



2009 Annual Report ADR Advisory Council State of New Mexico



December 1, 2009



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NEW MEXICO GOVERNOR

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The Honorable Bill Richardson, Governor of New Mexico
The Honorable Timothy 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. Simms Building
715 Alta Vista
Santa Fe, NM 87501

Governor Richardson, Venerable Legislators, and GSD Secretary Arturo Jaramillo:

It is with immense pride that I submit the Alternative Dispute Resolution Advisory Council report for your consideration and review. Enclosed within this report is a detailed account of the intensive work completed and forecasted statewide regarding ADR initiatives. A proactive stance is taken to allow conflicts and disputes to be resolved at the earliest, least expensive point, using methods intended to encourage and build strong working relationships throughout the State of New Mexico. We remain committed to promoting and encouraging increased participation. Moreover, we look forward to working in collaboration with all state agencies.

We believe that with our continued focus, alternative dispute resolution will continue making a lasting positive contribution to state government, breaking barriers to communication and promoting efficient, less expensive, and more satisfying ways of resolving disputes. On behalf of the ADR Advisory Council, I am happy to answer any questions you may have.

Sincerely,

Mike Wilson, AIC, CPCU, CPA
Chair, ADR Advisory Council
Director, Risk Management Division
General Services Department



2009 Annual Report ADR Advisory Council State of New Mexico

INTRODUCTION

The Alternative Dispute Resolution Bureau (established as the *Office of Alternative Dispute Prevention and Resolution* by state statute in 2007), promotes early alternative dispute resolution and positive collaboration among state employees and agencies through the development and support of effective and efficient programs and policies. The office leads numerous initiatives in support of RMD's cost reduction efforts and performance expectations of the Legislature and Governor.

The Bureau devoted much of its first year to establishing baselines for state performance in dispute resolution. First, the Bureau conducted a comprehensive survey of Risk Management Division insured entities (including state agencies, colleges and universities, and a number of schools). The Bureau then conducted on-site customer service interviews with key staff at 79 entities statewide, representing 49,719 (or 90%) of all covered FTEs. The resulting needs analysis focused the Bureau's FY09 efforts in three major areas:

- customer service and outreach initiatives;
- training initiatives; and
- the establishment of sound performance benchmarks.

This report reflects the efforts and results of the state ADR program in the past year, and establishes future goals and expectations.

TABLE OF CONTENTS

<i>Letter from Council Chair Mike Wilson</i>	<i>pg. 2</i>
<i>Introduction</i>	<i>pg. 3</i>
<i>Outreach & Customer Service Initiatives</i>	<i>pg. 4</i>
<i>Training Initiatives</i>	<i>pg. 5</i>
<i>Establishment of Performance Benchmarks</i>	<i>pg. 6</i>
<i>Formalization of ADR Coordinator Position</i>	<i>pg. 7</i>
<i>FY10 Initiatives</i>	<i>pg. 8</i>
<i>Appendix A, FY09 ADR Training Summary</i>	<i>pg. 9</i>
<i>Appendix B, EEOC Mediation Statistics</i>	<i>pg. 10</i>
<i>Appendix C, SPO Classification Description</i>	<i>pg. 11</i>



2009 Annual Report ADR Advisory Council State of New Mexico

OUTREACH AND CUSTOMER SERVICE INITIATIVES

In FY09, the ADR Bureau promoted awareness of ADR principles and benefits and access to resources directly to state agency management and staff, constituents and citizens. The Bureau focused on inviting staff and users to share information, input and feedback into the ADR program's operation and growth. Activities included:

- responding to direct requests for no-cost mediation and facilitation with an expanding roster of volunteer mediators and facilitators;
- creation of a comprehensive ADR resource guide book;
- site visits to share program development resources and information;
- presentations at numerous statewide conferences, in-service trainings, management/staff meetings, health fairs and other organizational events;
- working with the Employee Assistance Program contractor (Deer Oaks EAP) on requests for agency and employee services, including training requests and conflict resolution services;
- participation in related organizations, including the NM State Bar ADR Committee, the Albuquerque/Santa Fe Federal Shared Executive Board – Shared Neutrals Program, the New Mexico Equal Employment Opportunity and Diversity Council Executive Board, and the Santa Fe County Family Self-Sufficiency Program Advisory Board;
- creation and distribution of a quarterly newsletter (*NM ADR News*);
- providing articles for the *Round the Roundhouse* newspaper (at least quarterly);
- coordination of two ADR Advisory Council meetings (attended by representatives from 24 state entities); and
- annual reporting to Legislators and Office of the Governor.

