



# ONLINE DISPUTE RESOLUTION FOR POST-JUDGMENT FAMILY LAW CASES

— A Report to the Ottawa County, Michigan,  
Friend of the Court



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# ONLINE DISPUTE RESOLUTION FOR POST-JUDGMENT FAMILY LAW CASES:

## A Report to the Ottawa County, Michigan, Friend of the Court

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# EXECUTIVE SUMMARY

## BACKGROUND

Having successfully implemented an online system for child support enforcement in 2016, the Friend of the Court (FOC) in Ottawa County, Michigan (an agency under the aegis of the 20<sup>th</sup> Circuit Court), committed to identifying innovations that would offer parties a simpler, more convenient, and cost-effective way to make their own decisions about issues related to custody, parenting time,<sup>1</sup> and child support. The FOC also sought to increase efficiency in the disposition of these matters<sup>2</sup> for the benefit of parties, FOC caseworkers, court administrative personnel, and Family Division attorney referees<sup>3</sup> and judges.

In the interest of achieving these objectives, the FOC launched online dispute resolution (ODR) for most post-judgment matters in August 2020. For its ODR program, the FOC used Matterhorn, an online platform developed by Court Innovations, which is headquartered in Ann Arbor, Michigan. The platform provides text-based, asynchronous ODR where participants can communicate with each other and their caseworker through text and document exchanges with a time delay similar to what is observed with email.

The 20th Circuit Court requested the present external evaluation to understand the impact of ODR on parties and staff members, and to assess the need for any modifications that could improve the program. The evaluation covers matters brought to the FOC for resolution between November 2, 2020, and August 31, 2021. The evaluation uses data from the FOC, the court, the ODR platform, and staff interviews. It also relies on data from two surveys. Survey 1 surveyed parties shortly after their matters were filed with the FOC, generally before receiving assistance for that matter. Survey 2 was sent to parties for whom FOC caseworkers had entered contact information into the ODR platform. This survey was sent shortly after the parties' matters were closed out of the ODR platform, whether they used it or not.<sup>4</sup> To gain an understanding of factors that might enhance or hinder informed participation in ODR, we also reviewed information the parties receive about the ODR process, how the ODR platform works, and the benefits and risks of participation.

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<sup>1</sup> In some jurisdictions, "parenting time" is called "visitation."

<sup>2</sup> In this evaluation, "case" refers to the file that is opened when the court first refers the parties to the FOC for child support determinations or enforcement. Once a case is opened, parties might have numerous "matters" for which they seek the FOC's assistance, such as to change custody or parenting time schedules.

<sup>3</sup> A referee is appointed by the court to hear testimony and arguments on matters other than spousal support. The referee then recommends a resolution to the judge.

<sup>4</sup> See Appendix A for a description of the data collection procedures used for this evaluation.

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Our analysis of data from these combined sources provides insights into:

- Parties' expectations for the ODR process at the time it was offered to them, and their views on a video mediation alternative
- ODR access, including the percentage of parties who participated and opted out, information about ODR available to parties, and parties' capacity to use ODR
- Participants' evaluation of their experience of ODR in terms of procedural justice, satisfaction, fairness of the process, and ability to control the outcome of their matter
- Parties' impressions of the FOC and the other party
- The agreement rates, hearing rates, and efficiency (time to disposition, caseworker time spent on matters) associated with ODR use
- Direct costs and the FOC's staff members' perceptions of indirect costs

### The Friend of the Court

In Michigan, the Friend of the Court offices operate under the direction and supervision of the chief judge of the circuit court in each county. The FOC conducts external investigations and furnishes the court with information to support recommendations related to custody, parenting time, and child support matters. Without advocating for any party, the FOC facilitates the entry and maintenance of appropriate orders, attempts to resolve complaints and disagreements between parties, and ensures compliance with lawful court orders using various enforcement tools. When parties request Title IV-D Child Support Services under the Social Security Act, they are required to obtain FOC assistance unless they meet opt-out criteria. Parties may also request services on their own. Once parties are assigned a caseworker,<sup>5</sup> the non-custodial parent is assessed a \$3.50 monthly service and processing fee and the custodial parent is assessed a \$35 yearly administrative fee. The FOC's caseworkers provide both pre- and post-judgment services.

### ODR Program Process

When the FOC established the current ODR program, FOC personnel envisioned ODR as a required process with an option to opt-out for good cause, along with caseworkers having some flexibility in deciding which matters to submit to ODR. Caseworkers were instructed to strongly encourage parties to use ODR in almost all matters; however, parties could refuse to do so at two junctures—when the caseworker discussed the use of ODR with them and after they registered on the platform. In addition, they could opt out passively by not registering on the platform.

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<sup>5</sup> "Investigator" is the official title for the FOC staff members who work with parties with post-decree or post-judgment disputes. Staff members use the term "caseworker" during the course of their work instead because they believe it helps members of the public understand the full range of their responsibilities.



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Parenting-time complaints, parenting-time modifications, child support modifications, child support review objections, and custody modifications were eligible for ODR during all or part of the evaluation period. Only one person per side could participate in ODR. The FOC determined that that person would be the party, meaning that attorneys could not participate.

During the evaluation period, the first step in the ODR process was for the caseworker to determine whether ODR was appropriate for the parties and their circumstances. Caseworkers could use their own judgment for deeming ODR inappropriate. Such instances included matters in which parties had already exhibited a highly litigious or contentious relationship or were not proficient in English.

If the caseworker determined that the matter was appropriate for ODR and the initiating party (i.e., the party who initiated the matter with the FOC) did not object to participating in the program, the caseworker entered both parties' names and email addresses into the ODR system, which automatically sent an email instructing the parties to log on to the Matterhorn platform and register for ODR. At that point, both parties had the opportunity to actively opt out of ODR by checking an opt-out box during the registration process. If they continued on the platform, the parties signed an agreement to use ODR. The parties also completed an intimate partner violence (IPV) screening on the platform. Caseworkers used responses to this screening to identify matters that were not appropriate for ODR.

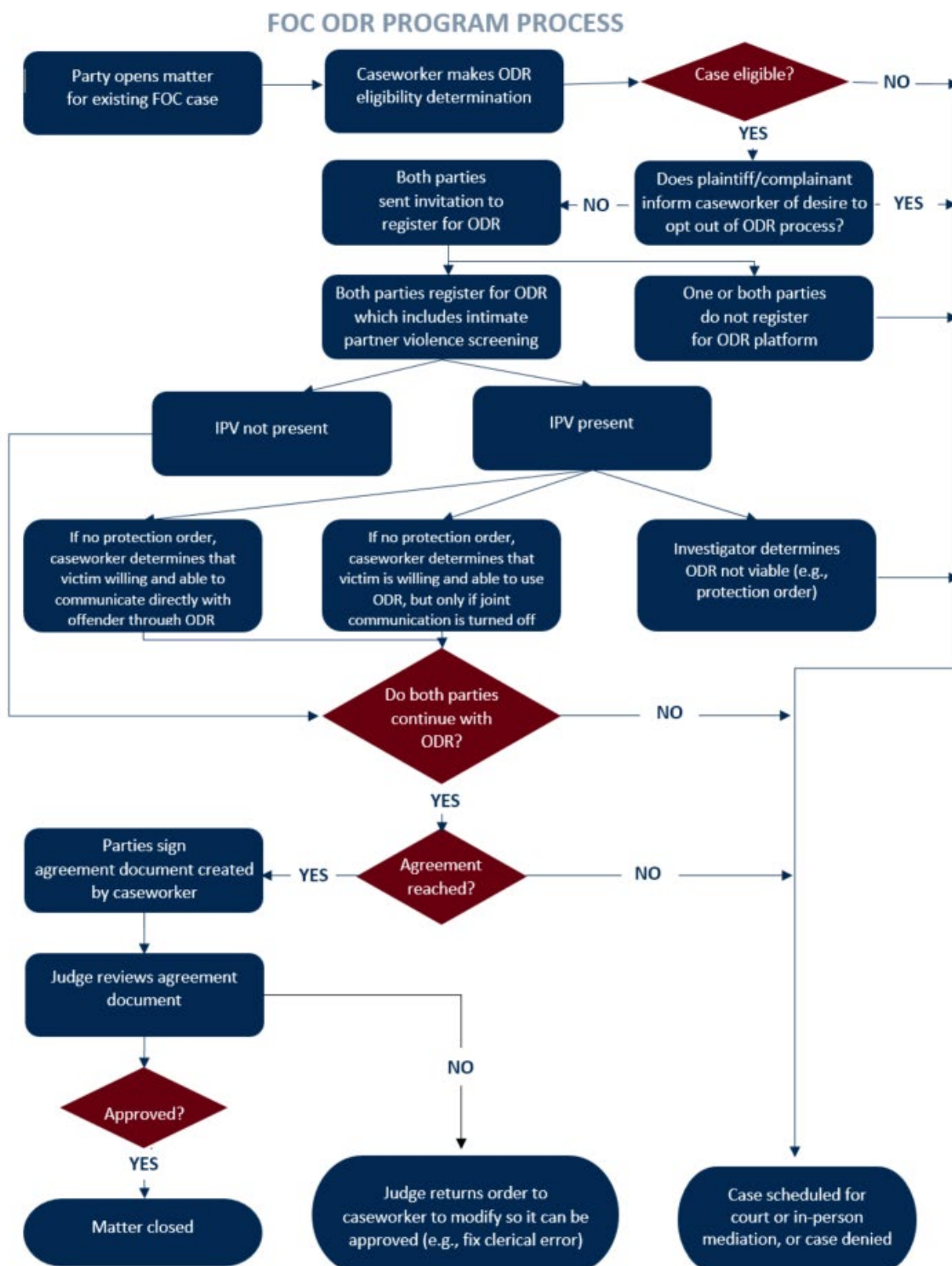
If both parties registered for ODR, the caseworker opened the platform to joint communications, which allowed the parties to communicate with each other as well as jointly with the caseworker.<sup>6</sup> In addition, the caseworker could communicate with each party individually. The parties and caseworker communicated via an open text format, where participants could text each other asynchronously (with delays similar to what occurs with email), with the goal of reaching agreement on the issues at hand. The platform did not provide any guidance regarding the content or style of communication. Instead, the caseworker monitored communication between the parties and intervened when necessary. Parties and caseworkers uploaded documents as needed. If the parties reached an agreement, the caseworker drafted the terms and the parties signed the resulting document on the platform. The caseworker then forwarded it to the judge for approval and signature electronically. If the parties did not reach an agreement, they had the option of requesting a court hearing to obtain a ruling by the judge. Judges do not have access to the platform to view communications among the parties and the caseworker. The flowchart below depicts the ODR process used during the evaluation.

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<sup>6</sup> If the screener suggested that IPV existed, and both the caseworker and the party who reported the IPV decided to move forward with ODR, the caseworker then decided whether to close the option for joint communication between the parties.



## EXECUTIVE SUMMARY



### FINDINGS AND RECOMMENDATIONS

#### Parties' Expectations for ODR

In Survey 1, we asked parties about their feelings regarding ODR, their confidence level about reaching an agreement, their level of trust that the other party would be truthful, and their feelings about the other party.

***The most common reason for parties expressing uncertainty about ODR use was their impressions of the other party's desires***

When parties were asked whether they planned to use ODR, the majority (78.4%) answered affirmatively, while a much smaller group (15.7%) answered "maybe." Among those who answered "maybe," half (50.0%) indicated that their answer reflected their uncertainty about whether the other party would want to use ODR.

***Participants had mixed feelings about ODR, with significant majorities reporting feeling excitement, confidence, anxiety, and being overwhelmed; nearly half expressed confusion***

Prior to using ODR for their matter, parties rated their feelings about using ODR. While 67.6% of parties indicated they were at least somewhat excited and 76.3% reported feeling at least somewhat confident, 63.1% were at least somewhat anxious and 62.1% felt at least somewhat overwhelmed. Just under half, 48.6%, said they felt confused.

**RECOMMENDATION: Clearly communicate the requirement to use ODR, barring specific exceptions, to both initiating and responding parties**

If caseworkers assure initiating parties that the FOC will require the responding party to use ODR unless their situation meets specific exceptions, it might reduce some of their anxiety. Caseworkers should be given specific instructions on how to communicate expectations and educate parties to create a uniform experience for the FOC's clients. One way to promote uniformity would be to provide caseworkers with a uniform decision tree that includes a checklist of items they are expected to communicate to each party for each matter.

***Most parties were somewhat confident that they could reach an agreement using ODR, but the majority did not trust the other party to be truthful***

Among the parties planning to use ODR, 74.4% were at least somewhat confident that they could reach an agreement online, with 33.3% expressing a high level of confidence. However, 59.0% did not expect the other party to be truthful during ODR.

***Those who planned to use ODR were more than twice as likely to report high levels of fear toward the other party compared with those who felt unsure about using, or were not planning to use, ODR***

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At the outset of their matter, those who planned to use ODR were almost twice as likely (18.9% versus 10.0%) to report high levels of fear as those who were unsure about using, or not planning to use, ODR. These figures suggest that ODR might seem more appealing to parties with high levels of this emotion toward the other party.

### ODR Access

Ensuring access is important for any new court program. If a court provides a service to its constituents, that service should provide equal access to all, with any exceptions being clearly and consistently applied. Further, the service should be easy and convenient to use, and potential users should be adequately informed about it.

### ODR Participation and Opt-Outs

#### ***In 48.0% of matters in which parties were offered ODR, both parties used it***

In 49 of the 102 matters in which parties were offered ODR, both parties elected to use it. Parenting-time matters accounted for 32 of these 48 matters. This participation rate is higher than those observed in other recently established court ODR programs in the United States.

#### ***In half of the matters in which ODR was offered but not used, at least one party failed to register***

In 26 of the 53 matters in which the parties opted not to use ODR, at least one party did not register on the platform. The initiating party did not register for ODR in 19 matters, and the responding party did not register in 18 matters. These numbers include 11 matters in which neither party registered.

#### **RECOMMENDATION: Make it more challenging for parties to opt out of ODR**

Despite the program's higher than average participation rate compared with other ODR programs that underwent recent evaluations, more could be done to discourage opt-outs. More parties might use the ODR program if parties were required to provide specific justifications for opting out.

#### ***Attorneys could not directly participate in ODR***

At the time of the evaluation, the platform allowed only one person per side to participate in ODR. Therefore, parties who wanted their attorney's direct involvement in handling their matter were precluded from participating in ODR. According to the FOC, few parties with post-judgment matters have attorney representation. Nevertheless, the National Center for Technology & Dispute Resolution Ethical Principles for ODR Initiative and the International

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Council for Online Dispute Resolution (ICODR) ODR Standards state that ODR should not limit access to representation.<sup>7</sup>

**RECOMMENDATION: Explore with Matterhorn the possibility of facilitating the participation by parties who have attorney representation and want their attorneys' direct assistance with ODR**

### Messaging and Party Education

***The invitation email sent to parties is inconsistent with the program's intent***

Our review of the automated email sent to the parties indicates the need for greater clarity. The email “invites” parties to participate. Thus, on its face, the automated email incorrectly implies that participation in ODR is opt-in rather than generally required. The email also uses the term “investigator” rather than “caseworker,” which might confuse some parties who are accustomed to the latter terminology. Moreover, the invitation indicates it is coming from the “20<sup>th</sup> Circuit Court,” rather than the FOC where their matters are being handled, which may also cause confusion.

**RECOMMENDATION: Review and test the language used in the automated email**

The FOC should modify the email to present a stronger message to signal that participation in ODR is required unless certain exceptions apply and using FOC terminology that is more familiar to parties (e.g., “caseworker” rather than “investigator”). If possible, the FOC should test the email message with FOC clients to obtain their feedback regarding message clarity.

***Parties lack information about key features of the program***

Although the FOC provides parties with information on ODR at three separate points during a matter's trajectory through the system, survey participants' responses suggest that they lacked a basic understanding of how ODR worked and whether they would be required to pay for the service. In fact, half of the 50 parties we surveyed near the start of their matter did not know the platform was offered free of charge. A review of the information provided in the automated email, on the platform, and on the FOC's website indicates that the FOC is missing opportunities to educate the parties.

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<sup>7</sup> See *Ethical Principles for ODR Initiative*, THE NAT'L CTR. FOR TECH. & DISP. RESOL., <https://odr.info/ethics-and-odr/> (last visited Feb. 12, 2022); *ICODR Standards*, INTERNATIONAL COUNCIL FOR ONLINE DISPUTE RESOLUTION, <https://icodr.org/standards/> (last visited Mar. 12, 2022).

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### **RECOMMENDATION: Share messaging tips among caseworkers**

Our interviews with caseworkers suggested that some had a greater fraction of their clients participate in ODR than others. Sharing effective messaging ideas—both message substance as well as message delivery—among caseworkers may be helpful.

### **RECOMMENDATION: Better educate parties on core features of the ODR program and its benefits**

A description of the program's features and benefits should be included in caseworkers' offers of ODR, in the automated email, on the platform, and on the FOC's website. In addition, the FOC should:

- Provide parties with more information about ODR and how to handle their matters using the ODR platform. A noteworthy example of the information that can be included in an FAQ can be found on Delaware's Justice of the Peace Court ODR platform.<sup>8</sup>
- Use a multi-media approach to educate parties (e.g., use the FOC website to textually describe the ODR process and post a short video explaining the ODR process).
  - Use emails and text messages to share links to this information to parties.
- Parties should be informed of whether participant communications on the ODR platform are privileged or how they could be used in future proceedings. This information should be disclosed in the agreement to use ODR.

### Effect of Technology on Access

#### ***The platform is not available to parties who are not English proficient or those with disabilities***

The FOC informed us that the FOC's ODR program was not yet accessible to individuals have limited English proficiency or are visually impaired. The FOC can reduce access barriers to these populations by providing accommodations. For example, software like Microsoft Word and apps on mobile phones are screen reader compatible and voice activated.<sup>9</sup> The FOC might request Matterhorn provide these capabilities. For those with limited English proficiency, the FOC could provide interpreters, as is required for other court-related services.

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<sup>8</sup> See *Frequently Asked Questions*, DEL. JUST. OF THE PEACE CT. ONLINE DISP. RESOL., <https://cii2.courtinnovations.com/DEJPCOURT/faq> (last visited Mar. 12, 2022).

<sup>9</sup> See *Listen to Your Word Documents*, MICROSOFT, <https://support.microsoft.com/en-us/office/listen-to-your-word-documents-5a2de7f3-1ef4-4795-b24e-64fc2731b001> (last visited March 12, 2022).

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### ***Some parties lack the digital literacy to use ODR***

According to data provided by the FOC, caseworkers recorded that parties opted out of ODR because of their lack of comfort with technology in only five matters. However, in interviews, one caseworker estimated that nearly 30% of their clients had problems using the ODR platform at some juncture, including registering and understanding how to upload documents, and another reported that those who were not tech-savvy did not even try to use the platform.

### ***Parties noted that the ODR platform was easy to use and convenient***

In response to a question asking what they liked most about the ODR platform after using it, nearly half of the surveyed parties who used ODR (7 of 16) mentioned ease of use. Two mentioned its convenience. These observations suggest that the platform is well designed for those who feel comfortable enough with the technology to use ODR.

### ***Parties were significantly more likely to use ODR on a mobile phone than on a PC, with 92% of parties using a mobile phone for at least some ODR activities***

Almost all of the 78 parties who logged on to the ODR platform used a mobile phone for at least some ODR activities; 70.5% percent used a mobile phone exclusively. Only 7.7% (six parties) used a personal computer (PC) exclusively. The available data suggest that no parties used a tablet to access the platform. Caseworkers noted that some parties found it difficult to use the ODR platform on a mobile phone.

### **RECOMMENDATION: Ensure that the ODR platform is optimized for mobile phones**

Along with Court Innovations, explore ways to improve the ODR experience for those who would use ODR on their cellphones. Base changes to the user interface on user experience research to ensure that parties will be encouraged to use it and find it easy to use. Once functionality is improved, educate eligible parties about the changes.

### ***81% of parties used ODR outside the FOC's office hours***

Among 78 ODR users, 63 (80.8%) logged on to the platform both during and outside the FOC's office hours. Overall, 51.8% of logons occurred outside office hours, indicating that although most users took advantage of the 24/7 capability of the platform, they were almost as likely to log on during office hours as when the office was closed.

## **Participants' Evaluations of Their Experience with ODR**

One of the FOC's goals for the ODR program was to provide parties with a favorable user experience. To gain insight into the parties' perspectives on their experience, we invited them to complete a survey after their matter concluded on the platform. Most of the questions asked parties to rate their experiences on a scale from 1 to 7, where 1 was the least favorable rating and 7 was the most favorable rating.

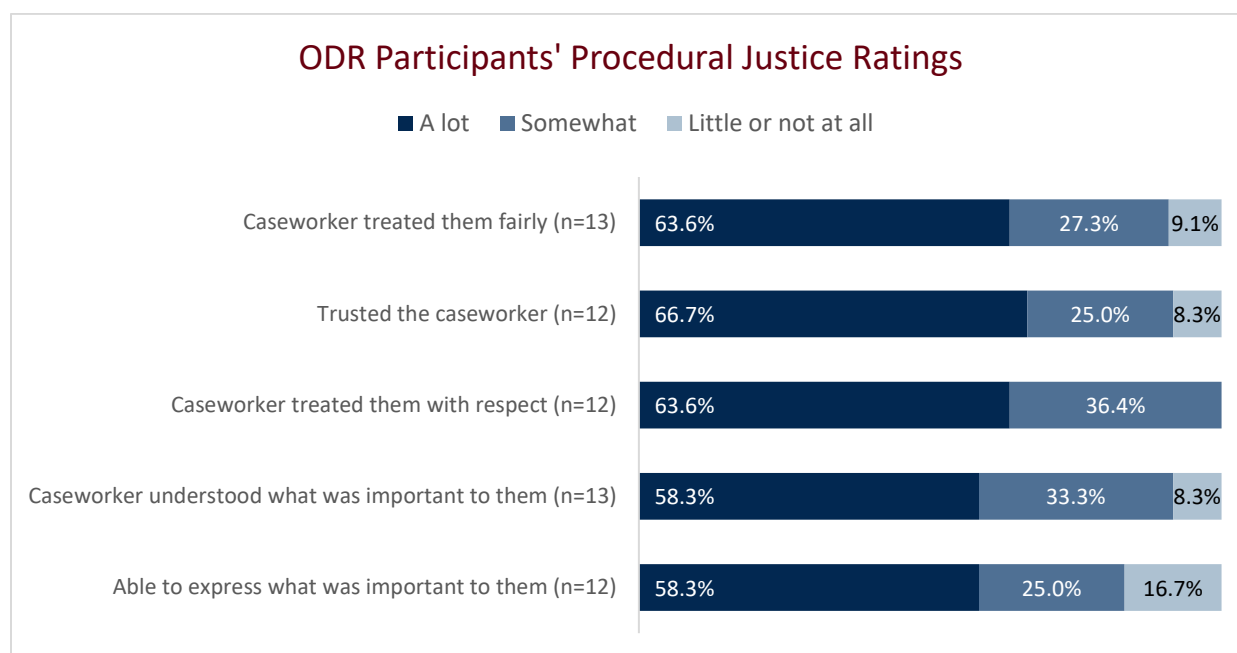
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### Procedural Justice

Effective court programming depends in part on parties' experiences of procedural justice. Specifically, parties should feel they are being treated fairly during the process used to handle their case. Empirical research has determined that the major factors underpinning procedural justice are voice, neutrality, respect, and trust.

#### ***The majority of ODR participants rated their experience of procedural justice highly***

The majority of parties provided high ratings (i.e., ratings of 6 or 7) when assessing how much they were able to express what was important to them (58.3%), how fairly their caseworker treated them (69.2%), and how much the caseworker treated them with respect (66.7%). Two-thirds (66.7%) gave high ratings for evaluations of how much they trusted their caseworker; 61.5% did so for ratings of whether their caseworker understood what was important to them.



***ODR users were four times as likely as non-ODR users to issue high ratings for process fairness and almost twice as likely to award high process satisfaction ratings; overall, mean ratings for process fairness and process satisfaction were higher for ODR users, but the difference was not statistically significant***

The mean process fairness rating for ODR users ( $M = 4.63$ ;  $SD = 2.56$ ) was higher than the mean for parties who did not use ODR ( $M = 2.88$ ;  $SD = 2.10$ ), but this difference was not statistically significant. Of those who used ODR, 50% provided high ratings of 6 or 7 (out of 7) for fairness of the process whereas only 12.5% of non-ODR users did. Those in the non-ODR group were twice as likely as those in the ODR group to give a low rating (1-2) for process fairness (50.% versus 25.0%). ODR users also tended to award higher process satisfaction scores ( $M = 4.60$ ;  $SD = 2.26$ ) compared with non-ODR users ( $M = 3.38$ ;  $SD = 2.13$ ), but this difference was not



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statistically significant. Nearly half of ODR users (46.7%) gave high ratings (6-7) for process satisfaction, whereas only 25.0% non-ODR users did. Whereas 20% of ODR users reported low process satisfaction (1-2), 50% of non-ODR users did.

### Impressions of the Process

One of the FOC's objectives in creating its ODR program was to give parties ownership over their agreements. ODR theoretically allows parties to craft agreements that reflect their own interests and priorities. This relatively higher level of party control, known as "party self-determination," is a core principle motivating many alternative dispute resolution (ADR) programs, such as court-sponsored mediation.

#### ***Most parties who used ODR felt they had at least some control over the outcome***

The majority (65.8%) of those who used ODR rated their level of control as 3 or higher, indicating they felt they had at least some control over the outcome of their matter. One quarter (25.0%) perceived themselves as having a great deal of control over the outcome. In contrast, among those who did not use ODR, the majority (62.5%) provided a rating of 1 or 2, indicating they felt they had either little or no control over the outcome. Those who used ODR reported, on average, a higher amount of control ( $M = 3.88$ ;  $SD = 2.78$ ) compared with those who did not use ODR ( $M = 2.50$ ;  $SD = 2.14$ ).

#### ***The majority of parties were not satisfied with their outcome***

Most ODR participants (56.3%) were not satisfied with the outcome of their matter. Those who did not use ODR had similar satisfaction levels, with 57.1% reporting they were not satisfied with the outcome. Those who used ODR reported they were somewhat satisfied, on average, ( $M = 3.25$ ;  $SD = 2.75$ ), as did those who did not use ODR ( $M = 3.14$ ;  $SD = 2.17$ ).

#### ***Feeling control over the outcome was associated with other important aspects of parties' experiences***

For both those who used ODR and those who did not, there was a statistically significant positive relationship between the amount of control they felt they had over the outcome and their satisfaction with the process, how much they believed the FOC handled their matter fairly, and their impression of the FOC. For those who used ODR, the degree of control they felt they had over the outcome was also positively associated with how favorably they felt about the other party after their matter concluded on ODR.

### Impressions of the FOC and the Other Party

#### ***Overall, ODR use was not associated with parties' impression of the FOC***

Of the 16 survey respondents who used ODR, 25.0% had a positive impression of the FOC after the process, and half had a neutral impression. Of the eight respondents who did not use ODR,

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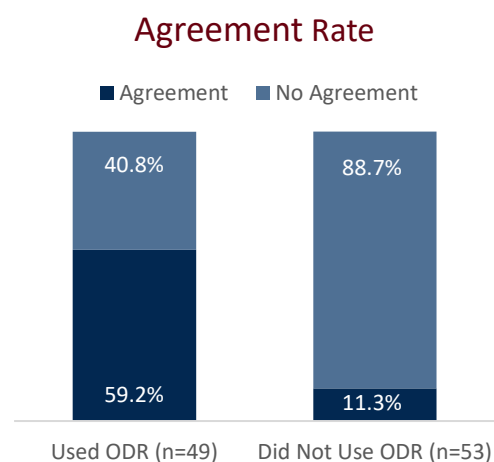
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half had a negative impression of the FOC. The other four respondents were evenly split between having a positive impression and having a neutral one. Although these results suggest a favorable impression of the ODR program, they may be confounded by the fact that parties could essentially self-select into ODR. Parties who already had a more favorable impression of the FOC or the other party might have been more likely to use the ODR program.

### Outcomes

#### ***Parties who used ODR were significantly more likely to reach agreement than those who did not***

Of the matters handled through ODR, 29 of 49 (59.2%) reached a resolution. By comparison, only 6 of 53 (11.3%) matters not handled through ODR reached an agreement. A similar difference emerged when ODR users were compared with parties who were offered another dispute resolution mechanism—of the 15 matters in which informal resolution or mediation was used but ODR was not, only 4 (26.7%) resulted in a stipulation or informal resolution.



#### ***A lower percentage of matters that used ODR required a hearing compared with those that did not use ODR***

Of the matters that used ODR, only 18.2% required a hearing, compared with 28.0% of those that did not use ODR. This observed difference was not statistically significant. Overall, hearings were relatively uncommon, with only 23.4% of matters requiring a hearing during the evaluation period. In the majority of matters that did not reach agreement with FOC assistance, the parties did not file a motion for a hearing, ending the FOC's involvement with the matter.

### Efficiency

#### ***Matters in which ODR was used tended to close more quickly than those in which ODR was not used***

Child support matters in which ODR was used closed in 11.8 days on average, compared with 21.5 days (on average) when ODR was not used. For parenting-time matters, the difference was smaller (5.5 days: 45.1 when ODR was used vs. 50.6 when ODR was not used). For neither type of matter was the difference statistically significant.

#### ***Caseworkers had mixed views on the effect of ODR on their time***

The four caseworkers interviewed as part of the evaluation offered differing opinions regarding whether they spent more time on cases that used ODR than on cases that did not use ODR. Two reported that ODR increased their time spent on a case, while two said it did not.

## EXECUTIVE SUMMARY

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### Program Costs

#### ***Program development was reportedly time intensive***

According to the Assistant Friend of the Court: Field Services Division (AFOC), developing the ODR program was very time intensive at certain stages. Five people from the FOC, including the AFOC, participated in program development, learned how to conduct online dispute resolution for parenting-time issues, tested the platform for bugs/faults, and trained their colleagues on how to use it.

