



2008 Annual Report ADR Advisory Council State of New Mexico



Alternative Dispute Resolution Advisory Council
December 1, 2008

INTRODUCTION

The New Mexico Alternative Dispute Resolution (ADR) Advisory Council and Office of Alternative Dispute Prevention and Resolution were established pursuant to the Governmental Dispute Prevention & Resolution Act of 2007 (Chapter 12, Article 8A NMSA 1978); their purposes and duties, as outlined by this Act, are found in Appendix A of this report. This Council submitted its first Annual Report to the Governor and Legislature on November 30, 2007, establishing three main initiatives for the newly created Office:

- conduct a comprehensive survey and assessment of state ADR systems;
- conduct statewide outreach and marketing to promote the use of ADR; and
- develop ADR participation incentives to encourage greater use of ADR in state government.

The overall goal of these initiatives and challenges was to increase state government effectiveness and efficiency by:

- reducing insurable losses in state government;
- saving money and conserving state resources;
- delivering professional services responsive to customer needs; and
- building collaborative relationships across state government.

Ultimately, these initiatives promote recognition that introducing ADR early in a dispute can prevent or reduce costs associated with resulting claims.

The ADR Advisory Council is pleased to present this second annual report highlighting innovative strategies and significant progress toward the establishment of ADR as a fundamental organizational best practice in state government.

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December 1, 2008

The Honorable Bill Richardson, Governor of New Mexico
The Honorable Timothy Z. Jennings, President Pro Tem of the Senate
The Honorable Ben Lujan, Speaker of the House of Representatives
Members of the Legislature
State Capitol Building
Santa Fe, NM 87501

Secretary Arturo Jaramillo
General Services Department
John F. Sims Building
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Governor Richardson, Honorable Legislators, and GSD Secretary Arturo Jaramillo:

I am pleased to submit this report of the interagency Alternative Dispute Resolution Advisory Council for your review and consideration. As this report demonstrates, 2008 was an eventful and productive year towards establishing a solid foundation for statewide ADR initiatives. The positive and significant accomplishments achieved serve to promote efficient, less expensive, and more satisfying methods of resolving internal and external disputes that arise in working relationships, organizational issues and public policy decisions. As we continue the work of encouraging state agency participation in alternative dispute resolution processes and activities, I am confident that we will continue to see program enhancements to deal with claims at earlier, less costly stages.

We remain committed to our firm belief that alternative dispute resolution is an important tool in creating a lasting positive impact on state government effectiveness and efficiency. On behalf of the ADR Advisory Council, I would be happy to answer any questions you may have.

Sincerely,



Michael Wilson, AIC, CPCU, CPA
Chair, ADR Advisory Council

Director, Risk Management Division
General Services Department

ACCOMPLISHMENTS: DECEMBER 2007 THROUGH NOVEMBER 2008

1. Comprehensive survey and assessment of state ADR systems:

From December 2007 to October 2008, the Office conducted a comprehensive, statewide survey and assessment of Risk Management Division (RMD)-insured entities. The survey yielded over 100 responses, representing close to 50,000 (or 95%) of all RMD-covered full-time equivalent employees (FTE's). Concurrently, the Office completed statewide outreach directly to state employees, through on-site meetings and interviews with key staff at 79 RMD-insured entities, representing 49,719 (or 90%) of all covered FTE's. These visits allowed Office staff members to personally introduce themselves, share the Office's mission and goals, and distribute information in the form of brochures, publications, and other resources; Office staff also invited review of and contributions to ongoing development of a state ADR Handbook. Of equal importance, Office staff members were able to meet agency personnel in their environment and at their convenience, an element critical to shared understanding and collaborative relationships. Ultimately, the survey data, other collected information, and contact information contributes to a broad understanding of the state of ADR in New Mexico, and reveals best practices and needs; a summary of the survey results and best practices findings can be found in Appendix C.

