

FY2017 Annual Report

New Mexico Alternative Dispute Prevention & Resolution Advisory Council





OUR MISSION

The 2007 New Mexico Governmental Dispute Prevention and Resolution Act requires that state agencies provide access to Alternative Dispute Resolution (ADR) options to prevent or resolve disputes early, thereby preventing expensive and complicated administrative processes or litigation. The Act established the state ADR Bureau within the General Services Department, Risk Management Division, to assist state-insured entities in conflict resolution processes and policy development to maintain and advance cost-reduction efforts throughout the state. The core mission and responsibilities of the ADR Bureau are established in the Act: 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 ADR Advisory 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.

In its work, the ADR Bureau is committed to:

"Encouraging communication through mutual respect."

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December 1, 2017

Honorable Governor Martinez, Legislators, and GSD Secretary Ed Burckle:

The state's Alternative Dispute Resolution (ADR) program was established by the Governmental Dispute Prevention and Resolution Act of 2007 [NMSA § 12-8A-1 et seq.]. The statute defines ADR as a voluntary process other than litigation used to prevent or resolve disputes, and requires that state agencies provide access to ADR. In support of this mandate, the GSD/RMD/ADR Bureau provides assistance to state agencies in identifying ADR resources, coordinating services and supporting the development of improved administrative processes. This report presents some of the highlights of our work in FY2017, and reflects ADR's use, cost and success within state entities.

On behalf of the Alternative Dispute Prevention and Resolution Advisory Council and ADR Bureau staff, this annual report is submitted for your consideration and review.

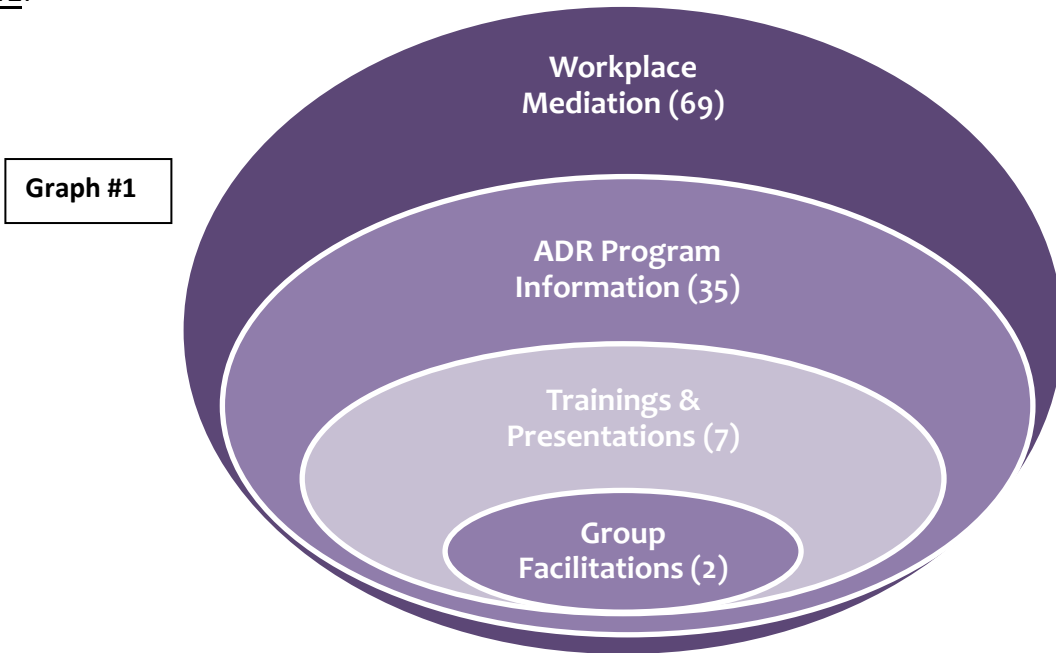
Sincerely,

A handwritten signature in blue ink, appearing to read "Mary Jo Lujan".