#### ***Program costs are \$7,000 per year and are partly offset by savings***

The FOC did not pay to customize the platform. Once the program launched, the cost to use the platform was \$7,000 per year. The AFOC noted that this cost was partly offset by a 50% reduction in paper mailings and the personnel time saved by not having to mail notices, complaints, and agreements.

## LIMITATIONS OF THE EVALUATION

### Surveys

The number of parties completing our Survey 2 was relatively small for several reasons discernable to us. First, we were limited in the amount of time we could collect data. Second, we experienced delays in survey dissemination while changes to our data-sharing agreement with the 20th Circuit Friend of the Court were negotiated. Third, the dissemination of Survey 2 was dependent on the caseworkers manually closing out matters on the platform (i.e., their closing out a matter triggered the automated survey invitation and our follow-up invitation), which did not always occur. This scenario meant that we missed opportunities to send survey invitations to parties who used ODR as well as those who opted out of ODR, reducing the sample size for both subsets of FOC clients. Future evaluations should attempt to increase the sample size by increasing the data collection period and minimizing missed opportunities to disseminate surveys to eligible parties. The fact that we achieved such high response rates (56.7% for Survey 1; 43.3% for Survey 2) suggests that our recruitment method and survey incentives were successful compared with benchmarks established by past research and other evaluations of court programs.

Our small sample size necessitated that we rely on descriptive statistics for most of the survey component of the evaluation. Some of the statistical tests we conducted may have produced nonsignificant results as a result of the small sample size. Larger samples would allow more robust statistical analysis and a more detailed exploration of specific types of matters, such as custody disputes, and non-parent FOC clients (e.g., guardians, grandparents), which was not possible with the current datasets.

## EXECUTIVE SUMMARY

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In addition, the fact that parties could self-select into the ODR program (e.g., those who expressed a discomfort with technology were permitted to opt out) suggests that our findings concerning how parties viewed their ODR experience might not predict how parties would view ODR if that ability to self-select becomes more restricted. Moreover, some caseworkers suggested during interviews that they did not offer ODR to some parties involved in especially contentious cases. The comparisons made between survey responses for ODR and non-ODR groups should be interpreted in this light.

The sample was composed of parties involved in family cases, which lawyers, court personnel, and researchers acknowledge to be fraught with interpersonal conflict. Therefore, the findings based on our data might not generalize to parties from courts that have similar ODR programs but handle different matters. In addition, our evaluation took place during the COVID-19 pandemic, which prompted many businesses and organizations to curtail in-person operations and a greater percentage of people across the US to work from home. These factors, along with the stress associated with the pandemic, might have affected parties' behaviors and perceptions as assessed in this evaluation.

### FOC and ODR Platform Data

As with many surveys, the data regarding resolution rates, hearing rates, and time to disposition suffered from a small sample size, which may have obscured the statistical significance of the findings. In addition, we relied on caseworkers to manually enter information about the matters they were handling into spreadsheets. We conducted a rigorous quality check of their entries by searching for conflicting information in the data sources. While this quality review increased the accuracy of the data we used for the analyses, some reporting inaccuracies might still exist, which would slightly affect the findings regarding matter outcomes and time to closure.

As with the survey data, the findings based on data from the FOC and the ODR platform may also be colored by party self-selection. The findings also might not generalize to programs involving cases that are less emotionally charged.

## FINAL THOUGHTS

Our evaluation provides a favorable first impression of the FOC's ODR program. Data drawn from multiple sources suggest that, for parties who use ODR, the program has a relatively high use rate compared with other programs that have been evaluated to date, is generally considered by participants to be easy to use and convenient, provides parties with an experience of procedural justice, and is associated with a greater probability of reaching an agreement, as well as a shorter time to disposition for child support cases.

## EXECUTIVE SUMMARY

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However, our analysis suggests that the FOC could do more to educate parties about the program, direct parties to use it, and increase access to parties with disabilities as well as those who need an interpreter's assistance to use the platform. The FOC should also explore ways to reduce access barriers for those identified by caseworkers as less likely to use or benefit from the program because they have lawyer representation or have high-conflict relationships. Attempts to reduce access barriers should also be directed at those who lack digital literacy and those who would use their mobile phone to access the platform.

Our findings are not as robust as they could be with more data, which would allow more rigorous statistical analysis. Thus, we recommend that the FOC continue its efforts to evaluate the program along the dimensions examined in this report. In addition, we suggest that the FOC 1) evaluate the efficacy of its messaging about the ODR program to ensure parties understand its core features by the time they are invited to register and 2) identify and assess ways to make the program more accessible.

# BACKGROUND

Having successfully implemented an online system for child support enforcement in 2016, the 20<sup>th</sup> Circuit Court—Friend of the Court (FOC) in Ottawa County, Michigan, committed to identifying innovations that would offer parties a simpler, more convenient, and cost-effective way to make their own decisions about issues related to custody, parenting time,<sup>10</sup> and child support. The FOC also sought to increase efficiency in the disposition of these matters for the benefit of the FOC’s caseworkers and court personnel.

In the interest of achieving these objectives, the FOC launched online dispute resolution (ODR) for most post-judgment matters in August 2020. The FOC used Matterhorn, an online platform developed by Court Innovations, for its ODR program. The platform provides text-based, asynchronous ODR.

The FOC staff members began using Matterhorn in September 2020 for matters related to parenting-time modifications, child support, and custody. On March 30, 2021, the FOC launched a separate ODR track for complaints about violations of parenting-time orders. Software modifications to fix bugs that limited the platform’s use were implemented on an ongoing basis.

To initiate the ODR process, caseworkers invited parties (i.e., parents, foster parents, and guardians) to use the online platform free of charge. Eligibility was limited to self-represented parties. Once the parties registered on the platform, they worked together and/or with their caseworker, who performed functions similar to those often performed by mediators. If the parties reached an agreement, the caseworker documented the terms for both parties to review and sign. The agreement was then submitted for court review and approval by the judge.

The 20th Circuit Court requested the present external evaluation to understand the impact of ODR on parties and FOC staff, and to assess the need for any modifications that would improve the program. The evaluation covers matters brought to the FOC for resolution between November 2, 2020, and August 31, 2021. The evaluation uses data from the court, the FOC, the ODR platform, party surveys, and staff interviews to provide insights into:

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<sup>10</sup> In some jurisdictions, “parenting time” is referred to as “visitation.”

## BACKGROUND

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- Parties' expectations for the ODR process at the time it was offered to them, and their views on a video mediation alternative
- ODR access, including the percentage of parties who participated and opted out, information about ODR available to parties, and parties' capacity to use ODR
- Participants' evaluation of their experience of ODR in terms of procedural justice, satisfaction, fairness of the process, and ability to control the outcome of their matter
- Parties' impressions of the FOC and the other party
- The agreement rates, hearing rates, and efficiency (time to disposition, caseworker time spent on matters) associated with ODR use
- Direct costs and the FOC's staff members' perceptions of indirect costs

Data that demonstrate the positive effects of the program can be helpful to FOC personnel as they request continued funding for ODR and make policy decisions regarding issues such as participant recruitment, court and program staffing, and possible changes to the ODR platform. In the broader context, an external evaluation can serve as a useful road map for other courts that seek to introduce ODR.

## THE FRIEND OF THE COURT

In Michigan, the Friend of the Court offices operate under the direction and supervision of the chief judge of the circuit court in each county. The FOC conducts external investigations and furnishes the court with information to support recommendations related to custody, parenting time, and child support matters (i.e., the individual issues that arise for FOC clients after they have a case filed in court). Without advocating for any party, the FOC facilitates the entry and maintenance of appropriate orders, attempts to resolve complaints and disagreements between parties, and ensures compliance with lawful court orders using various enforcement tools. For violation of parenting-time orders, the FOC indicates that their enforcement tools include applying "makeup" time, attempting to resolve the issue with the two parties, and helping clients to file a complaint with the court. For child support, the FOC has a wide range of tools available, including garnishment of wages, contempt of court proceedings, and interception of income tax refunds.<sup>11</sup>

When parties request Title IV-D Child Support Services under the Social Security Act, they are required to obtain FOC assistance unless they meet certain criteria to opt out. To opt out, both must agree to opt out, neither can be receiving public assistance, there can be no evidence of intimate partner violence (IPV) or an uneven bargaining power between the parties, and the

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<sup>11</sup> *Friend of the Court Model Handbook*, FRIEND OF THE CT. BUREAU, STATE CT. ADMINISTRATIVE OFFICE, MICH. SUP. CT. (2021), [https://www.courts.michigan.gov/siteassets/publications/pamphletsbrochures/focb/focb\\_hbk.pdf](https://www.courts.michigan.gov/siteassets/publications/pamphletsbrochures/focb/focb_hbk.pdf).



## BACKGROUND

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court must find that declining FOC services is not against the best interests of the child.<sup>12</sup> The FOC provides both pre- and post-judgment services.<sup>13</sup> Once parties are assigned a caseworker, the non-custodial parent is assessed a \$3.50 monthly service fee and the custodial parent is charged a \$35 yearly administrative fee.

The FOC's services are provided by 12 caseworkers<sup>14</sup> who are trained and certified in mediation and are assigned cases based on the first letter of the father's last name. Once a case is assigned to a caseworker, the case remains with them until the children reach adulthood. Most commonly, caseworkers work with the parties only during a federally mandated child support review every three years. However, a small percentage of parties repeatedly request assistance with parenting-time complaints, child support enforcement, or the modification of previous orders. Some parties contact their caseworker having already reached an agreement with the other party regarding changes to their parenting-time schedule but needing assistance to obtain a court order that will enforce the agreement.<sup>15</sup>

## THE TRADITIONAL FOC POST-JUDGMENT PROCESS

Before the ODR program launched, when a party contacted their caseworker to file a complaint against the other party for violating their parenting-time court order, the caseworker reviewed the legal file for the most recent court order and determined whether that order had been violated. If the caseworker determined there was no violation, they informed the complainant that the complaint was denied and explained the available options. If the caseworker determined that the other party had violated the court order, they offered the complainant the option of resolving the matter by making up the parenting time lost as a result of the violation. If the party declined, the caseworker offered three possible avenues to rectify the problem: mediation, a joint meeting with the caseworker, or filing a motion for a contempt hearing. If the parties requested mediation, they were referred to an outside agency to obtain in-person mediation services on a sliding fee scale.<sup>16</sup> If the parties opted for a joint meeting with the caseworker, the caseworker recommended a specific way to resolve the complaint.

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<sup>12</sup> *Id.*

<sup>13</sup> The statutes and court rules that generally describe the FOC's authority and duties include the FOC Act, the Support and Parenting Time Enforcement Act, and Domestic Relations Rules (MCL 552.501, MCL 552.601, MCR 3.200, and MCR 3.208, respectively). The circuit court may also apply other applicable laws regarding FOC operations including the divorce act, family support act, paternity act, emancipation of minors act, and the child custody act (MCL 552.627).

<sup>14</sup> "Investigator" is the official title for the FOC's personnel who work with parties who have both pre- and post-judgment disputes. Staff members tend to use the term "caseworker" during the course of their work because they believe it helps members of the public understand the full range of their responsibilities.

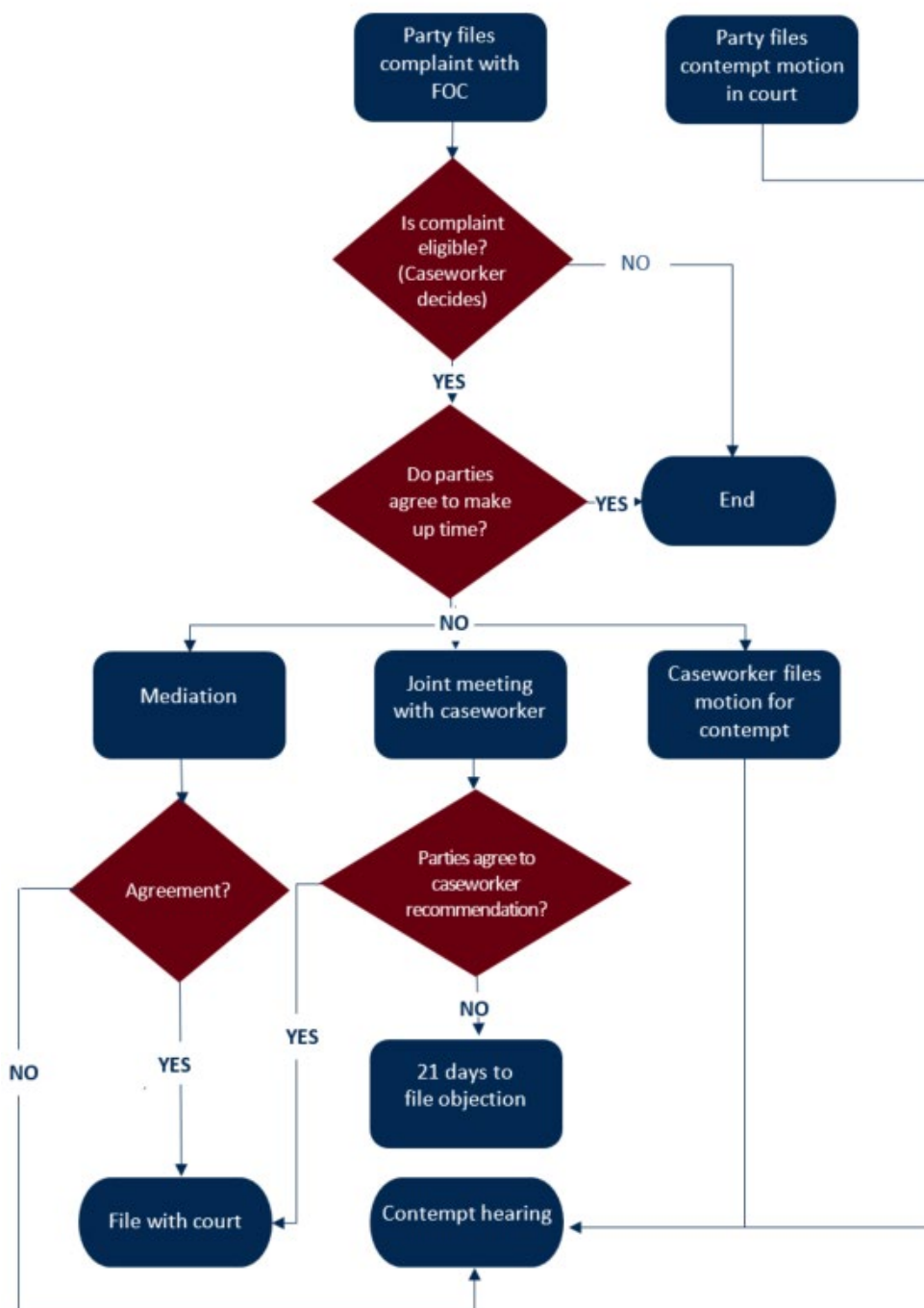
<sup>15</sup> The FOC cannot enforce a parenting-time schedule unless it is included in a court order.

<sup>16</sup> Mediation services switched to video mediation during the pandemic.

## BACKGROUND

When parties reached an agreement or accepted the caseworker's recommendation, the agreement or recommendation was filed with the court. If the judge approved the agreement or recommendation, it was entered as a court order. If the parties did not reach an agreement or did not accept the caseworker's recommendation, they could file a motion for a court hearing. Figure 1 depicts the complaint resolution process that the FOC used before launching ODR.

FIGURE 1. TRADITIONAL COMPLAINT PROCESS



## BACKGROUND

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Parties could also contact the FOC to get help with modifying their parenting-time schedule or obtaining a new parenting-time order. Figure 2 depicts the complex process used for matters prior to the launch of ODR. These requests generally came to the FOC when circumstances changed, for example, when a parent changed their employment or their child switched after-school activities. In these instances, the caseworker determined a course of action based on whether the parties had already reached an agreement about the new schedule and, if not, whether they were likely to work out an agreement. If the parties had already agreed to specific schedule modifications, their caseworker drafted the order and mailed it to the responding party for signature. The second party signed the order and mailed it to the initiating party (i.e., the party who initiated the matter with the FOC) for signature. After signing the order, the initiating party mailed it back to the caseworker.<sup>17</sup> The caseworker then forwarded the order to the judge electronically to obtain their review and approval. Completing these steps often took weeks, with the timing being largely dependent on the conscientiousness of the parties involved and the efficiency of the United States Postal Service. If either party declined to sign the order, the initiating party could file a motion for a hearing with a referee.<sup>18</sup>

If the parties had not yet agreed on a new schedule but the caseworker believed they were good candidates for mediation, the caseworker referred them to an outside mediation provider. If the parties reached an agreement through mediation, the mediator drafted the resulting agreement and sent it to their caseworker for review. The caseworker then forwarded it to the judge for review and approval. If the parties did not reach an agreement in mediation, they could either drop the matter or file a motion for a hearing with a referee.

When parties wanted to change their parenting-time schedule but their caseworker believed they were unlikely to reach an agreement without assistance (e.g., when the parties had a high-conflict relationship or returned to court repeatedly), the caseworker directed them to file a motion for a hearing with a referee. If the parties did not reach an agreement during the hearing, the referee made a recommendation for a new parenting-time schedule. The parties had 21 days to object. If they did not object, the referee sent the new schedule to the judge for review and approval. If one of the parties objected to the recommendation, the judge held a *de novo* hearing, which the caseworker attended.

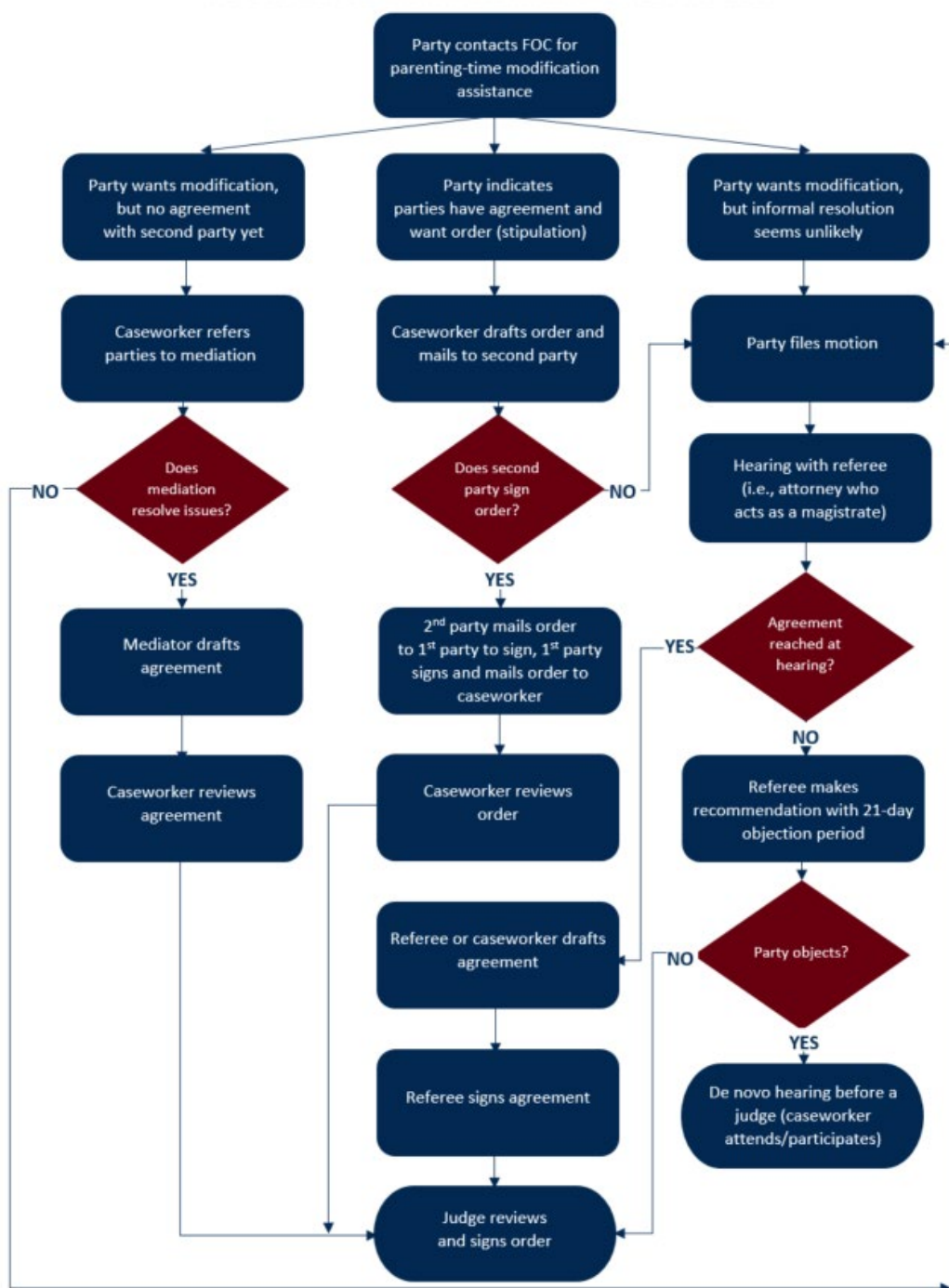
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<sup>17</sup> After the onset of the COVID-19 pandemic, the state created an online portal that could be used to upload and sign agreements. Not all caseworkers used this portal during the evaluation period.

<sup>18</sup> A referee is appointed by the court to hear testimony and arguments on matters other than spousal support. The referee then recommends a resolution to the judge.

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FIGURE 2. PRE-ODR PARENTING-TIME PROCESS



## ODR PROGRAM PROCESS

When the FOC established the ODR program, its leadership envisioned a required process in which most parties could not opt out. Caseworkers would have some flexibility in deciding which matters to submit to ODR but were instructed to strongly encourage parties to use ODR

## BACKGROUND

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in most situations; however, parties could actively refuse to do so at two junctures—when the caseworker discussed the use of ODR with them and after they registered on the platform and learned more about the process. They could also opt out passively by not registering on the platform.

Parenting-time complaints, parenting-time modifications, child support modifications, child support review objections, and custody modifications were eligible for ODR during all or part of the evaluation period. However, matters in which at least one party had an attorney were not eligible. The platform for the evaluated ODR program was text-based and asynchronous.

During the evaluation period, the first step in the ODR process was for the caseworker to determine whether ODR was appropriate for the parties and their circumstances. The reasons for which caseworkers deemed ODR inappropriate included parties having a highly litigious relationship or not being proficient in English. Initially, some caseworkers based their decision on other factors as well, including their assessment of whether the parties would gain anything from participating in ODR. Near the end of the pilot program (early August 2021), caseworkers were instructed to send all matters to ODR unless the parties were highly litigious, had been unsuccessful in ODR in the past, or had limited English proficiency (because the platform only supported English). In addition, caseworkers could use their judgment to exempt matters in which the parties had a history of IPV.

If the caseworker determined that the matter was appropriate for ODR and the initiating party wanted to participate in the program, the caseworker sent emails and/or texts to both parties and entered both parties' names and email addresses into the ODR system, which then automatically sent an email instructing the parties to log on to the Matterhorn platform and register for ODR.<sup>19</sup> At that point, both parties had the opportunity to actively opt out of participating in ODR by checking an opt-out box during the registration process. To do this, they were presented with either a "complainant opt out" or "respondent opt out" box (based on which party they were). No explanation of the opt-out option or its consequence was provided with these boxes.

During the registration process, the parties were also asked to read and sign (by typing their name) an agreement to participate in ODR. In the form, the parties were asked to acknowledge the following: "due to the electronic nature of the services, I understand that confidentiality is not guaranteed." They were also informed that the caseworker would "maintain files in a confidential manner."<sup>20</sup> The form did not contain information about what maintaining files in a

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<sup>19</sup> See Appendix B for an example of the text used for the automated invitation emails.

<sup>20</sup> See Appendix B for an example of the Agreement to Use ODR.

## BACKGROUND

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confidential manner meant, including how their communications may or may not be used during any later proceedings concerning their matter.

The parties also completed an IPV screening on the platform. The caseworker reviewed the parties' responses to this screening to determine whether IPV had occurred between the parties. If the caseworker's review suggested that IPV had occurred, they conferred with the party who had reported experiencing IPV and then decided whether the case should move forward with ODR and, if so, whether the parties would communicate only with the caseworker or would also communicate with each other.<sup>21</sup> Caseworkers could change the communication options available on the platform to implement these decisions. Joint (i.e., between-party) communication on the platform was not permitted when there were active or past personal protection orders between the parties.

For all cases, the caseworker facilitated communications between the parties on the ODR platform and could communicate with each party individually. The platform was text-based and asynchronous. See Appendix B for a screenshot of the ODR conversation space. The parties and caseworker communicated via an open text format with the goal of reaching agreement on the relevant issues. The platform did not provide any guidance regarding the content or style of communication. Instead, the caseworker monitored communications between the parties and intervened when necessary. Parties and caseworkers uploaded and shared documents as needed. If the parties reached an agreement, they signed the resulting document on the platform and the caseworker forwarded it to the judge for approval and signature. If the parties did not reach an agreement, they had the option of requesting a court hearing to obtain a ruling by the judge.

Matters that did not involve parenting-time complaints followed the same process as those that did, except caseworkers did not have to determine whether the parenting-time order had been violated.

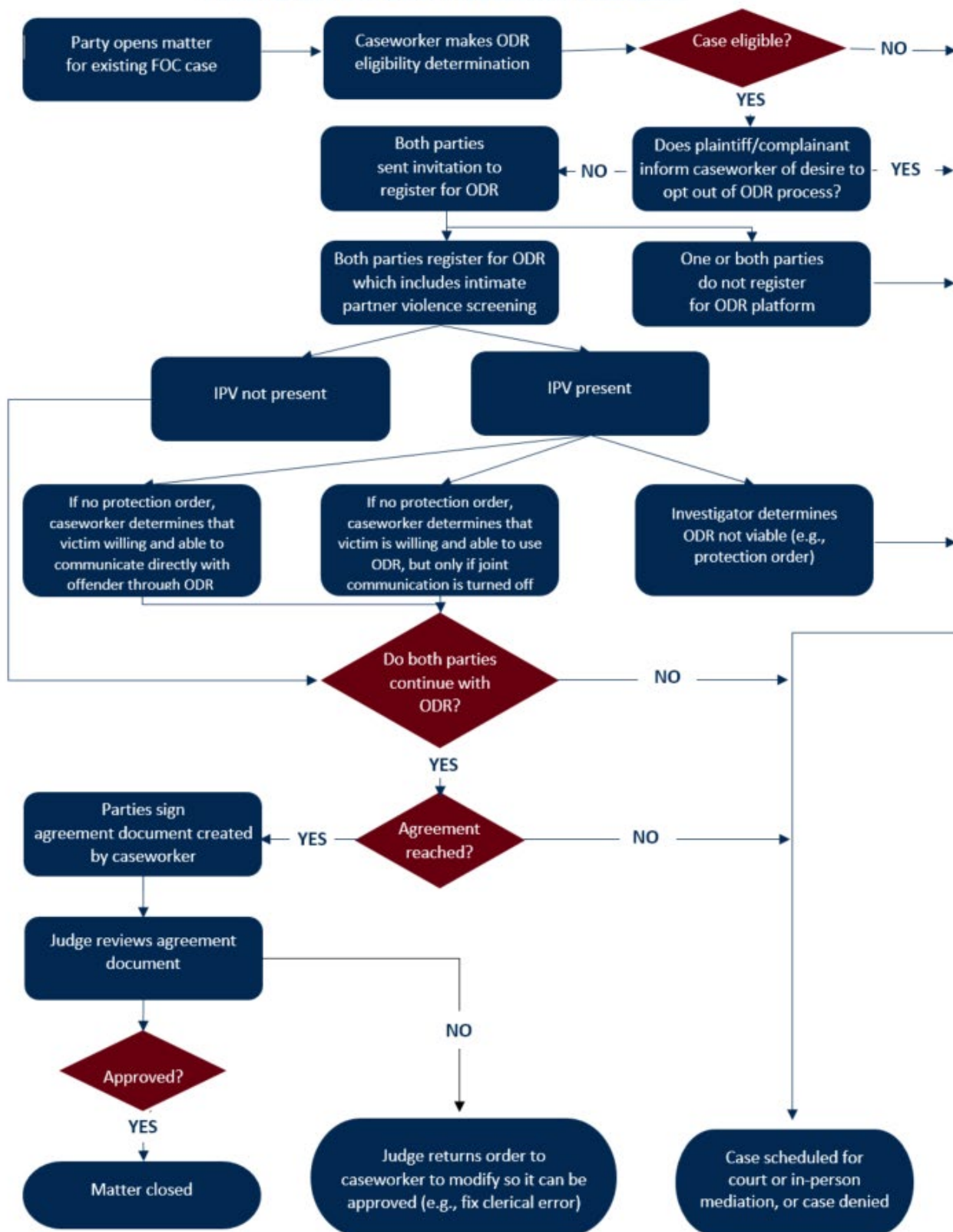
Figure 3 illustrates the process used for matters that were eligible for the ODR program. The figure illustrates the manner in which eligible matters were resolved through the program and the many ways in which ODR was cancelled and set for resolution by other means.

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<sup>21</sup> Generally, when a matter involving IPV did not proceed to ODR, it was set for a hearing.



FIGURE 3. FOC ODR PROGRAM PROCESS





# FINDINGS AND RECOMMENDATIONS

The Friend of the Court (FOC) works with parties who have current child support, parenting-time schedule, and custody court orders. Generally, these parties are divorced or separated or were never married to each other but had children together. In rare instances, one of the parties is the children's guardian or foster parent.

The FOC's leadership wanted to determine whether and how the FOC should improve its new online dispute resolution (ODR) program, as well as whether it was achieving the goals of creating an easy-to-use program that provides participants with a favorable experience, increases the number of agreements, reduces the number of hearings, and makes the case disposition process more efficient.