2. Conduct statewide outreach and marketing to promote the use of ADR

This year, the Office initiated a number of marketing and informational activities. The Office published regular articles in the "Round the Roundhouse" state newspaper and introduced a quarterly newsletter in July 2008. Office staff also attended or presented at numerous state employee conferences, seminars and fairs. These events included: a Phoenix Region/Albuquerque Area EEOC Seminar; NM State Bar ADR Symposium; various State Bar ADR committee meetings; State Personnel Office "Webinar;" Department of Game & Fish Annual In-Service Conference; Attorney General's Open Records Seminar; New Mexico State Bar Annual Conference; General Services Department Loss Control Workshop; Governor's Career Conference; University of New Mexico Collaborative Public Policy Symposium; and an EEOC presentation to state ADR Coordinators. Through these and other statewide outreach and marketing activities, the Office will continue to promote and support the integration and development ADR options into existing state government frameworks.

3. Develop ADR participation incentives to encourage greater use of ADR in state government

The Office actively partnered with individuals and organizations to provide free or low-cost training in a variety of formats. Beginning in July, the Office hosted a series of monthly "Brown Bag Lunch" presentations on a variety of ADR topics, including dispute resolution and management training support available through the state's new Employee Assistance Provider (Deer Oaks EAP). The Office also partnered with Santa

Fe Community College to offer a 40-hour formal mediation and conflict resolution skills course for 22 employees representing 13 different agencies. In addition, the Office partnered with the State Personnel Office and the Federal Mediation and Conciliation Service to provide a three-day labor-management interest-based conflict resolution training course; 37 employees participated, representing 14 different agencies. These employees bring value-added benefits to their workplaces by developing conflict resolution as a critical core competence in state employment. Moreover, these training activities enable state employees to join the roster of trained state employee mediators to respond to direct requests for conflict resolution assistance, at no cost. To support these skills through mentorship and practice opportunities, the Office also formed partnerships with mediation programs in the Santa Fe Public Schools, and Santa Fe Magistrate and Municipal Courts; these communities, in turn, benefit from the mediators' volunteer service.

4. Other Initiatives

The Office also participated in additional initiatives aimed at promoting effective interagency collaboration, focused on establishing a lasting positive impact on state government. Office staff participated in RMD's monthly early neutral evaluation (ENE) committee reviews of new employment-related civil rights claims with the goal of mitigating losses through ADR intervention processes. As part of RMD, the Office is uniquely situated to analyze ADR use and resulting impact on claims experience within state agencies on a year-to-year historical basis, and comparatively across state government. Office staff also participated in RMD insurance premium rate review meetings with various state agencies and played an instrumental role in organizing Risk Management Advisory Board (RMAB) meetings for the Division. Through these efforts, the Office supports RMD's standing practice to work closely with insured entities to increase their role in proactive loss reduction.

In late 2008, the ADR Bureau assisted in the drafting of a Regional Universal Agreement to Mediate (RUAM) between the State of New Mexico and the US Equal Employment Opportunity Commission (US EEOC); this landmark partnership marks the first such agreement between the EEOC and a state government. The RUAM streamlines the mediation process for allegations of workplace discrimination and names RMD as the state's designated representative to the US EEOC. Along with the accompanying Executive Order issued by Governor Richardson, the RUAM becomes another key component of the ADR Bureau's efforts to improve operational efficiency, cost-effectiveness and accountability in the state's dispute resolution practices.

Collectively, these initiatives contribute to the Office's function as a central resource center in support of ADR efforts across a broad range of state functions. The Office will continue to promote and support the integration and development of these and other new ADR options into existing state government frameworks.

