



Small Claims ODR Checklist

This document is designed to assist a court interested in implementing online dispute resolution (ODR) for small claims cases. The checklist below represents best practices in process design and ODR implementation and should be used as a guide and comparison point for current processes during planning for ODR.

(1) Landscape

- a. Are attorneys allowed in small claims court? What if corporate party?
- b. Do you have a right to a jury trial in small claims court?
- c. What is the statute of limitations?
- d. Are there multiple courthouses within judicial circuit or district? Does it matter where filed?

(2) Beginning the Case

- a. Is complaint in plain language?
 - i. Is ability to pay made clear when filing complaint?
 - ii. Is jurisdiction information explained?
 1. Cap of monetary damages in small claims
 2. Specific courthouse requirement (if applicable)
 3. Can attorneys be involved?
 4. Does complaint ask user if LEP or ADA needed?
 5. Email addresses?
 - iii. In debt cases, is proof of chain of title required in complaint?
- b. Is case filed *first* in court to trigger ODR?
 - i. If yes, is that done via e-filing and e-pay?
 1. Is there still exemption process for those without access to internet, LEP, ADA or other reason why need to come to court instead?
 2. For e-pay, is there a cash option for those unbanked?
 - ii. If straight to ODR, how does court get involved?
 1. How is court paid, if at all?
 2. How is complaint filed, if at all?
 3. How are cases tracked?
 - iii. If yes, what is the filing fee cost?
 1. How is ability to pay determined?
 - a. Certification on pleading alone?
 - b. Hearing?

For more information about ODR or to talk through how to apply this in your jurisdiction, contact Danielle Hirsch at dhirsch@ncsc.org/303-308-4318 and Zach Zarnow at zzarnow@ncsc.org.



2. Is case filed before fee waiver determined?
- c. How does plaintiff know about and sign up for ODR?
 - i. Opt-out or opt-in?
 - ii. How long does plaintiff have to sign-up for ODR? What is the consequence of not registering for ODR after deadline?
 - iii. Is there a separate fee for ODR?
 1. If yes, how does ability to fee extend to this provider?
 2. If yes, how does plaintiff pay ODR fee?
 - a. Is there a cash option for those unbanked?

(3) Service/Notice

- a. How is respondent made aware of complaint?
 - i. How long to effectuate service of process to defendant?
 - ii. Is this the plaintiff's responsibility or the court's?
 1. If plaintiff's responsibility, procedurally, how does plaintiff file proof of service with court?
 2. Does court review this proof of service?
 - iii. What happens if service of process not effectuated?
 1. Is case dismissed without prejudice automatically?
 2. Does defendant have to file a motion to dismiss case?
- b. What informational materials are given to defendant with summons? And in what format?
 - i. Information about proper service and what to do if improper?
 - ii. Information about substantive law and affirmative defenses?
 1. Easy referral to standardized form answer?
 2. Easy referral to procedural timeline?
 3. Information about language access and ADA accommodations and process?
 - iii. Will answer require a fee?
 1. If yes, how does respondent learn about ability to pay? AND
 2. If yes, can respondent pay fee electronically?
 - iv. Information about ODR?
 1. How to get started?
 2. Exemption information? (CANNOT just be online)
 3. Is there a fee for ODR?
 - v. Referrals to any available self-help resources?
 1. Are there court-based self-help resources?

For more information about ODR or to talk through how to apply this in your jurisdiction, contact Danielle Hirsch at dhirsch@ncsc.org/303-308-4318 and Zach Zarnow at zzarnow@ncsc.org.



- a. Court-based self-help centers?
 - b. Law library resources?
 - c. Court-based legal aid help desks?
 - d. Court-based facilitators?
2. Is there a court- or legal aid hotline?
 3. Is there useful self-help website content?
 - a. On the court's website?
 - b. On a private legal aid provider website?
 - c. On the Legal Navigator?
 4. Are there community-based legal help resources?
 - a. Legal aid providers that assist in small claims?
 - b. Limited scope lawyer referral lists?
 - c. Law school clinics?
 - d. *Pro bono* drop-in court or community clinics?

(4) Responding to Claim

- a. Is respondent required to complete answer form?
 - i. If yes, is there a standardized form?
 - ii. If no, is signing up for ODR account adequate for moving case forward?
- b. What is process if respondent files counterclaim?
- c. What is process for respondent to challenge service?
- d. If answer has a fee associated with it, how is ability to pay communicated?
 - i. What is the process for reviewing respondent fee waiver?
 1. Certification on pleading alone?
 2. Hearing?
 - ii. If answer fee is assessed, can it be paid electronically?
 1. Is there a cash option for those unbanked?
- e. If complaint is required, is that document filed with court?
 - i. If not, how does court track whether case proceeds with ODR?
- f. If respondent agrees to enter ODR, what is the process for getting started?
 - i. How long does respondent have to register for ODR account?
 - ii. Is there a fee for participating in ODR?
 1. If yes (and if respondent is indigent), does fee waiver exemption extend?
- g. What is process if respondent files exemption from ODR?
 - i. What is the standard for exemption—undue hardship or something lesser—from ODR?

