

2010 Annual Report
Alternative Dispute Prevention
& Resolution Advisory Council



NEW MEXICO
GENERAL SERVICES DEPARTMENT



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 operates as a Bureau of the General Services Department Risk Management Division (RMD) and leads numerous initiatives in support of RMD’s cost reduction efforts and performance expectations of the Legislature and Governor.

This report describes the efforts and results of the state ADR program in the past year, and establishes initiatives for the coming year. As required by statute, this report presents information on the “use, cost and success” of state ADR to the New Mexico Legislature and the Office of the Governor.

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Photos courtesy of Josh Pando.

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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
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State Capitol Building
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Honorable Governor Richardson, Venerable Legislators, and GSD Secretary Arturo Jaramillo:

This report marks the third year of progress in advancing alternative dispute resolution in state government through a formal program administered by the Office of Alternative Dispute Prevention and Resolution, in conjunction with its Advisory Council. This work supports the Risk Management Division's organizational goals of reducing insurable losses and conserving state resources by partnering with our client agencies on new and better work practices.

Alternative dispute resolution is comprised of a broad range of processes which enable individuals to communicate in new ways, seeing opportunities and solutions that they may not have seen before. ADR can open new doors and windows toward improved understanding and a better quality of life. The ADR Bureau promotes and coordinates services and resources through customer service outreach, training, and continuous program evaluation and improvement. These efforts support personal conflict management and resolution skills at the individual level, and increased agency participation in the program. The ADR Bureau is committed to collaborating with state agencies to develop responsive and effective practices and approaches for more efficient, less expensive, and more satisfying dispute resolution.

On behalf of the Alternative Dispute Prevention and Resolution Advisory Council and Office, I am proud to submit this annual report for your consideration and review. It describes the significant work completed in FY10, and planned initiatives for the coming year. I look forward to answering any questions you may have.

Sincerely,

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

OUTREACH AND CUSTOMER SERVICE INITIATIVES

Coordinated ADR through a centralized office is a relatively new approach within state government. As a result, the ADR Bureau dedicates a significant amount of its time and resources to outreach initiatives that educate agencies, employees, stakeholders and other community members about ADR concepts and strategies, and raise awareness about resources and services available. The long-term goal is to increase the understanding and practice of ADR, improving state government operations and decreasing insurable losses.

In FY10, the ADR Bureau maintained its outreach focus through on-site customer service visits with RMD-insured entities, including state agencies, boards and commissions, colleges and universities, district courts, participating local public bodies, and more. This personal interaction is essential to keeping ADR concepts and approaches at the forefront in dealing with conflicts within state government. Additionally, this networking allows the Bureau to remain highly visible and informed regarding dispute prevention and resolution procedures, techniques, and resources utilized by each insured entity. The ability to network in this manner is vital to building confidence, support, and buy-in for dispute resolution, and cultivates collaborative relationships throughout the state.

FY10 outreach and customer service initiatives included:

Conducting on-site customer service visits to build relationships, gain inside knowledge of services provided, and impart a professional passion about ADR. Through these visits, the Office was able to introduce staff, meet key personnel and identify the ADR Coordinator or point of contact for the agency, share program development resources and information, and invite input and feedback into the ADR program's operation and growth. In FY10, the Bureau began conducting at least 5 on-site customer service visits per month.

Developing and coordinating ADR informational events, including formal presentations at conferences, in-service trainings, management/staff meetings, and other organizational events; program orientations/overviews; and displays at health fairs and seminars.

Responding to requests for direct assistance by coordinating no-cost mediation services from a pool of capable, competent, and qualified mediators, and identifying and encouraging the use and sharing of state and community facilities for ADR events.

Creating and distributing a quarterly newsletter (*NM ADR News*) and publishing regular items in the *Round the Roundhouse* state government newspaper, and in other relevant publications like the *New Mexico Lawyer* supplement to the NM State Bar Bulletin.

