

# FY2014 ANNUAL REPORT



State of New Mexico  
General Services Department  
Risk Management Division

Alternative Dispute Prevention  
& Resolution Advisory Council

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## INTRODUCTION

The New Mexico Office of Alternative Dispute Prevention and Resolution promotes the early resolution of disputes through respectful communication and positive, constructive collaboration. The Bureau assists Risk Management Division 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.

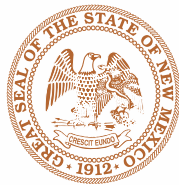
Through all of this work, the ADR Bureau remains committed to:

***" Encouraging communication through mutual respect."***



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

*Original cover art by: Mary Margaret Luján / 2014*



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December 1, 2014

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

The Governmental Dispute Prevention and Resolution Act of 2007 [NMSA § 12-8A-1 et seq.] established the Alternative Dispute Resolution (ADR) program within RMD. 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. The ADR Bureau provides assistance to state agencies in identifying ADR resources, coordinating services and supporting the development of improved administrative processes.

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 that reads "AJ Forte".

AJ Forte

Chair, ADR Advisory Council  
Director, Risk Management Division  
General Services Department

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*"THE HEART AND SOUL OF STATE GOVERNMENT"*

## CUSTOMER SERVICE INITIATIVES

The ADR Bureau's primary customer service goal is to support early dispute resolution for agencies served by RMD, thus preventing expensive and complicated processes such as litigation. The Bureau coordinates no-cost mediation services for workplace issues through a "pool" of trained mediators, primarily from within state government, along with community and other volunteer service providers. State agencies also conduct and report internal ADR activities, which combined with the Bureau's service data, provide a comprehensive view of ADR use throughout state government.

This year, the Bureau made great progress in its Electronic Content Management (ECM) system. The system allows the Bureau to maintain current information on mediation services coordinated by the Bureau, and to conduct meaningful analysis (see Appendix A). The ECM system also creates an online automated process for agencies to submit quarterly reports on their ADR activities (see Appendix B). In FY2014, the reporting rate for state agencies increased dramatically to seventy-four agencies (as compared to twenty-one for FY2013, the first use of the online system), reflecting an increase of **352%**; this increase is largely attributable to the enhanced system, and dedicated outreach to ADR Coordinators, reinforced by training on the reporting system. This data is helpful in better understanding the use and effectiveness of ADR within various organizations, and will also be helpful in demonstrating agency compliance as part of the RMD Loss Prevention and Control Bureau's upcoming program audits in 2015. The Bureau also coordinates administrative functions and support to state agencies participating in the mediation program at the US Equal Employment Opportunity Commission (EEOC). Fewer charges were considered "eligible" for mediation by EEOC this year, consistent with a downward trend in the last three years; state agency participation remains low (see Appendix C).

ADR can be a highly effective tool in the reduction of insurable losses, particularly in employment-related civil rights claims. Analysis of claims data from FY2010–FY2014 indicates total incurred costs of over **\$ 20 million**, with an average of over **\$ 45 thousand** per claim. Resolution of workplace issues before escalation to formal administrative or legal action saves money: for FY2014, the cost avoidance value of ADR is over **\$ 3.2 million** by resolving workplace issues that could otherwise escalate to costly claims against the state (see Appendix D).

Understanding the interconnected nature of RMD's programs is critical to proactive loss prevention and mitigation. For that reason, the ADR Bureau participated in developing and presenting integrated RMD Seminars for state agencies and employees, with events in Las Cruces and Santa Fe drawing close to three-hundred participants, from over fifty state entities. Other ADR outreach and training events included customer service visits, ADR Coordinator orientation, conference presentations, and staff training events. At the end of the fiscal year, the Bureau presented 2-day conflict management courses for forty-eight state employees, and graduated twenty-four new state mediators from the certifying 40-hour course.

