



TEXAS JUDICIAL COUNCIL

2020 CIVIL JUSTICE COMMITTEE

REPORT AND RECOMMENDATIONS
September



In June 2019, the Texas Judicial Council charged the Civil Justice Committee with:

- Continuing to study the landscape of the Texas Civil justice system, and recommending any necessary reforms to improve access to justice in Texas Courts;
- Working with individual jurisdictions to implement pilot programs for:
 - o Business Courts
 - o Online Dispute Resolution; and
- Monitoring the Commission on Judicial Selection and recommending any necessary reforms.

Members of the Committee are:

Chief Justice Sherry Radack,
Chair
Senator Judith Zaffirini
Honorable Bill Boyce (Frm.)
Honorable Emily Miskel
Honorable Vivian Torres
Representative Jeff Leach

Honorable Valencia Nash
Honorable Jon Gimble
Mr. Evan Young
Mr. Kevin Bryant
Mr. Ken Saks

The Civil Justice Committee met on November 8, 2019 and on August 13, 2020. The meeting scheduled for February 13, 2020 was canceled.

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Report

When the Civil Justice Committee met for its November 2019 meeting, few people could imagine the disruption awaiting the public and the courts in the form of the COVID-19 pandemic. By the time the Committee reconvened over nine months later in August 2020, a “new normal” of social distancing, remote trials, and limited in-person proceedings – all part of the State’s effort to fend off the COVID-19 pandemic – had reshaped the business of civil justice. Even before the pandemic’s arrival, though, and in line with the charges it had received from Chief Justice Nathan Hecht, the Committee had identified civil justice issues in the areas of access to justice, online dispute resolution, and civil filing fees in need of reform consideration.

Pre-pandemic court data reveal a civil justice system with year-over-year increases in case filings and a backlog of cases. According to Fiscal Year 2019 (FY19) Texas court data, the number of new civil filings in district, county, and justice courts continues to trend upward. In 2019 the number of new civil cases (excluding civil cases related to criminal matters) filed in district courts increased by 12%, in the county courts by 14%, and in the justice courts by 18%.¹ Clearance rates for all civil cases in district and county courts as well as for debt cases in justice courts all sit well below 100%,² indicating that backlogs pre-pandemic were already growing.

Of special importance for the Committee’s recommendations, FY19 data reveal that debt cases dominate the ongoing civil case filing growth trend. In district and county courts, debt cases account for 30% of incoming caseload, increasing almost 40% from the previous year and up almost 90% over five years. Debt cases likewise increased by a similar percentage in justice courts, surpassing landlord/tenant cases as the largest category of cases in justice courts.³

The pandemic caused a major disruption in the civil justice system, especially the filing and disposition of civil cases. From March to July 2020, the number of new cases filed dropped 30% in the district and county courts and by 47% in the justice courts. At the same time, dispositions in those courts dropped by 29% and 46%, respectively. Due in part to the drastic decline in new case filings, the clearance rate in those courts improved from the same period in 2019, increasing from 93% in 2019 to 97% in 2020 in the district and county courts and from 89% to 92% in the justice courts. These statistics show the nimbleness of the judiciary in addressing civil litigation remotely during the pandemic. That being said, as case filing trends return to a more normal pace, the courts may struggle to keep up with the caseload.

Another major disruption was the suspension of jury trials due to the affects of the pandemic. In FY19, a total of 2,709 civil jury trials occurred, or 52 per week. From mid-March to mid-September, only 11 civil jury trials occurred, versus the 1,404 that would have typically occurred. Due to the limitation on capacity for conducting jury proceedings during the pandemic and the pressing need to conduct criminal jury trial in-person, it is likely that a backlog of civil jury trials will continue to grow.

¹ Annual Statistical Report for the Texas Judiciary, Fiscal Year 2019, Tex. Office of Court Admin. at iii, Statewide – 3 (2020). Available at <https://www.txcourts.gov/media/1445760/fy-19-annual-statistical-report.pdf>.

² *Id.* at Court-Level – 21, 29, 37, 43.

³ *Id.* at iii, Statewide – 4 - 5.

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While it is difficult to predict what the civil courts will look like in the coming months and years, at least one thing remains certain: the reforms the Committee began considering prior to the pandemic have taken on new urgency because of the pandemic.

