EIGHTEEN WAYS
COURTS SHOULD USE TECHNOLOGY
TO BETTER SERVE THEIR CUSTOMERS

IAALS
INSTITUTE for the ADVANCEMENT of the AMERICAN LEGAL SYSTEM
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18 WAYS COURTS SHOULD USE TECHNOLOGY

TO BETTER SERVE THEIR CUSTOMERS

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OVERVIEW

For over 20 years, courts have had national functional standards that describe the functional capabilities they should demand in court case management systems to ensure that automation meets their internal data processing needs. But what about the equally—if not more—important needs of the courts' customers when it comes to technology?

Courts, by their nature, are in the business of customer service, but consistent research on the experience and attitudes of court customers shows that they do not rate our courts highly. The National Center for State Courts (NCSC) conducts annual surveys of American voters, through the Public Trust and Confidence Study, to gauge their perceptions of the state courts. The 2017 survey found that only 52 percent of those questioned believe the state courts provide good customer service.[2] By a margin of two to one, American voters report that judges do not understand the challenges facing the people who appear in their courtrooms.[3]

Survey respondents report that their most serious concerns are not knowing where to turn for help with forms and procedures (37 percent); rude, unhelpful, and intimidating court staff (35 percent); not knowing where you need to go in the courthouse (29 percent); the amount of time spent at the courthouse (27 percent); and not being able to complete forms or pay fees online (24 percent).[4] And 69 percent feel that the situation has not gotten better in recent years.[5]

Respondents were, however, able to prioritize common-sense solutions to the problems they identified: plain-language legal forms that non-lawyers can understand and complete; the ability to connect with court staff online or by phone to answer questions rather than traveling to the courthouse; and self-help services that allow users to file a form, pay a fine, or take other actions online instead of coming to the courthouse.[6]

It is clear from this research that court customers expect the courts to use technology to solve many of their customer service problems. This is not surprising. In all other aspects of daily life customers are used to—and demand—services that are available to them through the internet. People go online to order groceries and retail goods, they bank online, they renew their driver's licenses online, they buy homes online, they find information on every issue under the sun online, and they videoconference and Skype with family, friends, and business partners around the world. It is also clear from this NCSC research, though, that court customers find the state courts to be severely lacking in these capabilities.[7]

In today's courts, self-represented parties are clearly the most numerous of the courts' customers and are probably also the ones most in need of many of these technological improvements. Recent research has shown

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1 The author acknowledges with deep appreciation the contributions and support of Rebecca Love Kourlis, IAALS Founder and Executive Director; Natalie Knowlton, IAALS Special Projects Director; and multiple IAALS and outside reviewers of drafts of this report. Glenn Rawdon of the Legal Services Corporation provided particularly significant input. Mistakes of omission and commission that escaped the sharp eyes, broad knowledge, and good judgment of these collaborators are the sole responsibility of the author. For more background on the author, please visit http://iaals.du.edu/profile/john-m-greacen.

2 Memorandum from Gerstein Boia Agne Strategies to the National Center for State Courts 2 (Nov. 15, 2017), *available at* (https://www.ncsc.org/~/media/Files/PDF/Topics/Public%20Trust%20and%20Confidence/SoSc-2017-Survey-Analysis.ashx) [hereinafter 2017 Survey Analysis].

3 *Id*. at 3.

4 *Id*. at 5.

5 *Id*. at 2.

6 *Id*. at 5.

7 We know there are court users who do not have access to, or the technological skills needed to use, the internet. For the time being, the courts will have to continue to provide one-on-one on-site assistance at the courthouse to meet the needs of these persons–often our poorest and most needy customers. But evidence from the Pew Research Center shows that the "digital divide" continues to shrink. Monica Anderson, *Digital divide persists even as lower-income Americans make gains in tech adoption,* Pew Research Ctr. (Mar. 22, 2017), http://www.pewresearch.org/fact-tank/2017/03/22/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/. And the fact that everyone cannot use a technology solution does not justify our failure to provide it for those who can use it and want it.

that three-quarters of all civil cases in state courts and an even higher percentage of family cases involve persons coming to court without a lawyer.[8] The same is true for misdemeanor and traffic cases; only a small percentage of defendants in these cases have lawyers.[9]

Unlike lawyers who come to the courthouse frequently, most self-represented litigants are one-time court users. They report that their experience in the court is bewildering, intimidating, and frustrating because they do not understand the language used, the rules applied, or the process followed in the court.[10] While the NCSC's 2017 Public Trust and Confidence Study showed that well over half of survey respondents felt they would want a lawyer anytime they were dealing with the court system (because they see it as too complicated to navigate without one), fully a third would prefer to represent themselves and expect the courts to provide the self-help resources needed to make that a reality.[11]

Recognizing these issues and the fact that the family justice system was built on a premise which is no longer true—that litigants are always represented by lawyers—IAALS, the Institute for the Advancement of the American Legal System, created the Court Compass project.[12] The project has two objectives: simplify the family law process and increase the use of technology to empower litigants with tools, information, and assistance to navigate the simpler process. This report is a part of the Court Compass project's second objective.

In this effort, IAALS is working with the Joint Technology Committee (of the Conference of State Court Administrators, National Association for Court Management, and National Center for State Courts), which is engaged in the development of the Next-Generation Court Technology Standards.[13] The "NextGen" Standards are premised on a "component-based" technology model. Instead of the traditional "unitary" court case management system—a massive single set of software code—the component model consists of a set of standalone coded modules that communicate with each other using a standard interface. This component model allows the vendor community to develop and market "best of class" components, without having to develop a complete case management application in order to enter the court IT market. And it allows courts to procure and assemble a set of components that provide maximum value for each court's individual needs.

As the Joint Technology Committee defines the contents of each of its 28 currently identified NextGen components,[14] IAALS' Court Compass project is providing input from the court user perspective for the Committee's consideration. This report highlights those user perspectives and provides readers with an introduction to, and a strong endorsement of, the NextGen component model.

It also responds to, and attempts to change, the perception of court technology vendors that the courts are not interested in technology designed to meet the needs of their customers—that they are interested only in technology that addresses the court's internal operations. When urged to incorporate a client-serving feature into one of their products, vendors typically respond that although they could do this with relatively little effort "none of our court clients are asking for that."

This vendor response, and the reported court perspective underlying it, contain a false underlying premise—that investing in customer-serving technology will not benefit the court itself. In this report, we make clear

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8 Nat'l Ctr. for State Courts, The Landscape of Civil Justice in State Courts (2015), *available at* https://www.ncsc.org/~/media/Files/PDF/Research/CivilJusticeReport-2015.ashx. The National Center for State Courts is engaged at the time of this publication in a similar "Landscape" report dealing with family law cases. The statement is based on preliminary findings from that study.

9 *Id.* at 33.

10 Natalie Anne Knowlton, Logan Cornett, Corina D. Gerety, Janet L. Drobinske, Inst. for the Advancement of the Am. Legal Sys.,Cases Without Counsel: Research on Experiences of Self-Representation in U. S. Family Court (2016), *available at* http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf.

11 *Supra* note 2, at 4.

12 *Court Compass*, Inst. for the Advancement of the Am. Legal Sys., http://iaals.du.edu/projects/court-compass.

13 Joint Technology Comm., JTC Resource Bulletin: Introduction to the Next-Generation Court Technology Standards Application Component Model (Nov. 2017), *available at* https://www.ncsc.org/~/media/Files/PDF/About%20Us/Committees/JTC/JTC%20Resource%20Bulletins/NextGen%20Court%20Component%20Model%202017-12-08%20FINAL.ashx.

14 *Id*. at 6.

that technology applications that improve the experience for the court's customers will also deliver immediate and substantial benefit to the court's internal operations, as well as improving the public's trust and confidence in the judicial branch.

Deploying the 18 technology capabilities described in this report will produce immediate tangible benefits to the courts:

- Documents filed in court will be more complete and readable by judges and court staff;
- Court hearings will take less time;
- More court staff and judge time will be available for dealing with difficult cases;
- Courts will be able to generate judgments and orders at the close of hearings;
- Parties will better understand the process and the courts' orders, reducing litigant stress and intimidation and minimizing courtroom tension and conflict;
- Parties will be less likely to return to court to try to get a different result; and
- Public trust and confidence in the courts will increase, in turn increasing the likelihood that the courts' orders will be followed.

This report sets forth 18 ways in which courts can use existing technology to improve significantly the experience of self-represented litigants. The last of these suggestions endorses the use of the "component-based" court case management software model and shows how, if this model were in place, the courts could more rapidly deploy the other 17 capabilities and dramatically enhance the court experience for their customers.

We have attempted to include examples of real-life implementations of most of the functionalities that we describe. We have not conducted exhaustive research to identify all such existing implementations; we acknowledge that there are innovative courts whose efforts and accomplishments are not recognized in this report. And, we have intentionally avoided referring to specific vendors in order to avoid the appearance of endorsing specific products.