Additional FY2014 customer service initiatives included:

- Active recruitment of new mediators to the state pool.
- ADR Coordinator program and systems training for fourteen agency representatives.
- Participation in related organizations, including the New Mexico Supreme Court ADR Commission, the NM State Bar ADR Committee, and State Personnel Office training committees.
- Supporting the Alternative Dispute Prevention and Resolution Advisory Council by coordinating bi-annual meetings, requesting input into program operations, and compiling this report on its behalf.

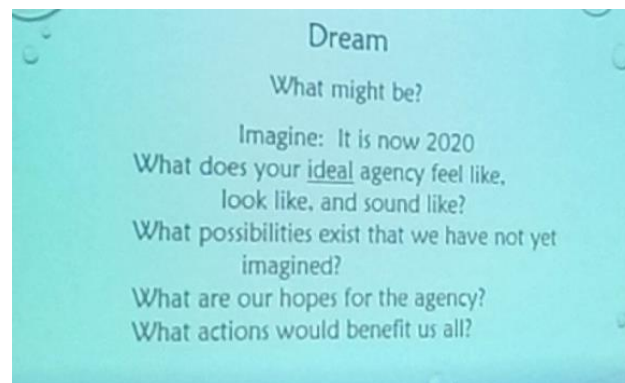
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## **FOURTH STATEWIDE ADR SYMPOSIUM**



The fourth annual statewide Alternative Dispute Resolution Symposium was held at UNM West in Rio Rancho on October 9<sup>th</sup> and 10<sup>th</sup>, 2014. The no-cost training event was organized by the ADR Bureau and the University of New Mexico Ombuds / Dispute Resolution Services for Faculty and Staff offices. This year commemorates twenty years of service for UNM's programs, initially created in 1994 under the name of UNM Dispute Resolution Department. This year's event was held at UNM West, the newest campus in the UNM system; the facility opened its doors in 2010, and today supports course enrollment of 1,600. Throughout the two days, attendees commented on UNM West's beautiful open views, state-of-the-art facility, and helpful and friendly staff.

From the presentation  
*“Discover-Dream-Design: Appreciative  
 Inquiry for Agencies and Departments,”*  
 by Jean Civikly-Powell,  
 Ombudsperson for UNM Faculty.

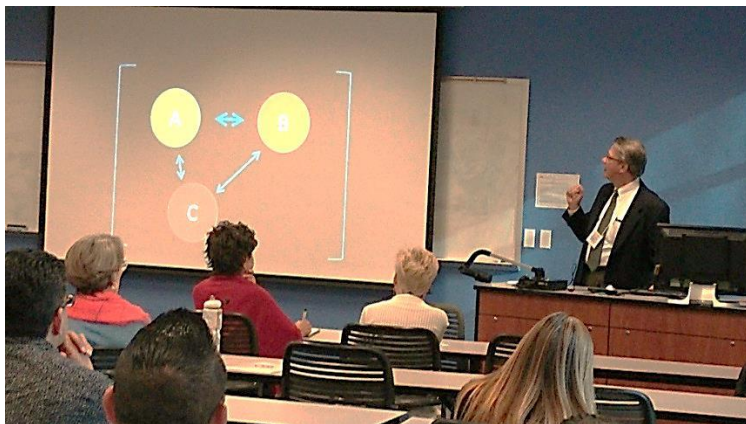


This year’s Symposium attendees were welcomed to the campus by UNM West CEO Dr. Wynn Goering and UNM Law Professor John Feldman. The next two days featured twenty-eight workshops and roundtable discussions by a distinguished array of presenters from federal, state and local partnering organizations, including: the University of New Mexico (Ombuds / Dispute Resolution Services for Faculty & Staff, Health Sciences Center Office of Professionalism, and School of Law), state Risk Management Division, NM Supreme Court, 13th Judicial District Court, Bernalillo County Metropolitan Court, NM DWS Human Rights Bureau, NM Workers’ Compensation Administration, US Equal Employment Opportunity Commission, Federal Mediation & Conciliation Service, and Los Alamos National Laboratory. The Symposium attracted one-hundred-thirty-six attendees from sixty-six organizations, representing: all levels of state courts; state agencies, commissions and boards; universities, colleges and schools; federal, military and laboratory employers; the Navajo Nation; numerous counties, local public bodies, and community organizations; and college students sponsored by the Hungarian National Office for the Judiciary.