INITIATIVES AND CHALLENGES FOR FY09

In 2009, the Office of Alternative Dispute Prevention and Resolution will focus on the following initiatives and anticipates the following challenges:

1. Establish an administrative rule to standardize state ADR practices

- Establish procedures for responding to requests for mediation or other ADR process
- Establish record-keeping and reporting requirements and procedures
- Establish training and RMD mediation program participation standards

Challenge: Increase use of ADR practices in a consistent manner

2. Implement EEOC-NM Regional Universal Agreement to Mediate and EO 2008-052

- Support RMD in role as designated EEOC representative for charges of workplace discrimination
- Clarify state agency duties and responsibilities
- Enforce provisions of EO 2008-052

Challenge: Increase state agency participation in EEOC mediation process

3. Partner with State Personnel Office to develop ADR Coordinator job description

- Recognizes the value of dedicated ADR position and role within agency
- Standardizes ADR Coordinator duties and responsibilities

Challenge: Increase organizational commitment and fiscal support for ADR operations

4. Expand training opportunities

- Continue partnering with Santa Fe Community College on low-cost conflict resolution skills curriculum model and duplicate at other public New Mexico colleges
- Establish a low-cost conflict resolution training program at University of New Mexico
- Continue partnering with Federal Mediation and Conciliation Service for no-cost training in labor-management conflict resolution skills
- Seek grants and other resources to support training development

Challenge: Increase state employee participation and fiscal support from agencies

5. Establish performance measures geared toward reduction of insurable loss and conservation of state resources

- Engage state managers and employees in implementing performance accountability
- Improve accountability of state agencies, employees, and participants in public policy development

Challenge: Measure positive impact on state government operations

APPENDIX A

Section 12-8A-7 NMSA 1978

"ALTERNATIVE DISPUTE PREVENTION AND RESOLUTION ADVISORY COUNCIL--DUTIES.--The council shall:

- A. review information about the use of alternative dispute resolution, including referrals, and make recommendations to the office to improve the effectiveness of alternative dispute resolution programs;
- B. develop strategies to encourage and expand the use of public facilitation in government operations;
- C. recommend to the division appropriate training standards and schedules for neutral parties and agency managers and supervisors;
- D. review and recommend standards and rules to the division to foster participation in alternative dispute resolution and minimize conflict in the discussion of issues under consideration by interested parties; and
- E. present an annual report to the department, the governor and the legislature by December 1 of each year on the use, cost and success of alternative dispute resolution programs."

Section 12-8A-9 NMSA 1978

"OFFICE OF ALTERNATIVE DISPUTE PREVENTION AND RESOLUTION--CREATED--POWERS-- DUTIES.--

- A. The "office of alternative dispute prevention and resolution" is created as a bureau of the division.
- B. In order to promote alternative dispute resolution, the office shall:
 - (1) organize and manage alternative dispute resolution programs for agencies, employees, vendors, businesses regulated by governmental entities and other interested parties;
 - (2) coordinate the use of neutral parties to facilitate alternative dispute resolution for interested parties and training for agency staff;
 - (3) implement development and use of alternative dispute resolution strategies;
 - (4) provide staff support for the council;
 - (5) maintain information and educate government officials about training and use of alternative dispute resolution and referrals; and
 - (6) prepare an annual report for review and presentation by the council on the use, cost and success of alternative dispute resolution programs."

APPENDIX B

I. 2008 ADR SURVEY RESULTS

The objective of the statewide ADR survey was twofold: first, to determine the baseline status of ADR within state agencies; and, second, to assist in determining the most effective method of complying with the GDPRA's directive to create access to ADR services in all agencies. Survey results are being used to identify successful, proven methodologies and innovative strategies that may be appropriate to incorporate into the state of New Mexico's ADR management programs.

