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# Online Dispute Resolution for Divorce Cases in Missouri: A Remedy for the Justice Gap

DANIELLE LINNEMAN\*

## I. INTRODUCTION

It's the end of your workday, you're driving home, and just finished a phone conversation with your spouse that ended in a screaming match. You and your spouse are separated—you live in Missouri and he moved across the border to Iowa to live closer to his parents and his new job. Even though you are physically separated as a couple, you are still legally married. After the argument with your spouse, you realize your marriage cannot be saved. Knowing you do not qualify for Missouri's free legal aid and cannot afford to hire an attorney, you immediately begin to search the Internet to try to understand Missouri divorce law yourself. You find countless statutes that are confusing and written in legalese that you do not understand. Not knowing where to turn next for assistance, you feel completely helpless and frustrated with the legal system.

Unfortunately, this scenario is how many Americans involved in domestic disputes feel prior to and during their divorce proceedings. State statutes are often difficult to understand without legal education and state court systems for family law cases are complex. Additionally, individuals who do not qualify for legal aid, but cannot afford to hire a private attorney, are stuck in a perpetual "justice gap" where access to legal resources is seemingly non-existent. To remedy similar situations, other countries have successfully created and implemented online dispute resolution ("ODR") programs. ODR is "the application of information and communications technology to the practice of dispute resolution."<sup>1</sup> Currently in the United States, ODR is prominent in consumer law disputes but has not entered the realm of family law.

This Comment will analyze the use of ODR for divorce disputes in Missouri by first explaining the use of ODR and then analyzing its evolution. How ODR has grown on a global level and entered the realm of family law will also be viewed, as well as how other countries have used ODR to successfully resolve divorce case disputes. Recent proposals in the United States for use of ODR programs to resolve domestic disputes will be discussed, before evaluating how ODR programs could be implemented into Missouri's legal system as a way to begin shaping the future of America's family law system.

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1. Colin Rule, *Technology and the Future of Dispute Resolution*, DISP. RESOL. MAG., Winter 2015, at 5, <http://www.colinrule.com/writing/drmag.pdf>.

## II. THE EVOLUTION OF ODR

### A. What is Online Dispute Resolution?

ODR involves the entire spectrum of alternative dispute resolution (“ADR”) outside of the courtroom combined with technology and the Internet.<sup>2</sup> ODR is a specific type of ADR that draws most of its methods and ideas from traditional dispute resolution processes.<sup>3</sup> Most ADR processes, such as mediation and arbitration, stem from a dispute resolution process that includes three partners, typically comprised of the two parties to the dispute and a neutral third party.<sup>4</sup> ODR, on the other hand, adds a fourth party: technology.<sup>5</sup>

The feuding parties may use the Internet and web-based technology in various ways to resolve disputes through ODR processes.<sup>6</sup> Some parties may choose to resolve their dispute entirely on the Internet, or “online.”<sup>7</sup> Other parties might wish to occasionally meet in person, or “face-to-face,” to follow up with their online communications.<sup>8</sup> When using ODR processes, parties have the autonomy to choose how much of their discussions will take place online or face-to-face.<sup>9</sup>

ODR includes a broad ensemble of tools and technological methods of communication.<sup>10</sup> ODR processes frequently use computer mediated communications (“CMC”) and web-based programs to resolve disputes.<sup>11</sup> ODR methods may vary in their levels of interaction. For instance, some dispute resolution is more automated, employing negotiations relying on algorithms to reach claim settlements. On the other hand, ODR may be more hands on, using arbitration procedures carried out via email, document postings, and online hearings.<sup>12</sup> The various ODR tools enable the resolution of disputes for cases in which the traditional alternatives are less viable and even, at times, impossible.<sup>13</sup>

### B. The Growth of ODR on a Global Level

In the private sector, ODR was initially used in the area of electronic commerce (“e-commerce”) on the Internet to settle disputes between buyers and sellers of

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2. Dafna Lavi, *Three is Not a Crowd: Online Mediation-Arbitration in Business to Consumer Internet Disputes*, 37 U. PA. J. INT’L L. 871, 879 (2016).

3. *Id.*

4. *Id.*

5. *Id.* at 880.

6. ABA Task Force on Electronic Commerce and Alternative Dispute Resolution Task Force, *What is Online Dispute Resolution? A Guide for Consumers* (Mar. 2002), [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/consumerodr.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/consumerodr.authcheckdam.pdf) (last visited Sept. 22, 2017).

7. *Id.*

8. *Id.*

9. *Id.*

10. Lavi, *supra* note 2, at 880.

11. Amy Schmitz, *Building Trust in Ecommerce Through Online Dispute Resolution*, University of Colorado Law School, Legal Studies Research Paper Series Paper Number 15-15, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2684177](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2684177).

12. *Id.*

13. Lavi, *supra* note 2, at 880.

goods and services.<sup>14</sup> Traditional methods of dispute resolution, including litigation, arbitration, and mediation, proved to be insufficient. The insufficiency stemmed from a variety of sources, such as: high litigation costs between parties who had great geographic distances from one another; complicated questions regarding jurisdiction; and the challenge of enforcing the outcomes and the rights conveyed.<sup>15</sup> ODR rose in popularity among parties in these disputes as an inexpensive, convenient, and accessible alternative to the traditional means of dispute resolution.<sup>16</sup>

Currently, companies including eBay, Amazon, and PayPal all have ODR systems in place.<sup>17</sup> Consumers who are buying, selling, and making payments online generally trust these systems.<sup>18</sup> While ODR's resounding success in resolving disputes on eBay and PayPal has not yet been duplicated elsewhere, the road is being paved for its use in settling online disputes.<sup>19</sup> For example, SquareTrade is eBay's preferred dispute resolution provider and offers two services: a free web-based forum that allows users to attempt to resolve disputes on their own, or if necessary, with the use of a professional mediator.<sup>20</sup>

Through SquareTrade, eBay offers a user-friendly ODR program for feuding customers to resolve their disputes. When a customer becomes dissatisfied with a purchase, he can file a complaint with eBay free of charge.<sup>21</sup> SquareTrade then contacts the party the complaint was filed against and encourages the party to respond to the complaint.<sup>22</sup> Next, the parties are provided an opportunity to resolve their dispute using SquareTrade's free ODR program, without aid from a third-party.<sup>23</sup> If further assistance is required, the parties may request the assistance of a professional mediator for a total of \$15, and eBay will subsidize the remainder of the cost.<sup>24</sup> On average, consumer disputes arising from eBay sales are resolved within 10 days.<sup>25</sup>

### C. The Establishment of ODR in Family Law

In recent years, there has been a trend to expand the use of ODR beyond electronic commerce and the virtual sphere.<sup>26</sup> The use of ODR has spread and been applied to "real world" conflicts such as disputes between neighbors, commercial

14. Dafna Lavi, *No More Click? Click in Here: E-Mediation in Divorce Disputes—The Reality and the Desirable*, 16 CARDOZO J. CONFLICT RESOL. 479, 481 (2015).

