



Refer to Mediation or
Free Assistance Program?

- problem(s)
- attendance
- peer conflict
- job performing
- boss-worker
- gender roles
- general insubordination



2011 New Mexico Alternative Dispute Resolution Symposium

2011 ANNUAL REPORT

New Mexico Alternative Dispute Prevention & Resolution Advisory Council



INTRODUCTION

The Office of Alternative Dispute Prevention and Resolution promotes the early resolution of disputes through respectful communication and positive, constructive collaboration. The Bureau assists RMD-insured entities in conflict resolution processes and policy development to maintain and advance cost reduction efforts throughout the State of New Mexico. The core mission of the ADR Bureau is established in the Governmental Dispute Prevention and Resolution Act of 2007: to promote ADR; to organize and manage ADR programs for state agencies; to coordinate the use of neutral parties; to implement the development and use of ADR strategies; to provide staff support for the Council; to maintain information and educate government officials about training and the use of ADR and referrals; and, to report annually on the use, cost and success of ADR.

Through all of this work, the ADR Bureau remains committed to its motto: *"Encouraging communication through mutual respect."*

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SUSANA MARTÍNEZ
NEW MEXICO GOVERNOR



ED BURCKLE
CABINET SECRETARY
GENERAL SERVICES DEPARTMENT

State of New Mexico
General Services Department

JAY R. HONE
DIRECTOR
RISK MANAGEMENT DIVISION

ADMINISTRATIVE SERVICES DIVISION
(505) 827-0620
BUILDING SERVICES DIVISION
(505) 827-2349
PROPERTY CONTROL DIVISION
(505)827-2141
PURCHASING DIVISION
(505) 827-0742
RISK MANAGEMENT DIVISION
(505) 827-0442
STATE PRINTING & GRAPHIC SERVICES
BUREAU
(505) 476-1950
TRANSPORTATION SERVICES DIVISION
(505) 476-1902

Honorable Governor Martinez, Legislators, and GSD Secretary Burckle:

2011 marks the fourth year of work by the Alternative Dispute Resolution Bureau throughout New Mexico state government. Alternative Dispute Resolution (ADR) is a broad array of processes which facilitate communication and opportunities for dispute resolution. The ADR Bureau promotes and coordinates services and resources to encourage personal and organizational conflict management and resolution skills at the earliest level. Mediation, facilitation, and other ADR processes support the Risk Management Division's mission to reduce insurable losses and conserve state resources. The Bureau collaborates with RMD-insured entities 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 ADR Bureau staff, I submit this annual report for your consideration and review. I look forward to answering any questions you may have.

Sincerely,

A handwritten signature in blue ink that reads "Jay R. Hone".

Jay R. Hone
Chair, ADR Advisory Council
Director, Risk Management Division
General Services Department



Mary Jo and Josh, of the ADR Bureau, present ADR program information to the Department of Health regional management team at Roadrunner Food Bank in Albuquerque.

OUTREACH AND CUSTOMER SERVICE INITIATIVES

Since its inception, the Bureau has maintained a high level of customer service through one-on-one customer service visits with individual agencies, and by networking throughout the state with ADR contacts in local, state, and federal government, in the courts, in colleges and universities, and in community programs. Through these contacts, the Bureau has been able to identify and coordinate with new resources for service and resource-sharing, training, and a broader understanding of ADR practices and benefits. 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. This networking is vital to building confidence, support, and buy-in for dispute resolution, and cultivates collaborative relationships throughout the state.

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. In FY11, 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 other interested parties and organizations. Bureau staff members are available at no cost to make presentations and participate in meetings with employees and employer agencies, community organizations, and other members of the general public. Maintaining frequent communication and personal interaction is critical in establishing ADR as an easily accessible service and valuable tool.

FY11 outreach and customer service initiatives included:

- Meeting with customers on-site to build relationships with key staff, share program development resources and information, and invite input and feedback. The Bureau conducts an average of 5 on-site customer service visits per month.

