

Request for Information (RFI) Toolkit for Courts Procuring Online Dispute Resolution (ODR) Technology

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Is Your Court Ready to Adopt ODR?

It is critical to analyze a court's readiness and commitment to transition to a digital platform from its existing processes and infrastructure. Evaluating preparedness often is too heavily focused on technology readiness rather than on "people" issues such as personnel, process, culture, and organizational structure. If the court's personnel, other stakeholders, and culture are not supportive of the transformation ODR brings, the risk in project failure will be very high. To assist with evaluating the court's readiness, Appendix A provides a checklist and business process template that will help guide the court's analysis to inform the court's stakeholders, as much as possible, if the court is ready and if ODR is the right solution. Appendix B provides a template to guide the collection and documentation of detailed business processes that can inform the procurement and implementation processes. Detailed business process documentation is critical to avoid gaps between a vendor's proposed solution and the court's specific needs. A thorough business process document is also key to help court's identify opportunities to streamline processes as a part of the ODR implementation.

Why Develop an RFI?

As courts seek to offer online or remote services, they are relying largely on off-the-shelf systems and platforms developed by private technology companies. Typically, there are gaps between what courts need and what vendors offer. This creates various challenges, such as:

- Requiring costly customizations needed to align software or platforms with relevant court rules, statutes, and procedures
- Inability to integrate a platform or software across other court technology processes, *e.g.*, case management systems
- Duplication of staff efforts (as a result of an inability to integrate fully)
- Implementation, without developing and testing products using user-centered design principles, could result in court users refusing to use the tool

Put simply, all ODR products may not be a good fit for a particular court's needs. To avoid the above pitfalls, courts should consider specifically articulating solutions they want from potential vendors through a competitive procurement process in which courts issue an RFI followed by a request for proposal (RFP). This will more efficiently communicate to potential vendors the courts' specific design needs. In this way, courts and potential vendors can optimize communication about product functions and needs early in a potential vendor-customer relationship to avoid frustration upon roll-out.

Courts should use the RFI/RFP process in a thoughtful manner to signal to potential vendors specific court and court-user requirements which, if done early in the procurement process, will avoid a situation in which products that are not necessarily well-suited for courts and court-users are implemented. RFIs allow courts to engage with industry and other stakeholders and to present their current situation and desired digital transformation. This enables a court to

receive valuable feedback, which then will help the court design a better procurement strategy and subsequent implementation. The RFI is the most suitable channel to exchange information and ensure clarity between the parties — to help shape and align existing solutions, including customizations, to meet courts' needs.

RFIs are especially valuable for procuring newer technology innovations, such as ODR solutions for courts. Although there are many similarities among courts, they often have their unique structures, processes, and requirements which may raise the risk of a project's success if they are not considered; an RFI allows a court to express its unique characteristics, circumstances, and needs, in order to receive feedback from the vendor community on their ability to deliver a more custom solution. In seeing these, the vendor can best estimate project risks, scope, and costs and courts will gain a better understanding of a vendor's tools' capabilities, limits, and other details necessary for a fruitful RFP process.

It is important to note from the vendor's point of view, an RFI may not commit a court to proceed with a purchase, nevertheless vendors spend significant time, human resources, and money to respond. An RFI generally does signal to the market there is a strong interest to move forward with a procurement following the RFI stage. Therefore, as is more fully outlined below, it is strongly encouraged that courts have a reasonable level of readiness and commitment to ODR before posting an RFI or that they clearly indicate where the court is in the ODR evaluation phase.

Considerations to Help Shape the Court's ODR RFI

Court's Goal and Scope of the Project

Convening several internal collaboration sessions to define the court's goal, objectives, and scope will help clarify and strengthen the buy-in and value proposition for using ODR.

- Define the court's overall broad goal for using ODR
The court should work with internal stakeholders to define what the overall goal is for transitioning from the current dispute resolution environment to ODR. The court should define what it is trying to achieve or solve by transitioning from the current state to ODR.

Below are some examples:

- Increase access to justice
 - Reduce operational costs
 - Increase case dispositions
- Define the court's objectives for using ODR
Objectives should be measurable actions the court would like to achieve with the ODR

solution to reach their goal. Some may be internal objectives and others external. It is recommended that courts define quantitative and qualitative metrics to measure progress toward the goal.