15. *Id.* at 482.

16. *Id.*

17. Scott J. Shackelford, *Building The Virtual Courthouse: Ethical Considerations for Design, Implementation, and Regulation in the World Of ODR*, 3 WIS. L. REV. 615, 624 (2014).

18. *Id.*

19. Noam Ebner & John Zeleznikow, *No Sheriff in Town: Governance for the ODR Field*, *Negotiation Journal* 32(4), \*4, <https://poseidon01.ssrn.com/delivery.php?ID=775083081114004120009066091080001125015041073000033030103117080071025080023086092099019058097123006014049015008029114108000083019050035019082065107099103067025116084015076004016115108068095108121086081113031111121010008088108020031071089007001017027&EXT=pdf>.

20. eBay.com, *Dispute Resolution Overview*, <http://pages.ebay.com/services/buyandsell/disputeres.html> (last visited Sept. 5, 2017).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Lavi, *supra* note 14, at 487.

negotiations, and even various international disputes arising from parties in different countries.<sup>27</sup> In accordance with this trend, ODR has recently expanded and gained momentum on a global level in the area of family law, and more specifically in both fault and no-fault based divorces.<sup>28</sup>

*i. The Rechtwijzer Project (The Netherlands)*

With a current divorce rate adding up to 34,000 new divorces and separations of couples with children each year, the Dutch Legal Aid Board in the Netherlands felt it was necessary to provide additional legal assistance to feuding spouses considering divorce. The Dutch Legal Aid Board launched Rechtwijzer 1.0 (Pathway to Justice) in 2007 with the collaborative efforts of Modria and the Hague Institute for Innovation of Law.<sup>29</sup> The Rechtwijzer online process was originally based on a concept developed for resolving consumer disputes on eBay—a system that resolves over 60 million disputes each year.<sup>30</sup> Through a sequence of interactive exchanges, participants using the Rechtwijzer 1.0 website were guided through a process that helped them understand their dispute and possible legal avenues to its resolution.<sup>31</sup> The primary mission of Rechtwijzer 1.0 was to place the disputants in a position to resolve the dispute themselves through face-to-face negotiations.<sup>32</sup>

Several years after the introduction of Rechtwijzer 1.0, the Dutch Legal Aid Board publicly released Rechtwijzer 2.0 in November of 2015.<sup>33</sup> Unlike Rechtwijzer 1.0, the updated program gives parties an opportunity to completely resolve the dispute online.<sup>34</sup> As an ODR program, Rechtwijzer 2.0 includes modules for divorce, consumer, and debt problems and allows parties in dispute to collaborate on their legal problem and attempt to reach an agreement outside of the courtroom.<sup>35</sup> More specifically to the family law portal, the website guides divorcing couples through a new type of separation process by providing an opportunity to draft a joint separation plan online.<sup>36</sup>

The program requires feuding partners to individually log into the program from their own computers. Users are then asked a series of multiple-choice questions to help them describe their current marital situation. The Rechtwijzer program makes proposals for agreements based on the responses given by the party that address the various legal issues that need to be resolved.<sup>37</sup> If the disputants are unable

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27. *Id.*

28. *Id.*

29. HiiL Innovating Justice, *Rechtwijzer.nl: A Game Changer*, <http://www.hiil.org/news/rechtwijzer-game-changer> (last visited Oct. 9, 2017).

30. Rebecca L. Kourlis et al., *Court Compass Convening Report*, Institute for the Advancement of the American Legal System (July 2016), [http://iaals.du.edu/sites/default/files/documents/publications/court\\_compass\\_convening\\_report.pdf](http://iaals.du.edu/sites/default/files/documents/publications/court_compass_convening_report.pdf).

31. Earl Johnson, Jr., *Lifting the “American Exceptionalism” Curtain: Options and Lessons From Abroad*, 67 *Hastings L.J.* 1225, 1254 (2016).

32. *Id.*

33. *Id.* at 1255.

34. *Id.* at 1254.

35. *Netherlands Project Rechtwijzer*, HiiL Innovating Justice, <http://www.hiil.org/project/?itemID=2641> (last visited Sept. 10, 2017).

36. *Rechtwijzer Launches in the Netherlands*, HiiL Innovating Justice (Nov. 26, 2015), <http://www.hiil.org/insight/rechtwijzer-press-release>.

37. *Id.*

to reach a final agreement, the Rechtwijzer program offers an option for the parties to hire a neutral third party (e.g., a mediator or an arbitrator) to provide additional online assistance and an option to request help from the Rechtwijzer contact center.<sup>38</sup> Mediators and arbitrators hired by Rechtwijzer users have access to the courtroom discussions of the feuding parties and can make suggestions or ask questions that help the parties resolve the dispute.

