

2017

# Statewide Alternative Dispute Resolution Commission

ANNUAL REPORT TO THE  
NEW MEXICO SUPREME COURT

Submitted by Hon. Jeff Foster McElroy  
Commission Chair  
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## EXECUTIVE SUMMARY

In 2011, the New Mexico Supreme Court established the Statewide Alternative Dispute Resolution (ADR) Commission with the directive that it report annually on efforts to develop, organize and monitor ADR programs in the state courts. ADR refers to a variety of methods used to help people resolve disputes without a lengthy and expensive trial. In 2017, the Commission:

- PROVIDED TECHNICAL SUPPORT FOR SUCCESSFUL LEGISLATION addressing funding via a sliding scale fee for district court ADR services in civil cases;
- ASSISTED THE SUPREME COURT in the development and implementation of the district court ADR sliding fee scale;
- COMMENTED ON ADR RELATED Supreme Court rule proposals;
- SECURED APPROVAL OF MEDIATION GUIDELINES for court-connected services from the Supreme Court and began evaluating the needs of individual courts in successfully implementing the guidelines.
- SUPPORTED A PROPOSAL to enhance the Magistrate Court Mediation Program and to expand mediation services statewide in courts of limited jurisdiction;

- DEVELOPED SHORT AND LONG-TERM GOALS for the Commission to fulfill its mission to advance the use of ADR throughout the state;
- RECOMMENDED COURT PERSONNEL TO RECEIVE NEW MEXICO JUDICIAL EDUCATION CENTER MEDIATION SCHOLARSHIPS to attend the University of New Mexico's School of Law Basic and Family Mediation courses;
- COLLABORATED WITH OTHER NEW MEXICO ORGANIZATIONS TO PROVIDE ACCESS TO FREE OR LOW-COST ADR TRAINING to assist the Judiciary.

## **ACTIVITIES**

### **General Operations**

The Commission began 2017 under new leadership at the start of the year. Hon. Jeff Foster McElroy, Chief Judge at the Eighth Judicial District Court, was appointed as Chair, and Mary Jo Lujan, Bureau Chief of the Office of Alternative Dispute Prevention and Resolution, was appointed as Vice-Chair. The Commission was staffed by the Statewide ADR Coordinator housed at the Administrative Office of the Courts.

The Statewide ADR Commission met bi-monthly on January 20<sup>th</sup>, March 10<sup>th</sup>, May 19<sup>th</sup>, July 14<sup>th</sup>, September 22<sup>nd</sup>, and November 16<sup>th</sup>. Accomplishments include involvement in ADR statute and rule changes, Supreme Court adoption of ADR guidelines, recommending mediation scholarship recipients, and identifying the Commission's long-term goals. The activities of this past year, described in

detail below, are designed to build a solid foundation for the continued development of ADR in the state courts.

### **Successful Legislation, District Court Civil ADR Sliding Fee Scale**

The Commission provided technical support for successful legislation (HB131) in the 2017 Legislative session to address a need for funding for district court civil ADR programs. The legislation provided district courts the authority to require litigants to contribute towards the actual cost of dispute resolution services based on their ability to pay. The enacted legislation requires that the N.M. Supreme Court approve a sliding fee scale that is based on parties' ability to pay. This was first introduced but failed to pass in 2015.

### **Implementation Plan for Legislation**

The Court requested that the Commission assist it with the implementation of the sliding fee scale for district court ADR in civil cases. The Commission conducted a survey of district court ADR activities and budgets and reviewed existing sliding fee scales being used statewide. It also formed a working group to consider various alternatives. The working group was comprised of ADR Commission members as well as District Court CEOs and Chief Judges from the urban courts and a sampling of the rural courts.

A draft of a report to the Supreme Court regarding the sliding fee scale was presented at the Commission's September meeting without gaining majority support from the Commissioners. An alternative recommendation was prepared for the Commission's November meeting. Ultimately, both were approved for

presentation to the Supreme Court for their review and consideration. As of the end of the year, the Supreme Court decision was still pending. The Commission appreciated being asked to provide its recommendations to the Supreme Court; a great deal was learned from the process and the collaboration.

