

# SRLN ITCon18 Update

## Self-Represented Litigation Network (SRLN) Recent Activities and Developments January 2018

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## ODR Discussion Information for SRLN Meeting at TIC18

ODR is being adopted by an increasing number of courts for simple matters. Here is some of the information and discussion that occurred recently on the SRLN listserv.

### Papers from the NCSC

Case Studies -

<http://www.ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/JTC%20Resource%20Bu12-18%20ODR%20case%20studies%20final.ashx>

ODR in Courts -

<http://www.ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/JTC%20Resource%20Bu12-18%20ODR%20for%20courts%20v2%20final.ashx>

### Hiil Report

<http://www.onlineresolution.com/hiil.pdf>.

## The Dubai Courts Project

<http://gulfnews.com/xpress/news/what-will-courts-look-like-in-the-years-ahead-1.2140270>

Read *Principles* here <http://www.courtsofthefuture.org/>

## SRLN Listserv activity

Katherine posted this link to the SRLN list:

<http://clevelandmunicipalcourt.org/judicial-services/administrative-services/public-information-office/news-library/2017/12/29/cleveland-municipal-court-offers-city-tax-dispute-resolution-online>

Here is a selection of now anonymized responses:

The use of the Matterhorn product in several case types and other actions is growing rapidly, most so far are in Michigan, Ohio, and Kentucky, but other states are looking too. So far they have capabilities in traffic, warrants, small claims, and some limited family actions. Their customers seem to be very happy, which is why adoption is going so quickly.

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Does anyone know which courts comprise the 30? Franklin county Muni court seems to offer ODR for more than small claims and Cleveland Muni is using it for property tax disputes. Are there any probate, domestic relations, or general jurisdiction courts that are using ODR and what is the nature of the cases they have decided it is appropriate for? Also, does anyone know if any court is using ODR to actually adjudicate cases versus providing ADR online?

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There are many counts in MI using Court Innovations, primarily for traffic tickets and outstanding warrants; I believe one or two is using it (or planning to use it) for unpaid child support cases. You can see the whole list here:

<https://www.courtinnovations.com/cii/>

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This raises an interesting question: What is the difference between “providing ADR” and “actually adjudicating cases.”? I would argue that for these case types, there is very little difference. Appearing in person in Traffic cases largely consists of verifying the citation and then simply bargaining, which is exactly what is done online. There is some consideration of uncontested divorce using online dispute resolution, since in many states to dissolve a union is a pro per filing a single piece of paper, no court appearance. Another big question is: for which types of cases is ODR appropriate and why? There seems to be a lot of disagreement between the high level of consensus for doing Traffic this way and not doing Felony homicide this way.

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Is this for an offense punishable in jail?

<https://sc.courtinnovations.com/OHCMC/help>

This sounds like these are criminal tax cases--so curious if in that county, criminal cases get a public defender if they can't afford their own lawyer to defend the criminal tax misdemeanor.

Tax cases and rules are complex--not only b/c of the math--but the application of the laws which can get quite complex, sometimes even for the lawyer. Once freedom is at stake--it gets even more complex.

Are people who opt in aware they might be waiving rights--and facing jail time if they loose or don't agree to an a payment plan?

For civil and criminal cases, what are the collateral consequences of settling a claim this way? Do they know what will go to the data agregators? Will some of them loose licences to work in any particular profession or job depending on the amount of the fees due? Will the record be expunged once the payment is made andc completed? Does this approach raise Padilla v. Kentucky type questions?

I'm wondering what the volume of these cases might be, and how much \$ is at stake in total for each county? What are the incentives here to the system?

--To get people to agree to pay faster and expedite revenue generation for the county and courts?

--To reduce the number of cases that go to trial?

--To reduce the costs to the county of providing representation in these cases for those who can't afford them?

--To reduce the issuance of warrants for those who don't show up (or whatever the next step is in the normal non ADR process)? To reduce the number of no shows and months it takes to resolve this type of case?

Anyone know?

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My understanding is that ODR is a broad term that encompasses (1) providing information, (2) providing the opportunity for parties to negotiate and facilitating settlement using ADR processes, and (3) formal adjudication. ODR is not just online ADR.

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In my view formal adjudication must be by consent (parties should not be forced into the option although they might be strongly encouraged to use it). I just spoke to Court Innovations/Matterhorn. Some of the 30 courts are Michigan courts that deal with business issues ("business courts"). The parties submit documents and written argument but they waive their right to submit testimony. Basically, what they are doing is replicating the court process in a digital environment. Just as in any formal case, the parties can choose to waive the right to cross examine and call witnesses, so they can do this virtually as well.