- Providing direct services for mediation requests by coordinating no-cost mediation services from the state mediator pool, and identifying state and community facilities for ADR events.
- Coordinating ADR events, including presentations at conferences, in-service trainings, management/staff meetings, and other organizational events; program orientations & overviews; and displays at health fairs and seminars.
- Creating and distributing a quarterly newsletter (*NM ADR News*), and publishing regular items in the *Round the Roundhouse* state government newspaper.
- Actively participating in related organizations, including the newly established New Mexico Supreme Court Alternative Dispute Resolution Commission, the NM State Bar ADR Committee, the State Americans with Disabilities Act (ADA) Coordinators' Council, and the Department of Health Region 1 & 3 Equity Group.
- Coordinating and facilitating bi-annual meetings of the Alternative Dispute Prevention and Resolution Advisory Council, soliciting Council input into program operations, and publishing this report on its behalf.

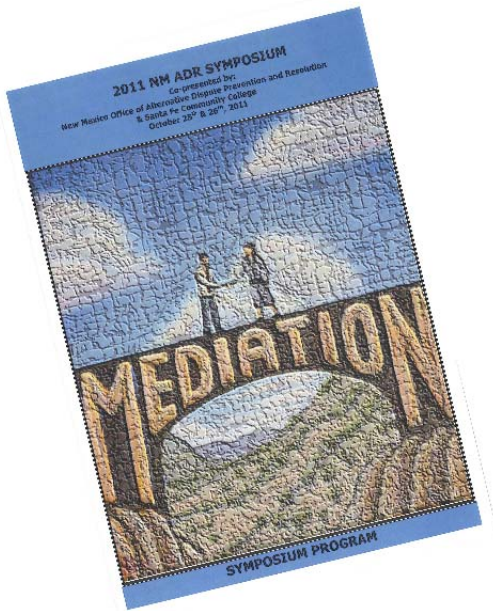


Josh Pando discusses the mediation process with state employees at the 2011 Children's Law Institute.

TRAINING INITIATIVES

The Office coordinates and promotes ADR training in a variety of formats and forums. The Bureau partners with other ADR organizations to leverage resources, with the goal of providing high-quality training experiences at low or no-cost to participants, from recognized subject matter experts. Typically, training events focus on individual skill development, or on improving organizational conflict management. Training events also serve as a forum to meet, discover and recruit new talented mediators who, through their voluntary/"pro bono" participation, provide essential services to the mediation program. FY11 training activities ranged from general awareness and procedural overviews to formal mediation skill development; in all, the Bureau coordinated 19 training events, totaling 187 training hours, in Albuquerque, Santa Fe, and Las Cruces. [See *Appendix A: FY11 ADR Training Summary*]. A total of 341 individuals attended these training events, representing 61 RMD-insured entities, and 2,745 cumulative training hours.

2011 Inaugural ADR Symposium



2011 Symposium Program Cover
(original artwork by Eduardo Duran)

On October 25th and 26th, 2011, the Bureau also coordinated the inaugural statewide NM Alternative Dispute Resolution Symposium, presented in partnership with the Santa Fe Community College. The Symposium, the first statewide ADR training event of its kind, was opened by Governor Susana Martinez and Court of Appeals Judge Roderick T. Kennedy. This hallmark event was presented at no cost to state government or attendees (other than an investment of work time); over 150 attendees, from 33 different state entities, came from throughout the state (including the furthest corners – Raton, Roswell, Silver City and Farmington). The event provided critical training, recognition and support for state mediators and ADR Coordinators, and numerous networking opportunities. A significant additional benefit of the Symposium was the introduction of a number of new volunteer/“pro bono” mediators to the state program.