Participants discuss *“Emotional Intelligence for Mediators”* in a session with instructor Cynthia Olson.

NM Supreme Court Justice Ed Chavez describes developments in court-annexed mediation.



Dr. Jonathan Bolton of UNM Health Sciences Center illustrates how emotions flow through conflict.

Mary Louise Romero-Betancourt facilitates a group exercise on restorative justice.



Evaluation responses reflect a positive and collegial learning experience:

- *“Awesome presenters, I would consider the best in our community.”*
- *“There is always something new to learn from the programs that are offered through ADR.”*
- *“Topics were timely in nature. Very good choice of topics and very knowledgeable presenters. The networking was great too!”*
- *“Learning about new areas of ADR, specifically restorative justice and ombudsman roles/potential.”*
- *“The last two symposiums have included presenters who discussed techniques for improving interaction between government employees and the general public and other agencies. These have been very useful and I would encourage you to continue to provide presentations that address this subject.”*
- *“It gets better every year.”*



*View toward mesa from UNM West on Thursday, October 9<sup>th</sup>, 2014.*

When we look up, it widens our horizons. We see what a little speck we are in the universe, so insignificant, and we all take ourselves so seriously, but in the sky, there are no boundaries. No differences of caste or religion or race. *-Julia Gregson*





## FY2015 GOALS

- Secure recurring funding source to support essential operations.
- Continue to direct attention to Top-20 RMD-insured organizations with highest loss experience in employment-related civil rights claims costs for the last five year period; review historical loss data, “root cause” / trend analysis, and premium impacts; assist in implementing effective ADR strategies, practices, and training to reduce losses.
- Increase outreach to historically underserved agencies and geographic areas, and identify and support local resources.
- Completely automate all ADR data reporting and analysis functions through computer-based information management system (ECM), and train ADR Coordinators in use.
- Facilitate and monitor agency compliance with reporting requirements, and confirm compliance to assist agencies in successfully completing audit requirements established by the RMD Loss Prevention and Control Bureau.
- Define long-term strategic goals and plan for program growth and stability.

## APPENDIX A: FY2014 ADR SERVICE REQUESTS

<b>FY2014 SERVICE REQUESTS RECEIVED:</b>	<b>75</b>
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### Type of Dispute:

Employee / Supervisor	40
Employee / Employee	27
Other (e.g., Group Facilitation, Information Only Request)	8

### Resolution status of the 67 mediations \*:

Written agreement	8
Verbal (oral) agreement	13
No agreement, and/or returning to mediation	2

*\* 44 of the 67 requested mediations did not occur because the matter was withdrawn (a party declined mediation, a party left employment, or the matter was otherwise resolved by the parties), the matter was deemed inappropriate for mediation, or the parties chose to use a different administrative process.*

### Source of Request:

#### By requestor type:

Executive Agency	61 ( or 81.33 % of total)
Judicial Agency	10 ( or 13.33 % of total)
Schools & Universities	4 ( or 5.33 % of total)

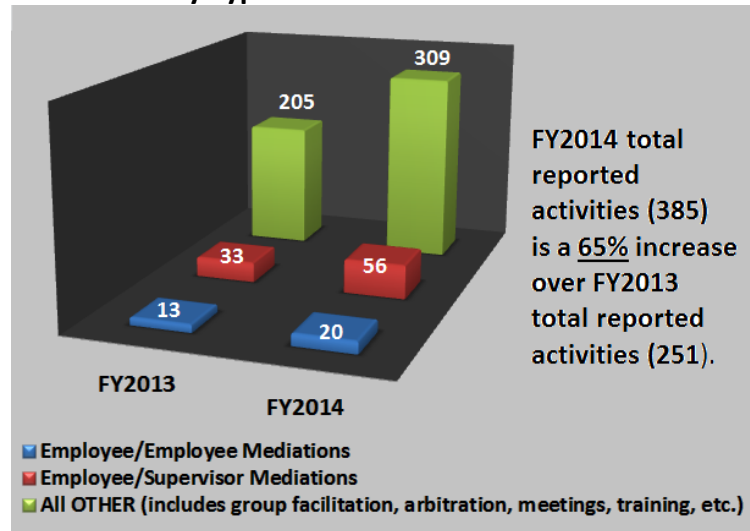
#### By Geographic Location:

Santa Fe	42 ( or 56.76 % of total)
Albuquerque / Rio Rancho	13 ( or 17.57 % of total)
Las Cruces	6 ( or 8.11 % of total)
Silver City / Bayard	4 ( or 5.41 % of total)
Grants	2 ( or 2.70 % of total)
Alamogordo	1 ( or 1.35 % of total)
Artesia	1 ( or 1.35 % of total)
Aztec	1 ( or 1.35 % of total)
Española	1 ( or 1.35 % of total)
Socorro	1 ( or 1.35 % of total)
N/A	2 ( or 2.70 % of total)

## APPENDIX B: FY2014 ADR ACTIVITIES REPORTED BY AGENCIES QUARTERLY

In FY2014, state agencies reported 385 internal ADR activities, a 65% increase over FY2013 (251 reported). Of the FY2014 activities, 76 were classified as mediation (56 or 74%, were Employee/Supervisor mediations, and 20, or 26%, were Employee/Employee mediations); the majority of activities (309, or 80%) were classified as “Other,” which included Group Facilitation (22), Arbitration (1), meetings, training and miscellaneous ADR-related events.

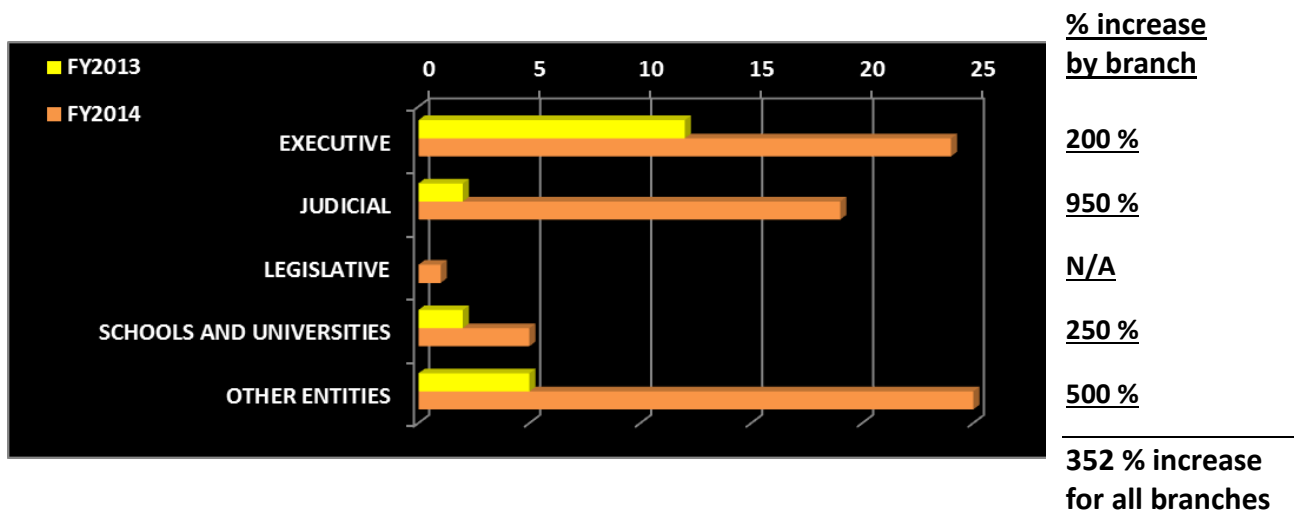
Percentage of Increase in Reportable Activity by Type From FY2013 to FY2014



In FY2014:

- Of 56 Employee/Supervisor mediations, 35 (or 63%) resolved the issues presented, 7 (or 13%) are ongoing, and the remaining requests (14, or 24%), were either withdrawn/refused or otherwise did not resolve the issues presented.
- Of the 20 Employee/Employee mediations, 11 (or 55%) resolved the issues presented, 3 (or 15%) are ongoing, and the remaining requests (6, or 30%) were either withdrawn/refused or otherwise did not resolve the issues presented.

