

## Look What's New! Utah's Groundbreaking Efforts to Use Online Dispute Resolution (ODR) to Increase Access to Justice

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Justice Deno Himonas, [Utah's Online Dispute Resolution Program](#), 123 *Dickinson L. Rev.* 875 (2018).

In September 2018, Utah [launched](#) its small claims court online dispute resolution (ODR) system. Years in the making, a goal of Utah's new ODR system is to provide greater access to justice for Utah's citizens. The ODR system has been designed to provide "simple, quick, inexpensive and easily accessible justice" that includes "individualized assistance and information that is accessible across a multitude of electronic platforms."

This description of Utah's new ODR program comes from Utah Supreme Court Justice Deno Himonas's article entitled [Utah's Online Dispute Resolution Program](#). Justice Himonas's article should be of particular interest to readers who followed the work of the [ABA Commission on the Future of Legal Services](#) or readers interested in developments such as Washington's Limited License Legal Technician program ([LLLT](#)) or New York's [Court Navigator](#) program.

Having a public ODR program, as opposed to private ODR providers such as [eBay](#), is not a new concept. For example, UNCITRAL (the United Nations Commission on International Trade Law) has been working on this topic for years.<sup>1</sup> In the United States, the [National Center for State Courts](#) has documented and facilitated state court ODR developments. Some [state courts](#) have linked up with ODR providers such as [Modria](#) on a limited basis. Utah, however, is the first U.S. jurisdiction to launch a "soup-to-nuts" ODR system for its small claims disputes, which currently include claims [up to \\$11,000](#). The implications of this development are profound. As Justice Himonas observed in his *Utah ODR* article, "at this point in time we're only authorized to implement ODR in small claims court; but it doesn't take much of a stretch of the imagination to see that if it's successful, we'll take it to the next level."

The beginning of Justice Himonas's *Utah ODR* article provides information that explains why Utah created its ODR system. It recites "access to legal services" statistics that are depressingly similar to statistics that many have read elsewhere. For example, the World Justice Project's Rule of Law Index ranked the U.S. 94<sup>th</sup> out of 113 countries with respect to access and affordability. Utah-specific statistics tell a similar story. In the Third District where Justice Himonas served as a trial court judge for ten years:

- 99 percent of the respondents in debt collection cases were unrepresented. (These were the bulk of cases that were filed);
- 98 percent of the respondents in landlord/tenant cases were unrepresented; and
- in approximately 60 percent of family law cases, one or both parties were unrepresented.

Statistics such as these show why the Utah Courts have devoted considerable resources to helping self-represented clients. After briefly reviewing some of these initiatives, many of which are set forth on the Court's excellent "[Self-Help Resources](#)" [webpage](#), the article reviews the process by which the Utah Court system developed its ODR system.

The article continues by reviewing the ODR system's four stages as well as the philosophy behind each. The first stage of the process provides resources to educate the prospective litigant and to help that person evaluate the claim. The article includes an ODR screen shot that shows how defendants can ask for information about their options before responding to a complaint. The second stage in Utah's ODR process allows litigants to gather additional information. As Figure 1 shows, defendants can respond to the suit by stating that they have already paid the debt, or they want to make a full or partial payment, or they are in bankruptcy, or it is not their debt, or they dispute the claim. (P. 883). The

follow-up exchange between the parties will differ depending on the option the defendant selects. The third stage provides an opportunity for settlement discussions. Figure 2 is a screen shot that shows the options available if a defendant indicates that the defendant wants to make a payment. (P. 884). Figure 5 illustrates a chat box the parties can use for their settlement discussions. (P. 888). During the fourth stage of the small claims ODR process, either the parties will settle, or a judicial officer will make a ruling based on the documents the parties mark as “public.” Justice Himonas described this stage of the process as follows:

Let’s say you can’t resolve the dispute with the facilitator, then the facilitator is going to prepare a trial preparation document. The trial preparation document will narrow the issues, the facilitator will help the parties describe what’s left, what they’ve been able to resolve, if anything, and what they’ve been unable to resolve and put it in simple understandable terms for the judge. The facilitator will allow the parties to upload whatever documents they think are appropriate and may help guide that decision. If the judge feels like he or she needs a live hearing, they can do that; if not, the parties can elect to do this entirely electronically and have the judge make a decision.

One of the most notable and important aspects of Utah’s ODR system is its use of trained facilitators to help the parties resolve their disputes. As Justice Himonas explains:

As soon as both parties have joined the web portal, a facilitator is assigned to the case. The facilitators will go through extensive in-house training. We’re going to start with five individuals who have been intimately involved in the development of the process and involved in drafting the manual for the facilitators to use as we train them in the future.