If the parties are able to successfully draft a joint separation plan on their own, a lawyer from Rechtwijzer reviews and approves the agreement to ensure that the plan is equitable and legally enforceable before it is presented to the court.<sup>39</sup> Users of Rechtwijzer 2.0 are not charged any additional fees for this process.<sup>40</sup> To date, the drafted agreements produced and reviewed through the Rechtwijzer program have had 100% approval ratings by courts in the Netherlands.<sup>41</sup> The program tends to be most beneficial for users who are above the poverty line yet still eligible for partially subsidized legal aid because the Rechtwijzer platform charges additional fees for optional legal services such as mediation and arbitration.<sup>42</sup> As a result, roughly forty percent of those who have signed up for Rechtwijzer 2.0 have been eligible for legal aid.<sup>43</sup>

Parties using the Rechtwijzer program have responded positively to the platform as a whole. Prior to the public release of Rechtwijzer 2.0, the programmers conducted a pre-launch test period to make final refinements. During the test period, 395 divorcing couples agreed to use Rechtwijzer 2.0 and 128 of those couples were able to reach a divorce agreement by using the program.<sup>44</sup> Surveys indicate that 84% of users felt Rechtwijzer 2.0 gave them more control over their divorce process and 70% of users reported that their results led to effective and sustainable solutions.<sup>45</sup> Rather than spending weeks or months in trial battling over various aspects of the divorce process, Rechtwijzer 2.0 users only spent an average of 23 hours working on their separation agreements.<sup>46</sup> Additionally, 79% of users felt the Rechtwijzer 2.0 process was fair.<sup>47</sup>

Although online users have shown support for Rechtwijzer 2.0, the program has proven to be financially unsustainable since its most recent update in 2015.<sup>48</sup> Rechtwijzer 2.0 was ambitiously designed with hope that the program could eventually be self-financed as users paid for extra online legal services such as mediation.<sup>49</sup> Unfortunately this proved a bridge too far and the program continued to depend on limited financial assistance from the government.<sup>50</sup> As a result, Rechtwijzer 2.0 dissolved in July of 2017 and was replaced in the Netherlands by a new program,

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38. *Id.*

39. *Id.*

40. *Id.*

41. Joshua Lenon, *Kafka's Chatbox*, Law Practice Today (Dec. 14, 2016), <http://www.lawpracticetoday.org/article/kafkas-chatbot>.

42. Johnson, Jr., *supra* note 32, at 1255.

43. *Id.*

44. *Id.*

45. Joshua Lenon, *Kafka's Chatbox*, Law Practice Today (Dec. 14, 2016), <http://www.lawpracticetoday.org/article/kafkas-chatbot/>.

46. *Id.*

47. *Id.*

48. Roger Smith, *Goodbye Rechtwijzer: Hello Justice*<sup>42</sup>, Law Technology, and Access to Justice (Mar. 21, 2017), <http://law-tech-a2j.org/advice/goodbye-rechtwijzer-hello-justice42>.

49. *Id.*

50. *Id.*

Justice42.<sup>51</sup> Programmers who created the Rechtwijzer program will use similar features for Justice42, but instead will only focus the new program on the Dutch divorce market.<sup>52</sup> The Dutch Legal Aid Board will cease to provide funding for Justice42, though it is hoped that legal aid funding will be available to users who were eligible within the new program.<sup>53</sup> The team working on the creation of Justice42 intends to operate the program independently of government funding.<sup>54</sup>

Overall the Rechtwijzer program was liked by users and provided sufficient legal assistance. When considering those factors, the program was a success. However, the unfortunate demise of Rechtwijzer sent a nationwide message that implementation of ODR programs has financial limitations and often cannot survive when dependent on government funding alone.

## ii. MyLawBC (British Columbia)

The Legal Services Society (“LSS”) in British Columbia created MyLawBC after noticing a growing problem with its citizens attempting to use the Internet to obtain legal information.<sup>55</sup> Many individuals researching their legal problem were overwhelmed by online legal information and, after reading it, are often uncertain how it applies to their troubles.<sup>56</sup> To address this national trend, LSS collaborated with HiiL Innovating Justice and Modria, the creators of Rechtwijzer,<sup>57</sup> to use Rechtwijzer’s existing platform as an inspiration for British Columbia’s own online legal service program.<sup>58</sup> The primary missions of the MyLawBC program are to increase public legal education and expand access to justice in the areas of family law, family violence, estate planning, and foreclosure.<sup>59</sup>

The interactive application engages users to identify and address common legal problems through the use of “guided pathways.”<sup>60</sup> MyLawBC offers an evaluative ODR process, and guided pathways are a unique feature that allows the site to diagnose legal problems and advise the user on the next appropriate steps to resolving the dispute.<sup>61</sup> As users navigate the website, they are asked a series of questions and the responses they give determine the information and resources provided by the program.<sup>62</sup> The questions answered by the user on the guided pathways also

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51. *Id.*

52. *Id.*

53. *Id.*

54. Roger Smith, *Goodbye Rechtwijzer: Hello Justice42*, Law Technology, and Access to Justice (Mar. 21, 2017), <http://law-tech-a2j.org/advice/goodbye-rechtwijzer-hello-justice42>.

55. Ian Mulgrew, *Legal Self-Help Finally Arriving in B.C.*, VANCOUVER SUN, Apr. 13, 2016, <http://vancouversun.com/opinion/columnists/ian-mulgrew-legal-self-help-finally-arriving-in-b-c>.

56. *Id.*

57. *Id.*

58. *About Us*, Legal Service Society, MyLawBC, <http://mylawbc.com/info/lss.php> (last visited Sept. 22, 2017).

59. *Development Blog*, Legal Service Society, MyLawBC, <http://devblog.mylawbc.com/faq> (last visited Sept. 22, 2017).

60. *Id.*

61. *Id.*

62. *Id.*

allow the program to create a plan of action for the user to use in future negotiations.<sup>63</sup> MyLawBC also provides an online application that allows divorcing couples to draft a separation agreement through the website.<sup>64</sup> If the divorcing couple is able to reach a final agreement, the program will produce a document for the individuals to present to the court for approval.<sup>65</sup>

Unlike *Rechtwijzer 2.0*, MyLawBC does not provide an option for users to hire mediators or arbitrators to assist with the dispute resolution process.<sup>66</sup> Instead, the program focuses on providing information, downloadable worksheets, and forms that allow users to resolve certain legal issues on their own.<sup>67</sup> As a result, the program provides legal assistance to individuals of all socioeconomic levels and is not restricted to those who have a low income but do not qualify for legal aid.<sup>68</sup> Even users who can afford to hire a private attorney are able to use MyLawBC as a tool to help them obtain a better understanding of the legal issues in their case and best use their financial resources to resolve the case.

