



# Alternative Dispute Resolution

An Administrative Process for resolution of claims  
by and against state registered Land Grants.

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# Preface

- The following presentation provides a very broad outline for the use of Alternative Dispute Resolution methods (“ADR”) in resolving disputes involving state registered Land Grants. Arbitration and mediation may be used to reduce the amount of time and expense incurred by Land Grants, as well as gaining greater consistency in the outcomes of disputes.
- Implementing an arbitration system for disputes involving Land Grants will require the approval and support of the Judiciary. After all the Judiciary will be responsible for monitoring and maintaining the system. It is likely to take several legislative sessions to finally pass the legislation and establish the necessary procedures.
- It is opportune that at this time the State Supreme Court is developing procedures for spreading arbitration and mediation methods to all district courts in the state.
- A national survey was performed by the National Center for State Courts (“NCSC”) to determine on a state by state basis the levels of use of ADR in resolving disputes (see report at: [http://www.nmcourts.gov/pdf/NCSC\\_New\\_Mexico\\_ADR\\_Final\\_ReportWithAppendices04-19-2011.pdf](http://www.nmcourts.gov/pdf/NCSC_New_Mexico_ADR_Final_ReportWithAppendices04-19-2011.pdf)). New Mexico was found to be lagging in its use of ADR. The New Mexico Supreme Court convened a commission to study the matter, see the following site: <http://courtadr.org/library/view.php?ID=5771>
- The NCSC provided ten points to address the deficit, nine of which can be seen in second site referenced above. Justice Edward Chavez and Mr. David Lavine, Director of the Court Alternatives program, are co-chairs of the committee working to implement the commission’s recommendations. The goal is to increase the use of ADR across New Mexico to aid in the resolution of disputes.
- Since the Judiciary is already working toward this goal, it is a perfect time to bring the Land Grants’ need for ADR (arbitration and mediation) as a method for solving disputes to the attention of the aforementioned committee. I have discussed this matter with Mr. Lavine, and he is supportive of the concept proposed in this presentation for disputes involving Land Grants. Mr. Lavine recommends this proposal be brought to the committee. Disputes with tribes or federal agencies cannot be brought under this umbrella. These types of disputes are the exclusive jurisdiction of the federal courts.



# Data From 2<sup>nd</sup> Judicial District Courts Arbitration – Court Alternatives Program

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Demonstrates the efficacy of Arbitration to  
resolve disputes without burdening court  
dockets



# The Problem

- Land Grants are expending the very limited resources they have on litigation, and in some cases relying on non-attorneys for “legal” advice
- The results of this litigation vary from one judicial district to another
- There is a paucity of legal representation available for some of the more remote Land Grants. In some cases an attorney will represent a Land Grant in one case, then in a similar subsequent case represent the non-Land Grant party.

# Arbitration Set-Up

- Mandatory administrative step before a case is brought to District Court
- Create panel of arbitrators w/representation from each Land Grant
  - Standard for Arbitrators (i.e. attorneys, retired judges, historians)
  - Training for Arbitrators on unique issues to Land Grants

# Costs For Arbitration

- Stipend for arbitrator –
- Administrative back office costs –
- For both –
  - The cost for the arbitrator can either be paid by the parties, or a program developed to pay a stipend for each case
  - Backroom costs – no need to reinvent. Provide some funding to an existing program (i.e. DFA, or Court Alternatives program)



# Benefits

- Reduced cost to the State/Land Grants
  - Even with funding for the arbitrators and back office administration the time frame is reduced and predatory motion practice can be reduced/eliminated
  - Emotional cost – litigation tends to polarize the parties. Arbitration, understanding these may be extended families, can reduce this tension

# Benefits - continued

- Consistency in resolution of cases
  - Uniformly trained finders of fact acquainted with Land Grant issues, and operating on repeating fact patterns
  - Arbitration Panel may serve as Special Master to the District Court, if case is appealed
    - Most, if not all, facts can be determined by Arbitration reducing discovery time for appealed case
    - Improving the consistency of resolution on appealed cases
  - Develop an understanding of Land Grant issues that can be accessed to help develop legislation for the Land Grants



## Benefits - Cont.

- Ethical Practices
  - The Arbitration Panel will be in a unique position to ensure that:
    - Land Grants are represented by attorneys that do not have a conflict
    - That legal advise is being provided by qualified persons
    - Frivolous lawsuits are screened out