The questions and responses to the survey are as follows:

ADR Survey Question	% Yes	% Don't Know	% No
GDPRA Compliance			
Is there an affirmative statement of adoption and support for the New Mexico Governmental Dispute Prevention and Resolution Act?	29.55%	23.86%	46.59%
Have costs of implementing and maintaining an ADR program been budgeted and allocated?	19.32%	28.41%	52.27%
Agency Support of Program			
Are agency employees encouraged and allowed to participate in mediation sessions?	75.00%	10.23%	14.77%
Is participation in mediation sessions considered work time?	72.73%	12.50%	14.77%
Does the agency support and allow employees to become mediators in the State pool and conduct mediations?	57.95%	14.77%	27.27%
Are these State pool mediations considered work time?	52.27%	27.27%	20.45%
Is ADR incorporated into any Agency-level plan?			
Loss Control	40.54%		
Grievance	63.75%		
Human Resources	67.09%		
Union	35.14%		
Vendor / Private Contractor	27.94%		
Other	22.81%		
Has your agency identified any obstacles to effective use of ADR?	27.59%	35.63%	36.78%

ADR Survey Question	% Yes	% Don't Know	% No
Policies and Procedures			
Are written ADR policies provided to all employees?	38.82%	9.41%	51.76%
Is there a written policy ensuring that mediation is voluntary, confidential and available?	34.88%	18.60%	46.51%
Are ADR referral and intake procedures in place?	35.63%	14.94%	49.43%
Are ADR policies periodically reviewed and updated?	33.73%	15.66%	50.60%
Is there an "Agreement to Mediate" document in place?	34.52%	16.67%	48.81%
Is there a "Confidentiality Agreement" in place?	41.67%	15.48%	42.86%
Is there a "Mediation Settlement Agreement" in place?	30.95%	19.05%	50.00%
Are there "Mediation / Mediator Exit Surveys" in place?	21.43%	21.43%	57.14%
Does your agency have a list of the types of matters that are not appropriate for ADR?	9.41%	20.00%	70.59%
ADR Survey Question	% Yes	% Don't Know	% No
Is there an ADR checklist in place and complete?	13.10%	21.43%	65.48%
Is there a safe, locked file for storing confidential files?	85.71%	3.57%	10.71%
ADR Coordinator			
Has an ADR Coordinator been designated?	58.82%	9.41%	31.76%
Is there a designated agency employee who identifies which cases are appropriate for ADR?	52.94%	11.76%	35.29%
Is the ADR Coordinator a member of the Loss Prevention and Control Committee?	29.41%	10.59%	60.00%
Does the ADR Coordinator attend ADR Advisory Council meetings and/or receive minutes?	24.71%	10.59%	64.71%
Mediators			
Is there access to properly trained, certified and neutral workplace mediators?	42.47%		
Through Agency's own Program	63.01%		
Through RMD's Program	65.75%		
Through EAP	29.31%		
Through Other Programs	15.91%		
Other	42.47%		
Does your agency maintain a roster of properly trained, neutral workplace mediators?	27.38%	8.33%	64.29%

ADR Survey Question	% Yes	% Don't Know	% No
Training			
Has the ADR Coordinator attended RMD trainings?	30.59%	9.41%	60.00%
Are notices of RMD trainings received and distributed in a timely manner?	32.14%	22.62%	45.24%
Are agency employees encouraged and allowed to attend RMD trainings during work hours?	57.14%	19.05%	23.81%
Communication / Promotion			
Does new employee orientation include ADR information, including how to access services?	29.76%	13.10%	57.14%
Do agency employees have knowledge of and confidential access to the ADR Coordinator?	54.76%	10.71%	34.52%
Is the agency actively conducting high visibility marketing of ADR to all employees?	16.67%	9.52%	73.81%
Is the agency actively collaborating with union(s) to develop and market ADR use?	10.71%	7.14%	82.14%
Is your ADR program available on your agency's webpage?	10.71%	7.14%	82.14%
Are clients, customers, suppliers, subcontractors, service companies, and the general public informed of ADR policies that may apply to them as a remedy?	13.10%	25.00%	61.90%
Evaluation / Follow Up			
Is your ADR program periodically evaluated?	25.00%	11.90%	63.10%
Is follow-up and corrective action on reported deficiencies conducted in a timely manner?	33.73%	24.10%	42.17%
Are GSD/RMD required plans and reports submitted in a timely manner?	27.38%	35.71%	36.90%

