

A sunset over a body of water with a large red rose in the foreground. The sun is low on the horizon, casting a warm orange glow across the sky and water. The foreground is dominated by a large, vibrant red rose with green leaves, and other smaller flowers are visible in the lower right.

NEW MEXICO
ALTERNATIVE DISPUTE
PREVENTION & RESOLUTION
ADVISORY COUNCIL

FY2020 ANNUAL REPORT



OUR MISSION

The state ADR Bureau assists state-insured entities with early conflict resolution to support better workplace practices and prevent expensive and complicated administrative processes and litigation. The Bureau is part of the General Services Department, Risk Management Division pursuant to the 2007 New Mexico Governmental Dispute Prevention and Resolution Act.

In our work, the ADR Bureau is committed to:

"Encouraging communication through mutual respect."

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December 1, 2020

Honorable Governor Lujan Grisham, Legislators and Secretary Ortiz:

The New Mexico Alternative Dispute Resolution (ADR) program coordinates voluntary and confidential mediation services for state entities, provides assistance in identifying ADR resources, and supports the development of improved administrative practices. ADR means a process *other than litigation* used to prevent or resolve disputes, as defined by our establishing statute, the Governmental Dispute Prevention and Resolution Act of 2007 [NMSA § 12-8A-1 et seq.]. Our mediators are trained volunteers, usually state employees, and all of our services are free.

This report is statutorily required of the Alternative Dispute Prevention and Resolution Council, inactive since June of 2017. Therefore, on behalf of the ADR program, we submit this FY2020 report on the use, cost and success of ADR within state entities.

Sincerely,

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

Mary Jo Lujan
ADR Bureau Chief

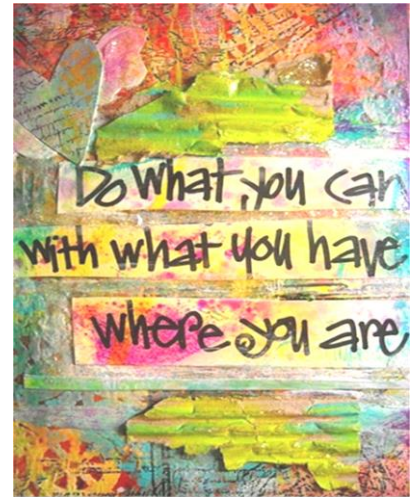
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ABOUT THE ADR PROGRAM

For the ADR Bureau, Fiscal Year 2020 began with business as usual – in-person mediations, training, outreach events and networking with our constituents and colleagues. This is our statutory mission: we serve RMD-insured public entities statewide with proactive dispute resolution approaches to mitigate claims costs. Since 2007, we have met this mandate by working closely with volunteer mediators and dispute resolution professionals throughout New Mexico to provide these services at **no-cost** to our insureds’ employees and managers. Creating awareness of ADR options to increase mediation referrals has been a consistent challenge in the state’s ever-changing workforce; in early 2020, the challenge became much greater with the advent of a worldwide pandemic.

By mid-March 2020, the rapidly escalating COVID pandemic forced sudden changes in state government, including the Governor’s public health orders and directives requiring facemasks, social distancing and work-from-home conditions for many state employees. These changes created massive disruptions in workplace operations and caused intense stress and anxiety for state employees and customers. Many essential government services immediately stopped; ADR Bureau staff, working from home, could no longer schedule traditional in-person mediations and live, instructor-led training; from this point through to the end of the fiscal year, no mediations took place and we focused training entirely on our service providers. To serve our customers in a safe and effective way, we had to explore new ways of working and reconsider new ways to use our existing resources.



The last quarter of Fiscal Year 2020 became our window of opportunity to virtual mediation and training events. Virtual services had long been one of our goals – expanding our service availability to remote areas. Ideally, the program’s mediation and training should be equally accessible to all employees regardless of geographic location. COVID leveled the state landscape and suddenly it did not matter where we were anymore because we all became remote employees. RMD had just recently purchased Zoom licenses and Zoom, designed with mediation needs in mind, became the solid foundation on which we built Online Mediation Services procedures, forms, and training. Zoom also proved well-suited for communication-based skills training (like emotional intelligence) and a free version of Zoom was available for our participants. By the end of the fiscal year, with a number of dedicated, newly trained and Zoom-fluent mediators, we began promoting online mediation. We also drafted a new work plan for online classes, and began planning for our annual ADR conference in the fall. *Detailed information on our services and training events begins on page 5.*

COVID will have a lasting effect on how state employees perceive our work and our workspaces. For the Bureau, this year has been one of growth and innovations that achieve our core mission, overcome long-standing challenges (e.g., geographically remote customers), and offer new efficiencies and cost savings (less travel time and expense). In essence, we created a new operating system for the ADR Bureau’s future; this expanded capability represents significant, positive and long-term benefits for the people we serve. Meeting our customers’ needs will require maintaining this enhanced level of service beyond the current health crisis.