1 ENABLING CUSTOMERS TO OBTAIN INFORMATION AND COURT SERVICES USING THEIR SMARTPHONES

"Responsive design" is the term used to describe the approach to building internet websites so that they display information differently for persons using different devices. It is frustrating to try to read text designed for a page eight inches wide on a two to four-inch smartphone screen. A recent evaluation of statewide legal information websites found that very few employ responsive design.[15] The same is true for court websites. This is especially problematic given the ubiquitous use of mobile phones to access the internet. The Pew Research Center's May 2018 survey of technology use found that 92 percent of Millennials, 85 percent of Generation Xers, and 67 percent of Baby Boomers own smartphones.[16] Earlier research found that smartphones are more likely to be the primary source of internet access for Blacks and Hispanics.[17]

The current best practice in building a website is "mobile first," creating all content for display on a smartphone screen and all applications for use on the same screen (e.g., completion and viewing of a form). This basic content is then modified for viewing on a tablet, laptop, or desktop computer.

Hawaii, Maryland, and Michigan have incorporated responsive design into their court websites.[18] The Florida courts recently followed suit, using open-source software to introduce responsive design into the Florida Courts Help website.[19] The Office of State Courts Administrator IT staff built an application using the Ionic framework, which directs users to a WordPress website. The State Courts Administrator reports that the conversion required less than $5,000 in out-of-pocket costs.[20]

15 *Statewide Website Assessment: Report for the Justice Community*, Legal Servs. Corp. 19 (July 2017), https://webassessment.lsc.gov/assets/downloads/report/LSC_State_Website_Evaluation_Public_Report_July_26_2017_3.pdf.

16 Jingjing Jiang, *Millennials stand out for their technology use, but older generations also embrace digital life*, Pew Research Ctr. (May 2, 2018), http://www.pewresearch.org/fact-tank/2018/05/02/millennials-stand-out-for-their-technology-use-but-older-generations-also-embrace-digital-life/.

17 Lee Rainie, *The State of Digital Divide (video & slides)*, Pew Research Ctr. (Nov. 5, 2013), http://www.pewinternet.org/2013/11/05/the-state-of-digital-divides-video-slides/.

18 P.K. Jameson and Paul Flemming, *Minding the APP: Bridging the Mobile Gap for Self-Represented Litigants* (July 23, 2018).

19 Author's summary of presentation titled *Minding the APP: Bridging the Mobile Gap for Self-Represented Litigants*, by P. K. Jameson and Paul Flemming at the National Association for Court Management annual conference, July 23, 2018, supplemented by an email from Tina White on the same date.

20 *Id.*

2 ENABLING CUSTOMERS TO PRESENT PHOTOS, VIDEOS, AND OTHER INFORMATION FROM THEIR SMARTPHONES IN THE COURTROOM

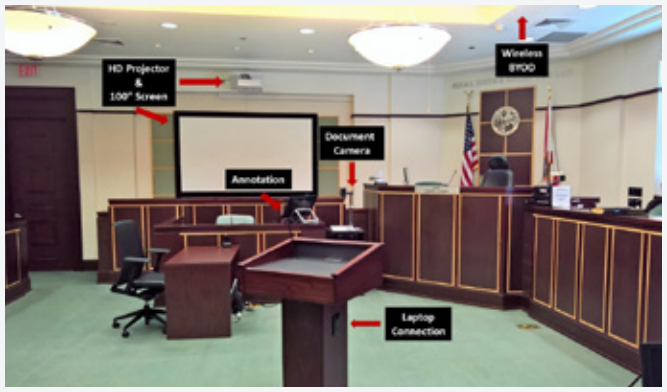
Banks now allow their customers to deposit checks by taking a smartphone photo of the check and sending the photo in a text message to the bank. Insurance carriers ask their customers to send smartphone pictures of an auto accident as part of the claims adjustment process. But most judges react negatively when a self-represented litigant asks her or him to look at a picture on a cellphone during a court hearing. The Rules of Evidence require that a party offering a picture as evidence provide a foundation for its admissibility: what it purports to show, who took it, where it was taken, and how its integrity can be demonstrated.[21] They do not dictate the medium by which the picture is displayed. Yet judges often lack an understanding of how a smartphone picture can be submitted to the court for inclusion in the court record, requiring the party to have a paper-based printout for inclusion in a traditional paper file.

There are many ways for the party to submit the picture to the court. The easiest is for the court to provide a smartphone number to which the picture can be sent as an attachment to a text message. Most smartphone users are very familiar with that process.

Technology already exists to facilitate the use of these photos in court. For example, Florida's Ninth Judicial District Court has installed hardware and software in each of its courtrooms that allows anyone in the courtroom to present information contained on any electronic device on a large screen by calling up a URL for that courtroom and displaying the photo on the screen of their own device.[22] The image on the device will display on the screen. The software will also print the photo or save it electronically as a court record. No training is required to use the application. The presenter simply has to know how to operate her or his own device.

21 Fed. R. Evid. 301.
22 Matt Benefiel, Trial Court Administrator, Ninth Judicial District Court of Florida, to John Greacen (June 2017).

FLORIDA'S NINTH JUDICIAL DISTRICT AUTOMATED PRESENTATION COURTROOM[23]



The Ninth Judicial District Court has taken an approach to courtroom evidence presentation that eliminates all court training and support obligations. These systems are installed in every courtroom. They all are based upon the Bring Your Own Device concept: any device can be connected through a wireless presentation system.

Evidence Presentation System

- Wolfvision Cynap wireless presenter - $4,995
- Wolfvision document camera - $2,920
- Dell touch screen monitor for annotation - $300
- NEC short throw HD projector - $1,100
- 100" screen - $400

Any Windows, iOS, or Android device can connect to the system to display documents, pictures, and/or videos. Because the parties use their own devices (PCs, laptops, tablets, and smartphones), no training or support is required for operation. The only training required is on the process of connecting devices.

Advantages

- Low cost - Less than $10,000 per courtroom
- No file format compatibility issues
- No cable converter issues (e.g., mini display port to HDMI)
- No expensive programming (e.g., Crestron)
- No operational training or support (user is using own device)

In addition to the evidence presentation system, all courtrooms are outfitted with the technology outlined below:

- Biamp Tesira mixer
- Remote digital court reporting
- Virtual remote interpreting
- Video conferencing - Cisco Telepresence, Acano, and Skype for Business
- Teleconferencing
- Docking station w/ Dell 23" touch screen for Surface Pro
- Recording notification light

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23 *Id.*

3 ENABLING CUSTOMERS TO APPEAR IN COURT BY TELEPHONE OR VIDEOCONFERENCE

Private industry uses conference calls and videoconferences to conduct many important meetings, even those resulting in highly consequential decisions. Every state judiciary has a process for allowing an expert witness to appear remotely (if the party wishing to present that witness files a motion showing the need for such an appearance and the other side fails to show that it would be prejudicial). The most common use of videoconferencing is for criminal arraignments, allowing law enforcement to keep arrested persons in the local jail instead of transporting them to court for their initial court appearance. Many jurisdictions also have remote appearance capacity for incarcerated persons who are parties in civil cases.

Letting parties and lawyers decide whether to appear remotely in a civil hearing or trial would save the parties—and the courts—significant resources. Courts would have less congestion in the courthouse and the courtroom, shorter weapons screening lines, and fewer security issues. More to the point, lawyers would not be sitting in courtrooms waiting and charging their clients, and clients would not be taking time off work to travel, park, and wait.

The most widely used telephonic appearance vendor charges a party from $50 to $100 per appearance, making the process unaffordable for most self-represented litigants. There are far cheaper, fully serviceable alternatives available. When videoconferencing was first introduced, it required specialized equipment running on dedicated T1 telephone lines. Its installation and use were expensive and required technical support. Zoom and Skype are now available as inexpensive online videoconferencing services. Other vendors are now providing services combining teleconferencing and videoconferencing tailored for use in a court setting that a court can offer without charge to its users.

In its 2015 *Call to Action: Achieving Civil Justice for All,* the Conference of Chief Justices' Civil Justice Improvement Committee recommended that "[j]udges should promote the use of remote audio and video services for case hearings and case management meetings."[24] The commentary supporting this recommendation makes the case:

> *Vast numbers of self-represented litigants navigate the civil justice system every year. However, travel costs and work absences associated with attending a court hearing can deter self-represented litigants from effectively pursuing or defending their legal rights. The use of remote hearings has the potential to increase access to justice for low-income individuals who have to miss work to be at the courthouse on every court date. Audio or videoconferencing can mitigate these obstacles, offering significant cost savings for litigants and generally resulting in increased access to justice through courts that "extend beyond courthouse walls." The growing prevalence of smart phones enables participants to join audio or videoconferences from any location. To the extent possible and appropriate, courts should expand the use of telephone communication for civil case conferences, appearances, and other straightforward case events. If a hearing or case event presents a variety of complexities, remote communication capacities should expand to accommodate those circumstances. In such instances video conferencing may be more fitting than telephone conferencing. The visual component may facilitate reference to documents and items under discussion, foster more natural conversation among the participants, and enable the court to "read" unspoken messages. For example, the video may reveal that a litigant is confused or that a party would like an opportunity to talk but is having trouble getting into the conversation.*[25]

But only one state, Alaska, currently allows a party to appear and to present testimony by phone or videoconference simply because the party finds it more convenient to do so. The court informs the parties of the option to appear remotely in the notice of hearing, allowing the party to make the decision about whether to attend in person.[26]

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24 CCJ Civil Justice Improvements Comm., Nat'l Ctr. for State Courts, Call to Action: Achieving Civil Justice for All 37 (2015), *available at* https://www.ncsc.org/~/media/Microsites/Files/Civil-Justice/NCSC-CJI-Report-Web.ashx [hereinafter Call to Action]. Adopted by the Conference of Chief Justices in 2016. Conference of Chief Justices, Resolution 8: In Support of the Call to Action and Recommendations of the Civil Justice Improvements Committee to Improve Civil Justice in State Courts (2016), *available at* http://ccj.ncsc.org/~/media/microsites/files/ccj/resolutions/07272016-support-call-action-recommendations-cji.ashx.

