Navigating the Tension between Formal Authority and Perceived Authoritativeness in Third-Party Settlement Proposals: Implications for Legitimacy and Procedural Justice in ADR and ODR

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ABSTRACT

Third-party settlement proposals—ranging from mediator proposals and judicial settlement conferences to evaluative mediation and technology-enabled recommendations—are now a routine feature of contemporary dispute resolution. Yet these interventions often trigger a recurring legitimacy problem: disputants may comply with a proposal because of formal authority (the legally or institutionally conferred power attached to an office or procedure) while simultaneously doubting the perceived authoritativeness of the proposer (the socially recognized credibility grounded in expertise, integrity, neutrality, and trustworthy motives). This paper argues that the long-term effectiveness of third-party proposals depends less on the mere presence of formal authority and more on whether the proposal is produced and communicated in ways that satisfy procedural justice expectations, thereby generating durable legitimacy. Building on interdisciplinary literature on authority, legitimacy, and procedural justice, and on mediation ethics and emerging governance frameworks for online dispute resolution (ODR), the paper offers (i) a clarified conceptual vocabulary that reduces terminological ambiguity; (ii) a compact framework that explains when proposals are experienced as coercive, paternalistic, or fair; and (iii) practical design principles for practitioners and institutions. These principles focus on role clarity, consent, transparency of reasons, participatory opportunities, safeguards against power imbalance, and contestability—especially where algorithmic tools shape settlement recommendations. The analysis concludes that legitimacy in third-party settlement proposals is best understood as an outcome of aligning formal authority with perceived authoritativeness through procedurally just practices. This alignment improves compliance, perceived fairness, and the sustainability of agreements across both traditional ADR and digitally mediated environments.

Keywords: authority; authoritativeness; legitimacy; procedural justice; mediation; online dispute resolution

INTRODUCTION

Third-party settlement proposals sit at the intersection of persuasion and power. In many jurisdictions and sectors, settlement processes increasingly rely on neutral (or quasi-neutral) actors who propose outcomes, predict litigation risk, or recommend compromise ranges. These interventions can accelerate resolution and reduce transaction costs, but they also raise a recurring question: why should parties treat the proposal as worthy of acceptance?

To address this question, this paper distinguishes two constructs that are frequently conflated in practice and in scholarship:

1. Formal authority: the power to influence outcomes conferred by legal rules, institutional design, procedural mandates, or recognized office (e.g., judge, arbitrator, court-appointed mediator, certified provider).

2. Perceived authoritativeness: the credibility that parties attribute to the third party as a function of expertise, neutrality, integrity, and demonstrated competence.

The paper's central claim is that durable effectiveness depends on the alignment between these constructs. When formal authority is high but perceived authoritativeness is low, proposals tend to be experienced as

coercive, politicized, or strategically biased. When perceived authoritativeness is high but formal authority is low, proposals may be respected yet ignored due to lack of enforceability. In both cases, legitimacy is fragile.

The analysis is primarily conceptual and normative: it synthesizes foundational and recent literature on authority, legitimacy, and procedural justice, connects these debates to mediation ethics and quality standards, and extends the discussion to ODR environments where platforms and algorithms may mediate perceptions of expertise and fairness. The contribution is practical as well as theoretical: the paper translates the conceptual framework into implementable design principles for third-party settlement proposals.

LITERATURE REVIEW

This section consolidates four strands of literature that, together, explain why third-party settlement proposals succeed or fail: (A) authority and legitimacy; (B) procedural justice; (C) mediation ethics and third-party roles; (D) ODR, platform governance, and algorithmic authority.

A. Authority and legitimacy: power, reasons, and acceptance

Legal-philosophical accounts treat authority as a special form of normative power: a claim that subjects should treat an authority's directives as reasons for action (or as reasons that replace competing reasons). On this view, authority is not simply influence; it is the structured capacity to make guidance action-directing. The practical implication for dispute resolution is straightforward: a third party can be institutionally empowered to shape outcomes, but this does not guarantee that parties experience the intervention as legitimate.

