

REPORT OF THE OMBUDS COMMITTEE

September 23, 1991

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INTRODUCTION

The University of Minnesota employs a number of formal and informal procedures for the resolution of University related disputes among faculty, staff, students, and between the University and the public. In the Spring of 1990 the Senate Consultative Committee appointed a committee (Ombuds Committee) to review and evaluate various dispute resolution models and to make recommendations for an organizational structure to serve all campuses and all constituencies of the University community. This structure should combine the strengths of one or more of the models, resulting in a more efficient process than exists presently. The overarching goal is to offer information and advice before conflicts escalate into a litigious and adversarial forum which consumes valuable University resources of time and effort with a frequently unsatisfactory overall result.

Many members of the University community are involved in dispute resolution at various levels within the University. The University of Minnesota is a large and complex institution that reaches into many aspects of the academic and economic life of the state, the nation and the world. It is inevitable that misunderstandings and disputes will arise. Most of these problems are solved at or near the point at which they arise through informal negotiations and mediation. These types of informal dispute resolution activities are crucial to the smooth operation of the University. The more formal dispute resolution procedures proposed in this report are in no way intended to replace or interfere with these efforts. Rather, the dispute resolution procedures discussed in this report are all intended for use when informal dispute resolution efforts have failed when the dispute escalates significantly beyond the point at which it arose, or when time does not permit continued efforts at informal resolution.

The Committee spent considerable time and effort analysing the formal dispute resolution procedures that are currently available at the University.

The first section of this report describes the result of this work. Three models-litigation, mediation, and ombuds service - were considered. For each, the advantages, disadvantages and current availability are discussed.

The second section of the report provides recommendations for changes in current dispute resolution procedures. The recommendations make use of all of the models discussed in the first section with the ombuds service model serving as the foundation. It was the intent of the Committee to recommend as few changes in the current system as possible. While some changes will be necessary, the principle recommendations provide for filling in gaps where they exist, better overall coordination, and less overlap of services. The overall goal is more efficiency, speed and fairness in the resolution of disputes.

CURRENTLY AVAILABLE MODELS

Litigation

The current University Grievance Policy, which is available to the entire University community with the exception of the public, follows the litigation model. Procedures include a formal written complaint and response. The parties then initiate discovery proceedings and present evidence to an independent third-party neutral hearing panel. The parties (petitioner and respondent) are required to participate in preparing and presenting the evidence. It is highly desirable that the parties have advocates or advisers to assist in this task. The panel's decision is based on evidence, policy and precedent. The remedy is imposed without the consent of the parties, with the final decision being made by the President. (The panel's decision is advisory.)

The advantages of this process are that it meets our cultural traditions of due process and judgement by a jury of peers and that the facts are presented by the people (parties) with the highest motivation to do a good job.

The disadvantages are that personal antagonism may permanently poison relationships within a Department, the process encourages parties to conceal information and to use procedural delays, the process is time consuming and complex, the time spent is mostly not compensated (many participants, panel

members, advocates) and the process may work to the benefit of the party with greater access to information and with more permanence at the University. These litigious procedures are available only to resolve disputes that allege violation of a University policy or practice. They are not available in the solution of work place conflicts or of classroom environment and personal disputes, and they are not available to members of the public who have no formal connection to the University.

Mediation

Mediation is a cooperative problem solving mechanism which is available to the University community through the Conflict and Change Center, University Counseling Services and the Minnesota Extension Service. This process utilizes an independent third-party neutral mediator who facilitates and guides negotiations but does not make recommendations or decisions on a settlement. Participation is voluntary and settlement is by agreement among the parties. The mediation process can address narrow or broad issues as determined by the parties. Typically, a mediation process is accomplished in one session though more may be necessary in some cases. The process includes intake, orientation, fact finding and negotiation of a settlement agreement.

The advantages of mediation are that it is a confidential process that does not require the presence of advocates, is relatively low cost in time and money, can deal with multi-party conflicts, requires a skilled mediator who can equalize power imbalances among the parties, and requires a desire by each party to work together to find mutually agreed upon solutions for the conflict to be resolved.

