Supporting Self-Represented Litigants and Access to Justice: How Does ODR Fit In?

2019 INTERNATIONAL ODR FORUM
WILLIAMSBURG, VIRGINIA
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The Goal

2015 Resolution 5, Reaffirming the Commitment to Meaningful Access to Justice for All.

[...]
the Conference of Chief Justices and the Conference of State Court Administrators support the aspirational goal of 100 percent access to effective assistance for essential civil legal needs
The Reality

The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans (LSC 2017)

In the past year, 86% of the civil legal problems reported by low-income Americans received inadequate or no legal help.
The Iceberg – Unrealized Legal Issues
The More Real Reality

14%/5=3% of poor people’s total legal issues
3/2=1.5% of the total legal issues of poor and middle class people
Percentage of Cases With One or More Self-Represented Litigants

NCSC “Landscape” Studies of 2015 and 2018

76% of civil cases
72% of family cases
Uneven Playing Field

Civil – in over 90% of cases, the SRL is the defendant and the plaintiff is represented

Default rates for debt collection and landlord/tenant cases above 95% in most states
Who Are They?

Avoid stereotypes

Majority are poor, but many middle class and some PhDs

Language/cultural needs vary widely

In courts that accommodate their needs, they understand what is going on

Research shows that SRLs obtain decisions based on the law and the facts of their case in many courts
But

They don’t understand the law, the procedure, the language, the etiquette, or the court’s expectations of them.

They are utterly incapable of assimilating and using the rules of evidence.

They are very aware of their shortcomings.

They are anxious and intimidated.
The Vision Going Forward

AI-powered legal issue identification “portals” using natural language processing

“Curated” content – not black letter law summaries

“Trusted intermediaries” link persons with the portal, which in turn links them with appropriate and available resources

Process simplification

Multiple ways that SRL deficits are addressed by self help services
Examples of self help services

A calming person who can respond to questions

Plain language forms

Process Road Maps

Reminders and “just in time” next step process guidance

Calculators

Common fact patterns/paths and potential downstream consequences

Triage and referral to unbundled or full representation
How does ODR address these needs?

Enables an SRL to avoid the courtroom in resolving a case

Provides a structured way to reach agreement on multiple issues

Provides an asynchronous negotiating process

But still requires a complaint or answer

And does not address an SRL’s ignorance of the law and the process
It is not good enough to say this is no worse than 95% defaults
Incorporating “informational justice” principles to even the playing field

CCJ 2017 Call to Action: Achieving Civil Justice for All

11.1 Courts should ensure that judgments are consistent with requirements for notice, standing, timeliness, and sufficiency of documentation to support the relief sought.

Turner v. Rogers 131 S. Ct. 2507 (2011)
Engaging self help resources

Involve mediators/facilitators/self help staff

Display phone icon for SHC and/or chat feature

Link to videos, website information, and other SHC resources
Special Issues with Debt Collection Cases

Amount owed

Limitation on permissible interest rates

Statute of limitations

Standing of a debt buyer to enforce the original loan agreement

Adequacy of notice and service

Auto repossession and deficiency assessments

Statutory exemptions from garnishment and attachment

Advice of debtor’s ability to bargain with debt buyer
I do not want to try and settle this case without going to court because

☐ I don’t owe this money
☐ The debt was discharged in bankruptcy
☐ The debt is too old to collect pursuant to law (time barred)
☐ Another reason not listed above
New Mexico ODR Pilot Initial Results

Pilot districts June, July and August–1713 cases with 3 agreements

Expanded pilot–September 2526 cases with 4 agreements

Proposals made by defendants–14

Proposals made by plaintiffs–2

Letters from “New Mexico Judiciary” with answer form urging filing and service of answer so they can participate in the ODR process.
Other considerations

• Evaluation of the substantive impact of ODR on the parties

• Exhaustive user testing, including testing of models of engagement by mediators/facilitators

• Prefiling ODR option with seamless integration into court process, including CMS

• Existence of DV may not be sufficient to disqualify a family law case from ODR