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# Online Dispute Resolution

Technology is disrupting the law – and this disruption may generate significant opportunities for those attorneys willing to embrace change and evolve their practices.

Technology is changing our society, and in doing so, it is changing our relationships. We now use computers to communicate with those we love almost every minute of the day. We use technology within our families (even when we’re together in our houses) in ways that would have seemed incredibly strange in 1993. We have integrated technology into our lives to such a degree that we now use it for many of our most intimate conversations. That means when a dispute arises within our family (maybe over the care of an elderly parent, or over shared custody of a child, or over spousal support payments), our expectation is that we will be able to use technology to resolve it.

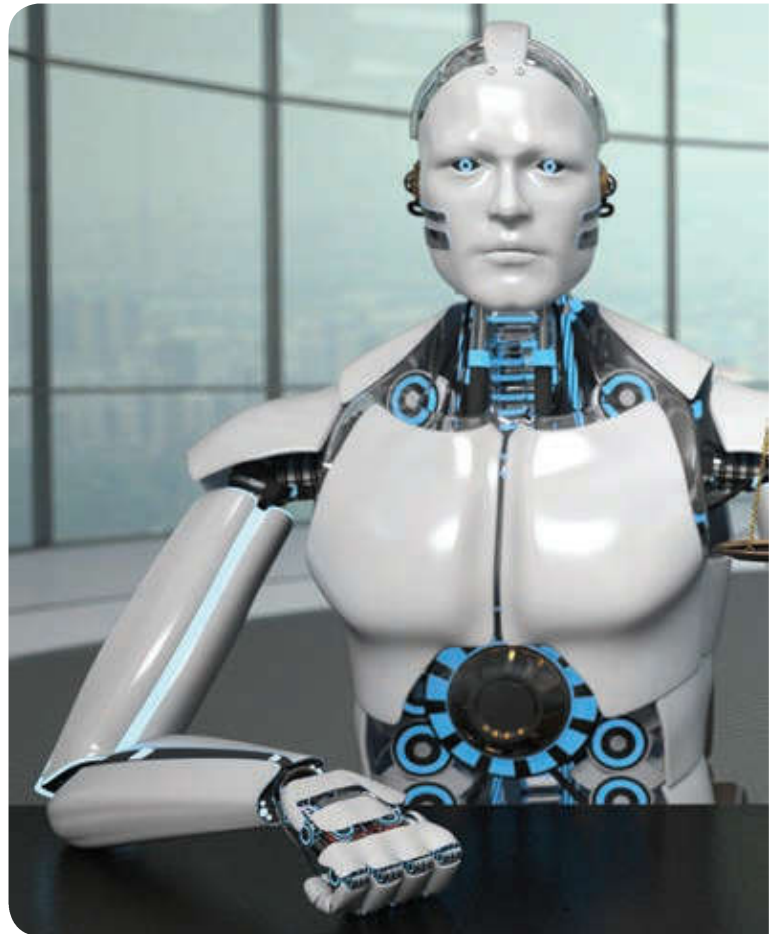
The question of how we can best do that is the focus of Online Dispute Resolution (ODR). ODR is the use of information and communications technology to help parties prevent, manage, and resolve disputes. ODR arose in the 1990s to address disputes that cropped up online, such as buyer and seller disputes in online marketplaces. But as technology has become more widespread and people have become more comfortable communicating through technological channels, online dispute resolution has extended into other kinds of disputes – even emotional face-to-face disputes like those that occur in families.

## Online Dispute Resolution and Courts

In the United States, the fastest-growing area for ODR is the courts. Courts are now deploying online dispute resolution systems to facilitate early resolution in low-value civil cases, like small claims and landlord-tenant disagreements, and these tools are getting traction in the family courts as well. In 2011, I co-founded an ODR system called Modria (now owned by Tyler Technologies) that opens an online resolution room for parties when they e-file a new family case. The software walks the participants through a TurboTax-style diagnosis process (see Figure A) to pre-negotiate issues in advance of a formal hearing or mediation. In some cases, the parties can reach agreement on all of the major issues in their parenting plan without having to work with a mediator or appear in front of a judge.

## Modria (Modular Online Dispute Resolution Implementation Assistance) and Family Law

One of the first counties to deploy Modria for family cases was Clark County, Nevada, which is the county containing Las Vegas. Clark County already has a Family Mediation Center with 11 full-time mediators resolving almost 4,000 cases a year. Designed



jointly with Clark County mediators, the Modria platform invites divorcing couples to use this step-by-step negotiation process in advance of their first meeting with the mediator in the Family Mediation Center. If both co-parents pick the same option (say, for legal custody), then Modria informs the mediator that the parties have already reached agreement in that area, which saves time and creates progress the mediator can build from.

Figure A: Overview of the Modria Parenting Plan Agreement Components

Legal Custody    Vacation    Transportation    Exchanges    Timeshare    Holidays    School Breaks    Special Provisions

Let's get started! Continue to start building your parenting agreement, one area at a time

# and the Future of Family Law

By Colin Rule, ODR Consultant



Typical resolutions through the face-to-face family mediation process in Clark County take on average four weeks – but the online cases resolve in an average of *six days*, with some cases resolving in as little as two days. Also, 85% of the resolutions achieved through Modria occur at an hour when the court is closed. This makes sense, because after work on a weekday or over the weekend are the times when the parties are most likely to be free to work on their agreement.