The two days of training were presented by some of New Mexico’s most respected ADR professionals, a broad array of talent from state government agencies, the courts, state colleges and universities, and federal and community ADR programs, including: NM General Services Department; NM Energy, Minerals & Natural Resources Department; NM Department of Public Safety; NM State Personnel Office; Deer Oaks Employee Assistance Program; Santa Fe Magistrate Court; Bernalillo County Metropolitan Court; NM Court of Appeals; NM Administrative Office of the Courts; Santa Fe Community College; University of New Mexico; UNM Institute of Public Law; the Federal Mediation & Conciliation Service; and, the US Equal Employment Opportunity Commission.

Participants and presenters were overwhelmingly positive and enthusiastic in their feedback about this training experience:

- *“one of the best learning experiences I’ve had in my professional career”*
- *“I am energized about mediation”*
- *“I left with a lot of information that I have already been discussing with my co-workers”*
- *“a great reminder for me as to why I became interested in dispute resolution to begin with”*
- *“Thanks again so very much for a beautiful two days – they were packed with wonderful presenters, essential information, and just plain good fun and energy!”*

The Bureau looks forward to presenting the event annually for the continuing education and support of mediators and other ADR staff throughout the state.

Outreach and networking has also resulted in the creation of valuable training resources for state employees by increasing the availability of low-cost formal mediation training through Santa Fe Community College, the University of New Mexico and NMSU/Dona Ana Community College. These courses qualify state employees to join the roster of volunteer state employee mediators; growing and supporting this resource is critical – it ensures the Bureau’s ability to respond to direct service requests for no-cost mediation and facilitation. The growing list of service providers is part of a larger network of qualified ADR professionals statewide, and is comprised of highly skilled and experienced mediators, facilitators, and seasoned subject matter experts in numerous disciplines. These ADR service providers are the heart and soul of the state ADR program.

Other FY11 training activities included:

- Maintaining and increasing formal mediation training opportunities through public institutions of higher education and partnerships with government and community organizations.
- Continuing 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.
- Presenting in-depth training presentations on the ADR program and procedures to state agency managers and staff (Public Employee Retiree Association, NM Finance Authority, NM Department of Health regional management team).
- Partnering with the Governor’s Commission on Disability to present Disability Communication forums in Las Vegas, Clovis and Silver City.
- Presenting at the State Bar of New Mexico’s Annual Meeting - Bench and Bar Conference.
- Hosting monthly ADR “Brown Bag” presentations by area professionals in ADR and related fields.
- Presenting “Program Orientation/Refresher” training for ADR Coordinators to review program policies and procedures, assess training needs, and promote working relationships between coordinators.
- Coordinating EEOC presentations by representatives of the US Equal Employment Opportunity Commission ADR Program.

UNM Professor Carolina Yahne leads a Brown Bag Lunch presentation in Albuquerque.



PERFORMANCE MEASUREMENT

The ADR Bureau continues to refine performance measures to evaluate improvement in conflict management throughout state government. With these measures, the Bureau seeks to assess institutional change resulting in better workplace practices and the reduction of insurable losses, particularly in the area of employment-related civil rights. (All data reported here is summarized, without names or uniquely identifying information). Measures reflect the number and type of mediations processed through the ADR Office [See *Appendix B: ADR Bureau Mediation Statistics*]. The Bureau also collects data on ADR activities within agencies as self-reported via the agency Quarterly ADR Activity Report [See *Appendix C: FY11 Mediation Statistics as Self-Reported by Agencies*].

Evaluative performance measures also reveal whether an ADR process effectively resolved the parties' issues. In FY11, the ADR Bureau implemented a feedback/evaluation process utilizing post-mediation surveys for both mediators and participating parties. These surveys capture data on the process itself (to support quality assurance and performance improvement), resolution rates, and non-financial performance improvement measures (i.e., "quality of life" concerns, like time saved, and improved workplace relationships). In FY11, mediation participants frequently reported the development of new problem-solving options, changes in work processes, better communication between supervisors and employees, and improved relationships between co-workers.