Actively participating in related organizations, including the NM State Bar ADR Committee, the New Mexico Federal Executive Board – Shared Neutrals Program, the state Americans With Disabilities (ADA) Advisory Council, and the Santa Fe County Family Self-Sufficiency Program Advisory Board.

Coordinating and facilitating meetings of the Alternative Dispute Prevention and Resolution Advisory Council; soliciting Council input into program operations.

TRAINING INITIATIVES

The Office coordinates and promotes dispute resolution and conflict management training for state employees to increase self-sufficiency in preventing and resolving disputes and to develop new practices and procedures for handling disputes. Often, the Bureau partners with other ADR organizations to leverage the variety of styles and range of training formats and levels available throughout the state's large geographic area, at low or no cost to participants, with recognized experts in the field. Training events also serve as a forum to meet and discover new talented, capable mediators who, through their voluntary/"pro bono" participation, provide cornerstone support for the mediation program.

FY10 training activities ranged from general awareness and procedural overviews to formal skill development. In all, the Bureau coordinated 24 training events, totaling 278 training hours, in 10 statewide locations (Albuquerque, Santa Fe, Roswell, Española, Truth or Consequences, Alamogordo, Las Cruces, Silver City, Grants and Taos) [See *FY10 ADR Training Summary*, Appendix A]. A total of 421 individuals attended these training events, representing 74 RMD-insured entities, and receiving 3,995 total cumulative training hours.

FY10 training activities included:

Formal classroom instruction through partnerships with Santa Fe Community College, the University of New Mexico, and the New Mexico Federal Executive Board Shared Neutrals Program (and, in FY11, adding New Mexico State University/Doña Ana Community College and Luna Community College). Formal instruction remains a core training focus, reinforcing the concept that *when on any professional path, it is important to always remain true to the fundamentals of the task at hand.*

A training partnership with the Federal Mediation and Conciliation Service (and the State Personnel Office) to teach Interest-Based-Problem-Solving techniques to supervisors, managers and staff within union-covered organizations.

EEOC presentations by representatives of the US Equal Employment Opportunity Commission ADR Program.

Monthly ADR "Brown Bag" Presentation Series by area ADR professionals on a broad range of ADR-related topics.

ADR Coordinator "Program Orientation/Refresher" training to review program policies and procedures, assess training needs, and promote working relationships between coordinators.

Presentations by member practitioners of the State Bar ADR Committee and the New Mexico Mediation Association.

Identification and notice of other related training opportunities (i.e. UNM Collaborative Governance / National Institutes Forum program).



David Martínez, Commissioner with the Federal Mediation & Conciliation Service, explains principles of collaborative decision-making to a group of employees in Shiprock, New Mexico.

PERFORMANCE MEASUREMENT

This year, the ADR Bureau established performance measures to reflect the amount of work performed and to evaluate performance improvement in conflict management. These measures seek to assess more than the traditional benchmark of “number of customers served;” they also seek to assess progress toward institutional change in how conflict is managed in state government, and resulting positive impacts on financial and other losses.

Measuring how much ADR work was performed in state government includes: the number of agencies contacted by direct customer service visits; number of training hours presented, entities participating, and attendees; number and type of mediations occurring within RMD-insured entities (as self-reported via the Quarterly ADR Activity report, effective July 1, 2009); number of no-cost mediation requests processed through the ADR Office; number of EEOC charges processed; and number of other services utilized (i.e.

personal conflict management through the state Employee Assistance Program). Evaluative performance measures reflect whether ADR work resulted in improved conflict management: whether mediations effectively resolved the parties' issues; whether there were reported improvements to mediation participants' "quality of life" at work; and whether there was an increase in the number of RMD-insured entities participating in EEOC mediations.

A major Bureau function continues to be the coordination of mediations pursuant to the *Regional Universal Agreement to Mediate (RUAM)* between the state and the US Equal Employment Opportunity Commission (EEOC), with shared goals to increase mediation participation, and improve operational efficiency, cost-effectiveness, and accountability in state dispute resolution practices. In the first year of the Agreement, the Bureau processed 73 charges, and the state participation rate rose 17% (from 27% to 44%). In the second year of the Agreement (federal fiscal year from October 1, 2009 to September 30, 2010), the Bureau processed 106 charges against state agencies; the state's participation rate was 42% (in those charges eligible for mediation), with 48% of mediations resolving the charge. Analysis of the types of charges filed and losses alleged serves as an important loss prevention and control tool for state agencies [See *FY10 Mediations Pursuant to RUAM Between US EEOC and State of NM*, Appendix B].