The reporting rate for state agencies increased dramatically in FY2014 to 74 agencies, as compared to 21 for FY2013 (the first use of the online ECM reporting system). Total number of agencies reporting increased by 352%, largely attributable to a greatly improved reporting system and dedicated outreach to agency ADR Coordinators, reinforced by training on the reporting system. (Note: These numbers include reports submitted with “No Activity.”)

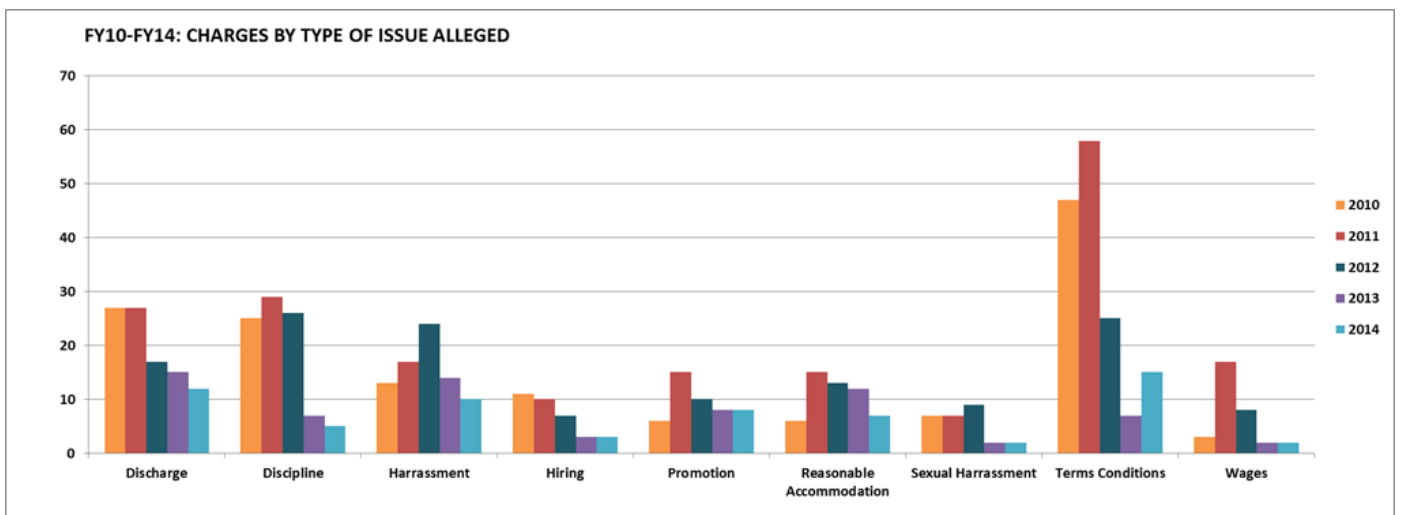
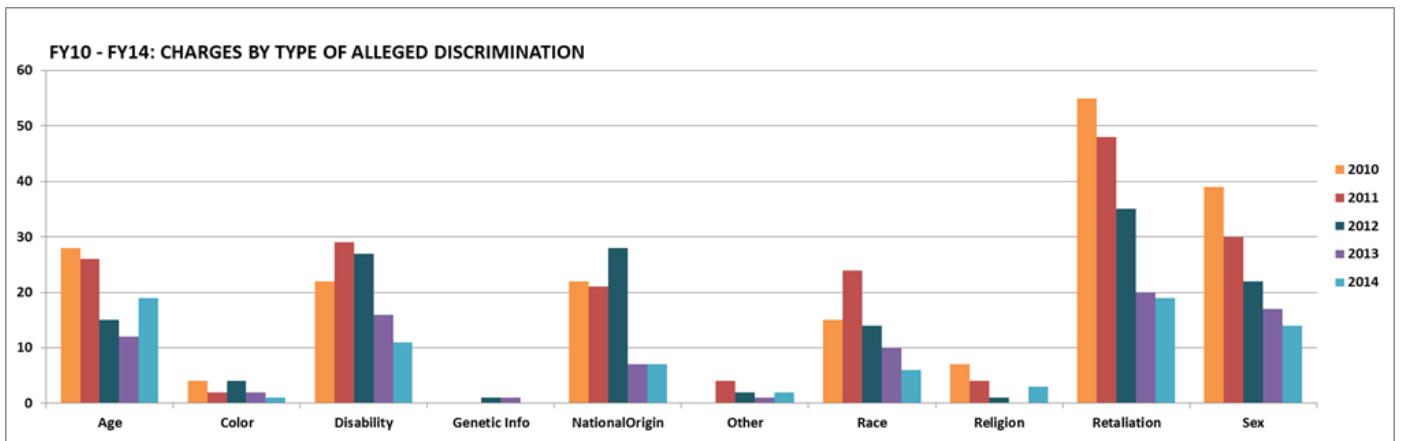
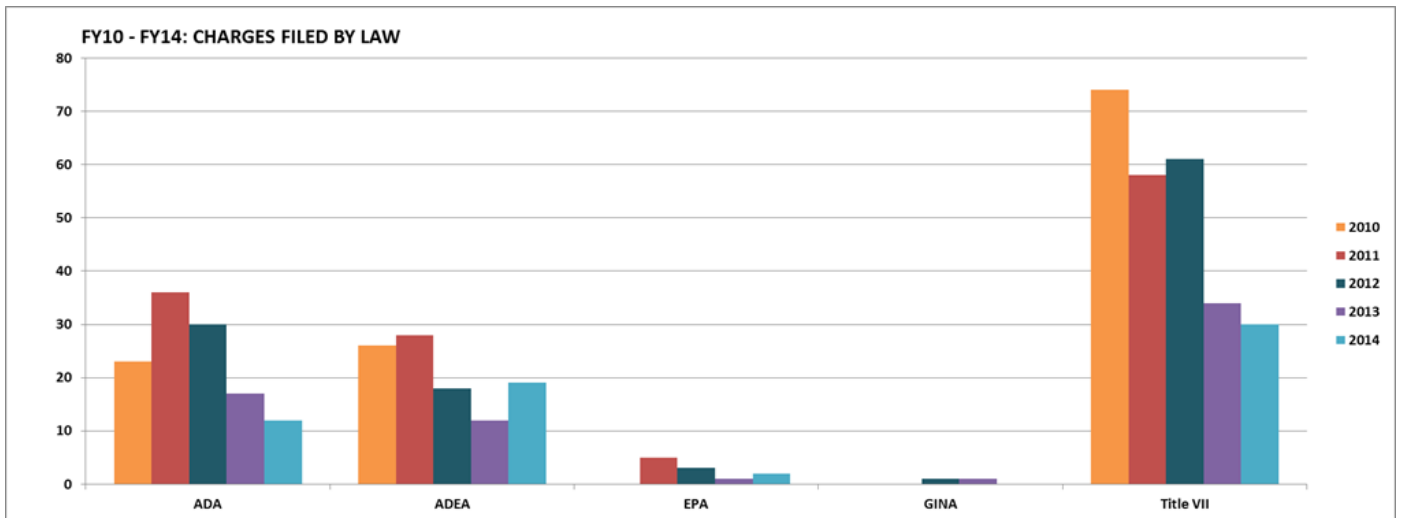