Mary Jo Lujan
ADR Bureau Chief

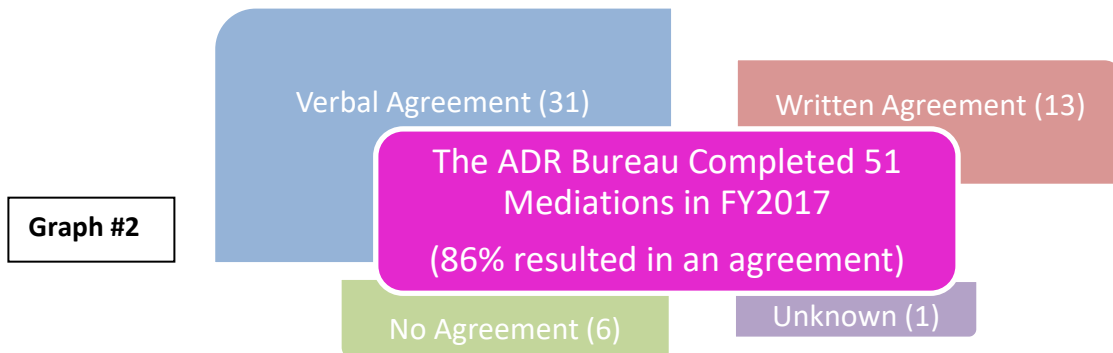
ADR SERVICES AND ACTIVITIES

BUREAU-PROVIDED ADR SERVICES: Early, voluntary and confidential mediation is central to the program’s statutory mission; the program’s volunteer mediators perform the critical services that make this program possible and available to our customers, state agencies and employees, at no cost. FY2017 continued a steady rate of requests for assistance with 113 requests received, as reflected in **Graph #1:**



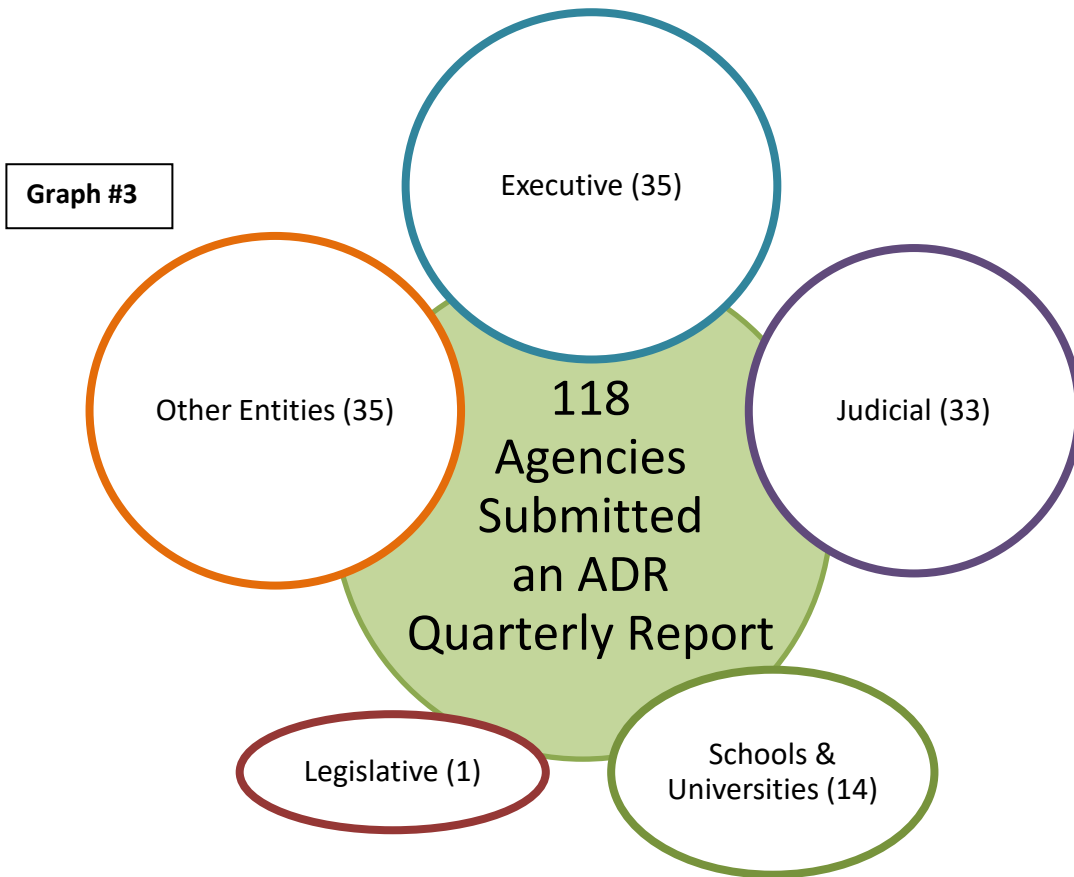
Requests originated primarily from executive agencies, with the majority (72%) coming from the Santa Fe and Albuquerque area.