To provide relevant information to the FOC, we invited parties to complete a survey shortly after their matters were filed with the FOC, generally before receiving assistance for that matter ("Survey 1") and when it closed out of ODR ("Survey 2"). Survey 2 was sent to parties for whom FOC caseworkers had entered contact information into the ODR platform. This survey was sent shortly after the parties' matters were closed out of the ODR platform, whether they used it or not. Parties who were not offered ODR (i.e., whose contact information was not entered into the ODR platform) participated in Survey 1 only.

In addition to gathering survey data, we compiled information from the FOC, the court, and Matterhorn on participation rates, access issues, agreement and hearing rates, and efficiency (i.e., time from filing to close and staff time spent on a case). Using semi-structured interviews, we also asked four caseworkers and the Assistant Friend of the Court: Field Services Division (AFOC) about the challenges and benefits of ODR to the parties as well as to them personally. To gain an understanding of factors that might enhance or hinder informed participation in ODR, we reviewed information the parties receive about the ODR process, how the ODR platform works, and the benefits and risks of participation.

The evaluation period ran from November 2, 2020, through August 31, 2021. Information on case outcomes was collected through October 21, 2021. See Appendix A for a detailed description of our data collection procedures.

## FINDINGS AND RECOMMENDATIONS

### PARTIES' EXPECTATIONS FOR ODR

Participation in ODR is a function of the parties' expectations of the process. If parties have low expectations of ODR, or concerns about its use, they may not attempt to participate in it. To explore parties' initial understanding of and feelings about ODR, we surveyed any party who initiated new matters and any responding parties who were offered ODR, shortly after their matters were opened with the FOC (generally before they received any FOC assistance for that matter) ("Survey 1"). The response rate for Survey 1 was 56.7%,<sup>22</sup> which is substantially higher than rates for many research surveys for which participants are recruited by email.<sup>23</sup> Appendix A describes how we recruited participants and administered the survey; Appendix C provides more information about the sample. The distribution of matter types represented in the Survey 1 sample compared favorably with the distribution from the population of all FOC cases that were eligible for ODR during the evaluation period. See Appendix H for relevant analysis.

#### Background Information

Parenting-time complaints were the most common matter type (44.7%), and most survey participants (62.2%) had initiated the current matter with the FOC. Almost two-thirds were divorced from the other party. The

Table 1: Characteristics of Survey 1 Participants and Matters They Were Handling		
Matter Type – check all that apply (n = 47)*		
Parenting-Time Complaint	21	44.7%
Parenting-Time Modification	14	29.8%
Child Support Negotiation	10	21.3%
Child Support Objection	2	4.3%
Child Custody	4	8.5%
Other	8	17.0%
Who Initiated the Matter (n = 45)		
Survey Participant	28	62.2%
Other Party	8	17.8%
Both Parties	9	20.0%
Relationship (n = 51)		
Divorced	33	64.7%
Never Married	18	35.3%
Attempted to Resolve Matter Prior to FOC (n = 46)		
Yes	33	71.7%
No	13	28.3%

\*Note: As this was a "check all that apply" question, the cumulative % is > 100%.

<sup>22</sup> Surveys were returned for 51 of the 90 matters for which surveys were sent (51/90 = 56.7%). Survey 1 invitations were disseminated starting on November 2, 2020, but were suspended between February 1 and March 19 as the evaluation team worked out changes to its data-sharing agreement with the 20th Circuit Friend of the Court. Survey distribution ended on August 31, 2021.

<sup>23</sup> See e.g., JAMES S. KAKALIK ET AL., AN EVALUATION OF MEDIATION AND EARLY NEUTRAL EVALUATION UNDER THE CIVIL JUSTICE REFORM ACT 24–25 (Institute for Civil Justice 1996), [http://www.rand.org/content/dam/rand/pubs/monograph\\_reports/2007/MR803.pdf](http://www.rand.org/content/dam/rand/pubs/monograph_reports/2007/MR803.pdf) ("Complete responses to our surveys were received from . . . about one-ninth of the litigants on closed cases (about one-fifth of the litigants on closed cases for whom we had addresses)."); James S. Kakalik et al., *Discovery Management: Further Analysis of the Civil Justice Reform Act Evaluation Data*, 39 B.C. L. REV. 613, 618 (May 1998) (noting a 13% response rate for mail study of litigants' perceptions of court proceedings); Katja Lozar Manfreda et al., *Web Surveys Versus Other Survey Modes; A Meta-*

## FINDINGS AND RECOMMENDATIONS

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rest had never been married to the other party. Survey participants tended to have previous experience with the FOC. The participants had initiated 5.29 matters, on average, with the FOC prior to the current one (range: 0-40). They reported that the other party had filed an average of 1.39 matters previously. See Table 1 for more information.

Most survey participants (71.7%) had tried to resolve the matter with the other party before seeking assistance from the FOC. They indicated they texted, emailed, talked on the phone, or talked to the other party in person. Eight (17.4%) reported that they attended mediation.

### Plan to Use ODR

We asked parties whether they planned to use ODR (see Table 2). The majority (78.4%) answered affirmatively, while 15.7% answered “maybe.” Half (50.0%) of the eight who answered “maybe” indicated that they were unsure whether they would use ODR because they did not know whether the other party would want to use ODR.<sup>24</sup> These impressions suggest that parties were unaware that ODR use was required with few exceptions. In addition, these results suggest that parties

would benefit from reassurance that the FOC will convey the general ODR requirement to the other party, which should make the use of ODR seem less negotiable between the parties. Given the negative emotions and conflict levels reported by the parties vis-à-vis the other party, and the caseworkers’ reports of contentiousness in many cases, parties who want to use ODR should not perceive that doing so might entail making a concession to the

**Table 2: Plan to Use ODR (n = 51)**

Yes	40	78.4%
No	2	3.9%
Maybe	8	15.7%
Other	1	2.0%

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*Analysis Comparing Response Rates*, 50 INT’L J. MKT. RESEARCH 79, Table 1 Jan. 2008) (reporting, in a meta-analysis of 45 published and unpublished experimental comparisons between web and other survey modes, that response rates for emailed surveys ranged from 18.5% to 43.2% but were generally below 22%); William H. Schwab, *Collaborative Lawyering: A Closer Look at an Emerging Practice*, 4 PEPP. DISP. RESOL. L.J. 351, 371 (2004) (noting that 7.1% of disputants returned a completed mail survey about collaborative lawyering); Donna Shestowsky & Jeanne Brett, *Disputants’ Perceptions of Dispute Resolution Procedures: An Ex Ante and Ex Post Longitudinal Empirical Study*, 41 CONN. L. REV. 63, 80-81 (2008) (reporting a 6.4% response rate for surveys mailed to civil litigants with cases pending in the Circuit Court of Cook County, Illinois); Tse-Hua Shih & Xitao Fan, *Comparing Response Rates in E-Mail and Paper Surveys: A Meta-Analysis*, 4 EDUC. RSCH. REV. 26 (2009) (reporting on a meta-analysis which examined 35 study results within last 10 years that directly compared the response rates of e-mail versus mail surveys, and finding that that email surveys on average had a response rate of 33%); Lamont E. Stallworth & Linda K. Stroh, *Who is Seeking to Use ADR? Why Do They Choose to Do So?*, 51(1) DISP. RESOL. J., 30, 33-34 (Feb. 1996) (noting that 3,000 parties with cases pending at the Illinois Human Rights Commission were mailed a survey about their experience and only 211 parties responded); Lamont Stallworth et al., *The NLRB’s Unfair Labor Practice Settlement Program: An Empirical Analysis of Participant Satisfaction*, 59 DISP. RESOL. J., 22, 25 (Nov. 2004–Jan. 2005) (reporting a 28% response rate for a mail survey of disputants to assess perceptions of a settlement program).

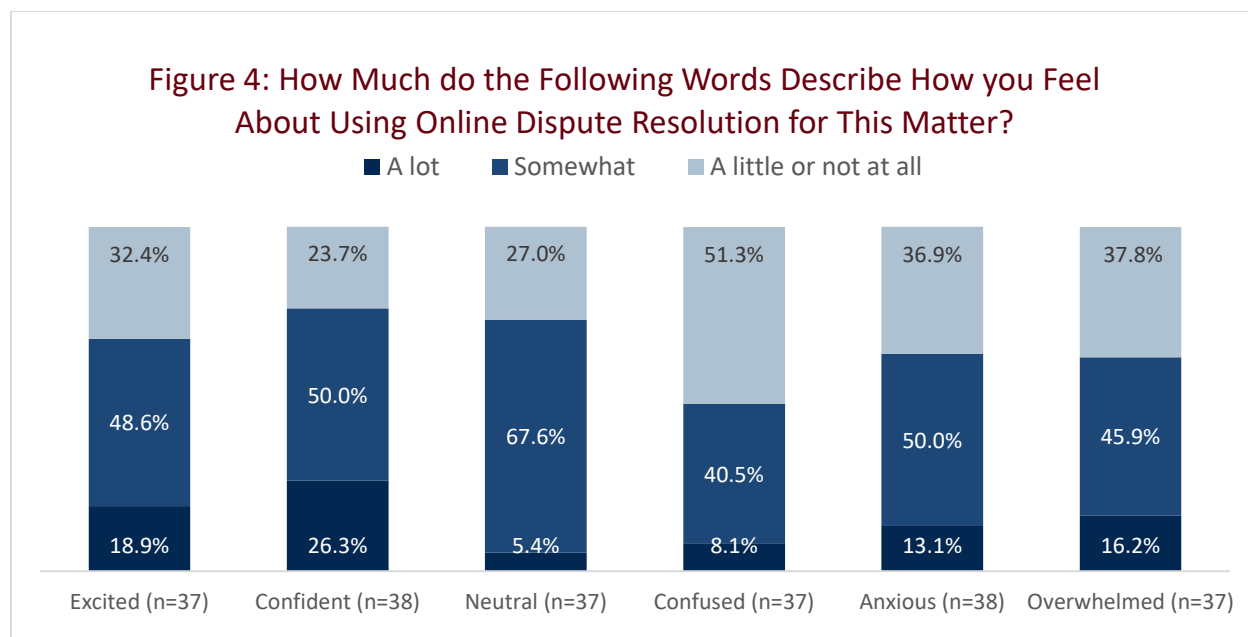
<sup>24</sup> We asked those who said “no” or “maybe” follow-up questions that assessed their reasoning. See Appendix D for their responses.

## FINDINGS AND RECOMMENDATIONS

other party. See Appendix D for more detailed information about parties' initial attitudes towards ODR.

### Feelings about Using ODR

We asked survey participants who reported that they were planning to use ODR to indicate, using a scale from 1 to 7 (not at all to very much), how specific emotions applied to their general feelings about using ODR. We grouped the responses as follows: little or not at all (i.e., low ratings) (1-2), somewhat (i.e., medium ratings) (3-5), and a lot (i.e., high ratings) (6-7). As shown in Figure 4, the majority (67.6%) felt at least somewhat excited, with 18.9% stating they were very excited to use ODR. In addition, 76.3% of the parties felt at least somewhat confident about using ODR; participants were split almost evenly between those expressing high (26.3%) and low (23.7%) levels of confidence, a pattern that differed from the results for other emotions. With regard to negative emotions, 62.1% felt at least somewhat overwhelmed, a similar proportion (63.1%) felt at least somewhat anxious, and about half (48.6%) reported being at least somewhat confused. These patterns suggest that parties tend to feel more confident than confused, anxious, or overwhelmed, but the majority experience at least some anxiety and some sense of being overwhelmed.



*Note:* 19 respondents checked "Other" as an emotion. Only two participants explained their response for "other": "Hope it expedited the process"; "This isn't case sensitive at all."

### **RECOMMENDATION: Clearly communicate the general ODR requirement to both initiating and responding parties**

If caseworkers assure initiating parties that the FOC will require the responding party to participate unless they fit certain exceptions, it might reduce some of their anxiety and

## FINDINGS AND RECOMMENDATIONS

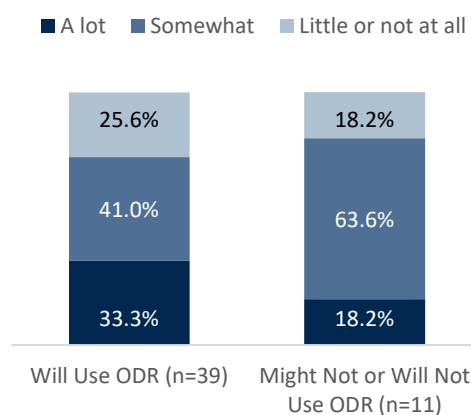
could also increase their willingness to use it.<sup>25</sup> Caseworkers should be given specific instructions for how to communicate expectations and educate parties to create a uniform experience for the FOC's clients. One way to accomplish this goal would be to provide caseworkers with a decision tree that includes a checklist of items to communicate to each party for each matter.

### Perceptions of the Likelihood of Reaching Agreement and Trust in Other Party, Nearly three quarters of the parties who indicated they were going to use ODR were at least somewhat confident that they could reach agreement. However, most participants did not

trust the other party to be truthful during ODR. We asked those who indicated that they planned to use ODR the following question: "How likely is it that you and the other party will work out an agreement that resolves this matter using online dispute resolution?" Those who indicated that they might not or would not use ODR were asked "How likely is it that you and the other party will work out an agreement that resolves this matter?" For either question, parties could answer on a scale from 1 to 7, where 1 = not at all, 4 = somewhat, and 7 = extremely.

We grouped the responses as follows: little or not at all (i.e., low ratings) (1-2), somewhat (i.e., medium ratings) (3-5), and a lot (i.e., high ratings) (6-7). The average was in the medium range ( $M = 4.33$ ;  $SD = 2.16$ ) for those who planned to use ODR as well as those who were unsure or did not plan to use it ( $M = 3.82$ ;  $SD = 1.54$ ).

Figure 5: Confident in Reaching Agreement



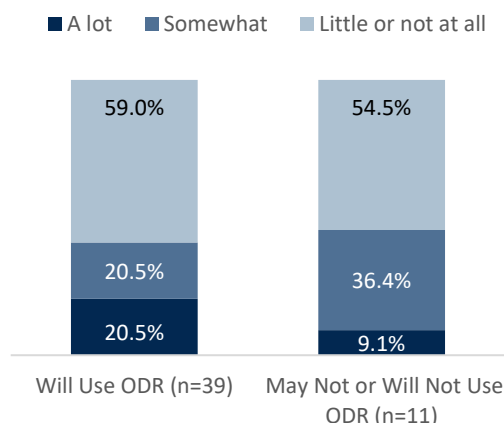
As shown in Figure 5, most of those who planned to use ODR (74.4%) were at least somewhat confident that they could reach an agreement online, with 33.3% expressing a high level of confidence. One quarter (25.6%) indicated they had little to no confidence in reaching agreement. Relative to those who said they might not or would not use ODR, a higher percentage of parties who planned to use ODR reported a high level of confidence that they would reach an agreement. Those who believed they could collaborate effectively with the other party might have been more inclined to use ODR; however, we did not have the data necessary to test this possibility.

<sup>25</sup> Legal scholarship suggests that lawyers fear that offers to use settlement procedures might signal that they do not have a strong case on the merits. See Donald G. Gifford, *The Synthesis of Legal Counseling and Negotiation Models: Preserving Client-Centered Advocacy in the Negotiation Context*, 34 UCLA L. REV. 811, 853 (1987). It is possible that parties have a similar concern.

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We asked each group how much they trusted the other party to be truthful during the resolution process. Parties answered on a scale from 1 to 7, where 1 = not at all, 4 = somewhat, and 7 = very much. We grouped the responses as follows: little or not at all (i.e., low ratings) (1-2), somewhat (i.e., medium ratings) (3-5), and a lot (i.e., high ratings) (6-7). **The majority of parties, whether they were planning to use ODR or not, did not trust the other party to be truthful.** The average was in the medium range ( $M = 2.95$ ;  $SD = 2.34$ ) for those who planned to use ODR as well as those who were unsure or did not plan to use it ( $M = 2.36$ ;  $SD = 1.63$ ). Although those who planned to use ODR and those who did not were almost equally likely to report a low level of trust in the other party, members of the former group were more than twice as likely as those in the latter group to report a high level of trust (see Figure 6). Although those who highly trusted the other party to be truthful might have been more motivated to plan to use ODR, we were unable to test this possible relationship between trust and ODR use intention.

Figure 6: Trust Other Party To Be Truthful



### Initial Emotions Toward the Other Party

***Those who planned to use ODR were more than twice as likely to report high levels of fear toward the other party compared with those who felt unsure about using, or were not planning to use, ODR***

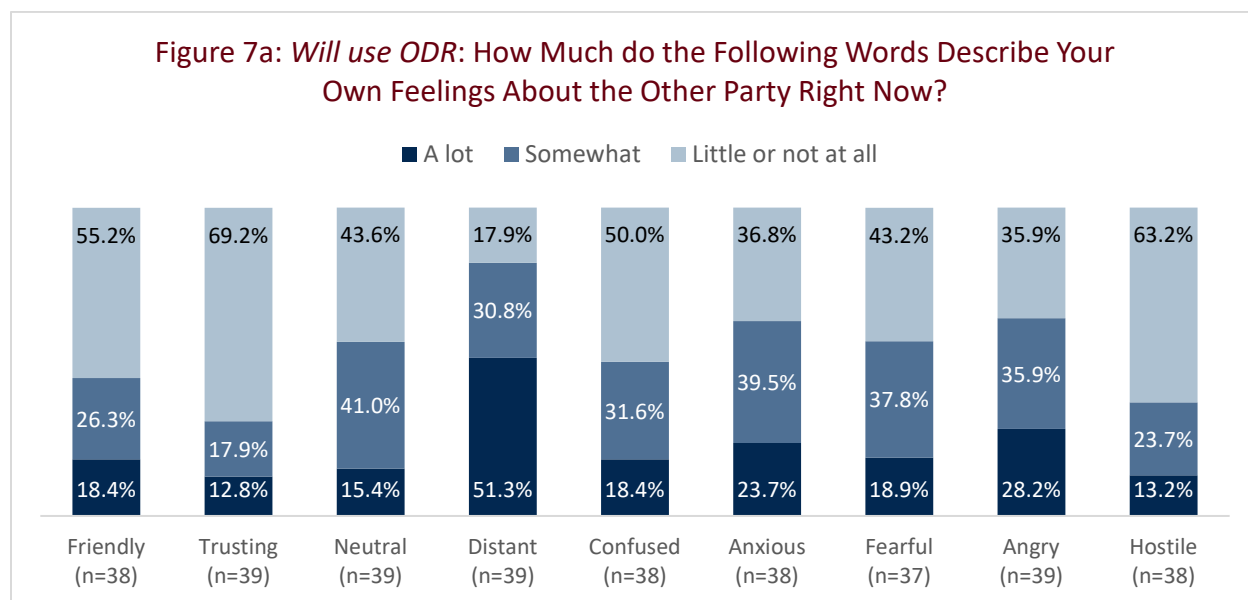
We asked all survey participants to describe their current relationship with the other party by rating how much various emotion terms described their feelings about that individual. They used a scale from 1 to 7 (1 = not at all; 4 = somewhat; 7 = very much), to indicate how several specific emotions applied to their general feelings about the other party. We grouped the responses as little or not at all (i.e., low ratings) (1-2), somewhat (i.e., medium ratings) (3-5), and a lot (i.e., high ratings) (6-7) and then separately analyzed responses for those who planned to use ODR (see Figure 7a) and those who were undecided or not planning to use ODR (see Figure 7b).

More than 65% of both groups reported feeling low levels of trust, and at least 40% of both groups reported high levels of distance. This pattern meshes with the view that family law cases are high-conflict and replete with extreme negative emotion.<sup>26</sup> Those who planned to use ODR

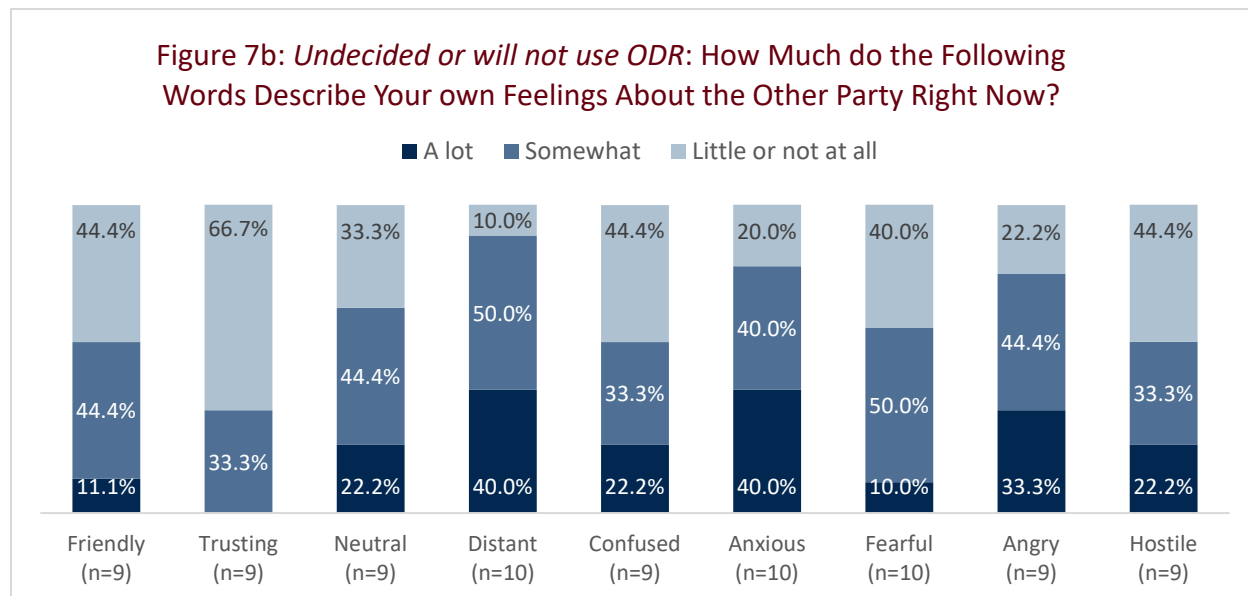
<sup>26</sup> See generally, Tonya Inman et al., *High Conflict Divorce: Legal and Psychological Challenges*, 45 HOUS. LAW. 24 (2008) (highlighting the level of conflict in high-conflict divorce cases); Thomas E. Schacht, *Prevention Strategies to*

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were almost twice as likely (18.9% vs. 10.0%) to report high levels of fear, suggesting that ODR might seem more appealing to parties with high levels of this emotion vis-à-vis the other party.



*Note:* 17 survey participants selected Other. Two also provided comments: "He said he was going to put a bullet in my head"; "My son is 5 states away."



*Note:* One survey participant selected Other.

*Protect Professionals and Families Involved in High-Conflict Divorce*, 22 U. ARK. LITTLE ROCK L. REV. 565, 570 (2000) (highlighting the harms associated with high-conflict divorce); Janet Weinstein & Ricardo Weinstein, "I Know Better Than That": The Role of Emotions and The Brain in Family Law Disputes, 7 J. L. FAM. STUD. 351, 353 (2005) (highlighting the impact that emotions have in family law disputes and how the legal system exacerbates those negative impacts).



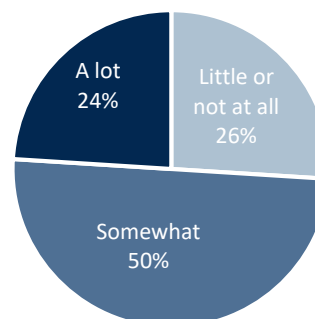
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### Video Mediation as an Alternative

**Most parties were at least somewhat attracted to using video mediation.** Due to the increased use of video for court procedures during the pandemic in many jurisdictions,<sup>27</sup> we asked those who completed Survey 1 to evaluate the possibility of using video mediation for their matter: “Imagine that the court offered you the option of trying to resolve this matter by mediating using video with the other party. How attractive would you find that option?”

Respondents answered on a scale from 1 to 7, where 1 = not at all, 4 = somewhat, and 7 = extremely. The average was in the “somewhat” range ( $M = 3.90$ ;  $SD = 2.02$ ). We consolidated their ratings as follows: little or not at all (i.e., low ratings) (1-2), somewhat (i.e., medium ratings) (3-5), and a lot (i.e., high ratings) (6-7). As depicted in Figure 8, while medium ratings were most common (50.0%), the others were nearly equally split in regard to giving it the highest possible rating (16.0%) or the lowest (20.0%).

Figure 8: Attractiveness of Video Mediation (n = 50)



When asked to explain their video mediation ratings in their own words, 39 parties commented, and they expressed a range of ideas that fit with several themes. Responses were coded according to procedures described in Appendix A. Below, we provide representative comments that corresponded with high ( $n = 10$ ), medium ( $n = 19$ ), and low ( $n = 10$ ) ratings, as well as the common themes that emerged. For a full list of the comments, see Appendix E.

**Those who provided high ratings for video mediation tended to explain their ratings by referring to its convenience (30.0%) or effectiveness (40.0%).** Representative comments:

- “It would be convenient not having to use a large portion of your day to come to an appointment in person, but, still allows for face to face contact.”
- “At least we would be able to see body language and tone. It helps understand what people are going through.”
- “I have tried to resolve and he continues to dismiss my conversation and not reply (sic)”

<sup>27</sup> *How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations*, PEW CHARITABLE TRUSTS (Dec. 2021), <https://www.pewtrusts.org/-/media/assets/2021/12/how-courts-embraced-technology.pdf>.

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**Comments from those who gave medium ratings to video mediation commonly addressed its effectiveness (26.3%) but otherwise were so wide-ranging that they tended to defy categorization.** Example comments:

- “I have a hard time connecting to video chats”
- “I have anxiety about devices not working, where face to face you have to be there”
- “It is convenient but not as good as in person for my situation specifically.”

**Those who provided low ratings generally commented on the tension they had with the other party (40.0%) or a desire to avoid in-person communication (20.0%), or seemed to question video mediation’s potential effectiveness for resolving their matter (20.0%).** Representative comments:

- “I would feel more intimidated having to see him”
- “I had a Zoom court date with a court referee and it was the most awful experience I have ever had with the courts.”
- “With everything that has happened i have a lot of dissent towards her. I have been on zoom meetings with her and the kids therapist so I know we can do it but I’d rather not have to look at her.”

The trend across the comments suggests that some parties believed that video mediation offered convenience, similar to the statements that emerged for the FOC’s text-based ODR program, while others were apprehensive about the unreliability of technology. Some parties indicated they valued the face-to-face aspect of video, which text-based ODR does not offer, while others indicated they preferred not to see the opposing party, which is a benefit of text-based ODR.

## ACCESS

Access is important for any new court program. If a court provides a service to its constituents, that service should be available to all eligible parties, and any exceptions to eligibility should be clear and consistently applied. Further, the service should be attractive to potential users; they should be informed of its existence and their eligibility to use it and should understand the benefits and risks involved; and users should be able to easily navigate the service and find it convenient to use.

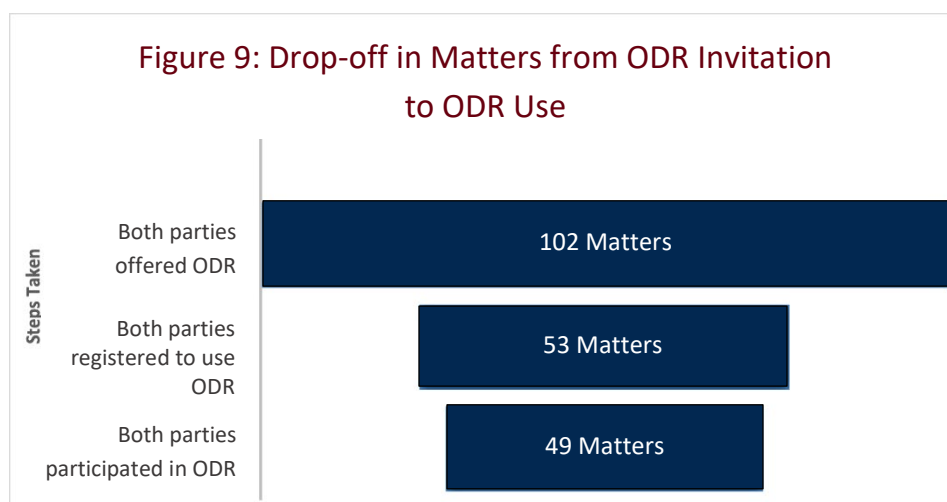
## ODR Use

The following steps needed to occur for a matter to undergo ODR at the FOC: 1) the caseworker determined that the matter was appropriate for ODR; 2) the caseworker offered ODR to both parties; 3) the parties registered for the program; and 4) the parties used the ODR platform.

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Parties could opt out by telling the caseworker they did not want to participate, by failing to register on the platform, or by not participating after they had registered.

We relied on caseworker self-reports to determine whether they offered ODR to the parties and whether ODR was used for any given matter. We supplied caseworkers with an Excel spreadsheet to record this information and provided written and video instruction on how to track and record the data.<sup>28</sup> We defined “use” as the caseworker and the parties working together to resolve the matter on the ODR platform. We cross-checked caseworkers’ assessments using data provided by Matterhorn regarding whether the parties did more than register on the platform. Any activity on the platform constituted “use.” Figure 9 depicts how many matters were left at different points of the process.



### Caseworker Offers of ODR

**Caseworkers offered parties ODR in 102 matters during the evaluation period.** Caseworkers first offered ODR to the initiating party. If the initiating party refused ODR, the responding party was not invited to use it. Most ODR offers ( $n = 73$  or 71.6%) were for parenting-time matters. Fifteen offers (14.7%) were for child support matters. Seven (6.9%) were for custody issues. Seven (6.9%) were for other matters.

In at least 19 matters, caseworkers decided not to offer parties the opportunity to use ODR.<sup>29</sup> Caseworkers were asked to note for each matter the reason they did not offer ODR. The most

<sup>28</sup> We asked caseworkers to use a spreadsheet to record all matters that were initiated by one of the parties. We were unable to verify whether they entered all matters into the spreadsheet. If they indicated they offered ODR to the parties, we were able to cross-check the matter against data provided by Matterhorn. See Appendix A for a list of the spreadsheet elements.

<sup>29</sup> We were unable to verify the exact number of matters in which the caseworkers decided not to offer ODR to the parties.

