

2018 Hawai'i Access to Justice Conference
"Fighting for Access to Justice for All"
Friday, June 29, 2018

Workshop summary:¹

"Technology in Mediation to Increase Access to Justice"

Presenters: Tracey Wiltgen, Executive Director, The Mediation Center of the Pacific (facilitator); Judge Michael Tanigawa, Honolulu District Court; Giuseppe Leone, founder, Virtual Mediation Lab; Kristi Bao, Lieutenant Commander (Navy); Cecelia Chang, Director, Hawaii State Judiciary's Center for Alternative Dispute Resolution

The panelists discussed the value of online Dispute Resolution ("ODR"), how it works, some of the challenges, and where it might be applicable in Hawaii.

It was noted that ODR encompasses a broad array of technologies used to resolve a growing variety of business and consumer disputes throughout the world. In addition to being used by private businesses such as EBay, the Courts are integrating ODR into its systems for a variety of issues including landlord-tenant, small claims, and minor traffic and code enforcement violations. ODR presents opportunities for courts to expand services while simultaneously reducing costs and improving customer experience and satisfaction.

The panelists noted that technology can be used to automate some or all of the steps in a resolution process. It creates an additional path into the courts, expanding access to justice. It can also help to make services more accessible for people with poor health, limited mobility, physical or mental disabilities, caregiving responsibilities for children or the elderly, military deployment, or inability to take time off from work.

While ODR is not appropriate for all cases, it has been shown to be an excellent tool for cases that are not complex and that occur in high volume such as small claims matters. Some of the challenges noted by Giuseppe Leone, a mediator specializing in online mediation, are that it can be difficult to develop the trust of the participants electronically. Equally significant is that some people are resistant to change and/or are not comfortable with technology. To create an effective ODR program, Giuseppe emphasized that good software and access is critical, as well as readily available assistance when technology glitches arise. Effective training for the mediators providing the service is also necessary.

The panelists agreed that there are opportunities to use ODR in Hawaii. Lieutenant Commander Kristy Bao shared that with the large military population

in the State, a large percentage of whom are young, ODR would be beneficial. Lieutenant Bao described the challenges experienced by military personnel in obtaining the return of their security deposits when they are suddenly called to active duty overseas. An online mediation program would provide them with the opportunity to negotiate the return of their deposit from the landlord, without the need for ever going to court. She could also see opportunities for incorporating ODR into divorce and other legal matters encountered by the military.

Judge Michael Tanigawa agreed that ODR would be good for high volume, simple cases such as Small Claims matters. He described the current challenge faced by litigants on Oahu of being required to file all claims in Honolulu, irrespective of which district court location the hearing is ultimately conducted. He noted that the Judiciary is highly interested in developing an ODR program for Small Claims matters to make it easier and more efficient for participants to resolve their disputes without ever entering the court system.

Cecelia Chang, the Director for the Judiciary's Center for Alternative Dispute Resolution, reported that that Judiciary has issued a request for information to begin the development of an ODR system. While the program will most likely start small, the intent is to have a statewide program. She noted that an ODR program will be simultaneously developed with an online filing system for greatest efficiency.

Giuseppe Leone stated that the key questions to address in the development of an ODR program is whether to develop a customized program or purchase one off the shelf. For example, British Columbia has developed its own customized program that was initiated with landlord tenant matters and has now been expanded to small claims. Giuseppe emphasized that it is important to start slowly, measure results and continually ask for feedback from the participants. All players must be on board for a program to succeed.

In the follow-up discussion with the audience, concerns were raised regarding how persons with disabilities will be accommodated to effectively utilize an ODR program. Similar questions were posed regarding how ODR will interface with different cultures. It was agreed that all of these issues will need to be considered in the development of a successful program that is accessible to all.

Members of the audience also commented that access to equipment to utilize an ODR program should be factored into the development process. Everyone doesn't own a smart phone or tablet. There needs to be additional public resources to computers besides public libraries.

Finally, members of the audience raised suggestions for the potential expansion of ODR. For example, victims of domestic violence could mediate online to finalize the terms of a divorce while remaining safe. While such a program would require a lot of input from domestic violence advocates to address power and control dynamics, it was agreed that the idea had potential. Ultimately, more dispute resolution options are needed by Hawaii's communities. The growth of dispute resolution, online and face-to-face, will help to reduce the large volume of cases in Hawaii's courts and allow for greater satisfaction of the participants.

¹ Notes of this workshop were prepared by Judge Frances Wong (ret.), and the summary was drafted by Tracey Wiltgen, facilitator of the workshop.