In FY10, the ADR Bureau also analyzed claims data to evaluate the value of **costs avoided** when issues are successfully resolved through mediation. RMD analysis indicates employment-related civil rights claims against the state over the last eight years have an average cost of over \$32,000; another RMD analysis of employment-related claims from the last five years indicates an average cost of approximately \$28,000. A conservative estimate of the claim value at \$20,000 demonstrates cost avoidance benefits for issues that otherwise would likely lead to a costly claim against the state. It is noteworthy that the program's operational expenses do not include service fees, as service providers are volunteer/"pro bono" mediators, contributing hundreds of hours of "in-kind" ADR services annually, with a typical market rate in excess of \$100/hour.

Finally, the ADR Bureau evaluates non-financial performance measures (i.e., "quality of life"). For example, comparing the turnaround time for scheduling a mediation (an average of about one week from request to scheduling) against the time (months, or even years) to investigate and resolve a typical claim, charge or legal action confirms mediation can save another extremely valuable resource – time. Moreover, mediation participants report other "quality of life" improvements, including improved communication skills and workplace relationships, and decreased stress-related health costs and work time lost. These non-financial (and more personal) factors **make peoples' lives better**, and can be instrumental in creating a value-driven ADR program.

Data regarding the number and type of state mediations appears in Appendix C.

ADR has proven to be one of the few state resources of which we can say, "the more you use it, the more you save."

FY11 INITIATIVES

2011 will bring large-scale change to state government. As a result, the ADR Bureau anticipates an increased demand for ADR information, resources and services.

FY11 ADR initiatives include:

- Provide active and consistent customer contact through on-site customer service visits, and participation in related organizations
- Conduct ongoing data analysis on agency-reported ADR activity, Office-coordinated mediation requests, EEOC mediations, and employment-related civil rights claims
- Improve accessibility to resources through extensive e-mail distribution, various publications, translation into various formats, and a user-friendly website
- Integrate creative uses of technology (i.e., teleconferenced presentations and meetings)
- Implement a feedback/evaluation process to support quality assurance and performance improvement
- Develop marketing campaign to increase “brand” visibility, recognition, and utilization
- Promote EAP, community and other “self-help” ADR services to support personal conflict management development and personal well-being
- Expand outreach efforts to actively engage state employees, RMD-insured entities, colleges/universities/schools, community organizations, stakeholders and other “interested parties”
- Maintain and increase training opportunities through public institutions of higher education and partnerships with government and community organizations
- Continue active recruitment of new mediators to “state pool,” and innovate professional support and continuing education mechanisms
- Secure reliable funding source for training and other program initiatives
- Convert all program documents, forms and files into Electronic Content Management system as part of larger RMD record retention initiative