“Go to the people. Live with them. Learn from them . . . Start with what they know; build with what they have. But with the best leaders, when the work is done, the task accomplished, the people will say, “We have done this ourselves!”” — Lao Tzu (700 BC)



2009 Annual Report ADR Advisory Council State of New Mexico

TRAINING INITIATIVES

While the problem-solving concepts underlying ADR are not complicated, they may be new for many people; learning about and using proactive, problem-solving approaches to *prevent* conflict as well as to *resolve* disputes should be a core competency of state employees at all levels. ADR is critical in making state operations more efficient and effective by saving time, money and resources.

To promote ADR self-sufficiency, the Bureau coordinated training opportunities to increase knowledge and skills within state agencies, and to develop new procedures and practices for handling disputes. Educational activities ranged from general awareness and procedural overviews to formal skill-building training, and included the following free or low-cost activities:

- classroom instruction through partnerships with Santa Fe Community College, UNM Continuing Education Division, the Federal Mediation and Conciliation Service (through the State Personnel Office), and the New Mexico Federal Executive Board;
- presentations by US Equal Employment Opportunity Commission ADR Coordinator for the Phoenix District Office;
- a series of monthly “Brown Bag Lunch” presentations by ADR professionals on a broad range of ADR-related topics; and
- identification and notice of other related training opportunities, including UNM Collaborative Governance program, LANL Foundation Community Education Initiatives, SFCC Service Learning Program, NM Mediation Association presentations, etc.

In all, the Bureau coordinated 30 training events, totaling 354 training hours, in 9 statewide locations (Albuquerque, Roswell, Raton, Las Vegas, Santa Fe, Las Cruces, Farmington, Grants and Taos) [Appendix A]. A total of 563 individuals attended, representing 61 state agencies.

“Learning is not a spectator sport — it is an active, not a passive, enterprise. Accordingly, a learning environment must invite, even demand, the active engagement of the student.” — D. Blocher



2009 Annual Report ADR Advisory Council State of New Mexico

ESTABLISHMENT OF PERFORMANCE BENCHMARKS

Organizational best practices demonstrate that documenting processes leads to their improvement. Collecting and analyzing the most accurate and relevant information will produce the most informed decisions. With these principles in mind, the ADR Bureau analyzed claims data to evaluate the applicability and effectiveness of ADR in state government with a consistent goal: to encourage increased participation in ADR.

Analysis took several forms:

- statistical analysis of RMD civil rights claims experience (FY06 – FY08) for a cause and loss baseline and trend data;
- regular claims review with RMD's Property and Casualty Bureau; and
- monthly civil rights claims review by the interagency Early Neutral Evaluation Committee.

This year, a major Bureau function was coordination of mediations pursuant to a *Regional Universal Agreement to Mediate (RUAM)* between the State of New Mexico and the US Equal Employment Opportunity Commission (EEOC). Signed on October 29, 2008, this agreement is the first between EEOC and a state government with shared goals to increase mediation participation, and improve operational efficiency, cost-effectiveness, and accountability in dispute resolution practices. In the first year (federal fiscal year from October 1, 2008 to September 30, 2009), the bureau received information on 73 charges against state agencies, and the state's participation rate increased approximately 17 percent.

Analysis of the types of charges filed and losses claimed will serve as an important loss prevention and control tool for state agencies [Appendix B]. This depth of analysis contributes to a broader understanding of ADR practices and potential benefits in state government.

"If you can't measure it, you can't manage it." — Peter Drucker



2009 Annual Report ADR Advisory Council State of New Mexico

FORMALIZATION OF ADR COORDINATOR POSITION

A three-year project was completed this year with the State Personnel Board's approval to establish an ADR Coordinator position classification for use within state agencies. [Appendix C]. Standardizing the responsibilities, functions and authority of ADR coordinators is critical for the majority of individuals serving this role, because the majority have been doing this function in an "other duties as assigned" capacity.

Approval of the position classification reinforces recognition of the resources and time required to more adequately support this function. The position classification supports individual professional development by recommending experience standards and professional education. Moreover, standardizing and articulating the ADR Coordinator's role helps institutionalize desired change in state government.

"Great necessities call forth great leaders." —Abigail Adams



2009 Annual Report ADR Advisory Council State of New Mexico

FY10 INITIATIVES

In Fiscal Year 2010, the ADR Bureau plans to:

- begin data analysis on quarterly report information detailing ADR activity within individual state agencies (a reporting requirement which commenced on October 1, 2009);
- complete construction of a user-friendly web site, featuring an on-line library for forms and resources, interactive programs and data management tools (leveraging the state's communication technology to increase access to information);
- finalize criteria for a performance-based ADR award and recognition program to acknowledge innovative efforts and accomplishments in state program development; and
- seek grant funding for program support and expansion.

