

## AI in Mediation: Revolutionizing Conflict Resolution or Raising New Questions?

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Online dispute resolution (ODR) is a rapid-growing topic within the field dispute resolution. Both public dispute resolution and private dispute resolution engage ODR, namely through alternative dispute resolution (ADR). While ADR generally implies negotiation, mediation, or arbitration, ODR may involve any of these techniques, or a combination of them in an online setting. As ODR begins to advance, so too does the potential use of artificial intelligence (AI).

Some scholars suggest that AI will bridge the gap between public and private dispute resolution as a new form of “AI-DR.”<sup>1</sup> This blog post will provide an overview of new uses of AI-DR in settings that largely take on a mediation-like role.

*How is AI being used in ADR?*

AI emerges in many forms within the alternative dispute resolution field. Some AI systems include automated negotiation that can identify common ground between parties and suggest a compromised agreement.<sup>2</sup> Other systems, such as Smartsettle and Modria, have software that gather information to provide neutral facilitation similar to a mediator. OurFamilyWizard is another leading example of a facilitative platform that integrates AI to help co-parents coordinate effectively. Though less formal than traditional ODR mediation platforms to facilitate an active dispute, OurFamilyWizard is notable for using AI to prevent disputes.<sup>3</sup>

With respect to arbitration and litigation, AI can help inform dispute outcomes by processing data of prior disputes, including court cases, to predict court decisions and case outcomes.<sup>4</sup> Even some state courts have also used “algorithm-based ODR” in some disputes, such as small monetary disputes, traffic tickets, and some family court cases.<sup>5</sup>

*What potential does AI-DR have with respect to mediation?*

AI technologies in dispute resolution typically provide a supportive approach or a substantive approach.<sup>6</sup> In the supportive approach, AI is a tool that ODR systems can engage or adopt into their algorithms. Parties still engage simultaneously with a mediator. In the substantive approach, AI takes on a more active role by assuming mediator functions. The AI system may ask

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<sup>1</sup> See e.g. Rabinovich-Einy, O. and Katsh, E., “Artificial Intelligence and the Future of Dispute Resolution: The Age of AI-DR” in ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE, at 471 (Danie Rainey, Ethan Katsh, & Mohamed S. Abdel Wahab eds., 2nd ed. 2021), available at <https://dx.doi.org/10.2139/ssrn.3830033>.

<sup>2</sup> See Samuel D. Hodge Jr., “Is the Use of Artificial Intelligence in Alternative Dispute Resolution A Viable Option or Wishful Thinking?” 24 PEPP. DIS. RES. L.J. 91, 103–104 (2024).

<sup>3</sup> See *infra* note 13.

<sup>4</sup> Hodge Jr., *supra* note 2 at 107.

<sup>5</sup> *Id.* at 108.

<sup>6</sup> *Id.* at 109–110.

parties for their perspectives or proposals for settlement, and try to arrange an optimized agreement between them.

Two examples of ODR systems that have integrated AI into their systems are Family Winner and Smartsettle.<sup>7</sup> The Family Winner system facilitates negotiations by identifying potential alternatives for opposing parties and a professional mediator.<sup>8</sup> This system draws upon game theory and decision theory in its underlying AI algorithms.<sup>9</sup> Similarly, Smartsettle is also an advanced negotiation tool. In addition to the option of providing inexperienced parties with an online facilitator, Smartsettle offers five products that range from single-issue monetary disputes to sophisticated software products and negotiation analysis.<sup>10</sup>

Other examples of entities in the private sector that use AI in assisted negotiated or mediated processes include Cybersettle, Inc., VirtualCourthouse, and Modria.<sup>11</sup> Though not a platform designed strictly for dispute resolutions, OurFamilyWizard also uses AI in a mediation-like setting. OurFamilyWizard is a platform that seeks to promote amicable coparenting to reduce conflict by managing communication, scheduling, and expenses.<sup>12</sup> Parents can exchange messages through the app with the option of using an advanced AI tool called ToneMeter. ToneMeter uses language context to analyze drafts of messages and marks those that may seem upsetting, aggressive, humiliating, or hurtful.<sup>13</sup>