## Family ODR Goes Beyond the Courtroom

But family ODR is not confined to the courts. Private family mediators are also using technologies like video and audio conferencing to work with their parties when getting together face-to-face is difficult or impossible. Family mediators can even provide their parties with an online pre-negotiation “workbook” that surfaces

issues that need to be resolved and required information. This helps to inform and prepare parties for the first joint session with the mediator, which can save time and help parties generate reasonable expectations about the process and outcome.

Post-session party satisfaction numbers are still slightly higher for face-to-face mediation, but party preferences are off the charts in favor of online processes. It turns out that the appeal of working out the details of your separation at home and on your own schedule are compelling benefits. As a result, private ODR companies are cropping up to support divorcing couples, including Wevorce.com, HelloDivorce.com, Itsovereasy.com, Commonsensivedivorce.com, and post-separation co-parenting management services like OurFamilyWizard.com and CoParenter.com. More are sure to come in the near future.

There are still questions about the quality of resolutions delivered through ODR. It’s great that parties are satisfied and outcomes are delivered quickly, but if the resolutions don’t prove to be durable, then the parties may end up back in court just a few months later fighting over the same issues.

The Pew Charitable Trusts has announced that they are going to spend millions of dollars on evaluating the effectiveness of court ODR, and they have selected several academic research centers to conduct longitudinal studies on how online dispute resolution compares to traditional litigation and face-to-face mediation. Researchers from UC Davis, the University of Arizona, and Harvard University will examine not only party satisfaction through ODR, but also the durability of agreements achieved through online dispute resolution and any variations in outcomes between ODR agreements and face-to-face agreements.

## Is ODR Good or Bad News for Family Lawyers?

As I sketch out these developments, not all of you may be feeling the urge to applaud. Some of you may regard these new technologies as scary, or even threatening. That is completely understandable. For every new capability technology has introduced there have undoubtedly been downsides and challenges. We often rush ahead with technological innovation without adequate efforts to combat these negative dynamics, which is short-sighted.

Like it or not, the expansion of technology into family law is showing no signs of slowing down. My wife thinks it’s weird that I help people end their marriages online, but my reply is: “How do you think people find their spouses nowadays?” Many

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## Future of Family Law / Cont. from page 7

people rely on sites like Match.com or PlentyOfFish.com to find their significant others, so it seems natural to them to utilize technology when those relationships come to an end. Modern clients expect to use technology in every area of their lives – divorce included. Disputants expect to be able to use the same kinds of communication tools they leverage at home and work to handle their separations, and if they're told they have to do it the "old, face-to-face" way, they get annoyed.

### ODR May Generate New Opportunities for Lawyers Who Embrace Change

Many family lawyers are concerned that ODR will put them out of business, but my experience in deploying online dispute resolution systems indicates that this will not necessarily be the case. Currently, ODR systems are usually focused on *pro se*, self-represented litigants who can't afford to hire a lawyer to help them in their divorce, so no family lawyers are being displaced. If parties need and can afford support from a lawyer or mediator, ODR can help to connect parties with capable counsel. Even with ODR, many cases will still require the assistance of a lawyer or a mediator, and the technology will allow them to assist parties outside of their immediate geographic area of practice.

Part of the hesitation about welcoming ODR may be generational. Most young lawyers are very comfortable with technology and are open to integrating new technology into the way they

service their clients. Eventually, all lawyers may come around to appreciate the benefits of ODR, just like their clients. After all, being able to reach agreements from anywhere – including your home office, at the pool, on the golf course, or at the beach – can be pretty great. If resolutions become more efficient, lawyers may be able to take more cases (perhaps even at flat rates) – which will more than compensate for any drop in billable hours.

My grandfather always used to say: "Don't build your business where the highway is, build your business where the highway is going." This is good advice for any lawyers who still plan to be practicing 10, 20, or 30 years from now. Technology is disrupting the law, just like it disrupted medicine and finance – but for those attorneys who embrace the change and are willing to evolve their practices, this disruption may generate significant opportunities. It's not going to be orderly, and we'll probably make many mistakes along the way – but if we do it right, ODR may offer the biggest opportunity we've had to expand access to justice in the last hundred years. ■



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## Electronic Evidence / Cont. from page 29

of unilaterally searching for and capturing any such publicly available data with respect to an opposing party, and capturing, filtering, and hosting such discoverable information from your own client that you may need to review and eventually produce.

The advantages are threefold:

1. A good vendor will have access to multiple capture tools that will capture a wider range of application and site types.<sup>6</sup>
2. These vendors will typically assign a hash-value to each element captured or otherwise follow a forensically sound methodology that will establish authenticity in support of admission at trial.
3. These vendors can host this data in native format as needed so that a significant amount of such data can be searched the same as less exotic file types (e.g., .doc, .msg, .pdf) can in a hosted searchable database platform.

Thanks to increased competition over the last five years, these services are becoming much more reasonable in terms of pricing/burn rate.

<sup>6</sup>For instance, while X1 Social Discovery is an excellent and very user-friendly tool that costs only around \$2,000 to license annually, it currently can only capture Facebook, Instagram, Tumblr, Twitter, IMAP, Gmail, YahooMail, AOL Mail, YouTube, and webpages/sites. See [www.x1.com/products/x1-social-discovery](http://www.x1.com/products/x1-social-discovery).

Given the easy access the Internet provides to information about the functionality and attributes of not only social media applications but also cell phone platforms (e.g., Apple's iOS), accounting programs (e.g., Intuit's Quickbooks), and even the Internet itself (e.g., Internet Archive's Wayback Machine), it is well within the reach of all family law practitioners to gain the technical knowledge and cyber competence a modern family law practice requires. ■



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