### **Support for the Magistrate Court Mediation Program**

The Magistrate Court Mediation Program (MCMP) remains a point of concern. Current services are entirely dependent on fee-based revenue, and fee collections are down significantly from several years ago. Given reduced program revenues, the Administrative Office of the Courts is leaving a program manager position vacant and working closely with its contract coordinators to maintain current program operations, while also expanding services to a targeted few additional Magistrate Courts (in Anthony, Portales, and Santa Fe).

The empirical evidence clearly reflects that mediation is a valuable court service that reduces court dockets by facilitating agreements between the parties and fostering lasting self-determined resolutions to conflict. In 2017, approximately 32% of all answered general civil complaints in courts with a mediation program were resolved through mediation. Over 64% of mediated cases reached an agreement with a 92% percent compliance rate, compared to a 42% compliance rate for non-mediated cases. In addition, the time to disposition for mediated cases in the Magistrate Courts was 85 days, compared to 165 days for cases with Judgments.

In March, the Commission unanimously supported a proposal to the Judiciary's fiscal year (FY) 2019 Unified Budget intended to maintain the program with the use of general fund revenue. The program provides 35-40 certified mediators who volunteer their services to collectively provide over 1,000 hours to mediate hundreds of general civil cases in six Magistrate Courts in Sandoval, Curry, Doña Ana, Taos, and Valencia counties. Unfortunately, the proposal intended to compensate for the decrease in fee-based revenue the program was not included in the Judiciary's unified budget for FY 2019. The Administrative Office of the Courts intends to try again next year and make that proposal part of its funding request for FY 2020.

### **Goals Setting Session**

In July, the Commission expanded their usual meeting time and changed its usual location to spend the better part of a day to focus on its mission, vision, and goals for the short term and for the next five years. The Commission saw its mission to include the advancement of ADR throughout the state. Consequently, the Commission adopted a vision for ADR in New Mexico that courts would develop to provide dispute resolution services "even before cases are filed." Another vision was adopted for the Commission to serve as strategic, technical and tactical support, and to provide a forum for connection for all dispute resolution programs in the state. In addition to ongoing work/projects, the goals of the Commission are identified as follows:

### One-Year Goals

- Survey courts throughout the state about their needs, including questions about the recently-approved Statewide Guidelines for Court-Connected Mediation Services, to determine court needs and necessary next steps.
- Establish standards for the collection of dispute resolution data in the courts.
- Work with other dispute resolution organizations and communities in the state with the goal of improving court-connected ADR.

### Three-Year Goals

- Develop strategies to increase the amount of education about ADR services across the state, including education within the legal community and to the public.
- Build and make available a repository of information to demonstrate the effectiveness of ADR programs.

### Five-Year Goals

- Implement activities to ensure that there are responses to court needs, as determined by the aforementioned court survey.
- Provide advice and tools to assist with the development of ADR programs where they do not currently exist.



## **JEC Mediation Scholarships**

Since 2011, the Judicial Education Center (JEC) has funded scholarships for court personnel to receive basic or family mediation training at the University of New Mexico's School of Law. The scholarship process is administered by the Administrative Office of the Courts, pursuant to a Memorandum Of Understanding with the JEC. A Commission subcommittee reviews the scholarship applicants and in collaboration with JEC, recommends scholarship recipients. Six (6) scholarships were awarded since the last reporting:

### 40-Hour Mediation Course Recipients

- Spring Basic Mediation 2017
  - ✓ Judge Kea W. Riggs, 5<sup>th</sup> Judicial District
  - ✓ Chief Judge Jeff Foster McElroy, 8<sup>th</sup> Judicial District
- Spring Family Mediation 2017
  - ✓ Elizabeth ("Lisa") Betancourt, Mediation Program Manager, 3<sup>rd</sup> Judicial District
  - ✓ Sara Scripp, Court Clinician I, 2<sup>nd</sup> Judicial District
- Fall Basic Mediation 2017
  - ✓ Chris Peck, Mortgage Foreclosure Settlement Program, 2<sup>nd</sup> Judicial District
  - ✓ Judge George P. Eichwald, 13<sup>th</sup> Judicial District

### **Training Events in Collaboration with Other New Mexico Organizations**

A number of other programs also offer low- or no-cost training for members of the Judiciary. The State Bar's ADR Committee presents an annual ADR Institute in the fall, which this year featured ADR Commission member, Laura Bassein

(Institute of Public Law/UNM School of Law). The State Bar’s Committee also schedules regular ADR presentations throughout the year with stand-alone CLE credits.