Of the 69 requested mediations, 18 requests did not occur because they were withdrawn or cancelled. **Graph #2** reflects the 51 requests completed, with 44 (86%) resulting in a written or verbal resolution.



OTHER REPORTED ADR SERVICES: The program also tracks ADR activity within state agencies, self-reported on a quarterly basis by designated ADR Coordinators. ADR Coordinators serve as the front-line liaison between the agency and the ADR Bureau and are responsible for promoting, coordinating, monitoring and reporting ADR. In FY2017, 118 entities filed an ADR report (a slight increase over 116 entities the previous year).

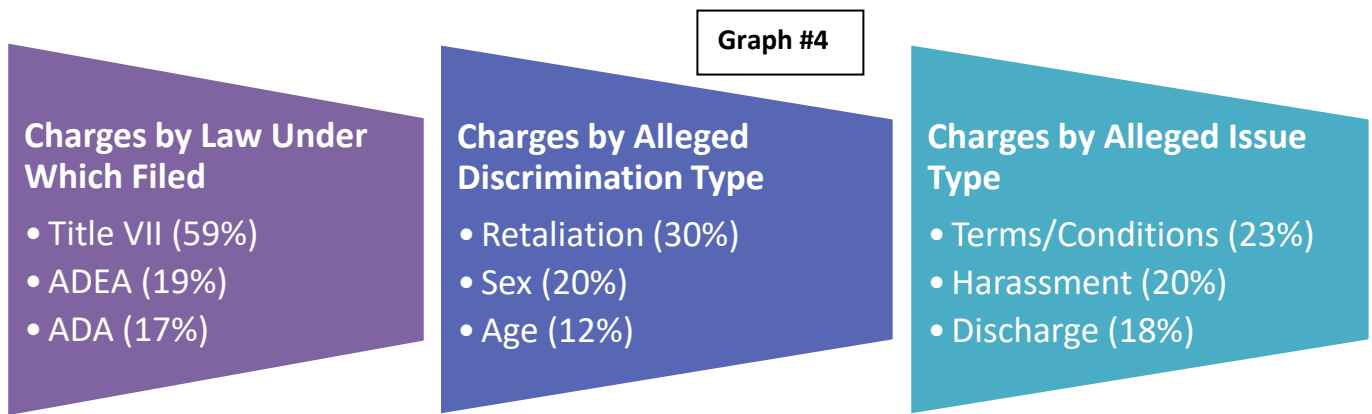
Graph #3 reflects the total number of reporting agencies from all branches of state government, schools and universities, and local public bodies. Over half the submitting agencies (61) reported ADR activity, with the number of activities increasing by almost 15% over the previous year.



Agencies reported 120 mediation requests; of those completed, 33 resulted in a written or verbal resolution. As in the last five years, mediations between employees and supervisors number more than twice as many as between employees and other employees.