SERVICES AND ACTIVITIES

In *Trying Hard is Not Good Enough – How to Produce Measurable Improvements for Customers and Communities*, Mark Friedman offers useful data analysis concepts to evaluate the value of our work:

- the QUANTITY of work (how much did we do?)
- the QUALITY of our work (how well did we do it)
- the IMPACT of our work (is anyone better off?)

The following summaries demonstrate ADR’s value as a loss prevention tool and best workplace practice.

OUR PROGRAM’S MEDIATION SERVICES: In FY2020, the ADR Bureau received 70 service requests (a decrease of 21% from the 89 requests the previous year). The requests, by type, are: 25 workplace mediation requests, 43 program information inquiries, and 2 presentation requests. Completed mediation requests (17) originated primarily from executive agencies, with the majority (59%) coming from Santa Fe and Albuquerque. This year, we were able to assist in a number of outlying cities such as Las Cruces, Aztec, Española, Socorro, Farmington, and Tucumcari. Of the 25 requested mediations, 8 requests did not occur because they were withdrawn or cancelled. Of the 17 requests completed, 15 (or almost 88%) resulted in a written or oral resolution, and 2 mediations did not result in a resolution; of the 17 requests, 7 were categorized as Employee/Employee and 10 were Employee/Supervisor. **NOTE:** Quarter 3 had a significant number of mediation cancellations due to increasing COVID restrictions and uncertainty, and in the 4th Quarter, no mediations were conducted. Of the participant surveys returned, all reported that the mediators were professional, impartial and treated them with respect and all indicated they were willing to participate in mediation again in the future.

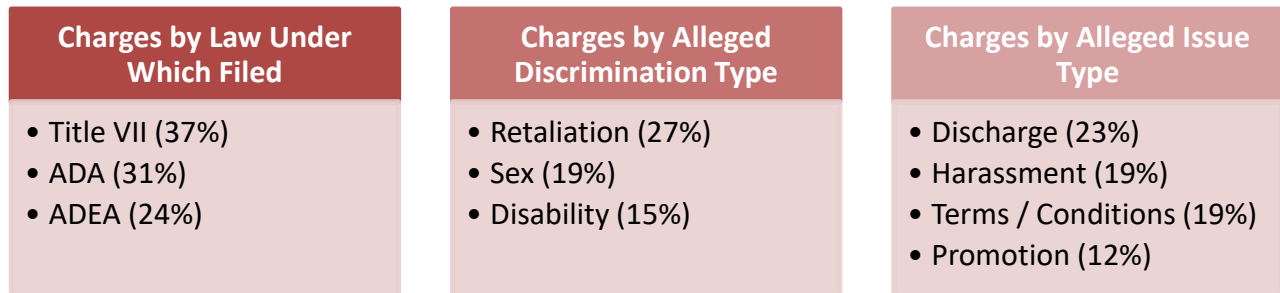
For situations deemed inappropriate for mediation, the Bureau recommended other resources, like training (both by the Bureau and by others) or services by the state’s Employee Assistance Provider (the Solutions Group).

OTHER ADR ACTIVITIES REPORTED TO US: Participating state entities from all branches of state government, schools/universities and local public bodies report ADR activity on a quarterly basis. In FY2020, 74 entities submitted an ADR report (a decrease of almost 10 % from 82 the previous year).



Participating entities reported 1065 activities, a decrease of almost 28% from the previous year (1360). This year, participating entities reported 62 mediation requests; of those completed, 13 resulted in a written or oral resolution. The majority of requests were between employees and supervisors (63%); of the remainder, 31% were co-worker relationships and 6% were group mediations. Entities also reported 1003 other ADR processes such as arbitration, group facilitation and a significant number of ADR activities (inquiries, outreach, meetings, etc.). Reported ADR or communication-based trainings decreased this year, with 444 compared to 519 last year (a decrease of almost 14%); reports reflect a significant decline between Quarters 1 & 2, and Quarters 3 and 4, when COVID restrictions were set in place.

OUR WORK WITH US EEOC: The ADR Bureau serves as a formal liaison between the state and the US Equal Employment Opportunity Commission’s (EEOC) mediation program. U.S. EEOC’s mission is to stop and remedy unlawful employment discrimination in the workplace by enforcing federal anti-discrimination laws. The graphic below reflects the characteristics of the 43 charges received in Federal FY2020 (Oct 1, 2019 – Sept 30, 2020), a decrease of 32% from 63 charges received in FY2019. This number represents only those charges received by the ADR Bureau, not all charges filed against state employers.