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common reasons given were the parties' recurrent filings with the court to resolve post-judgment matters and/or the high level of conflict in the parties' relationship.

ODR was also not available to parties represented by an attorney. In at least two cases, the caseworker offered ODR to parties who then opted not to use it because they wanted their attorney to help them with the matter.

### **RECOMMENDATION: Consider giving high-conflict parties the option to use ODR**

Parties in high-conflict relationships may want the option to communicate via text with the help of a caseworker. These parties should be offered this opportunity, the effects of which can be assessed in future evaluations.

### **RECOMMENDATION: Allow parties represented by attorneys to participate in ODR**

The National Center for Technology & Dispute Resolution Ethical Principles state that ODR programs should facilitate — not limit — access to representation.<sup>30</sup> All eligible parties should be allowed to benefit from ODR should they wish to participate. The FOC should work with Matterhorn to permit multiple individuals on a side to participate in ODR.

### ODR Participation and Opt-Outs

When both parties were offered ODR, they used it in 49 of the 102 matters that closed during the evaluation period.

Differently stated, **in 48.0% of matters in which both parties were given the opportunity to use ODR, both parties elected to use it.** Parenting-time matters accounted for the majority of ODR use. See Table 3. Although parenting-time complaints had the lowest rate of ODR use and

Table 3: ODR Use by Matter Type				
	Used ODR (n = 49)		Did Not Use ODR (n = 53)	
Parenting-Time Modification	17	55%	14	45%
Parenting-Time Complaint	15	36%	27	64%
Child Support Negotiation	6	46%	7	54%
Child Support Objection	0	0%	2	100%
Custody	6	86%	1	14%
Other	5	71%	2	29%

custody matters had the highest, there was no statistically significant difference in the rate of use across the matter types,<sup>31</sup> possibly because of the small sample size for some matter types.

<sup>30</sup> See *Ethical Principles for ODR Initiative*, THE NAT'L CTR. FOR TECH. & DISP. RESOL., <https://odr.info/ethics-and-odr/> (last visited Jan. 7, 2022); *ICODR Standards*, INT'L COUNCIL FOR ONLINE DISP. RESOL., <https://icodr.org/standards/> (last visited Mar. 12, 2022).

<sup>31</sup> For the 2 x 2 chi-square test (*i.e.*, matter type by ODR use) no statistically significant relationship between matter type (parenting-time complaints or parenting-time modifications vs. child support modifications or objections) and ODR use emerged:  $\chi^2(1) = .08$ ,  $p = .79$  ( $\phi = -.03$ ).

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The ODR program's 48% participation rate is much higher than the rates prior studies have found for debt and small claims programs in Utah (36%),<sup>32</sup> the Ninth Judicial Circuit of Florida (21%)<sup>33</sup> and Collin County, Texas (24%),<sup>34</sup> and for a family mediation program in Clark County, Nevada (33%).<sup>35</sup> The higher participation rate could be due to the FOC's program having lower barriers to use and/or better messaging/marketing. It could also be due to other factors, such as the nature of the matters that are involved or the parties' general understanding that their caseworker would facilitate their interactions on the platform. This program differs from the comparison ODR programs in that it is limited to post-judgment family matters and the parties' interactions are facilitated by a person who is already familiar to them.

### **Parties opted not to use ODR in 53 of the 102 matters (52.0%) in which it was offered.<sup>36</sup>**

Parties were able to opt out when their caseworker first offered them ODR or later by not registering on the platform or by deciding not to use ODR after registering. According to data entered by the caseworkers, in about half (26 of 53) of the matters in which the parties opted out, one or both parties did not register for ODR. See Table 4.

For those 26 matters, the caseworkers did not know the reason the parties did not register. In an additional 11 matters in which the parties opted out, the caseworkers noted that the parties were not comfortable with technology, wanted to proceed straight to a hearing, or preferred to work

Table 4: Caseworker Reports of Why Parties Opted Out of ODR (n = 53)		
	Number	Percent
Failed to register	26	49.1%
Not comfortable with using technology	5	9.4%
Just wanted to have a hearing	3	5.7%
Party had attorney	3	5.7%
Other	5	9.4%
Unknown	11	20.8%
Total	53	100%

with their attorneys, who could not participate in ODR. In another 11 instances, the caseworkers were unable to provide information on why the parties opted out. In these

<sup>32</sup> STACY BUTLER, ET AL., THE UTAH ONLINE DISPUTE RESOLUTION PLATFORM: A USABILITY EVALUATION AND REPORT (Innovation for Justice Program ed., 2020).

<sup>33</sup> ONLINE DISPUTE RESOLUTION PILOT PROGRAM REPORT: RECOMMENDATIONS FROM THE ONLINE DISPUTE RESOLUTION WORKGROUP OF THE COMMISSION ON THE TRIAL COURT PERFORMANCE AND ACCOUNTABILITY AND THE COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION RULES AND POLICY 21 (January 2021) [hereinafter ONLINE DISPUTE RESOLUTION PILOT PROGRAM REPORT]

<sup>34</sup> DONNA SHESTOWSKY & JENNIFER SHACK, ONLINE DISPUTE RESOLUTION FOR DEBT AND SMALL CLAIMS CASES: A REPORT ON A PILOT PROGRAM IN COLLIN COUNTY, TEXAS (University of California, Davis, and Resolution Systems Institute 2022).

<sup>35</sup> *Clark County Family Mediation ODR Case Studies*, TYLER TECHNOLOGIES, <https://www.tylertech.com/resources/case-studies/clark-county-family-mediation-odr-case-study> (last visited Mar. 12, 2022).

<sup>36</sup> For three matters, the offer was at the end of the data collection period, and the parties had not yet opted in or out of the program when data collection ended.

## FINDINGS AND RECOMMENDATIONS

situations, parties opted out of ODR after registering by failing to provide required information during the registration process, not using the platform, or telling their caseworker they had changed their mind about using ODR.

Notably, both parties opted out in 17 of the 102 matters (16.7%) in which parties were offered ODR. In an additional 24 matters, only the responding party opted out, while only the initiating party dropped out in an additional nine cases. See Table 5.

Table 5: Which Party Opted Out of ODR? ( <i>n</i> = 102 offered ODR)		
	Number	% of Offered
Both parties	17	16.7%
Initiating party only	9	8.8%
Responding party only	24	23.5%
Unknown	3	2.9%
Total	53	52.0%

### **RECOMMENDATION: Make it more challenging for parties to opt out of ODR**

Despite the program's higher than average participation rate compared with other ODR programs that underwent recent evaluations, more can be done to discourage opt-outs. The program is designed such that parties need to proactively register on the platform. They could therefore passively opt out of ODR by not registering. Parties could also opt out after registering for it without needing to provide an explanation for doing so. For these reasons, the program functions more as an opt-in system. More parties might use the ODR program if it was designed to be required with few exceptions,<sup>37</sup> wherein, for example, ODR would be required of parties unless they provided a suitable justification for opting out.

One improvement to the messaging would be to let parties know the consequences of opting out at the time the platform presents them with the opt-out button. This message, for example, could state that by opting out they may not receive FOC assistance in resolving their matter outside of court.

### **Message**

Research has found that the messages parties receive about alternatives to adjudication can influence their decision to participate in these alternatives. For example, studies of small claims mediation suggest that the manner in which judges or other court personnel introduced mediation to parties influenced participation rates. Simply offering mediation was less effective at prompting parties to attempt mediation than making an offer accompanied by an explanation of mediation and its benefits, including the opportunity for parties to ask

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<sup>37</sup> See generally RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE (2021) (reviewing research demonstrating that people are less likely to use programs that are opt-in as compared to ones that are opt-out).

## FINDINGS AND RECOMMENDATIONS

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questions.<sup>38</sup> Additionally, in an evaluation of eight foreclosure mediation programs, parties were more likely to participate in mediation when a program had a message that instructed parties that their participation was required, with rare exceptions.<sup>39</sup>

**Our review of the FOC’s messaging to parties regarding its ODR program suggests a need for greater uniformity and clarity.** At the FOC, parties first learn of the ODR program from their caseworkers. Caseworkers can tailor their message to the parties and insist on the parties’ participation, as one caseworker who was interviewed reported doing, and they can communicate their enthusiasm for the process. **Our interviews with caseworkers suggest that some may have a more effective message or message delivery than others.** It is possible that some have greater comfort with and/or less resistance to using ODR.

The FOC’s next opportunity to inform the parties about ODR is the automated message sent via the ODR platform. **Although the automated message for those involved in matters pertaining to parenting-time modifications, custody or child support (see Figure 10) is short and written in clear language, clients may find it confusing** for a few reasons. First, although ODR is intended to be required, the email “invites” parties to participate, thus implying that it is an opt-in program. The fact that many parties did not use ODR even after registering on the platform suggests that the general requirement was not widely understood. Second, the message uses the term “investigator” even though the FOC staff members indicated to us that they usually use the term “caseworker” rather than “investigator” when communicating with parties because they find that parties have a better understanding of that term. Third, the invitation contains wording that may lead the parties to believe the message was sent to them in error. It states that it comes from the “20th Circuit Court” rather than from the FOC where their matters are being handled. It also states that the program pertains to their “case,” which may seem inapplicable to parties who do not have a case filed in court.

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<sup>38</sup> Heather Scheiwe Kulp, *Increasing Referrals to Small Claims Mediation Programs: Models to Improve Access to Justice*, 14 CARDOZO J. CONFLICT RESOL. 361, 386-87 (Jan. 2013).

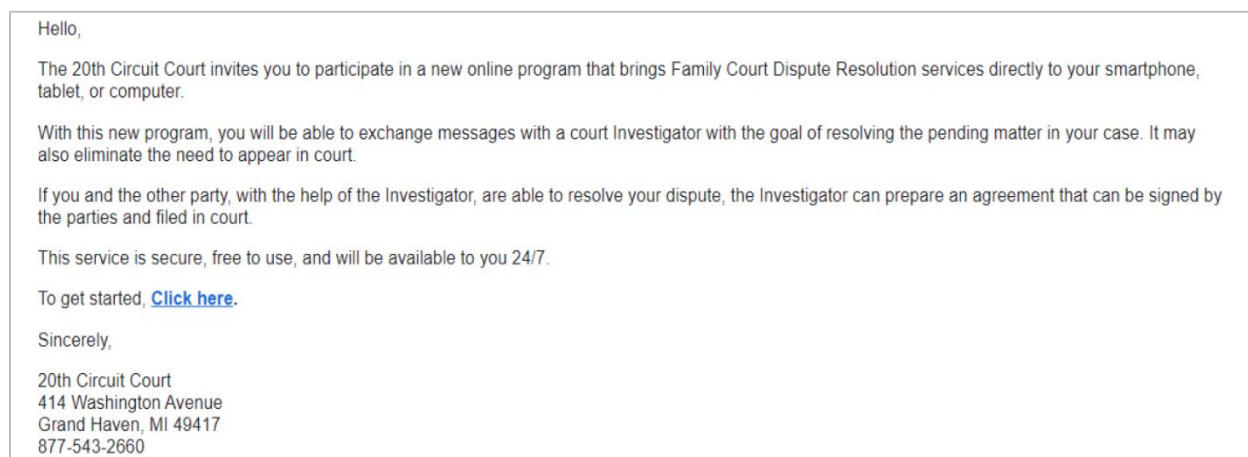
<sup>39</sup> JENNIFER SHACK, SAVING HOMES, BUILDING UNDERSTANDING: AN EVALUATION OF THE EIGHT FORECLOSURE MEDIATION PROGRAMS FUNDED BY THE ILLINOIS ATTORNEY GENERAL 43-45 (Resolution Systems Institute 2018).



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**Figure 10: Automated Invitation Email from ODR Platform for Matters Involving Parenting-Time Modifications, Custody, and Child Support**



**RECOMMENDATION: Share messaging tips among caseworkers**

Our interviews with caseworkers suggested that some may have been more effective than others at encouraging clients to use ODR. It may be helpful to have caseworkers share their ideas for effective messaging, in regard to both message substance as well as delivery.

**RECOMMENDATION: Review the language used in the automated email**

As noted, the automated email signals that participation in ODR is opt-in rather than generally required. Further, the language used in the email (e.g., “investigator” rather than “caseworker” and “20<sup>th</sup> Circuit Court” rather than “the FOC”) might confuse some parties. The FOC should review and modify the language used in the email to present a stronger message, using terminology that is more familiar to its clients. The FOC should test the new email message with FOC clients to obtain their feedback regarding message clarity.

### Information Provided to Parties about ODR

**Parties who were invited to use ODR lacked awareness of key features of the program.** To gauge parties’ initial understanding of the ODR program in Survey 1, we provided parties with a list of possible ODR program features and asked them to indicate which ones matched the features of the FOC’s ODR program. As reported in Table 6, 40 out of 50 parties (80.0%) correctly responded that a caseworker would help them try to reach an agreement. However, only 14 out of 50 (28.0%) correctly understood that this process would involve negotiation via text-based communication. Some parties (10.0%) incorrectly believed that the platform included a video communication component. Moreover, half (25 out of 50) were confused about the cost—only half correctly indicated that the ODR program was free to use.

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Table 6: What are the features of the ODR program? (check all that apply)* (n = 50)		
	Number	Percent
<b>The other party and I exchange written messages to negotiate</b>	<b>14</b>	<b>28.0%</b>
The other party and I negotiate online using video	5	10.0%
<b>A caseworker helps us try to reach agreement</b>	<b>40</b>	<b>80.0%</b>
We don't get the help of a caseworker to try to reach agreement	1	2.0%
<b>It is free</b>	<b>25</b>	<b>50.0%</b>
It costs \$50 to participate	0	0.0%
<b>We can try to reach agreement online</b>	<b>32</b>	<b>64.0%</b>

\* Note: Bolded items represent actual features of the ODR program.

Parties who are offered a dispute resolution process should be able to make an informed decision regarding whether to use it, even when that process is generally required. Making an informed decision requires that parties have a good conception of what the process entails, understand that they are eligible for it, and are aware of the benefits and risks of participating in it. The FOC provides parties with information about ODR at three separate points: when caseworkers first inform parties about ODR, in the automated email generated by the ODR platform “inviting” parties to use ODR, and when parties click on the link to go to the platform. In addition, the FOC’s website contains a link to the platform as well as a press release with information about ODR conception.<sup>40</sup>

When it comes to educating parties about ODR, using a multi-modal approach is good practice.<sup>41</sup> However, a review of the information provided in the email, on the platform, and on the FOC’s website indicates that the FOC misses opportunities to educate eligible parties in all three locations. The information provided in the email and on the platform is minimal and does not include an explanation of the benefits or risks to the parties, nor does it address the issue of communication confidentiality. Neither source explains that parties and caseworkers communicate via text. While the FOC’s website contains a slightly more detailed explanation of ODR and mentions some benefits, it does not communicate risks. Furthermore, parties may not perceive a press release as intended for them to read.

<sup>40</sup> See Release, Matterhorn, Friend of the Court 20<sup>th</sup> Circuit Court Ottawa County Now Offering Online Dispute Resolution for Parenting Time Issues, <https://www.miottawa.org/Courts/FOC/pdf/MatterhornPressRelease.pdf> (last visited Mar. 12, 2022).

<sup>41</sup> Experts in Family Law, ODR, and Access to Justice Responded to a Survey Regarding Best Practices in Family ODR and Took Part in a Three-Day Convening on the Topic. Resolution Systems Institute, publication (forthcoming).

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A user experience study of Utah's pilot ODR program found that test participants wanted to be informed about ODR on the platform's home page, wanted legal terms to be defined, and desired more instruction regarding how to use the platform. After conducting user testing, the researchers recommended that the court include an FAQ button on the home page, a quick guide, and a welcome video outlining how ODR works. They also recommended closed captioning the video.<sup>42</sup>

### **RECOMMENDATION: Improve methods for educating parties on key features of the ODR program and how to use it**

The program's features and instructions for using it should be included in caseworkers' offers of ODR to the initiating party, in the automated email, on the ODR platform, and on the FOC website. In addition, the FOC should:

- Provide more information about the ODR process and how to use the platform. A noteworthy example of this type of information can be found on Delaware's Justice of the Peace ODR platform. The platform's FAQ section is lengthy, with a good description of the ODR process.<sup>43</sup>
- Use a multimedia approach (e.g., post both a text-based description of the ODR process and a short video explaining the process on the FOC website and the program platform).
  - Use emails and text messages to share links to this information with parties.
- Instruct caseworkers that when they have initial conversations with parties about ODR, they should not assume that parties understand the core features of the program; direct caseworkers to review the ODR's core features, check in with parties to ensure their understanding, and invite questions.

### **RECOMMENDATION: Ensure the parties know about the benefits and risks of participating in ODR**

The parties should be granted the opportunity to give informed consent to participate in ODR. Explanations of the process should list expected benefits and possible risks associated with using it, starting with when the caseworkers inform the parties about ODR through to the agreement to use ODR.

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<sup>42</sup> BUTLER ET AL., *supra* note 32.

<sup>43</sup> See *Frequently Asked Questions*, DEL. JUST. OF THE PEACE COURT ONLINE DISP. RESOL., <https://cii2.courtinnovations.com/DEJPCOURT/faq> (last visited Feb. 16, 2022).

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**RECOMMENDATION: The FOC should seek clarity under the relevant law regarding whether ODR communications are privileged communications and inform the parties of any risks of disclosure**

Parties should be informed of whether and how participant communications on the ODR platform could be used in future proceedings. This information should be disclosed in the agreement to use ODR.

### Effect of Technology on Access

Access to justice initiatives strive to help all parties obtain access to the same legal services to protect their legal rights, thereby making the rule of law fair for everyone.<sup>44</sup> For ODR, access means that all parties have the technological capacity to log on to, navigate and utilize the platform. In addition, the platform should be useable by individuals with a disability or who have limited English proficiency, as well as those who are not digitally literate, which might entail the court providing additional assistance to those who need it. The available information about the FOC's clients' ability to access, navigate, or work on the platform is limited but suggests that there is room for improvement.

### Accommodations for Disability or Language Barriers

The FOC informed us that its ODR program was not yet accessible to individuals who are visually impaired or those who cannot read and write in English. The FOC can reduce access barriers to these populations by providing accommodations. For example, software like Microsoft Word and apps on mobile phones are screen reader compatible and voice activated.<sup>45</sup> The FOC might request Matterhorn provide these capabilities. For those with limited English proficiency, the FOC could provide interpreters, as is required for other court-related services.<sup>46</sup> The FOC might also request Matterhorn provide on-screen translation.

### Digital Literacy

Evaluation data show that a lack of digital literacy played a part in only 5 of 102 matters in which the parties were offered ODR. However, the caseworkers we interviewed suggested that this lack of capability was more widespread.<sup>47</sup>

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<sup>44</sup> See generally Deborah L. Rhode, *Access to Justice: Connecting Principles to Practice*, 17 GEO. J. LEGAL ETHICS 369, 369 (2004).

<sup>45</sup> See *Listen to Your Word Documents*, *supra* note 9.

<sup>46</sup> Mich. Ct. R. 1.111.

<sup>47</sup> Emily A. Vogels, *Digital Divide Persists Even as Americans with Lower Income Makes Gains in Tech Adoption*, PEW RSCH. CTR. (June 22, 2021) <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption>; *Internet/Broadband Fact Sheet*, PEW RSCH. CTR. (Apr. 7, 2021), <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/?menulitem=6ba9316e-006c-482d-be4b-69feb64c4be8>.

## FINDINGS AND RECOMMENDATIONS

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When asked about the difficulties that clients faced when using ODR, two caseworkers mentioned technology issues, including parties not knowing how to use a computer or having problems with the ODR registration process, which occurs online. One caseworker estimated that approximately 30% of clients had problems using the platform and 15% of these problems pertained to the registration process. Another interviewee reported that parties who are not tech-savvy do not even try to use the platform. Three caseworkers mentioned that older clients and those who are not tech-savvy had the most challenges. When asked to identify specific technological difficulties, one caseworker referred to problems with document signing and working with attachments. Another cited an example in which neither party could sign their name on the screening paperwork.

In contrast, another caseworker indicated that parties did not have any difficulties with ODR because their office explained the process and answered any questions. One caseworker emphasized that the platform was easy to use and thorough. This caseworker noted that they strongly urge reluctant parties to use ODR, even if doing so requires them to go to a friend's house or the library to get online.

We do not know why the caseworkers had different assessments of their clients' ability to use the ODR platform, but one possible reason is that they took different approaches to discussing ODR with their clients. Given that clients are assigned to caseworkers according to an alpha-split determined by the child's father's last name, party attributes are an unlikely explanation for caseworkers' different experiences. As mentioned previously, having caseworkers share their approaches to informing their clients about the program, in terms of both the substance and delivery, might help to identify ways to promote a more uniform adoption of ODR. They should be provided with a uniform decision tree that includes a checklist of items that they are expected to communicate to each party for each matter. This checklist should include any accepted reasons for opting out, so that caseworkers apply these standards consistently.

To those who are comfortable enough with technology to try ODR, the ODR platform appears to be well-designed. In Survey 2, parties who indicated that they used ODR were asked an open-ended question regarding what they liked about ODR. Seven of the 16 parties (43.8%) who used ODR and completed the survey mentioned its ease of use. Two mentioned its convenience.

## FINDINGS AND RECOMMENDATIONS

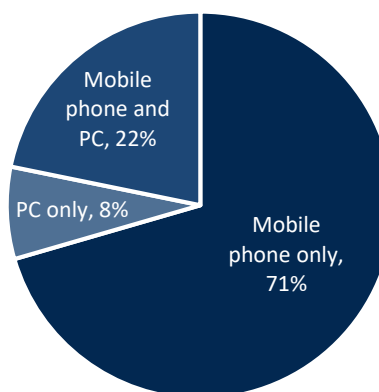
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### Devices Used to Access ODR

The proportion of parties who used only a mobile phone to access ODR was significantly higher than both the proportion who used a personal computer (PC) only<sup>48</sup> and the proportion who used both a mobile phone and a PC.<sup>49</sup> Almost all parties (92.3%) used a mobile phone to access ODR at some point. The available data from Matterhorn suggested that none of the parties used a tablet.

Matterhorn offers ODR participants in Ottawa County the option of using PCs, tablets, or mobile phones to access the platform. To understand how parties accessed the platform, we analyzed the devices used each time they logged on to the ODR platform. As seen in Figure 11, among ODR users, 17 (21.8%) used both a mobile phone and a PC at different times, while 55 (70.5%) used a mobile phone exclusively and only 6 (7.7%) used a PC exclusively. Thus, fully 92.3% of parties who used ODR logged on via mobile phone at least some of the time, while 29.5% used a PC at least some of the time.

Figure 11: Device Used ( $n = 78$ )



These figures point to a need to tailor the platform and the ODR process to mobile phone users. Using a mobile phone to access the platform may make it more challenging to upload documents and carefully consider terms of agreements.<sup>50</sup> Indeed, one of the caseworkers we interviewed noted that some parties found it challenging to use the platform on a mobile phone, with some declining to participate in ODR for that reason.

### **RECOMMENDATION: Improve parity in access for mobile phone users**

The FOC should work with Court Innovations to make the platform easier to use on mobile phones. We recommend engaging in observation-based usability testing to

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<sup>48</sup>  $Z = 3.1, p = .002$ .

<sup>49</sup>  $Z = 3.6, p = .0003$ .

<sup>50</sup> Terri R. Kurtzberg, et al., *The Effect of Screen Size and E-Communication Richness on Negotiation Performance*, 27(11) GROUP DECISION AND NEGOT. 573, 575, 581-83 (2018) (reviewing research showing that using mobile phones for decision-based activities can fragment people's attention, leading them to understand less of the information that they encounter and presenting novel data showing that using a mobile phone to negotiate is associated with lower joint gains compared with when devices with larger screens are used).

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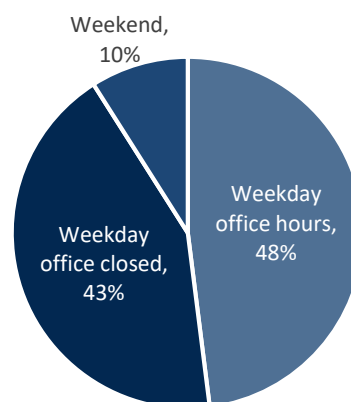
identify the specific pain points in mobile use of the platform.<sup>51</sup> Changes should be made based on the results of this testing, and, once functionality is improved, the improvements should be communicated to potential users, many of whom are repeat players at the FOC who may want to try it once changes are made.

### Time of ODR Use

One proposed benefit of asynchronous text-based ODR relative to the FOC's traditional process is that ODR is available 24/7.<sup>52</sup> Parties can send messages and upload or open files at any time rather than having their communication limited to FOC office hours (7:30 am to 5:00 pm). To determine whether parties availed themselves of this benefit, we examined the times at which they logged on to the platform. **Data from 78 individual ODR users indicates that 63 (80.8%) logged on to the platform both during the FOC's office hours and when the FOC's office was closed.** Only eight (10.3%) logged on exclusively during office hours.

In general, the timing of ODR access was split almost evenly between times at which the FOC was open for business and when it was closed. We found that 52.2% of logons occurred outside FOC office hours, with 9.5% occurring on weekends. See Figure 12. The parties logged on at all times of day and night, with more than half of their activity occurring between 2:00 pm and 7:00 pm.

Figure 12: Time of ODR Access  
(*n* = 916)



When parties use ODR appears to differ among evaluated programs and may be a function of the type of cases involved, who interacts on the platform (i.e., do only parties and outside mediators interact, or do parties interact with court or agency personnel), or other factors. In a recent evaluation of ODR use for debt and small claims cases in Texas, for example, more than 70% of ODR use occurred during non-office hours,<sup>53</sup> while data from an income tax ODR program in Columbus, Ohio, showed that only 37% of ODR access occurred outside traditional work hours (8:00 am to 5:00 pm).<sup>54</sup> Even fewer interactions occurred outside of work hours in

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<sup>51</sup> For a model example of such testing, see <https://law.arizona.edu/utah-online-dispute-resolution-platform-usability-evaluation-and-report> (last visited on Mar. 12, 2022).

<sup>52</sup> Parties who are comfortable communicating directly with each other presumably can do so 24/7 using text, email, or phone even when they use the FOC's traditional process in lieu of ODR.

<sup>53</sup> SHESTOWSKY & SHACK, *supra* note 34.

<sup>54</sup> FRANKLIN COUNTY MUNICIPAL COURT DATA PROJECT, [https://sites.google.com/view/fcmcdataport/about#h.p\\_03h0fs19dBnn](https://sites.google.com/view/fcmcdataport/about#h.p_03h0fs19dBnn) (last visited Mar. 12, 2022).



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the small claims ODR program in the Ninth Circuit of Florida, in which 30% of users accessed the platform when the court was not open.<sup>55</sup>

### PARTIES' EVALUATIONS OF THEIR EXPERIENCE WITH ODR

Parties' subjective impressions of their experiences of the legal system are crucial to understand. These impressions have been shown to predict important metrics such as parties' willingness to voluntarily comply with the outcomes of their cases<sup>56</sup> and their inclination to follow the broader body of law more generally.<sup>57</sup>

#### Background Information

Parties whose matters were closed on the ODR platform were asked to complete Survey 2. This group included both those who participated in ODR and those who opted out of ODR after being invited to register.<sup>58</sup> Survey 2 assessed the parties' experiences with ODR or the process used in lieu of ODR as well as their impressions of the FOC. They were sent an automated survey invitation immediately after their case was closed out on the ODR platform; we sent a second invitation, typically within seven calendar days.

Appendix A describes how we recruited participants and administered the survey. We included only one party's responses from each case in the Survey 2 dataset.<sup>59</sup> To determine which party's responses to include, we prioritized those who had completed Survey 1. When both parties to a matter had completed Survey 1, we prioritized any party who completed at least one question on Survey 2. If both parties completed at least one question on Survey 2, we randomly selected one party for inclusion. This method resulted in responses for 26 of the 60 matters eligible for Survey 2, reflecting a 43.3% response rate.<sup>60</sup> Of the 26 parties in the Survey 2 sample, 15 (57.7%) had completed Survey 1.

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<sup>55</sup> ONLINE DISPUTE RESOLUTION PILOT PROGRAM REPORT, *supra* note 33.

<sup>56</sup> Tom. R. Tyler, *The Psychology of Disputant Concerns in Mediation*, 3 NEGOT. J. 367, 368 (Oct. 1987); cf. Mark Umbreit et al., *Victim-Offender Mediation: Three Decades of Practice and Research*, 22 CONFLICT RESOL. Q. 279, 298 (Dec. 2004).

<sup>57</sup> TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 3-7, 82 (2d ed. 2006).

<sup>58</sup> As mentioned earlier, participants could opt out by simply not registering on the platform, by checking the opt-out box, or by not participating in ODR after they registered.

<sup>59</sup> We did not have enough matched initiating-responding party pairs in the sample to analyze data at the dyadic level. We therefore decided to retain just one party per case in our dataset to avoid data dependency concerns, which is important for statistical analysis. See David A. Kenny, *Models of Non-Independence in Dyadic Research*, 13 J. SOC. & PERS. RELATIONSHIPS 279, 280 (1996).

<sup>60</sup> Only eligible parties were invited to complete the survey. Thus, to be included in the dataset, we needed to be able to verify that we invited them to complete the survey by cross-checking either their name or case number against our master eligibility list. To maintain some consistency regarding timeframes during which parties evaluated their experience, we included surveys only from those who completed the survey within 21 days of their matters ending on the platform.

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Appendix F provides more information about the Survey 2 sample. The distribution of matter types represented in the Survey 2 sample compares favorably with the distribution of the population of FOC cases that were eligible for ODR during the evaluation period. The sample also compares favorably with the population with respect to the percentage that reached agreement on at least some issues during the evaluation period. The percentage of matters that reached an agreement was higher for those who completed Survey 2 compared to with the relevant FOC population. See Appendix H for relevant analysis.

As in Survey 1, all survey participants as well as all opposing parties were parents of the involved children. Among the respondents, 66.7% reported that they used ODR, while 33.3% indicated that they did not use ODR.