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I could see ODR being appropriate for child support and parenting time disputes, parenting coordination, mediation, uncontested divorces, dissolutions and any agreed entries that need to be processed. Guardianship applications in probate court. Maybe there is room for ODR in all case types but the aspect of the process is

dependent on the case type but not necessarily complexity. Maybe the ODR in some case types is a digital place to negotiate and in other case types it includes the adjudication.

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And let me stand corrected: my example of a super simple dissolution came from my own experience in mid 1980s California, which has a process that is not so simple (and no doubt for many good reasons). I thank Bonnie Hough for advising me of same.

That said, what interests me more is the bigger issue that she started to touch on in our correspondence, namely: what kinds of cases are appropriate for what I call transactional justice. The purpose of a court/judge is to level the playing field, deal with asymmetries of power and information, and ensure due process and that rights are protected. Easy to say in the abstract, but increasingly harder to figure out what it means in practice. People are rejecting the current process in large numbers—they don't want it in plain English, in easy forms, they just don't want it, it takes too long, is too complicated, and costs too much. That is the challenge—caseloads have been dropping like a rock since 2008 (total state court caseload now about 86M, was about 105M when the downturn hit). There many factors driving this (demographic, economic, policy), but among them is a turning away from the legal system as we know it. If we don't figure this out, there won't be much left of it. That is the real issue. (And technology is not a panacea, I get that too!). So, it's complicated!

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Thanks for raising the "people are leaving the courts" issue. As you note, this is a really complicated question and a conversation I do not think we have had among the SRLN constituencies, each of whom see a very different aspect. For folks not familiar with the excellent NCSC case statistics project, I paste a screen shot of the big picture from NCSC report at

<http://www.courtstatistics.org/~media/Microsites/Files/CSP/EWSC%202015.ashx>.

I think we can all agree a reduction in criminal filings is a good thing. I find the drop in juvenile really fascinating but do not know enough about the area to understand what is behind the numbers, especially since it is difficult to cross the street without

breaking a law these days and kids, especially poor kids, are such a target. Whatever the story, I don't think court customer service is behind those numbers and as a criminal matter should have an entirely different analysis anyhow. As for family, I think that is only general jurisdiction divorce in your numbers, so does not include custody or DV, which are lumped into civil, yes? Civil is obviously where the big trend is but what happens when we disaggregate into custody, DV, housing, small claims, consumer debt etc etc. It was my understanding the major drop off is in private civil litigation, largely as a result of the arb clauses. What are the trends in the "people" cases? The really challenging thing from my perspective is that all I hear from judges and court staff is that they are overwhelmed and cannot handle the loads they have, and in many jurisdictions the hours of lines in the front of the building are a clear testament that the court is not managing the challenge very well, and we know from court self-help staff and legal aid attorneys around the country that the people want more and better quality help not less (and technology can have a huge role to play in improving quality) help. When we see process analysis put into action as in the Bronx by Mike Williams, those lines are suddenly gone, people get more and better help and court staff feel like numbers have reduced when in fact they have increased. (If I recall, Mike also saw a drop in dependency petitions when he made guardianship more accessible through process reform .) This is a small effort to flesh out the "it's complicated," as I know we all know, but I think it is really important to expand and focus this conversation at this time. Perhaps there is someone from NCSC who could come out to the SRLN conference and share the Center's learning on this and some SRLN folks could voice some of the ATJ issues? It would be a great and important conversation.

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People are fleeing the courts and, like it or not, courts are not the dispute resolution venue of choice. Corporations figured out how to avoid the courts by demanding mediation and arbitration and inserting mandatory arbitration clauses in contracts. It is disturbing, even frightening, that corporations and individuals are willing to cede the responsibility of dispute resolution to anyone but the courts! It just tells you that the courts are the opposite of what they should be.

Courts are all about providing due process, as they should but I think it is time to recognize that not all cases have to be treated the same and people don't always

want that amount of process – they just want a resolution to their problem quickly and in a way that is not going to break them financially. Some courts do understand this and some have expedited litigation procedures and relaxed rules.

The public is used to the conveniences that technology offers in their daily life and they want that within their courts and are willing to sacrifice some due process and some rights to get it. Courts have to accept that. If courts want to be the “go to” place to resolve disputes they have to get with the times and offer it remotely. It may sound heretical but it will do a lot more to meet people’s needs than the current system. What good is it having the most advanced system in the world if no one uses it? We might be constitutionally legitimate but we are also going to obsolete if we don’t provide better access to our customers.

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The Section of Dispute Resolution is also working with the New York Court system and the Veterans Administration in Memphis on several ODR projects if anyone is interested in working with us.