MyLawBC operates as a non-profit organization and is a registered charity in British Columbia, and was created under the Legal Services Society Act.<sup>69</sup> Although LSS receives both government and private funding, the MyLawBC initiative has operated primarily through the non-government funding received by LSS from sources such as the Law Foundation and Notary Foundation.<sup>70</sup> The start-up costs for MyLawBC totaled around \$775,000 and annual maintenance costs for running the website each year are roughly \$60,000.<sup>71</sup>

### III. NEED FOR LOW-COST OPTIONS FOR DOMESTIC DISPUTES IN MISSOURI

There are currently several ways for Missourians to resolve domestic legal disputes without needing to hire a private attorney. However, these options only provide limited access to justice and do not include any form of ODR. Missouri courts allow civil litigants to appear *pro se*, without the assistance of a licensed attorney, in a variety of domestic disputes including dissolution of marriage cases. Additionally, several organizations and corporations currently offer free or reduced fee legal service programs to low-income persons who need assistance with a variety of domestic disputes including divorce, child custody, child support, adult and child orders of protection, and paternity. The majority of domestic disputes cannot be unilaterally resolved by the parties without the court's permission, so many who do not qualify for state-funded legal aid ultimately litigate their cases *pro se*.

63. *Id.*

64. Ian Mulgrew, *Legal Self-Help Finally Arriving in B.C.*, VANCOUVER SUN, Apr. 13, 2016, <http://vancouver.sun.com/opinion/columnists/ian-mulgrew-legal-self-help-finally-arriving-in-b-c>.

65. *Id.*

66. *Development Blog*, Legal Service Society, MyLawBC, <http://devblog.mylawbc.com/faq> (last visited Sept. 22, 2017).

67. Ian Mulgrew, *Legal Self-Help Finally Arriving in B.C.*, VANCOUVER SUN, Apr. 13, 2016, <http://vancouver.sun.com/opinion/columnists/ian-mulgrew-legal-self-help-finally-arriving-in-b-c>.

68. *Id.*

69. *About Us*, Legal Service Society, MyLawBC, <http://mylawbc.com/info/lss.php> (last visited Sept. 22, 2017).

70. *Development Blog*, Legal Service Society, MyLawBC, <http://devblog.mylawbc.com/faq> (last visited Sept. 22, 2017).

71. Ian Mulgrew, *Legal Self-Help Finally Arriving in B.C.*, VANCOUVER SUN, Apr. 13, 2016, <http://vancouver.sun.com/opinion/columnists/ian-mulgrew-legal-self-help-finally-arriving-in-b-c>.



A. *Appearing Pro Se*

In recent decades, civil litigants nationwide have increasingly appeared in court *pro se*, usually because they cannot afford to hire private counsel and do not qualify for free legal services.<sup>72</sup> This trend has been and continues to be most apparent in domestic relations cases,<sup>73</sup> as “on average, eighty percent of all family law cases involve at least one self-represented litigant, while in 50% of the cases, both litigants proceed on their own.”<sup>74</sup> Cases involving one or more *pro se* litigant place a heavy burden on the court because judges, clerks, and other staff members often need to take special measures to compensate for a litigant’s lack of legal training.<sup>75</sup>

In Missouri, state courts compensate for a *pro se* litigant’s lack of legal knowledge in family law matters through the requirements set forth under Rule 88.09.<sup>76</sup> First, individuals who plan to represent themselves in court must complete a two-step Litigant Awareness Program.<sup>77</sup> The mandatory program is intended to help *pro se* litigants gain a better understanding of the Missouri court system as well as the dangers and duties of self-representation in the courtroom.<sup>78</sup> Additionally, *pro se* litigants must also complete and file various forms approved by the Missouri Supreme Court regarding the nature of the case and information about the parties involved in the dispute.<sup>79</sup> Missouri circuit courts also have the authority to enforce additional requirements for *pro se* litigants in divorce cases.<sup>80</sup>

As self-representation continues to increase in domestic disputes and other areas of the law, many national and state bar associations, including Missouri, encourage the use of “unbundled legal services.”<sup>81</sup> In these arrangements, a licensed attorney provides a client with some, but not all, services traditionally associated with representation.<sup>82</sup> A lawyer in Missouri may limit one’s scope of representation in an unbundled legal service agreement under Rule 4-1.2(c), which states: “A lawyer may limit the scope of representation if the client gives informed consent in a writing signed by the client to the essential terms of the representation and the lawyer’s limited role.”<sup>83</sup> Thus, a *pro se* litigant also has the ability to represent himself in court with partial legal assistance if he enters into an unbundled legal service agreement.

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72. Douglas E. Abrams, Naomi R. Cahn, Catherine J. Ross, David D. Meyer & Linda C. McClain, *Contemporary Family Law* 986 (4th ed. 2015).

73. *Id.*

74. Amy G. Applegate & Connie J.A. Beck, *Self-Represented Parties in Mediation: Fifty Years Later It Remains the Elephant In the Room*, 51 FAM. CT. REV. 87, 87 (Jan. 2013).

75. Abrams et al., *supra* note 73 at 987.

76. Mo. Sup. Ct. R. 88.09 (2017).

77. Missouri Courts: Judicial Branch of Government, *Representing Yourself*, <http://www.selfrepresent.mo.gov/page.jsp?id=5240> (last visited Sept. 22, 2017).

78. *Id.*

79. Mo. Sup. Ct. R. 88.09 (2017).

80. Local Court Rules of the Thirteenth Judicial Circuit of the State of Missouri, <http://www.courts.mo.gov/hosted/circuit13/documents/LocalRules.pdf#nameddest=RULE68> (last visited Sept. 22, 2017).

81. Abrams et al., *supra* note 73 at 987.

82. *Id.*

83. Mo. Sup. Ct. R. 4-1.2(c) (2017).

Proponents of unbundled legal services argue that the model expands access to justice for litigants with limited means.<sup>84</sup> Unbundling provides affordable legal services to those that might need assistance with one particular aspect of their legal case, such as child support, but could competently handle the rest of their matter *pro se*.<sup>85</sup> Unlike traditional practices, unbundling provides the option for litigants to “hire an attorney, at a set price, for a discrete task, within his means, and where he believes it might be most beneficial.”<sup>86</sup> This option is particularly helpful to *pro se* litigants who do not qualify for free legal aid and are financially unable to hire a private attorney to handle all legal disputes in the case.