II. BEST PRACTICE FINDINGS

Demonstrate Top Level Management & Leadership Support; Use Policy Statements

- ADR principles should be visible, widely communicated & distributed, internally to all staff & externally to constituents, stakeholders, vendors, contractors, interested public.
- Incorporate ADR principles in agency mission statements/core values encouraging and promoting the broad use of ADR at all levels.
- Formally adopt a written, stand-alone ADR policy for agency operations.
- Be inclusive of all levels of agency employees, clients, customers, constituents, stakeholders to establish open, honest discussions/dialogue, form interest-based, collaborative partnerships and relationships to address shared challenges.

Allocate Resources

- Demonstrate ADR support through resource allocation in the form of designated funds, budget or allocated work time to allow designated staff to carry out required functions (communicating, coordinating, promoting, reporting, scheduling, etc...); GDPRA also authorizes agencies to use Budget Adjustment Requests to fund ADR initiatives.
- Identify existing or develop new in-house training resources.
- Use external resources; build reciprocal relationships and collaborate or partner with similar federal, local or other programs.
- Establish a broad policy that allows staff to attend ADR-related training events and ADR sessions during normal work hours.
- Utilize free/no cost training opportunities whenever possible.

Use a Single Point of Contact Within Agency

- Assign an ADR Coordinator; duties and responsibilities can be shared or delegated, but one person with designated responsibility and accountability should act as single point of contact.
- Should have access to & be accountable to top level management (Director, Cabinet Secretary, Board/Commission Chair, Governor, etc...); if viewed as having limited authority, it may be viewed as ineffective, thereby possibly creating apathy, frustration, and/or mistrust.
- Person should have broad knowledge and awareness of agency's scope of operations and divisions.
- Designee should be perceived as respected, easily approachable, fair, honest, in possession of good listening skills, and capable of handling confidential issues discreetly, professionally and with integrity.

Use a Variety of Promotion & Communication Methods

- Electronic communication via internet, intranet and e-mails.
- Brochures, newsletters, posters, paycheck stuffers, targeted mailings.

- Executive briefings; speaking engagements; community or stakeholder meetings.
- New hire orientation & new hire packets or manuals.
- Incorporation in required annual staff training.
- Community events (federal, state, local fairs or public forums).
- Educational events.
- Primacy marketing campaign directed to all agencies, all staff levels, to introduce, in an eye-catching way, the benefits of and the procedures for accessing the ADR programs; develop creative marketing strategies through in-house capacity, State Printing graphics or contract out-sourcing.

Set Performance Measures / Self-Evaluation Criteria

- Usage - how often ADR services are used.
- Time savings - measured in timelines by the number of days the entire process takes from intake referral to conclusion or final outcome.
- Cost avoidance or savings – measured by staff time, productivity, cost savings when compared to traditional methods such as formal grievance, arbitration hearings or litigation.
- Customer satisfaction with the process, outcome and assigned neutral 3rd party (often measured by confidential exit surveys).
- Improved relations and working environment, evidenced by improved morale, increased productivity, less absenteeism & staff turnover, lower incidences of complaints or claims, increased civility and harmony.
- Length of time vacancies remain unfilled, low applicant numbers for vacant positions (word gets around to employment applicants about working environments and morale).

Keep Essential Records

- Limited documentation on ADR cases is preferable.
- Little or no formal documentation is kept on ADR sessions to preserve the confidentiality of the process.
- Examples of tracking items:
 - Usage figures (frequency)
 - Request date
 - Requesting agency, department, division or parties
 - Type of service requested
 - Total number of hours from intake referral to final outcome (administrative & ADR session time)
 - Final Outcome
 - Date case closed
 - Miscellaneous comments and/or follow-up

Emphasize Confidentiality as Critical Component of HR/employee-related ADR

- Encourages open, honest discussion.
- Voluntary participation – all parties must agree to participate.
- Self-determination – parties decide and agree to the terms of the process; can choose to terminate their participation at any point and craft their own agreements.
- No record of ADR sessions need be kept unless agreed upon by the parties.