FY11 analysis of RMD claims data demonstrates the value of **costs avoided** when issues are successfully resolved through mediation. RMD claims data indicates employment-related civil rights claims against the state over the last five years totaled over \$23 million, with an average individual claim cost of close to \$38,000. The cost avoidance benefit for issues that otherwise would likely lead to a costly claim against the state cannot be overemphasized, particularly because the ADR program's operational expenses do not include service fees. Service providers are volunteer/"pro bono" mediators, and this contribution of hundreds of hours of "in-kind" ADR services annually has a typical market rate in excess of \$100/hour.

The Bureau continues to monitor the number of RMD-insured entities participating in the EEOC mediation process pursuant to the Regional Universal Agreement to Mediate (RUAM) of 2008 between the state and the US Equal Employment Opportunity Commission (EEOC). This agreement was established with the shared goal to increase mediation participation, and improve operational efficiency, cost-effectiveness, and accountability in state dispute resolution practices. Mediation at the EEOC is an informal, confidential, and free process, using staff or contract mediators. The decision to mediate is completely voluntary; if either party turns down mediation, the charge is forwarded directly to an investigator. A mediation session usually lasts from 3 to 4 hours, although the time can vary depending on how complicated the case is. Through mediation, the parties may resolve the charge in less than 3 months on average (while it can take 6 months or longer for a charge to be investigated), and a written signed agreement reached during mediation is enforceable in court just like any other contract. If the parties do not reach an agreement at the mediation, the charge is investigated like any other charge.

In the first year of the Agreement, (Federal Fiscal Year 2009, from October 1, 2008- September 30, 2009), the Bureau processed 73 charges, and the state participation rate rose 17% (from 27% to 44%). In FY10, the Bureau processed 106 charges, and the participation rate was 42%. In FY11, the Bureau processed 100 charges, and the state's participation rate was 47%. Information on the types of charges filed and a 3-year comparative analysis are contained in *Appendix D: FY11 EEOC Mediation Statistics*. The data reflects an upward trend in ADA-related charges, consistent with the national trend as reported by EEOC. Retaliation remains the most frequently cited type of charge in both state and national statistics, an expected result because it is generally filed as a "companion" to other charges.

OTHER FY11 ACCOMPLISHMENTS

- Improved accessibility to resources through extensive e-mail distribution, various publications, translation into various formats, and a user-friendly website.
- Integrated creative uses of technology (i.e., teleconferenced presentations and meetings).
- Promoted Employee Assistance Program, and other "self-help" ADR services to support personal conflict management development and well-being, to assist in management consultations on difficult issues, and in situations requiring critical incident response and stress management (i.e., a workplace violence incident).
- Converted all program documents, forms and files into Electronic Content Management system as part of larger RMD record retention and management initiative.

FY12 INITIATIVES

- Develop reliable funding source for training and other program initiatives.
- Expand mediator roster through recruitment of new service providers.
- Increase resources identification and service-sharing statewide.

***"Never doubt that a small group of thoughtful committed citizens
can change the world. Indeed, it's the only thing that ever has."***