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Recommendations in Brief

Enhancing Access to Justice in Consumer Debt Claims

1

The Texas Supreme Court or the Texas Judicial Council should adopt rules that make the process of understanding and engaging in a debt claim lawsuit more accessible by requiring courts to send debt claim defendants a plain language post-service letter and answer packet that explains the legal process and provides a sample answer form with available defenses under the law.

1a

The Texas Judicial Council should direct the Office of Court Administration to create a model plain language post-service letter packet that courts can use to send to debt claim defendants.

2

The Texas Supreme Court or the Texas Judicial Council should adopt rules that improve access to justice for unrepresented defendants by requiring a court, prior to issuing a default judgment in a debt claim case, to send a debt claim defendant a plain language notice explaining what a default judgment is and what its implications are. The notice should include a statement indicating when the default judgment will be entered and the need to answer the lawsuit to protect the defendant's rights, and include a general answer form with instructions.

2a

The Texas Judicial Council should direct the Office of Court Administration to create a model plain language debt claim default judgment notice packet that courts can use to send to a debt claim defendant prior to issuing a default judgment in a debt claim case.

3

To ensure that default judgments are granted in cases only where sufficient evidence exists, the Texas Supreme Court should adopt a rule requiring a debt claim plaintiff to submit documentary proof, and not merely sworn statements, to substantiate the debt, the amount owed, and the right to collect it.

4

To ensure that default judgments are granted in cases only where sufficient evidence exists, the Texas Supreme Court should adopt a rule requiring a debt claim plaintiff to demonstrate compliance with Finance Code §392.307, which prohibits a debt buyer from suing to collect a time-barred debt, and Finance Code §392.101, which requires third-party debt collectors to be bonded.

5

The Texas Supreme Court should amend TRCP 663a to provide judgment debtors information on exemptions and the ability to file a notice of exemption or a motion to dissolve a writ of garnishment. The service timeline found in the first sentence of TRCP 663a should also be amended to replace “as soon as practicable following the service of the writ” with “within three days following the service of the writ.”

6

The Texas Supreme Court should amend TRCP 664a to require modification of a writ of garnishment to exclude any funds found exempt after notice and a hearing. Rule 664a should also be amended to permit judgment debtors to file a notice of exemption or a motion to dissolve a writ of garnishment and continue to obtain a hearing within 10 days. Rule 664a should also be amended to afford an exemption claim as raising a rebuttable presumption that the exemption claims of validity. The rule should provide that, unless the judgment creditor requests a hearing within three days, the exemption claim is deemed valid. The rule should provide that if the judgment creditor does request a hearing, the judgment debtor would have the burden of proving he or she was entitled to raise the exemption and what amount of the frozen funds were exempt. The Texas Supreme Court should also draft a simple notice of exemption claim form for use by unrepresented defendants.

7

The Texas Supreme Court should adopt rules governing the issuance of turnover orders, appointment of turnover receivers, and the mechanisms for challenging turnover receivers.

8

The Legislature should provide by statute for a minimum cash exemption to ensure that families can cover basic living expenditures while still allocating remaining funds to repay debt.

Online Dispute Resolution

1

The Texas Judicial Council should adopt a rule implementing the Texas Online Dispute Resolution Policy Framework to govern the use of court-sponsored online dispute resolution.⁴

2

The Office of Court Administration should implement a low-cost or free online dispute resolution platform throughout the state so that parties in civil matters may access the judicial system.

Civil Filing Fees Reform

1

The Legislature should simplify and consolidate the civil court filing fee system in a way that remedies potential constitutional issues in the current system. This reform should be revenue-neutral for both the state and local government to the extent it can be.

⁴ See Attachment A.

Recommendations in Detail

ENHANCING ACCESS TO JUSTICE IN CONSUMER DEBT CLAIMS

BACKGROUND

As noted in the Report section above, FY19 data reveal that debt cases dominate the ongoing civil case filing growth trend. In district and county courts, debt cases account for 30% of incoming caseload, increasing almost 40% from the previous year and up almost 90% over five years. Debt cases have likewise increased in justice courts, rising 36% from 2018 to 2019 and accounting for almost half of the civil cases filed in justice courts.⁵

An analysis of justice court data presented to the Committee at its August 2020 meeting suggests that most debt cases are filed by only a handful of plaintiffs and law firms, that most debt case defendants are unrepresented, and that the vast majority of judgments are for plaintiffs, with default judgments making up around three quarters of these judgments.⁶ The Committee urges the adoption of pre-judgment reforms designed to increase defendant participation in debt claim lawsuits, improve outcomes for unrepresented defendants, and address the high no-answer rate that characterizes debt claims lawsuits.

