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## Legal Ethics: Ethical Principles for Online Dispute Resolution

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With an increasing proportion of our lives taking place online, it is not surprising that alternative dispute resolution is quickly becoming an online dispute resolution (ODR). Everything regarding disputes between persons or parties from consumer relationships to disagreement across state lines can now take place online. It is more important than ever for attorneys to understand the features, benefits, principals, and practices for the resolution of various forms of dispute in an electronic and ethical manner.

According to [The National Center for Technology and Dispute Resolution](#) (NCTDR), there are “principles and standards of practice as well as the growing body of literature and the standards of numerous professional, governmental, and commercial bodies concerning ODR and dispute resolution more generally” that aim to guide the process. They go on to list seventeen different ways in which online dispute resolution can be handled ethically.

### 17 Golden Rules for Online Dispute Resolution

The NCTDR states that no preference should be given to one principle over another. Though they list theirs alphabetically, we will be working through them in groups of shared responsibility. They should all be taken into account when dealing with alternative dispute resolution in an online environment.

To start, there are two similar ethical principals, those of accountability and legal obligation. The NCTDR explains the first (though it could easily describe both) as making sure that the “development and implementation of ODR systems, processes, and practices are accountable to the institutions, legal frameworks, and communities that they serve.” It goes without saying that any process of a legal or mediatory nature should always account for the laws and regulations of the jurisdiction in which it takes place.

Along those same lines are the issues of competency, confidentiality, honesty, and transparency, in which all parties involved must ensure that the use of electronic means and processes are implemented with proficiency and privacy. This is self-evidently not an easy or dismissible task in the constantly changing world of technology and the Internet. In order to facilitate the best possible outcome, NCTDR adds to these the matters of empowerment, equality, and fairness, in which online dispute resolution exists and functions to create a more realizable and sustainable environment for *all* individuals, regardless of background or other demographic. It is with the utmost care that ODR is undertaken in the same vein as a court trial, that is, to seek that justice is served.

Further, to be ethical is to be impartial, neutral, and transparent with all parties that are involved in the dispute. Conflicts of interest should be made clear whenever necessary so that all matters are dealt with outside of personal interest. The mediators ought to act with fairness as the primary driving motivation. In other words, no preference ought to be given to one side over the other in any online dispute resolution. Again, this is similar to a



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court trial, in which a jury or judge is expected to remain impartial throughout the entire process.

On the other side of that coin is informed participation and protection from harm. This goes hand-in-hand with transparency. The NCTDR elucidates this principal at length. They write that “In the development and implementation of ODR systems and processes active effort is made to ensure (1) explicit disclosure to participants of all information about risks and benefits of the process, (2) the competency of participants to evaluate the information about participation in the process, (3) understanding by participants of the information, (4) whenever possible, the voluntary acceptance by the participants of the risks of participating; and whenever voluntary consent is not possible due to the mandatory nature of participation [sic] than that is made transparent.” In other words, all entities ought to be made aware of any pertinent details or relevant processes and/or risks that could potentially affect the mediation of the dispute or the parties involved in as clear a manner as possible. This precludes assumption and the danger therein for a fair resolution of the dispute.

Finally, there are three ethical considerations that work together: innovation, integration, and security. Each of these works to provide an efficient and functional online environment invulnerable (as much as possible) to outside forces or manipulations. Of necessity, this entails the preceding ethical principals, while also ensuring that any physical or digital system, framework, or networking services that are utilized join together smoothly and without obstacles, inasmuch as it is feasible to do so.

## **A More Equitable Dispute Resolution**

With this in mind, one recognizes the ability of ODR to level the playing field. As Judge Arthur M. Monty Ahalt [writes](#), electronic capabilities for alternative dispute resolution have created a more equitable system simply by being accessible on the Internet. He goes on to say, “Registered users are able to visit the ‘virtual’ court 24/7, review the docket, and conduct any proceedings underway. Lawyers are able to check on the status of their cases, view documents, and make filings at any time. Case administration for the parties and the neutral by a case administrator is minimized, as case administration activities are automated through the virtual private data and business process network.” His point is evident. At the risk of sounding like a broken record, with this technology, alternative dispute resolution should be *more* equitable, not less, but that is only possible within a consistent ethical framework.

## **Last Notes**

In conjunction with this ease of online practice, all seventeen principals discussed here exist for this one overriding and guiding purpose. As the NCTDR puts it, the environment of online dispute resolution ought “to enhance inclusiveness and access to justice”, not the other way around. As attorneys, it is imperative that ethical practices are implemented in every aspect of one’s work, whether in person or conducted electronically, where more and more adjudication seems to be taking place with each passing year.

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