### B. Missouri Legal Service Programs

Four regional non-profit Legal Services programs currently exist in Missouri and have all operated organized *pro bono* or *judicare* (reduced fee) programs since 1982.<sup>87</sup> Each region sets its own case priorities, but legal services for domestic disputes generally include assistance in the areas of divorce, child custody, orders of protection, paternity, and guardianship for minors.<sup>88</sup> All four programs are funded by state and federal grants and jointly cover all counties within the state of Missouri.<sup>89</sup> To qualify for a Legal Services program, applicants must meet certain income eligibility criteria determined by the Legal Services program offering legal aid in the applicant’s county.<sup>90</sup>

Missouri Legal Services programs often limit the scope of free representation available for domestic dispute applicants. Mid-Missouri Legal Services (“MMLS”), located in Columbia and Jefferson City, offers free legal assistance in clinics held by volunteer attorneys and law students for low-income individuals involved in uncontested divorces.<sup>91</sup> In MMLS clinic sessions, volunteer attorneys and law students help low-income individuals fill out the necessary paperwork to get divorced without the need to hire a private attorney.<sup>92</sup> Similarly, Legal Services of Eastern Missouri (“LSEM”), located in St. Louis, offers *pro bono* legal assistance to individuals who “are parties in the welfare system, and whose custody and parental rights are at stake.”<sup>93</sup> LSEM does not offer free legal services for marriage dissolution cases and narrows its assistance solely to child custody and domestic violence issues.<sup>94</sup>

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84. Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. WASH. J. ON POVERTY L. & POL’Y 454, 461-63 (2011).

85. *Id.* at 458.

86. *Id.* at 463.

87. *Existing Pro Bono Programs in Missouri*, <https://www.courts.mo.gov/page.jsp?id=43918> (last visited Sept. 22, 2017).

88. *Id.*

89. *Id.* See also Missouri, Legal Services Corporation, <http://www.lsc.gov/missouri>.

90. *Existing Pro Bono Programs in Missouri*, <https://www.courts.mo.gov/page.jsp?id=43918> (last visited Sept. 22, 2017).

91. Mid-Missouri Legal Services, *Divorce*, <http://mmls.org/forms-info/divorce/> (last visited Sept. 22, 2017).

92. *Id.*

93. Legal Services of Eastern Missouri, *Family Court Program*, <http://www.lsem.org/lsem-services/family-court-project/> (last visited Sept. 22, 2017).

94. *Id.* See also Legal Services of Eastern Missouri, *Lasting Solutions Family Law Program*, <http://www.lsem.org/lsem-services/lasting-solutions-family-law-program>.

Likewise, Legal Services of Southern Missouri (“LSSM”), located in Springfield, limits its free legal assistance to family matters where “the situation may threaten the security or the viability of a family.”<sup>95</sup> LSSM provides legal services for marriage dissolution cases where abuse is present, and typically only handles family law cases involving paternity, adoption, name change, and guardianship.<sup>96</sup> Additionally, Legal Aid of Western Missouri (“LAWM”), located in Kansas City, focuses its resources to providing legal services for low-income victims of abuse in family law cases.<sup>97</sup> LAWM accepts family law cases that involve domestic violence and primarily situations in which children are at risk.<sup>98</sup> Its legal services are typically limited to helping low-income domestic abuse victims secure protective orders, establish paternity, and obtain orders for child custody and support.<sup>99</sup>

### C. MARCH Mediation Services

The idea for Mediation Achieving Results for Children (“MARCH”) originated at a judicial conference in September of 1996, and the program officially began operating in October of 1997.<sup>100</sup> MARCH currently operates in all counties throughout Missouri and provides mediation services to assist with the needs of the children of parents who are divorced or were never married and are currently separated.<sup>101</sup> To be eligible for MARCH Mediation Services, the parents must be divorced or never married, and both parents must agree to use mediation to resolve the dispute.<sup>102</sup>

Numerous Missouri judges, mediators, and attorneys have supported MARCH Mediation Services for years as the program continues to help thousands of families statewide.<sup>103</sup> MARCH provided mediation services for 1,270 cases throughout the state in 2009,<sup>104</sup> and the program served approximately 1,300 families in 2010.<sup>105</sup> Since its origination, MARCH Mediation Services has served as a model program throughout the country and has won various awards including the Irwin Cantor Innovative Program Award, given annually by the Association of Family and Conciliation Courts.<sup>106</sup>

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95. Legal Services of Southern Missouri, *Family*, <http://www.lsoism.org/services/family> (last visited Sept. 22, 2017).

96. *Id.*

97. Legal Aid of Western Missouri, *Family Law & Domestic Violence Protection*, <http://lawmo.org/what-we-do/how-we-help-people/family-law-domestic-violence-protection> (last visited Sept. 22, 2017).

98. *Id.*

99. *Id.*

100. *History of MARCH*, M.A.R.C.H. MEDIATION, <http://www.marchmediation.org/history.html> (last visited Sept. 8, 2017).

101. Alan E. Freed, MO. FAMILY LAW § 5.13 (MoBar 7th ed. 2012) (2014). *See also Counties Served*, M.A.R.C.H. MEDIATION, <http://www.marchmediation.org/counties.html> (last visited Sept. 8, 2017).

102. *How to Participate*, M.A.R.C.H. MEDIATION, <http://www.marchmediation.org/howtoparticipate.html> (last visited Sept. 8, 2017).

103. Association of Missouri Mediators, Inc., *THE COMMUNICATOR*, Vol. XI, Issue III, Winter 2009, <http://www.momediators.org/docs/Newsletter%20Winter%202009.pdf>.

104. *Id.*

105. Cathy Kingsley, *Court Mediation Program to Receive Award*, MISSOURI LAWYERS MEDIA, Apr. 22, 2010, LexisNexis (2010).