Many post-judgment challenges also await judgment debtors. In a system where exemptions must be asserted by a judgment debtor to protect income and resources from seizure, individuals who do not know a default judgment has been entered against them are exceptionally vulnerable. Moreover, turnover receivers are frequently appointed to collect judgments against judgment debtors, and receivers may seize debtor bank accounts even when all funds therein are derived from wages. There are no rules governing turnover receivers, and there is no simple procedure for unrepresented litigants to argue their funds are exempt from turnover. Lastly, there are no explicit exemptions that protect judgment debtor wages once deposited into an account, subjecting funds needed for basic living expenses to garnishment.

⁵ *Id.* at Statewide – 2, 4, 5, Court-Level – 46.

⁶ REFORM PROPOSAL: ENHANCING ACCESS TO JUSTICE IN CONSUMER DEBT CLAIM CASES, TEXAS APPLESEED ET AL. (July 2020) at 1 – 2.

RECOMMENDATIONS

Recommendation 1: The Texas Supreme Court or the Texas Judicial Council should adopt rules that make the process of understanding and engaging in a debt claim lawsuit more accessible by requiring courts to send debt claim defendants a plain language post-service letter and answer packet that explains the legal process and provides a sample answer form with available defenses under the law.

Recommendation 1a: The Texas Judicial Council should direct the Office of Court Administration to create a model plain language post-service letter packet that courts can use to send to debt claim defendants.

Because debt claim cases regularly involve unrepresented defendants, many defendants either fail to effectively defend themselves or fail to answer the lawsuit altogether, resulting in a high number of default judgments entered against defendants. A default judgment may also make collecting on the judgment difficult for a creditor. To remedy this problem, the Committee recommends the adoption of a rule requiring courts to send defendants in debt claims cases a post-service letter that includes in plain language the information outlined in TRCP 501.1, along with court contact information, a statement that the defendant is being sued for a debt, and information on the legal process (including the answer process, deadlines, the adversarial nature of the suit, and available resources). This post-service letter should include a sample answer form with a general denial that includes a checklist of common defenses, along with simple, easy-to-read instructions on how to complete the answer form. The Committee also recommends that the Texas Judicial Council direct the Office of Court Administration to create a model plain language post-service letter and answer packet that contains the above-listed materials and information.

Recommendation 2: The Texas Supreme Court or the Texas Judicial Council should adopt rules that improve access to justice for unrepresented defendants by requiring a court, prior to issuing a default judgment in a debt claim case, to send a debt claim defendant a plain language notice explaining what a default judgment is and what its implications are. The notice should include a statement indicating when the default judgment will be entered and the need to answer the lawsuit to protect the defendant's rights, and include a general answer form with instructions.

Recommendation 2a: The Texas Judicial Council should direct the Office of Court Administration to create a model plain language debt claim default judgment notice packet that courts can use to send to a debt claim defendant prior to issuing a default judgment in a debt claim case.

The Committee recommends the adoption of a rule requiring courts, prior to issuing a default judgment in a debt case, to send a debt claim defendant a plain language notice explaining what a default judgment is and what its implications are. This pre-judgment notice should include a sample answer form with a general denial that includes a checklist of common defenses, along with simple, easy-to-read instructions on how to complete the answer form. The Committee also recommends that the Texas Judicial Council direct the Office of Court Administration to create a model plain language post-service letter and answer packet that contains the above-listed materials and information.

Recommendation 3: To ensure that default judgments are granted in cases only where sufficient evidence exists, the Texas Supreme Court should adopt a rule requiring a debt claim plaintiff to submit documentary proof, and not merely sworn statements, to substantiate the debt, the amount owed, and the right to collect it.

Recommendation 4: To ensure that default judgments are granted in cases only where sufficient evidence exists, the Texas Supreme Court should adopt a rule requiring a debt claim plaintiff to demonstrate compliance with Finance Code §392.307, which prohibits a debt buyer from suing to collect a time-barred debt, and Finance Code §392.101, which requires third-party debt collectors to be bonded.

