

Recommendations for Successful ODR

by

Susan Nauss Exon

Whether we like it or not, the time has come when technical competence will be required for virtual arbitrators and mediators as well as attorneys who represent clients in online dispute resolution (ODR). It is important, therefore, to hire an ADR specialist who is well versed in an online platform of choice so that he or she may educate the attorney advocates and parties.

Here is a list of recommendations for both the ADR specialist and for attorneys who engage their services. They should:

- Have adequate Wi-Fi and bandwidth so that one can access the Internet and avoid being dropped from an online platform. A good way to test Internet connectivity is to attempt streaming from a video source such as Netflix or YouTube.
- Possibly limit other high-demand Internet use (streaming video or music, for example) while the mediation is in process. This caveat is particularly important when a participant is at home for the virtual arbitration or mediation and others may be using the Internet at the same time.
- Have a good computer, laptop or tablet that includes a video camera and workable microphone. If your electronic device lacks these features or they are not optimal, purchase a portable video camera with a built in microphone that can easily be affixed to an electronic device.
- Use a private, closed room to avoid nonparties from overhearing the online proceedings and to prevent any unwanted distractions.
- Make sure the room includes good lighting.
- Never use public Wi-Fi because it will compromise security and confidentiality.
- Never leave the online platform open when leaving the room. To maintain security and confidentiality, exit the meeting and then rejoin when you are able.

Now for some specific tips for the ADR Specialist:

- Only use an online platform that you have been trained to use and for which you have experience.
- After gaining knowledge of your online platform, be sure to engage all security features to maintain privacy and keep intruders from participating.
- Create a specific identification number and password for each ADR session and share only with those who will participate in that session. Instruct the participants not to share this information with anyone else. By creating a new ID and password for each session, someone from a previous session will not be able to join a future session.
- Educate attorneys and parties how to use the platform and ensure that they are comfortable with the platform. A good way to educate others is to hold a pre-arbitration or pre-mediation session with the attorney advocates. Show them the functions of the platform and let them practice using some of the features, especially the ability to share

documents. This is a great way for you to enable attorneys to show off their newfound expertise to their respective clients. Once the attorneys feel comfortable with the online platform, encourage them to have a similar practice session with their respective clients. Alternatively, invite both the attorney and client to the pre-session practice and educate them together.

- Prior to the arbitration or mediation, obtain email addresses and cell phone numbers of each participant. If a participant incurs a challenge while trying to access the online platform or is suddenly dropped from the platform, the ADR specialist has an alternative method to contact that person directly to assist them in joining/rejoining the session.
- Be prepared to take more breaks than usual as participants will easily tire when sitting in front of an electronic screen.
- Create an online dispute resolution disclosure agreement that outlines much of the information in this article. It can be helpful to include a confidentiality agreement as part of the disclosure form. I also include the following clause in my ODR disclosure agreement: “All participants rely on the security measures provided by the Internet service provider being used.”
- Engage in specific behavior to instill trustworthiness. This is particularly important when engaging with others in ODR. Trustworthiness is characterized by one’s capability (level of competence), benevolence (ability to do good for another), and integrity (capacity to imply morality and credibility). An ADR specialist can begin to showcase these characteristics at the pre-arbitration or pre-mediation practice session. In particular, by talking about one’s education and experience and demonstrating keen knowledge of the online platform, an ADR specialist can signify a level of competence. By taking the extra time to help participants practice using the online platform, the ADR specialist can signify benevolence. Integrity will surface through communication. Once the ADR specialist creates an aura of trustworthiness, participants will begin to trust him or her and through a positive rapport begin to candidly share information.

Susan Nauss Exon is a full-time arbitrator and mediator on several panels, including the California Arbitration and Mediation Services (CAMS), the Riverside County Court Mediation Panel, and DRS of the Riverside County Bar Association. She is Professor Emerita at the University of La Verne College of Law, Ontario, CA, USA, where she taught mediation, negotiation, civil procedure, professional responsibility and related topics. She can be reached at snexon@camsmediation.com.

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