25 *Id*. at 37-38.

26 John Greacen, Self-Represented Litigation Network, Remote Appearances of Parties, Attorneys and Witnesses: A Review

ALASKA'S REMOTE TELEPHONIC APPEARANCE PROGRAM INTERVIEW WITH STACEY MARZ, DIRECTOR OF SELF-HELP SERVICES FOR THE ALASKA COURT SYSTEM[27]

Do you allow telephonic appearances for cases on a long trailing docket, e.g., a domestic relations docket with thirty matters on it? Or are they limited to specific matters, e.g., a scheduling conference in a large civil case that is set for a time certain?

Yes, telephonic appearances are used for any kind of appearance: block hearings in criminal cases with multiple defendants, civil hearings, trials, etc. There is no restriction based on type of hearing. Sometimes, in fact, the judge appears telephonically when there are hearings or trials in remote locations where there is no sitting judge. Also, attorneys appear by phone as well in all types of hearings.

Does your court (or any other trial court you know) notify parties for a particular type of hearing that they can appear telephonically if they want to? Or do you require in every instance that a party ask permission in advance to appear telephonically?

Depends on judge and court. It is routine in remote locations where there is no road infrastructure to provide telephonic call-in information. In locations where it is easy to drive, the info may not necessarily be provided routinely. If the court notices a litigant is not in the community, the court may automatically provide call-in information. Litigants may call the court or file something asking to be telephonic and the information is provided. In reality, it is very routine and often very informal to provide the call-in information.

How, exactly, does the telephonic appearance work? What phone system do you use? Do you send out the number and pin, or does the requesting party do that, or do you use a vendor who does that?

We use Global Crossing for the 800 #s. Each courtroom has an 800 # with an access code. As answered above, the number is either provided by the court without a request or provided after a request. No vendor is used to provide the telephonic info.

What restrictions do you put on telephonic participants, e.g., no cell phones, no putting the call on hold, etc.?

No formal restrictions. As a practical matter, if it is too loud from background noise, ask that they find a quieter place, but judges are even tolerant of that because they want people to participate as the priority. No driving while talking.

How exactly does the call proceed?

In-court clerk opens the conference line (calls 800 #, adds access code, adds code to initiate call a minute before the call is supposed to start). Litigant(s) call in by dialing 800 # and access code. In-court clerk asks who is on the line, party identifies self. Hearing/trial starts with the judge explaining the proceeding, etc.

Is the call recorded, or taken down by a court reporter?

The calls are recorded as if the person is in the courtroom. The call is heard through the overhead speakers on the record. All proceedings are electronically recorded in Alaska and we don't use court reporters.

Does the judge like to use telephonic appearances, or is this a pain in the neck?

I've never heard anyone complain about telephonic appearances. It is easy and routine—really happens so much of the time that nobody thinks anything of it.

What else do I need to know about your process?

Do it! It is simple and there are no problems.

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of Current Court Rules and Practices (2017), *available at* https://www.srln.org/system/files/attachments/SRLN%20Remote%20Appearances%20Court%20Rules%20and%20Practices%20Report%204-2-17.pdf; John Greacen, Self-Represented Litigation Network, Compendium of Statutes and Court Rules Relating to Appearances of Parties, Lawyers and Witnesses in Court Proceedings (2017), *available at* https://www.srln.org/system/files/attachments/SRLN%20Compendium%20of%20Statutes%20and%20Court%20Rules%20Relating%20to%20Appearances%20of%20Parties%2C%20Lawyers%20and%20Witnesses%20In%20Court%20Proceedings.%20%20State%20Statutes%20and%20Rules.%203-15-17.pdf.

27 E-mail from Stacey Marz, Director of Self Help Services, Alaska Court System, to John Greacen, (June 2017) (on file with author).

4 ENABLING PARTIES TO SCHEDULE HEARINGS AT THEIR CONVENIENCE

Current scheduling software used in private business allows employees to schedule meetings using the business' videoconferencing system, learning the availability of participants from the company's personal calendar software, sending a meeting announcement to all persons who need to attend, and automatically adding the meeting to each person's calendar.

Court personnel use these capabilities to set up their own meetings and trainings. A number of courts allow summoned jurors to change the date on which they will appear for service, using an online application. One example is the Maricopa County eJuror portal.[28] But it is rare that a court will display to parties the available hearing slots in a judge's calendar so that they can choose a hearing date and time most convenient for them.

There are exceptions. Many California courts allow drivers to schedule their initial traffic court appearance online.[29] Los Angeles, Orange, and Riverside Counties allow attorneys to schedule their own civil motion hearings.[30] The Maricopa Superior Court allows attorneys to choose a date for a criminal settlement conference by phone or email (but not yet online).

Fort Lauderdale, Florida and several other Florida trial courts have software applications that enable attorneys and self-represented litigants to self-schedule hearings at times available on the court's calendar that are most convenient for them.[31] The Miami-Dade County trial court will soon implement the same system.

28 *eJuror System*, Judicial Branch of Ariz., Maricopa Cnty., https://ejuror.maricopa.gov/ejuror-agile/.
29 *How do I request a court date?*, Super. Ct. of Cal., Cnty. of L.A., http://www.lacourt.org/division/traffic/TR0012.aspx.
30 *Court Reservation System*, Super. Ct. of Cal., Cnty. of L.A., https://www.lacourt.org/mrs/ui/index.aspx; *Civil (Unlimited)* – Reserve a Motion Date, Super. Ct. of Cal., Cnty. of Orange, https://ocscefm1.occourts.org/racd/; *Reserve Civil Motion Date*, Super. Ct. of Cal., Cnty. of Riverside, https://www.riverside.courts.ca.gov/reservecivilmotion.shtml.
31 *17th Judicial Court Management System*, Seventeenth Judicial Circuit of Fla., http://www.17th.flcourts.org/online-schedule/.

5 ENABLING PARTIES TO PAY FEES, FINES, AND OTHER FINANCIAL OBLIGATIONS ONLINE

A number of courts and court systems (but not all) allow parties to make payments online using credit cards. Accepting electronic payments raises a number of practical and procedural issues. One issue is accounting for the transaction fee charged by a credit card company. Other issues include discerning how to record the payee's signature and how to provide a receipt. The payment system should be seamlessly integrated into the court's financial accounting system, to avoid requiring court staff to enter manually the payments made electronically.

These issues have all been resolved by courts that provide this service to their customers. For instance, courts have obtained legislation that allows the court to accept a credit card payment as a payment in full even though the credit card company has retained a portion of the payment as a service charge.

This customer service improvement has proved to benefit the courts by providing higher collection rates and reduced staff time dealing with and reconciling these transactions.

6 ENABLING WAYFINDING

Virtually every commercial website today has a feature allowing a customer to obtain a map and instructions for getting to a store or company office. Some cities have applications that show how to use public transportation to get from your current location to a desired destination. All court websites should have this same feature, providing a familiar process for navigating to the courthouse.

Wayfinding can also be enabled for navigation within a courthouse—to locate and walk to a particular courtroom or court office. Providing this service will not eliminate the need to give directions to patrons who face language or reading challenges, but it will reduce significantly the extent to which those services are necessary.

Courthouses such as the Fourth Judicial District in Hennepin County (Minneapolis), Minnesota and the First Judicial District Court in Santa Fe, New Mexico, have interactive displays in the courthouse lobby that allow a patron to obtain directions to a particular destination within the courthouse.[32]

A number of courts are using queuing systems located in the lobby near the clerk's window to allow patrons to obtain and enter information in multiple languages about the service they are seeking and present them with information about court processes while they are waiting for their numbers to be called.[33]

We have not yet identified a courthouse that has a smartphone app that supports wayfinding within the courthouse. But it should not be long in coming. Retailers have begun to develop these applications using low-energy Bluetooth devices to help customers locate a particular product in their store.[34] Courts could provide docket information together with directions for reaching the correct courtroom or office within the courthouse that would display on the court user's smartphone.