The principle disadvantage is that it relies on the skills of the mediator. If the mediator attempts to impose a solution on the parties or fails to protect a powerless party from an aggressive, powerful party, the situation can be made much worse. Also, there are few, if any, due process protections in this model.

Ombuds Service

An independent third-party neutral ombudsperson is designated to hear complaints.

The ombudsperson performs the following roles as appropriate:

Counselor - after intake, helps the petitioner develop a choice of options. The petitioner then chooses how to proceed.

Shuttle Diplomat - facilitates communication between the parties - reframes the situation to address key issues and concerns.

Mediator - helps disputants come to their own written settlement in a face to face meeting.

Fact-Finder - gathers information relating to the case; researches relevant policies and precedents.

Change agent - provides upward feedback, keeps aggregate statistics to facilitate discussion and solution of general problems.

An ombudsperson does not advocate for either of the parties to a dispute. An ombudsperson advocates for an integrative solution that considers the interests of the parties and the policies of the institution. Primarily, however, the ombudsperson serves the principles of justice and fairness. Every attempt is made to resolve the problem at its point of origin.

The advantages of the ombuds model are that it is confidential, efficient, and relatively inexpensive in use of time and energy. It builds a sense of community and is satisfying to the participants. The process is informal and does not require advocates. Also, the process identifies chronic problem areas that may lead to proposals for systemic change within the institution.

The ombuds model does not work well if there is inadequate information or if the ombudsperson is perceived to be biased. If the process fails, it may prejudice a later evidentiary hearing.

Some form of this model is currently available to students through Student Ombuds Service or Student Advocate Service, to those with discrimination complaints through the Equal Opportunity and Affirmative Action Office, and to the public on an ad hoc basis through the office of the Vice President for External Relations.

RECOMMENDATIONS

Structure

The Committee agreed on the need for a Staff and Community Ombuds Service to serve those members of the University community and the public for whom no formal ombuds service is currently available. Several organizational options were considered. After a series of discussions, the Committee acknowledged that the number of possible organizational structures are many and that to be proactive, it would be necessary to settle on one plan, agree to test it for a finite period (three years was suggested) and then to evaluate it. After an evaluation process it could be recommended to Central Administration as a permanent process, as adequate but in need of fine tuning and reevaluation, or as so woefully inadequate that it should be eliminated and a different model tested.

The committee recognized that two subsets of the University community (i.e., students and those who have an action before EEO) already have some type of ombuds programs in place. These the Committee designated as "haves". The remaining subsets were designated "all others". The Committee recommended that cases involving the "haves" go directly to the specific "have" ombuds service. The remaining cases, which would involve all other members of the University community (faculty, professional/academic, civil service, student employment and public) would go to the "all others" ombuds service. The "all others" ombuds service would serve as a universal intake in the following sense. Any case could be brought to the "all others" ombuds service. However, if the case properly belongs with one of the "have" ombuds services, it would be immediately referred to that service. Those cases not referred would be handled by the "all others" ombuds service.

The office of the "all others" ombuds service would be staffed by a small number of part-time persons who will be selected from the constituent groups (students, civil servants, faculty, professional/academic, public, EEO, Minnesota Extension). It was suggested that 7 part-time staff be utilized at the outset,

each working .2-.4 FTE depending on the dollars available for salary, the amount of service that needs to be provided, and the amount of release time that each could negotiate with his or her unit. Staff from the "have" groups (students and EEO) together with the public and the Minnesota Extension would be designated by the constituent groups (SOS Administrator, Director of EEO, VP for External Relations, Dean of Minnesota Extension). Since the ombuds service program will be housed in the President's office administratively, it is recommended that the President's office conduct an internal search for individuals to represent faculty, P/A and civil service. It is anticipated that a person who is presently serving on one of the two "have" ombuds services would be selected to represent their constituent group. Thus, a person who works for the student ombuds service could have a .2 assignment to the "all others" ombuds service. It is the Committee's expectation that the "have" representative(s) would make certain that cases that should be directed to one of the "have" ombuds services would actually be so directed. In addition, the Committee expects that each of these representatives would be able to serve as an ombudsperson for the "all others" ombuds service and handle a case in an unbiased fashion without reference to the group with which he or she has the major time commitment. The Committee assumed that all who serve as ombudspersons will be rational, logical, sensitive, compassionate, competent, and unbiased individuals who can effectively serve the overall ombuds program. The staff will elect one member to perform administrative functions. Representatives from all of the ombuds services ("haves" and "all others") will meet quarterly (or more often if necessary) to discuss matters of mutual concern. An Ombuds Service Advisory Board with representation from all constituent groups will be appointed by the Committee on Committees to oversee and coordinate all ombuds activities.