106. *Id.*

The program offers up to four hours of free mediation services by a trained mediator for the purpose of resolving disputes about child support, custody, parenting time, transportation responsibilities, health insurance coverage, and other issues related to their children.<sup>107</sup> MARCH narrowly focuses its services for disputes directly involving children, and does not offer any mediation services for dissolution of marriage or other forms of domestic disputes.<sup>108</sup> Additionally, the mediated agreements are non-binding until a written agreement is signed by both parties and approved by the court.<sup>109</sup> MARCH mediators also help direct parents to resources that will assist them in presenting their agreement for court approval.<sup>110</sup>

MARCH offers its mediation services through the use of both public and private funding.<sup>111</sup> The program is a collaborative effort between the Missouri Department of Social Services, Division of Family Support, and MARCH, Inc.<sup>112</sup> MARCH receives public funding through a grant from the Federal Department of Health and Human Services, Office of Child Support Enforcement, and general revenue from the State of Missouri through the Missouri Division of Family Support.<sup>113</sup> In Missouri, MARCH is registered as a “not for profit” corporation and is also able to accept voluntary contributions from corporate sponsors and private individuals to help promote mediation education and public awareness.<sup>114</sup>

#### *D. Other Privately Owned Organizations Providing Legal Assistance*

Numerous privately-owned and operated organizations throughout the state also offer legal assistance to individuals who have needs that are not being met by state and federal funded programs. In mid-Missouri, the Samaritan Care Center is an interfaith social service agency that assists low-income individuals by offering free legal services.<sup>115</sup> The center’s Legal Care Program acts as a bridge between low-income Missourians who need legal assistance and local attorneys and mediators who volunteer to provide free or reduced cost legal services.<sup>116</sup>

Legal Care at the Samaritan Center assists with most legal issues except criminal or traffic violation matters.<sup>117</sup> An individual wishing to receive legal services must first apply through the Samaritan Center and receive approval from the organization.<sup>118</sup> Then, Legal Care refers the applicant to an attorney or mediator who volunteers with the program.<sup>119</sup> If an applicant is able to pay some of the attorney’s

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107. *Services Offered*, M.A.R.C.H. MEDIATION, <http://www.marchmediation.org/services.html> (last visited Sept. 8, 2017).

108. *Id.*

109. *Id.*

110. *Id.*

111. *Funding & Collaboration*, M.A.R.C.H. Mediation, <http://www.marchmediation.org/funding.html> (last visited Sept. 9, 2017).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Mission*, SAMARITAN CENTER INTERFAITH AGENCY, <http://www.midmosamaritan.org> (last visited Sept. 9, 2017).

116. *Legal Care*, SAMARITAN CENTER INTERFAITH AGENCY, <http://www.midmosamaritan.org> (last visited Sept. 9, 2017).

117. *Id.*

118. *Id.*

119. *Id.*

fees or court costs, he may be asked to do so.<sup>120</sup> However, if he is unable to pay for any of the attorney's fees or court costs, the services are free and financial assistance with costs or fees may be paid from the Legal Care fund.<sup>121</sup>

Like the Samaritan Center, the Catholic Legal Assistance Ministry ("CLAM") also provides legal assistance to those in need and is located in St. Louis, Missouri. CLAM was founded in 1987 and provides pro bono legal services and equal access to justice to low-income Missourians involved in civil matters throughout 11 counties in the St. Louis area.<sup>122</sup> Although CLAM is a Catholic organization, it provides legal assistance to individuals throughout the community regardless of faith.<sup>123</sup>

CLAM's Family Law Project provides legal assistance to low-income clients in all areas of family law, but prioritizes cases involving parents and children who are victims of domestic abuse or violence.<sup>124</sup> The legal services offered through the Family Law Project primarily include establishing child and spousal support, child custody, and equitable distribution of property in divorces.<sup>125</sup> CLAM has operated under St. Francis Community Services, a social service agency that organizes Catholic charities in the St. Louis area, since July of 2011.<sup>126</sup> CLAM is a privately operated organization and receives funding from St. Francis Community Services' \$2 million dollar budget.<sup>127</sup>

#### E. Limitations of the Current Legal Aid Offerings in Missouri

The limited legal aid options currently available in Missouri have created an evolving "justice gap" throughout the state. Low-income Missourians who qualify for legal aid may receive assistance with their cases from a government-funded program. High-income Missourians are presumably able to hire their own private attorney to handle their legal matters. However, a significant number of Missourians fall between these two groups and have severely limited access to legal resources. Thus, creating a justice gap in the state legal system, Missouri does not offer any form of basic legal aid programs or educational tools to individuals who have a low-income socioeconomic status, but do not quite qualify for legal aid. As a result of this justice gap, an increased number of Missourians appear *pro se* for their divorce cases because they cannot access legal resources.

This growing trend is problematic for Missouri courts because *pro se* litigants lack the legal knowledge to sufficiently represent themselves. Therefore, a heavy burden is placed on the courts to protect and be responsible for ensuring the rights of *pro se* litigants. As a result, the additional requirements and steps *pro se* litigants must complete prior to trial slow down the litigation process and are costly to the court system.

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120. *Id.*

121. *Id.*

122. *Catholic Legal Assistance Ministry: Locations*, ST. FRANCIS COMMUNITY SERVICES, <https://sfcs-stl.org/locations/clam> (last visited Sept. 9, 2017).

123. *About St. Francis Community Services*, ST. FRANCIS COMMUNITY SERVICES, <https://sfcs-stl.org/about-us/about-st-francis-community-services> (last visited Sept. 9, 2017).

124. *Catholic Legal Assistance Ministry: Family Law Program*, ST. FRANCIS COMMUNITY SERVICES, <https://sfcsstl.org/services/familylaw> (last visited Sept. 9, 2017).

125. *Id.*

126. *About St. Francis Community Services*, ST. FRANCIS COMMUNITY SERVICES, <https://sfcs-stl.org/about-us/about-st-francis-community-services> (last visited Sept. 9, 2017).

127. *Id.*

Additionally, the state legal aid services might lose a significant amount of funding in the next few years. President Donald Trump has proposed a new budget plan that would eliminate federal funding that supports legal aid services nationwide.<sup>128</sup> If the proposal is adopted and passed by Congress, legal aid services nationwide, including the four regional legal aid programs in Missouri, would likely be unable to continue operating.<sup>129</sup> Therefore, there is an immediate possibility that even more low-income Missourians would fall into the justice gap and not have access to legal resources or assistance.