WHAT NEW MEXICO IS DOING (IN GENERAL)

ADR Processes

- Informal discussions/interventions
- Safe conversations
- Cooperative problem solving
- Interest based problem solving
- Fact finding
- Early neutral evaluation
- Ombudsman
- Mediation
- Conciliation
- Facilitated discussions/Facilitation
- Group Facilitation/Mediation
- Collaborative team building
- Arbitration
- Mini-trials
- Public policy consensus building
- Negotiated rulemaking
- *Whatever else will work*

Other Processes

- Defer to SPO rules
- Defer to collective bargaining agreements
- HR grievance policies
- Employee Assistance Programs (EAP)
- Defer to Disciplinary action policy
- ADA reasonable accommodation policy
- License revocation appeals
- Permitting appeals
- License vendor accountability settlement

NOTABLE NEW MEXICO BEST PRACTICES (SPECIFIC)

Top Management Support

- General Services Department – Strong support for ADR from Cabinet Secretary Arturo Jaramillo, also a proponent of emotional intelligence as a core competency.
- Commission for the Blind - Strong policy and support for ADR procedures from Exec. Director Gregg Trapp, an attorney and trained mediator.
- EMNRD - Strong support for ADR procedures from Deputy Secretary Reese Fullerton, a trained mediator, facilitator and mediation trainer.

Policy Statements & Procedures

- Tourism Department – Succinct, yet thorough formal ADR policy in place.
- NM Commission for the Blind – Procedures ensure their constituent population opportunities to redress complaints.
- Numerous agencies in process of developing a stand-alone ADR policy or incorporating ADR into an existing administrative policy.

Allocated Resources

- School for the Deaf – Longstanding EAP contract for private mediators.
- DVR – 10 year contract with private EAP provider to provide ADR services.
- School for the Blind & Visually Handicapped – Created an internal fund for employees to choose their own EAP provider (can choose pastors, counselors, mediators as needed).
- DOT – Full-time ADR Coordinator/Mediator; inclusion of ADR/mediation initiative into larger DOT planning (OIG, OEOB, & Risk Management) **and** at the executive management level as a prevention tool.
- HSD – A large agency able to contract with private mediators for employment-related issues and routinely provides informal conferences to resolve other disputes.
- WCA – In-house ADR Bureau comprised of 6 mediators and 3 Administrative Law Judges to resolve case matters; also have 5-6 ombudsman for workers, employees, adjusters and the public.

Single Point of Contact

- New Mexico state agencies have 90+ designated ADR contacts, representing 100% of identified “parent” entities; most of these agencies assign ADR responsibilities to employees with other responsibilities.
- DOT – a full-time position dedicated to ADR.
- GSD – ADR responsibilities assigned to employee with related critical function (loss prevention and control).

Promotion & Communication

- Publication of agency-specific operations manuals on ADR (i.e., Game & Fish's *Public Involvement Guide*).
- Increasing use of homepage and e-mail communication (internet and intranet).
- Internal distribution of Office of Dispute Prevention and Resolution's quarterly ADR newsletter, along with other publications.

Pro-active early intervention

- Gaming Control Board – "Management by walking around" to address issues early and at lowest level possible.
- EMNRD – Formal encouragement of a harmonious, respectful workplace, resulting in little or no serious staff conflict.

Continuity

- UNM – Staff ADR program in place since 1994; Faculty ADR program since 1999.
- Game & Fish Dept. – Longstanding involvement and promotion of collaborative decision making processes with the public and constituency groups.
- DOH – Labor Relations Unit includes 4 trained, in-house mediators to mediate internal disputes; ADR Coordinator and Legal Counsel have a strong working relationship.
- School for the Deaf – Longstanding EAP contract for private mediators to resolve agency conflicts.
- DVR – 10 year contract with private EAP provider that provides mediation services.