Given the frequency of default judgments in debt claim cases where the defendant is unrepresented, the Committee believes access to justice for these defendants would be improved by requiring debt claim plaintiffs to submit documentary proof of a debt and the right to collect it and by requiring debt claim plaintiffs to show they are in compliance with state law applicable to debt claim proceedings.

Recommendation 5: The Texas Supreme Court should amend TRCP 663a to provide judgment debtors information on exemptions and the ability to file a notice of exemption or a motion to dissolve a writ of garnishment. The service timeline found in the first sentence of TRCP 663a should also be amended to replace “as soon as practicable following the service of the writ” with “within three days following the service of the writ.”

Recommendation 6: The Texas Supreme Court should amend TRCP 664a to require modification of a writ of garnishment to exclude any funds found exempt after notice and a hearing. Rule 664a should also be amended to permit judgment debtors to file a notice of exemption or a motion to dissolve a writ of garnishment and continue to obtain a hearing within 10 days. Rule 664a should also be amended to afford an exemption claim with a rebuttable presumption of validity. The rule should provide that, unless the judgment creditor requests a hearing within three days, the exemption claim is deemed valid. The rule should provide that if the judgment creditor does request a hearing, the judgment debtor would have the burden of proving he or she was entitled to raise the exemption and what amount of the frozen funds were exempt. The Texas Supreme Court should also draft a simple notice of exemption claim form for use by unrepresented defendants.

Judgment debtors are entitled to assert certain exemptions to protect financial resources from garnishment, but the process for asserting exemptions is not user-friendly and can be difficult for unrepresented judgment debtors. The Committee believes the Supreme Court should amend TRCP 663a and 664a to better ensure that judgment debtors are aware of and can assert the protections available to them under the law.

Recommendation 7: The Texas Supreme Court should adopt rules governing the issuance of turnover orders, appointment of turnover receivers, and the mechanisms for challenging turnover receivers.

Under the current debt claim process, judgment debtors are at risk of having exempt funds seized by turnover receivers. To better protect judgment debtors, the Committee recommends the Supreme Court adopt rules governing turnover. Specifically, the Court should create a rule that requires judgment debtors to receive notice either before or after the issuance of a turnover order or an order appointing a turnover receiver so that judgment debtors have an opportunity to demonstrate that their funds and/or assets are exempt from turnover. The Supreme Court should also adopt a rule that grants judgment debtors a post-seizure right to file a motion to challenge seizure of exempt funds. The rule should provide for a timely hearing after the filing of a motion or notice of exemption. Lastly, the Supreme Court should adopt a rule providing that any order issued at this hearing is a final order subject to appeal so that consumer judgment debtors can more easily contest exemption rulings.

Recommendation 8: The Legislature should provide by statute for a minimum cash exemption to ensure that families can cover basic living expenditures while still allocating remaining funds to repay debt.

Once deposited into an account, wages are not generally protected from garnishment. To ensure that families can cover basic expenditures while repaying debt, the Legislature should establish a minimum cash exemption to garnishment.

ONLINE DISPUTE RESOLUTION

BACKGROUND

Data from Texas courts show that virtually all civil cases are resolved through methods other than trial.⁷ Some forms of dispute resolution, however, are expensive and unavailable in certain areas of the state. One accessible option for litigants is online dispute resolution (ODR), a technique that provides an asynchronous environment for case resolution that can reduce the cost, time, and inconvenience of resolving a civil dispute. ODR is currently used to resolve private online disputes on platforms such as Amazon and eBay and is emerging as a tool for civil courts. As civil case filings continue to increase across Texas courts and as clearance rates consistently stay short of 100%, ODR offers litigants another alternative, low-cost form of dispute resolution and provides courts an additional means by which to dispose of cases. . ODR may also provide opportunities for lawyers to offer pro bono services to parties who are located remotely from large cities, either by facilitating the parties' own resolution or by counseling one party to the dispute.