APPENDIX A

FY10 ADR TRAINING SUMMARY

# of Events	Start Date	Type Of Training Event	Class Room Hours	Location	# of Attendees	Total Hours Received
ADR Coordinator Training						
1	1/13/10	2010 ADR Coordinator Refresher	2.0	Santa Fe	17	34
Brown Bag Lunch Presentations						
1	7/29/09	Mediation Roundtable	1.0	Roswell	11	11
2	8/27/09	A Short Introduction to Managing Conflict Effectively	1.0	Santa Fe	35	35
3	9/29/09	Getting to the Core of Conflict	1.0	Albuquerque	16	16
4	11/18/09	Creating a More Ethical Workplace	1.0	Albuquerque	14	14
5	11/24/09	FY09 ADR Activity - Year in Review	1.0	Albuquerque	11	11
6	12/14/09	Conflict Resolution as a Core Competency	1.0	Santa Fe	28	28
7	1/25/10	Effective Communication	1.0	Albuquerque	14	14
8	2/24/10	ADR in the Real World	1.0	Albuquerque	11	11
9	3/30/10	Presentation by US EEOC	1.0	Santa Fe	30	30
10	4/22/10	Volunteer Mediation Program at the Santa Fe Magistrate Court	1.0	Santa Fe	8	8
11	5/24/10	Finding a Better Way: Interest Based Problem Solving	1.0	Albuquerque	35	35
12	6/28/10	At the Crossroads of ADR & the ADA	1.0	Santa Fe	20	20
New Mexico Federal Executive Board Shared Neutrals Program						
1	8/31/09	40 hour Basic Mediation	40.0	Albuquerque	11	440
2	3/31/10	Conflict Communication and Change	16.0	Albuquerque	19	304
Federal Mediation and Conciliation Service						
1	1/20/10	Interest Based Problem Solving	24.0	Espanola	7	168
2	2/3/10	Interest Based Problem Solving	24.0	Truth or Consequences	36	624
3	3/3/10	Interest Based Problem Solving	24.0	Alamogordo	9	216
4	3/17/10	Interest Based Problem Solving	24.0	Las Cruces	29	696
5	4/7/10	Interest Based Problem Solving	24.0	Grants	18	432
6	5/5/10	Interest Based Problem Solving	24.0	Silver City	11	264
7	6/9/10	Interest Based Problem Solving	16.0	Taos	8	128
Santa Fe Community College						
1	08/24/09	40-hour Basic Mediation	40.0	Santa Fe	6	240
National Issues Forum Institute (hosted by NM Institute of Public Law at UNM)						
1	04/08/10	NIFI - Public Deliberation	8.0	Albuquerque	27	216
Total Number of Events Presented						24
Total Number of Training Locations						10
Total Classroom Hours Presented						278
Total Number of Attendees						421
Total Number of Participating Entities						74
Total Numbers of Hours Received (Cumulative)						3,995

APPENDIX B

FY10 MEDIATIONS PURSUANT TO REGIONAL UNIVERSAL AGREEMENT TO MEDIATE BETWEEN US EEOC AND STATE OF NEW MEXICO. Office established protocols and procedures to assist agencies through EEOC mediations, and monitor and report on participation and resolution rates.

- A. **106** charges received by RMD (92, or 87% from Albuquerque/Phoenix District; 12, or 11% from El Paso/Dallas District; 2, or 2% from NM Human Rights Bureau)
- B. Number of charges by law under which filed:
 1. Title VII of Civil Rights Act: 74, or 70%
 2. Americans With Disabilities Act: 24, or 23%
 3. Age Discrimination in Employment Act: 25, or 24%
 4. Equal Pay Act: 0, or 0%
 5. Genetic Information Nondiscrimination Act (GINA): 0, or 0%

***(17 of 106 charges, or 16%, were filed under more than one law)*
- C. Number of charges by type of alleged discrimination:
 1. Retaliation: 54, or 51%
 2. Sex: 39, or 37%
 3. Disability: 22, or 21%
 4. National Origin: 22, or 21%
 5. Age: 27, or 25%
 6. Race: 14, or 13%
 7. Other: 0, or 0%
 8. Color: 4, or 4%
 9. Religion: 6, or 6%
 10. GINA: 0, or 0%

