An Ombuds Resolution for the 21st Century: Resolution 103 Passes Without Opposition

By Natalie Fleury

On August 24, 2017, the most recent American Bar Association (ABA) Ombuds Resolution, Resolution 103, passed the ABA House of Delegates with the support of several other sections and without opposition.

Resolution 103 states:

RESOLVED that the American Bar Association encourages greater use and development of ombuds programs that comply with generally recognized standards of practice, as an effective means of preventing, managing, and resolving individual and systemic conflicts and disputes.

As discussed in the February 2016 edition of Just Resolutions, the ABA adopted previous Resolutions in 1969, 1971, 2001, and 2004. The recent Resolution was drafted to address some of the definitional issues in previous resolutions, and to encourage the use and development of programs in keeping with recognized standards of practice.

The report accompanying the Resolution highlights the standards established by the ABA, the United States Ombudsman Association, the International Ombudsman Association, and the Coalition of Federal Ombuds, among others, and covers a variety of ombuds models, including organizational, classical, and advocate programs.

The proposed resolution was further bolstered by the Administrative Conference of the United States (ACUS) report on the Use of Ombuds in Federal Agencies adopted on December 14, 2016 urging Congress and the President to “create, fund, and otherwise support ombuds offices across the government consistent with . . . three core standards of practice—indpendence, confidentiality, and impartiality.” The report recommends that any existing ombuds programs in federal agencies which do not comply with those three standards should “align their office standards and practices with those included in this recommendation” or “consider modifying their title, where permitted, to avoid any confusion.” The ACUS report was drafted after a two-year study of the use of ombuds programs in the federal government.

One key impetus behind the new resolution related to the ability of the ABA Ombuds Committee to have a voice in legislative matters related to Ombuds work. As stated in the report accompanying the Proposal:

In the 114th Congress, for example, bills were introduced to: establish an Ombudsman Office within the Transportation Security Administration (H.R 80); to establish a pilot program in the Veterans Health Administration of the Department of Veterans Affairs, which would include a Management and Accountability Ombudsman, (H.R. 502); to create an Office of the Ombudsman on Women’s Health in the Department of Health and Human Services (H.R. 3652); to appoint a FAA Community Ombudsman for each region of the Federal Aviation Administration (H. R. 3965); to establish an Ombudsman within the Veterans Health Administration of the Department of Veterans Affairs (H. R.
3978); and to create a Medicare Provider and Supplier Ombudsman for Reviews and Appeals (S. 2368).

As this list indicates, there is a clear need for experienced Ombuds to have input on pending legislation related to federal sector Ombuds and other legislation that might impact Ombuds practice.

For Organizational Ombuds, the now-withdrawn1 “Dear Colleague Letter”2 and the Department of Education’s “Handbook for Campus Safety and Security Reporting 2016 Edition,” which listed Ombuds as generally meeting the criteria for campus security authorities, both added to the motivation to provide the Ombuds community with a voice in legislative matters. Resolution 103 allows the Ombuds Committee to not only act as subject matter experts and prepare written analyses for the ABA to present to bill sponsors, the ABA Governmental Affairs Office can now speak and lobby on Ombuds issues with input from the Ombuds Committee.

During the proposal development phase, the Dispute Resolution (DR) Section’s Ombuds Committee made great efforts to convene leaders from the classical, organizational, and federal sector ombuds office for input and feedback regarding appropriate language. The Ombuds Committee hopes the Resolution will help to highlight the benefits of these programs generally, as well as to equip those who may be creating programs with an understanding of the various models to better assess the type of ombuds office that would work best in their setting and achieve their objectives.

Special recognition should be given to Chuck Howard, Ombuds Committee Co-Chair, for his tireless commitment to achieving this resolution. He was aided in his efforts by Vik Kapoor and Natalie Fleury, the author of this article. Additional thanks are due to, among many others, James Alfini, ABA DR Section Delegate, Pam Enslen, ABA DR Section Delegate, Nancy Welsh, Immediate Past Chair of the ABA Dispute Resolution Section, Linda Warren Seely, ABA DR Section Director, Harrie Samaras, Chair-Elect of the ABA DR Section, and the members of the ACUS drafting Committee.

The full text of Resolution 103 with the accompanying Report, and a copy of ACUS Recommendation 2016-5 are available online and through the ABA Ombuds Committee webpage.

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2 The “Dear Colleague Letter” was issued by the Office of Civil rights, and explained Title IX requirements for educational institutions receiving federal funding. Although the letter did not explicitly identify Ombuds, the language was interpreted by some administrators to require Ombuds to report incidents of sexual harassment and violence, compromising those offices’ capacity to remain a confidential resource.