Court personnel participated in no-cost ADR trainings offered by the Executive Branch’s ADR Bureau of the Risk Management Division (RMD), General Services Department. The ADR Bureau sponsors a number of trainings for employees of all RMD-insured entities, including the Judiciary. In return, newly trained mediators join the program’s roster, a “shared resource” that provides mediation services at no cost; other attendees serve as agency ADR Coordinators or facility contacts. Since the last report, eight members of the Judiciary completed the 40-hour Basic Mediation training:

- |                     |                                   |
|---------------------|-----------------------------------|
| ✓ Alex Araiza       | AOC                               |
| ✓ Monica Baca       | 2 <sup>nd</sup> Judicial District |
| ✓ Tania Crow        | 2 <sup>nd</sup> Judicial District |
| ✓ Kathy Karcher     | 2 <sup>nd</sup> Judicial District |
| ✓ Rachelle Klump    | 2 <sup>nd</sup> Judicial District |
| ✓ Sarah Scripp      | 2 <sup>nd</sup> Judicial District |
| ✓ Roderick Kennedy  | Court of Appeals                  |
| ✓ Jessieann Montoya | 4 <sup>th</sup> Judicial District |

Employees of the Judiciary also attended courses at the ADR Bureau’s 7<sup>th</sup> Annual ADR Symposium in December. The Symposium was attended by mediators and coordinators, as well as lawyers and human resources professionals from around the state. The two-day training was coordinated by Commission Vice-Chair Mary

Jo Lujan and her staff, and included presentations by Cynthia Olson, (Commissioner), Susan Barnes Anderson (Commissioner and Metropolitan Court's Mediation Division Program Director), Shannon Driscoll (Commissioner and former Program Manager of the Magistrate Court Mediation Program), and David Levin (former Chair of the Statewide ADR Commission).

Collaborative efforts like these foster awareness of ADR statewide and encourage collaboration between the executive and judicial branches of government. In the future, the Commission would like to utilize this model to build greater expertise and cooperation for court-connected ADR programs.

## **CONCLUSION**

Through the passage of new legislation, significant progress was made in the funding and development of ADR for civil cases in the district courts. The Commission is encouraged that it can positively impact the quality and availability of ADR services in the courts. In the upcoming months, the Commission plans to develop specific measures, focused on action, to reach its long term goals. Using the 2011 National Center for State Court's report, *Advancing Alternative Dispute Resolution in the New Mexico Judiciary: Key Strategies to Save Time and Money* as a base, the Commission intends to see positive growth in court-connected ADR programs statewide.

There is much to do in the coming year. Looming challenges remain in maintaining and expanding valuable mediation services in the magistrate courts, as fee funding may not be adequate to keep existing programs in the magistrate

courts afloat. This coming year will also show whether filing fees and participant fees will provide adequate funding for domestic and civil ADR efforts in the district courts. That being said, the Commission will continue to advocate for adequate funding of programs and is determined to create positive results, regardless of the funding challenges ahead.

**2017 ROSTER FOR THE STATEWIDE  
ALTERNATIVE DISPUTE RESOLUTION COMMISSION**

**Commission Member**

**Representative Capacity**

Hon. Jeff Foster McElroy, Chair	General Member
Mary Jo Lujan, Vice-Chair	Office of Alternative Dispute Prevention & Resolution, Risk Management/GSD
Susan Barnes Anderson	Metropolitan Court ADR
Laura Bassein	UNM School of Law
Hon. Duane Castleberry	Magistrate Court Judge
Philip J. Dabney	General Member
Shannon Driscoll	NM Mediation Association
Jennifer Foote	Access to Justice Commission
Mari Gish	General Member
Torri A. Jacobus	District Court ADR/SRL
Jessie Eaton Lawrence	N.M. State Bar ADR Committee
Cynthia Olson	General Member
Hon. Mark Sanchez	District Court Judge
David Smoak	Business Community
Kevin Spears	Court Executive Officer Council
Sara Stevens	General Member

**Non-Voting Members**

Hon. Judith K. Nakamura	Supreme Court Liaison
Elizabeth Jeffreys	Commission Staff