Because achieving meaningful change takes time, the Bureau recognizes that creating a strong foundation for ADR's sustainability and long-term success will be a committed, steady and evolving process. Performance goals and expectations must be practical and optimistic, but also realistic and achievable in order to bring meaningful, long-term improvements in state government. Accordingly, the Bureau must measure both the quantity and quality of its work. Mark Friedman, in Trying Hard is not Good Enough, distinguishes between effort and effect as "simply the difference between how hard we tried and whether we made a difference in the lives of our customers." We can measure our efforts by measuring the quantity (how much did we do?) and the quality (how well did we do it?) of our work, but the more important result-focused measurement remains the *effect* of our efforts - what change did we produce, and is anyone better off?

This is ADR's great potential—that empowering people to communicate and work together can lead to more efficient, satisfying and durable solutions.

"There's a way to do it better - find it." — Thomas Edison

APPENDIX A
FY09 ADR TRAINING SUMMARY

# OF EVENTS	START DATE	TYPE OF TRAINING EVENT	HOURS	LOCATION
Brown Bag Lunch Presentations				
1	07/29/08	Essential Elements of a Successful Workplace ADR Process	1.00	Santa Fe
2	08/27/08	Conflict Resolution through Win-Win Strategies	1.00	Albuquerque
3	09/24/08	Mediation and Restorative Justice at SFPS	1.00	Santa Fe
4	10/23/08	Mediator, Heal Thyself	2.00	Santa Fe
5	11/12/08	Mediation Process at the NM Human Rights Bureau	1.00	Albuquerque
6	01/09/09	SFCC – Spring 2009 Mediation Course Synopsis	1.00	Santa Fe
7	01/22/09	Team Building	1.00	Albuquerque
8	02/24/09	Solving Interpersonal Conflicts on the Job	1.00	Las Cruces
9	03/31/09	Dispute Resolution Resources in State Government	1.00	Grants
10	04/29/09	Mediation Program Management Strategies	1.00	Albuquerque
11	05/06/09	Respect in the Workplace	1.00	Taos
12	06/16/09	Do You Know What I Mean?	1.00	Santa Fe
US Equal Employment Opportunity Commission				
1	11/18/08	Mediation Program Overview	2.00	Santa Fe
2	01/14/09	Mediation Program Overview	2.00	Santa Fe
3	01/15/09	Mediation Program Overview	2.00	Albuquerque
4	01/15/09	Mediation Program Overview	2.00	Santa Fe
New Mexico Federal Executive Board				
1	06/10/09	Conflict, Communication and Change	16.00	Albuquerque
2	08/31/09	40-hour Basic Mediation	40.00	Albuquerque
Federal Mediation and Conciliation Service				
1	10/10/08	Basic Labor Relations	24.00	Albuquerque
2	03/03/09	Basic Labor Relations	24.00	Roswell
3	03/13/09	Basic Labor Relations	24.00	Las Vegas
4	04/21/09	Basic Labor Relations	24.00	Raton
5	05/05/09	Basic Labor Relations	24.00	Albuquerque
6	05/19/09	Basic Labor Relations	24.00	Santa Fe
7	06/02/09	Basic Labor Relations	24.00	Las Cruces
8	06/16/09	Basic Labor Relations	24.00	Farmington
Santa Fe Community College				
1	09/27/08	40-hour Basic Mediation	40.00	Santa Fe
2	06/15/09	Mediation Skills Refresher	8.00	Santa Fe
University of New Mexico \ Cont. Ed. Div.				
1	02/05/09	Conflict, Communication and Change	16.00	Albuquerque
2	03/24/09	ADR Coordinator\Program Management Certificate	21.00	Albuquerque
TOTAL OF 30 TRAINING EVENTS / 354.00 TRAINING HOURS				

APPENDIX B

MEDIATIONS PURSUANT TO REGIONAL UNIVERSAL AGREEMENT TO MEDIATE BETWEEN US EEOC AND STATE OF NEW MEXICO (for Federal FY09, October 1, 2008 – September 30, 2009). Office established protocols and procedures to assist agencies through EEOC mediations, and monitor and report on participation and resolution rates.

A. 73 charges received by RMD:

Albuquerque/Phoenix District: 67, or 92%

El Paso/Dallas District: 5, or 7%

NM Human Rights Bureau: 1, or 1%

B. Number of charges by law under which filed:

Title VII of Civil Rights Act: 46, or 56%

Americans With Disabilities Act: 19, or 23%

Age Discrimination in Employment Act: 15, or 18%

Equal Pay Act: 2, or 2%

***(9 of 73 charges, or 12%, were filed under more than one law)*

C. Number of charges by type of alleged discrimination:

Retaliation: 34, or 27%

Sex: 21, or 16%

Disability: 19, or 15%

National Origin: 19, or 15%

Age: 16, or 13%

Race: 14, or 11%

Other: 3, or 2%

Color: 2, or 2%

Religion: 0, or 0%

***(40 of 73 charges, or over 55%, alleged more than one type of discrimination)*

D. Type of issue alleged:

Discharge: 19, or 22%

Terms/Conditions: 17, or 20%

Harassment: 12, or 14%

Reasonable Accommodation: 10, or 12%

Discipline: 8, or 9%

Hiring: 6, or 7%

Sexual Harassment: 6, or 7%

Promotion: 5, or 6%

Wages: 3, or 3%

***(15 of 73 charges, or over 21%, alleged more than one type of issue)*

E. Status of charge:

Agreed to Mediate: 32, or 44%

Declined to Mediate: 24, or 33%

Pending / Undecided: 7, or 10%

Mediation Not Applicable: 10, or 14% (i.e., charge sent for “notice only” purpose because charge was incomplete as filed, charge already settled or dismissed, or charge is otherwise ineligible for mediation)