**Table 7: Characteristics of Survey 2 Participants and Matters They Were Handling**

Matter Type – Check all that apply*				
	Used ODR		Did Not Use ODR	
Parenting-Time Complaint	4	40%	1	33.3%
Parenting-Time Modification	4	40%	1	33.3%
Child Support Negotiation	1	10%	0	0%
Child Support Objection	0	0%	0	0%
Child Custody	1	10%	1	33.3%
Other	0	0%	0	0%
<b>Total</b>	<b>10</b>	<b>100%</b>	<b>3</b>	<b>100%</b>
Who Initiated the Matter				
Survey Participant	5	55.6%	4	57.1%
Other Party	4	44.4%	3	42.9%
<b>Total</b>	<b>9</b>	<b>100%</b>	<b>7</b>	<b>100%</b>
Relationship				
Divorced	7	58.3%	4	100%
Never Married Parents	5	41.7%	0	0%
<b>Total</b>	<b>12</b>	<b>100%</b>	<b>4</b>	<b>100%</b>

\*Note: As this was a “check all that apply” question, the cumulative % is > 100%.

As depicted in Table 7, most of the survey participants indicated their matter concerned parenting-time complaints or parenting-time modifications (4, or 40.0% for each type for the ODR group; 1, or 33.3% of each for the non-ODR group). One survey participant from both the ODR group (10.0%) and the non-ODR group (33.3%) had a matter involving a request to change custody. One person from the ODR group (10.0%) had a matter involving a request to change child support.

The majority of survey participants (55.6% of the ODR group; 57.1% of the non-ODR group) had initiated the current matter with the FOC. Over half (58.3%) of those who used ODR were divorced from the other party; 100% of those who did not use ODR were parents who were divorced. Survey participants tended to have previous experience with the FOC—those who used ODR had filed, on average, 4.6 matters against the same opposing party prior to the current matter; those who did not use ODR had filed an average of 7.6 past matters against the

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same opposing party. Survey participants reported that the other party had filed matters against them previously as well ( $M = 1.7$  matters for the ODR group;  $M = 2.5$  matters for the non-ODR group).<sup>61</sup>

### Parties' Post-Experience Impressions of ODR

We asked parties who reported that they used ODR two open-ended questions about their experience. The first asked what they liked about the ODR platform; the second asked what they would change about it. The purpose was to assess parties' reactions without influencing the responses by providing response options.

#### What Parties Liked about ODR

The first item assessing parties' reactions to ODR instructed respondents to, "Please tell us what you liked about the online dispute resolution system." As reported in Table 8, the open-ended responses ( $n = 16$ ) generally fell within three categories, with seven parties (43.8%) indicating ODR was easy to use, two (12.5%) noting its convenience, and four (25.0%) mentioning other positive attributes such as the chat rooms and the opportunity to avoid face-to-face contact with the other party. As shown in the "Other" section in Table 8, four parties (25.0%) responded with negative comments about ODR, with three of these (18.8%) suggesting there was nothing positive about their experience.

**TABLE 8: WHAT PARTIES LIKED ABOUT ODR ( $n = 16$ )**

Category	Comment
<b>Easy to Use</b>	Easy
	I loved the idea and the ease of use
	I was thankful to resolve this so easily.
	It was very simple and easy to use
	Very easy
	Very easy to follow and use, even for someone like me that is not great with technology.
	Very easy to use. Did not have to see and talk to the other party directly.
<b>Convenience</b>	It saves time[,] paper and gas, is more convenient
	It's available 24/7

<sup>62</sup> Appendix F provides information concerning parties' demographic and matter characteristics.

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	Avoidance of face to face contact with other party.
	I like that it sends you notifications when something comes through. My resolution was that there was no resolution. My needs weren't met. My caseworker was basically non-existent which goes for everyone who works in Ottawa County, MI
Other	I liked that we did not have to be in the same room.
	I liked the separate chats. And then we also used the combine chat where we all talked.
	It was a complete waste of time
	Nothing
	Nothing, it achieved nothing.

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The parties' focus on the platform's ease of use and convenience suggests that the FOC is achieving its objective of providing an easy-to-use and convenient service. On a less favorable note, some parties reported that they did not perceive any benefits from the program.

### What Parties Would Change about ODR

To identify any negative reactions to ODR, we asked: "If you could pick one thing to change about the online dispute resolution system, what would it be?" The responses ( $n = 15$ ) generally fell within three categories: a need for clearer direction on how to navigate the platform (4, or 26.7%); changes to the technology (2, or 13.3%); and "other" (2, or 13.3%). Almost half (7, or 46.7%) of the survey participants indicated that no changes were needed. See Table 9 for the parties' comments.

**TABLE 9: WHAT PARTIES WOULD CHANGE ABOUT ODR ( $n = 15$ )**

Category	Comment
	Directness would be improved
	More attention at first it felt like it took a while to get going
Clearer Instructions	My caseworker poorly explained what she needed from me and I submitted the paperwork twice, just for her to say it wasn't right and closed the case.
	Quicker communication

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<b>Changes to Technology</b>	Alerts letting your caseworker know there is a message
	Some way to ensure the other party gets the invite other than just me telling them to respond and check their email.
<b>Other</b>	No mediation took place
	There should be a penalty for someone that says they will do it and then later decide not to do it.
<b>No Changes</b>	No recommendations.
	Nothing
	Nothing
	Nothing
	Nothing at the moment
	Nothing [Emoji]
	NA

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In sum, almost half of the parties who answered this question indicated that no changes to the platform were needed, but over one quarter recommended improving the directions given to parties regarding how to use the platform. The diversity of other suggestions is worth exploring as the program continues to develop.

We obtained a small number of comments about the program. A feedback survey that captures responses from more parties who use ODR would be beneficial.

### Parties' Procedural Justice Evaluations

"Procedural justice" is an important criterion in evaluations of court procedures and programs.<sup>62</sup> As applied to the legal domain, the concept of procedural justice relates to people's subjective impressions of fair treatment during a process used to handle their dispute—for example, during a trial or mediation.

Many judges and lawyers believe that laypeople who receive assistance from the courts primarily care about objective metrics of winning or losing.<sup>63</sup> Decades of psychological research,

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<sup>62</sup> Tom R. Tyler, *Procedural Justice and the Courts*, 44 COURT REV. 26 (2007).

<sup>63</sup> DAVID B. ROTTMAN, TRUST AND CONFIDENCE IN THE CALIFORNIA COURTS: A SURVEY OF THE PUBLIC AND ATTORNEYS (Judicial Council of California & Administrative Office of the Courts 2005); Deborah R. Hensler, *Suppose It's Not True*:

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however, has shown that people evaluate the process used to resolve disputes separately from their evaluation of the outcome.<sup>64</sup> Those who achieve favorable outcomes, as well as those who do not, often report high levels of satisfaction when they perceive the process as having been fair. This phenomenon is known as the “procedural justice effect.”

Procedural justice has important implications for the legal system. When people view the process they’ve experienced as fair, they are generally more likely to voluntarily comply with case outcomes, making it less likely that verdicts will be appealed or that settlement agreements will be breached. They are also more likely to follow the law more generally.<sup>65</sup>

Given that procedural justice evaluations are subjective in nature, when evaluating ODR programs, courts must gather data from the parties directly. Relevant survey questions could ask them to rate the fairness of the overall process used to handle their case. More specific questions could tap the four components of procedural justice that have been established in published research: voice, neutrality, respect, and trust.

To gauge parties’ perceptions of procedural justice in their experiences with FOC services, we asked them tailored versions of standard procedural justice questions concerning fair treatment and satisfaction. We compared the responses of those who used ODR and those who were offered ODR but did not use it (i.e., the non-ODR group). They were also invited to explain their responses. See Appendix A for an explanation of the system used to code their comments.<sup>66</sup>

### Fairness of the Process

To assess parties’ views on how fairly the FOC handled their matter, we asked: “Thinking of this matter from when the Friend of the Court first started helping you to resolve it to now, how fairly was it handled by Friend of the Court?” Respondents answered on a scale from 1 to 7, where 1 = not at all, 4 = somewhat, and 7 = extremely. We consolidated their ratings as follows: little or not at all (i.e., low ratings) (1-2), somewhat (i.e., medium ratings) (3-5), and a lot (i.e., high ratings) (6-7). As illustrated in Figure 13, **those in the ODR group were four times as likely as those in the non-ODR group to give a high fairness rating, while those in the non-ODR group were twice as likely as those in the ODR group to give a low rating.** The difference in the

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*Challenging Mediation Ideology*, 2002 J. DISP. RESOL. 81, 88 (2002); Tamara Relis, “It’s Not About the Money!”, *Theory on Misconceptions of Plaintiffs’ Litigation Aims*, 68 U. PITT. L. REV. 701, 732 (2007).

<sup>64</sup> Deborah R. Hensler, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement Is Re-Shaping Our Legal System*, 108 PENN ST. L. REV. 165, 197 n. 63 (2003); E. Allan Lind et al., *In the Eye of the Beholder: Tort Litigants’ Evaluations of Their Experiences in the Civil Justice System*, 24 L. & SOC’Y REV. 953, 957 (1990).

<sup>65</sup> For a review of the relevant literature, see Donna Shestowsky, *Great Expectations? Comparing Litigants’ Attitudes Before and After Using Legal Procedures*, 44 LAW & HUM. BEHAV. 179 (2020); Shestowsky & Brett, *supra* note 23.

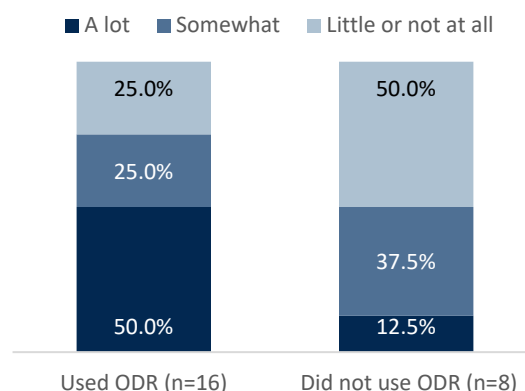
<sup>66</sup> Some comments fit into more than one coding theme; therefore, the frequencies noted for themes may exceed the number of survey participants who provided comments.

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two groups' perspectives on the fairness of the process is reflected in the mean (average) ratings (out of 7) for the groups: 4.63 ( $SD = 2.56$ ) for the ODR group and 2.88 ( $SD = 2.10$ ) for the non-ODR group. Although the small sample size ( $n = 24$ ) was not suitable for evaluating whether this difference in means was statistically significant, this pattern suggests that parties may be more likely to view ODR as fair than to view the traditional FOC process as fair.<sup>67</sup> Given that the ODR program did not function as a mandatory one, parties essentially self-selected into the platform or the non-ODR alternatives. Thus, the attributes of the parties or matters that used ODR, rather than the use of ODR per se, might have driven these differences.

**Figure 13: How Fairly was the Process Handled?**



When asked to explain their fairness ratings, 17 parties provided comments, including 11 who used ODR and six who did not. Their comments are compiled in Table 10. Among those who used ODR, five (45.5%) remarked that their fairness ratings were related to communication, with four of these five parties indicating that communication was good and one reporting dissatisfaction with the communication. Four (36.4%) parties indicated there were no issues, while two (18.2%) said the process was biased.

Of the six parties who did not use ODR, two remarked that the process was biased, and two said they would have liked better communication. In addition, two parties made general comments, and one simply said the process "seemed fair."

TABLE 10: PARTIES' EXPLANATIONS OF THEIR FAIRNESS RATINGS ( $n = 17$ )		
USED ODR ( $n = 11$ )		
Fairness Rating	Category	Comment
<b>Low (1-2)</b>	Biased	I am the Father. The court allowed my son to be kidnapped. I haven't seen him in 1.5 years.
	Biased, Quality of Communication	No one took into account the mental and physical needs of [unintelligible]. They just listened as the dad spewed lies. No one cares that he is buying the kids illegal drugs or that he provides them alcohol

<sup>67</sup>  $F(1, 23) = 2.75, p = .11, \eta^2 = .11$ .



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	Other	The other party who wanted to do it initially later decided not to do it.
		Nothing happened
Medium (3-5)	Quality of Communication	Case worker called me and sent something for me to fill out, I like the communication
	Other	This situation is complicated and FOC has historically not handled [it] well.
High (6-7)	Quality of Communication	They put our wants into and (sic) order
	No issues	No issues
	No issues, Other	We both got what we wanted
	No issues, Quality of Communication	I never felt like I was treated unfairly. I was always spoken to very professionally.
		It was handled with mediation and clarity and respect for both parties
DID NOT USE ODR (n = 6)		
Fairness Rating	Category	Comment
Low (1-2)	Quality of Communication	They don't engage. Zero assistance zero clarity. Completely worthless. I can read my parenting time order, I need help interpreting it
	Biased	Bias
Medium (3-5)	Biased, Quality of Communication	I wish the child support had been abated much sooner, when I first reported that I had [redacted name] in my custody in March.
	Other	The other party chose not to join. The friend of the court tried.
		Still being handled
High (6-7)	No issues	It seemed fair to me.

### Satisfaction with Process

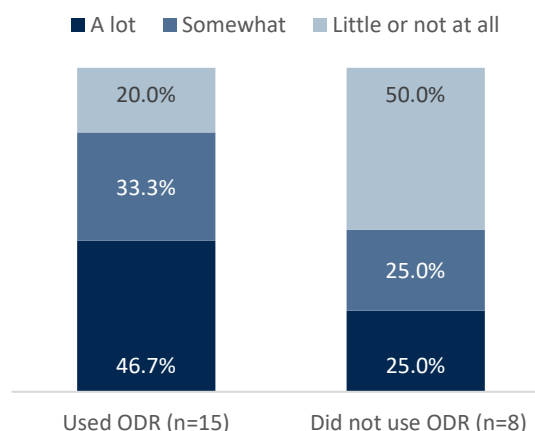
To assess parties' satisfaction, we asked: "Regardless of the outcome, how satisfied are you with the overall process used to try to resolve this matter?" Respondents answered on a scale from 1 to 7, where 1 = not at all, 4 = somewhat, and 7 = extremely. These ratings were then grouped as follows: little or not at all (i.e., low ratings) (1-2), somewhat (i.e., medium ratings)

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(3-5), and a lot (i.e., high ratings) (6-7). As shown in Figure 14, **the percentage of ODR users who were highly satisfied was almost twice the percentage of those who did not use ODR.**

Members of the non-ODR group were more than twice as likely as those in the ODR group to give a low rating. Differences in the two groups' satisfaction with the process is reflected in the mean (average) ratings (out of 7) for the groups: 4.60 for the ODR group ( $SD = 2.26$ ) and 3.38 ( $SD = 2.13$ ) for the non-ODR group. While the sample size was too small to determine whether these differences were statistically significant, the results suggest that ODR might offer parties a more positive experience than the traditional FOC process.<sup>68</sup>

**Figure 14: How Satisfied are You with the Process?**



When asked to explain their satisfaction ratings, 10 of the parties who used ODR responded. Their comments are reported in Table 11. Two of the 10 (20.0%) indicated that it was easy to use. Five others (50.0%) generally approved of the platform, mentioning that they liked it or were “a fan” of it. One mentioned that it was respectful. Three parties (30.0%) generally disapproved of the ODR process for various reasons.

Five of the respondents who were offered ODR but did not use it explained their satisfaction ratings for the process they underwent in lieu of ODR. Three of the 5 (60.0%) provided reasons for their dissatisfaction, with two of these parties mentioning bias and the other saying they felt unsupported. Two others commented on their general satisfaction with the alternate process, with one noting the caseworker’s helpfulness and understanding.

**TABLE 11: PARTIES’ EXPLANATIONS OF THEIR PROCESS SATISFACTION RATINGS (n = 15)**

USED ODR (n = 10)		
Process Satisfaction Rating	Category	Comment
<b>Low (1-2)</b>	General Disapproval or Bias	Nothing happened. Case was closed with no mediation in (sic)
<b>Medium</b>		Outcome is not [in the] best interest of child.

<sup>68</sup>  $F = (1, 22) = 1.59, p = .22, \eta^2 = .07$ .

## FINDINGS AND RECOMMENDATIONS

(3-5)	General Disapproval or Bias	Need better response time and the ability to actually change without a judge
	General Approval of Process Used	It's a cool concept.
		I am a fan of this resolution system
High (6-7)	Simple, General Approval of Process Used	Easy and Fair Resolution
		Easy
	General Approval of ODR Process Used	It was handled respectfully (sic)
		I like the online forum
		I should have had child support changed but I didn't think about it at the time[;] other than [that] this is perfect
	DID NOT USE ODR (n = 5)	
Process Satisfaction Rating	Category	Comment
Low (1-2)	General Disapproval or Bias	I was essentially instructed to get a lawyer. Sorry, as a single mother with zero child support, I cannot afford a lawyer. Guess that means I do not matter and my children's needs do not matter
		Biased and favors the woman
		Bias
Medium (3-5)	General Approval of Process Used	Still waiting for paperwork[;] case worker very helpful and understanding
High (6-7)	General Approval of Process Used	Mediation went well for the most part

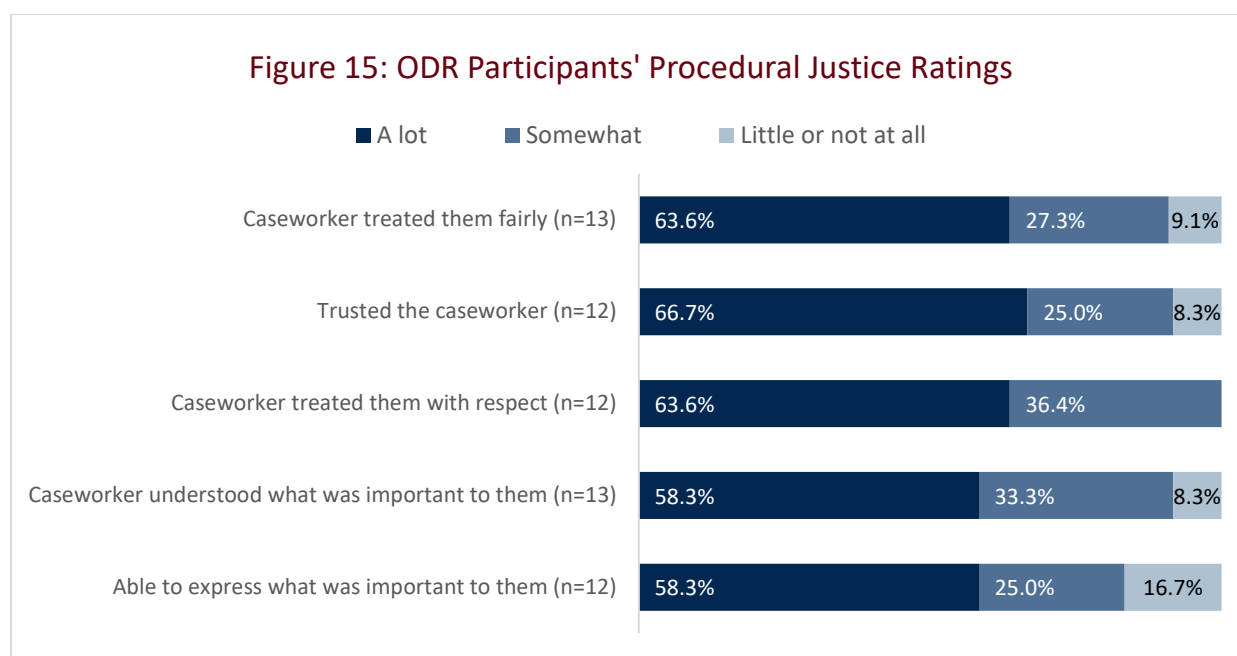
### Voice, Neutrality, Respect, and Trust

To more deeply understand how parties experienced ODR from a procedural justice perspective, we asked them questions that tapped the different components of procedural justice: voice, neutrality, respect, and trust. For each question, they rated their experience on a scale from 1 to 7, where 1 = not at all, 4 = somewhat, and 7 = very much. We grouped them as

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follows: little or not at all (i.e., low ratings) (1-2), somewhat (i.e., medium ratings) (3-5), and a lot (i.e., high ratings) (6-7).

As noted in Figure 15, the majority of ODR users who indicated that they worked with a caseworker online gave high ratings (6 or 7) for the caseworker treating them fairly (9, or 69.2%), and treating them with respect (8, or 66.7%). Eight of 12 (66.7%) indicated that they trusted their caseworker, and 9 of 13 (61.6%) indicated their caseworker understood what was important to them. Fewer than 8.5% gave low ratings for these three questions. The majority of respondents (8, or 61.5%) also awarded high ratings for being able to express what was important to them, but two (15.4%) gave low ratings. Future evaluations should give parties the opportunity to explain their ratings for this item so that answers could be used to enhance this voice opportunity for a wider subset of parties.



### Litigants' Post-Experience Impressions of Procedures

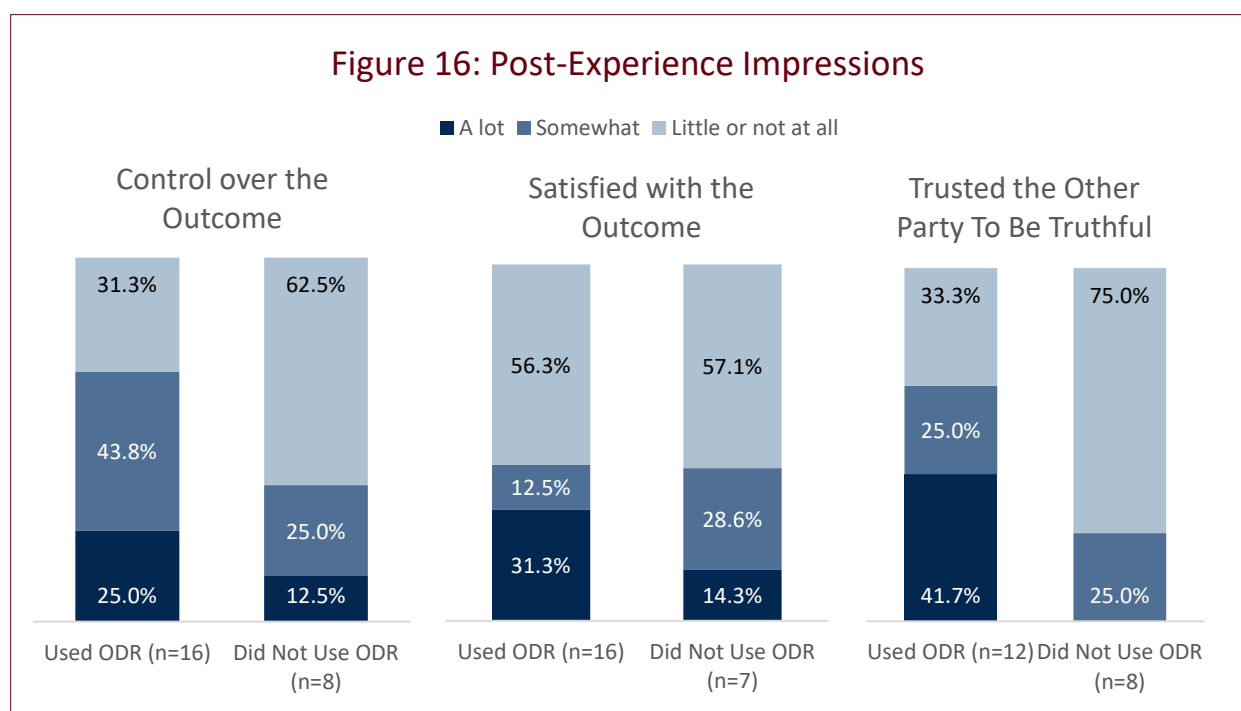
One of the FOC's objectives in creating the ODR program was to give parties ownership over their agreements. If parties use ODR, they can theoretically craft agreements that reflect their own interests and priorities without input or direction from third parties.<sup>69</sup> They can also work at their own pace and at times that are more convenient for them (rather than being restricted

<sup>69</sup> Positive party experiences with ODR can have far-reaching benefits. ALEX SANCHEZ & PAUL EMBLEY, ACCESS POWERS: HOW ODR INCREASED PARTICIPATION AND POSITIVE OUTCOMES IN OHIO 19 (Franklin County Municipal Court 2020) ("The FCMC experience demonstrates how a user-centered ODR platform can not only generate positive case outcomes, but also change the public's perception of court through positive experiences and bridge the access-to-justice gap to achieve social justice.").

## FINDINGS AND RECOMMENDATIONS

based on the availability of third parties). This type of relatively greater party control, known as “party self-determination,” is a core principle motivating many alternative dispute resolution (ADR) programs, such as court-sponsored mediation programs.<sup>70</sup>

Parties who used ODR, as well as those who were invited to use ODR but did not, were asked to evaluate their experience on several dimensions including their satisfaction with the outcome and how much they trusted the other party to be truthful when resolving the issue. For these dimensions, they rated their experience on a scale from 1 to 7 (1 = not at all, 4 = somewhat, 7 = very much/extremely). Respondents also rated how much control they had over the outcome of the matter, again on a scale from 1 to 7 (1 = none, 4 = some, 7 = a great deal). We consolidated their ratings as follows: little or not at all (i.e., low ratings) (1-2), somewhat (i.e., medium ratings) (3-5), and a lot (i.e., high ratings) (6-7). The responses for each dimension are summarized in Figure 16.



**The data show that the majority (68.8%) of those who used ODR reported having at least some control over the outcome of their matter.** Four of 16 (25.0%) provided a rating of 6 or 7, indicating that they had a great deal of control. The mean rating for control was 3.88 out of 7 ( $SD = 2.78$ ) for this group. In contrast, 5 of 8 (62.5%) of those who did not use ODR reported having a low level of control over the outcome, with an overall mean rating of 2.50 (out of 7)

<sup>70</sup> Donna Shestowsky, *When Ignorance is Not Bliss: An Empirical Study of Litigants' Awareness of Court-Sponsored Alternative Dispute Resolution Programs*, 22 HARV. NEGOT. L. REV. 189, 195 (2017) [hereinafter *When Ignorance is Not Bliss*].

## FINDINGS AND RECOMMENDATIONS

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( $SD = 2.14$ ).<sup>71</sup> See Appendix G for more detailed information about their post-process evaluations.

**In both the ODR and non-ODR groups, a greater percentage of parties were dissatisfied with their outcome than were satisfied with it.** The majority of parties in both groups (56.3% and 57.1%, respectively) reported low levels of satisfaction with the outcomes they obtained. However, nearly a third (5, or 31.3%) of ODR users reported high levels of satisfaction with their outcome, compared with only one (14.3%) of those who did not use ODR. The mean ratings were 3.25 (out of 7) ( $SD = 2.75$ ) for the ODR group and 3.14 ( $SD = 2.17$ ) for the non-ODR group.

When asked to evaluate how much they trusted the other party to be truthful when resolving the issue at hand, 6 of 8 (75.0%) of those who did not use ODR gave low ratings, whereas only 4 of 12 (33.0%) of those who used ODR did the same. The difference in mean or average ratings between the ODR group ( $M = 3.92$ ;  $SD = 2.58$ ) and those who did not use ODR ( $M = 1.63$ ;  $SD = 0.92$ ) was statistically significant,<sup>72</sup> indicating that those who used ODR trusted the other party more than those who did not. It should not be concluded that ODR participation affected the trust levels of ODR users. We encourage future evaluations to examine a possible causal relationship between ODR use and trust.<sup>73</sup>

### Impressions of the Court and the Other Party

We asked parties a series of questions about their overall impressions of the court and the other party, and compared the responses for ODR users and non-ODR users. For each question, parties responded using a scale from 1 to 7 (1 = extremely negative, 4 = neutral, 7 = extremely positive). We grouped these ratings as follows: negative (1-2), neutral (3-5), and positive (6-7). The response patterns for each question are depicted in Figures 17 and 18. Parties' attitudes toward the FOC did not differ to a statistically significant extent across those who used ODR ( $M = 4.13$ ;  $SD = 2.06$ ) and those who did not ( $M = 3.00$ ;  $SD = 2.27$ ).<sup>74</sup> Even so, the percentage of parties who rated the FOC negatively was double for the non-ODR group compared with the ODR group (4 of 8 [50%] and 4 of 16 [25%], respectively). The two groups also did not differ in their attitudes toward the other party (ODR group:  $M = 3.25$ ;  $SD = 2.27$ ; non-ODR group:  $M = 3.00$ ;  $SD = 0.93$ ).<sup>75</sup> For both metrics, however, the small sample size may have obscured findings on these issues.

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<sup>71</sup> This difference did not reach statistical significance, possibly due to the small sample size,  $F(1, 22) = 2.02$ ,  $p = .169$ ,  $\eta^2 = .084$ .

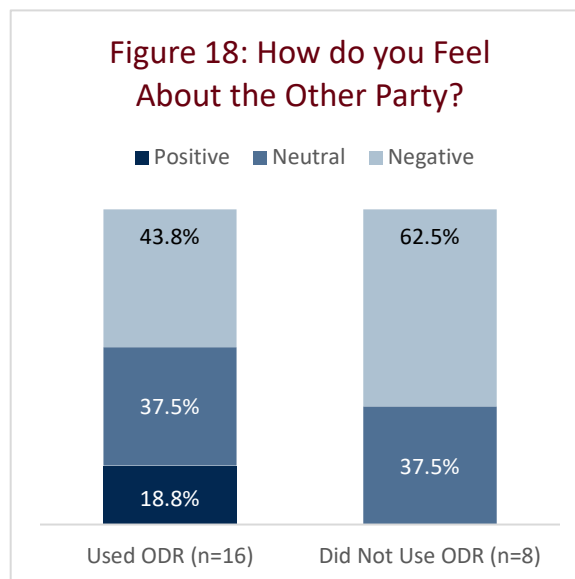
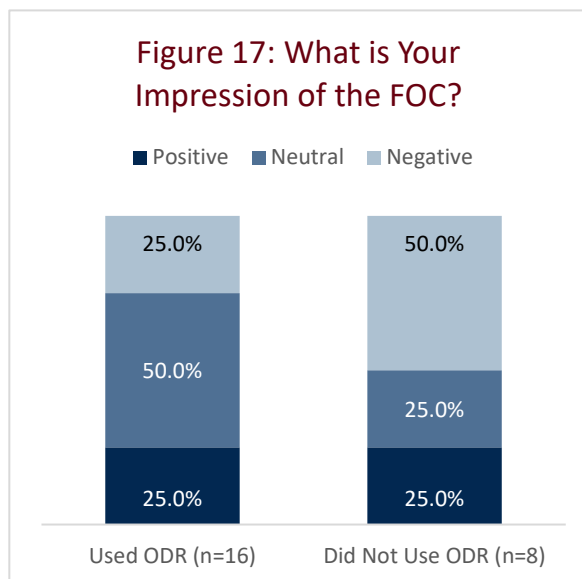
<sup>72</sup> Independent t-test  $t(17) = -2.39$ ,  $p = .03$ ,  $d = 1.18$ .