Below are some examples of quantitative and qualitative goals:

- Reduce default judgment rates by 10%
 - Realize 15% cost savings for court operations compared to the prior fiscal year
 - Reduce case disposition time by 25%
 - Help the public easily select an appropriate process to solve their legal issue
 - Facilitate and where possible, automate, and guide the input of information
 - Make the court processes more understandable and accessible
 - Help identify parties' ability to pay court costs or fees
 - Reduce Failure to Appear rates for hearings
 - Provide start-to-finish services for filers that are a viable means for parties to resolve disputes prior to/instead of coming to court for hearings
 - Provide useful, clearly worded guidance, in multiple formats, to individuals about processes and parties' legal rights and responsibilities at each stage of the ODR process
 - Extend hours of access to negotiation and mediation resources
 - Facilitate access to justice by eliminating the need for litigants to come to a physical court building for resolution
 - Ensure that parties have access to legal representation and that attorneys can fully participate in platforms with their clients
 - Ensure that online services are accessible by making them available via any electronic device (including mobile) and compatible with multiple browsers
 - Comply with the ADA and applicable state laws and regulations related to accommodations for people with disabilities, including compatibility of online platforms with screen-reading software
 - Design systems that allow for satisfactory online translation and remote live translation
 - Offer platforms in all languages [specify here] that meet the needs of people with limited English proficiency, aligned with the demographics of the population being served
 - Incorporate electronic payment options within the platform
 - Incorporate options for automated email and text reminders of platform deadlines, next steps, and court dates
- Define one or two case types for the scope of the project

Early adopters of ODR have found that focusing their efforts and investment on one or two specific case types has been more beneficial than attempting to procure ODR for a more broadly defined effort to address many case types. The processes, stakeholders, and culture vary so greatly by case type, so it is difficult to procure a one-size-fits-all

ODR system. Review the case studies in Appendix D to learn from other courts' experiences.

Several courts have found success by limiting their effort to a pilot that lasted one year and focused on one case type or class and expanding the project if they are successful with the pilot. Starting with a pilot may reduce the court's risks and costs by making incremental investments.

Business Process Considerations

Courts, rather than technology vendors, should be the catalysts for transitioning traditionally in-person processes to online engagement. Courts can be proactive by using the potential of technology as an opportunity to rethink current business processes that could reduce redundant and out-of-date procedures and streamline the court experience for users.

Below is information courts should gather and share during the RFI process to inform the vendor community of the court's current state, desired outcomes, unique characteristics, and circumstances.

- Internally, recruit high level and diverse court leaders who are able to articulate the business case for ODR and are there for the long-term
- Identify and engage key stakeholders (e.g., the public, court personnel, local bar association, legal services, community agencies, etc.) that would be served by or impacted by the implementation of ODR
- Work with key stakeholders to establish objectives for ODR
- Work with key stakeholders to document current paper and system processes, documents, points of interaction, and outcomes for one or more case types
- Identify process redundancies, inefficiencies, bottlenecks, and constraints
- Identify court rules or processes that need to be amended or created to successfully implement ODR (collection of email address, funding/payments, standing orders, handling customer service after hours for a 24/7 service, etc.)
- Identify triage questions that should be incorporated for a specific case type
- Recommend a problem resolution process
- Identify additional key metrics that are important to measure outcomes and success
- Work with designated court personnel and key stakeholders to develop a project plan
- Identify design aspects that are critical to meet accessibility requirements
- Identify the demographics of users and the languages needed for platform text and materials
- Identify the steps in the case or process where legal information is relevant and necessary.

- Partner with key stakeholders in the drafting of legal information/content for the ODR platform
- Identify the stages in the process where text or email notifications are relevant, necessary, and should be automated
- Identify the points at which the ODR platform should integrate with other court systems
- Identify the necessary technical standards
- Identify the ethical standards and controls needed in a digital dispute resolution environment
- Identify legal aid partnerships that can assist users with questions and potentially provide legal support

Technology Considerations

During the RFI process, the court should provide the vendor community technical details on the court's IT environment, capabilities, and limitations so vendors can provide the court feedback on how their solutions can integrate with the existing environment and provide details on any challenges or limitations. The court should also provide information on desired technology features or services that are necessary or important to include in an ODR solution. Below are some details a court should consider including in the RFI:

- Data standards requirements, sensitive data required to be protected, ownership of data within the system, data interoperability requirements between the ODR system and the court's other systems
- Ability to support multiple case types through configuration versus additional software customization
- IT security standards and such adhering to the National Institute of Standards and Technology (NIST) framework, Criminal Justice Information System (CJIS)
- Usability/Accessibility requirement standards such as Section 508
- Required integration with existing court systems
- Mobile device compatibility and feature requirements
- Remote stations and other equipment to support reaching populations with technology and broadband access challenges
- Open-source preferences to drive down costs and increase flexibility to maintain and enhance the solution. An example of open-source legal technology is Docassemble.
- Cloud solution preferences requiring some or all of the ODR solution to be hosted and maintained outside of the court's IT infrastructure. An example of a cloud solution is Amazon Web Services.
- Payment processing integration and compatibility requirements
- Service level agreements metrics and other performance expectations
- ODR system training and customer service for internal staff
- Customer service support for clients

- Expectations for measuring metrics for your goal and objectives within the system
- Documentation and record retention preferences, including how records will be captured, managed, retained, and made available to authorized users
- Party-based system versus case-based system (e.g., ability to link party information when enough identifiers are available)

Other Considerations

- Cyber and other liability insurance requirements
- 9-5, 5 days a week customer support (court users and general public)
- Off-hours support
- Notifications/reminder automations
- Licensing and service costs
- Transition procedures and costs (e.g., ability to convert legacy data – if needed)
- Product Roadmap – provide product vision and timeline for execution for the next 3 - 5 years

Questions to Consider Asking in the Court's RFI

- 1) Case types
 - a) Provide a list of case types your organization currently has implemented with other court jurisdictions and other customers.
- 2) Triage
 - a) Describe how the proposed solution helps a user triage a problem, facilitates triage by the court, guides the participant to the correct path (guided interview), and assists in the participant's ability to determine if their case is appropriate for ODR.
- 3) Negotiation and Mediation
 - a) Describe how the proposed solution helps shape constructive communication between parties.
 - b) Does the proposed solution provide a secured negotiation platform between opposing parties?
 - i) If yes, please describe (e.g., chat, video, synchronous, asynchronous, private chat, private rooms, etc.).
 - c) Describe if/how the proposed system detects and neutralizes inflammatory language.
 - d) Does the proposed solution have interfacing capabilities with third-party mediation services?
 - i) If yes, please describe.
- 4) Streamlining

- a) Describe how you anticipate the proposed solution improves existing processes.
 - b) Provide your response in terms of Current State and Future State.
- 5) Payment
- a) Describe how the proposed solution:
 - i) Helps parties understand a defendant's ability to pay and any exempt income sources.
 - ii) Helps parties determine an appropriate payment schedule.
 - iii) Incorporates fee waivers for those with the inability to pay.
 - iv) Allows for electronic payments of fines/fees.
- 6) Transparency
- a) Identify system processes and algorithms that impact decision-making.
- 7) Data
- a) Identify data collection points in the resolution process.
 - b) Can users triage an issue without providing personal identifying information?
 - i) If yes, describe.
 - c) Describe case, usage, and data ownership, and the process and parameters for transferring data to the court upon termination of services.
 - d) How long is data retained, by whom, and where?
 - e) What data retention and destruction policies are in place and how are they enforced?
 - f) How and at what point is data transferred to the court if services are terminated?
 - g) Can data be accessed by litigants after a case is closed?
 - i) If so, for how long?
 - h) Are any private and public data co-mingled?
 - i) If so, what security controls are in place to prevent unauthorized disclosure?
- 8) Metrics
- a) Describe how data are used to inform decision-making algorithms and improve processes.
 - b) What data elements are necessary, how they will be captured, and what mechanisms are employed to ensure good data hygiene?
 - c) What reporting tools are included?
 - d) What information can be gleaned to help meet objectives?
- 9) Privacy and Security
- a) Explain the proposed solution's data protection, security, redundancy, and disaster recovery mechanisms.
 - b) If the vendor utilizes a cloud provider, what are the vendor's privacy and security policies and processes?
 - c) Is a cybersecurity incident recovery plan in place, and if so, what is the victim notification policy and process?
 - d) Describe adherence to standards such as NIST and laws such as GDPR.

10) Communications

- a) How does the system facilitate communications and negotiations (e.g., chat, video, synchronous, asynchronous, private chat, AI, etc.)?
- b) Does the proposed solution provide configurable, multi-channel customer support platform, integrating online chat, call center, and ticketing services?
- c) Does the proposed solution offer configurable chat bots?
- d) Is the proposed solution ADA accessible compliant?
 - i) Identify the scale of compliance to this and/or other federal standards.
- e) Does the proposed solution allow for interpreter participation, and if so, how?
- f) Is the proposed solution available in multiple languages or able to be easily translated?