APPENDIX C

New Mexico State Personnel Office

2600 Cerrillos Road Santa Fe
New Mexico 87505-0127

Classification Description

ALTERNATIVE DISPUTE RESOLUTION (ADR)

<u>Class Title</u>	<u>Class Code</u>	<u>Pay Band</u>	<u>Alt Pay Band*</u>
ADR Coordinator	H10221	65	

* In accordance with SPB Rule 1.7.4.11 NMAC, the assignment to alternative pay bands shall be reviewed annually to determine their appropriateness.

Occupation Description

Incumbents in this classification promote dispute prevention and alternative dispute resolution as a cost-effective means of resolving issues, problems or complaints before they progress to formal procedures.

Nature of Work

Develops and maintains procedures for settling disputes in an expedited manner by means other than litigation.

Fosters long term relationships among agency personnel, clients, vendors, citizens, or other interested parties.

Promotes an internal appeals procedure as a means of resolving employee complaints before they end up as a charge with an agency such as the EEOC or in litigation.

It is critical that the ADR Coordinator be perceived as a neutral, confidential, and accessible resource for the early intervention and resolution of conflicts.

Distinguishing Characteristics

Work is under direct supervision of an agency head: ensures compliance with Federal, State, and Local laws, regulations and state statutes governing employment and dispute prevention, resolution and management

- Works with state Office of Alternative Dispute Prevention and Resolution to ensure consistency of mediation process.
- Works with employee relations, human resources and personnel management, labor-management representatives, other state of federal agencies, and the general public.
- Develop, implement and coordinate an agency dispute prevention and resolution plan and corresponding agency rules, policies, procedures for the use of ADR.
- Acts as the agency's primary point of contact on all matters related to ADR
- Identifies and coordinates qualified mediators to facilitate mediations.
- Serves as a mediator and/or facilitator in employment and other program area disputes.
- Conducts intake of potential participants in mediation situations.
- Conducts informal and formal interviews to assess each participant's readiness to mediate.
- Conducts management and employee training sessions to promote mediation and provide basic level mediation training to employees.
- Conducts presentations and develops informational packets to market ADR and mediation processes.
- Attends various meetings, conferences, trainings and education programs.
- Exhibits confidentiality with respect to all matters regarding ADR; employee cases, records, reports; remains neutral and accessible resource for the early intervention and resolution of conflicts.
- Compiles and maintains records and statistics of the ADR operations.
- Prepares written and oral reports and responds to requests for information.
- Develops a tracking system (measurement tool) and aggregate information to determine return on investment for ADR and mediation services and to comply with Governmental Dispute Prevention and Resolution Act's reporting requirements.
- Communicates with agency Human Resources staff, Loss Control Coordinator, Risk Management Division, and state Office of Alternative Dispute Prevention and Resolution.
- Maintains cooperative working relationships with related state, court, community and other governmental and private agencies in order to achieve general organizational goals as well as specific project goals.

Recommended Experience and Education Standards

Experience in one or more applicable areas including, but not limited to, public administration, alternative dispute resolution program development, regulatory law, or experience in mediation or facilitation is preferred. Bachelor's degree in public administration, business management, social services, political science; or any combination of education, training, and experience will be accepted that provides the desirable qualifications

Statutory Requirements: § 12-8A1 through 10 NMSA 1978 (Governmental Dispute Prevention and Resolution Act).

Conditions of Employment: Must have completed a minimum of forty hours basic mediation training/dispute resolution training, to be supplemented by continuing educational courses. Must have attended ethical standards training and understand the application of these standards in practice. Work is performed in an office environment; continuous contact with attorneys, litigants, other staff and the general public. Work requires occasional moderate lifting of objects weighing up to 25 pounds

Default FLSA status: Non-Exempt. FLSA status may be determined to be different at the agency level based on the agency's utilization of the position.

Bargaining Unit: This position may be covered by a collective bargaining agreement and all terms/conditions of that agreement apply and must be adhered to

Established: *11/13/2009*

Classification description subject to change. Please refer to the SPO website www.spo.state.nm.us to ensure this represents the most current copy of the description.

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