AMERICAN BAR ASSOCIATION
SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE
SECTION OF DISPUTE RESOLUTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association supports the greater use of "ombudsmen" to receive, review and resolve complaints involving public or private entities.

FURTHER RESOLVED, that the American Bar Association endorses the Standards for the Establishment and Operation of Ombudsman Offices dated July 2000.

STANDARDS FOR THE ESTABLISHMENT AND OPERATION
OF OMBUDSMAN OFFICES

PREAMBLE

Ombudsmen receive complaints and questions from individuals concerning persons within an entity or the functioning of an entity. They work for the resolution of particular issues, and where appropriate, make recommendations for the improvement of the general administration of the entities they serve. Ombudsmen protect the legitimate interests and rights of individuals with respect to each other. Ombudsmen protect individual rights against the excesses of public and private bureaucracies. Ombudsmen protect those who work within an entity, and those who are affected by the entity's actions.

Ombudsmen must be independent and impartial. Confidentiality must extend to communications with the ombudsmen. Federal, state and local governments, academic institutions, companies and non-profit organizations, or sub-units of these entities may establish ombudsmen.

ESTABLISHMENT AND OPERATIONS

A. An entity should establish the ombudsman in law or a publicly available written policy and authorize the ombudsman to:

(1) receive complaints and questions about, and to address, investigate or otherwise examine alleged acts, omissions, improprieties, and systemic problems within the ombudsman's defined jurisdiction
(2) exercise discretion to accept or decline to act on a complaint or questions

(3) act on the ombudsman's own initiative

(4) operate by fair procedures to aid in the just resolution of a complaint or problem

(5) gather information from all relevant sources

(6) resolve issues at the most appropriate level of the entity

(7) issue periodic public reports

(8) function by such means as:

(a) developing, evaluating, and discussing options available to affected individuals
(b) facilitating, negotiating, and mediating

(c) conducting an inquiry

(d) investigating and reporting findings

(e) making recommendations for the resolution of an individual complaint or a systemic problem to those persons who have the authority to act upon them

(f) identifying complaint patterns and trends, and

(g) educating.

(9) initiate litigation, but only to enforce or protect the authority of the office.

INDEPENDENCE, IMPARTIALITY, AND CONFIDENTIALITY

B. To ensure the effective operation of an ombudsman, an entity should authorize the ombudsman to operate consistently with these essential characteristics:

(1) Independence. The ombudsman must be and appear to be free from interference in the legitimate performance of duties and independent from control, limitation, or penalty by an officer of the appointing entity or person who may be the subject of a complaint or inquiry. In assessing whether an ombudsman is independent in structure, function, and appearance, the following factors are important: whether anyone subject to the ombudsman's jurisdiction or anyone directly responsible for a person under the ombudsman's jurisdiction can (a) control or limit the ombudsman's performance of

assigned duties, (b) eliminate the office, (c) remove the ombudsman for other than cause, or (d) reduce the office's budget or resources for retaliatory purposes.

(2) Impartiality. The ombudsman must conduct inquiries and investigations in an impartial manner, free from initial bias and conflicts of interest. Impartiality does not preclude the ombudsman from developing an interest in securing changes that are deemed necessary as a result of the process. The ombudsman may become an advocate for change where the process demonstrates a need for it.

(3) Confidentiality. An ombudsman must not disclose and must not be required to disclose any information provided in confidence, except to address an imminent risk of serious harm. Records pertaining to a complaint, inquiry or investigation must be confidential and not subject to disclosure outside the ombudsman's office. The ombudsman may disclose information that the ombudsman determines is not confidential or does not identify a confidential source to the extent necessary in making inquiries or investigations, in making recommendations or issuing reports, provided however, the ombudsman discusses confidentiality and any exceptions with the source of the information.

LIMITATIONS ON THE OMBUDSMAN'S AUTHORITY

C. An entity should not authorize an ombudsman to:

(1) make, change or set aside a law, policy, or administrative decision
(2) make binding decisions or determine rights

(3) compel an entity or any person to implement the ombudsman's recommendations, or

(4) conduct an investigation that substitutes for administrative or judicial proceedings.

NOTICE
D. No ombudsman who functions in accordance with these standards shall be deemed to be an agent of the entity, nor shall any communication to the ombudsman be imputed as notice to the entity.