RECOMMENDATIONS

Recommendation 1: The Texas Judicial Council should adopt a rule implementing the Texas Online Dispute Resolution Policy Framework to govern the use of court-sponsored online dispute resolution.⁸

Texas courts are experimenting with ODR, but implementation of ODR can be uneven in terms of access, participation, timeliness, cost-effectiveness, and results. To provide consistency in court-sponsored ODR, the Committee believes a common framework, built upon certain minimum standards and bound by an approved ODR administrative plan, is needed. The Committee also believes implementation of this framework is best addressed through a rule adopted by the Texas Judicial Council.

Recommendation 2: The Office of Court Administration should implement a low-cost or free online dispute resolution platform throughout the state so that parties in civil matters may access the judicial system.

The Committee believes that providing an online dispute resolution platform for Texas courts, implemented by the Office of Court Administration, will enhance access to justice and improve the civil justice system greatly.

⁷ ANNUAL STATISTICAL REPORT FOR THE TEXAS JUDICIARY, *supra* note 1, at Detail p.39

⁸ See Attachment A.

CIVIL FILING FEES REFORM

BACKGROUND

During the 86th Legislative Session, the Legislature simplified and consolidated criminal court costs to correct constitutional issues with the administration of the costs and to lessen the local burden of administering the criminal court cost system. The changes were done in such a way to be revenue-neutral for both the state and local jurisdictions. Like its criminal court sister-system was prior to 2020, the civil filing fee system in Texas is complex and can be difficult for county and district clerks to administer. Reforming this system is necessary, both for administrative purposes and to address caselaw that suggests that some current uses of civil filing fees might be unconstitutional.⁹

RECOMMENDATIONS

Recommendation 1: The Legislature should simplify and consolidate the civil court filing fee system in a way that remedies potential constitutional issues in the current system. This reform should be revenue-neutral for both the state and local government to the extent it can be.

⁹ See *LeCroy v. Hanlon*, 713 S.W.2d 335 (Tex. 1986). In *LeCroy*, the Texas Supreme Court construed the Texas Constitution's Open Courts Provision (Art. I, Sec. 13) to prohibit arbitrary or unreasonable legislative interference with a litigant's right of access to the courts. The *LeCroy* court distilled this right of access into interconnected filing fee principles, clarifying that filing fees cannot go into the general revenue because filing fee revenues cannot be used to fund programs besides the judiciary and that filing fees and court costs exacted or used for non-court-related purposes unconstitutionally interfere with the right of access protected by the Open Courts Provision. *LeCroy*, 713 S.W.2d at 341 – 343.

Attachment A

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Texas Online Dispute Resolution Policy Framework 1.0

Baseline Standards for Implementing Online Dispute Resolution in Texas Courts

Proposed Policy Framework for Consideration by Office of Court Administration, Civil Justice Committee, July 6, 2020

Introduction

This policy framework was developed through a partnership of academic, law, policy, and access to justice experts. Authors include: Dr. Tony Fabelo, Senior Fellow for Justice Policy at the Meadows Mental Health Policy Institute, working as a consultant for Pew Charitable Trusts Civil Legal System Modernization project (<https://www.pewtrusts.org/en/projects/civil-legal-system-modernization>) and in partnership with the Texas Office of Court Administration; Professor Mary Spector, Associate Dean for Clinics, Director of the Civil/Consumer Clinic and Professor of Law at the Southern Methodist University's Dedman School of Law; Trish McAllister, Executive Director of the Texas Access to Justice Commission; and Ann Baddour, Director of the Fair Financial Services Project at Texas Appleseed. The goal is to provide information to the Civil Justice Committee of the Texas Office of Court Administration and other state policy makers as they seek to enact policies to guide the development of Online Dispute Resolution (commonly known as ODR) systems in Texas.

ODR is defined as the use by Civil Courts of an online process in which the parties in civil litigation resolve their disputes to the parties' mutual satisfaction, using an online portal that complies with the minimum ODR standards and is administered by the court. It must include court oversight and may include the assistance of a mediator communicating electronically or in-person with the parties.

This framework has been informed by international ODR standards, interviews with Texas courts implementing ODR, and a study of ODR platforms implemented in the United Kingdom, Canada, and the United States. Pew is also partnering with Collin County judicial and county officials to pilot and test the effectiveness of an ODR model in Justice of the Peace, Precinct 3-1 Court presided by Judge Chuck Ruckel. Pew's partnership in Collin County is part of its larger "Civil Legal System Modernization" project named above, which includes a partnership with the National Center for State Courts (NCSC) to assess ODR systems.