11) Documents

- a) What automated processes could reduce forms requirements, and how could the implementation address both current and future documentation requirements?
- b) Does the system support electronic signatures?
- c) Does the proposed solution provide document assembly/intelligent fillable forms services?
- d) Does the system support electronic submission of .pdf, .jpeg, .tiff, or other documents?

12) ODR Integration

- a) Among those listed below, indicate how the proposed solution supports integration:
 - i) Partial Integration – the ODR system relies on certain case management system data.
 - ii) Full Integration – the ODR system is seamlessly integrated into the court’s processes for electronic filing and case management.
 - iii) Pre-trial/Standalone – the ODR system helps parties resolve disputes instead of filing a legal action.
 - iv) Legal Services Marketplace – ODR is a platform to provide access to legal services.
 - v) Extra-judicial – the proposed solution operates without a direct connection to the courts.
- b) How do parties access the ODR platform?
 - i) Is there a static website, or must email addresses be gathered by the court to push individual emails?
- c) Identify points and formats at which legal information can be inserted into the platform and/or how the platform can be configured to add varied formats of legal information.
- d) Determine the stages in the process that email and text reminders can be pushed to the parties and/or how the platform can be configured to allow for notifications/reminders at multiple stages.

13) Standards

- a) How does the proposed solution adhere to ODR and ethical standards?

14) Support

- a) What are the automated and human technical and user support mechanisms for both

court personnel and the public? Include hours/days of coverage.

15) Net Promotor Scoring

- a) How the proposed solution quantifies and utilizes net promotor score?

16) Usability/Accessibility

- a) Are all interfaces that are part of your solution compliant with Section 508?
- b) Do you do testing with users with disabilities?
 - i) If so, please explain the process and identify the range of disabilities and access technologies used.
- c) Have you tested and/or developed your mobile apps with accessibility design in mind?
 - i) If so, please describe your approach.
- d) How the proposed solution tracks and analyzes bounce rates, resolution rates (including resolution before a formal case is filed), and cases that fail to progress?
- e) Recommend accessibility solutions that can be incorporated into the ODR platform, particularly with regard to screen-reading software, language translation, etc.

17) Technology

- a) Describe the technologies the solution uses – platforms, architecture, databases, etc.
- b) What browsers are preferred?
- c) What browsers are compatible with this product?
- d) What are the minimum system standards required to operate the solution?
- e) Does the solution offer a mobile device-friendly interface?
- f) Is the platform mobile responsive and is it accessible on a mobile device?
- g) What types of integrations with court case management systems or e-filing systems are possible?

18) Project Implementation

- a) Describe your organization's implementation methodology.
 - i) What are the critical milestones and gates (e.g., business process review, gap analysis, etc.)?
- b) How does your organization follow a human-centered design process?
- c) How does your organization support observational user testing?
- d) Describe your resolution process and the typical timeline for fixing issues that arise with the platform or usage (as determined by the court).
 - i) How do you track this today, and is this information accessible by your customers?

19) Monitoring and Evaluation

- a) Describe the types of user-testing performed, the audiences that have user-tested the platform, and your ongoing plan for user-testing and platform enhancement.
- b) Describe your plan or incorporating feedback from court users into platform design and the timeline for potential resolutions and upgrades.
- c) Describe the types of data that are or can be collected by the platform, including quantitative metrics such demographics, case disposition times, ODR outcomes,

engagement of mediators, technical services requests, etc.).

- i) Can the system be configured to allow for the collection of additional data points?
- d) Does the platform allow for the inclusion of a user satisfaction survey?

Bringing It All Together into an RFI

All the upfront work pays off. Much of the information necessary to prepare the RFI has been gathered and is ready to be added to the RFI sections below. Appendix C contains examples of ODR RFIs developed by other states. Appendix F lists vendors who may be interested in receiving the RFI.

- **Introduction/Background** — provide information you collected above, including your current state and desired future state with ODR.
- **Statement of Need** — include the goal and objectives you have defined. Ensure you make it clear what is driving the court’s needs, what is trying to solve, the features or elements that a solution must include, and any specific pain points.
- **Qualifications and Standards** — provide the expectations your seeking from vendors defined in your business and technology process considerations.
- **Information Requested** — request information you want to receive back, including the questions you have developed and consider additional ones from Appendix C.
- **Selection Criteria (optional)** — define your evaluation criteria if you choose to use the RFI as a down-select for an eventual RFP.
- **Past Performance and References** — request examples of projects similar vendors have performed in the past that closely match what the court is looking for. Ask for references who can speak to the vendor’s performance.
- **Collaboration** — include interactions you would like to have with the vendors during the RFI phase.
 - Host a solution demo day
 - Hold a pre-proposal conference or a call
 - Written Q&A period
- **Time for Response** — date and time responses are due back.