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Well, the FAQs in the sample from Cleveland provide very little information on the consequences of choosing to do ODR--particularly if it is a criminal misdemeanor. If Kentucky v. Padilla issues are involved here (as defined by state law classification of the offense (theft?) )--the lack of disclaimer of the impact for Legal Permanent Residents is dangerous (maybe unethical?).

Or even if it is "only" a civil tax issue.

It is important to know what the incentives are--that lead to using this type of tool-- and that inform the design choices that ultimately impact the litigants experience of fairness (procedural and substantive due process).

If this moves ultimately move to ADR--then that brings up other questions about who is making the choices--etc.

Are there evaluations of these projects lined up?

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## **SRLN Conference 2018**

The 2018 SRLN Conference will be held in San Francisco February 22-23, with a series of pre-conferences that will include JFA Strategic Planning Training for Non-Grantees, Judges Conference and Self-Help Services Boot Camp. Information for the conference can be found at <https://atjlibrary.org/node/1302/save-date-srln18>.

Historically about 35 states have representation at the conference, an unparalleled networking opportunity. We encourage all states to send a team so we can have representation from every jurisdiction. Please contact [renee@srln.org](mailto:renee@srln.org) with questions.

## **Justice for All Project**

Katherine continues to serve as a Senior Advisor to the Justice for All project, and in conjunction with the staff at the NCSC, is providing support to the grantees. The seven plans have been completed and states are currently responding to the RFP for implementation activities. We will be releasing a “highlights” of the plans shortly.

Alaska’s is the only one currently available publicly at

<http://courts.alaska.gov/jfa/index.htm>.

## **Georgetown Legal Tech Fellow and Revision of the Best Practices Guide**

Eduardo Gonzalez, a Georgetown Legal Tech Fellow, and Katherine are working together to update and convert the 2008 Best Practices Guide into an online Guide that will include a online peer networking tool to share information, learn about what is going on and connect with fellow professionals. We will also be engaging a New America Fellow to help integrate this tool with an improved membership engagement process and streamline the tech infrastructure to create the most useful resource for members.

## **Data & Mapping**

SRLN now has a three-person revenue generating mapping department available to provide GIS professional services to any of our members. Katherine and Alison are working closely with Esri to increase the professional exposure of mapping access to civil justice. Visit our Map Gallery for more information, or this quick link to see representative examples from the states. Our new legal tech fellow will work with this department to create an on-line geo-spatial best practices and peer networking tool. Please remember that the Whom Do We Serve app provides detailed demographic maps for every county in the 50 states. This app is available in our map gallery accessed through our home page at srln.org.

## **ABA-SRLN ATJ Commission Self-Help Services Working Group**

We continue to host monthly calls to support peer-to-peer networking opportunity and capacity building for the Access to Justice Commissions. Approximately 20 states are participating. Please contact [renee@srln.org](mailto:renee@srln.org) for more information or if you wish to participate.

## **Working Groups**

We currently host the following working groups. With the exception of the groups with an asterisk, monthly conference calls are open to all justice system professionals who join our listserv. We encourage you to encourage the appropriate staff to join the listserv and therefore have access to this high quality peer-to-peer networking opportunity. Sign-up from our home page at srln.org.

## **Forms & Technology**

Chair: Glenn Rawdon (DC)

Current Special Project: Forms Competition

## **Research**

Co-Chairs: Bonnie Hough (CA) and John Greacen (NM)

## **Simplification**

Co-Chairs: Danielle Hirsch (IL) & Stacey Marz (AK)

## **Self-Help Services**

Co-Chairs: Mary Jane Ciccarello (UT) & Deborah Hughes (MI)

## **GIS for Justice**

Co-Chairs: Alison Davis-Holland (VA) and Richard Schauffler (VA)

## **Triage**

Co-Chairs: Angela Tripp (MI) and Joyce Raby (FL)

Current Special Project: Triage and Portal Lessons from the Field

## **Law Libraries**

Chair: Maryruth Storer (CA)

Current Special Project: National Law Library ATJ Initiatives Inventory

## **Administrative Proceedings**

Chair: Judge Laura Bradley (WA)

## **Courtroom Services\***

Chair: Deborah Chase (CA)

Current Special Project: Case Flow Management

## **Federal Courts\***

Co-Chairs: Abel Mattos (MD) and Janine Liebert (CA)

## **Access to Justice Coordinators with Court Administration\***

Chair: Rochelle Klempner (NY)

## **Access to Justice Commissions Self-Help Services\***

Facilitators: Katherine Alteneder (VA) and Renee Danser (PA)

Last updated on January 30, 2018.

## **Topics**

[Articles & SRLN Briefs](#)

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