The readers should note that as more conversations and experience in evaluating the Collin County pilot develops, the author may provide updates to this framework. That will be noted by the versions and dates above.

Overarching Principles

Texas courts and others across the country are experimenting with court-sponsored online dispute resolution (ODR) as a way to increase access to the courts while maintaining the integrity of the judicial system. If implemented well, ODR has the potential to increase efficiency in the court system while also furthering fundamental access to justice principles. An effective ODR platform should:

- (a) Increase access to the courts for all parties;
- (b) Enable all parties to participate meaningfully and effectively in court processes;
- (c) Promote timely and cost-effective resolution of disputes; and
- (d) Achieve a just result.

The COVID-19 pandemic has given new attention to court-sponsored ODR, as an option for parties to participate remotely in court and to reduce case backlogs that have built up due to court closures during the stay-at-home orders that were in place for much of the Spring of 2020.

These standards provide a draft for discussion of a suggested policy framework that parallels the development of the state indigent defense improvement policies adopted in the Texas Fair Defense Act of 2001. The Texas Fair Defense Act required the submission of local plans to the state delineating how local courts and counties will administer improvements and follow best practices standards.

Any statewide implementation of court-sponsored ODR should integrate minimum standards that align with the efficiency and integrity of the court process.¹ An ODR platform should be:

- **Accessible:** ODR systems should be developed from a user's perspective and based in user-tested technology and best practices. They should be accessible to individuals with disabilities, those with limited English proficiency, and to those without access to an attorney. They should be in plain language with simple explanations of processes and procedures. They should be accessible and fully functional across a variety of common device types, such as desktop computers and mobile phones. Systems also must actively screen for individuals who do not have access to sufficient technology to engage in an online-only platform.
- **Fair and Impartial:** ODR must treat all parties equally and with respect and dignity. ODR must comport with due process, without bias or benefits for or against individuals, groups, or entities. It should allow often marginalized voices to be heard, and ensure that offline privileges and disadvantages are not replicated in the ODR process. ODR should minimize power differentials between parties, including the provision of timely access to relevant laws governing the case, easy to use forms, and plain language information and

¹ These standards are adapted from those developed by the [International Council for Online Dispute Resolution](#) (ICODR), an international nonprofit focused on the use of technology to resolve disputes and conflicts in an equitable and accessible manner. The standards draw on the work of ICODR, other research, and information specific to the Texas courts.

other tools that inform the parties of their rights and responsibilities in that specific case type. Conflict of interest of providers, participants, and system administrators must be disclosed in advance of commencement of ODR services.

- **Competent:** ODR systems must be specifically designed by experts to accommodate designated case types. Each case type, such as debt claim or small claim cases, should be individually assessed for the appropriateness of using an ODR platform by a committee of expert stakeholders convened by the Texas Office of Court Administration. The committee should designate specific standards and features for each case type deemed appropriate for ODR and develop a process for how those cases should proceed in court if the ODR platform does not lead to a solution.
- **Confidential and Secure:** ODR systems must protect confidentiality for the users while requiring appropriate access to data, consistent with standards applicable to other court proceedings. Data collected and communications between those engaged in ODR must not be shared with any unauthorized parties and users must be informed of any breaches in a timely manner.
- **Legal:** ODR systems must preserve principles fundamental to the court when processes go online, such as providing notice of the case, the opportunity to be heard in court if an agreement cannot be reached, and judicial review of any settlement reached.
- **Transparent:** ODR systems must provide clear and easily understandable information about how to use the system, the consequences of failing to participate, and the enforceability of the processes and outcomes. Data in ODR must be gathered, managed, and presented in ways to ensure it is meaningful, not misrepresented or out of context, and must be owned and controlled by the court.
- **Efficient:** Integrate ODR systems into the court processes in a manner that reduces redundancy of procedures and streamlines the court experience for users and does not create undue burdens for the court. Ensure that users are not required to pay additional fees in courts that require mandatory participation and when participation is optional, defendants should not be required to pay additional fees to use ODR systems, and that implementation of ODR provides for potential cost savings to the civil justice system; and,
- **Monitored:** Baseline data should be collected in each case type in which ODR will be used and compared to data collected after the implementation of ODR to ensure that ODR is fair and effective. Ongoing evaluation of ODR systems should be conducted to ensure compliance with the above standards and to monitor the use and effectiveness of the system. Changes should be made to ODR systems as indicated.

