

Online Dispute Resolution Platform in NYC (Truncated for Class Discussion)

Need for Project

Approximately 1.8 million litigants appear in the New York State courts annually without counsel; a significant portion of these litigants are defendants in consumer debt matters. In recent years, consumer debt cases have represented a disproportionately large segment of New York court dockets, approximating 35% of the caseload in the courts of limited jurisdiction.¹ Over 95% of the defendants in consumer debt matters appear without counsel, with a significant percentage of cases resulting in default judgments.²

For a low-income individual, a judgment in a consumer credit case can be devastating, with wide-ranging consequences on the ability to meet monthly obligations for the essentials of life, as well as damaging credit ratings which impact the ability to qualify for housing and certain financial supports, and pursue employment opportunities. However, many consumer debt litigants default or consent to unfavorable judgments and settlements because they are too intimidated by the process to appear in court in their own defense. The ODR platform will provide a less intimidating and more consumer-friendly alternative for accessing the justice system. The triaging aspect of the platform will direct litigants to the level of services most appropriate to resolve their matter. An ODR platform eliminates the need for physical appearance in the courthouse, greatly lessening the impact of transportation barriers/travel time for low-

¹ This is based on 2015 statistics. The caseload percentage is even more staggering when the cases are separated by inside New York City and Outside New York City courts. Outside New York City, consumer debt cases comprise 53% of the caseloads in City and District Courts, compared to 28% of the New York City Civil Court caseload.

² Most recent data from 2013 shows the percentage to be approximately 96 – 97% statewide.

income individuals, particularly in the rural areas of the state. The parties would be able to complete the negotiation and mediation on their own time, instead of having to take time off from work or make complicated travel arrangements.

The consumer debt area is ideal for piloting ODR. Many administrative policies and initiatives have been successfully implemented to combat abuses, promote fair outcomes and reduce the number of unwarranted default judgments in this area. Since 2014, creditors are now required to submit more documentation to prove that the debt is owed and in default, making it more difficult to obtain a judgment. With more onus placed on the creditor, there is an incentive to engage in thoughtful dispute resolution and developing a settlement, rather than entering into full litigation. An ODR platform will allow for more cost effective solutions of the large majority of cases and will also reduce administrative costs for the courts, as it eliminates the need for and resources required for in-person appearances.

Further, an ODR platform will reduce the burden on legal services providers who lack the resources to meet the overwhelming need. Legal services programs have begun to develop consumer law practice areas, but the services currently are limited. In a 2014 report, the Legal Services Corporation (LSC) documented that 10.7% of closed LSC-eligible cases were for consumer-related legal issues. However, 82% of those cases were closed at the counsel and advice, or limited services level.³ If legal services providers could rely on an effective online dispute resolution platform to refer the majority of consumer litigants, they could concentrate more of their work on complicated cases that require extended services as well as impact litigation.

³ Legal Services Corporation, 2014 Legal Services Corporation by the Numbers: The Data Underlying Legal Aid Programs, at 21-22, available at <http://www.lsc.gov/media-center/publications/2014-lsc-numbers>.

There is growing national and international interest in developing court-based ODR as a key component to improving access to justice. The project partners have been in touch with national and local bar associations, as well as court and justice organizations, including the American Bar Association and the National Center for State Courts, whom believe the New York project can serve as a prototype that can be used by courts around the country. Successful implementation of an ODR pilot program in New York will help narrow the justice gap while serving as a model for expansion of ODR to other jurisdictions as well as into additional subject matter areas where accessing justice is a challenge.

New York's Quest to Serve as a National Model

The New York State Unified Court System is the judicial branch of government in New York State, with its core mission is to provide a fair and efficient justice system for all New Yorkers who use the courts for the resolution of their legal matters. One of the highest priorities of the court system is to ensure equal access to the courts for all.

For the past twenty years, the Unified Court System has been at the forefront of expanding access to justice, through the provision of funding for civil legal services and implementation of a broad array of innovative initiatives aimed at bridging the justice gap, the difference between the need for civil legal services for low-income New Yorkers and the resources available to meet those needs. Executive officers of the courts have dedicated their work to ensuring that the courts and legal system are more accessible to low-income New Yorkers.⁴ Extensive initiatives have been implemented,

⁴ See, e.g., Hon. Jonathan Lippman, Brennan Lecture: The Judiciary as the Leader of the Access to Justice Revolution, 89 NYU L Rev 1569 (2014); New York State Unified Court System, State of the Judiciary 2015, Access to

including the development of innovative technologies like the DIY Forms, computer programs that guide litigants through a series of easy-to-understand questions in order to prepare personalized court forms or informational sheets to assist the litigant through the court process.⁵

Since 2010, the court system's efforts on expanding access to justice have been furthered by the work of the Permanent Commission on Access to Justice, which was established to address the crisis of unrepresented litigants in the State courts. From its inception, the Permanent Commission, , has focused on addressing the justice gap by recommending both financial and non-financial solutions. The non-financial recommendations have aimed to create innovative methods for those of limited means to easily access the courts and legal system, for effective and efficient resolution of their legal matter. In particular, the Permanent Commission has focused on the role of technology to transform the delivery of civil legal services. In its 2013 report, the Permanent Commission recommended the development of a coordinated online portal that would provide low-income New Yorkers information, screening and referral to appropriate legal services. Currently, two pilot intake portals for consumer debt matters are being developed, in New York City and western New York.