<sup>73</sup> Our sample size was too small to reliably conduct a longitudinal analysis that examined changes in trust ratings between Survey 1 and Survey 2 as a function of ODR use.

<sup>74</sup>  $F(1, 22) = 1.49$ ,  $ns$  ( $\eta^2 = .06$ ).

<sup>75</sup>  $F(1, 22) = .09$ ,  $ns$  ( $\eta^2 = .004$ ).

## FINDINGS AND RECOMMENDATIONS



### Association Between Post-Experience Ratings

We conducted correlational analyses to determine the associations between parties' perceptions of control over the outcome and their ratings of other aspects of their experience.

The results are reported in full in Appendix G. Table 12, which summarizes the primary findings that reached statistical significance, shows that, for both those who used ODR and those who did not, **the more control parties felt over the outcome, the more satisfied they were with the outcome and the process, the more fairly they believed the FOC handled their matter, and the more favorably they rated the FOC.** For ODR users, but

not for nonusers, the more control they felt they had over the outcome, the more favorably they felt about the other party at the time they took Survey 2 (i.e., when their matter concluded on the platform). Together, these findings suggest that control over outcome is associated with post-experience evaluations, especially for those who utilize ODR. Notably, as mentioned above, because some parties could self-select into ODR, those who felt more favorable about the other party may have been more likely to use ODR.

**Table 12: Correlation Between Perceived Control Over Outcome and Other Factors**

The more control parties felt over the outcome:

- The more satisfied they were with the outcome
- The more satisfied they were with the process used to try to resolve their matter
- The more fairly they believed the FOC handled their matter
- The more favorably they rated the FOC

ODR users only: the more control parties felt over the outcome:

- The more favorably they felt about the other party after their matter concluded on the platform



## FINDINGS AND RECOMMENDATIONS

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Parties who were more satisfied with their outcome were more likely to report that the FOC handled their matter fairly and were more satisfied with the process used to handle their matter.

ODR users and nonusers differed in regard to whether there were statistically significant associations between their ratings of their court-related experiences (i.e., their ratings of the FOC, the outcome of their matter, and the process) and how they felt about the other party after the conclusion of their matter. Specifically, ODR users felt more favorably toward the other party when they were more satisfied with their outcome, when they were more satisfied with the process used for their case, when they had a favorable impression of the FOC, and when they felt they had more control over the outcome; in contrast, these associations did not emerge among non-ODR users.<sup>76</sup>

### Caseworkers' Perceptions of the Effect of ODR on Parties

When asked about ODR's effect on the parties, the caseworkers we interviewed reported that the platform offers several advantages over traditional FOC procedures. Three caseworkers observed that ODR often led to quicker resolution of cases. In addition, some caseworkers indicated that ODR helps their clients have ownership over their agreements and leads to better hearings.

One caseworker noted that using a text-based format was advantageous because it requires parties to type their communications, allowing them to reflect on their message and word choice more closely than when they are speaking. In contrast, another caseworker observed that parties used less self-restraint when writing.

The disadvantages mentioned by caseworkers generally concerned technology, including the fact that the platform appears to work better on a computer than on a phone and that some parties were not proficient enough with technology to use the platform. Another caseworker mentioned "bugs" that parties encountered when they used the portal.

## OUTCOMES

For this evaluation, the FOC tracked each matter they handled, noting whether it reached agreement or eventually resulted in a hearing, among other possible outcomes. "Agreement" was defined as either a signed stipulation that resulted in a court order or an informal resolution that closed the matter.

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<sup>76</sup> Had we hypothesized that participants' ratings of how fairly the FOC handled their cases would be associated with how they felt about the other party after their matter concluded, the results would have supported this hypothesis;  $r(14) = .43$ , one-tailed  $p = .0465$ .

## FINDINGS AND RECOMMENDATIONS

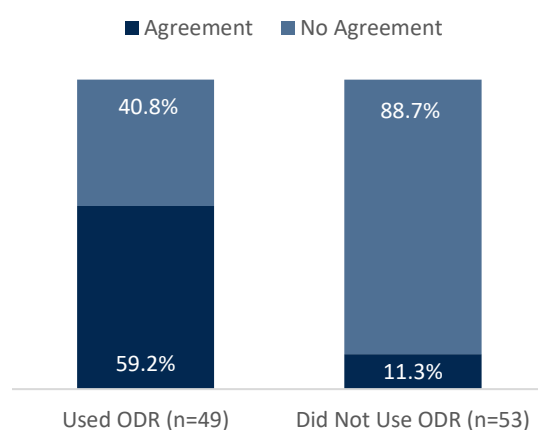
To determine whether there was a relation between ODR use and outcomes, we compared matters in which ODR was offered but not used with matters in which ODR was used.

### Agreements

Matters for which the parties used ODR were significantly more likely to reach agreement than those for which the parties did not use ODR.<sup>77</sup> In all, agreements were reached in 29 of 49 (59.2%) matters in which both parties used ODR, while agreements were reached in only 6 of 53 (11.3%) matters in which ODR was offered but not used. See Figure 19.

We also compared cases that underwent *only* ODR (i.e., no other dispute resolution method was used) with cases that underwent mediation or caseworker-led informal resolution but not ODR. The ODR cases had a higher agreement rate, with 16 of 30 (53.3%) reaching agreement, compared with 4 of 15 (26.7%) of the matters for which mediation or informal resolution was used but not ODR. However, this difference was not statistically significant.<sup>78</sup>

Figure 19: Agreement Rate



Although these findings suggest that the ODR program might be increasing the rate of agreements reached, the pattern might be the result of self-selection. Parties who were more inclined to resolve their matter collaboratively might have been more likely to use ODR.

For the matters in which ODR was used, parenting-time modifications were significantly more likely than parenting-time complaints to reach agreement.<sup>79</sup> Of the 15 parenting-time complaints for which ODR was used, four (26.7%) reached agreement. In contrast, of the 17 parenting-time modifications for which ODR was used, 12 (70.6%) reached agreement. Given that the initiation of a complaint reflects a dispute between parents that is likely adversarial in nature, this difference is not surprising. The difference may also be related to caseworkers' observations that ODR seems more challenging for contentious parties. The results do, however, indicate that ODR is quite effective at modifying parenting-time agreements.

Interestingly, child support matters and parenting-time matters (complaints and modifications combined) that used ODR had identical agreement rates, with both at 50.0%.

<sup>77</sup>  $\chi^2 (1, N=102) = 25.88, p = .0000 (\phi = .50)$ .

<sup>78</sup>  $\chi^2 (1, N=45) = 2.88, p = .09 (\phi = .25)$ .

<sup>79</sup>  $\chi^2 (1, N=32) = 6.15, p = .01 (\phi = .44)$ .

## FINDINGS AND RECOMMENDATIONS

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### Hearings

In all, of the 94 matters that closed within two months of the end of the evaluation period, 60 did not reach agreement and 22 of those proceeded to a hearing. **In matters that used ODR, 18.2% (8 of 44) proceeded to a hearing, while in matters that did not use ODR, 28.0% (14 of 50) proceeded to a hearing.** This difference was not statistically significant; however, the small sample size may have obscured significance.<sup>80</sup>

In 19 of the 38 matters (50.0%) in which the parties neither reached agreement nor had a hearing, the parties did not file a motion for a hearing, ending the FOC's involvement with the matter. This group included 17 matters in which ODR was not used and two in which ODR was used.

### EFFICIENCY

#### Time to Case Disposition

One of the FOC's motivations for introducing ODR was to increase case processing efficiency, with a focus on closing matters more quickly. In interviews, caseworkers pointed to the efficient disposition of cases as a core benefit to the parties as well as to the FOC. To determine whether ODR did indeed achieve quicker matter disposition, we calculated the number of days between the initiating party contacting their caseworker for assistance and the caseworker closing the matter. Caseworkers closed matters when the judge approved an agreement that parties reached, when a hearing was held, or when the parties decided not to pursue their matter further through the FOC.

**The data show that matters that used ODR tended to reach disposition more quickly than those that did not use ODR.** Parenting-time matters closed 5.5 days sooner on average when ODR was used than when it was not (45.1 days and 50.6 days, respectively). The difference was more striking for child support matters, in which those that used ODR closed 9.7 days sooner on average than those that did not (11.8 days and 21.5 days, respectively). In neither case was the difference significant.<sup>81</sup> However, the sample size for child support matters was very small, which might have obscured the significance of the findings.

#### Caseworkers' Impressions of ODR's Effect on Time Spent Handling Cases

The caseworkers we interviewed had differing perceptions of how ODR affected the time they spent actively handling matters. Two of the interviewees suggested that using ODR increased the amount of time they spent on matters, with one of these caseworkers estimating that their

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<sup>80</sup> $\chi^2(1, N=94) = 1.26, p=.26 (\phi = -.12).$

<sup>81</sup>Child support:  $F(1, 14) = .54, p = .48, \eta_p^2 = .04$ ; Parenting time:  $F(1, 71) = 0.19, p=0.66, \eta_p^2 = .003.$

## FINDINGS AND RECOMMENDATIONS

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work on individual matters took one to two hours longer because of ODR. The second caseworker reported that using ODR almost always took more hours of their time.

In contrast, the other two caseworkers did not report that ODR increased the time they spent handling matters. One noted that the time required was matter-dependent — if an agreement was already in place, the matter could be closed within an hour or two online, while other cases took longer. The other caseworker perceived no difference in the amount of time spent on matters that used ODR versus matters that did not use ODR.

**In the interviews, caseworkers indicated that how much time they spent using ODR depended on factors such as the attitudes of the parties, how much back-and-forth communication was needed to reach an agreement between parties, how long parties took to reply via the system, and the type of matter being addressed.** Regarding matter type, one caseworker noted that ODR seemed to increase the time required when dealing with modifications but was a time saver when addressing parenting-time complaints. Another caseworker concluded that resolving parenting-time issues took more time when using ODR, noting that he could spend up to eight hours reading and responding to the parties' text messages because they wrote extensively and/or introduced more issues to the discussion. He also commented that using ODR to handle child support issues always took more of his time than using traditional case processing methods because the platform replaced a process in which the parties moved directly to a hearing, and thus he spent more time on the case before the hearing. He clarified that although he spent more total time working with parties on a matter when using ODR, the matter would often take significantly fewer calendar days to resolve, which he perceived as an important benefit to the parties.

### Caseworkers' Perceptions of the Effect of ODR on their Roles and the FOC

**All four caseworkers we interviewed indicated that the ODR program held advantages for them.** All of them noted that ODR has the potential to resolve matters significantly faster than traditional processes and that handling matters on the platform is often simpler and more efficient when working with less contentious cases. Further, the caseworkers indicated that, for most matters, it was quicker and more efficient to work with documents online than through the mail. When an agreement is reached, both parties can sign the document online rather than mailing it first to one party and then to the other. Thus, working on the platform reduces the time between reaching an agreement and the judge converting it to a court order and also ensures that the agreement does not get lost in the mail. Moreover, parties who work with their caseworker online to resolve parenting-time complaints can waive certain rules such as the 21-day notice, which can theoretically greatly reduce the number of calendar days it takes to resolve a matter. As one caseworker stated, "We can resolve a . . . complaint in a matter of days, versus before, it may have taken us 60 days."

## FINDINGS AND RECOMMENDATIONS

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One caseworker noted that another advantage of using ODR for child support matters is that the platform makes information readily available. Previously, he often had to make calculations based on limited information because relevant documents were not readily available to him. Further, the parties might not bring appropriate documentation to their hearing, which meant the judge also made decisions based on limited information. With ODR, the caseworker could use his child support calculator in conjunction with documents the parties had uploaded, allowing for greater accuracy in the calculations and better understanding by the parties, which in turn led to shorter hearings and fewer objections.

The disadvantages of the program mentioned by the caseworkers focused on time. Using the ODR platform was time consuming, especially when addressing more difficult issues. Two caseworkers mentioned that in some matters they wasted significant effort and time because they spent a lot of time working on issues for which no resolution was reached. One caseworker noted that this possibility presented a dilemma about whether to continue trying to reach an agreement through ODR. Presumably, caseworkers could have directed many of these issues to in-person mediation or scheduled the matter for an earlier hearing date had the default process not been to send issues to ODR. Some caseworkers mentioned the difficulty of knowing when to draw the line with certain issues or parties; however, they remained optimistic that as they learned which matters not to send to ODR, this problem would arise less frequently.

Interviewees also alluded to negative aspects of ODR related to not being able to monitor group conversations at all times of the day. For example, they observed that some parties used inflammatory language, leading to further conflict. One caseworker noted that he sometimes had greater difficulty keeping the parties from broadening the scope of their issues with the other party in ODR than when speaking with the parties.

## PROGRAM STAFF TIME, COSTS, & BENEFITS

### Time Spent on Program Development

According to the Assistant Friend of the Court: Field Services Division (AFOC), developing the ODR program was very time intensive at certain points. Five people from the FOC, including the AFOC, participated in program development, learned how to conduct online dispute resolution for parenting-time issues, tested the platform for faults, and trained their colleagues on how to use it. The AFOC estimated that pre-launch, he spent eight to ten hours per week on the ODR project. During the most intense training phase, ODR-related work took up half of his workday. He reported that after the program's launch, he spent four to six hours per week on the project.

## FINDINGS AND RECOMMENDATIONS

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Of the four caseworkers we interviewed, two were involved in the development of the ODR program in some capacity. Both reported that they did not have to discontinue their pre-existing work activities to contribute to the program's development, although they acknowledged that their participation was associated with small delays in completing these other activities. For example, one caseworker mentioned being slower to return client phone calls. Another caseworker we interviewed helped implement the program in his previous position with the court and indicated that he was not very familiar with how caseworkers handled cases prior to the launch of ODR since he had joined the caseworker team just as ODR was being launched.

### Program Costs

The AFOC indicated that the ODR program is funded by the state and federal governments. The customization of the platform to fit the FOC's needs was free. He estimated that use of the program costs \$7,000 per year, and the Michigan Department of Health and Human Services reimburses the FOC for 66% of that cost under Title IV-D of the Social Security Act.

The AFOC reported that the FOC has a very good relationship with Matterhorn, which has kept costs low. The FOC does not have to pay Matterhorn to make changes to the platform. For example, after its launch, the platform was expanded to add parenting-time complaint cases. Matterhorn made these changes for no additional cost.

According to the AFOC, ODR has resulted in cost savings to the FOC. He estimated that adopting ODR led to a 50% decrease in paper mailings, which saved the court and the FOC both considerable staff time and paper. In addition, he noted that because ODR allows parties to resolve their issues via the platform, they can more often avoid hearings, thus decreasing the need for court involvement. Court staff does not have to schedule matters for hearings, send out notices for *de novo* hearings, or post hearing announcements on the court's monitor or the courtroom hearing day board.

### Benefits

When asked about ODR's effect on parties, interviewees reported that the platform has several advantages beyond efficiency. As noted earlier, a subset of caseworkers indicated that ODR helps their clients have ownership over their agreements and leads to better hearings. One caseworker noted that using a text-based format was advantageous because it requires parties to type their communications, allowing them to consider what they are saying more carefully than when they are speaking.

The AFOC's impressions of ODR were overwhelmingly positive. Although developing the platform required a significant amount of time, he believed that once it was finished, it saved

## FINDINGS AND RECOMMENDATIONS

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time for both the FOC staff members and parties. He observed that because parties do not need to travel to the courthouse, attendance and participation in cases have increased. More disputes are solved in real time, which, from his perspective, results in better outcomes for parties.

The AFOC said that developing the ODR platform helped him grow closer with staff members because the project was a team effort. He enjoyed observing team members who were initially hesitant about the shift to ODR eventually come to appreciate the advantages of the program: “When the light goes on for one of my team members, that is a positive for me.”

The AFOC suggested that COVID-19 ultimately helped propel ODR efforts because it increased the need for technology that allows people to handle disputes without leaving their homes. When asked what advice he would give other courts considering the implementation of ODR, he said “Take the plunge.” He concluded that adopting modern technology pays dividends in the long term.



# LIMITATIONS OF THE EVALUATION

## SURVEYS

The number of parties who completed the surveys was relatively small, in large part due to the restricted length of the evaluation period, but also because caseworkers had to close matters on the ODR platform to trigger the automated survey invitation and follow-up invitation; in 28 cases, the caseworker did not close the matter and thus no invitation was sent. The small sample size meant that we had to rely primarily on descriptive statistics for the survey component of the evaluation. For some survey questions, including those that assessed attitudes toward caseworkers among parties who did not use ODR, we did not report descriptive statistics because we obtained three or fewer responses.

Some of the statistical tests we conducted may have produced nonsignificant results because of the small sample size. One reason for the small sample size was the temporary halt to data collection that took place while we negotiated changes to the terms of our data-sharing agreement with the 20th Circuit Friend of the Court to clarify whether and how data that the Matterhorn platform collected on its behalf could be shared with third-party evaluators such as ourselves. The halt in data collection could have been avoided had these issues been determined during the initial contract formation stage between the Court, the FOC, and Matterhorn. We recommend that contracts between vendors and courts anticipate the possibility of third-party evaluations by including provisions that provide easy access to data for evaluation purposes and are approved in advance by any state agencies that have jurisdiction over the collection of statutorily regulated data (e.g., child support data).

Based on our experience, we strongly encourage future evaluations to collect data from larger samples, which would require collecting data over a longer period. Given the high response rate we achieved, these studies should use comparable recruitment methods. Larger samples would also allow more detailed analysis of specific types of matters, such as custody disputes, as well as types of FOC clients other than parents, which was not possible with the current dataset. In addition, a larger sample would also support more robust comparisons between ODR users and those who used more traditional processes, which was also not possible with the current dataset. Nevertheless, given the high response rate, the available data offer important insights into party perspectives on the ODR program.

## LIMITATIONS OF THE EVALUATION

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### FOC AND ODR PLATFORM DATA

Similar to the situation we faced with survey collection, the matter-level data suffered from a small sample size, which may have obscured the significance of the findings. In addition, we relied on caseworkers to provide information via spreadsheets. We conducted a rigorous quality check of their entries by identifying any conflicting information within and across the two FOC spreadsheets and by comparing caseworker data against automated data from Matterhorn. This process greatly increased the accuracy of the data. Nonetheless, the data may still contain some inaccuracies, which might have slightly affected the findings regarding matter outcomes and time to closure.

### ADDITIONAL CONSIDERATIONS

Some parties who were offered ODR ultimately opted out; thus, the comparison groups used in our evaluation reflect an element of self-selection. The comparisons we made between ODR and non-ODR groups should be interpreted accordingly. Moreover, some caseworkers suggested during interviews that they did not offer ODR to some parties involved in especially contentious cases.

We anticipate that evaluations such as this one will provide useful information to not only the court where the evaluated program is housed, but also other courts contemplating an ODR initiative. That said, the present sample was composed of parties involved in family law cases, which necessarily involve parties with preexisting relationships. These parties had cases related to child custody and parenting time, which are typically high conflict in nature. Responses to the survey questions asking parties to indicate how they felt about the opposing party confirmed that the majority of sample members felt some level of hostility toward the other party, as well as fear and anxiety. Parties also generally reported low levels of trust. It remains an empirical question whether, or how much, our findings might generalize to parties or matters that have different attributes.

It is also worth noting that the evaluation took place during the COVID-19 pandemic during which many businesses and organizations curtailed in-person operations and many people across the US worked from home.<sup>82</sup> These factors, along with the stress associated with the pandemic,<sup>83</sup> could have affected parties' behaviors and perceptions vis-à-vis ODR.

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<sup>82</sup> Kim Parker et al., *How Coronavirus Has Changed the Way Americans Work*, PEW RSCH. CTR. (Dec. 9, 2020), <https://www.pewresearch.org/social-trends/2020/12/09/how-the-coronavirus-outbreak-has-and-hasnt-changed-the-way-americans-work/>.

<sup>83</sup> Canan Birimoglu Okuyan & Mehmet A. Begen, *Working from Home During the COVID-19 Pandemic, its Effects on Health, and Recommendations: The Pandemic and Beyond*, PERSPECTIVES PSYCHIATRIC CARE 1 (2021).

# OVERALL CONCLUSION

We used a multi-faceted approach to evaluate the FOC's ODR program; specifically, we used surveys to assess parties' perceptions of ODR and their experience with the FOC, analyzed data from the court's case management system and Matterhorn's platform, and conducted interviews with FOC personnel who were heavily involved in establishing or utilizing the program.

## ODR ACCESS

### Messaging and Party Education

The FOC's ODR program appears to be more successful at promoting participation than early programs in other US jurisdictions, with 48% participation compared with rates of 21% to 36%.<sup>84</sup> Nonetheless, for more than half the matters that were offered ODR, at least one party decided not to participate. In half of these matters, a party simply did not register on the platform. The program was meant to be required with few exceptions, both in terms of caseworkers offering ODR and parties using ODR unless they had a compelling reason not to. The FOC might be able to boost participation rates to better align with its intent to make ODR a requirement by clarifying that parties are expected to use ODR unless an exception applies, providing more information about ODR, and requiring parties to supply a justification for opting out.

Responses to the survey parties completed shortly after their matters opened with the FOC suggested that many parties had incomplete knowledge of the program's key features. One-half did not realize the ODR program was being offered free of charge, and 10% erroneously believed it involved video communication. These findings suggest the FOC could do more to educate parties about the program around the time they are asked to register for ODR.

Survey responses also indicated that although the majority of parties felt at least some initial excitement about trying ODR, a similar percentage felt at least somewhat anxious, and about half reported being at least somewhat confused. In addition, at least one caseworker noted that the parties were unclear about what could be done on the platform and what his role would be. Further, survey participants who shared that they were not sure whether they would use ODR for their matter generally responded this way because they did not know whether the other party would want to use the platform, suggesting the importance of sending stronger messages concerning the general requirement to use ODR to non-initiating parties and reassuring initiating parties that caseworkers are delivering these messages.

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<sup>84</sup> See *supra* notes 33 to 36 and accompanying text.

## OVERALL CONCLUSION

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Given some parties' apparent confusion about ODR, the FOC should review and enhance the information it provides to parties. The FOC can provide parties with messaging that indicates that ODR is required unless the parties have a compelling reason to opt out, as well as information on ODR's potential benefits, and how to use the platform on at least three occasions during its handling of matters: when caseworkers first inform parties about ODR, in the automated email generated by the ODR platform "inviting" parties to use ODR, and when the parties click on the link to go to the platform. Providing parties with program information at multiple junctures is good practice. The FOC should build upon this foundation by providing more information at each point, as well as on its website. If possible, the FOC should test the communication materials with people who are similar to its clients to discern what they understand about the program and how it can be used.

The information must be thorough yet concise and understandable. People are more likely to absorb new information when they understand its importance and its relevance to them.<sup>85</sup> Thus, FOC personnel should flag information about the ODR program as important and relevant to the clients receiving the communication. Caseworkers could accomplish this goal by informing each client that they are expected to use ODR unless an exception applies and should explain the features as they relate to the client's matter. In other words, rather than offering a generic statement that parties are generally expected to use ODR, caseworkers should personalize this instruction. For example, instead of telling all clients, "Parties who have parenting-time disputes are expected to use ODR," a caseworker could tell hypothetical client Anna, who has divorced her husband, Charles, "The FOC has an online dispute resolution program, which we expect you to use for your parenting-time dispute with Charles unless your situation fits within an exception for this requirement."

The wording of the automated email asking parties to register for ODR and the platform's guidance on ODR should be reviewed. Both the automated email and the platform itself should also indicate that parties are expected to use the platform, barring specific exceptions. Use of the term "invites" in the version of the email we evaluated suggests that the parties can decide to not use it for any reason. The ODR platform should outline the acceptable reasons for opting-out near the opt-out checkbox and require parties to specify their reason for opting out. Of particular importance, the FOC should add information about whether, and if so how, communications made on the platform can be used in later legal proceedings. This information should also be included in the agreement to use ODR. The email should provide a short description of ODR and links to the FOC website for more information about how to use it, along with its risks and benefits. The ODR platform should include more information on what ODR is and how parties can learn to use it.

The FOC's website presents an additional opportunity to educate parties about its ODR program. The FOC should update its website to include more information about ODR, including a statement that

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<sup>85</sup> *When Ignorance is Not Bliss*, *supra* note 70.

## OVERALL CONCLUSION

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parties may be required to use ODR, information on the ODR process, and its benefits and its risks. If possible, this information should be provided in a video format as well as in text.

In addition, caseworkers should be given specific instructions on how to communicate expectations and educate parties to create a uniform experience for the FOC's clients. One way to promote uniformity would be to provide caseworkers with a standardized decision tree that includes a checklist of items they are expected to communicate to each party for each matter. This checklist should be clear about accepted reasons for opting out, so that caseworkers can apply these standards consistently.

### Technological Aspects of Access

The platform is currently not available to individuals with visual impairments or who have limited English proficiency. We recommend that the FOC request assistance from Matterhorn in accommodating these parties. Matterhorn should provide screen reader and voice activation capabilities. The FOC should consider providing interpreters for parties with limited English proficiency.

According to the caseworkers we interviewed, technological challenges prevented some clients from using the existing ODR platform. The FOC might consider offering parties who are not technologically capable of using text-based ODR other resolution options appropriate to their matter. These options might include video mediation or more informal phone or video discussions among the parties and the caseworker. These could be evaluated to ascertain participants' feedback on their experiences with these alternatives.

Caseworkers also indicated that some parties had difficulty with the platform once they began using it, including problems with the registration process, and not knowing how to upload or open files on the platform or sign documents online. One caseworker also noted that the platform was easier to use on a computer than on a phone, which led to some parties declining to use ODR because their only point of access was via their phone. Optimization of the platform for mobile phones is essential given that 91% of the parties who used ODR accessed the platform via their phone.

To enhance the experience of parties who lack digital literacy, the FOC should explore what can be done to make the technology more accessible.<sup>86</sup> Observation-based usability and accessibility testing, similar to what the University of Arizona conducted for Utah's statewide ODR pilot program,<sup>87</sup> might help the FOC to pinpoint specific problems parties have when using its ODR platform and shed light on

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<sup>86</sup> Heather Scheiwe Kulp & Amy J. Schmitz, *Real Feedback from Real People: Emphasizing User Centric Designs for Court ODR*, 26 DISP. RESOL. MAG. 1, 11 (2020) ("The word 'people' is key here; almost all interviewees said they wanted to be able to talk to a real, live person who could assist them if they had trouble with the system").

<sup>87</sup> BUTLER ET AL., *supra* note 32.

## OVERALL CONCLUSION

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possible solutions. Improvements might include providing parties with links to resources or trainings that increase their comfort level with technology and giving them instructions on how to share and sign documents online.

Despite some parties being wary of or having difficulties with the technology, the most common responses to our question asking ODR users what they liked about the platform indicated that they found it easy to use or convenient. The parties also took advantage of the convenience of 24/7 access to ODR, with more than half logging on when the FOC office was not open. These responses and use patterns suggest that the ODR platform worked well for those who felt comfortable enough with technology to use it.

Currently, parties who are represented by attorneys cannot use ODR with their attorneys because the platform does not allow more than one person on any side of a matter to participate. Thus, a push for ODR might discourage people from utilizing legal representation. Although a small minority of FOC clients are represented, the benefits of ODR should be available to all. The FOC should explore with Matterhorn the possibility of opening participation to attorneys.

## PARTY EXPERIENCE

Although our survey sample size was too small to determine whether the experiences of those who used ODR differed significantly from the experiences of those who were offered ODR but did not use it, the survey results paint a favorable picture of how ODR users viewed their experience with the platform with respect to procedural justice and other metrics. Compared to those who did not use ODR, parties who used ODR were four times as likely to give highly favorable ratings for process fairness and were almost twice as likely to indicate they were highly satisfied with the process used to resolve their issue. Further, compared with those who did not use ODR, parties who used ODR were half as likely to give low ratings for process fairness and process satisfaction. Given that the ODR program was not in practice required, parties essentially self-selected into the platform. Thus, the attributes of the parties or matters that used ODR, rather than the use of ODR per se, might have driven these differences.

For both parties who used ODR and those who did not, the more control they reported having over the outcome, the more satisfied they were with the outcome and the process, and the more fairly they believed the FOC handled their matter. The amount of control parties reported having was significantly associated with how favorably they rated the FOC. For ODR users, the more control they felt they had over the outcome, the more favorably they felt about the other party at the time of Survey 2; however, this association did not emerge among nonusers. Together, these findings suggest that perceived control over outcome may play a role in shaping post-experience evaluations, especially for those who use ODR.

## OVERALL CONCLUSION

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### OUTCOMES AND EFFICIENCY

Parties who used ODR were significantly more likely to reach agreement than parties who were offered ODR but did not use it. Parties who used ODR were also significantly more likely to reach agreement compared with those who participated in mediation or informal resolution in lieu of ODR (59.2% vs. 26.7%). Although these differences in agreement rates may be attributable to the use of ODR per se, they might also reflect self-selection bias: parties who were more favorable to settlement may have been more likely to choose to use ODR. Although we also observed that a lower percentage of matters in which ODR was used required a hearing than matters in which ODR was not used, the difference in hearing rates was not statistically significant.