Public Policy/ Outreach

- Game & Fish – Because of its mission, probably focuses more ADR on public policy and administrative issues than other state agencies; have developed an extensive Public Involvement Guide published in 2001 by G&F ADR Coordinator, Bill Graves, which includes & strongly promotes ADR procedures.
- EMNRD – Also inherent in its mission, this agency places a greater emphasis on its ADR approach to public policy making and negotiated rule making; significant federal agency, private industry and constituent components.
- Miners Colfax Hospital – Collaboration with local related groups for an annual community health fair; monthly board meetings with citizen input time on agenda; extensive use of customer satisfaction surveys by Care Management and Quality Assurance departments.
- Dept. of Veterans' Services – Strong, close relationship with constituent population; commitment demonstrated at highest level by Secretary John Garcia through support of veterans' rights in a highly involved and visible way within the veteran community.
- NM Tech – Problem solving meetings with community members (e.g., Campus Research Facility collaborated with local ranchers and AFB/local airport to resolve complaints regarding low flight patterns affecting cattle production).

Training

- Dept. of Workforce Solutions - Developing internal "Workforce Corporate University" for all employees ranging from new employee orientation to leadership training.
- DOT - Developing a "leadership academy" for managers and supervisors to provide 40+ hour supervisory and subject matter skills course.
- UNM Staff & Faculty - Internal training program funded by the University that has trained over 100 people in the mediation process; staff is trained in early evaluation, collaborative evaluation and anger management, to help resolve conflicts that may arise.
- CYFD - "Respect in the Workplace" training, offered every 2 years to all staff, contains an ADR training component, as does its "core supervisory" training, provided to all supervisors within 45 days of hire or promotion.

APPENDIX C



REGIONAL UNIVERSAL AGREEMENT TO MEDIATE

The United States Equal Employment Opportunity Commission and the State of New Mexico enter into this Regional Universal Agreement to Mediate. This Regional Universal Agreement to Mediate applies to charges of discrimination filed with the EEOC or any charge of discrimination filed with a Fair Employment Practice Agency and then deferred to the EEOC for processing that the EEOC deems eligible for the mediation program.

As the EEOC's Alternative Dispute Resolution (ADR) Mediation Program provides a method for employer and charging party to come together and informally resolve their workplace disputes, and as the State of New Mexico has an interest in resolving workplace disputes that may arise in a fair and efficient manner, the EEOC and the State of New Mexico agree as follows:

1. All eligible charges of discrimination filed with the EEOC in which the State of New Mexico is named as an employer/respondent will be referred to the EEOC's Mediation Program. This Regional Universal Agreement to Mediate will operate as a general agreement and is used in lieu of an individual Agreement to Mediate for all charges of discrimination filed against the State of New Mexico.
2. The EEOC's mediation program is a voluntary program. Therefore the State of New Mexico and the Charging Party have the right to refuse to mediate any charge of discrimination. If either party rejects mediation, the charge is ineligible to enter the EEOC's mediation program and will be forwarded to an enforcement unit for investigation.
3. Charges of discrimination filed against the State of New Mexico that would normally be dismissed under the Commission's Priority Charge Handling Procedures will not be eligible to enter the ADR program. Charges ineligible for mediation include class and systemic charges or those filed solely under the Equal Pay Act. EEOC also has the authority to withhold charges from mediation in cases when it serves the public interest to investigate the charge.
4. The Risk Management Division of the New Mexico General Services Department shall be the designated representative for the State of New Mexico for purposes of this Agreement. All inquiries, notices, and communications regarding eligible charges of discrimination shall be directed to the Division Director of the Risk Management Division at the following address: 1100 St. Francis Drive #2073, P.O. Box 6850, Santa Fe, New Mexico 87502. The Division Director as of the effective date of this agreement is Mike Wilson, who is also available by telephone (505-827-0463), fax (505-827-2108), and email (mike.wilson@state.nm.us). Mediations shall be scheduled as soon as practical after the charge is filed and the charging party

has agreed to participate, but in any event no later than 45 days from the date the charge enters the mediation program.