REPORT

The American Bar Association (ABA) adopted a resolution in 1969 recommending that state and local governments consider establishing an ombudsman who would be authorized to inquire into administrative action and to make public criticism. That policy also recommended that the statute or ordinance creating the ombudsman contain twelve essentials. The ABA adopted a resolution in 1971 recommending that the Federal government experiment with the establishment of ombudsmen for certain geographical areas, specific agencies, or for limited phases of Federal activities.

There has been an extraordinary growth in the number and type of ombudsmen. Congress has called for the establishment of ombudsmen. In addition to specific legislation requiring the establishment of an ombudsman, the Administrative Dispute Resolution Act includes "use of ombuds." In the judicial arena, the Guidelines for Sentencing Organizations creates incentives for companies to take crime controlling actions and encourages organizations to provide confidential resources for employees and other agents to report criminal conduct by others within the organization without fear of retribution.

Federal, state, and local governments, academic institutions, companies, and non-profit organizations, as well as sub-units of these, have responded by establishing ombudsmen. However, the role of the ombudsmen in these entities, how they function, and the issues they address vary widely and significantly. Therefore, individuals who come to ombudsmen for help cannot know what to expect.

The ABA's Board of Governors establishes legislative and governmental priorities annually. Based on its importance to society, to the practice of law, and in the administration of justice, one of the year 2000 priorities is alternative dispute resolution. The ABA supports the greater use of alternative dispute resolution by private parties, government agencies, and the courts "as a necessary and welcome component of America's civil justice system, so long as all parties' legal rights and remedies are protected." As a protector of individual rights against the excesses of public and private bureaucracies an ombudsman receives complaints and questions from individuals concerning the functioning of an entity, works for the resolution of particular issues, and where necessary, makes recommendations for the improvement of the general administration of the entity. As an independent, impartial, and confidential complaint handler, an ombudsman when appropriate uses alternative means of dispute resolution.

Consistent with ABA priorities, the Sections of Administrative Law and Regulatory Practice and of Dispute Resolution have worked together and appointed a steering committee consisting of representatives from the Coalition of Federal Ombudsmen, the National Association of State Ombudsman Programs, the International Ombudsman Institute (IOI subsequently withdrew), The Ombudsman Association, the United States Ombudsman Association, and the University and College Ombuds Association, as well as other experts in the field. The commit-tee consulted with numerous ombudsmen from Federal, state, and local agencies, academic institutions, companies, and non-profit organizations. Further, it solicited, received, and considered comments from the international community of ombudsmen. Based on the steering committee's work, the Sections have developed a resolution encouraging the use of ombudsmen in the public and private sectors that adhere to the Standards for the Establishment and Operation of the Ombudsman Offices (Standards).

This Resolution and the Standards do not replace or modify the existing ABA policy that was adopted in 1969. The Resolution and Standards broaden the existing policy to address ombudsmen who are appointed within government, academia, and the private sector, and who respond to complaints from individuals from within and outside the

entity. These standards do not apply fully to ombudsmen that have been created by statute to address vulnerable populations.

For Federal, state, and local governments that want to create an ombudsman who would be authorized to address, investigate or inquire into administrative action and to criticize agencies, officials, and public employees, the twelve essential characteristics of the ABA's 1969 policy continue to serve as a model: "(1) authority of the ombudsman to criticize all agencies, officials, and public employees except courts and their personnel, legislative bodies and their personnel, and the chief executive and his personal staff; (2) independence of the ombudsman from control by any other officer, except for his responsibility to the legislative body; (3) appointment by the legislative body or appointment by the executive with confirmation by the designated proportion of the legislative body, preferably more than a majority of the legislative body, such as two thirds; (4) independence of the ombudsman through a long term, not less than five years, with freedom from removal except for cause, determined by more than a majority of the legislative body; (5) a high salary equivalent to that of a designated top officer; (6) freedom of the ombudsman to employ his own assistants and to delegate to them, without restrictions of civil service and classifications acts; (7) freedom of the ombudsman to investigate any act or failure to act by any agency, official, or public employee; (8) access of the ombudsman to all public records he finds relevant to an investigation; (9) authority to inquire into fairness, correctness of findings, motivation, adequacy of reasons, efficiency, and procedural propriety of any action or inaction by any agency, official, or public employee; (10) discretionary power to determine what complaints to investigate and to determine what criticisms to make or to publicize; (11) opportunity for any agency, official, or public employee criticized by the ombudsman to have advance notice of the criticism and to publish with the criticism an answering statement; and, (12) immunity of the ombudsman and his staff from civil liability on account of official action."