In addition, the Unified Court System, with its network of Community Dispute Resolution Centers, has been an international leader for more than 30 years in the

Justice: Making the Ideal a Reality (Feb. 17, 2015), available at <http://www.nycourts.gov/whatsnew/pdf/2015-SOJ.pdf>; Office of the Deputy Chief Administrative Judge for Justice Initiatives, Expanding Access to Justice in New York State: A Ten Report (2009), available at <http://www.nycourts.gov/ip/nya2j/pdfs/TenYearReport2009.pdf>; New York State Courts Access to Justice Program, 2015 Report, Delivering Cost Effective Legal Services and Information in Challenging Times: A Report to the Chief Judge and Chief Administrative Judge (2016), available at http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2015report.pdf.

⁵ See <http://www.nycourts.gov/ip/nya2j/diyforms.shtml>; <http://nycourts.gov/courthelp//diy/index.shtml>.

provision of free and low-cost mediation for low-income New Yorkers. It has also been an incubator for innovative concepts within the ADR community, experimenting with new case types and delivery of services.⁶ The ODR platform will complement the court system's current initiative to develop a case management system for the CDRCs, and will be developed with the capacity to integrate the Case Management System with the client-side ODR system.

Pilot Description

This project seeks to create a platform to implement ODR in New York in order to resolve cases involving unrepresented litigants (voluntary participation) and to lower the overall caseloads of judges by using ODR in matters where both parties are represented (mandatory participation). By use of an efficient, court-administered platform that uses structured online communication and filing, in conjunction with the services of volunteer certified mediators upon request, various types of civil matters could potentially be resolved in a fraction of the time and at a significantly lower cost. Given the limited administrative costs of the proposed program and the flexibility provided through remote access, there is a potential for utilization of an online program to resolve a variety of types of disputes involving both unrepresented and represented litigants, however initial implementation will be limited to consumer debt matters including credit cards, medical bills and small claims actions, with anticipated expansion to other types of civil matters.

⁶ See Office of Alternative Dispute Resolution website, <http://www.nycourts.gov/ip/adr/index.shtml>.

The New York Unified Court System's ADR Office and the Permanent Commission will work with the three pilot Community Dispute Resolution Centers (New York Peace Institute, Manhattan; North Country Conflict Resolution Services, northeastern New York; and Center for Dispute Resolution, western New York), along with local legal service providers, to develop an online dispute resolution platform to assist in the resolution of consumer debt matters. Prior to commencing the development of the ODR platform, the Office of ADR will consult with the other organizations and individuals who have piloted similar projects, in order to incorporate lessons learned from those projects in conjunction with the experiences of local mediators.

The ODR platform will be accessible through a number of online sources, including the court system's own website, nycourts.gov, and its site for unrepresented litigants, CourtHelp, as well as LawHelpNY, legal services providers' websites and consumer advocacy websites. It also will be available from the Online Intake and Triage Portals currently being developed for consumer cases in two regions of New York State. Legal service providers, consumer advocacy organizations and CDRCs would be encouraged to refer individuals with consumer debt matters directly to the platform. On the homepage, users would find general information about resolving their disputes online through the ODR process, and other pertinent online resources.

If a user chooses to access the platform, s/he would be directed to answer a series of questions to determine whether the case is appropriate for ODR and the client's eligibility for the various services accessible through the platform. If the case is deemed eligible, the user would be asked to create a login and continue with the ODR

process. If the case is deemed ineligible, the user would be directed to relevant online resources and, if appropriate, legal services providers for assistance.

Following the creation of a login, parties will begin to negotiate. The creditor would be invited to join the process, and given access to the ODR platform. Both the creditor and the debtor in the action would have access to the negotiation portal where they would be able to correspond directly through structured online communications; video capacity is also being considered for the pilot. Documents that are relevant to the case would be uploaded and viewed within the negotiation portal allowing both parties to review the same information. The structured communications would be recorded for future reference by a mediator, if one is assigned to the matter. Links to relevant legal information guides from LawHelpNY, other consumer advocacy groups and the courts would also be available through each phase of the ODR process.

During the negotiation, either party would have the option to request a mediator to facilitate the reaching of an agreement. A certified mediator from the CDRCs' list of volunteer mediators will be assigned to the matter. The mediator will have access to any conversations or documents within the negotiation portal, and will be able to have private conversations with each party through the structured communications. Within the online platform, the mediator would facilitate conversation between the parties with the intention of the parties being able to find a creative resolution to the debt dispute.

Once an agreement in principle has been reached, either side will have the option to propose a formal agreement to resolve the dispute. After an agreement is proposed, either side could accept, reject or make suggestions within the agreement. Each party will then have the opportunity to request that a volunteer attorney review the

agreement to check for fairness. Panels of volunteer attorneys will be established, working in conjunction with the local legal services and pro bono programs. If the parties are unable to reach an agreement, they will be informed through the platform or their mediator that they will have to appear in court to resolve the case. If a final agreement is reached, a designated person at the CDRC will allocute the stipulation in compliance with court procedures and deliver the signed agreement to the court where the case is pending, without the need for the parties to appear.

Questions and Queries:

1. What would you recommend as proposed rule provisions?
2. What processes would you deem best? Consider negotiation, mediation, arbitration online? Only partially online?
3. What would you propose for an online dispute resolution platform, with triaging capabilities, to connect litigants with the services and resources needed to resolve their matters? Consider means for encouraging more respondents to: (1) participate in the process, thus avoiding default judgments; (2) raise objections about the validity of the debt and present legal defenses; and (3) reach a more just agreement.
4. How could the use of volunteer mediators, combined with the ability of the CDRCs to file stipulations on behalf of the parties, alleviate the pressure on local courts by equitably resolving matters without the need for court appearances? Would that work for complicated matters requiring legal assistance?
5. How would this assist New Yorkers, particularly in the more rural and remote areas of the state? How could it harm them?
6. How should the courts deal with the digital divide?
7. Are there constitutional issues to consider regarding public dispute resolution?
8. Could a project in NY serve as model for replication in other jurisdictions and subject matter areas?



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