Steps to Effectively Integrate an RFI Response into the RFP

After the RFI process is complete, evaluate the information received, update your documentation, and summarize your findings. Next, convene as many internal stakeholder meetings as needed to deliberate on whether or not to proceed with an RFP. If the court chooses to proceed with an RFP, it will be well-positioned to do so. Vendors and other stakeholders will be better prepared to respond now having the familiarity of the scope and needs of the court. In your RFP you should incorporate and update any relevant information collected in the RFI stage and from your other market research:

- Adjust the scope of the project and expectations
- Incorporate ethical, security and data standards identified as industry best practices and necessary
- Update the baseline functionality required and enhancements needed
- Adjust and add performance metrics

Send the RFP to the vendors who responded to the RFI and others identified in your market research or to a select few if you established down-select criteria in your RFI.

Conclusion

ODR can be a transformational solution; when planned carefully it can help the court increase access to justice, reduce costs, and create better outcomes for all parties involved. The upfront research and work performed in the process of preparing an RFI will save the court time, money, and heartache. The RFI process can be the catalyst for bringing the court together to drive support and momentum for adopting ODR.

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Appendix A: ODR Pilot Self-Evaluation

Online Dispute Resolution Pilot – Assessing Court Capacity and Readiness for Participation

The following checklist provides a self-assessment with questions to think about before implementing online dispute resolution. (Responses should be no more than one to three sentences.)

Court Engagement

Commentary: Exhibit a willingness to use resources to launch ODR.

- Why is the court interested in participating in the pilot?
- Are there problems in the court that you believe online dispute resolution can address?

Effective Stakeholder Relationships

Commentary: Exhibit a proven capability to work successfully with key external stakeholders (including the public), demonstrated by working groups, past projects, etc.

- Have you thought through who will contribute to the success of ODR?
- Have you thought through stakeholders that are likely to oppose ODR?

Effective Champions

Commentary: Identify explicit internal champions that have both persuasive power and authority to act.

- Have you thought through who will serve as internal champions?

Customer-centered Culture

Commentary: Exhibit a track record of prioritizing and implementing outward facing services.

- Give an example of a time where you provided user-friendly information about court processes to court users.

Flexible Rules Strategy

Commentary: Exhibit a willingness to use emergency or temporary rules to support projects. Able to modify permanent rules as required.

- Give an example of your court changing or suspending a rule to support a project.

Willingness to Redesign Processes

Commentary: Exhibit a track record of redesigning processes as appropriate before and/or during projects.

- Give an example of a time your court redesigned a process to launch a project.

Use of Evidence-based Practices

Commentary: Prefer evidence-based decisions and policies where possible. Exhibit a track record of using data to make decisions.

- Give an example of how your court uses data to monitor and modify court business processes:

Effective Use of Technology

Commentary: Implement technology projects successfully. Willing to adopt centralized and/or standardized technology when appropriate. Willingness to train staff to implement new processes.

- Give an example of a time you adopted a new technology to successfully solve a business problem.

Sustainable Funding Strategy

Commentary: Innovate using sustainable funding strategies instead of ad hoc or one-off approaches. Prioritize and/or reallocate existing funding to innovation uses.

- How do you plan to fund an ODR initiative?

Effective Risk Management Strategy

Commentary: Manage internal and external constraints, roadblocks, and barriers successfully.

- What obstacles do you anticipate to adoption of ODR?

Effective Data Strategy

Commentary: Exhibit ability to collect, use and publish data as required to support innovations. Open to new data sharing solutions.

- Give an example of using court data to evaluate an innovation in an evidence-based way. Did you make the results public?

The following questionnaire is to help you and your staff think through ODR design components. Most of the answers require a simple y/n response. Once you answer these questions, we will help you complete and implementation plan.

(Disclaimer: This is not an exhaustive list of the requirements that you can request. Please include additional requirements at the bottom of the document.)