This Resolution and the Standards clarify that independence, impartiality, and confidentiality are essential characteristics of ombudsmen. An ombudsman must operate consistently with these essential characteristics to discharge the duties of the office effectively. In addition, Federal, state, and local governments, academic institutions, companies, and non-profit organizations want to create an ombudsman to address designated activities, such as employee concerns. Therefore, the Resolution and Standards also expand current policy to address these ombudsmen. Without adherence to these Standards, persons seeking an ombudsman's assistance could be subject to personal, professional, and economic retaliation, loss of privacy, and loss of relationships. The Resolution and Standards are necessary to protect individual rights.

THE RESOLUTION

The resolution recognizes the value of the ombudsman in the public and private sectors. It also recognizes that entities that establish ombudsman offices should adhere to the Standards for the establishment and operations of the ombudsman offices. The fundamental underlying premise of this resolution is that all ombudsmen must operate

with certain basic authorities and essential characteristics. The effort here, broadly supported by organizations of practicing ombudsmen, is to develop these Standards to enhance the functioning and reception of ombudsmen so that those who seek an ombudsman's assistance know what to expect and can rely on adher-ence to certain procedures.

Those who are now called ombudsmen but do not meet these Standards may provide important or valuable services. But, it would be far better if entities that established these positions were to call them a term more fitting of the function they provide and to reserve the term "ombudsman" for those who do in fact meet certain basic authorities and essential characteristics.

STANDARDS

Section A. What an Ombudsman Does.

An ombudsman is a person who is authorized by an entity to receive complaints or questions confidentially about alleged acts, omissions, improprieties, and broader, systemic problems within the ombudsman's defined jurisdiction and to address, investigate, or otherwise examine these issues independently and impartially.

Importantly, the ombudsman's jurisdiction who complains and who or what are complained about needs to be defined in advance, setting out the scope of the duties and authority. The ombudsman's jurisdiction must be defined in the official act establishing the office. The jurisdiction may be limited to a defined constituency or population. For example, a state ombudsman may receive complaints or questions from any person, while a university student ombudsman may receive complaints or questions only from students at that university, and a long-term care ombudsman has jurisdiction to resolve only complaints initiated by or on behalf of residents of a long-term care facility.

The ombudsman determines whether to accept or to act on a particular complaint or question. The ombudsman also has the discretion to initiate action without receiving a complaint or question. This process is consistent with the principle that an ombudsman operates with independence and in contrast to the processes of the judiciary, mediators, or arbitrators. An ombudsman may determine that the complaint is without merit. Or, an ombudsman may receive a complaint or question on a specific topic and conduct an inquiry on a broader or different scope.

Appropriate subjects for an ombudsman to review include allegations of unfairness, maladministration, abuse of power, abuse of discretion, discourteous behavior or incivility, inappropriate application of law or policy, inefficiency, or decision unsupported by fact. It is essential that the ombudsman operate by fair procedures to aid in the just resolution of the matter. It would not be appropriate for the ombudsman to act as an appellate forum when a complainant is dissatisfied with the results in a formal adjudicatory or administrative proceeding. Furthermore, it would not be appropriate for the ombudsman's review to serve as the foundation for any disciplinary activity or civil

action, nor as a determination of a violation of law or policy. An ombudsman's inquiry or investigation does not substitute for an administrative or judicial proceeding. In an administrative or judicial proceeding, the deciding official should not consider the ombudsman's review or recommendations to be controlling. Rather, the deciding official must conduct a de novo examination of the matter. It may, however, be appropriate for the ombudsman to identify a systemic issue even though it arose in a formal proceeding or investigate procedural problems in formal proceedings of entities over which the ombudsman has jurisdiction.

Ombudsmen need access to all information relevant to a complaint or a question so that the review is fair and credible. When the ombudsman is established by law, the ombudsman should have the power to issue a subpoena for testimony or evidence relating to an allegation. The entity must be responsible for protecting those seeking assistance from or providing information to the ombudsman from personal, professional, or economic retaliation, loss of privacy, or loss of relationships.