Of course, courts will have to allow court users to bring their smartphones into the facility. Prohibitions on possession of smartphones within a courthouse create major problems for court users, including what to do with a phone when they learn they cannot take it into the courthouse. Most courts will not take responsibility for safekeeping of the banned instruments. What can the owner do if s/he does not have the option of returning it to a parked car? What can s/he do if the phone contains information needed for the court appearance? Vendors now provide sealable pouches in which portable phones can be placed.[35] This allows the patron to keep the phone on her or his person while preventing the phone's use within the courthouse. Bailiffs can be given a device allowing the pouch to be opened to allow use of the phone in a courtroom if the judge approves.

The preferred course, however, is for courts to reconsider their prohibitions on bringing portable phones into their premises. If TSA allows us to take our smartphones on airliners, courts should be able to do the same. There are many states where these restrictive policies exist in some but not all courthouses. Why is mobile phone possession a security threat in some but not all courts? What is the optimum policy, considering both security risks and the interests of both lawyers and other court patrons, in being able to have and use their smartphones in the courthouse? Can identified problems be addressed by policies with more limited impact on court users than total bans on smartphones?

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32 *Follow the Yellow Brick Road,* Courts Today (May 11, 2017), http://www.courtstoday.com/article/follow-the-yellow-brick-road-42496.

33 Nat'l Ctr. for State Courts, Wayfinding and Signage Strategies for Language Access in the California Courts: Report and Recommendations 68 (2017), *available at* http://www.courts.ca.gov/documents/LAP-Wayfinding-and-Signage-Strategies-Language-Access-in-the-CA-Courts.pdf.

34 Alex Rolfe, *NFC Vs iBeacons – digital retail marketing spend to double*, Mobile Payments World (July 11, 2016), https://www.mobilepaymentsworld.com/nfc-vs-ibeacon-digital-retail-marketing-spend-double/?v=7516fd43adaa.

35 *Courts*, Yondr, https://www.overyondr.com/courthouses/.

7 ENABLING CUSTOMERS TO OBTAIN INFORMATION AND FORMS REMOTELY

There is no reason why customers should have to travel to the courthouse to ask court staff a question or to obtain a form or information about their case. In 2016, the Self-Represented Litigation Network published a study of remote service delivery mechanisms in use in eight United States jurisdictions.[36] It marshalled empirical data and expert observation to demonstrate the value to customers and to courts of enabling customers to contact the court by telephone, email, text message, chat, and videoconference. It also documented the use of "co-browsing," in which a user gives the court staff member access into the user's computer; the staff member can then show the user how to navigate to different parts of the court's website.

Courts are making videos—and creating their own YouTube channels—to show examples of court processes, to provide mandatory training sessions (such as the impact of divorce on children), and to provide step-by-step "how to" directions for completing forms or processes (such as service of process and completion of a certificate of service).[37] Thirteen California courts have created a network for simultaneous videoconference workshops for self-represented litigants in multiple locations.[38]

36 John Greacen, Greacen Associates, LLC, Self-Represented Litigation Network, Serving Self-Represented Litigants Remotely: A Resource Guide (2016), *available at* https://www.srln.org/system/files/attachments/Remote%20Guide%20Final%208-16-16_0.pdf.

37 Many examples are available on the Self-Represented Litigation Network website, *available at* https://www.srln.org.

38 *SHARP TECH Connect: a California Judicial Council Court Innovation's Grant Project*, SHARP: Self-Help Assistance and Referral Program, http://sharpcourts.org/about-sharp/sharptechconnect/.

8 SIMPLIFYING THE PROCESS OF FORMS COMPLETION

Virtually every court event is accompanied by the creation and filing of a form. For years, courts have been preparing fillable forms for completion by hand. The result is a great deal of repetitive labor for the court user and the challenge of deciphering the language and handwriting by judges and court staff—but it does not have to be this way.

By now, document assembly software has proven its value both for the user and for the court. Using this software, a court creates a standard form and an "interview" to be completed by the user. The software uses the answers to the interview to determine which form to complete and to enter the information into the form, avoiding all repetitive data entry by the user. No matter how many times the filer's name appears on the form (or set of related forms), the filer only has to enter it once in the interview. The software inserts it wherever it belongs in the completed form or forms.

The filer has an opportunity to review the form before it is saved, printed, or filed electronically. This process can also be used to elicit information that will allow the court to triage cases onto different tracks.[39]

The most frequently used document assembly software products are HotDocs and A2J Author.[40] Many courts use Law Help Interactive, developed for the legal services community, to deliver these document assembly services.[41] Margaret Hagan, Director of Stanford's Legal Design Lab and a lecturer at Stanford Institute of Design (the d.school), is doing very useful work in designing and improving user interfaces to these and other online products intended for use by the public.[42] And, several court case management vendors now offer specialized document assembly software designed as part of an integrated case management and electronic filing product or as standalone applications.

39 Brittany K.T. Kauffman & Natalie Anne Knowlton, Inst. for the Advancement of the Am. Legal Sys., Redefining Case Management (2018), *available a*t http://iaals.du.edu/sites/default/files/documents/publications/redefining_case_management.pdf.

40 HOTDocs, https://www.hotdocs.com/ (last visited Sept. 7, 2018); Access to Justice Author, https://www.a2jauthor.org/ (last visited Sept. 7, 2018).

41 Law Help Interactive, https://lawhelpinteractive.org/ (last visited Sept. 7, 2018).

42 Justice Innovation, http://legaltechdesign.com/access-innovation/ (last visited Sept. 7, 2018).

9 ENABLING SELF-REPRESENTED LITIGANTS TO FILE DOCUMENTS ELECTRONICALLY

A court's electronic filing process needs to be designed with separate, distinct interfaces for attorneys and governmental entities on the one hand and for self-represented litigants on the other. The former are frequent, high-volume users; the latter will typically employ the electronic filing process for a single case or even for a single document. An interface designed for self-represented litigants will prove to be completely unsatisfactory for high-volume users and vice versa, given the unique context and needs of these very different users.

High-volume users are very likely to have their own processes for generating the documents they will file. The personnel responsible for the electronic filing process itself will become very familiar with its functions and will want to be able to complete them in the fewest possible steps and keystrokes. Conversely, self-represented litigants will need to be led through the eFiling interface very slowly, with the emphasis placed on a thorough explanation of each step of the process rather than on efficiency.

Commercial electronic filing vendors are able to generate significant revenue from attorneys and governmental entities. The cost of creating an account and establishing a billing process for a client is a minor matter, given that a single account will generate a substantial amount of business over time. The vendor's training and support costs are limited, with most of them incurred close to the time their system is launched. When personnel change in a law office, the outgoing eFiling clerk will usually train her or his replacement.

The opposite is true for self-represented litigants. The cost of creating a new account is very high compared to the revenue that will be generated from the new user. The training and support costs are even higher and persist. Collection of eFiling fees earned will be much more problematic when the users are individuals rather than business entities.

These realities lead to the conclusion that courts will often need to create and support their own electronic filing mechanism for self-represented litigants.[43] Even though vendors will often agree in their contracts to be responsible for supporting self-represented litigants, they will insist on implementing services for higher-revenue generating clients first and will attempt to use the same interface for self-represented litigants, blaming them for their inability to use it in the same way as their high-volume customers. This can no longer be the standard operating procedure if courts are to make better use of technology for their customers.

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43 The New Hampshire court system has demonstrated how to implement eFiling for SRLs successfully. For a detailed treatment of the issues associated with successful SRL eFiling, see the Best Practices document developed by Central Minnesota Legal Services in cooperation with the Self-Represented Litigation Network. Richard Zorza, Legal Serv. Corp., Principles and Best Practices For Access-Friendly Court Electronic Filing (2013), *available at* https://www.srln.org/system/files/attachments/LSC%20Best%20Practices%20in%20E-Filing.pdf.

NEW HAMPSHIRE MANDATORY E-FILING FOR SELF-REPRESENTED LITIGANTS

The New Hampshire judicial branch began in 2014 to implement a highly successful statewide mandatory eFiling process designed at the outset to be useable by self-represented litigants.[44] The program followed four design principles:

- eFiling will be mandatory, necessitating the construction of a system that will be truly easy for all filers to use; the system will provide no advantage for attorney filers over other filers.
- The design process will engage others—end users and partners (such as public librarians who would serve as user assisters)—from the outset in conceiving and designing the system.
- The system will meet the filers where they are.
- Every part will be tested and retested with users before the system is rolled out.

The process involved a number of unusual steps:

1. Business process redesign preceded the development of the eFiling system.
2. The state hired different vendors to develop the attorney and self-represented litigant applications.
3. The state created a centralized eFiling support center, which provides remote assistance to eFilers (and to court staff seeking guidance).
4. The planning process included retraining of court staff on the fundamentals of customer service, such as the adoption of the slogan "Come Out From Behind the Counter" when an SRL needs help.
5. Judges are included in the customer service culture; to remain attuned to the needs of SRL eFilers, administrative judges work an eFiling queue every day.
6. Some basic filing requirements inconsistent with easy eFiling were eliminated:

   a. Original documents (e.g., wills, death certificates) are mailed or delivered by hand to the court.

   b. Scanning equipment is available at the court for other documents.
7. Forms were redesigned and document assembly guided interviews created for ease of use by all filers.

