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How Does New Technology Change the Dynamics of ADR?

By Harshitha Ram

Generally, parties use three distinct and separate processes as part of the ADR umbrella which are negotiation, mediation, and arbitration. The world dispute forums are now undergoing a profound change in dispute resolution, which apparently, they call powerful and inexpensive computer technology. In the 90s calling computers and technology-based machines ‘information superhighways’ was trending as a term coined by vice president Al Gore who described the use of computer networks for economic, social, governmental, and other activities. This is now a fine subject for all of us to contemplate as we live in an era where none of us would function without a smartphone let alone a cellphone.

Today, phones have become pocket computers serving the purpose of our business and day-to-day needs, be it a quick google, GPS, or maybe a calendared event or a birthday notification. No longer do we memorize any phone numbers as it’s all handy and just a click away from the touchpad and we don’t have to dial that telephone machine anymore; and with no surprises, the device software is upgraded in short intervals. This permanently changed our lifestyle forever. For better or worse!

It’s technology all over and makes no sense to think that these machines and software would only make life simpler. They do in some instances but they have an equal footing in creating hitches. When the use of information superhighway via the internet, various online services, email, the world wide web, and other means of computer-based technology became commonplace it was preordained to have disputes arising from them and in turn, use the technology to resolve the disputes.

Not to wonder how these devices began to create a new platform for the resolution of disputes, thus to be more specific is not the beginning; not the interim; not the end; but forever. Yes, you read it right, the ODR is here to stay. In recent times, we hear that ADR is not an alternative mechanism but a preferred mechanism whereas, ODR may not be the desired platform but has created an impact with parties such that it is interminable. At this point, with refining technologies and emerging software one can only expect a sophisticated or rather enhanced dispute resolution platform but not a way to inhibit this option.

We must accept the fact that we as a society have embraced technology which has principally paved the way for the ODR platforms to take center stage. Although ODR emerged in the 90s there were a bunch of ADR professionals who initially resisted the transformation to ODR, it is evident that presently, there are emerging ADR practitioners and even online dispute specialists that show curiosity in developing an effective ADR/ODR practice. Let’s accept the fact that ODR is the future. We have to acknowledge that ODR has been widely recognized in a very short span than ADR itself. ODR is a relatively new term in the dispute-resolution arena but has created the bearing to last incessantly. ODR does provide proficient access to justice speedier and at low costs, and eventually, with several advancements in technology, there could be an advanced version of ODR too.

The advantage on one hand is that the online resolution is not restricted by physical location and enables parties to resolve disputes without barriers and at a fraction of the costs. This is an impressive benefit for the users and brings great convenience to people with small claims. On the other hand, there could often be exhaustion and perplexity that parties experience during the online resolution process. At times this could be the reason for the lack of effective communication online as people don’t get the process straightforward. Some ODR/ADR practitioners propose that the perspectives of body language and eye contact be improved whereas others say it’s a perfect closed-screen tight camera to gauge the parties. While both comments are valid it becomes strange when parties think it is their right to ‘go off video’ mode. Covering their face is not an option to an in-person hearing.

While this is so, ODR may not be the right fit for all types of disputes. In some cases, online communication may even lead to power imbalances and propagate differences. However, there could be a great correlation and may enable parties to deal with utter emotional situations, unlike an in-person hearing. It is also widely understood that, as ODR may not be for all cases and the best person to make this recommendation and assessment would be the chosen neutral.

Moving forward all of our mediation and arbitration courses should come with an ODR toolkit and a mini-training for

newcomers, people in business, and even senior practitioners that are only used to in-person sessions. Today's world revolves around technology, and it certainly offers big opportunities but even bigger challenges including what type of cases lend themselves to online dispute resolution; what criteria might be established to help both neutrals and potential users of ODR? Identifying cases that are not suitable for online resolution, and If an online ADR process does not result in a resolution, might there be access to an in-person ADR process? Without a doubt, ADR practitioners can provide efficient services online, again that depends on the matter at hand, specific case-to-case evaluation to identify its options via online resolutions, the comfort level of parties involved, the nature of the discovery, the contentment of the session, and finally the assessment of how elaborate the process could get. ✨

About the Author

Harsbitha is an International Disputes Attorney, Arbitrator, and Mediator focusing on commercial, consumer, information technology, construction, labor, and employment matters. She serves on several arbitration panels including the American Arbitration Association, and the National Mediation Board. She is an adjunct professor at Michigan State University and a panelist at the PREMi, an invitation-only group of Michigan's top ADR professionals. Besides being the Chair of the Michigan Dispute Resolution Journal Initiative, she hosts the 'fireside chat' of the journal. She is a Fellow of the Chartered Institute of Arbitrators CI Arb, and the youngest appointed Arbitrator at the ICC International Court of Arbitration, France. She lived and practiced in three countries including, India, the UK, and the USA. Ram currently leads a global program on the accreditation of ADR professionals.

Legal News Updates



Lee Hornberger

Michigan Arbitration and Mediation Case Law Update

By Lee Hornberger, Arbitrator and Mediator

I. INTRODUCTION

This update reviews appellate decisions issued since July 1, 2022 concerning arbitration and mediation. Update uses short citation style for COA unpublished decisions.

YouTube of 2021-2022 update presentation: <https://www.youtube.com/watch?v=kZpATRmGCcQ>

YouTube of 2020-2021 update presentation: <https://www.youtube.com/watch?v=9Q7deVIExDI>

YouTube of 2019-2020 update presentation: <https://www.youtube.com/watch?v=I0TkP8zs-A8>

II. ARBITRATION

A. Michigan Supreme Court Decisions

Supreme Court orders oral argument re vacatur of labor arbitration award.

In *Mich AFSCME Council 21 v Wayne Co*, 356320 and 356322 (April 21, 2022), **app lv pdg**, on September 28, 2022, Supreme Court ordered oral argument to address: (1) whether standard in *Detroit Auto Inter-Ins Exch v Gavin*, 416 Mich 407 (1982), applies to labor arbitration cases and (2) whether Circuit Court erred in vacating awards.

In *Mich AFSCME Council 21*, COA in split decision affirmed Circuit Court vacatur of labor arbitration award. Employee applied for retirement while awaiting outcome of disciplinary action. Retirement application required him to agree to a "separation waiver." The "waiver" stated he was terminating employment and not seeking reemployment. Employer terminated his employment the following day. Employee allowed retirement application to proceed. He also filed grievance pursuant to CBA, seeking reinstatement. Retirement System approved retirement. Employee transferred his retirement account funds to an IRA.