~ Margaret Mead

Appendix A

FY11 ADR TRAINING SUMMARY

# of Events	Start Date	Type Of Training Event	Class Room Hours	Location	# of Attendees	Total Hours Received
ADR Coordinator Training						
1	06/29/11	2011 ADR Coordinator Refresher	1.5	Santa Fe	17	25.5
Brown Bag Lunch Presentations						
1	07/21/10	A View from the Bench	1.0	Santa Fe	19	19.0
2	08/31/10	Mediator Roundtable Discussion	1.0	Albuquerque	9	9.0
3	09/29/10	Restoring Trust, Preserving Values	1.0	Santa Fe	17	17.0
4	10/26/10	Generational Differences in the Workplace	1.0	Santa Fe	28	28.0
5	11/30/10	Metro Court Mediation Division/Rewards and Challenges	1.0	Albuquerque	7	7.0
6	12/28/10	ADR Open House	2.0	Santa Fe	6	12.0
7	01/27/11	Overview of State-Tribal Collaboration Act	1.0	Santa Fe	23	23.0
8	02/24/11	Maintaining (or Restoring) Civility, Respect and Professional Communication in the Workplace	1.0	Albuquerque	29	29.0
9	03/30/11	Collaborating Across Communities	1.0	Albuquerque	15	15.0
10	04/27/11	Improving Workplace Mediations with ADA Implications	1.0	Santa Fe	28	28.0
11	05/05/11	Southern New Mexico Mediator's Roundtable	2.0	Las Cruces	7	14.00
12	05/20/11	Mediation: an Effective Alternative to Discipline	2.0	Albuquerque	36	72.0
Federal EEOC						
1	09/01/10	EEOC Meet and Greet	1.0	Santa Fe	21	21.0
Federal Mediation and Conciliation Service						
1	07/28/10	Interest Based Problem Solving - Albuquerque	24.0	Albuquerque	29	696.0
2	08/25/10	Interest Based Problem Solving – Santa Fe	24.0	Santa Fe	18	432.0
New Mexico State University/DACC						
1	08/31/10	Beginning Level Mediation Training	40	Las Cruces	12	480.0
2	05/01/11	Beginning Level Mediation Training	40	Las Cruces	4	160.0

Total Number of Events Presented	19
Total Number of Training Locations (Santa Fe, Albuquerque, Las Cruces)	3
Total Classroom Hours Presented	187
Total Number of Attendees	341
Total Number of Participating Entities	55
Total Numbers of Hours Received (Cumulative)	2,745

Appendix B

FY2011 / TOTAL MEDIATION REQUESTS RECEIVED:

92

Type of Dispute:

Employee / Employee	32 (34%)
Employee / Supervisor	41 (45%)
Other (i.e., Group Facilitation)	12 (13%)
Unknown	7 (8%)
TOTAL	92/100%

Resolution status of 53 mediations that occurred*:

Written agreement	33 (62%)
Oral agreement	10 (19%)
No agreement, and/or returning to mediation	9 (17%)
Pending	1 (2%)
TOTAL	53/100%

**39 mediations did not occur because the matter was resolved prior to mediation, a party withdrew request/declined mediation, a party left employment, or the matter was inappropriate for mediation.*

Source of Request

By Requestor:

Executive Agency	78 (85%)
Judicial Agency	3 (3%)
College / University / School	7 (8%)
Other	4 (4%)
TOTAL	92/100%

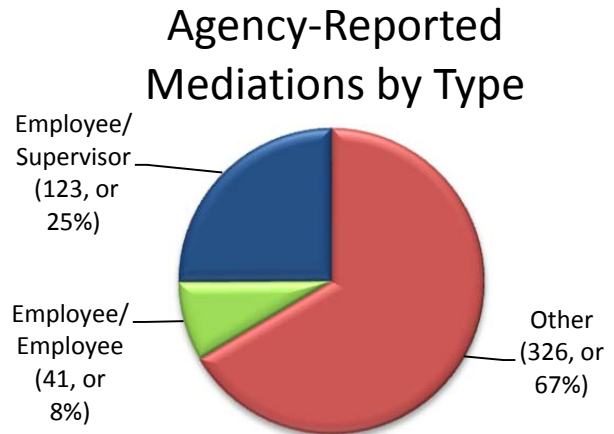
By Geographic Location:

Santa Fe	53 (58%)
Albuquerque	16 (17%)
Española	5 (5%)
Las Cruces	5 (5%)
Roswell	4 (4%)
Remainder of requests, 1 each from: Silver City, Bernalillo, Springer, Socorro, Moriarty, Grants, Gallup, Portales, and Raton.	9 (10%)
TOTAL	92/100%