ADR AT US EEOC: Since 2008, the ADR Bureau has served as the state’s formal liaison with the US Equal Employment Opportunity Commission (EEOC). Pursuant to a *Regional Universal Agreement to Mediate*, all eligible EEOC charges of discrimination naming any RMD-insured entity of the State of New Mexico as the employer/respondent are referred to EEOC’s mediation program. Understanding the nature of charges filed against the state is essential to facilitating and monitoring the state’s mediation participation, preventing recurrence, and mitigating loss.

Graph #4 reflects the characteristics of the 87 discrimination charges filed against the state and received by the ADR Bureau in Federal FY2017 (Oct 1, 2016 – Sept 30, 2017); the basis of the majority of these charges continues a five-year trend:



As in recent years, the number of charges deemed eligible for mediation was low. **Graph #5** reflects the status of those 28 charges offered mediation in FY2017; of the 9 mediated, only one reached resolution.



* Late in Federal FY2017, EEOC placed a moratorium on mediation, effectively eliminating mediation opportunities for state agency respondents; the moratorium continued into FY2018. The Risk Management Division and US EEOC continue to explore strategies to increase the state’s mediation participation and resolution rates.

TRAINING AND OUTREACH: State volunteer mediators are the program’s service providers, a renewable resource made possible by professional training that produces and sustains ready and capable practitioners. New mediators contribute to program sustainability by bringing in new talents and energy and by offsetting natural attrition. The Bureau provides professional 40-hr mediation certification courses emphasizing facilitation and problem-solving skills; in return, graduates commit to serving the program and benefit from continuing education, also provided by the Bureau. In FY2017, the Bureau recruited and trained 31 new mediators from throughout the state.

Training in communication-based practices and basic conflict management support the workforce’s capacity to effectively identify and take early opportunities to resolve issues at the lowest organizational level. Though classes are open to all state employees, the bureau focuses marketing to those agencies with histories of high loss in employment-related civil rights claims for the greatest positive impact and return on investment. The Bureau also schedules numerous outreach events to connect directly with state employees and actively participates in sister organizations, including the NM Supreme Court ADR Commission and the NM State Bar ADR Committee to network and leverage resources statewide.

SEVENTH ANNUAL ADR SYMPOSIUM:

Each year, the ADR Bureau organizes and hosts the New Mexico Annual ADR symposium, two days of workshops and presentations by colleagues and partnering organizations, offered at **no cost** to attendees. It is the only event of its kind in the state and is the Bureau’s principal outreach event.



Graduate Assistants with the UNM Ombuds for Faculty program lead a workshop entitled “Wait, What? And Life’s Other Essential Questions: The Advantages to Questions in Conflict” at the 7th Annual ADR Symposium in Santa Fe at the DPS Law Enforcement Academy.

The Symposium offers:



The “Ask a Mediator” panel answers questions from participants at the 2017 ADR Symposium.




FINANCIAL AND OTHER BENEFICIAL IMPACTS:

For the 5-year period FY2013-FY2017, the State of New Mexico experienced 392 employment-related civil rights claims with an estimated incurred cost of over \$21 million, and an average cost of almost \$55 thousand per claim. This loss history is the basis for the annual civil rights premium assessed to state agencies (over \$17 million in FY2018). In FY2017, state agencies and the Bureau worked together to achieve 78 mediated resolutions, with a **cost-avoidance value of over \$4 million dollars**. Cost savings could be even greater if employees in conflict were more open to seeking assistance through the Bureau and if state agencies were more engaged in the program and mediation at EEOC.

FY2018 GOALS:

- ✓ Offer training outside the Rio Grande corridor to expand program's reach and capacity.
- ✓ Revamp ADR Coordinator training to more strongly engage state agencies in program.
- ✓ Continue active dialogue with US EEOC to re-engage state agencies in mediation process.



**LIFE IS A CONTINUOUS
EXERCISE IN CREATIVE
PROBLEM SOLVING.**

~ Michael J. Gelb ~



**OFFICE OF ALTERNATIVE DISPUTE
PREVENTION AND RESOLUTION**

" Encouraging communication through mutual respect."

Visit our website at: <http://adr.gsd.state.nm.us>

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