This year, the state saw a slight increase in the number of mediation opportunities offered by EEOC, with 33 of the 43 charges offered mediation (77%, versus 63% in FY2019). For charges filed after July 6, an EEOC pilot program allowed mediation requests at any time during the charge process, a change that affected 6 of this year’s charges. Of the 33 charges offered mediation in FY2020, state agency employers accepted the invitation to mediate in 17 charges with ten mediations actually taking place; two mediations resulted in a settlement, six resulted in no settlement while two charges have a settlement pending.

OUR TRAINING AND OUTREACH WORK: Our volunteer mediators are the heart of our program; they are from diverse backgrounds, professionally trained and committed to standards of practice and ethics established by the profession and the ADR Bureau. Their hard work enables the ADR Bureau to offer *free*, high-quality mediation to state employees, and continuing education is critical to maintaining the strength and proficiency of our provider pool. In November 2019, we held the year’s only 40-hour mediation certification course in Roswell (a historically underserved region) and graduated 13 fully trained mediators.



Graduates of our 40-hour Mediation Certification course held in Roswell (with instructor Cynthia Olson, front row, far right).

In FY2020, continuing education for mediators included workshops (often with guest presenters) on specific mediation strategies and skills practice. When COVID forced transition to online operations in March, all in-person events ceased and we focused on keeping mediators engaged through online sessions on *Mediator Ethics* and a series of small group meetings on *Emotional Intelligence for Mediators*. Finally, we began training traditional mediators in our new online mediation process to prepare for FY2021.

The Bureau also conducted communication-based training for state employees (*Conflict, Communication & Change*) and for supervisors (*Conflict Resolution for Managers*). For those serving as liaisons between their agency and the Bureau, we offered an *ADR Coordinator Training*. In the first three quarters of the year, the Bureau also scheduled numerous outreach events to connect directly with hundreds of state employees through health fairs, program overviews, quarterly newsletters, meetings and RMD roundtable discussions in Raton and Las Cruces. Bureau staff also actively participated in the NM Supreme Court ADR Commission and the NM State Bar ADR Committee. In total, the Bureau conducted 21 training events for 195 attendees, with 11 of those events and 68 attendees ONLINE in the 4th Quarter. Note: even with COVID restrictions, these numbers compare favorably to the previous year’s totals – 14 training events and 231 attendees.

OUR TENTH ANNUAL ADR SYMPOSIUM: Each October, the ADR Bureau hosts its principal outreach event, the Annual New Mexico ADR Symposium. This two-day conference features workshops and presentations by colleagues and program partners, and is offered at *no cost* to attendees; it is the only event of its kind in the state. The 2020 event, entirely online over ten days, was a tremendous success, with 284 attendees (a 49% increase over the previous year) from 57 state entities (a 36% increase over the previous year), representing 29 cities across New Mexico. Survey responses reflect attendee’s appreciation for: information about new ADR programs and resources; a supportive environment for mediators to practice critical skills and discuss best practices; the opportunity to collaborate with colleagues and programs; and a sense of community to establish new working relationships and strengthen existing networks.



At this year's Symposium, the New Mexico Supreme Court Statewide ADR Commission recognized the ADR Bureau's work in making a positive difference in the lives of state employees and promoting the use of ADR throughout the state.

ADR'S COST-SAVING BENEFITS

For the 5-year period FY2016-FY2020, the State of New Mexico experienced 489 employment-related civil rights claims with estimated incurred losses of over \$16 million and an average cost of almost \$34 thousand per claim. This loss history is the basis for the annual civil rights premium assessed to state entities. In FY2020, the state participated in mediations coordinated by the Bureau (17), at US EEOC (10) and through other service providers (62) to achieve 30 mediated resolutions, with a cost-avoidance value of over a million dollars. Promoting increased state participation in mediation at any point short of litigation is key to increasing these cost savings. The Bureau also leverages its training investment by focusing initial registration efforts toward those entities with high loss histories in employment-related civil rights claims.

FY2021 GOALS

- ✓ Develop additional online resources to expand service availability to all parts of the state
- ✓ Train more volunteer mediators on the process of mediating online for our program; ensure they are comfortable and confident with the new online platform
- ✓ Complete a Mediator Handbook for our volunteer mediators

"When we are no longer able to change a situation, we are challenged to change ourselves."
~ Victor Frankl, Austrian neurologist, psychiatrist, philosopher, author & Holocaust survivor ~



**OFFICE OF ALTERNATIVE DISPUTE
PREVENTION AND RESOLUTION**

"Encouraging communication through mutual respect."

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

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General Services Department

"THE HEART AND SOUL OF STATE GOVERNMENT"

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