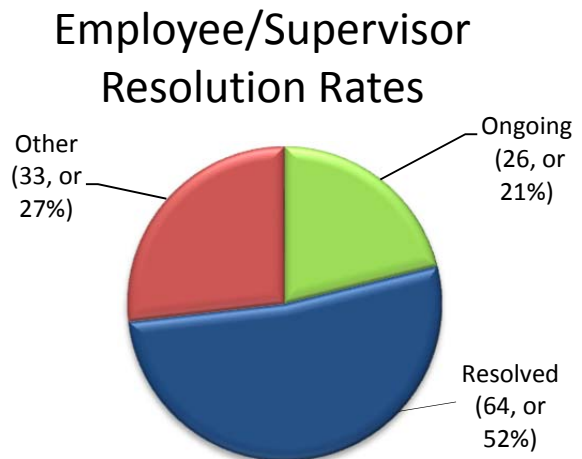
Appendix D

FY11 MEDIATION STATISTICS AS SELF-REPORTED BY AGENCIES

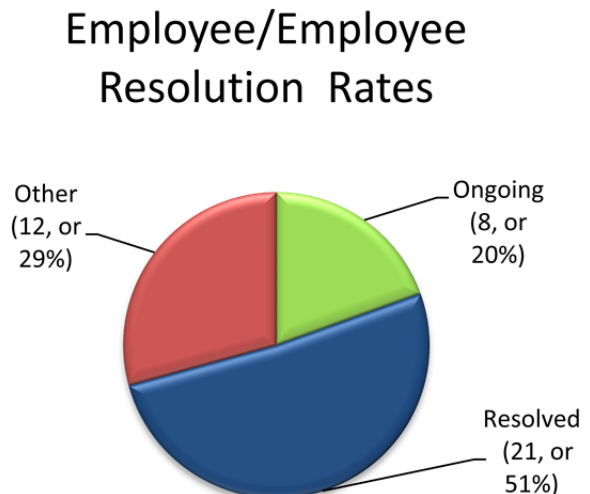
In FY11, state agencies reported 618 total internal ADR activities (including ADR processes, meetings, trainings, etc.); of those activities, 490 were ADR processes, with 123 classified as Employee/Supervisor mediations (25%), 41 classified as Employee/Employee mediations (8%) and the remaining 326 classified as “Other Processes” (67%). “Other processes” include arbitrations, group facilitations, citizen participation events, and miscellaneous events.



Of 123 Employee/Supervisor mediations, 64 (or 52%) resolved the issues presented, 26 (or 21%) are ongoing, and the remaining requests (33, or 27%) were either withdrawn/refused or otherwise did not resolve the issues presented.



Of the 41 Employee/Employee mediations, 21 (or 51%) resolved the issues presented, 8 (or 20%) are ongoing, and the remaining requests (12, or 29%) were either withdrawn/refused or otherwise did not resolve the issues presented.