Organizational and socio-legal theories conceptualize legitimacy as perceived appropriateness or acceptability of an actor's conduct within a framework of shared norms and expectations. A widely used typology differentiates pragmatic legitimacy (self-interest and utility), moral legitimacy (normative approval), and cognitive legitimacy (taken-for-grantedness and comprehensibility). Within third-party proposals, pragmatic legitimacy may arise from cost-saving and risk-reduction; moral legitimacy from fairness and neutrality; cognitive legitimacy from clarity and predictability of the process. The literature collectively suggests that legitimacy is not a mere attribute of office; it is an outcome of how authority is exercised and explained.

A distinct but complementary perspective comes from epistemology and communication studies: authoritativeness is often attributed to sources whose competence and reliability are socially recognized. In dispute resolution, authoritativeness emerges from demonstrated expertise, coherent reasoning, consistent neutrality, and ethical discipline, rather than from the mere fact of holding an official role.

B. Procedural justice as the bridge between authority and authoritativeness

Procedural justice research shows that people accept decisions not only because outcomes favor them, but because procedures are experienced as fair. Two recurrent findings are particularly relevant for third-party settlement proposals.

First, voice and participation matter. Parties are more likely to accept recommendations when they had a meaningful opportunity to express their perspective and to see it reflected—directly or indirectly—in the reasoning and structure of the proposal.

Second, neutrality, respect, and trustworthy motives shape compliance and satisfaction. Parties evaluate whether the third party appears unbiased, applies consistent criteria, treats participants with dignity, and is oriented toward problem-solving rather than domination. In settlement proposals, these cues can be more influential than the technical correctness of the recommendation.

For the purposes of this paper, procedural justice functions as the principal mechanism through which perceived authoritativeness is generated. Put differently: procedurally just behavior converts formal authority into perceived authoritativeness, which in turn stabilizes legitimacy. Where procedural justice is absent—e.g., opaque caucusing, perceived pressure tactics, unexplained evaluative claims—formal authority may produce short-term compliance but long-term resentment and low institutional trust.

C. Mediation ethics and third-party roles: facilitative, evaluative, and proposal-making

Mediation scholarship has long debated the legitimacy of evaluative practices, including mediator proposals, predicted outcomes, and robust reality-testing. A key problem is that proposal-making shifts a mediator's stance along a spectrum from facilitation toward evaluation, raising risks to self-determination, perceived neutrality, and informed consent.

Professional standards emphasize self-determination, impartiality, conflicts management, competence, and confidentiality. These standards do not categorically forbid proposals, but they require role clarity and consent: parties must understand what the mediator is doing, why, and with what limits. Contemporary critiques— particularly in court-connected settings—warn that settlement pressure can masquerade as assistance, especially where power imbalances or institutional urgency (backlogs, quotas, "settle-rates") distort the process. In such environments, the difference between "helping parties decide" and "deciding for them" can become structurally blurred, undermining perceived authoritativeness and, ultimately, legitimacy.

The literature therefore supports a conditional conclusion: third-party settlement proposals are legitimate when embedded in ethical guardrails that preserve party agency and procedural fairness; they become legitimacy-fragile when they are experienced as coercive substitutes for adjudication.

D. ODR, platform governance, and algorithmic authority

ODR introduces additional layers of authority. In platform environments, parties may attribute legitimacy not only to a neutral but also to the platform's reputation, interface design, perceived efficiency, review systems, and default options. In this context, authoritativeness may be socially constructed through "signals" (rankings, badges, automated prompts) rather than through direct interpersonal demonstration of expertise.

International and regional governance documents increasingly emphasize that ODR processes should respect due process, fairness, transparency, accountability, and effective remedies. Where algorithms generate settlement ranges or recommend outcomes, the legitimacy challenge intensifies: parties may not know what data was used, whether biases exist, or how to contest recommendations. Modern AI governance instruments therefore converge on a core requirement that maps cleanly onto procedural justice: explainability (or at least intelligibility), contestability, human oversight, and safeguards against discrimination.

Conceptual Framework: Definitions And A Legitimacy Model

To avoid terminological ambiguity, this paper uses the following definitions consistently:

Formal authority: office-based, rule-based, or institution-based power to influence dispute outcomes (including the power to recommend in ways that predictably shape decisions).

Perceived authoritativeness: party-attributed credibility grounded in expertise, neutrality, integrity, and communication quality.

Legitimacy: perceived rightfulness/acceptability of the third party's intervention and of the process that produced the proposal.