Court Information

| | |
|----------------------------------------------------------------------------|--|
| Court | |
| Presiding Judge | |
| Involved staff | |
| City, State, Zip | |
| Phone | |
| Primary Contact Email | |
| Court Type (general jurisdiction, limited jurisdiction, ubiquitous, other) | |

ODR Information

| | |
|-----------------------------------------------------------------|--|
| Who must sign off on the ODR pilot? (supreme court, individual) | |
| Who must sign off on the rule changes related to ODR? | |

| | |
|-----------------------------------------------------------------------------------------------------------|--|
| Why does the court want to adopt ODR? | |
| Is ODR local or statewide? | |
| ODR Vendor (name if selected) | |
| Have you seen a demo of ODR from vendors? | |
| Case Type for 2019 ODR Pilot (small claims, debt, landlord-tenant, divorce, child custody, traffic, etc.) | |
| Within this case type, are there any subcategories or party types that will be excluded from the pilot? | |
| What is your plan to ensure existing power dynamics between parties are not worsened by ODR? | |
| Number of Eligible Cases a Year for the Case Type (#) in the Pilot Jurisdiction | |
| Is the platform mandatory (opt-out/opt-in) | |

Please answer the following questions:

Current Systems

1. Is your Case Management System (CMS) local or statewide?
2. Who is the CMS vendor?
3. Is your e-file system local or statewide?
4. Who is your e-file vendor?

5. Is your payment processing system local or statewide?
6. Who is your payment processing vendor?
7. Can these systems integrate with the ODR tool?

Pre/Post File

8. Will your ODR system handle pre-file, post-file, or both?
 - a. Will pre-file cases avoid the court process entirely?
 - i. If using pre-file, how do you plan to notify users of the system?
 - ii. If using pre-file, what is your pre-filing fee structure?
 - b. When will post-file cases happen?
 - i. If not, when do you plan to insert ODR into your process?

Current Court Processes

9. How do you plan to provide notice to individuals who are using the ODR platform?
10. If the defendant does not respond, what are the steps?
11. How do your forms support your processes?
12. How many forms do you require for someone to file their initial case in the chosen case type?
13. What are the different stages of filing?
14. How do you plan to modify and streamline your current forms for this case type?
15. Do you need to change your court forms to include other modes of contact such as email?
 - a. If not, how do you plan to collect email information for users of ODR?
16. If the system is opt-in, how do you plan to notify the users that they have a case that can be settled in ODR?
17. Will the ODR system allow litigants to submit evidence? (e.g.: pictures, bills)

18. Does the system need to verify jurisdiction?

19. Will ODR be allowed in cases where the statute of limitations has passed?

- a. If yes, what safeguards will be put into place to ensure these cases do not come into ODR?

Financial

20. How does the state/county plan to pay for ODR?

- a. Is this sustainable after the pilot?
- b. Will the court charge litigants a fee in the ODR platform?
 - i. If yes, will this fee cover the cost of the platform?
 - ii. If yes, will the state or court allow for fee waivers in the system for low-income residents?
 1. If so, what needs to be changed to make this happen?
 - iii. How does the court handle payments and fees with ODR?
 1. What vendor do you want to use to collect ODR fees?

Legal Information

21. Do you have a legal information website?

- a. If yes, will the information from the portal integrate with ODR?
- b. Does the portal provide information on the case type(s) you are interested in launching in ODR?
 - i. If yes, what is the webpage to the portal?

22. Do you provide legal information in plain language to court users to navigate cases?

23. What types of legal information do you plan to provide users in the ODR tool?

Access

24. Will you allow the users to start the ODR process with party-to-party negotiations without a third-party?

25. Will your ODR system be accessible 24/7?

26. Will your ODR tool be mobile responsive?

Judges/Mediation/Facilitators/Third-Parties

27. Will a judge/magistrate be involved in the dispute resolution portion of ODR?

28. Will the ODR include mediators/facilitators?

a. Are you mediators comfortable, will, and trained in doing their work on an on-line platform such as ODR?

b. If yes answer the following questions, if not skip to 29.

i. Will you charge users to access mediators?

1. If yes, how much?

ii. Do you have an existing mediation program?

1. If yes, do you plan to use your current mediators in ODR?

iii. Will mediators/facilitators be brought in at the beginning of the process or after both parties request a mediator?

iv. Will you assign mediators manually or allow the system to do it automatically?

v. Does your state/county have a rule on how mediators are utilized?

Please share:

1. Will this rule prevent you from launching ODR with mediators?

a. If yes, is your state/court willing to implement a temporary rule change to launch the pilot?

b. If no, is your state/court willing to create a facilitator position solely for ODR?

29. Will judges be required to review and sign documents created in ODR by parties?

Communication

30. What languages do you require the vendor to offer in ODR?

31. Does your ODR include a chat function for communication between parties?

a. Do you want a chat function that allows the plaintiff and defendant to talk one-on-one without a mediator?