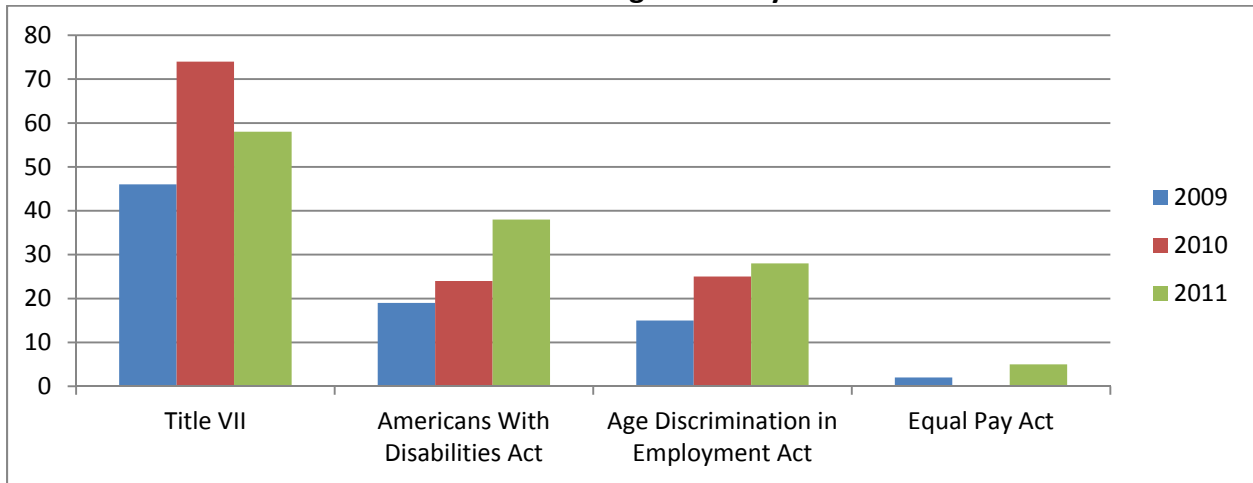
Appendix D

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. For FY11

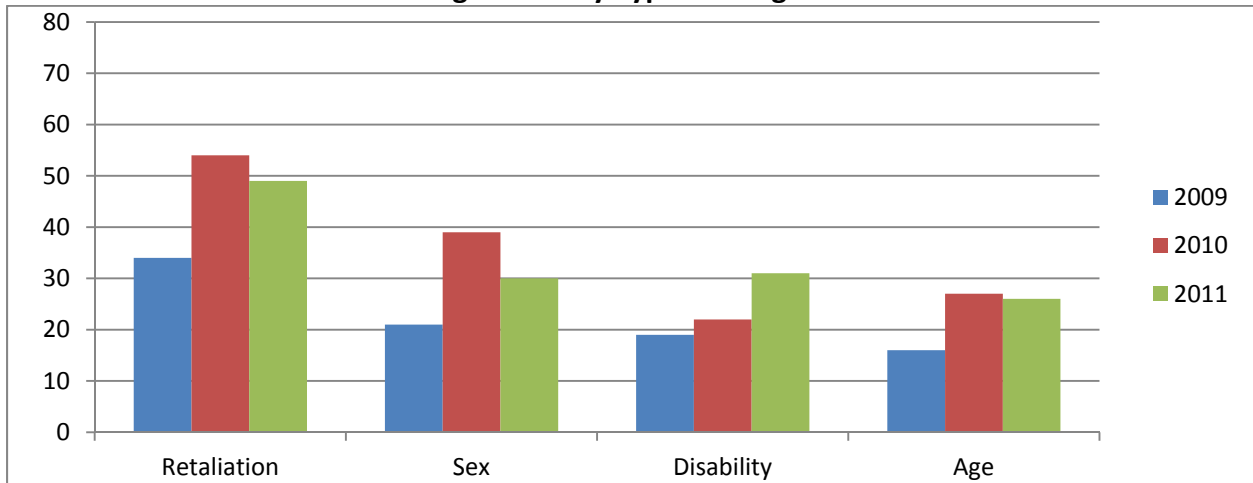
- A. 100 charges received by RMD (98, or 98% from Albuquerque/Phoenix District and 2, or 2% from El Paso/Dallas. District)
- B. Number of charges by law under which filed:
 - 1. Title VII of Civil Rights Act : 58, or 58%
 - 2. Americans with Disabilities Act: 38, or 38%
 - 3. Age Discrimination in Employment Act: 28, or 28%
 - 4. Equal Pay Act: 5, or 5%
 - 5. Genetic Information Nondiscrimination Act (GINA): 0, or 0%
***(27 of 100 charges, or 27%, were filed under more than one law)*
- C. Number of charges by type of alleged discrimination:
 - 1. Retaliation: 49, or 49%
 - 2. Sex: 30, or 30%
 - 3. Disability: 31, or 31%
 - 4. National Origin: 21, or 21%
 - 5. Age: 26, or 26%
 - 6. Race: 24, or 24%
 - 7. Other: 4, or 4%
 - 8. Color: 2, or 2%
 - 9. Religion: 4, or 4%
 - 10. GINA: 0, or 0%
***(52 of 100 charges, or 52%, were filed alleging more than one type of discrimination)*
- D. Type of issue alleged
 - 1. Discharge: 27, or 27%
 - 2. Harassment: 14, or 14%
 - 3. Sexual Harassment: 8, or 8%
 - 4. Terms/Conditions: 52, or 52%
 - 5. Discipline: 29, or 29%
 - 6. Wages: 18, or 18%
 - 7. Reasonable Accommodation: 16, or 16%
 - 8. Hiring: 10, or 10%
 - 9. Promotion: 14, or 14%
***(57 of 100 charges, or 57%, were filed alleging more than one issue)*
- E. Status of charge:
 - 1. Mediation was “Not Applicable” in 7 of 100 charges, or 7% (i.e., charge was sent for “Notice Only” purposes because charge was incomplete as filed, already settled or dismissed, or otherwise not eligible for mediation)
 - 2. Of the 93 charge eligible for mediation:
 - a. Agreed to Mediate: 44, or 47%
 - b. Declined to Mediate: 43, or 46%
 - c. Pending / Undecided: 6, or 6%
- F. Outcomes of the 44 Mediations - Agreement resolving charge: 16, or 36%

