

Recommended ADR Policy Principles

John Lande

Use of Dispute System Design (DSD) Methods

1. Dispute resolution professionals should aspire to a goal of developing a good overall dispute resolution system with a variety of desirable processes and approaches. In other words, the goal should be a pluralistic dispute resolution system rather than one with rigid orthodoxies about what dispute resolution procedures are appropriate or not. Recognizing the evolving nature of the legal system and dispute resolution processes, dispute resolution practitioners should develop flexible and dynamic models and avoid static, brittle models.
2. When developing policies about dispute resolution processes, policymakers should use DSD procedures and principles as much as feasible given their circumstances. DSD focuses on systematically managing a series of disputes rather than handling individual disputes on an ad hoc basis. In general, it involves assessing the needs of disputants and other stakeholders in the system, planning to address those needs, providing necessary training and education for disputants and relevant dispute resolution professionals, implementing the system, evaluating it, and making periodic modifications as needed.
3. When developing dispute resolution processes, designers should engage representatives of parties and other stakeholders as much as appropriate and consider offering a variety of processes to satisfy parties' various interests and preferences.

Maintenance of Appropriate Relationship Between ADR Processes and the Legal System

4. Members of the dispute resolution field should acknowledge and appreciate the significant social value that the legal system contributes to U.S. society. Leaders of dispute resolution movements should create a careful balance between maintaining important values of their innovations and being flexible enough to satisfy needs of the legal system, practitioners, and the public.

Consideration of Full Range of Policy Goals and Options

5. In devising strategies to promote goals related to dispute resolution, policymakers should consider a broad range of policy goals and options and take advantage of complementary benefits of various policy options.

6. Dispute resolution policy goals may include, among others:
 - a. substantive and procedural fairness
 - b. termination of disputes
 - c. satisfaction of disputants' substantive interests
 - d. satisfaction with the dispute resolution process
 - e. efficiency in the process (for the disputants and/or the public)
 - f. reduction of risk
 - g. reduction of harm to disputants and others (including society generally)
 - h. provision of greater choice in dispute resolution processes for disputants (and dispute resolution professionals)
 - i. increase of disputants' capabilities in handling other disputes
 - j. promotion of productive relationships
 - k. satisfaction with services of dispute resolution professionals
 - l. improvement of the culture of disputing for disputants, professionals, and society
 - m. compliance with social policies expressed in law

7. Dispute resolution policy options may include, among others:
 - a. use of explicit agreements about appropriate dispute resolution goals and process in individual cases
 - b. development of general protocols (such as guidelines and standards) in dispute resolution practice communities
 - c. training for disputants and professionals
 - d. use of dispute referral mechanisms
 - e. improvement of dispute resolution professionals' skills through peer consultation and mentoring

- f. provision of technical assistance for dispute resolution organizations
 - g. education of the general public
 - h. use of grievance mechanisms to deal with problems arising in dispute resolution processes
 - i. credentialing of dispute resolution professionals
 - j. adoption and enforcement of legal rules
 - k. provision of sufficient resources to implement policies
8. This outline does not analyze the preceding options, other than to generally recommend focusing on promotion of reflective practice by practitioners. Reflective practice involves the self-analysis of practitioners' effectiveness in practice situations and a systematic approach to learning from experience. It is designed to increase practitioners' awareness of the impact of contextual factors, appropriate responsiveness to actual situations in real time, and experience-based knowledge.
9. Legal rules are sometimes appropriate as policy tools, though they can be crude instruments that sometimes have unintended adverse effects. Before proposing new or revised legal rules, policymakers should consider whether other tools would be more appropriate for achieving the desired dispute resolution goals.
10. Regulation of ADR is appropriate in several types of situations. (For this purpose, ADR means dispute resolution processes other than traditional litigation.)
- a. Rules are needed to regulate and restrict the use in litigation of communications in ADR processes.
 - b. Regulation is appropriate to regulate the relationship between ADR processes and the courts, such as when parties are required to use ADR or when the courts will enforce the results of ADR processes.
 - c. Some regulation is appropriate to protect ADR consumers, though this is a challenging task and thus regulation should be done cautiously and often in coordination with non-regulatory policies.
 - d. Default rules for ADR processes are appropriate when a substantial number of people have actually encountered significant problems because their ADR agreements were silent or ambiguous about particular issues.

Provision of a Variety of Desirable Processes for Disputants

11. Dispute resolution professionals serving clients should help the clients evaluate process options that might reasonably satisfy the clients' interests, giving greater priority to the clients' interests than to the professionals' philosophical preferences for (or against) different processes.
12. Within a given dispute resolution process, dispute resolution professionals should encourage party decisionmaking about substantive and procedural issues as much as the parties desire and is appropriate in particular circumstances.

© John Lande 2007 (4/07). This is adapted from John Lande, *Principles for Policymaking about Collaborative Law and Other ADR Processes*, 22 OHIO STATE JOURNAL ON DISPUTE RESOLUTION 610 (2007). Permission to copy is granted if the copyright notice is retained for credit.