#### IV. PROPOSAL FOR THE USE OF ODR FOR DIVORCE CASES IN MISSOURI

##### *A. Existing Proposal for Inclusion of ODR for Domestic Disputes in the United States*

After Rechtwijzer and MyLawBC explored new legal territory through the use of ODR in the family law sphere, some American proponents of the programs met to discuss the possibility of expanding the use of ODR throughout the United States.<sup>130</sup> The Institute for the Advancement of the American Legal System (“IAALS”) is “a national, independent research center at the University of Denver that is dedicated to facilitating continuous improvement of the American legal system.”<sup>131</sup> The primary mission of IAALS is to forge innovative solutions to current problems in the United States legal system and empower others with knowledge, models, and will to have a more accessible, efficient and accountable American legal system.<sup>132</sup>

In its most recent meeting, IAALS members acknowledged two prominent problems that have surfaced in the American legal system. First, IAALS claims there is a belated nationwide recognition that the justice system is no longer court-centric.<sup>133</sup> In many civil justice situations, individuals do not view their problem as “legal” and do not always believe courts and attorneys can provide them with the appropriate remedy.<sup>134</sup> Thus, ODR and other dispute resolution methods may best serve the needs of these individuals because the processes allow them to have increased control over the outcome of the case.

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128. Debra Weiss, *Trump Budget Eliminates Legal Services Corp, Funding*, ABA JOURNAL (Mar. 16, 2017), [http://www.abajournal.com/news/article/trump\\_budget\\_eliminates\\_funding\\_for\\_legal\\_services\\_corp/](http://www.abajournal.com/news/article/trump_budget_eliminates_funding_for_legal_services_corp/).

129. Jordan Smith, *Donald Trump Plans to Eliminate Legal Aid Funding that Supports Survivors of Domestic Violence*, THE INTERCEPT (Mar. 20, 2017, 2:50 PM), <https://theintercept.com/2017/03/20/donald-trump-plans-to-eliminate-legal-aid-funding-that-supports-survivors-of-domestic-violence>.

130. Roger Smith, *Bringing Online Dispute Resolution to Family Courts in the United States*, LAW, TECHNOLOGY, AND ACCESS TO JUSTICE (July 15, 2016), <http://law-tech-a2j.org/odr/bringing-online-dispute-resolution-to-family-courts-in-the-united-states>.

131. *A Court Compass for Litigants*, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (July 2016), [http://iaals.du.edu/sites/default/files/documents/publications/court\\_compass\\_convening\\_report.pdf](http://iaals.du.edu/sites/default/files/documents/publications/court_compass_convening_report.pdf).

132. *Id.*

133. *Id.*

134. Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, AM. B. FOUND. (Aug. 8, 2014), [http://www.americanbarfoundation.org/uploads/cms/documents/sandefur\\_accessing\\_justice\\_in\\_the\\_contemporary\\_usa\\_aug\\_2014.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf).

The second problem IAALS acknowledged is that it is impossible to supply every litigant in the American legal system with an attorney.<sup>135</sup> As a result of this problem, self-representation in courts nationwide has grown exponentially in recent years, especially in the area of family law.<sup>136</sup> A study conducted by the National Center for State Courts concluded that “[t]he idealized picture of an adversarial system in which both parties are represented by competent attorneys who can assert all legitimate claims and defenses is an illusion.”<sup>137</sup>

IAALS believes the best way to combat these growing problems in the American legal system is to use technology as a tool for increased access to justice.<sup>138</sup> Similar to the evolution of medical services, where individuals often first seek out information on the Internet about a particular symptom, Americans should be able to obtain information online about legal “symptoms.”<sup>139</sup> Online tools can be used to empower individuals and help them gain a better understanding about when they should seek legal counsel and what legal options are available to them.<sup>140</sup> In certain cases, litigants should also have the opportunity to take advantage of technological tools that could aid the parties in resolving their dispute outside of the courtroom.

IAALS’s vision for future implementation of ODR in the American legal system includes a litigant portal that (1) helps individuals diagnose the existence of a legal problem; (2) provides relevant referrals to licensed attorneys; (3) grants access to ODR processes where appropriate, including online mediation and negotiation; and (4) provides user-friendly tools to assist and support the litigant through the court process if they appear *pro se*.<sup>141</sup> In addition to helping self-represented litigants, the litigant portals would also provide legal aid to persons anticipating litigation, but not yet involved in a case filed with the court.

Because there is great uncertainty about the logistics of implementing a new ODR program in the American legal system, IAALS proposes the pilot model should initially be limited to problems surrounding the breakup of a family.<sup>142</sup> A family law portal has the potential to assist the greatest number of Americans because most *pro se* litigants nationwide appear in cases involving domestic disputes.<sup>143</sup> Furthermore, court systems and processes in the family law area are particularly complex and designed for parties represented by legal counsel.<sup>144</sup>

IAALS recommends we look to the technological designs used for Rechtwijzer 2.0 in the Netherlands and MyLawBC in British Columbia. Rather than reinventing

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135. *A Court Compass for Litigants*, Institute for the Advancement of the American Legal System (July 2016), [http://iaals.du.edu/sites/default/files/documents/publications/court\\_compass\\_convening\\_report.pdf](http://iaals.du.edu/sites/default/files/documents/publications/court_compass_convening_report.pdf).

136. *Id.*

137. Paula Hannaford-Agor, Scott Graves & Shelley Spacek Miller, *The Landscape of Civil Litigation in State Courts*, NAT’L CTR. FOR STATE CTS. (2015), <http://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.

138. *A Court Compass for Litigants*, Institute for the Advancement of the American Legal System (July 2016), [http://iaals.du.edu/sites/default/files/documents/publications/court\\_compass\\_convening\\_report.pdf](http://iaals.du.edu/sites/default/files/documents/publications/court_compass_convening_report.pdf).