An ombudsman may make a formal or informal report of results and recommendations resulting from a review or investigation, in which case the ombudsman should consult with an individual or group prior to issuing a report critical of that individual or group, and include their comments with the report, and communicate the outcome, conclusion or resolution of a complaint or an inquiry to the complainant and may also communicate with other concerned entities or individuals.

In addition, to ensure the office's accountability, an ombudsman should issue and publish periodic reports summarizing the ombudsman's findings and activities. This may include statistical information about the number of contacts with the ombudsman, subjects hat the ombudsman addressed, evaluation by complainants, etc. These reports may be done, annually, biannually, or more frequently.

In receiving complaints or questions and examining problems, the ombudsman may use a variety of dispute resolution and other techniques. These processes include: developing, evaluating, and discussing the options which may be available for remedies or redress; facilitating, negotiating, and mediating; conducting an inquiry; investigating and reporting findings; making recommendations for the resolution of an individual complaint or a systemic problem to those persons who have authority to act on them; identifying complaint patterns and trends; and educating.

An ombudsman may initiate litigation but only to enforce or protect the authority of the office. For example, if an ombudsman issues a subpoena and the subpoena is ignored, the ombudsman should be able to initiate litigation to compel a response. The ombudsman is not authorized to act on behalf of individuals and does not substitute for independent legal counsel.

An ombudsman uses the powers of reason and persuasion to help resolve matters. The goal of the ombudsman's efforts is to provide a path to fairness and justice. Therefore, the ombudsman's quest is to seek the fair and just resolution of the matter.

Section B. The Essential Characteristics

The original 1969 resolution contained twelve essentials for the ombudsmen described in it. Those essentials have been distilled and expanded in the Standards. The core qualities are independence, impartiality, and confidentiality. Without these, an ombudsman cannot discharge the duties of the office effectively.

1. Independence in structure, function, and appearance.

To be credible and effective, the office of the ombudsman must be independent in its structure, function, and appearance. Independence means that the ombudsman must be free from interference in the legitimate performance of duties. In assessing whether an ombudsman is independent, the following factors are important: whether anyone subject to the ombudsman's jurisdiction or anyone directly responsible for a person under the ombudsman's jurisdiction can (1) control or limit the ombudsman's performance of duties, (2) eliminate the office, (3) remove the ombudsman other than for cause, or (4) reduce the office's budget or resources.

Historically, ombudsmen were created in parliamentary systems and were established in the constitution or by statute, appointed by the legislative body, and had a guarantee of independence from the control of any other officer, except for responsibility to the legislative body. This structure remains a model for ensuring independence, and a number of states have followed it.

In the United States since the late 1960s, a number of other ways have been developed to ensure independence. Examples of approaches that contribute to an ombudsman's independence include: establishment of the office through a formal, transparent act of a legislature or official governing body of an organization; establishment outside the entity over which the ombudsman has jurisdiction; a direct reporting relationship to a legislative body, the official governing body of an organization or the chief executive; designation as a neutral who is unaligned and objective; a broadly defined jurisdiction not limited to one part of the entity or one subject matter; appointment or removal of the ombudsman free of influence from potential subjects of a complaint or inquiry; a set term of office; no reporting relationship to someone with assigned duties that conflict with the ombudsman's role; no assignment of duties other than that of the ombudsman function; specifically allocated budget and sufficient resources to perform the function; freedom to appoint, direct, and remove staff; sufficient stature in the organization to be taken seriously by senior officials; placement in an organization at the highest possible level and at least above the heads of units likely to generate the most complaints; discretion to initiate and pursue complaints and inquiries; access to and resources for independent legal advice and counsel; prohibition of disciplinary actions against the ombudsman for performing the duties of the office; removal only for cause; provision of an employment contract that the ombudsman will receive a significant severance provision if terminated without good cause.

Great care has to be exercised in establishing the structure of the ombudsman to ensure that the independence described in the resolution is, in fact, achieved. Choosing which of these approaches are appropriate will depend on the environment. The instrument used to establish independence should be the strongest available and should guarantee the independence of the ombudsman from control by any other person.