The Committee recommended that the entire ombuds service program ("haves" and "all others") have a 1-800 telephone number so that those on the coordinate campuses will have easy access to the service.

The Committee recommended that the "all other" ombuds service be called the Staff and Community Ombuds Service.

Proposed Process and Functions of the Ombuds Service

The ombudsperson in charge of the case will set and monitor time schedules. All University personnel shall cooperate with the ombudsperson in providing records and information relevant to the resolution of the case. A written Statement of Facts will usually be prepared by the ombudsperson and made available to the parties. It will contain public information or information which the parties have agreed to disclose. It will state clearly those facts that are agreed to by the parties and those that are disputed. All other notes and records kept by the ombudsperson will be confidential.

Intake - The petitioner will provide a full account of the situation from his/her perspective. Based on this description, the case will be assigned to the Student Ombuds Service (if the petitioner is a student), to EEO (if the case involves discrimination), or to the Staff and Community Ombuds Service (if none of the above). While intake may be done at any of the preceding offices, the petitioner should be referred to the appropriate service as soon as possible, if it becomes necessary to do so. After the ombudsperson in charge of the case has completed the intake and researched relevant factual issues, policies and/or precedents, the petitioner is given a list of options as to how to proceed. A petitioner who wishes to pursue the case with further assistance from the ombudsperson must give formal approval before any respondent can be contacted. Periodic meetings by ombudspersons from all tracks will be necessary to review the active caseload.

Options to the ombuds process include mediation and litigation through the current Grievance Policy. The ombudsperson may recommend mediation, especially if any of the following factors is present:

1. facts aren't known or aren't available and/or parties don't agree on facts.
2. multiple parties and/or issues
3. higher probability of resolution if the parties meet face to face

4. parties are involved in on-going work place relationships
5. situation does not involve a violation of written University policies or procedures.

If the case is not resolved through the ombuds process and the petitioner wants to pursue resolution through the University Grievance Policy, the ombudsperson shall send the Statement of Facts for the case to the University Grievance Officer with the request that grievance procedures be followed.

It will be necessary to revise the current Grievance Policy so that the Statement of Facts prepared by the ombudsperson serves as the input document for the grievance procedure. The first contact of the petitioner with the ombuds service would serve to satisfy the timeliness requirement of the Grievance Policy.

A follow up survey of parties to disputes will be used to determine their level of satisfaction with their experience and to provide an opportunity for suggesting improvements.

An annual report to the Regents will include an evaluation of the service, case statistics (e.g. type and number of cases), basic demographic information on clients and disposition of cases. This report shall also contain recommendations for changes in University structure or policy needed to eliminate the causes of observed incidences of conflict and dispute.

Overlapping Services

Since the intake functions of the University Grievance Officer's will be performed by the Ombuds Services, the University Grievance officer appointment may be reduced or eliminated. It is possible that the remaining functions of the University Grievance Officer may be performed by the Chair of the University Grievance Committee.

The Student Advocate Service (SAS) and the Faculty/Academic Staff Advocacy and Grievance Advisory Program will no longer perform intake or mediation functions. They will deal only with grievances that have been referred to the

University Grievance Officer by the appropriate ombudsperson. It may be appropriate to combine these two programs.

SAS will continue to assist students charged with scholastic misconduct or a violation of the Student Conduct Code.

Bargaining Units

The committee intends that the proposed structure be available to all University Staff whether or not they are members of a bargaining unit. It is, however, understood that if a union contract provides for a dispute resolution mechanism that conflicts with the structure proposed here, the union contract will prevail.