The FOC envisioned a program that was more efficient for parties, caseworkers, and the court. The evidence as to whether the ODR program is accomplishing this goal is mixed. On one hand, ODR use appears to be associated with a shorter time to disposition, particularly for child support cases. For the six child support cases for which ODR was used, the number of days from when the matter was opened until it was closed was just over half the number of days for the eight cases in which ODR was not used (11.8 days and 21.5 days, respectively). However, the difference in time to disposition for parenting-time matters was only five days (45.1 days for ODR users and 50.6 days for non-ODR users).

The effect of ODR on caseworkers' time also seems mixed. The caseworkers we interviewed noted that, for some matters, they spent more time interacting with parties when they used ODR than they would have without ODR. For other matters, however, they noted the convenience of sharing documents and signing agreements online and reported that these features reduced time to resolution and offered both parties and caseworkers greater clarity and access to relevant documents, allowing everyone to make more informed decisions and, for child support cases, more accurate calculations.

How much time caseworkers spent using ODR appeared to depend on several factors, including the attitudes of the parties, how much back-and-forth communication was needed to reach an agreement between parties, how long parties took to reply via the system, and the type of matter being addressed. Because caseworkers had flagged the use of ODR for highly contentious parties as a potential waste of time, the FOC leadership permitted caseworkers to determine whether individual matters involving high conflict parties should be offered ODR. We encourage the FOC to offer parties in these situations the choice of participating in ODR, as they do for some matters involving IPV.

The FOC personnel viewed reaching agreement as increasing efficiency for both caseworkers and the court. Caseworkers noted that each agreement reached was a chance to avoid a hearing. The AFOC indicated that when resolution occurs online, less court involvement is required. The court does not have to send out notices for *de novo* hearings or post hearing announcements on the court's monitor or the courtroom hearing day board.



## OVERALL CONCLUSION

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In terms of program development and administration, the AFOC indicated that developing the ODR program was very time intensive at certain points. Five people from the FOC, including the AFOC, participated in program development, learned how to conduct online dispute resolution for parenting-time issues, tested the platform for faults, and trained their colleagues on how to use the platform. Nevertheless, the caseworkers involved in the development phase noted that their involvement did not require them to significantly shift their responsibilities. Once the program launched, the amount of time the AFOC and caseworkers spent on administrative tasks declined significantly, although some efficiency was lost when Matterhorn changed its contact person for the FOC, as the formation of a trusting relationship with a vendor contact takes time.

There was no direct cost to the FOC to develop the program. The annual cost for using the platform, according to the AFOC, was offset in part by time and cost savings, including a 50% decrease in paper mailings, which saved not only money, but personnel time.

## FINAL THOUGHTS

Our evaluation provides a favorable first impression of the FOC's ODR program. Data drawn from multiple sources suggest that the program has a relatively high use rate compared with other programs that have been evaluated to date and is associated with a greater probability of reaching an agreement, as well as a shorter time to disposition for child support cases. Parties who used ODR generally considered it to be easy to use and convenient and were more likely to feel highly satisfied with the process and to report that the process used for their case was highly fair.

These positives notwithstanding, our analysis suggests that improvements could be made to educate parties regarding the ODR program, direct parties to use it, and increase access to parties with disabilities or who would benefit from an interpreter. The FOC should also explore ways to reduce access barriers for those identified by caseworkers as less likely to use or benefit from the program because they have lawyer representation or have high-conflict relationships. Attempts to reduce access barriers should also be directed at those who lack digital literacy, those with disabilities, and those who would use their mobile phone to access the platform.

Our findings should be regarded as laying the foundation for future work that utilizes a sample size conducive to more rigorous statistical analysis. For this reason, we recommend that the FOC continue its efforts to evaluate the program. We also recommend that the FOC consider testing the efficacy of how it markets and educates parties concerning its ODR program to ensure clients understand its core features.

# APPENDIX A: DATA COLLECTION PROCEDURES

We used a mixed-methods approach to evaluate the ODR program’s impact on matter disposition time, case outcomes, party perceptions, court personnel, and other factors.

We compared data from matters that used ODR to data from matters that were offered ODR but the parties opted not to use it (“non-ODR group”). All members of both groups sought to use the FOC’s services to resolve their issues during the COVID-19 pandemic. We also included data from parties who were surveyed about their expectations for ODR prior to using the platform and from those surveyed about their experience with ODR after using the platform. Those who opted out of ODR were asked to complete a survey shortly after they were identified as having opted out.

All data collection was conducted under the terms of various data-sharing agreements among the 20<sup>th</sup> Circuit Court of Michigan; the Ottawa County Friend of the Court; the Michigan Department of Health and Human Services – Office of Child Support; the University of California, Davis; and Matterhorn. The agreement between the University of California, Davis and the 20th Circuit Friend of the Court was required and approved by the Michigan Office of Child Support.

To collect data on matters that received the FOC’s assistance during the evaluation period, we created a spreadsheet for investigators to complete for each of their matters. The spreadsheet tracked whether parties were eligible for ODR, whether they were offered ODR, whether they opted out (and if so, why), the number of days from the caseworker receiving the matter to when it was resolved, and the outcome of the FOC’s assistance. Each caseworker was responsible for recording information for their matters. The FOC also collected information for the evaluation from the Ottawa County Court’s case management system (AS400). Court Innovations provided data from Matterhorn, and parties completed surveys. In addition, we interviewed key stakeholders at the FOC who were involved in implementing or using the ODR system.

Data were collected during two time periods: the pilot period and the post-launch data collection (“data collection”) period. During the **pilot period**, we asked volunteer parties who were using the FOC’s services to provide feedback on the drafts of several survey instruments; specifically, parties were asked about question clarity, survey organization, and the duration of time needed to complete the surveys. These parties were compensated for their assistance. We also asked FOC caseworkers to complete the spreadsheet to determine whether any changes needed to be made to it and whether the caseworkers needed clarification on how to fill it out. The ODR **data collection period** was the time during which we actively collected data from the FOC, the court’s case management system, Matterhorn, and the parties.

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### DATA COLLECTED BY THE FOC

After the launch of ODR, caseworkers kept records on their matters in a spreadsheet. We used these data to identify the number of days matters took to move from request for services to service closure, the type of outcome for each FOC case (e.g., agreement reached, hearing held), and the parties' representation status. The data also provided information as to whether parties were offered ODR as well as whether either of the parties opted out of ODR and, if so, why. The information was provided weekly during the data collection period of November 2, 2020, through August 31, 2021. See Table A1 for a list of the data elements included in the dataset.

We reviewed the caseworkers' entries periodically. Any conflicting or missing information was flagged for follow up with the caseworker assigned to oversee the collection of the data. Missing data was added, and conflicting data were amended. The caseworkers' entries were also compared to data from the ODR platform. Any conflicts between these sources of data were discussed with caseworkers and amended as required.

The variables in Table A1 were provided to the caseworkers to complete the spreadsheet that was used for analyzing participation rates, reasons for not participating, outcomes, and time from filing to matter closure.

**Table A1:** *Caseworker Spreadsheet: Data Elements Used to Track Matters*

Variable	Definition
Matter	A matter is an issue brought by a party to the FOC for resolution
Matter Type	<ul style="list-style-type: none"><li>• <u>PT Complaint</u>: A party has filed a complaint stating that the other party has not followed the agreed parenting-time plan.</li><li>• <u>PT Modification</u>: The parties want to change their parenting-time plan and have asked FOC for help to do this.</li><li>• <u>Child Support Negotiation</u>: The parties are involved in a 3-year review and want to figure out what child support should be.</li><li>• <u>Child Support Objection</u>: A party has objected to an FOC-proposed support order.</li><li>• <u>Custody</u>: The parties want to modify custody.</li><li>• <u>Other</u>: Any matter that is not listed above</li></ul>
Date Matter Started	The date that the caseworker first took action to try to resolve this matter.
Who initiated this matter?	<ul style="list-style-type: none"><li>• <u>Plaintiff</u>: The plaintiff in the case initiated the matter either by filing a complaint, objection or motion</li><li>• <u>Defendant</u>: The defendant in the case initiated the matter either by filing a complaint, objection or motion.</li><li>• <u>Both</u>: Both parties mutually decided they wanted to modify their parenting time agreement or their custody agreement.</li></ul>

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Parties offered ODR?	Caseworker offered the parties the opportunity to use ODR and entered their information into Matterhorn.
Reason not offered ODR	<ul style="list-style-type: none"> <li>• <u>IPV</u>: The caseworker and person who experienced IPV decided that ODR would not be appropriate due to the nature of the intimate partner violence and/or the victim's fear of using ODR to resolve the matter.</li> <li>• <u>Highly litigious case</u>: The parties have a history of filing complaints or using the court to resolve their conflicts.</li> <li>• <u>Lawyer involved</u>: At least one party has a lawyer.</li> <li>• <u>Low literacy</u>: At least one party does not have the literacy skills required to use ODR.</li> <li>• <u>Not English fluent</u>: At least one party does not understand English well enough to use ODR.</li> <li>• <u>Cognitive incapacity</u>: At least one party does not have the cognitive capacity to be able to understand the process and/or self-advocate.</li> <li>• <u>Disability</u>: At least one party has a disability that precludes use of ODR, such as visual impairment.</li> <li>• <u>Other</u>: Any reason not listed above.</li> <li>• <u>N/A</u>: Parties were offered ODR</li> </ul>
Party opt out	When offered ODR, did at least one of the parties decide not to use ODR?
Reason for opt out	<ul style="list-style-type: none"> <li>• <u>Failed to register</u>: The reason for opt out was not known. Parties simply did not register.</li> <li>• <u>Not comfortable with technology</u>: At least one party said they didn't want to use ODR because they couldn't easily use the technology.</li> <li>• <u>No internet access</u>: At least one party did not have regular access to the internet.</li> <li>• <u>No access to a computer</u>: At least one party did not have regular access to a computer or smartphone.</li> <li>• <u>Just wanted to have a hearing</u>: At least one party said they wanted to move directly to a hearing.</li> <li>• <u>Other</u>: Any reason not listed above.</li> <li>• <u>Unknown</u>: Reason is not known.</li> </ul>
Non-ODR actions taken for this matter	<ul style="list-style-type: none"> <li>• <u>Court-referred mediation</u>: The court has referred this matter to mediation services for formal mediation.</li> <li>• <u>Court-referred informal resolution</u>: The court has referred this matter to FOC for informal resolution to narrow issues or work toward resolution.</li> <li>• <u>FOC-initiated mediation</u>: FOC decided the matter should be mediated</li> <li>• <u>FOC-initiated informal resolution</u>: The investigator undertook to informally resolve the matter.</li> <li>• <u>Traditional Complaint Process</u>: The investigator mailed the complaint and waited for a response</li> <li>• <u>None of the above</u>: None of the above-listed actions was taken.</li> </ul>

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How was agreement signed?	<ul style="list-style-type: none"><li>• Mailed to the parties for signature</li><li>• Signed by the parties online</li><li>• Signed by the parties at the FOC office</li></ul>
Outcome	<ul style="list-style-type: none"><li>• <u>Stipulation</u>: The parties have signed a stipulation.</li><li>• <u>Informal resolution</u>: The parties resolved the matter without a signed stipulation.</li><li>• <u>Hearing required/No agreement</u>: The parties did not reach agreement and will continue to a hearing.</li><li>• <u>Complaint denied</u>: The caseworker denied a party's complaint that a parenting time order was violated.</li><li>• <u>Other</u>: Any outcome not listed above.</li></ul>
Date matter completed	Enter the date when the matter closed at FOC either through agreement, informal resolution, complaint denial, decision to drop the matter, or hearing.

## COURT CASE MANAGEMENT SYSTEM DATA

FOC staff members used the court's system-wide CMS (AS400) to identify when matters receiving FOC assistance during the data collection period were first adjudicated and whether the matters eventually underwent a hearing. They recorded information on case outcomes through October 21, 2021, giving us information on most cases that opened during the data collection period.

In an effort to be very thorough in determining the ultimate outcome of a case, FOC personnel supplemented the court record with the caseworkers' notes. They entered this information into a spreadsheet created specifically for this study. See Table A2 for a list of the data elements included in the dataset.

As a quality check, we reviewed the spreadsheet, asking for clarification when needed and comparing it to the data provided in the caseworkers' spreadsheet. All discrepancies were discussed with FOC staff and amended as needed.

**Table A2:** Case Outcome Spreadsheet Data Elements

Variable	Definition
Docket Number	Case number from the original family case filing in court
Initial Filing Date	Date the family case was first filed
Date of final Judgment/Order	Date of the original court order regarding custody, parenting time or parentage
Results of case	Narrative regarding what happened with the case
Outcome Code	<ul style="list-style-type: none"><li>• <u>Stipulation</u>: The parties reached agreement and signed a stipulation that was entered as a court order</li><li>• <u>Resolution</u>: The parties resolved their matter informally and did not proceed to a hearing.</li></ul>

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	<ul style="list-style-type: none"> <li>• <u>Hearing held</u>: The matter was resolved through a hearing</li> <li>• <u>Hearing not held</u>: For an unknown reason, a scheduled hearing was not held.</li> <li>• <u>Hearing scheduled</u>: A hearing had been scheduled but had not yet taken place.</li> <li>• <u>Motion filed</u>: FOC or a party has filed a motion for a hearing, but the hearing has not yet been scheduled.</li> <li>• <u>No known further action</u>: There is no record of the parties taking any action after the caseworker has assisted them without resolution.</li> <li>• <u>Other</u>: Any other outcome.</li> </ul>
Party opt out	When offered ODR, did at least one of the parties decide not to use ODR?
Date of Order after FOC Assistance	<ul style="list-style-type: none"> <li>• <u>Date entered</u>: The date the judge signed the court order resolving the matter, whether the parties stipulated or had a hearing.</li> <li>• <u>N/A</u>: No order was entered for this matter</li> </ul>

## ODR PLATFORM (MATTERHORN) DATA

Matterhorn generated information on how parties used ODR and their engagement with the process, including the time of day they logged in and out of the platform, the total number of messages the parties sent per matter, the number of documents that parties uploaded, time elapsed between starting and ending negotiations, and whether the parties reached agreement on the platform. In this program, the caseworkers had to manually close a matter on the ODR platform. They may not have closed the matter on the exact date they stopped working on the platform, and in some instances, they did not close the matter at all. Therefore, in some instances, the matter closed date may not be the date on which work on the platform ended and closed dates are missing for some matters.

**Table A3: Matterhorn Data Elements**

Variable	Definition
Create Date	The date a new matter was entered into Matterhorn
Docket Number	The case number associated with the matter
Complainant Opted In	Yes/No – the plaintiff/complainant registered on Matterhorn for this matter
Respondent Opted In	Yes/No – the defendant/respondent registered on Matterhorn for this matter
Parties offered ODR?	Caseworker offered the parties the opportunity to use ODR and entered their information into Matterhorn
If it ended, Where it Ended	<ul style="list-style-type: none"> <li>• <u>Pending Registration</u>: One or both parties did not register</li> <li>• <u>Intake</u>: One or both parties did not complete the intake forms (IPV, etc.)</li> <li>• <u>Opt-Outs</u>: One or more parties opted out by checking the opt-out box</li> <li>• <u>In Progress</u>: The parties and caseworker used the platform, but did not reach agreement</li> <li>• <u>Pending Signatures</u>: The parties reached agreement, but did not sign it online</li> <li>• <u>Signed Agreements</u>: The parties signed the stipulation online</li> </ul>

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Reached Agreement	TRUE/FALSE: True if end stage was Signed Agreements. Otherwise false
Closed Date	Date the caseworker closed the matter on Matterhorn
Days Elapsed	Days between the Create Date and the Closed Date

We obtained these data from Matterhorn at the end of the data collection period. See Table A3 for the list of data elements included in the dataset.

### PARTY SURVEYS

We developed two survey instruments to evaluate parties' perceptions of the ODR program and FOC processes. The pre-experience survey (Survey 1) was administered to parties shortly after their matters were filed with the FOC, generally before receiving assistance for that matter. This included parties who ultimately never registered for ODR. The post-experience survey (Survey 2) was administered soon after parties' time on the ODR platform had ended, whether they used it or not. Parties who were not offered ODR participated in Survey 1 only. All surveys were available only in English, mirroring the language of the ODR platform.

Survey 1 questions assessed the nature of the relationship and the level of conflict between parties, gathered background information about the matter they were seeking to resolve via ODR, and asked about their expectations of ODR. The survey also gathered general demographic information about the party completing the survey and the children involved in the matter. Parties who opted out of ODR were asked why they did so. This group's responses provided insights about whether parties understood that ODR was an option, what they believed ODR would entail, and whether they perceived barriers that prevented them from utilizing the program. The Survey 2 focused on parties' experiences with the ODR platform and surrounding FOC processes.

We pilot-tested Survey 1 by asking volunteer parties who used the FOC's services to provide feedback on our draft, including opt-out questions; respondents were asked about question clarity, survey organization, and the time needed to complete the surveys. They were compensated for their time. We modified the survey according to the feedback we obtained. Survey 2 questions were derived in part from questions we used for an evaluation in another jurisdiction that benefited from pilot participant feedback. Time constraints prevented us from being able to pilot Survey 2 in Ottawa County.

Parties accessed the surveys online via a link contained in emails or text messages which invited them to participate in the study. The surveys were created in a Qualtrics account managed by the University of California, Davis. Eligible parties completed no more than one Survey 1 and one Survey 2 for the same matter during the evaluation period. Initially, participants received \$20 for completing Survey 1 and \$30 for completing Survey 2. To boost the response rate, we increased compensation to \$25 and



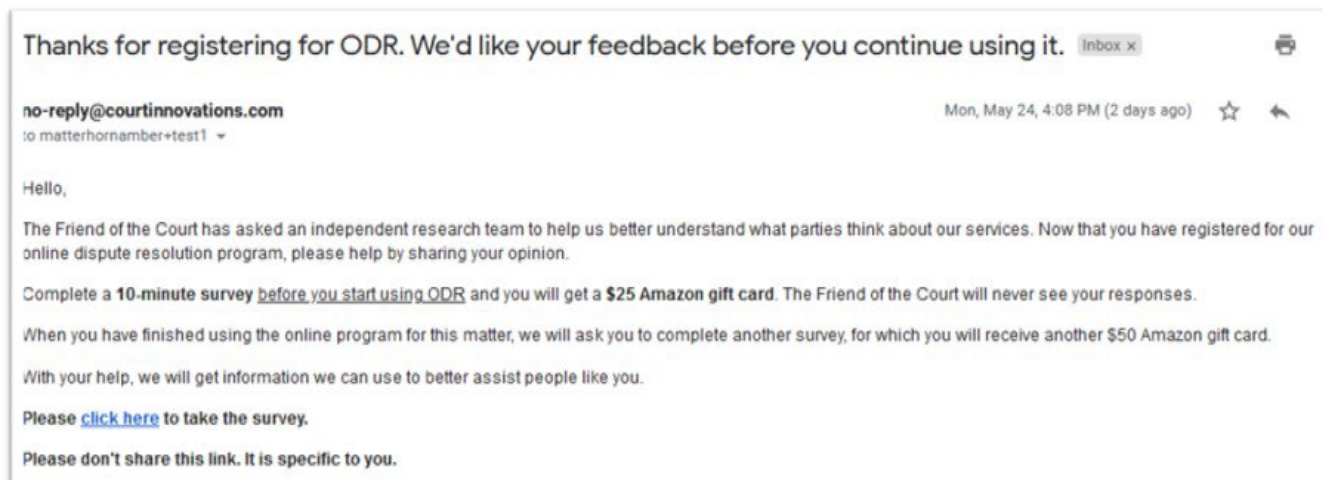
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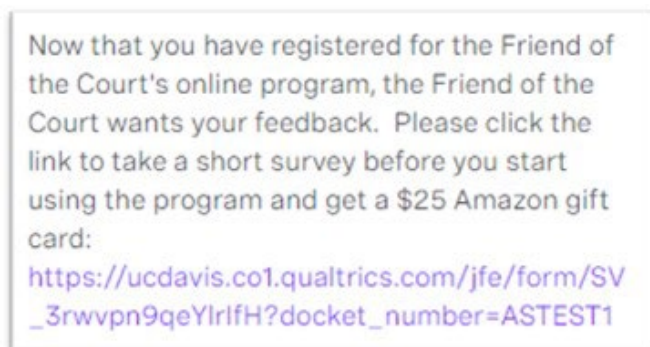
\$50 for the Survey 1 and Survey 2, respectively, in May 2021. All compensation was in the form of Amazon e-gift cards.

The Matterhorn platform emailed and texted an invitation to complete Survey 1 automatically immediately after a caseworker entered the parties' contact information into the platform. See Figure A1 for an example email invitation and Figure A2 for an example of the text message invitation. Within generally one week of the automated email and text message, we emailed an invitation reminder to those same parties.

**Figure A1: Survey 1 Initial Email Invitation**



**Figure A2: Survey 1 Text Message Invitation**



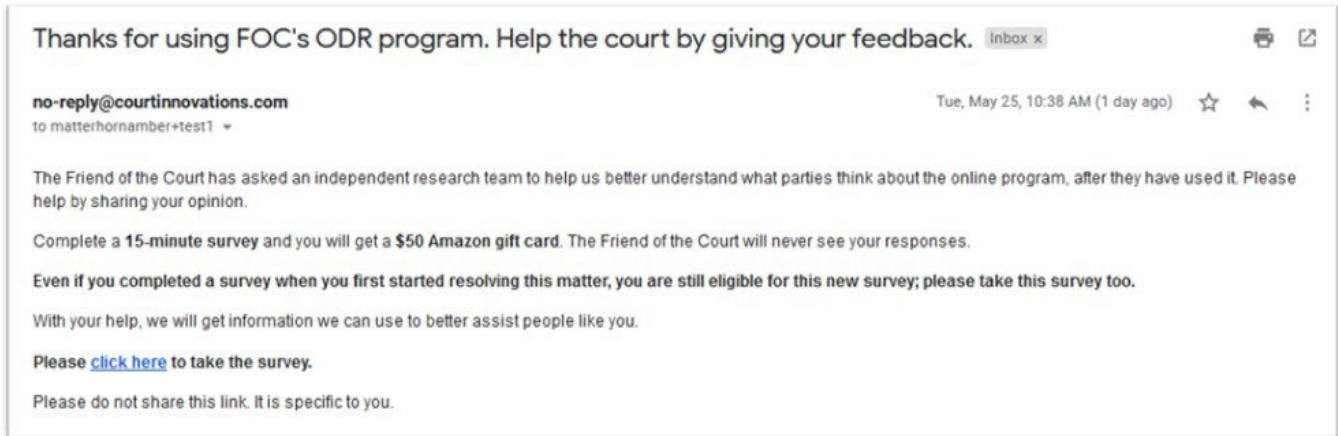
Parties who used ODR were invited to complete Survey 2 after one of the following events indicated the termination of their time on Matterhorn: 1) they reached an agreement on Matterhorn; 2) they did not reach agreement on Matterhorn and a notice of no agreement was sent to the court; 3) they did not engage or stopped engaging on Matterhorn and the caseworker closed the matter; or 4) the FOC caseworker noted that ODR was not being used to resolve the matter. In these instances, Matterhorn sent an automatic email and text message inviting the parties to complete Survey 2 directly after the

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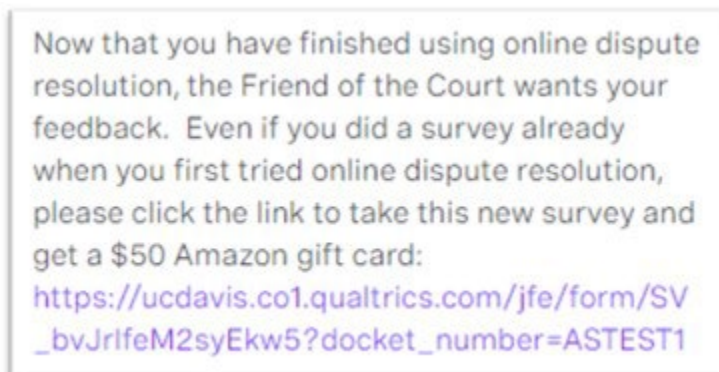
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caseworker closed the case manually. See Figure A3 for an example of the email and A4 for the text message.

**Figure A3: Survey 2 Initial Email Invitation**



**Figure A4: Survey 2 Text Message Invitation**



Court Innovations emailed us an Excel file each week with a list of matters in which the parties were newly invited to register for ODR as well as a list of newly closed matters. We used these files to know when to send out follow up survey invitation emails to the parties. In accordance with the data sharing agreement with the 20th Circuit Friend of the Court, these files included case numbers, dates the matters opened or closed, type of matter (modification, request, complaint), party names, and party email addresses. In addition, each week the FOC informed us of ODR-eligible matters that caseworkers had deemed unsuitable for ODR and ones in which the plaintiff/complainant preemptively indicated they did want to use ODR. In these rare situations, the plaintiff/complainant received an invitation only via an email from the University of California, Davis; no automated email was sent through Matterhorn. The defendant/respondent was not contacted. Because we did not have the ability to track case closure for matters that did not participate in ODR, these parties were invited to participate in Survey 1 only.

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Survey links in emails and text messages sent from the ODR platform contained embedded case numbers and parties' names, which allowed the research team to match data across the pre-experience and post-experience surveys when parties completed both surveys.

### Coding Procedure for Open-ended Questions

#### Theme List

Two law students coded the survey responses for our question asking parties to rate video mediation as an option. Two other law students coded all open-ended questions from Survey 2. The Principal Investigator (PI) instructed coders to complete several tasks independent of one another. They independently reviewed all question responses three times and took note of common themes which could be captured in a word or phrase. For each question, the coders independently created a list of themes (themes that appeared five or more times for the video mediation question; three or more times for Survey 2). Themes with fewer responses were placed in a category called "other." Each code, working on their own, then consolidated themes which were substantially similar to one another and could be combined. Next, each created labels for their themes (e.g., "convenience"; "tension with opposing party"), wrote short descriptions of what each theme captured, and provided examples from the response list demonstrating each theme. Coders were instructed to take at least a 24-hour break before independently reviewing the responses once again to make sure that all responses were captured by the theme lists.

After the coders created their own theme lists, they met to create a master list. Common or matching themes were added to the master list. Other themes were discussed until both coders agreed that they represented a large enough number of responses and were sufficiently descriptive. The coders continued their discussion until they were able to narrow down the master theme list to no more than 6 themes per question.

To ensure consistency during the coding process, the PI reviewed the master lists for each question to confirm that each theme was conceptually unique and provided feedback to the coders who then finalized the themes. The list of themes and their descriptions appear in Tables A4 and A5.

**Table A4:** *Coding Themes for Video Mediation Ratings*

Theme Name	Theme Description
Convenience	The process is convenient and/or would take less time.
Effectiveness	This process did or did not seem effective or like it could work.
Tension with Opposing Party	The other party is confrontational and/or

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	combative.
Uncooperative opposing party	The other party does not cooperate, was unresponsive or would not comply with orders.
Unfair	The process, court or caseworker did not seem fair.
Other	Response did not fit into another theme.

**Table A5:** *Coding Themes for Survey 2*

Theme Name	Theme Description
Biased	Answers described the process as being biased
Clarity	Answers described different ways to gain more clarity from the process
Convenience	Answers described different ways the ODR program was more convenient than in-person
Easy to Use	Participants described how the ODR platform was easy or simple to use
General Approval	Participants expressed several approval of the ODR program
General Disapproval or Bias	Answers described the participant's general disapproval of the ODR program and describe it as biased
Liked About ODR	Answers described aspects of ODR the participants liked
No Changes	Participants stated there were no changes they would want to make to the ODR program
No Issues/ Regarding Fairness	Answers described the process as being fair
Nothing	Participants described not liking anything about their selected choice
Quality of Communication	Participants described the quality of communication they experienced
Simple	Participants described the ODR program as simple or easy to use
Technology	Participants suggested new features using technology that could be implemented into the ODR program
Other	Answers did not fit into any category

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### Coding Process<sup>88</sup>

Once the coding teams finalized the master list, they began the coding process. Using Excel for their tabulations, each coder independently coded each response as “1” if the theme was referenced in the response and “0” if it did not. If parties appeared to not answer the question, the coder marked a 1 in an “unresponsive” category. If a party’s response referenced criteria that did not appear on the master list, they categorized the response in category called “other.” Each response could correspond to multiple themes. To ensure accuracy and consistency, the coders independently reviewed the list as well as their coding several times.

They coders were instructed to try to reach unanimity for each entry. Thus, they discussed any disagreements in their coding. Any responses for which unanimity could not be reached were flagged for the PI to tie-break.

### Interviews with FOC Personnel

We conducted in-depth, semi-structured interviews (ranging from 53 to 140 minutes in duration;  $M = 92.8$  minutes) via Zoom with five FOC staff members who helped implement the ODR program or worked directly with ODR matters. Each staff member was interviewed separately. These interviews were conducted toward the end of the data collection period, in July and August of 2021. The interview questions concerned how ODR affected the FOC’s processes, the effect of ODR on their work, the time staff members spent handling matters before and after implementing ODR, and how COVID-19 impacted the FOC’s procedures and their work. We shared the interview questions with interviewees in advance.