In the case of the government ombudsman, these elements should be set forth in a constitution, law, or regulation. The twelve essential characteristics of the 1969 ABA Resolution continue to serve as the model for an ombudsman situated in the legislative branch of government authorized to investigate administrative action, help provide legislative oversight and offer criticism of agencies from an external perspective. While there are a number of potential avenues of achieving independence, experience on the state and local level has demonstrated rather consistently that unless there is a structural independence for these ombudsmen akin to the 1969 ABA Resolution that independence will not be accomplished and the office will not be able to function as envisioned in this resolution and the accompanying standards.

Structuring independence for ombudsman who serve inside organizations requires similar care. These elements should be in written policies binding on the organization such as board resolutions, terms of reference, laws or regulations. The ombudsman position should be explicitly defined and established as a matter of organizational policy, authorized at the highest levels of the organization; the ombudsman should have access to the chief executive officer, senior officers and, in appropriate circumstances, the oversight body or board of directors of the organization; the ombudsman should also have access to all information within the organization, except as restricted by law; the ombudsman must be designated as an official who does not formally represent the organization or accept notice on its behalf; the ombudsman ought not be removable except through the end of an assigned term of office or for cause; and the ombudsman should have access to resources for independent legal advice and counsel.

2. Impartiality

The ombudsman's structural independence is the foundation upon which the ombudsman's impartiality is built. If the ombudsman is independent from line management and does not have administrative or other obligations or functions, the ombudsman can act in an impartial manner.

Acting in an impartial manner, as a threshold matter, means that the ombudsman is free from initial bias and conflicts of interest. Therefore, a government ombudsman may be prohibited from engaging in partisan political activities. Acting in an impartial manner also requires that the ombudsman be authorized to gather facts from relevant sources and apply relevant policies, guidelines, and laws, considering the rights and interests of all affected parties within the jurisdiction, to identify appropriate actions to address or resolve the issue.

The ombudsman must conduct inquiries and investigations in an impartial manner. An ombudsman may determine that a complaint is without merit and close the inquiry or investigation without further action. If the ombudsman finds that the complaint has merit, the ombudsman makes recommendations to the entity and seeks resolution for a fair outcome. The ombudsman does not represent complainants, is not their legal counsel, nor is the ombudsman a guardian ad litem who provides the court with an independent recommendation. Similarly, the ombudsman does not defend the entity complained against.

Impartiality does not preclude the ombudsman from developing an interest in securing the changes that are deemed necessary where the process demonstrates a need for change. The ombudsman has the authority to become an advocate for change where the results of the inquiry or investigation demonstrate the need for such change. For example, when an ombudsman identifies a systemic problem, it would be appropriate for the ombudsman to advocate for changes to correct the problem. But, someone who begins with a bias in favor of a particular viewpoint be it management or someone who may be affected by the actions of the entity, such as an employee, student, nursing home resident or child and does not conduct an impartial inquiry or investigation, is not appropriately called an ombudsman.

3. Confidentiality.

Confidentiality is an essential characteristic of ombudsmen that permits the process to work effectively. Confidentiality promotes disclosure from reluctant complainants, elicits candid discussions by all parties, and provides an increased level of protection against retaliation to or by any party. Confidentiality is a further factor that distinguishes ombudsmen from others who receive and consider complaints such as elected officials, human resource personnel, government officials, and ethics officers.

Confidentiality must extend to all communications with the ombudsman2 and all notes and records maintained by the ombudsman in the performance of assigned duties. It begins when a communication is initiated with the ombudsman to schedule an appointment or make a complaint or inquiry. Confidentiality may apply to the source of the communications and to the content of the communications. Individuals may not want the ombudsman to disclose their identity but may want the ombudsman to act on the information presented. An ombudsman should discuss confidentiality and any exceptions with individuals who communicate with the office.

The authorizing entity must allow the ombudsman to provide confidentiality of the identity of persons who communicate with the ombudsman and of information provided in confidence. The authorizing entity must not seek information relating to the identity of complainants nor seek access to the ombudsman’s notes and records.

So that the contours of confidentiality can be assured and known, confidentiality should be provided by statute. Several statutes provide ombudsman confidentiality.