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44 Author's summary of a presentation titled *Mandated SRL e-Filing: How to Make It Work*, by Jackie Waters, Elaine Lessels, and Kim Brackett from the New Hampshire Judicial Branch, at the National Association for Court Management Annual Conference, Atlanta, GA, July 25, 2018.

10 ENABLING THE CREATION OF AN ORDER OR JUDGMENT AT THE CLOSE OF A HEARING OR TRIAL

One of the functions most needed by self-represented litigants is a written order or judgment in the courtroom at the end of a hearing or trial.

Using traditional automation, performing this function is time-consuming and burdensome for the court and its staff. The court generally starts with an empty order template, entering all the necessary information, including the case caption and the entire text of the order or judgment.

Because of this workload, most courts require the parties to file proposed orders along with their motions or to prepare and submit them for the court to sign following the hearing. Editing those orders when submitted on paper creates a document with handwritten interlineations which are difficult to verify. Receiving proposed orders as editable word processing documents requires that every filer use a court-prescribed word processing application and that the court maintain a parallel eFiling system for receiving documents that are not intended for filing.

In order for the court to be able to produce an order after a hearing quickly and efficiently, it needs to have the data contained in the request for relief that the hearing addresses available in electronic form—inserted as appropriate into a draft order. Electronic filing and storage of documents traditionally uses the PDF/A protocol, which preserves a document as an image rather than as data representing all the information present in the document—a significant impediment to such a process.

On the other hand, document assembly software can easily produce a "tagged" document that preserves information as data rather than as an image, which allows it to be inserted into a form court order or judgment.

This process is currently used in electronic filing to automatically create the docket entry for the newly filed document. The filer sends with her or his document, in a tagged format, the name and docket number of the case, the name of the party on whose behalf the document is filed, the name of the attorney filing the document, and the name of the document—all the information needed to compose the docket entry. The clerk does not need to type any information (unless, upon review, the clerk discovers an error in the information provided by the filer).

It is not feasible to add all of the "tagged" information in a request for relief as unique data recorded in the court's case management system. That would require expanding the number of unique data fields as each new proceeding type is added to the system. And the data is not appropriate for storage in the case management system because it is pertinent only to a specific motion and order and not to the whole of the case.

Vendors, however, have developed ways to capture this information for reuse in constructing a proposed order. One vendor uses optical character reading to parse a PDF/A document and self-learning (artificial intelligence) software to identify specific information in a filed document. That language is then inserted into a draft order for editing by the court. A second method uses XML tagging. A filing is constructed using a document assembly program that produces "tagged information." The tagged document is converted into a PDF/A image, which is entered into the court's document management system and saved as the tagged document in a temporary database where it can be used to generate a draft order for review and editing by the court. A third method would be to use a single data field in the court case management system as the place to record all tagged data associated with the case. When the judge is ready to prepare an order, s/he would call up the court's form for that order which already contains the tags for each data element to be inserted in the order (e.g., the case caption, document

name, and relief requested). The system would then parse the tagged data field and import the information with corresponding data tags. The judge would be responsible for adding information not already contained in the tagged data field and for modifying the information (e.g., the request for relief) to reflect the court's decision.[45]

These approaches offer great benefit to the court and to its users for the generation of timely orders and judgments.

45 For this third process to succeed, the community would have to develop a data standard to support it. The OASIS LegalXML Member Section would be the appropriate place for that development to take place.

11 CREATING AN ONLINE TRIAGING PORTAL FOR EVERY JURISDICTION

In 2015, Tom Clarke published *Building A Litigant Portal: Business and Technical Requirements*.[46] The paper presents the vision of an online tool to be used by persons seeking to learn whether they have a legal problem and, if so, how they can access help in getting it resolved. Using natural language processing and an Artificial Intelligence engine, the Litigant Portal will assess whether the user has a legal problem, direct the user to a legal information resource to learn about the law applicable to that problem, and refer the user to the most appropriate resource for addressing the problem. If the user is eligible for legal aid services and the problem falls within a high-priority area for the local legal services program, that is the referral that will be made. If the user is not eligible for legal aid, the various options for assistance (from the court, from the private bar, or from other community and social service agencies) will be presented.

Microsoft, the Legal Services Corporation, and Pro Bono Net are currently partnering to build a prototype portal application which will be piloted in Alaska and Hawaii in the first or second quarter of 2019.[47] Microsoft has agreed to place the resulting software into the public domain where it can be used and enhanced by anyone.

The Microsoft effort is one of many "portals" in place or currently under development. Those in Illinois and Michigan are the most technologically sophisticated.[48] Ohio is in the process of developing a portal as part of a new statewide legal information website.[49] And Florida is engaged in its own portal development effort.[50] The Pew Charitable Trust recently announced a Civil Justice Innovation program—an explicit objective of which is furthering the development of such portals.

A statewide portal will necessarily involve and be governed by a large group of stakeholders, including courts, the organized bar, legal aid, libraries, law schools, and other community service providers and organizations. Solving the governance issues associated with a portal serving these disparate entities may be the biggest challenge for these portal efforts. Florida's approach—creating a separate 501(c)(3) entity governed by a board representing the major stakeholders—is an especially promising approach.

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46 Thomas M. Clarke, Nat'l Ctr. for State Courts, Building a Litigant Portal: Business and Technical Requirements (2015), *available at* https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/375.

47 Video: Using Technology to Increase Access to Legal Services: An LSC-Microsoft-Probono.net Collaboration (Legal Services Corporation) *Media Center*, Legal Services Corporation, https://www.lsc.gov/media-center/multimedia-gallery/using-technology-increase-access-legal-services-lsc-microsoft.

48 Ill. Courts, http://www.illinoiscourts.gov/default.asp (last visited on Sept. 7, 2018); Mich. Courts: One Court of Justice, http://courts.mi.gov/Pages/default.aspx (last visited on Sept. 7, 2018).

49 Ohio Legal Help, http://ohiolegalhelp.org/ (last visited on Sept. 7, 2018).

50 Fla. Courts Help, https://help.flcourts.org/ (last visited on Sept. 7, 2018).

12 ENABLING ONLINE DISPUTE RESOLUTION

One of the resources to which a triaging portal will be able to refer its users is an Online Dispute Resolution (ODR) application. The eBay dispute resolution process is the most widely used example of such a process. eBay developed a simple computer-based process that resolved millions of disputes about private party sales conducted on the site, 90 percent of them without human intervention.[51]

The basic concept of an ODR application is an online tool that enables the parties to craft and exchange offers of settlement. Typically, one party will initiate the process and invite the other to participate. If the other party agrees, they exchange offers, usually in an asynchronous process. ODR applications usually generate a document incorporating the terms of any agreement reached. Some generate court filings for submitting unresolved matters to the appropriate court for resolution.

ODR applications differ significantly in their details. They have been created for different case types, such as traffic, civil infractions, local tax assessment appeals, small claims, condominium disputes, general divorce, custody disputes, and child support matters. Some include an option for the parties to involve a mediator or arbitrator as part of the online process. Some can be invoked without filing a case in court; others are available only after a case is filed.

The Clark County Family Court in Las Vegas, Nevada, has inserted ODR into the middle of its mandatory custody and visitation mediation process in divorce cases.[52] As soon as the court enters an order requiring the parties to schedule a mediation session, the parties are given the option of trying to resolve the matter online. They also have the option of involving one of the court mediators in their online negotiation process. If the online process is not successful, the case proceeds in the normal course with both parties required to participate in a mediation session at the courthouse.

ODR processes offer a number of advantages over traditional court processes for many court customers:

- Parties are able to attempt to resolve their dispute on their own terms;
- Parties can resolve their case without having to go to court;
- ODR applications are available 24 hours a day, 7 days a week, and the parties can work on their proposals and counterproposals at their convenience;
- ODR users can opt into and out of the voluntary process;
- ODR is usually offered at no cost, although involvement of a third party may involve payment of a fee;
- ODR speeds up the resolution both of cases in which it is used and of the remaining cases on the court's docket; and
- Users report high levels of satisfaction with the system.

ODR programs have been implemented in at least 25 jurisdictions. The program in Franklin County (Columbus), Ohio, has been in operation for two years.[53] In the United States, ODR has been funded with

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51 *Resolving Disputes Online Fairly and Quickly*, Tyler Techs. Inc., https://www.tylertech.com/solutions-products/modria/history.

52 Jennifer Kepler, *Clark County Court Uses New Technology from Tyler to Resolve Disputes Online*, Tyler Techs., Inc. (Apr. 17, 2018), http://investors.tylertech.com/profiles/investor/ResLibraryView.asp?ResLibraryID=87405&GoTopage=1&Category=16&BzID=499&G=320.

53 Alex Sanchez, *A Letter from the Franklin County Municipal Court*, Online Dispute Resolution: Franklin Cnty. Mun. Court (Oct. 1, 2016), https://sc.courtinnovations.com/OHFCMC.

public appropriations as a means of improving court processes and improving the experience of court customers. There have been few attempts to make them financially self-sufficient.