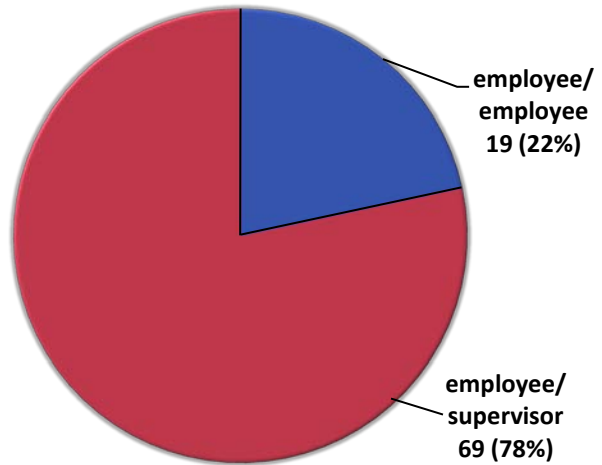
***(82 of 106 charges, or over 77%, alleged more than one type of discrimination)*
- D. Type of issue alleged
 1. Discharge: 28, or 26%
 2. Harassment: 12, or 11%
 3. Sexual Harassment: 8, or 8%
 4. Terms/Conditions: 47, or 44%
 5. Discipline: 24, or 23%
 6. Wages: 3, or 3%
 7. Reasonable Accommodation: 5, or 5%
 8. Hiring: 11, or 10%
 9. Promotion: 6, or 6%

***(38 of 106 charges, or over 36%, alleged more than one type of issue)*
- E. Status of Charge
 1. Mediation was “Not Applicable” in 14 of the 106 charges (13%) (i.e., charge was sent for “notice only purposes” because charge was incomplete as filed, already settled, or was otherwise already dismissed)
 2. Of the remaining 92 charges:
 - a. Agreed to Mediate: 39, or 42%
 - b. Declined to Mediate: 53, or 58%
- F. Outcomes of Mediations (33 occurred; 6 did not occur as scheduled)
 1. Agreement resolving charge: 16, or 48%
 2. No agreement: 13, or 39%
 3. Pending decision: 4, or 12%

APPENDIX C

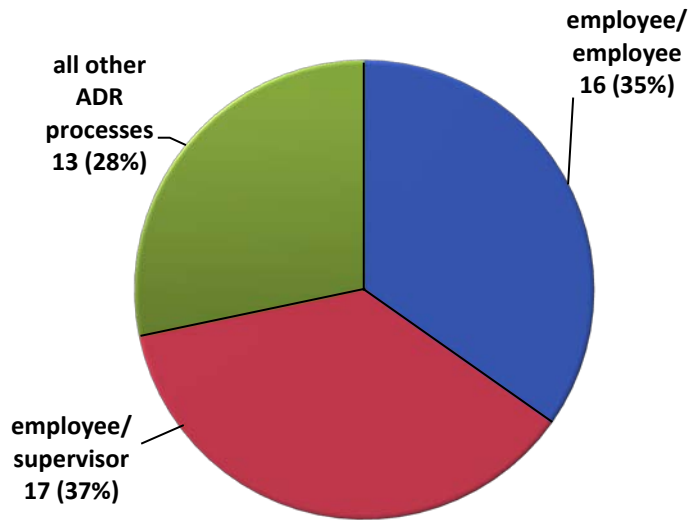
I. FY10 MEDIATIONS AS REPORTED IN ADR QUARTERLY ACTIVITY REPORTS (information reported to ADR Bureau regarding mediations conducted within RMD insured entities without direct assistance from the ADR Bureau):

Of 88 reported mediations in FY10, 69 of them were employee/supervisor mediations (78%), and 19 were employee/employee mediations (22%); 58 of the 88 mediations resulted in a verbal or written agreement (66% resolution rate), 14 were withdrawn by the requestor or refused by the other party, and the remaining mediations were in an “open or ongoing” status.



II. FY10 MEDIATIONS COORDINATED BY THE ADR BUREAU (direct assistance requested by RMD-insured entities):

Of 55 mediation requests, 46 mediations were scheduled; of the 46 mediations, 17 were employee/supervisor mediations (37%), and 16 were employee/employee mediations (35%); the remaining requests were group facilitations or other ADR processes. Mediations were requested in Santa Fe (33) and Albuquerque (8), with the remainder in Farmington, Las Cruces, Roswell, Truth or Consequences, Alamogordo, Los Lunas, Lordsburg, Hobbs, Carlsbad and Deming.



III. Other state ADR process: State agencies and employees also utilize personal conflict management services available through the state’s EAP provider (Deer Oaks Employee Assistance Program); in FY10, 35 conflict-related issues were referred to EAP.



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