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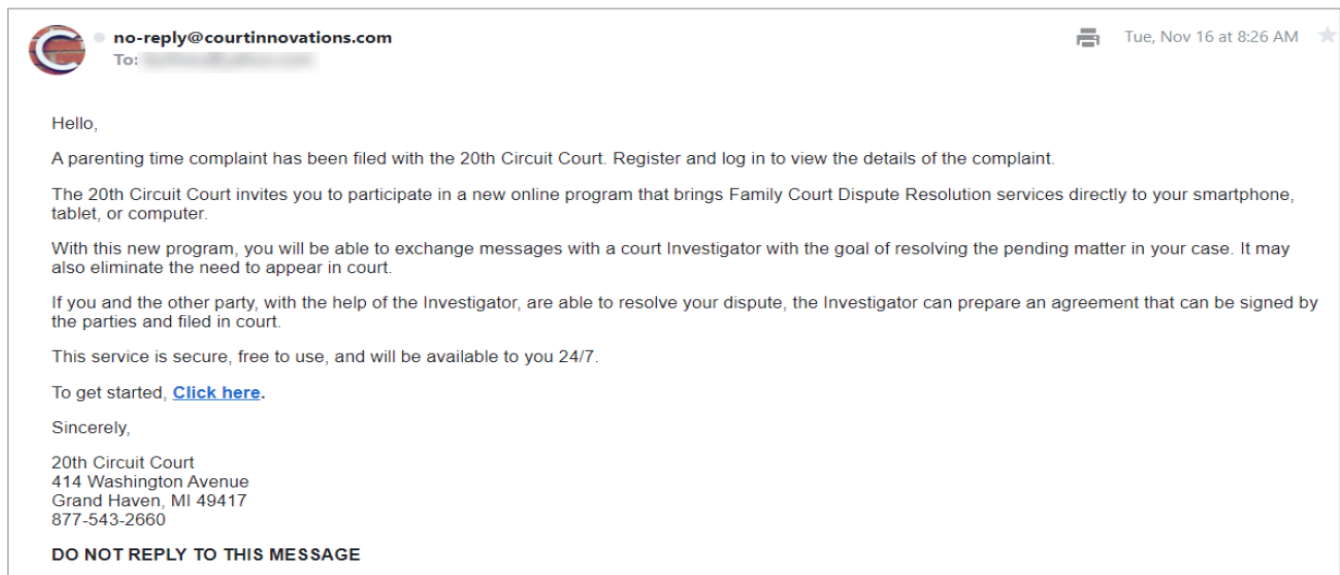
<sup>88</sup> The general coding process we used was inspired by work published in Donna Shestowsky, [\*Inside the Mind of the Client: An Analysis of Litigants’ Decision Criteria for Choosing Procedures\*](#), 36 CONFLICT RESOL. Q. 69 (2018).

# APPENDIX B: ODR INVITATIONS, AGREEMENT TO PARTICIPATE, AND ODR SCREENSHOT

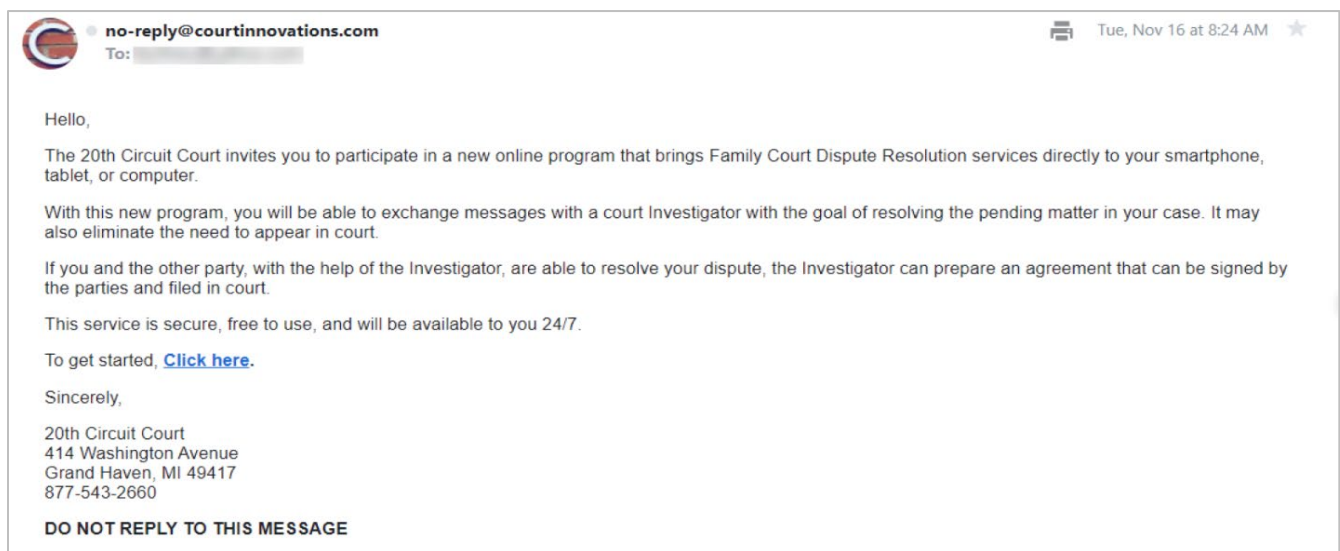
## EMAIL INVITATIONS TO USE ODR

The FOC created two distinct automated emails sent from by Matterhorn inviting the parties to use ODR. The text for each is below.

### Parenting Time Complaint Invitation



### Invitation for Other Matter Types





## APPENDIX B

### AGREEMENT TO PARTICIPATE IN ODR

#### AGREEMENT TO PARTICIPATE IN ONLINE DISPUTE RESOLUTION (ODR)

By typing my name below, I agree to attempt to resolve issues arising out of my case, I agree to make a good faith effort to discuss the issues with the aid of the case worker and to fully disclose all relevant information. I understand that Online Dispute Resolution (ODR) is a voluntary process which may be ended at any time by either party or the case worker.

I understand that ODR sessions are conducted in an online environment and may involve communication via email, text message, or online platform. Due to the electronic nature of the service, I understand that confidentiality cannot be guaranteed. I understand that the case worker conducting the session will maintain files in a confidential manner except for allegations of child abuse or neglect or threats of harm to one's self or anyone else. Allegations of child abuse or neglect or threats of harm to one's self or anyone else. Allegations of domestic violence and convictions related to substance abuse are further not subject to confidentiality. I agree not to record the session(s). I agree to not subpoena any case worker, and I agree that no case worker will testify on behalf of either party. The case worker(s) are impartial third parties who do not take sides. The case workers(s) are not acting as advocates or attorneys for either side, and it is recommended that each party obtain an attorney at least for the purpose of reviewing a proposed agreement prior to signing it.

By typing my name below, I agree to participate in ODR even if an order of protection is currently in effect in my case. I do so of my own free will without threat, fear, duress, coercion or undue influence by anyone including the other party or the caseworker(s).

I have had the opportunity to discuss any issues or concerns, including any history of domestic violence which might adversely affect my ability to participate in online dispute resolution. I have the right to have reasonable procedures in place to protect me from domestic violence at the time of the session.

By typing my name in this box, I acknowledge that I have read and understand the online dispute resolution process.  
Heather

### SCREENSHOT OF ODR PLATFORM

#### Conversation Space

HomePT ComplaintsPT Modification

←

Case Details

Case Number  
ASD12345

Case Type  
Post-Decree Modification

IV-D  
No

Parties

PLAINTIFF  
Tim Johnson

DEFENDANT  
Heather Harris

CASEWORKER  
Brian H Caseworker

StatusConversationsHistory

Plaintiff/Party A + Defendant/Party B + Case WorkerPlaintiff/Party A + Case WorkerDefendant/Party B + Case Worker

Brian H Caseworker, CASEWORKER 10/01/2020 2:03 PM EDT

Everyone

This channel includes the Plaintiff/Party A, Defendant/Party B, and the Case Worker.

Attach Files

SEND



## APPENDIX C: CHARACTERISTICS OF SURVEY 1 PARTICIPANTS AND THEIR MATTERS

**Table C1:** Survey 1 Participant Demographic Information

Variable	<i>n</i>	%
<i>Role (n = 51)</i>		
Plaintiff	29	56.9%
Defendant	20	39.2%
Both Plaintiff and Defendant	2	3.9%
<i>Age (n = 48)</i>		
18-24	3	6.3%
25-34	19	39.6%
35-44	21	43.8%
45-54	5	10.4%
<i>Background/Ethnicity (n = 48)</i>		
Black or African-American	1	2.1%
White	46	95.8%
Prefer not to say	1	2.1%
<i>Hispanic or Not (n = 48)</i>		
Hispanic/Latino	2	4.2%
Not Hispanic/Latino	43	89.6%
Prefer not to say	3	6.3%
<i>Gender/Sex (n = 48)</i>		
Male	21	43.8%
Female	27	56.3%
<i>Household Income (n = 48)</i>		
Less than \$25,000	7	14.6%
\$25,000 - \$50,000	16	33.3%
\$50,000 - \$75,000	12	25.0%
\$75,001 - \$100,000	7	14.6%
\$100,001 - \$125,000	2	4.2%
More than \$125,000	1	2.1%
Prefer not to say	3	6.3%

## APPENDIX C

### *Education Level (n = 48)*

Less than high school diploma	1	2.1%
High School diploma or equivalent	12	25.0%
Some college	17	35.4%
Associate degree	5	10.4%
Bachelors degree	5	10.4%
Post graduate education	7	14.6%
Prefer not to say	1	2.1%

**Table C2: Survey 1 Matter and Other Background Information**

<b>Survey Questions</b>	<b>n</b>	<b>%</b>
<i>Type of Matter* (Check all that apply) (n = 47)</i>		
One party filed a complaint about the other party for not keeping to the parenting time order	21	44.7%
One or both of us wanted to change the parenting time schedule no complaint was filed	14	29.8%
One or both of us wanted to change child support payment amounts	10	21.3%
One party objected to a proposed child support order	2	4.3%*
One or both of us wanted to change custody	4	8.5%
Other (Please describe)	8	17.0%
<i>Who Initiated Matter (n = 45)</i>		
Me	28	62.2%
The other party	8	17.8%
Both of us	9	20.0%
<i>Custody Type* (Check all that apply) (n = 51)</i>		
Sole legal custody	8	15.7%
Shared legal custody	28	54.9%
Sole physical custody	10	19.6%
Shared physical custody	22	43.1%
No custody	4	7.8%
Different types of custody for different children	1	2.0%
Not sure	2	3.9%
Other (Please describe)	1	2.0%
<i>Who Pays Child Support Now (n = 6)</i>		
Me	4	66.7%
The other party	2	33.3%
<i>Change in Child Support Requested (n = 6)</i>		
Increase child support	1	16.7%
Decrease child support	2	33.3%
End child support	1	16.7%
Other (Please describe)	2	33.3%

## APPENDIX C

### *Participant's Relation w/Children (n = 51)*

Parent	51	100%
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### *Other Party Relationship with Children (n = 51)*

They are a Parent	51	100%
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### *Your Relationship with other party*

We were never married	18	35.3%
We were married once	32	62.7%
We were married more than once	1	2.0%

### *Parties who were never married: Did you have a romantic relationship (with the other party)? (n = 18)*

No	7	38.9%
Yes	11	61.1%

### *Number Children Involved in Matter (n = 40)*

1	19	47.5%
2	13	32.5%
3	7	17.5%
4	1	2.5%

Note: \*Check all that apply; cumulative % may > 100%.

**Table C3: Survey 1 Participants' Relationship with Other Party (in years)**

Variables	Married				
	N	M	SD	Mdn	Range
Length of Marriage	9	8	5	8	2–17
How long ago separated*	29	5.4	3.8	4.2	.9–13.1
How long ago divorced *	14	3.6	3.4	3	.1–10.6
Time between Separation and Divorce	16	6.3	4.6	5.8	1.2–15.3
	Never Married				
	N	M	SD	Mdn	Range
Length of Relationship	2	0.04	0.1	0.04	0–.08
How long ago relationship ended *	8	9.6	4.8	10.5	2.3–15

Note: \*= relative to date when they completed the survey.

**Table C4: Survey 1 Participants' Past Experience with the FOC**

	n	M	SD	Mdn	Range
Times participant filed complaints with the FOC against the other party prior to this matter	48	5.3	10.0	1	0–40
Times the other party filed a complaint with the FOC against the participant prior to this matter	46	1.4	1.8	1	0–6
Total number of FOC filings by and against participant	48	6.6	10.0	3	0–40

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**Table C5: Survey 1 Participants' Past Efforts Made with Opposing Party**

Survey Questions		
<i>What did you try before contacting FOC for this matter/issue?*</i>	<i>n (out of 46)</i>	<i>%</i>
I didn't try anything. (Neither did my lawyer.)	13	28.3%
I (for my lawyer) emailed the other party or their lawyer to try to resolve things	9	19.6%
I (or my lawyer) texted the other party or their lawyer to try to resolve things	15	32.6%
I (or my lawyer) talked on the phone with the other party or their lawyer to try to resolve things	12	26.1%
I (or my lawyer) sent a letter to the other party or their lawyer to try to resolve things	5	10.9%
I (or my lawyer) talked in person to the other party or their lawyer to try to resolve things	13	28.3%
I (or my lawyer) attended mediation to try to resolve things	8	17.4%
Other	11	23.9%
<i>What you've tried with other party in past*</i>	<i>n (out of 33)</i>	<i>%</i>
Parenting class	2	6.1%
Mediation with other party regarding issues concerning the child/children involved in this matter	11	33.3%
Counseling with therapist, pastor, or similar counselor with the other party regarding issues concerning the child/children	3	9.1%
Counseling with a therapist, pastor or similar counselor without the other party regarding issues concerning the child/children	17	51.5%

Note: \* = "Check all that apply;" cumulative % may > 100%.

**Table C6: Survey 1 Participants' General Online Experience**

	<i>n</i>	<i>M</i>	<i>SD</i>	<i>Mdn</i>	<i>Range</i>
Hours online for work, typical day	30	3.7	3.3	3	0-12
How has COVID changed that? (1 = increased it a lot to 7 = decreased it a lot)	42	3.4	1.1	4	1-5
Those who indicated they spend time online: How many hours do you spend online doing things not related to work?	44	1.8	1.5	1	0-8
How has COVID changed that?	46	3.7	1.1	4	1-8
During a typical day, how many times do you check email?	40	5.5	5.1	4	1-28

## APPENDIX C

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How comfortable are you using technology to communicate with people you don't know well? (1 = not at all to 7 = extremely)	48	5.0	1.7	5	1-7
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## APPENDIX D: ATTITUDES AT START OF MATTER

**Table D1:** Survey 1 Participants' Initial Attitudes Towards ODR

Survey Questions	<i>n</i>	%
<i>ODR invitation by email or text for current matter? (n = 51)</i>		
Yes	48	94.1%
No	1	2.0%
Not sure	2	3.9%
<i>Will you use ODR for this matter? (n = 51)</i>		
Yes	40	78.4%
No	2	3.9%
Maybe	8	15.7%
Other - please describe:	1	2.0%
<i>Those who replied "no": Why not use ODR for this matter? (n=2)</i>		
I do not want to use it	2	100%
<i>Those who replied "no": Why decided not to use ODR? (n=2)*</i>		
I don't believe online dispute resolution can help us with this matter	2	100%
I wanted to have a hearing	1	50.0%
My lawyer didn't think it was a good idea	1	50.0%
<i>Those who replied "maybe": Why answered "maybe" to will you use ODR? (n=8)*</i>		
I'm not sure if I want to use online dispute resolution	3	37.5%
I don't know if the other party wants to use online dispute resolution	4	50.0%
Other - Please describe	1	12.5%
<i>Those who replied "maybe": What would make you more likely to use it for this matter? (n=2)*</i>		
I'm not sure it's the best option at this time	1	50.0%
If I had an attorney to help me	1	50.0%

Note: \* = Check all that apply; cumulative % may > 100%;

## APPENDIX E: VIDEO MEDIATION RATING COMMENTS

**TABLE E1:** Survey 1 Video Mediation Rating Explanations

Rating	Category	Comment
<b>Low (1-2)</b>	Effectiveness	Never had the greatest luck or fairness at FOC  Unnecessary
	In-Person Communication	With everything that has happened i have a lot of dissent towards her. I have been on zoom meetings with her and the kids therapist so I know we can do it but I'd rather not have to look at her.  I would feel more intimidated having to see him
	Other	I had a Zoom court date with a court referee and it was the most awful experience I have ever had with the courts.  He said she said  Insecure
	Tension with Opposing Party	Not on good terms with other party  With everything that has happened i have a lot of dissent towards her. I have been on zoom meetings with her and the kids therapist so I know we can do it but I'd rather not have to look at her.  Again.. the other party is very negative and confrontational  I would feel more intimidated having to see him
	Uncooperative Opposing Party	Same answer (He doesn't do meditation)
	Unfair	Never had the greatest luck or fairness at FOC
	Convenience	It is convenient but not as good as in person for my situation specifically.
		That's how we did mediation and it didn't help because he didn't follow through with what he agreed to.



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Medium (3-5)	Effectiveness	<p>Again, i would like to try to resolve issues, but I am not hopeful that it would actually work.</p> <p>Thru text or video, or phone call I just want it resolved</p> <p>We've already been through mediation and she hasn't changed or really hasn't agreed to anything</p> <p>same as above (It's no use. And I don't like to spend time in the presence of the other person, ever.)</p> <p>My ex-wife and I are in great terms, and don't feel mediation will be necessary.</p>
	Other	<p>Maybe then I will be able to express my concerns</p> <p>Awkward</p> <p>It would be less nerve wracking than court.</p> <p>I have anxiety about devices not working, where face to face you have to be there</p> <p>Same (I'm fine online)</p> <p>Any means is fine by me</p> <p>I don't really like it</p> <p>I have a hard time connecting to video chats</p> <p>We are fine resolving however possible as this matter is not in dispute.</p>
	Tension with Opposing Party	<p>same as above (It's no use. And I don't like to spend time in the presence of the other person, ever.)</p> <p>My ex makes me anxious.</p>
	Uncooperative Opposing Party	<p>That's how we did mediation and it didn't help because he didn't follow through with what he agreed to.</p> <p>It would be ok with me but my Ex has a history of people in the room and/or recording without permission video based mediation and court hearings.</p>

## APPENDIX E

		We've already been through mediation and she hasn't changed or really hasn't agreed to anything
<b>High (6-7)</b>	Convenience	<p>It would be convenient not having to use a large portion of your day to come to an appointment in person, but, still allows for face to face contact.</p> <p>Easier</p> <p>I don't want to drive all the way to grand Haven</p>
	Effectiveness	<p>This court has done nothing to help during any of this</p> <p>So we can get to the bottom of this</p> <p>Wanting a resolution</p> <p>Something other than this might help.</p>
	In-Person Communication	<p>It would be convenient not having to use a large portion of your day to come to an appointment in person, but, still allows for face to face contact.</p> <p>At least we would be able to see body language and tone. It helps understand what people are going through.</p>
	Other	We have been working really well with each other.
	Tension with Opposing Party	I won't have to personally interact with the other party
	Uncooperative Opposing Party	I have tried to resolve and he continues to dismiss my conversation and not reply (sic)

*Note:* Comments that fit more than one category are duplicated in the table, once for each relevant category.

## APPENDIX F: CHARACTERISTICS OF SURVEY 2 PARTICIPANTS AND THEIR MATTERS

**Table F1:** Survey 2 Participants' Demographic Information as a Function of ODR Usage

	Did not use ODR (N = 8)		Used ODR (N = 16)	
	n	%	n	%
<i>Completed Survey 1?</i>	8		15	
Yes	4	50	12	80
No	4	50	3	20
<i>Role</i>	7		14	
Plaintiff /Complainant	4	57.1	6	42.9
Defendant/Respondent	2	28.6	7	50
Both	1	14.3	1	7.1
<i>Age</i>	7		14	
18-24	0		0	
25-34	1	14.3	6	42.9
35-44	3	42.9	6	42.9
45-54	3	42.9	2	14.3
<i>Hispanic or Not</i>	7		14	
Hispanic/Latino	2	28.6	1	7.1
Not Hispanic/Latino	5	71.4	13	92.9
<i>Background/Ethnicity</i>	7		14	
American Indian/Alaskan Native	1	14.3	0	
White	6	85.7	13	92.9
Prefer not to say	1	14.3	0	
<i>Gender/Sex</i>	7		13	
Male	3	42.9	5	38.5
Female	3	42.9	8	61.5
Prefer not to say	1	14.3	0	
<i>Household Income</i>	7		14	
Less than \$25,000	2	28.6	3	21.4
\$25,000-\$50,000	1	14.3	4	28.6
\$50,001-\$75,000	2	28.6	3	21.4
\$75,001-\$100,000	1	14.3	1	7.1
\$100,001-\$125,000	0		2	14.3
More than \$125,000	0		1	7.1
Prefer not to say	1	14.3		

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<i>Education Level</i>	7		14	
Less than high school diploma	0		0	
High school diploma or equivalent	2	28.6	2	14.3
Some college	2	28.6	6	42.9
Associate degree	1	14.3	1	7.1
Bachelor's degree			2	14.3
Post graduate education	2	28.6	3	21.4

**Table F2:** Survey 2 Matter and Other Background Information, as a Function of ODR Usage

	Did Not Use ODR (N = 8)		Used ODR (N = 16)	
	n	%	n	%
<i>Who was Paying Child Support when Matter was Initiated?</i>	4		3	
Me	0		2	75.0%
The other party	3	75.0%	1	25.0%
Other (Please describe)	1	25.0%	0	
<i>Custody Type* (Check all that apply)</i>	7		14	
Sole legal custody	1	12.5%	1	6.3%
Shared legal custody	4	50.0%	8	50.0%
Sole physical custody	1	12.5%	2	12.5%
Shared physical custody	3	37.5%	7	43.8%
No custody	0	0.0%	3	18.8%
Different types of custody for different children	1	12.5%	0	0.0%
Other (Please describe)	1	12.5%	0	0.0%
<i>Type of Matter* (Check all that apply)</i>	3		10	
One or both of us wanted to change the parenting time schedule; no complaint filed	1	12.5%	4	25.0%
One party filed a complaint about the other party for not keeping to the parenting time order	1	12.5%	4	25.0%
One party objected to a proposed child support order	0	0.0%	0	0.0%
One or both of us wanted to change child support payment amounts	0	0.0%	1	6.3%
One or both of us wanted to change custody	1	12.5%	1	6.3%
Other (Please describe)	0	0.0%	0	0.0%
<i>Who Initiated this Matter?</i>	7		9	
Me	4	57.1%	5	55.6%
The other party	3	42.9%	4	44.4%
<i>Participant's Relationship to Involved Children</i>	7		15	
Parent	7	100%	15	100%

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<i>Opposing Party's Relationship to Involved Children</i>	7		15	
They are a parent	7	100%	15	100%
<i>Romantic Relationship with Other Party?</i>	4		12	
Yes, we were married	4	100%	7	58.3%
Yes, but we were not married	0	0	3	25%
No	0	0	2	16.7%
<i>Number of Children Involved in Matter</i>	7		11	
1	3	42.9%	6	54.5%
2	3	42.9%	4	36.4%
3	1	14.3%	1	9.1%

*Note: \* Check all that apply; only those who responded to the question were included in the percentage calculations.*

**Table F3: Survey 2 Participants' Relationship with Opposing Party (in years)**

Variables	Married					
	<i>n</i>	%	<i>M</i>	<i>SD</i>	Min	Max
Length of Marriage			10.8	5.5	2.9	17.0
How long ago separated*	8		8.4	5.4	1.3	15.3
How long ago divorced*	6		4.0	4.2	0.1	10.2
Never Married						
Length of Romantic Relationship	3		11.1	10.0	1.0	21.1
How long ago relationship ended*	5		6.6	5.6	1.2	14.6

Length of time living together

*Note: \*= relative to date when they completed the survey.*

## APPENDIX F

**Table F4:** *Survey 2 Participants' Past Experience with the FOC*

	Did Not Use ODR ( <i>N</i> = 8)					Used ODR ( <i>N</i> = 16)				
	<i>n</i>	<i>M</i>	<i>SD</i>	Mdn	Range	<i>n</i>	<i>M</i>	<i>SD</i>	Mdn	Range
How often the participant filed complaints with the Friend of the Court against the other party	7	7.6	10.4	4	1–30	14	4.6	10.3	2	0–40
How often the other party filed a complaint with the Friend of the Court against the participant	6	2.5	3.8	1	0–10	14	1.7	2.9	0	0–10
Total number of FOC filings per participant	7	9.7	10.9	4	2–30	14	6.36	10.1	4.5	0–40

## APPENDIX F

**Table F5:** *Survey 2 Participants' General Online Experience*

	Did not Use ODR					Used ODR				
	<i>n</i>	<i>M</i>	<i>SD</i>	Min	Max	<i>n</i>	<i>M</i>	<i>SD</i>	Min	Max
Hours online for work, typical day	1	6		6	6	2	8.5	10.6	1	16
How has COVID changed that? (1 = increased it a lot to 7 = decreased it a lot)	3	4.3	0.6	4	5	3	5	1.7	4	7
Those who indicated they spend time online: How many hours do you spend online doing things not related to work?	3	2	2	0	4	3	3.3	2.5	1	6
How has COVID changed that?	4	3	1.4	1	4	3	4	0	4	4
During a typical day, how many times do you check email?	3	2.3	0.6	2	3	3	6	3.5	4	10
How comfortable are you using technology to communicate with people you don't know well? (1 = not at all to 7 = extremely)	4	2.8	1.3	1	4	3	5.3	1.5	4	7



## APPENDIX G: PARTY POST-PROCESS EVALUATIONS

**Table G1:** *Post-ODR Evaluations as a Function of Reaching Agreement*

Survey Question	<i>n</i>	No Agreement				Partial or Full Agreement				
		Min.	Max.	<i>M</i>	<i>SD</i>	<i>n</i>	Min.	Max.	<i>M</i>	<i>SD</i>
How much were you able to express what was important to you?	5	1	7	3.8	2.4	8	4	7	6.5	1.1
Did the other party understand what was important to you?	5	1	5	2.2	1.8	7	1	7	5.6	2.2
Did the other party treat you with respect?	5	1	5	2.2	1.8	8	1	7	5.9	2.1
Did you trust the other party to be truthful?	5	1	7	2.6	2.6	7	1	7	4.9	2.3
Did the caseworker understand what was important to you?	5	1	7	4.4	2.4	8	5	7	6.3	0.9
Did the caseworker treat you with respect?	5	4	7	5.0	1.2	7	6	7	6.9	0.4
How much did you trust the caseworker?	5	1	7	4.4	2.2	8	6	7	6.6	0.5
How fairly did the caseworker treat you?	5	1	7	4.40	2.2	7	6	7	6.7	0.5

## APPENDIX G

**Table G2:** Correlation Table for Post-experience Attitudes, as a Function of ODR Usage

Correlations								
	Used ODR		How much control did you feel you had over the outcome of this matter?	How satisfied are you with the outcome of this matter?	Thinking of this matter from when the Friend of the Court first started helping you to resolve it to now, how fairly was it handled by Friend of the Court?	Regardless of the outcome, how satisfied are you with the overall process used to try to resolve this matter?	What is your impression of the Friend of the Court?	Right now, how do you feel about the other party?
How much control did you feel you had over the outcome of this matter?	No	<i>r</i>	1	0.97***	0.84**	0.89**	0.88**	-0.43
		<i>n</i>	8	7	8	8	8	8
	Yes	<i>r</i>	1	0.76***	0.71**	0.72**	0.70**	0.64**
		<i>n</i>	16	16	16	15	16	16
How satisfied are you with the outcome of this matter?	No	<i>r</i>	0.97***	1	0.74	0.85*	0.78*	-0.34
		<i>n</i>	7	7	7	7	7	7
	Yes	<i>r</i>	0.76***	1	0.71**	0.61*	0.77***	0.73***
		<i>n</i>	16	16	16	15	16	16
Thinking of this matter from when the Friend of the Court first started helping you to resolve it to now, how fairly was it handled by	No	<i>r</i>	0.84**	0.74	1	0.97***	0.99***	-0.44
		<i>n</i>	8	7	8	8	8	8

## APPENDIX G

Friend of the Court?								
	Yes	<i>r</i>	0.71**	0.71**	1	0.79***	0.75***	0.44
		<i>n</i>	16	16	16	15	16	16
Regardless of the outcome, how satisfied are you with the overall process used to try to resolve this matter?	No	<i>r</i>	0.89**	0.85*	0.97***	1	0.97***	-0.51
		<i>n</i>	8	7	8	8	8	8
	Yes	<i>r</i>	0.72**	0.61*	0.79***	1	0.72**	0.57*
		<i>n</i>	15	15	15	15	15	15
What is your impression of the Friend of the Court?	No	<i>r</i>	0.88**	0.78*	0.99***	0.97***	1	-0.48
		<i>n</i>	8	7	8	8	8	8
	Yes	<i>r</i>	0.70**	0.77***	0.75***	0.72**	1	0.65**
		<i>n</i>	16	16	16	15	16	16
Right now, how do you feel about the other party?	No	<i>r</i>	-0.43	-0.34	-0.44	-0.51	-0.48	1
		<i>n</i>	8	7	8	8	8	8
	Yes	<i>r</i>	0.64**	0.73***	0.44	0.57*	0.65**	1
		<i>n</i>	16	16	16	15	16	16

Note: \* $p \leq 0.05$ ; \*\* $p \leq 0.01$ ; \*\*\* $p \leq 0.001$ ; All reported *rs* are Pearson Correlations.

## APPENDIX H: SURVEY SAMPLE REPRESENTATIVENESS

**Table H1:** Comparison of Matter Types for Survey 1 and Survey 2 Participants to All Eligible Matters at FOC

Matter Type	FOC (N=124)		Survey 1 (N=59)*		Survey 2 (N=13)	
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
Parenting Time Complaint	59	47.6%	21	35.5%	5	38.5%
Parenting Time Modification	35	28.2%	14	23.7%	5	38.5%
Child Support Objection	2	1.6%	2	3.3%	0	0%
Child Support Negotiation	13	10.5%	10	16.9%	1	7.7%
Custody	8	6.5%	4	6.8%	2	15.4%
Other	7	5.6%	8	13.6%	0	0%

Note: \* = Check all that apply; cumulative number is greater than number of survey participants.

**Table H2:** Comparison of Agreement Rate for Survey 2 Participants to All Eligible Matters at FOC

Agreement	FOC (N =124)		Survey 1		Survey 2 (N =25)	
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
Reached agreement	40	32.3%	N/A	N/A	11*	42.3%
Did not reach agreement	84	67.7%	N/A	N/A	14	53.8%

Note: \* = This number incorporates all full and partial agreements reported by survey participants.