Providing for confidentiality and protection from subpoena in a statute is particularly important because, where statutes have not provided confidentiality, state courts have not consistently recognized an ombudsman privilege nor granted protective orders to preserve the confidentiality of communication made to ombudsmen. One Federal district court, Shabazz v. Scurr, 662 F. Supp. 90 (S.D. Iowa 1987), recognized a limited privilege under Federal law for an ombudsman with a state statutory privilege. The only Federal circuit court to have addressed the issue, Carman v. McDonnell Douglas Corp., 114 F. 3d 790 (8th Cir. 1997), failed to recognize an ombudsman privilege.

Short of explicit statutory authority, ombudsman offices should adopt written policies that provide the fullest confidentiality within the law. These policies should be publicly available, broadly disseminated, and widely publicized. Several existing model ombudsman acts and policies of ombudsman organizations address confidentiality.

An ombudsman will rarely, if ever, be privy to something that no one else knows. Therefore, providing confidentiality protection to the ombudsman allows the ombudsman to perform assigned duties independently and impartially while at the same time, society continues to have access to the underlying facts. As evidenced by the statutes and policies that have been developed, there may be instances in which other, competing societal interests dictate that the ombudsman must disclose some information. If an individual speaks about intending harm to himself or herself or others, or if the complainant confesses to serious misconduct or a crime, an ombudsman must use personal discretion in determining whether or not this information is carried forward.

Section C. Limitations on the ombudsman's authority.

An ombudsman works outside of line management structures and has no direct power to compel any decision. The office is established by law or publicly available written policy with the stature to engender trust and to help resolve complaints at the most appropriate level of the entity. To ensure the ombudsman's independence, impartiality, and confidentiality, it is necessary to establish certain limitations on the ombudsman's authority.

An ombudsman is not authorized to make, change, or set aside a law, policy or administrative/managerial decision, nor to compel an entity or any person to make those changes. While an ombudsman may expedite and facilitate the resolution of a complaint and recommend individual and systemic changes, an ombudsman cannot compel an entity to implement the recommendations.

It is essential that an ombudsman operate by fair procedures which means that the actions taken will likely vary with the nature of the concern, and that care must be taken to protect the rights of those who may be affected by the actions of an ombudsman. In particular, an ombudsman's actions, whether formal or informal, do not substitute for administrative or judicial proceedings for determining anyone's rights.

Section D. Notice

When meeting with an ombudsman, people discuss allegations of unfairness, maladministration, abuse of power, and other sensitive subjects. They fear personal, professional, or economic retaliation, loss of privacy, and loss of relationships. Faced with sexual or racial harassment, for example, many people will quit, get sick, or suffer in silence. People often need help in developing ways to report or act so that these matters will be considered and resolved.

Communications must be protected if people are to be willing to visit and speak candidly with the ombudsman. As noted above, some ombudsman have confidentiality protected by law and others do not. Under these Standards, entities that establish an ombudsman should authorize the ombudsman to operate with confidentiality and independence. Consistent with these essential characteristics, the ombudsman does not accept notice on the entity's behalf.

An ombudsman may communicate information that could require action by an entity. If the ombudsman communicates that information to the entity, notice is complete, and the entity is then responsible for evaluating the information and taking any appropriate action. While the ombudsman does not shield information about having provided notice to the entity, communications to an ombudsman and the ombudsman's sources remain confidential.

CONCLUSION

Government, academia, and the private sector are answering demands for fairness and responsiveness by establishing ombudsmen. Ombudsmen receive complaints and questions concerning the administration of the establishing entity. However, the basic authorities of these persons called ombudsmen and the independence, impartiality, and confidentiality with which they operate vary markedly. The term "ombudsman" should be reserved for those persons who meet these Standards, and who are not authorized to perform tasks that are inconsistent with their basic authorities and essential characteristics.

An ombudsman works for the resolution of an individual issue, and where necessary, makes recommendations for the improvement of the general administration of the entity. To be credible and effective, the office of the ombudsman must be independent in structure, form, and appearance. The ombudsman's structural independence is the foundation upon which the ombudsman's impartiality is built. Confidentiality is a widely accepted characteristic of ombudsmen which helps the ombudsman to perform assigned duties, independently and impartially. Without these Standards, individuals would be reluctant to seek the ombudsman's assistance be-cause of fear of personal, professional, or economic retaliation, loss of privacy, and loss of relationships. This Resolution and the Standards for the Establishment and Operation of Ombudsman Offices are appropriate now to ensure that ombudsmen can protect individual rights against the excesses of public and private bureaucracies.