Appendix D

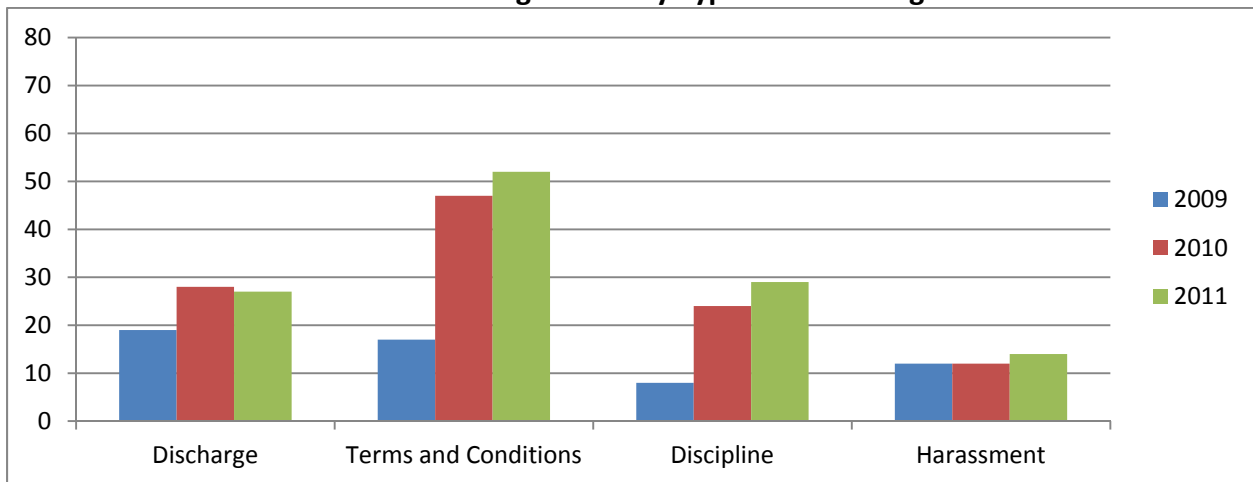
3 year EEOC Comparative Analysis Number of Charges Filed by Law



Number of Charges Filed by Type of Alleged Discrimination



Number of Charges Filed by Type of Issue Alleged





ADR BUREAU STAFF

Mary Jo Lujan
Bureau Chief
(505)827-0444
mlujan@state.nm.us

Josh Pando
**ADR Training &
Development Specialist**
(505)827-0421
Josh.Pando@state.nm.us

Maria Voyles
**ADR Program
Management Analyst**
(505)827-0576
Maria.Voyles@state.nm.us



**GENERAL SERVICES DEPARTMENT
RISK MANAGEMENT DIVISION**
1100 St. Francis Drive, PO Box 6850, Santa Fe, NM 87502

Ed Burckle, GSD Secretary
Jay Hone, RMD Director
Ed Romero, RMD Deputy Director