The COSCA/NACM/NCSC Joint Technology Committee has developed a Resource Bulletin, *ODR for Courts*, which documents existing ODR programs, summarizes the results of ODR program evaluations, and recommends a number of Best Practices for implementing ODR programs.[54] The Pew Charitable Trust's Civil Justice Innovation program has identified ODR as another target for its support.

ODR is clearly effective in traffic and civil infraction cases where the "other side" has an incentive to participate in the online process. The issuing officer or local prosecutor has a strong interest in resolving these matters without having to appear in court and can offer to settle them on the same terms as would be offered at the time of a court appearance. It is not so clear that ODR is as effective in matters where the "other party"—e.g., the other parent in a custody or child support matter—does not have a similar incentive to cooperate in consensual resolution of the matter. Although courts routinely require mediation before they will set a trial date for a contested family law case, the coercive power of the court has not generally been used to force parties to participate in ODR processes.

Utah's new small claims ODR program, however, provides an example of mandatory ODR.[55] The small claims plaintiff must log onto the ODR process within seven days of filing a complaint and a case will be dismissed or judgment entered by default for failure to participate in good faith in ODR. Courts might also consider other incentives to encourage ODR participation, such as waiver of a portion of the filing fee if the parties need to submit one or two issues in a divorce to the court for resolution following an ODR process.

Another aspect of ODR applications that has not been fully explored is whether their use can result in structural changes in the bargaining power of the participants. Concern has been raised about the use of ODR in debt collection matters. The most frequent type of small claims filing is collection of a debt small enough to fall within the subject matter jurisdiction of the small claims court. Most debt collection cases are currently resolved by default. In a subsequent garnishment or other collection action, the judgment debtor is entitled to statutory protections limiting the amount that can be collected. A debtor participating in an ODR process will probably be unaware of those protections and may agree to pay more than the creditor would otherwise be able to collect, while saving the creditor considerable amounts in attorney fees by reaching agreement through ODR.

To what extent is a court obligated to integrate an educational component into an ODR process? One example of an ODR system with a heavy emphasis on education of the parties is MyLawBC, developed by the Legal Services Society of British Columbia, Canada for use in family law cases.[56] The application gathers standard information about the family, such as length of marriage, children, and property, and provides the user with basic legal information concerning each issue presented. If the online offer/counteroffer process does not lead to settlement of a particular issue, MyLawBC asks whether the parties would be interested in knowing how other users typically resolve that issue.

In the landmark *Call to Action* report, the CCJ CJI Committee recognized the issues of fundamental fairness presented by high volume court processes exemplified by debt collection proceedings. Section 11.1 of its recommendations significantly increases the responsibility of the court for the fairness of final judgments in these cases:

> *Courts must implement systems to ensure that the entry of final judgments complies with basic procedural requirements for notice, standing, timeliness, and sufficiency of documentation supporting the relief sought.*[57]

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54 Joint Technology Comm., JTC Resource Bulletin: ODR for Courts (2017), *available at* https://www.ncsc.org/~/media/Files/PDF/About%20Us/Committees/JTC/JTC%20Resource%20Bulletins/2017-12-18%20ODR%20for%20courts%20v2%20final.ashx.

55 Summary prepared by Clayson Quigley of the Utah Administrative Office of the Courts at the author's request in August 2018.

56 It uses the same software platform to help people prepare a will. See Legal Services Society, MyLawBC.com, *available at* https://mylawbc.com/.

57 Call to Action, *supra* note 24, at 37.

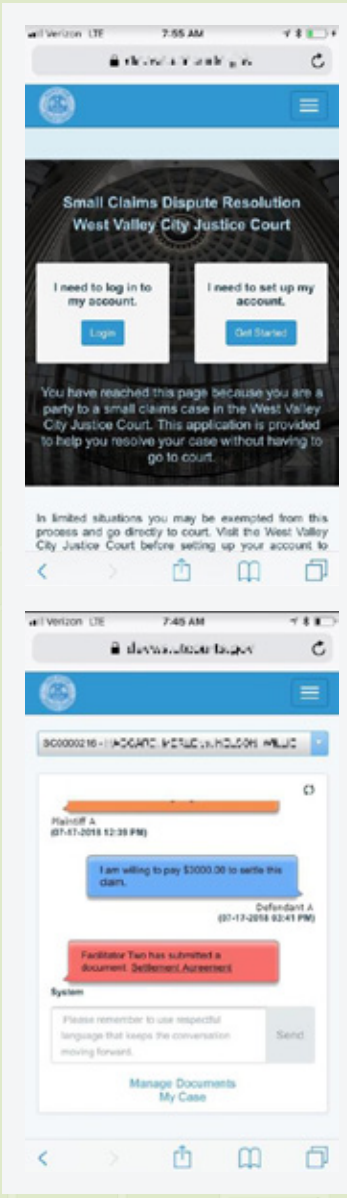
This recommendation transfers from the defendant to the court the obligation to raise and resolve these basic fairness issues before signing a default judgment. Does the same fairness principle impose an obligation on a court to ensure that debtors are protected from entering into agreements with creditors to pay claims that would be barred for defects of notice, standing, timeliness, and sufficiency of documentation when they participate in a court sponsored ODR process? If so, how could the ODR application be structured to educate the debtor sufficiently to protect her or his interests in these regards?

Utah is the first state court system to develop its own ODR process and the software on which it runs, and is currently implementing it in one court in Salt Lake City.[58]

58 Quigley summary, *supra* note 55.

THE UTAH JUDICIAL BRANCH SMALL CLAIMS ODR APPLICATION[59]

UTAH COURTS ONLINE DISPUTE RESOLUTION



Utah is excited about the implementation of ODR in the state. The court sees this innovation as an opportunity to increase access to justice across the state by bringing tools for resolution to the participants' finger tips. It is anticipated that ODR will help increase engagement with the judicial system by making it more convenient and accessible than ever before.

The Utah State Courts will implement ODR for small claims cases as a pilot program in the West Valley City Justice Court. ODR is a platform where parties are given the opportunity to communicate with one another in order to reach a resolution without going to trial. Participation in ODR will be required in all small claims cases in the pilot court except those few which meet strict exemption criteria. It is a web-based application and is optimized for both mobile and desktop access. The program allows parties to communicate via chat as well as upload documents and prepare a settlement agreement.

ODR is initiated when the plaintiff files a small claims affidavit and summons. Upon filing, a case number and ODR account are generated. The Plaintiff must log into their account within seven days or the court may dismiss the case without prejudice.

Defendants are served with a summons, which directs them to the website where they create their account and log into their case. Once logged in, they are presented with a number of generic questions regarding their case to help begin the resolution process. They may indicate whether they agree with the claims fully or in part as well as their willingness or ability to enter into a payment plan as part of a settlement. Defendants are required to log into ODR within 14 days of service or a default judgment may be entered against them.

Once both parties have logged into the ODR case, a facilitator is assigned to the case. Facilitators for the pilot program are volunteers—from the court staff, from the bar, and from the community—with experience in mediation. One of the purposes of the pilot is to learn what qualifications are most important for effective facilitation. A facilitator will guide parties through the ODR process by helping to keep the conversation moving and advise the parties on next steps. The facilitator also assists the parties in finalizing documentation for a settlement or trial preparation.

All parties, including the facilitator, can see any message in the chat and the documents uploaded into the case. These communications and documents are not a part of the court record. If an agreement is not reached and the case progresses to trial after ODR, supporting documents may be submitted for the trial, following the normal rules and procedures of the court. The chat function is an asynchronous feature, meaning the system is designed to be accessed at any time by all parties. This means that the chats may not be read or responded to immediately since a party can engage the system without all parties logged in. This provides convenience and flexibility for all those involved. The parties may log in at the time and place most convenient to them. However, if either party fails to respond to the facilitator for more than 10 days the other party may file for a default judgment or dismissal.

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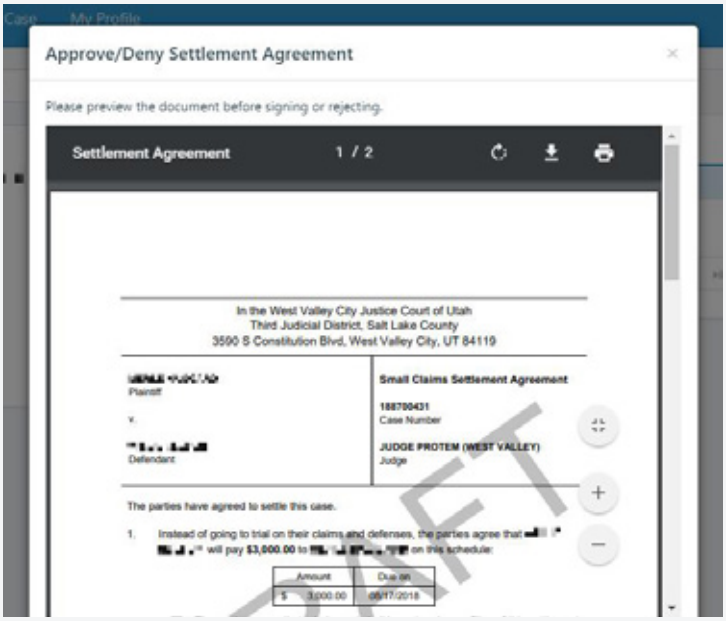
59 *Id.*

If the parties are able to reach an agreement, the facilitator may prepare a settlement agreement. However, either party may draft the settlement agreement at any time. The preparer accesses a form which prompts the person to provide details of the agreement. From those details, a settlement agreement is automatically drafted by the system and sent to the other party for review. Once both parties have signed the document electronically, the facilitator is able to submit the document to the court at which point it will be included in the case.