Procedural justice: perceived fairness of the process, operationalized through voice, neutrality, respectful treatment, and trustworthy motives.

These concepts relate as follows:

1. Formal authority enables third-party intervention.

2. Procedural justice practices convert formal authority into perceived authoritativeness.

3. The combination of formal authority + perceived authoritativeness generates legitimacy.

4. Legitimacy predicts durable acceptance and compliance, beyond short-term settlement.

A practical way to visualize the model is a 2×2 matrix:

High authority / High authoritativeness: proposals are influential and accepted as legitimate; compliance is stable.

High authority / Low authoritativeness: proposals may be followed under pressure but perceived as coercive; trust declines.

Low authority / High authoritativeness: proposals are respected but may lack traction; uptake depends on incentives.

Low authority / Low authoritativeness: proposals are ignored; the process loses credibility.

The matrix is not static. A third party can build perceived authoritativeness during the process through procedural justice choices: transparent reasoning, clear boundaries, respectful communication, and genuine opportunities for participation. Conversely, authoritativeness can collapse quickly when parties perceive bias, opacity, or instrumental pressure.

Third-Party Settlement Proposals In Practice: Where Legitimacy Fails

Third-party settlement proposals commonly arise in at least four configurations:

1. Court-connected settlement activity (settlement conferences; judicial encouragement; mediator proposals in annexed programs).
2. Evaluative mediation (reality-testing, risk analysis, recommended brackets).
3. Conciliation and expert-assisted settlement (structured proposals by a third party with subject-matter expertise).
4. ODR and hybrid systems (platform-based negotiation with automated suggestions and escalation).

Across these settings, legitimacy failures tend to cluster around recurring patterns.

Role ambiguity. Parties are often unclear whether the third party is a facilitator, evaluator, quasi-adjudicator, or agent of institutional efficiency. When role ambiguity is high, parties may interpret proposals as disguised commands.

Opacity of reasons. When the third party provides a number or outcome without intelligible reasoning, parties infer bias, manipulation, or reliance on hidden information.

Process pressure and timing. Proposals introduced late, under deadlines, or in ways that appear designed to "close" rather than to "clarify" increase perceived coercion.

Power imbalance and unequal participation. Where one party is more resourced, more experienced, or institutionally privileged, proposals can be perceived as legitimizing inequality—particularly if the process does not actively correct asymmetries.

These patterns are not merely "soft" issues; they shape whether parties experience the proposal as an extension of justice or as an instrument of control.

Design Principles For Legitimate Third-Party Settlement Proposals

This section operationalizes the framework into implementable guidance. The principles apply to human-led ADR and, with adaptations, to ODR systems.

1. Role clarity and informed consent

A third party should explicitly define (i) the nature of the intervention (facilitative vs evaluative; proposal vs

options; non-binding vs binding), (ii) the limits of the proposal, and (iii) the parties 'ability to reject or suspend proposal-making. Informed consent should be revisited at key transition points (e.g., before caucusing, before a proposal is issued, before numbers are exchanged).

2. Procedural justice as a deliberate practice

Because procedural justice generates perceived authoritativeness, third parties should structure the process to maximize:

Voice: balanced opportunities to be heard, including on non-monetary interests and constraints.

Neutrality: consistent criteria; avoidance of strategic alignment cues; careful management of ex parte information.

Respect: dignified treatment; non-humiliating reality-testing; culturally competent communication.

Trustworthy motives: explicit articulation that the goal is informed party decision-making, not institutional closure.

3. Transparency of reasoning (without over-adjudicating)

A proposal should be accompanied by intelligible reasons. The goal is not to write a judgment; it is to make the logic visible enough to be contestable. Where uncertainty exists (e.g., merits risk, valuation volatility), the third party should disclose the uncertainty rather than presenting false precision.

4. Safeguards against coercion and "settlement theatre"

Institutional settings can produce implicit coercion. Safeguards include: cooling-off periods; explicit reminders of party choice; separation between evaluation and pressure; and avoidance of threats (e.g., cost sanctions rhetoric) unless genuinely mandated and neutrally explained.

5. Power-imbalance protocols

Where imbalance is material, legitimacy depends on visible corrective steps: structured agenda-setting; counsel support where appropriate; balanced caucus time; reality-testing applied symmetrically; and, in ODR, interface design that prevents one party from dominating timing and information flow.

