

What's a Court?



Do online dispute resolution services offer lessons to help make our courts more user-friendly and effective?

It's a simple question: Is a court a place — a physical location where people go — or a service?

Today we can visualize a time in Tennessee when “going to court” might *not* mean walking to the courthouse on court square. It might mean firing up your tablet and logging in to an online session with a judge, other lawyers, and even witnesses.

Your association has been investigating and educating us on the changing market for legal services. In one of its earliest briefings, our Special Committee on Evolving Legal Market (ELM) heard from Colin Rule, the co-founder of Modria, a company that provides online dispute resolution services. It may be the most important legal services company you've never heard of.

Ever had a dispute with an eBay seller or a payment made through PayPal? Then you've experienced online dispute resolution. No courthouse, no lawsuit, reasonably prompt results. It's hard to imagine online commerce being as robust as it is today without this technology-driven online process. The guys who brought you those two dispute resolution systems are behind Modria.

Modria has built and provides software systems — sometimes completely in the background, and that's why you may never have heard of them — that process 60 million cases online every year, resolving about 90 percent of them with *no human input* on the company side. Our committee heard about the systems they provide to resolve no-fault insurance disputes in New York, to guide the resolution of divorces in the Netherlands, and to power online dispute resolution for property tax appraisals for the Nashville-Davidson County Property Assessor.

Some of their systems reduce to an absolute minimum the need for anything like a judge or jury to run the process or “decide” the dispute; others look more

like e-filing and case-management systems on steroids, designed to allow more efficient decision-making by human adjudicators. Modria's pitch seems to be: you design it; we'll build and run it online.

While Modria is the most well-known player in this market, other companies offer various online dispute resolution platforms, including InstaRemedy, ResolvNow and Youstice. For years, internet domain-name disputes have been resolved by the international organization that officially regulates the use of domain names (ICANN) with an online tool.

So, what's a court? That paneled room in that court square building? Or that woman in the black robe presiding there?

Or, instead, should we think of a court as a service provider — a provider of dispute resolution services? That might make Modria a court, but that's not quite right. Isn't Modria in the business of “building courthouses,” for private companies and property tax assessors?

If you view a court as a provider of dispute resolution services, then judges, especially civil judges, might think of themselves not quite as a government service, like fire and police services today — a service that's always and only provided by government, that's supported by public funding, tax money, and fees established by the legislature. Maybe they're providers of dispute resolution services competing in a marketplace that

continued on page 4

PRESIDENT'S PERSPECTIVE

continued from page 3

serves consumers of those services. After all, thanks to services like Modria and the arbitration provisions in eBay, PayPal and other terms of service of thousands of other online businesses, the civil courts don't handle the business of smaller consumer disputes — those disputes will now almost never be resolved at that court square building

Cause for concern? Probably not. After all, our civil courts were never designed to handle disputes over a used cellphone sold on eBay that was not as represented. Besides, without innovators like Modria, would those disputes ever even be resolved by any true dispute-resolution process?

Still, every public indication is that Modria is looking to move upmarket. Its recent acquisition by a larger, public company confirms this, and the “market” of civil legal disputes now handled by our traditional courthouses often involves disputes smaller than some lawyers realize.

A 2015 study for the National Center for State Courts suggests that the median judgment in cases where there was a judgment greater than \$0 was \$2,441, increasing to \$5,595 for matters in general jurisdiction courts. Perhaps more importantly, that study suggests that 75 percent of civil cases involve a party not represented by a lawyer.

Modria and services like it are tools Tennessee lawyers should know to better serve their clients. Your business client may decide it wants to be like eBay and try to resolve its consumer disputes better, faster and cheaper than the civil courts now can.

But learning about Modria is also important to the profession — and here I certainly include judges — as a lesson in what's possible to allow our existing courts to resolve citizen — their customers — disputes better, faster and cheaper. E-filing, software systems online or on courthouse kiosks to guide preparation of filings, electronic submission of evidence, remote appearance of parties,

lawyers, or even witnesses. Can these or other tools make our civil courts (and maybe even our criminal courts, to the extent the constitution allows) more user-friendly and effective?

If so, maybe the lawyers and litigants of 2037 will think of “going to court” the same way people today think of “going shopping” — as something they do online or after work, without visiting that imposing building on court square.

I'm looking forward to our association

helping the profession meet these challenges, and I hope you are, too. Do let me hear from you along the way. 

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Learn More About Online Dispute Resolution

- “**Online Dispute Resolution Leader Modria Acquired by Tyler Technologies,**” by Indiana University's Bill Henderson at www.legalevolution.org/2017/06/online-dispute-resolution-leader-modria-acquired-tyler-technologies-009.
- “**What We Know and Need to Know About Online Dispute Resolution,**” by Colin Rule and Ethan Katsh at https://www.americanbar.org/content/dam/aba/images/office_president/katsh_rule_whitepaper.pdf.
- For more information about online dispute resolution, visit the **National Center for Technology and Dispute Resolution** at <http://odr.info>.

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