When the parties are unable to reach a settlement, a trial preparation document is created by the facilitator. Like the settlement agreement, the trial preparation document is signed by both parties and then submitted electronically to the court by the facilitator. Once the document is filed with the court, a trial date is set; the case is removed from ODR and resumes the normal process for small claims cases in the state.



13 ENABLING AUTOMATED COURT MESSAGING TO CUSTOMERS

One of the most promising customer-serving technologies is the application of messaging. We are all familiar with receiving text, email, or telephone messages from the dentist or doctor about a scheduled appointment, including reminders of steps that we must take in advance of the appointment. These sorts of messages are generated electronically, with the message to be sent and its timing based on information contained in the office scheduling software.

In a court context, messaging can be used in several different ways.

A. REMINDERS OF UPCOMING OR MISSED EVENTS

This is the most easily envisioned process. The court sends a text, an email, or recorded phone message (depending upon the preference recorded by the recipient) with a reminder of an upcoming scheduled court event. The message would also contain other relevant information about the event, such as the issue to be decided, the materials a party should bring, and the issues the party should be prepared to address. A text message or email could also contain a link to an informational or instructional video.

This message could also remind a party of an upcoming fine payment due date, with instructions on how to use the online payments process. Additionally, it could be used to alert a party to her or his failure to appear at a scheduled event or of the failure to make a required payment. This sort of deficiency notice would also contain remedial steps available to the party receiving the message. For instance, a failure to appear message might provide a short period of time for a criminal defendant who missed a court hearing to come to court to reschedule the matter and avoid the issuance of an arrest warrant or the revocation of bail or release on own recognizance occasioned by the failure to appear.

The 22nd Judicial Circuit of McHenry County, Illinois, built its own notification process.[60]

B. DELIVERY OF "JUST IN TIME" LEGAL INFORMATION

Courts have learned over the years that giving a customer a comprehensive manual covering the whole of a legal process from filing to post-judgment is a waste of paper and effort. Most of us have the attention span or bandwidth sufficient to address only the next step in a process. In response, courts developed limited information packets that address only a particular procedural event, and this information is given to the customer at the completion of the previous step. This process can be performed automatically using a notification process.

Legal information relevant to a claim or to defense of that claim should be treated the same way. A petitioner needs to be told what legal "elements" need to be proven in order to obtain the relief sought. A respondent needs to be told not only this same information about the requirements of the petitioner's case, but also the nature of any affirmative defenses available.

The same is true at each stage of a case, whether it be discovery, trial preparation, or any other stage. This information can be conveyed through a messaging application, with brief, clear statements of the legal concepts needed at a stage of the proceeding, and with a hyperlink to more in-depth discussion of the same material.

60 *Services: e-Notification*, McHenry Cnty., Ill., https://www.mchenrycountyil.gov/services/enotification.

ILLINOIS 22ND JUDICIAL CIRCUIT NOTIFICATION PROGRAM[61]

In April 2018, the 22nd Judicial Circuit of McHenry County, Illinois, and the Circuit Clerk of the Court implemented a free service to court patrons which provides text or email reminders of upcoming court dates. The service was developed without additional cost and is provided at no cost to the subscriber.

Any member of the public may access the service via the Circuit Clerk's Public Case Access Portal Court Event Reminders website: www.mchenrycourt.date/reminders. To receive notification of court events, the users must sign up for subscription services. To do so, the user must enter the case number, name, and email and/or cellular carrier and phone number. The service provides email, text messaging, or both forms of notification for future court events relating to the information entered by the subscriber. Both email and texts require validation before any reminder messages are sent.

The information is taken from a hosted database outside of the court's network and brought in via a reverse replication process from the DMZ which is between the public internet and the internal network.

An internal service application runs every five minutes, which looks for records where validation messages have not been sent. The service generates a validating text and/or email which is sent to the subscriber. The subscriber must acknowledge the message by visiting a URL with the validation code, which validates and modifies the record so that reminder messages are sent.

Each day an internal service runs at 6:00 am which looks at all scheduled court events for the next three calendar days. The service then searches for records that have a scheduled court date and the event sign up has been validated. When this occurs, the service pulls the case record, case number, event location, event time and bundles the information into an email html format or plain text messaging and sends the notification. Once the subscriber has signed up and validated the information, the subscriber will receive notification of any court event that has been subscribed to, for infinity.

For purposes of sending the text notifications, the service utilizes the phone carrier's email-to-text-message functionality. This allows an email to be generated via the internal service but to be sent as a simple text message (SMS) to the subscriber. There is no cost to use this functionality. Additionally, email notifications are simply generated and utilize an Exchange server to facilitate the sending of the email.

All of the services to complete the notifications where written internally by the Integration Manger, David Kozlowski, utilizing .NET programming. No specific software or expense was required to complete this project. It is necessary to have the database, Exchange server, and web server. However, a program such as this can be written in any programming language and perform on any platform.

Since the launch of the program, nearly 600 subscribers have signed up for the notification reminder and all feedback has been positive.

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61 Summary prepared for the author by Dan Wallis, court administrator for the 22nd Judicial Circuit of Illinois, in July 2018.

14 USING MESSAGING TO GUIDE CUSTOMERS THROUGH THEIR COURT CASE

The same messaging technology already described above is applicable to the procedural steps in the process. As the court case management system records procedural information, it can generate messages to both parties about the resulting case posture and procedural steps that must or may be taken. For instance, the petitioner can be notified repeatedly if service has not been accomplished, with escalating messages. An escalation could be: 1) a notification that a certificate of service has not been filed, with links to information on service and on completing and filing a certificate of service; 2) a notification that a certificate of service has still not been filed, with an invitation to visit the court self-help center for help; or 3) a notification of a court hearing, with warning that the case may be dismissed if the party does not come to court to receive instruction from the judge about the service of process.

Procedural options would also include the opportunity for the petitioner to submit a default judgment if the respondent had been served and had failed to file a timely responsive pleading, with a copy to the respondent noting any remedy s/he may have to seek leave to file an untimely response.

This process would be used throughout the course and life of a case, alerting both parties to each next step, including scheduling and settlement conferences, discovery, settlement approaches, trial preparation, and trial. Each message would provide clear, limited information, with links to more complete discussions of available options, forms, and instructional videos.

Like other technology uses designed to benefit the customer, this technology would also provide significant benefit for the court in ensuring that cases progress steadily through the process, substituting automated messaging for repetitive case file reviews by the judge or her or his staff. The court could also be more confident that customers were informed about the consequences of their actions and inactions.

The Orange County California Superior Court has experimented with this type of proactive notification process and collected data demonstrating its effectiveness.[62]

62 Summary prepared by the author from Maria Livingston's report, entitled *Procedural Assistance in Family Law via Text Messages,* prepared for the Institute for Court Management (May 2018).

ORANGE COUNTY CALIFORNIA'S EXPERIMENT WITH TEXT MESSAGING AS A MEANS OF SENDING NOTIFICATION TO SELF-REPRESENTED LITIGANTS[63]

The Orange County Superior Court has implemented the Microsoft Dynamics Customer Relations Management (CRM) software. This service creates for each self-represented litigant a MyCourt Card, which allows the user to call up her or his court record and a number of other features allowing easy access to SRL workshops and other resources. The Court intends ultimately to use the CRM system to generate messages to court users to guide them through the steps required to complete their family law cases. The messages will be generated by a set of rules programmed into the CRM using data from the court's case management system to identify the current status of the case.

In the period between September 19 to December 30, 2017, Maria Livingston, Self-Help Center Supervisor, with the help of staff members, experimented with sending such text messages to parties in family law cases. Parties consenting to receive text messages alerting them to the status of their family law case and directions concerning next steps were randomly divided into experimental and control groups (73 and 70 cases, respectively), with the experimental group getting the text messages and the control group getting standard court notices if their cases were not progressing satisfactorily.

For the experiment, the staff ran reports from the court's case management system to obtain the information on the basis of which one of eight standardized messages was sent by text to the experimental group. The experiment was designed to determine whether SRLs would opt into the program, whether those receiving text messages would take an action to move the case forward within the next 30 days, how the experimental and control groups progressed through the system, whether there would be a difference in the number of in-person visits to the Court Self-Help Centers between the members of the two groups, and whether the court would save money by texting rather than sending mailed notifications.