## APPENDIX C: FY2014 EEOC MEDIATION STATISTICS

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

- A. Of 41 charges received by RMD in Federal FY2014 (October 1, 2013 – September 30, 2014), 38, or 93%, were from the Albuquerque/Phoenix District; and 3, or 7%, were from the El Paso/Dallas District.
- B. Number of charges by law under which filed:
1. Title VII of Civil Rights Act (Title VII): 30, or 47.62%
  2. Americans with Disabilities Act (ADA): 12, or 19.05%
  3. Age Discrimination in Employment Act (ADEA): 19, or 30.16%
  4. Equal Pay Act (EPA): 2, or 3.17%
  5. Genetic Information Nondiscrimination Act (GINA): 0, or 0%
- \* (19 of 41 charges, or 46.34%, were filed under more than one law; 1 charge did not specify)*
- C. Number of charges by type of alleged discrimination:
1. Retaliation: 19, or 23.17%
  2. Sex: 14, or 17.07%
  3. Disability: 11, or 13.41%
  4. National Origin: 7, or 8.54%
  5. Age: 19, or 23.17%
  6. Race: 6, or 7.32%
  7. Other: 2, or 2.44%
  8. Color: 1, or 1.22%
  9. Religion: 3, or 3.66%
  10. GINA: 0, or 0%
- \* (28 of 41 charges, or 68.29%, were filed alleging more than one type of discrimination; 1 charge did not specify)*
- D. Type of issue alleged
1. Discharge: 12, or 18.75%
  2. Harassment: 10, or 15.63%
  3. Sexual Harassment: 2, or 3.13%
  4. Terms / Conditions: 15, or 23.44%
  5. Discipline: 5, or 7.81%
  6. Wages: 2, or 3.13%
  7. Reasonable Accommodation: 7, or 10.94%
  8. Hiring: 3, or 4.69%
  9. Promotion: 8, or 12.50%
- \* (17 of 41 charges, or 41.46%, were filed alleging more than one type of issue alleged; 2 charges did not specify)*
- E. Status of charge:
1. Agency Agreed to Mediate: 16, or 39.02%
  2. Agency Declined to Mediate: 15, or 36.58%
  3. Pending / Undecided: 3, or 7.31%
  4. Mediation Not Applicable: 7, or 17.07% (i.e., charge sent for “notice only” purpose because charge was incomplete as filed, already settled, or was otherwise already dismissed).
- F. Outcomes of mediations conducted:
1. Agreement Resolving Charge: 5
  2. No Resolution Reached: 6
  3. Outcome Pending: 3
  4. Mediation Withdrawn or N/A: 3

**APPENDIX C: FY2014 EEOC MEDIATION STATISTICS (5-year comparative analysis)**



## APPENDIX D: FY2014 EMPLOYMENT-RELATED CIVIL RIGHTS DATA ANALYSIS

### Preliminary Loss Data Analysis

#### 1. Employment-Related Civil Rights Claims against State of NM (for 5-year period from FY2010 – FY2014):

- 448 employment-related civil rights claims
- Aggregate “total incurred” cost of over \$ 20.4 million
- Average “cost” of over \$ 45 thousand per claim

#### 2. Impact on Agency Budgets (total for all agencies, annually):

- FY2012 Civil Rights Insurance Premiums: \$ 10 million  
(of \$ 66 million total insurance coverage premiums)
- FY2013 Civil Rights Insurance Premiums: \$ 9.8 million  
(of \$ 61 million total insurance coverage premiums)
- FY2014 Civil Rights Insurance Premiums: \$ 9.8 million  
(of \$ 60 million total insurance coverage premiums)
- FY2015 Civil Rights Insurance Premiums: \$ 17.3 million  
(of \$ 81.7 million total insurance coverage premiums)
- FY2016 Civil Rights Insurance Premiums: \$ 19.3 million  
(of \$ 82.4 million total insurance coverage premiums)

### ADR Cost-Benefit Factors

#### 1. Early Dispute Resolution Options:

- In-house resources (agency policies & procedures, ADR Coordinators, etc.); *no-cost*
- ADR services through ADR Bureau / state program; *no-cost*
- Other “external” service providers (EAP, community or private service provider, etc.); generally, a fee-for-service arrangement

#### 2. ADR Cost-Benefit Value: In FY2014, of 157 mediations, 72 resulted in resolution of the issues presented, with a **cost avoidance** value of over \$ 3.2 million.



**OFFICE OF ALTERNATIVE DISPUTE  
PREVENTION AND RESOLUTION**

*" Encouraging communication through mutual respect. "*

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