- b. Do you want a chat function that allows the plaintiff and defendant to talk to the mediator in a group chat?
 - c. Do you want a chat function that allows the mediator to have a private chat with either the plaintiff or defendant?
- 32. Do you want to include a chatbot—a computer program designed to simulate conversation with users— that answers questions for users in ODR? (legal information only)
- 33. Do you plan to include videoconferencing within ODR?
 - a. If yes, do these videoconferences need to be recorded and stored?
 - b. For how long?
 - c. Do they need to be transcribed?
- 34. Do you want the system to diagnose parties' best alternative to a negotiated agreement (BATNA) in order to prompt an automated settlement?
- 35. Can the system review and sign agreements online?

Court Communications and Information Sharing

- 36. Following a resolution, what information needs to be shared and what types of court approved documents do you want the system to generate and/or e-file?
- 37. If there is no resolution via ODR, what information needs to be shared and what types of court approved documents do you want the system to generate and/or e-file?

Users

- 38. If your system is opt-out? For what reasons can a user opt-out?
- 39. When can a user leave the system to go back to the traditional in-person court process?
- 40. If a user wants to appeal a decision, can the information from ODR come into the court?
 - a. If not, does the case start from scratch?

Stakeholders

- 41. Who on your staff is responsible for stakeholder engagement?

- a. Who are the stakeholders you plan to engage? (state bar assoc; legal aid provider; private attorneys who do this type of work; mediators; community advocates in the relevant issue area; libraries; other)
- b. Please list your point of contact at each organization.
- c. Have you spoken with your state bar about your plans?

Data sharing

42. Does the state/court have a mechanism for providing case data to entities outside of the court?
 - a. If yes, what is the process?
43. Will the state/court own the raw data in the ODR system?
44. Will the state/court be able to extract raw data from the ODR system? (including confidential information)
45. Will you require the vendor to review or walk through the process on a staging environment prior to launch?

Business process/rule changes

46. In order to streamline the process in the court and online, based on completing this guide, what rules do you anticipate need a temporary or permanent rule change?
47. Part of your commitment to this process is to redesign the way your courts do business. Based on completing this guide what processes do you anticipate need to change?
48. Do these processes add to your concerns, reduce your concerns, or not impacted?
49. What are your concerns with due process?

Marketing

50. How do you plan to make the public aware of ODR and what are your best practices?

Customer satisfaction

51. Will you include customer/stakeholder and end user surveys?
52. What are the main components on the surveys, and can you compare your feedback over time and with other courts and states?

Security

53. Is the system encrypted?

Please list any other components you would like the ODR tool to have:

Appendix B: Business Process Review Template

Template Overview

The purpose of this document is to facilitate the documentation of business processes, the critical information captured, required resources, and key systems for each department and their respective sections/offices.

This document facilitates the documentation of the following:

- Functional description of each Department's processes to provide the audience with an understanding of the purpose and scope of each process
- List of business process triggers & dependencies that impacts the initiation and outcome of this process
- List of process descriptions business rules that governs each process
- List of process input required to start the process and the outputs received during and at the conclusion of this process
- List of actions that are created or impacted by the execution of each process
- List each step performed in this process and associate to the existing interfaces, resources, and systems that support this process
- List of known critical linkage to other offices, departments, and external agencies
- List of required and state mandated reports as it relates to each process
- List of areas of concerns or improvements within each process
- Documented requirements for public access
- Document the required SLA for executing each process from initiation to completion
- List all exceptions that can occur and cause this process to deviate from its' normal flow

Template Instructions

With a team or individually, complete each section of this template by providing the requested information. Information presented in *gray text* should be used as a point of reference for eliciting your own response. Delete these examples and replace them with your own response. Save the documented process with the file name **Process ID_Process Name_Version (example: 1.0_Intake Process_V1.0)**.

Organizational Overview

Enter a brief Description of the Court's purpose and key responsibilities.

For example:

The Clerk of Court is the official record keeper and fiduciary agent for TBD Court. The functions of the Clerk of the Court satisfy more than xxx state statutes and court rules associated with Civil Matters.