For more information about ODR or to talk through how to apply this in your jurisdiction, contact Danielle Hirsch at dhirsch@ncsc.org/303-308-4318 and Zach Zarnow at zzarnow@ncsc.org.



1. No access to internet?
 2. LEP?
 3. ADA?
 4. Computer literacy?
 5. Low or no literacy?
- ii. How will these requests for exemption be reviewed?
 1. Certification on pleading?
 2. Hearing?
- h. What happens if respondent fails to register for ODR account?
 - i. Is there automatic default?
 - ii. Can plaintiff file motion asking court to enter default judgment?
 - iii. Does court set a hearing date?

(5) ODR Process

- a. If parties agree to court-annexed ODR, what are the steps in the ODR small claims process?
 - i. Does each side need to upload all evidence in case initially?
 - ii. Or does each side proffer evidence upon prompt by ODR platform/facilitator?
 - iii. If no answer required, what is asked of respondent upon start of ODR platform?
 - iv. What informational background is shared with each side about the small claims process and the likelihood of success?
 1. Affirmative defenses?
 2. Post-judgment interest?
 3. Collections process?
 4. Judgment-proof defenses?
 5. Potential timeline for resolution?
- b. How is communication handled in ODR platform?
 - i. Are communications chat-based?
 - ii. Are communications call-based?
 - iii. Are communications asynchronous?
 - iv. Are there possibilities for communications between all parties?
- c. Is there a facilitator in ODR platform? If yes, who is the facilitator?
 - i. Human?
 1. How selected?
 2. Court employee?

For more information about ODR or to talk through how to apply this in your jurisdiction, contact Danielle Hirsch at dhirsch@ncsc.org/303-308-4318 and Zach Zarnow at zzarnow@ncsc.org.



3. Volunteer?
4. Private mediator?
5. Judge?
 - a. Per-diem judge?
 - b. Retired judge?
 - c. Current judge?
6. How trained?
7. How supervised?
- ii. AI?
 1. What mapping done on backend to ensure chatbot informs both sides of rights?
 2. How does technology account for people's different ways of processing information?
- d. What is court involvement in ODR process?
 - i. If judge is not the facilitator, does court review settlement agreement?
 - ii. If parties come to agreement, is judgment automatically entered?
 1. If yes, how does ODR end?
 2. Can settlement agreement remain informal?
 - iii. How does court track ODR process and/or outcomes?
 - iv. What data does court collect about ODR process?
- e. How can parties challenge settlement agreement if breach?
 - i. Can parties challenge performance-related terms?
 - ii. Is there hearing, or will court consider allegation of breach on pleadings alone?
- f. What happens if unsuccessful ODR?
 - i. What happens if either party never participates or stops engaging in ODR mid-stream?
 1. Can the other party file motion for default?
 2. Does it get set for hearing?
 - ii. Does evidence shared by parties during ODR get shared with court?
 - iii. Do communications/conversations/chats by parties during ODR get shared with court?
 - iv. What qualitative information is shared with court about ODR process?
 1. Does facilitator prepare report for court on state of dispute, reason for breakdown of ODR? OR
 2. Do parties prepare an agreed form to court about state of dispute?

For more information about ODR or to talk through how to apply this in your jurisdiction, contact Danielle Hirsch at [dhirsch@ncsc.org/303-308-4318](mailto:dhirsch@ncsc.org) and Zach Zarnow at zzarnow@ncsc.org.



- a. What if parties cannot agree on anything to share with the court about state of dispute?
- b. What if facilitator disagrees with the state of the dispute from what parties include?
- v. Is trial date set automatically?
 - 1. How is that trial date set?
 - a. By facilitator?
 - b. By court?
 - c. By agreement of parties?
 - 2. Is there a timeline for how quickly trial must be set?
 - 3. How are parties notified of trial date?
 - a. Email?
 - b. Motion?
 - 4. How can parties change date if it does not work?
 - 5. Can parties participate in trial remotely?
 - 6. Will there be any pre-trial conference led by judge before trial?

(6) Traditional Court Process

(7) Settlement Agreement v. Judgment

- a. If parties settle dispute, how do parties document agreement?
 - i. Online settlement agreement form?
 - ii. Court-ordered judgment?
- b. If online settlement agreement form is available, who prepares it?
 - i. Does facilitator draft?
 - ii. Do parties have to draft?
 - iii. Does it include terms about monetary consequences if either party breaches the agreement?
 - iv. Does it include terms about performance-related consequences if either party breaches the agreement?
- c. What is the role of court review in settlement agreement?
 - i. If no judgment, does post-judgment interest apply to agreement?
 - ii. If no judgment, are court fees and attorneys' fees, if applicable, apply to agreement?
- d. If breach of settlement agreement, what happens?
 - i. Does moving party file the settlement agreement form and motion with court for enforcement?

For more information about ODR or to talk through how to apply this in your jurisdiction, contact Danielle Hirsch at dhirsch@ncsc.org/303-308-4318 and Zach Zarnow at zzarnow@ncsc.org.



ii. Would hearing be set or would court review on pleadings alone?

(8) Post-Judgment Issues

(9) Right to Appeal

a. Is there a right to appeal?