Proposed Texas Policy Framework 1.0

Section 1: Definition

Online Dispute Resolution commonly known as ODR is defined as the use by Civil Courts of an online process in which the parties in civil litigation resolve their disputes to the parties' mutual satisfaction, using an online portal that complies with the minimum ODR standards and is administered by the court. It must include court oversight and may include the assistance of a mediator communicating electronically or in-person with the parties.

Section 2: Authorization Third Party Vendor

The Texas Office of Court Administration may develop and administer a statewide ODR platform for Texas courts or pre-approve third-party vendors that the court or county of jurisdiction may contract with to provide ODR. All platforms must comply with the minimum standards.

Section 3: Scope

The implementation of ODR is authorized in a jurisdiction for resolving cases where both parties are represented. In cases where only one party is represented, additional features and accommodations must be part of the system for ODR to be used.

Important minimum standards for scope of ODR, including for cases where only one party is represented by counsel:

- Accessible
- Fair and Impartial
- Competent
- Legal
- Transparent

Section 4: Required Local ODR Plan

The local judicial board and administrative judge need to approve an ODR administrative plan for their courts of jurisdiction. The plan needs to include a statement by the county administrator (Commissioners Court or County Manager) stating that the county will have available funds to support the proposed system and this statement needs to be included in the plan. The county commissioners will select, through their procurement process, an ODR platform approved by the Texas Office of Court Administration and recommended by the local courts for the administration of the ODR. The plan needs to identify a court official responsible for overseeing the implementation of the plan. The plan needs to be submitted to the Texas Office of Court Administration for review before implementation of ODR.

The Texas Office of Court Administration shall review the local plan for compliance with the minimum ODR standards within 180 days of submission by the local administrative judge. The

local administrative judge shall address modifications to the local plan within 90 days of the Texas Office of Court Administration review or request an extension to be approved by the Texas Office of Court Administration. Upon approval of the plan by the Texas Office of Court Administration, the local administrative judge will submit the plan for approval by the Texas Supreme Court as part of their local administrative rules.

The local plan will be reviewed by county commissioners and the Texas Office of Court Administration every two years. The review must include an assessment of program outcomes based in the monitoring requirement in the minimum standards. Any significant changes to the operation of an ODR system will require the submission of an updated and amended plan for review by the Texas Office of Court Administration. The amended plan should then be submitted to the Texas Supreme Court for approval, as an amendment to local administrative rules. Significant changes are defined as changes to items (a) (b) (c) in Section 5.

Section 5: Structure of the Local Plan

The local plan required under Section 4 needs to specify how the ODR will be integrated into the current or planned workflow and case management functions. The plan needs to specifically address the following in compliance with the minimum standards:

- a. Threshold Considerations
 - i. Court(s) designated to operate ODR
 - ii. Type of cases to be handled by ODR
 - iii. Voluntary or mandatory use, including clear opt-in or opt-out options for any of the parties

Important minimum standards for threshold considerations of ODR:

- Competent
- Accessible
- Fair and Impartial
- Efficient
- Legal

- b. Implementation Process Considerations

- i. Identifying ODR technology vendor and implementation of a competitive procurement process. Implementation process should include contingencies for transfer of all system data back to the court in a usable format in the event of termination of the contract at a future date.

Important minimum standards for implementation considerations:

- Transparent
- Efficient
- Confidential and Secure

- ii. Integration with e-filing and case management systems such that:
 - o ODR platform integrates with e-filing and case management systems to prevent manual duplication of data
 - o Communication within the platform is confidential (unless waived by all parties) and is not entered into the court record or discoverable

Important minimum standards for integration with existing systems:

- Legal
- Efficient
- Competent

- iii. Accessibility (including availability via a range of electronic devices, such as mobile phones) and compliance with the Americans with Disabilities Act, applicable state laws and regulations related to accommodations for persons with disabilities, and linguistically appropriate access for those with limited English proficiency.

Important minimum standards for accessibility:

- Accessible
- Fair and Impartial

- iv. Engagement of mediators or other neutral third parties to support fair case resolution, including establishing set procedures and timeframes for each phase of online dispute resolution, including party-to-party negotiation, mediation with a third party neutral, notice to the court of settlement/non-settlement, commencing to a hearing/trial, and case disposition.