Significant findings included the following:

1. The majority of those in the group who received texts moved their cases forward within 30 days of receiving the procedural text;

2. The control group had more cases at the default stage or were procedurally off track at the 70-day electronic case file review when compared to the text group electronic case file review at 75 days;

3. The participants in the text group had fewer cases where there was inactivity;

4. Even with tools for remote procedural assistance, SRLs will continue to need services that Self-Help Centers provide; and

5. The text process was significantly cheaper than mailed notices.

The court is working with the Stanford Legal Design Lab to conduct an expanded study of the process.

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63 *Id.*

15 USING TECHNOLOGY TO SIMPLIFY THE SERVICE OF PROCESS

A major barrier encountered by self-represented litigants is service of process, but there are a variety of solutions that would ease this obstacle if used by the courts. For example, courts can perform service for the parties. In New Hampshire, service in guardianship matters can, by law, be accomplished by registered mail.[64] The court routinely makes and sends by registered mail copies of guardianship petitions to persons entitled to notice for all unrepresented parties.

The widespread availability of smartphones makes it possible for someone serving a summons and complaint or other legal document not only to record the time, date, and location of service, but also to take a picture of the person served. An application could be developed to enable persons accomplishing service to record the picture and the GPS data with the court as the certificate of service. With this level of verifiable certainty of the underlying facts of completion of service, there would no longer be a reason for disqualifying plaintiffs/petitioners from performing service themselves. In fact, since 2010, New York City law has required all licensed process servers to carry an electronic device that uses a global positioning system or other technology to electronically establish and record the time, date, and location of service and to maintain this data for seven years.[65]

Moreover, eliminating the antiquated requirement of a "wet" signature by the clerk of court on a summons would make it possible for a party to complete and download a summons without having to go to the courthouse. The clerk's signature is usually placed on a summons with a rubber stamp. A distinctive printed signature would be as effective in conveying the "officialness" of the document.

The impact of these changes would make service much easier for self-represented parties and increase their likelihood of success. But courts (and vendors creating new applications) should not stop at these steps in bringing service of process into the 21st century. There are more basic steps courts can take. For example, Alaska eliminated the expensive and ineffective service by publication in a "newspaper of local circulation" with the Alaska Court System's legal notice website. When a party is unable to locate the other side, s/he can petition the court to authorize alternative service, including the option of posting the summons and complaint on the state court website for a specified period of time.[66]

An even more realistic alternative in our day and age would be to allow service by social media. Users of Facebook and other social media platforms are highly likely to receive documents and information sent to their social media accounts.

64 *Circuit Court – Guardianship (e-Filing)*, N.H. Judicial Branch, https://www.courts.state.nh.us/circuitcourt/guardianships/index.htm.
65 N.Y.C. Admin. Code Section §§ 20-410 (2017).
66 *How To Serve A Summons In A Civil Lawsuit*, Alaska Court Sys. (Jan. 2018), https://public.courts.alaska.gov/web/forms/docs/civ-106.pdf.

16 ELIMINATING NOTARIZATION REQUIREMENTS FOR COURT FILINGS

The purposes of notarization are to authenticate the identity of the signer of a document and to record the witnessing of the signer's oath to the truthfulness of the statements in the document. For eFiled documents, most courts now accept a typed name in place of the filer's signature. And, we all know that no one actually takes an oath with respect to the truthfulness of the representations in a notarized document. Truthfulness is encouraged by references to the criminal penalties for perjury. Indeed, the Legal XML Member Section of OASIS some years ago established an eNotarization Technical Committee to create a technical standard that would support online notarization. The committee ultimately disbanded after concluding that notarization is a wholly unnecessary and antiquated process which should be abandoned rather than automated.

The Minnesota and New Hampshire[67] court systems have been able to get legislative approval to eliminate the requirement of notarization of court documents.[68] New Mexico accomplished the same result by court rule for all court documents.[69]

While this recommendation does not call for the application of a new technology, it is a useful, and often necessary, step for the implementation of other technologies.

67 N.H. E-Filing Policy #8 (Notarial Acts), *available at* https://www.courts.state.nh.us/nh-e-court-project/policies/8-Notarial-Acts.pdf; N.H. Circuit Court – Elec. Filing Pilot Rules, *available at* https://www.courts.state.nh.us/rules/dmcr/dmcr-scefilerules.htm.

68 H.F. 1609, 90th Leg., 3d Engrossment § 358.116 (N.H. 2017).

69 N.M. R. Civ. P. § 1-011 B (2017).

17 MAINTAINING A LIST OF EACH CUSTOMER'S PERSONAL NEEDS

Every case management application has a party information component, used to record the party's first and last names, status (person, corporation, partnership, governmental entity, etc.), mailing address, and representation status (name, address, and phone number of her or his lawyer, if any).

To this information would be added the following:

- Smartphone number
- Email address
- Preferred way of receiving messages from the court
- Language requirement, including need for an interpreter
- Physical disability (e.g., use of a wheelchair)
- Hearing or seeing impairment
- Any other special personal need

This information would be displayed to judges and court staff at the time a matter was calendared, ensuring that needed services would be arranged at the same time.

18 IMPLEMENTATION OF A COMPONENT MODEL CASE MANAGEMENT SYSTEM

The COSCA/NACM/NCSC Joint Technology Committee is developing the Next Generation of functional standards for court case management systems (CMS) and has embraced a "component model" as the underlying architecture for this next generation of systems. Even before the Joint Technology Committee completes and promulgates these new standards, courts can encourage their current vendors to adopt the component model and, if they are procuring new systems, choose a vendor offering a component model-based system. It is important, then, for state court leaders to understand the concept of a "component model" and the advantages that it offers.

Most courts have a traditional CMS, purchased and implemented as a monolithic system provided by a single vendor. An application component model (ACM) is an alternative to that current monolithic system. Under an ACM, all automation functions (components) are developed as independent software modules that communicate with other modules through standard messaging interfaces to constitute a complete application.

The components in the ACM model currently being developed by the Joint Technology Committee are as follows[70]:

CASE MANAGEMENT	ADDITIONAL APPLICATION COMPONENTS	SYSTEMWIDE CAPABILITIES
• Case Manager • Case Participant Manager • Accounting/Financial • Scheduling/Calendaring • Document/Content Management	• Electronic Filing Service Provider(s) • Electronic Filing Manager • Judicial Tools/eBench • Public Access • Litigant Portal(s) • Online Dispute Resolution • Jury Management • Remote A/V • Digital Recording • Electronic Transcripts • Evidence/Exhibit Management • Notifications • Electronic Payment Processing • Compliance Monitoring	• Search Engine • Reporting/Analytics • Business Rules Engine • Work Flow Engine • Identity Engine • Knowledge Management • Integration Engine • Enterprise Security

70 The functionality to be provided by each component is being defined to provide guidance to the vendor community as it reconfigures its software to function in the component-based environment.

In this alternative environment, all vendors and CMS providers would use the same interface standards when developing components. The court manager would not be limited to procuring components offered by a single CMS provider. For each part of the court's automation support, s/he could choose the component that best met the court's needs from an array of available vendor products, assembling the optimal set of features for the court. For instance, most states have at least one or two courts that are quite large when compared with other courts in the state. And they have a number of very small courts. Today, a state choosing a statewide system for its courts must make a compromise in choosing a single vendor product—one that will provide the most value for the largest number of courts. That compromise will not be necessary in a component-based environment. The state court system could procure standard components for the bulk of its system but buy unique, tailored components for the largest and smallest courts to meet their special needs.

Most CMS vendors today already accommodate this concept in one form or another, by creating an application programming interface enabling its system to interact with specific other vendor products. One example is eFiling, where CMS vendors now use the OASIS ECF 4.0 technical standard to interface with multiple eFiling vendor systems. Another is interfacing with another vendor's eBench application rather than build their own. A third is the widespread use of Business Intelligence (BI) software to supplement or replace the data reporting functions of a CMS. A BI application is mapped to the key data fields in the court's CMS and provides the capability to create custom data reports quickly and flexibly and to display the results in table, graph, or chart form.

This report provides a clear demonstration of the advantages of the component-based model. For all courts to be able to deploy a new customer-focused technology capability under the current unitary systems model, it will be necessary for *every* CMS vendor to build and integrate that capability into its current system. In a component model environment, it would be sufficient for a *single* vendor to develop and market each functionality. All courts could purchase that component from the developer—or the "best of class" product for their particular needs—and incorporate it seamlessly into their existing case management systems.

CONCLUSION

IAALS presents this set of 18 ideas not as a definitive compendium of ways in which America's state courts can use technology to provide better service to their customers. Rather, this report should serve as a "call to action" to courts to expand their thinking about how they can deploy technology for the benefit of their customers. It is also a "call to action" to pressure technology vendors to build the capabilities described here and to use their creativity to envision many more court user-centered applications. Finally, it is a "call to action" for the courts to favor vendors who adopt a "component model" to give impetus to the efforts of the COSCA/NACM/NCSC Joint Technology Committee to create a court technology environment capable of delivering better, cheaper, automated products to the state courts.

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