Respectfully submitted,

John Hardin Young,
Chair, Section of Administrative Law and Regulatory Practice

James Alfini
Chair, Section of Dispute Resolution

July 2000

GENERAL INFORMATION FORM

Submitting Entity: Section of Administrative Law and Regulatory Practice
Section of Dispute Resolution

Submitted By: John Hardin Young, Chair
James Alfini, Chair

1. Summary of Recommendation.

This resolution supports the greater use of "ombudsmen" to receive, review and resolve complaints involving public or private entities and endorses Standards for the Establishment and Operation of Ombudsman Offices dated July 2000.

2. Approval by Submitting Entity.

Approved at a regularly scheduled meeting of the Section of Administrative Law and Regulatory Practice Council on April 30, 2000 and the Dispute Resolution Council on April 6, 2000.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

There are three relevant policies: a 1969 resolution recommending that state and local governments should consider establishing an ombudsman who would be authorized to inquire into administrative action and to make public criticism; a 1971 resolution recommending that the Federal government experiment with the establishment of ombudsmen for certain geographical areas, specific agencies, or for limited phases of Federal activities; and the ABA's ADR Legislative Priority for 2000. This resolution and the Standards do not replace the existing policy on ombudsmen. Rather, they draw on it and expands it to address independence, impartiality, and confidentiality as essential characteristics of ombudsmen. The resolution and Standards also broaden the existing policy to address ombudsmen who are appointed within government, academia, or the private sector and who respond to complaints from individuals from within and outside the entity. These Standards do not apply fully to ombudsmen that have been created by statute to address vulnerable populations. In addition, they are consistent with the legislative priority.

5. What urgency exists which required action at this meeting of the House?

Action is desirable at this meeting to allow consideration of the recommendation by Federal, state and local governments, academic institutions, companies and non-profit organizations, or sub-units of these entities, as they establish ombudsman offices. The Sections have worked with numerous ombudsmen from Federal, state and local governments, academic institutions, companies and non-profit organizations, or sub-units of these entities, to develop these Standards.

6. Status of Legislation. (If applicable)

Legislation on ombudsman is currently pending in Congress and in state legislatures.

7. Cost to the Association. (Both direct and indirect costs)

None

8. Disclosure of Interest. (If applicable)

None

9. Referrals.

A copy of the Resolution, Standards, and Report is being be sent to all ABA Sections, Divisions, and Commissions.

10. Contact Person. (Prior to the meeting)

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11. Contact Person. (Who will present the report to the House)

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12. Contact Person Regarding Amendments to This Recommendation. (Are there any known proposed amendments at this time? If so, please provide the name, address, telephone, fax and ABA/net number of the person to contact below.)

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EXECUTIVE SUMMARY

1. Summary of the recommendation.

This resolution supports the greater use of "ombudsmen" to receive, review and resolve complaints involving public or private entities and endorses Standards for the Establishment and Operation of Ombudsman Offices dated July 2000.

2. Summary of the issue which the recommendation addresses.

Without adherence to these Standards, persons seeking an ombudsman's assistance could be subject to retaliation, loss of privacy, and loss of relationships. The resolution and Standards are necessary to protect individual rights.

3. Please explain how the proposed policy position will address the issue.

The fundamental underlying premise of this resolution is that all ombudsmen must operate with certain basic authorities and essential characteristics. To be credible and effective, the office of the ombudsman must be independent in structure form, and appearance. The ombudsman's structural independence is the foundation upon which the ombudsman's impartiality is built. Confidentiality is a widely accepted characteristic of ombudsmen which helps the ombudsman to perform assigned duties, independently and

impartially. Without these essential characteristics and limitations on the ombudsman's authority to protect them, individuals would be reluctant to seek the ombudsman's assistance because of fear of retaliation, loss of privacy, and loss of relationships.

4. Summary of any minority views or opposition which have been identified.

The Commission on Legal Problems of the Elderly opposed an earlier version of the Recommendation, Standards and Report on the basis that Congress has created ombudsmen that are explicitly advocates and hence would not meet the impartiality aspect of the these Standards.

The Sections have addressed the issue by making it clear that these standards do not apply fully to ombudsmen that have been created by statute to address vulnerable populations.