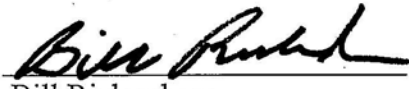
5. All inquiries regarding the EEOC's Mediation Program shall be directed to the ADR Coordinator in the EEOC's District Office where the charge was filed.

6. Nothing in this Agreement shall be deemed to be inconsistent with the laws of the State of New Mexico or shall impair the rights of employees of the State of New Mexico set forth in any Collective Bargaining Agreement to which the State is a party.

7. The EEOC and the State of New Mexico agree to issue a joint press release announcing this agreement.



Naomi Earp
Chair, EEOC



Bill Richardson
Governor, State of New Mexico

10/30/08
Date

10/29/08
Date



APPENDIX D

State of New Mexico

Office of the Governor

Bill Richardson
Governor

EXECUTIVE ORDER 2008-052

ENTERING INTO A REGIONAL UNIVERSAL AGREEMENT TO MEDIATE WITH THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

WHEREAS, the Richardson administration remains committed to ensuring that state government utilizes Alternative Dispute Resolution (ADR) processes as more efficient, less expensive, and more satisfying methods of resolving disputes;

WHEREAS, this administration's 2003 performance review of state executive agencies, "Moving New Mexico Forward", recommended that state government increase its use of ADR to prevent or resolve legal complaints, thereby avoiding traditional adjudicatory processes that are increasingly costly, time consuming, and contentious;

WHEREAS, the use of ADR as an efficient and mutually satisfying means of conflict resolution has been facilitated by Executive Order 2005-047, Establishing the ADR Advisory Council, and enactment of the Governmental Dispute Prevention and Resolution Act, Sections 12-8A-1 through 12-8A-10, NMSA 1978;

WHEREAS, ADR has been used with great success in the public sector of New Mexico to enhance the operation of state government and to better serve the public;

WHEREAS, in furtherance of this administration's commitment to ADR, the State of New Mexico has become the first state to enter into a Regional Universal Agreement to Mediate with the federal Equal Employment Opportunity Commission (EEOC), establishing a presumption that state agencies will engage in voluntary mediation processes to resolve complaints filed against the State of New Mexico with the EEOC;

WHEREAS, cooperation with the EEOC will increase the ability of the State of New Mexico to resolve disputes in a manner beneficial to both state executive agencies and their employees; and

WHEREAS, the Regional Universal Agreement to Mediate requires the State of New Mexico to appoint a designated representative.

NOW THEREFORE, I, Bill Richardson, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the Laws of the State of New Mexico, do hereby order the following:

1. The General Services Department, Risk Management Division, shall act as the State of New Mexico designated representative for the implementation and execution of the Regional Universal Agreement to Mediate between the State of New Mexico and the EEOC.
2. All state executive agencies shall cooperate with the General Services Department, Risk Management Division, in the implementation and execution of the Regional Universal Agreement to Mediate. All inquiries about and the scheduling of mediations pursuant to this agreement shall be directed to the General Services Department, Risk Management Division.
3. Each state executive agency that has not already appointed an ADR Coordinator shall appoint one as the point of contact for the Risk Management Division's designated representative and inform the Division of such appointment by December 1, 2008.
4. Upon receipt of an EEOC complaint against an agency, each agency's ADR Coordinator shall immediately forward a copy of the complaint to the designated representative at the General Services Department, Risk Management Division.

THIS ORDER supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until such time as it is rescinded by the Governor.

ATTEST:


MARY HERRERA
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE THIS
29th DAY OF OCTOBER, 2008

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO


BILL RICHARDSON
GOVERNOR