Important minimum standards for engagement of mediators or other neutral third parties:

- Accessible
- Fair and Impartial
- Transparent
- Legal
- Confidential

- v. Enactment of uniform rules, policies, and procedures to govern the use of ODR and party participation in ODR.

c. Notice

- i. Notice to plaintiff and defendant of ODR process
- ii. Notice to defendant of case filing

- iii. Notice to both parties of established timeframes by which each stage in the ODR process must be completed (i.e., party-to-party negotiation, mediation, etc.)

Important minimum notice standards:

- Legal
- Transparent
- Fair and Impartial

d. Information

- i. Information regarding use of the ODR platform
- ii. Legal information regarding parties' rights and responsibilities to guide them through decision-making in the ODR platform

Important minimum information standards:

- Transparent
- Fair and Impartial
- Legal

e. Review

- i. Judicial review of proposed settlement agreements and orders prior to enforcement and preserving the ability of participants to negotiate a settlement that is not registered as a judgment.

Important minimum review standards for settlement agreements:

- Legal
- Fair and Impartial

- ii. Judicial review of cases not resolved through ODR should be referred back to the court for a hearing.

Important minimum review standards for judicial review of cases not resolved through ODR:

- Legal
- Fair and Impartial
- Efficient

f. Post-ODR Process

- i. **Appeals:** Same rights to appeal must apply whether the judge resolves the case online or in a traditional court.

Important minimum standard for appeals:

- Legal

- ii. **Settlement Orders:** Settlement orders are fully enforceable by the court once reviewed the judge in accordance with existing legal standards.

Important minimum standard for settlement orders:

- Legal

g. Support for Court Staff and Users

- i. **Court staff:** ODR platform provider must conduct full demonstrations of the of ODR platform, train court staff and mediators, and user-test the platform with court staff and mediators prior to public launch. The provider must correct any identified problems or issues with the platform in advance of the launch.

Important minimum standard for court staff support:

- Accessible
- Legal
- Competent
- Efficient

- ii. **Users and other stakeholders:** Court staff and ODR platform provider should maintain trained staff to provide procedural assistance and/or maintenance and technical support services during their regular business hours accessible by online portal, email, and telephone. Materials accessible to self-represented litigants must be developed and shared in advance of interacting with the ODR platform to offer instructions on using the platform and the rules of engagement for all parties.

Important minimum standard for user and stakeholder support:

- Transparent
- Legal
- Accessible
- Competent
- Fair and Impartial

- h. Monitoring and evaluation must be integrated into ODR platforms to assess outcomes and target areas where adjustments are needed.

- i. **Best Practice:** Basic metrics to be reported quarterly to the designated ODR administrator to monitor the effectiveness of the ODR system.

- Number and type of cases filed
- Demographic distribution of the population (e.g., race, gender, age, zip code)

- Number of cases disposed
 - Of the cases disposed, average time from filing to disposition
 - Of the cases disposed, type of dispositions
 - Representation rates for plaintiffs and defendants
 - Number of customer satisfaction survey completed and results
 - Default judgment rates
 - Dismissal rates
 - Outcomes, including a comparison of outcomes pre- and post-ODR, such as the judgment amount agreed to through ODR compared to amount requested in the original filing in a debt claim case
 - Monitoring settlements for a period to see if the defendant is able to meet the terms (indicated the result was workable for the defendant)
- ii. **Best Practice:** Embed a survey within the ODR platform which courts can use to monitor customer satisfaction with the ODR platform and process.
- iii. **Best Practice:** When resources allow, engage a third-party evaluator to conduct a rigorous study examining the efficacy of the ODR platform, and offer recommendations for program improvement.

Important minimum standard for monitoring and evaluation:

- Monitored

Section 6: Grandfather Provision

Local jurisdictions presently operating ODR for resolving small claims, landlord/tenant, debt collection, home equity foreclosure cases or traffic tickets can continue to operate those systems but are required to submit the required plan under Section 4 no later than one year after the implementation of this framework. Local jurisdictions presently operating ODR shall modify their local ODR based on recommendations by the Texas Office of Court Administration after their plan review following the procedures set in Section 4.



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