6. Ethical discipline and conflict governance

Ethical standards on impartiality, conflicts, competence, confidentiality, and quality of process are not external constraints; they are legitimacy-enabling mechanisms. Institutions should operationalize these standards through training, accreditation, complaint pathways, and quality review.

7. ODR-specific requirements: intelligibility, contestability, and oversight

When platforms or algorithms produce settlement recommendations, legitimacy depends on procedural justice equivalents in digital form:

Intelligibility: users should understand, at a minimum, the factors considered and the limits of the recommendation.

Contestability: users must be able to challenge inputs, request review, and escalate to a human neutral.

Non-discrimination: governance must address data bias and disparate impact risks.

Accountability: auditability, logs, and clear responsibility allocation between platform and neutrals.

Where these elements are absent, platforms may simulate authoritativeness through interface cues while undermining legitimacy in substance.

CONCLUSION

Third-party settlement proposals are a powerful instrument of dispute resolution, but their success depends on more than institutional empowerment. This paper argued that formal authority and perceived authoritativeness are analytically distinct and practically separable: authority may secure short-term compliance, while authoritativeness secures durable acceptance and trust. The bridge between them is procedural justice, which generates legitimacy by making the process experienced as fair, intelligible, and respectful of party agency.

The paper offered a vocabulary and a compact model to diagnose legitimacy risks, and it translated those insights into design principles for ADR and ODR. The central operational implication is that institutions should treat procedural justice not as a soft aspiration but as a set of concrete design requirements. When formal authority is exercised through procedurally just practices—role clarity, consent, transparent reasoning, anti-coercion safeguards, and contestability—third-party settlement proposals are more likely to be accepted as legitimate and to produce sustainable agreements.

REFERENCES

1. American Arbitration Association; American Bar Association; Association for Conflict Resolution. (2005). Model Standards of Conduct for Mediators (revised).
2. Council of Europe, European Commission for the Efficiency of Justice (CEPEJ). (2018). European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment.
3. European Commission. (2004). European Code of Conduct for Mediators.
4. European Parliament and Council. (2008). Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters. Official Journal of the European Union, L 136.
5. European Parliament and Council. (2024). Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act). Official Journal of the European Union.
6. Katsh, M. E., & Rabinovich-Einy, O. (2017). Digital Justice: Technology and the Internet of Disputes. Oxford University Press.
7. Lind, E. A., & Tyler, T. R. (1988). The Social Psychology of Procedural Justice. Springer/Plenum.
8. OECD. (2019). Recommendation of the Council on Artificial Intelligence (OECD/LEGAL/0449).
9. Raz, J. (1979). The Authority of Law: Essays on Law and Morality. Oxford University Press.
10. Riskin, L. L. (2003). Decision-Making in Mediation: The New Old Grid and the New New Grid System. Notre Dame Law Review, 79(1), 1–53.
11. Suchman, M. C. (1995). Managing Legitimacy: Strategic and Institutional Approaches. Academy of Management Review, 20(3), 571–610.
12. Susskind, R. (2019). Online Courts and the Future of Justice. Oxford University Press.
13. Tyler, T. R. (2006). Why People Obey the Law (2nd ed.). Princeton University Press.
14. United Nations Commission on International Trade Law (UNCITRAL). (2016). UNCITRAL Technical Notes on Online Dispute Resolution. United Nations.
15. United Nations Commission on International Trade Law (UNCITRAL). (2018). UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, with Guide to Enactment and Use. United Nations.
16. United Nations Commission on International Trade Law (UNCITRAL). (2021). UNCITRAL Mediation Rules and Recommendations to Assist Mediation Centres. United Nations.
17. United Nations. (2018). United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation; opened for signature 2019).
18. UNESCO. (2021). Recommendation on the Ethics of Artificial Intelligence.
19. Welsh, N. A. (2017). Do You Believe in Magic?: Self-Determination and Procedural Justice Meet Inequality in Court-Connected Mediation. SMU Law Review, 70, 721–762.
20. Zagzebski, L. (2012). Epistemic Authority: A Theory of Trust, Authority, and Autonomy in Belief. Oxford University Press.