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *A Court Compass for Litigants*, Institute for the Advancement of the American Legal System (July 2016), [http://iaals.du.edu/sites/default/files/documents/publications/court\\_compass\\_convening\\_report.pdf](http://iaals.du.edu/sites/default/files/documents/publications/court_compass_convening_report.pdf).

the wheel, Americans should replicate the successful platforms of the two programs and tailor it to the needs of the American legal system.<sup>145</sup> The proposal is to initiate the program in at least two courts in the same state, so that the state's specific laws relating to domestic cases can be applied.<sup>146</sup>

### *B. Potential Future Use of ODR for Divorce in Missouri Courts*

When discussing the possibility of using ODR to resolve divorce cases in Missouri, it is important to note that ODR processes are not intended to be a replacement for in-person meetings with licensed attorneys. In-person legal services are essential to the viability of the American legal system and will always play a prominent role in access to justice. Instead, ODR can be used as a supplementary tool to resolve evolving nationwide problems in the legal field that in-person services have been unable to handle due to limited resources, time restraints, and a growing preference to settle cases outside of the courtroom.

The Rechtwijzer and MyLawBC programs serve as useful platforms that Americans can use to build an ODR program specifically tailored to address the current needs of courts throughout the United States. The American court system is complex and can be overwhelming to the vast majority of citizens who have no legal knowledge or experience. ODR programs can be used to expand public access to legal information and help individuals determine what type of legal assistance they need and which attorneys or programs to contact.

The Missouri legal system would be a particularly qualified candidate to test a new ODR program like Rechtwijzer or MyLawBC. Currently, no ODR legal services exist in the state and many of the nationwide legal problems, such as self-representation, are also prominent in Missouri. Most government-funded state agencies only provide legal assistance to citizens who qualify for the program as a low-income individual. Missouri's Legal Aid Service programs are also under a current threat of losing necessary funding from the federal government. Thus, countless Missourians currently are or could potentially be stuck in the justice gap over the next few years.

The state does not currently provide any form of legal assistance for contested divorce cases (unless domestic violence or children are involved), meaning countless cases are litigated with one or both parties appearing *pro se*. When one or both parties in a case are forced to appear *pro se* as a result of the justice gap, they are not given true access to the legal system. Critics might argue that the socioeconomic levels of these individuals likely leave them with limited assets, and therefore, the dispute is relatively insignificant when compared to the costs of legal proceedings. However, this would violate a deeply engrained principle in our nation's history: everyone deserves their day in court. Additionally, not only does a party's lack of legal knowledge place a heavy burden on the court, but it also creates a higher risk of power imbalance if one party is represented by legal counsel and the other is not. Generally in divorce cases, courts have a strong interest in protecting the spouse and children who are often more susceptible to power imbalances.

There is an immediate need for Missouri to remedy this problem and the ODR platforms used for domestic disputes in other nations provide reasonable solutions.

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145. *Id.*

146. *Id.*



The use of ODR in domestic disputes would likely be most beneficial for Missouri cases involving domestic violence or abuse as well as cases that involve a large geographic distance between the parties. For many cases involving domestic violence or abuse, a significant power imbalance exists between the parties. Creating a divorce settlement through an ODR program could save a domestic violence victim from being in the same room as the abuser except when necessary and create a fairer environment for negotiations. Even though some victims of domestic violence may qualify for legal aid, they should also have the option of using ODR programs so that face-to-face interactions with an abuser can be limited. Because ODR does not require parties to have face-to-face interactions, parties residing in different states could also attempt to resolve their problems more conveniently online.

To address the prominent issues currently faced in family law courts, Missouri's best option is to implement an ODR program like MyLawBC. Potential *pro se* litigants would be well served if they had easier access to basic legal information about their specific case using online guided pathways. Implementing a program like MyLawBC would provide public legal education to *all* Missourians, regardless of socioeconomic status.

Due to the limited financial resources of the state, it is unlikely that mediation or arbitration services could be offered on a new ODR program initially. However, an ODR program like MyLawBC would allow Missourians the opportunity to gain information, downloadable worksheets, legal forms, and a basic understanding of their specific legal options before the case is even filed. This would directly address many of the problems associated with *pro se* litigation because individuals would have improved access to basic legal information rather than showing up perplexed to court. Missourians would also be able to make more informed decisions about whether it is in their best interest to litigate the case or attempt to reach an agreement through mediation or arbitration.

### *C. Hurdles to Overcome With Implementing ODR in Missouri Courts*

Skeptics of the ODR platforms will likely point out several issues with implementing the program in the United States legal system, and more specifically in Missouri courts. A forefront issue surrounding the creation of ODR programs is funding. As experienced by the creators of Rechtwijzer 2.0, the initiation of ODR programs and website maintenance are expensive and often unsustainable if dependent on government funding. Therefore, the pressing issue at hand is: if Missouri creates an ODR program, who will fund it?

If an ODR program was created in Missouri, the funding would predominantly have to come from private not-for-profit organizations and charities. Like with the creation of MyLawBC, it is possible for the government to assist with the startup costs of creating the program. However, as we learned from Rechtwijzer 2.0, the ODR program must be self-sufficient and independent from government funding after the initial startup costs are paid.

Privacy and distrust of an online system collecting private information are other potential issues users might have with an ODR program. However, these issues can be remedied through high levels of security and privacy protection within the website. MyLawBC ensures its users that the information provided in responses on the

guided pathways are not visible to the public and the program has only limited instances when the information is even stored.<sup>147</sup> An ODR program in Missouri would need to have similar standards regarding the confidentiality of the information it receives from users.

Others might be hesitant to use an ODR program for divorce cases and domestic disputes because the best interests of children involved in the case could be at risk. Courts can appoint a *Guardian Ad Litem* in domestic disputes to protect the best interests of the child. However, this feature is lacking in both the Rechtwijzer and MyLawBC programs. Many divorcing couples have children, and if an ODR program is being used in the U.S. to assist with a divorce settlement involving minors, this is an important feature that would need to be added.

## V. CONCLUSION

The evolving issues of *pro se* divorce litigation in Missouri and a lack of access to justice are significant problems that need an immediate remedy. Although certain hurdles exist, they can be overcome through thoughtful planning in the creation of a new ODR program and referring to the success and lessons learned by the Rechtwijzer and MyLawBC platforms. ODR is the wave of the future and provides new beneficial options to civil litigants that have never existed through traditional legal practices in the United States. Allowing Missouri residents to access basic legal information online for their particular case can increase public trust of the legal system, reduce heavy burdens on the court system, and lessen the “justice gap.”

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147. *Development Blog*, MyLawBC (2015), <http://devblog.mylawbc.com/faq/> (last visited Oct. 9, 2017).