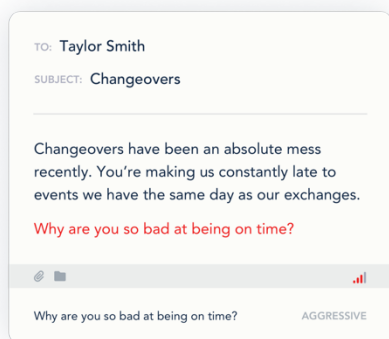


Figure 1

Figure 1 illustrates how ToneMeter flags language that may be perceived as aggressive and relates it on a scale.<sup>14</sup> Rewriting messages is optional, and ToneMeter makes no changes to flagged messages.<sup>15</sup> Instead, the tool intends to encourage self-reflection between parties, mimicking a role that a mediator often plays by encouraging positive communication between conflicting parties.

In this example, OurFamilyWizard deploys ToneMeter in a manner consistent with the mediation principle of self-determination. Mediators encourage parties to choose their own

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<sup>7</sup> Amin, *supra* note 8.

<sup>8</sup> Noopur H. Amin, “A New Frontier in Online Dispute Resolution: Combining AI and Mindfulness,” 15 CASE W. RESERVE J.L. TECH & INTERNET 283, 290 (2024).

<sup>9</sup> *Id.* at 289.

<sup>10</sup> *Id.* at 290.

<sup>11</sup> See Hodge Jr., *supra* note 2 at 104.

<sup>12</sup> An overview of OurFamilyWizard’s features and purposes are available at <https://www.ourfamilywizard.com>, which describes itself as “the #1 court-recommended co-parenting app.”

<sup>13</sup> OurFamilyWizard, *ToneMeter*; <https://www.ourfamilywizard.com/product-features/tonemeter> [<https://perma.cc/YW72-ZRM4>] (last visited Sep. 21, 2024).

<sup>14</sup> *Id.* at “Learn more about ToneMeter” (select and expand “Language in context” option).

<sup>15</sup> *Id.* at “Frequently asked questions.”

resolutions, similar to how ToneMeter allows parents to choose their own communication. ToneMeter suggests that using AI as a “fourth party” in ODR systems can have positive outcomes without human intervention.<sup>16</sup>

### *When is AI less helpful in mediation settings?*

While AI technologies enhance efficiency in mediation, limitations arise in areas like fairness. Some criticize AI-powered negotiated models like Family Winner because they “fail to adequately optimize ‘justice’ or ‘fairness’ metrics.”<sup>17</sup> AI’s role is less supportive when it comes to values that are subjective and relate to humanity. As a fourth-party tool, AI can provide support to a mediator role by identifying or creating optimized agreements. However, AI cannot replace the role of a mediator when the disputes involve individual motivations, values, and emotional judgments of fairness.<sup>18</sup>

Still, AI provides a helpful resource to bridge the gap between parties’ positions and generate movement towards a negotiated agreement. A party is more likely to perceive an outcome as fair when the outcome more closely aligns with the outcome they anticipated at the outset of negotiation. When two disputing parties have a wide gap in their anticipated outcome, at least one party will likely perceive the negotiated outcome as unfair unless value can be created to bridge the divide.<sup>19</sup> Thus, in disputes that involve a monetary issue predominantly, AI tools may be more helpful.

## **Conclusion**

While AI has the potential to revolutionize alternative dispute resolution, particularly in areas such as mediation and negotiation, its role is not without limitations. AI-driven systems like Smartsettle, Modria, and OurFamilyWizard demonstrate how technology can enhance efficiency, improve communication, and help parties reach optimized outcomes. However, AI cannot fully replace the nuanced role of a mediator. AI cannot account for deeply human factors like fairness, values, and emotional judgments. As technology advances, it will be important for dispute resolution forums to integrate AI as a supportive tool within a resolution process that emphasizes human elements as actors, not an underlying agreement between them.

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<sup>16</sup> See Ryan Searson, Embracing the Inevitable Integrating AI Technologies in Mediation, 53 Colo. Law. 24, 25 (May 2024) (explaining the “fourth party is a term often used to refer to technology that assists with resolving disputes online...where the fourth party is considered foundational and becoming more capable”) (internal quotations removed).

<sup>17</sup> *Id.* at 26.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*