When reading this article, I appreciated the fact that *Utah ODR* includes screen-shots of the ODR system that supplement the article’s explanations of how the system will work. Figures 1-4 show some of the interview questions, while explaining that the litigants’ answers do *not* become part of the court record. (P. 883-886). Figure 5 is a screen shot that illustrates the ODR system’s chat function that allows the parties to speak directly to one another. (P. 888). Figure 8 is a screen shot that shows how the parties are able to preview, edit, sign, or reject a settlement document. (P. 891). Figure 11 shows the ODR portal from the facilitator’s perspective. This section contains information about the “trial preparation” document the facilitator prepares in the event the parties are unable to settle and the dispute is sent to a judicial officer for resolution. (P. 894). (Under Utah’s ODR small claims system, if the parties do not like the small claims court ruling, they have the right to a de novo appeal to a Utah district court.) In short, after reviewing these screen shots and reading the article’s accompanying narrative, a reader will understand why Utah created its new ODR system, the philosophy and assumptions that drove its design, and the logistics of how it will work.

My one regret regarding this article, which is an edited transcript of Justice Himonas’s Symposium remarks, is that it did not include the lengthy footnotes and citations found in a traditional law review article. Citations that would have provided additional information and context include documents from the National Center for State Courts<sup>2</sup>, the Utah Court system<sup>3</sup>, and others such as the [American Bar Foundation](#), IAALS<sup>4</sup>, and [others](#). Despite this regret, I recognize that Penn State’s Dickinson Law Review was extremely fortunate to have Justice Himonas participate in its 2018 “[Access to Justice](#)” Symposium<sup>5</sup> and that his behind-the-scenes article about the development of Utah’s groundbreaking ODR system is an invaluable resource.

In sum, *Utah ODR* is now on the short list of articles that I am recommending to others. It is worth reading not only because it documents Utah’s cutting-edge access to justice efforts and provides a wealth of details to which the reader would not otherwise have access, but also because it is uplifting to read about the Utah Courts’ outside-the-[jury] box efforts to serve its citizens and remain relevant. It was difficult to select just one article for this Jot,<sup>6</sup> but this topic was the one I knew the least about and learned the most from.

1. See, e.g., [There's an 'App' for That: Developing Online Dispute Resolution to Empower Economic Development](#), [ODR Redress System for Consumer Disputes](#), and [Facilitating Expansion of Cross-Border E-Commerce – Developing a Global Online Dispute Resolution System](#); with class materials [here](#).
2. [Online Dispute Resolution at Court Technology Conference 2017](#), [Case Studies in ODR for Courts](#), and [Non-Lawyer Legal Assistance Roles Efficacy, Design, and Implementation](#).
3. [2018 Annual Report to the Community](#), [Resources For Self-Represented Parties Committee](#), and [Task Force Report](#).
4. [Mapping the Future of User Access through Technology](#) and [Inventory of Court Technology Solutions Supporting Self-Represented Litigants](#).
5. In addition to Justice Himonas's article, [Dickinson Law Review Volume 122:3](#) includes articles by: 1) Paula Littlewood and Steve Crossland who provided up-to-date statistics and implementation information about [Washington's LLLT program](#); 2) retired judge Fern Fisher, who helped design and implement New York's [Court Navigator](#) Program; 3) Liz Reppe, who helped establish the Minnesota State Library's clinics for [self-represented appellant litigants](#); and 4) Ryan Brunsink and Christina Powers, who describe the services provided by, and recent challenges to, [immigration resource centers](#). Volume 122:3's first article is by Forrest S. Mosten, Julie Macfarlane, and Elizabeth Potter Scully and is entitled [Educating the New Lawyer: Teaching Lawyers to Offer Unbundled and Other Client-Centric Services](#). The full title of this Symposium was [Access to Justice — Innovations and Challenges in Providing Assistance to Pro Se Litigants](#).
6. I was tempted to write about Prof. Bill Henderson's article entitled [Innovation Diffusion in the Legal Industry](#) or Prof. Peter Joy's article entitled [The Uneasy History of Experiential Education in U.S. Law Schools](#). Prof. Henderson's article applies to the legal services market lessons from other fields, including the well-established theory of an "innovation diffusion curve" and research that identifies factors that affect the rate of adoption of innovations. Prof. Joy's article analyzes the history of ABA accreditation of experiential education courses. Given the recent changes to, and controversy surrounding, [ABA Standard 303\(a\) \(3\)](#), this article is especially timely and important.

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