Among the Office's responsibilities are to:

- *Provide public access to the records of the Court in the County;*
- *Attend each Court session to record the actions of the court;*
- *Is the official record keeper of any Court action in civil, adoption, criminal, and Real Estate matters?*
- *Collect and disburse court-ordered fees, fines, and victim restitution;*
- *Receive, distribute, and preserve official court documents;*
- *Store exhibits for court cases;*
- *Issue and record name changes;*
- *Process passport applications.*

| Department / Court | Function/Purpose | Processes (Input inventory of major processes here. Each subject process related to ADR/ODR will be detailed in later sections) | Staffing Level |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| Enter court name here. | The Clerk of XXX Court is the official record keeper and fiduciary agent for Superior Court. The functions of the Clerk of the Court satisfy more than XX state statutes and court rules. | Input a short description of each major process area below. <ul style="list-style-type: none"> • Civil Process – Landlord Tenant Disputes • Civil Process – Child Custody • Daily Financials • Monthly Financials • Registry • Appeal / Transfer • Request for Service • FIFA | Total: XXX Judges: XXX |

| Process Control Information | | | |
|--------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| Business Process Number/ Department | Business Process Name | | Version |
| 1.x – (Example: Superior Court – Civil Division) | Enter business process short description from process inventory above here. Each section should be used to describe a single business process. (For example: Civil Process - Landlord Tenant Disputes) | | XX (Ex:1.0) |
| Documented By | Enter the name of the person(s) or team(s) that gathered and organized the information in this document. | Date Documented | (MM/DD/YY) |
| Last Updated By | Enter the name of the person(s) or team(s) that made a revision to this document last. | Last Revision Date | (MM/DD/YY) |
| Process Overview | | | |
| Functional Description | Provide a description of the purpose and objectives for this business process. Replace the example provided below. The Landlord Tenant Disputes process provides a legal platform for landlords and tenants to revolve various issues including upkeep and repair issues, non-payment of rent, fiduciary negligence by landlord and potential eviction. This process provides the legal means to resolve these disputes in accordance with the laws of the state and county. | | |
| Triggers | What triggers the initiation of this process listed above? Example: Complaint filed by a party. | | |
| Dependencies | What are the internal and or external dependencies for this process? Example: List of external systems, justice partners, service providers) | | |
| Business Rules | Describe the business rules associated with this process. (Example: Time constraints or objectives) | | |
| Input / Output | INPUT: <ul style="list-style-type: none"> What are the required inputs for this process? Example: Supervision Case | OUTPUT: <ul style="list-style-type: none"> What are the expected outputs for this process? Example: Case Monitoring, Time standards, Reports | |
| Next Action | What happens when this process is completed? Example: Court Case opened and request for service sent to process servers. | | |
| Critical Linkages to Other Offices | Are there any critical linkages to other offices/entities for this process? Example: Clerk's office, Sheriff's Office | | |
| State Mandated Reports | List any state mandated reports utilized as part of this process? Example: Compliance Reports | | |
| Areas of Concerns | List any areas of concern or gaps identified for this process. | | |
| Public Access | Does this process require public access? If so, confirm the methodology and procedure provided? | | |
| Interfaces | Provide the details of any interfaces related to this process. | | |

Current State “As Is” Process Details

| No. <i>(Process Sequence)</i> | Process Step <i>(The actual action(s) performed, in sequential order, to achieve the objective of this process.)</i> | Software/System Used & Purpose <i>I.e.: (CMS, Access, Excel, eFile, Lexus Nexus, paper)</i> | System Interfaces Used & Purpose <i>I.e.: (CMS, Access, Excel, eFile, Lexus Nexus, paper)</i> | Actor <i>(Who performs this step in the process?)</i> |
|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |
| 7. | | | | |
| 8. | | | | |
| 9. | | | | |
| 10. | | | | |
| Process SLA | (The amount of time required to execute the process steps listed above, from initiation to conclusion. For example: two business days) | | | |
| Exceptions | (List any unique scenarios that would cause a user to deviate from the normal flow of this process. For example: Received an urgent request from a commander.) | | | |

Draft - Future State “To Be” Process Details

| No. <i>(Process Sequence)</i> | Process Step <i>(The actual action(s) performed, in sequential order, to achieve the objective of this process.)</i> | Software/System Used & Purpose <i>I.e.: (CMS, Access, Excel, eFile, Lexus Nexus, paper)</i> | System Interfaces Used & Purpose <i>I.e.: (CMS, Access, Excel, eFile, Lexus Nexus, paper)</i> | Actor <i>(Who performs this step in the process?)</i> |
|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |
| 7. | | | | |
| 8. | | | | |
| 9. | | | | |
| 10. | | | | |
| Process SLA | (The amount of time required to execute the process steps listed above, from initiation to conclusion. For example: two business days) | | | |
| Exceptions | (List any unique scenarios that would cause a user to deviate from the normal flow of this process. For example: TPO in place this matter must go before a judge.) | | | |

