

IOA Best Practices

A Supplement to IOA's Standards of Practice¹

Version 3, October 13, 2009

The Best Practices guide is intended to provide guidance to Organizational Ombudsmen² in practicing according to IOA Standards of Practice to the highest level of professionalism possible. Any questions or suggested revisions are welcome and should be sent to the Chair of the Professional Ethics, Standards, and Best Practices Committee.

PREAMBLE

The IOA Standards of Practice are based upon and derived from the ethical principles stated in the IOA Code of Ethics.

Each Ombudsman Office should have an organizational Charter or Terms of Reference, approved by senior management, articulating the principles of the Ombudsman function in that organization and their consistency with the IOA Standards of Practice.

Before implementing an Ombudsman program, an organization should educate all affected constituencies about the nature and scope of the program, including the role of the Ombudsman within the organization and the Standards of Practice that will govern the activities of the office.

Each entity that establishes an organizational Ombudsman Office should make certain that the office has a Charter that ensures that the Ombudsman will function according to the Standards of Practices and the core values of independence, impartiality/neutrality, confidentiality, and informality. These Standards of Practice will govern the way in which the Ombudsman receives complaints, works to resolve issues, and makes recommendations for the general improvement of the organization. The Charter should also specify the Ombudsman's scope of practice, limitations on Ombudsman authority, and qualifications to be an Ombudsman.

IOA asserts that communications with an ombudsman are confidential and strives to protect confidentiality for all protected communications.

One basis for protecting confidentiality is a claim of privilege. The law on this issue is still evolving and the determination of whether such a privilege is applicable is made by courts on a case-by-case basis since there is no statute creating such a privilege. In addition, ombudsman offices have been able to protect the confidentiality of communications where program materials

¹ IOA Standards of Practice are indicated by text boxes; recommended Best Practices follow each text box. IOA Code of Ethics, Standards of Practice, and Best Practices are designed to guide "Organizational Ombudsmen" as distinguished from "Classical", "Advocate", "Executive" or other types of Ombudsmen.

² The term Ombudsman is used to communicate to the widest possible community and is not intended to discourage others from using alternatives. IOA respectfully acknowledges that many practitioners use alternative forms of this word.

adequately state that people who use the office agree to abide by expressed confidentiality principles or where statutes dealing with alternative dispute resolution or mediation are applicable to ombudsman communications.

STANDARDS OF PRACTICE

INDEPENDENCE

1.1 The Ombudsman Office and the Ombudsman are independent from other organizational entities.

The director of the Ombudsman Office should report directly to the highest level of the organization (such as board of directors, CEO, agency head, etc.) in a manner independent of ordinary line and staff functions.

The director of the Ombudsman Office should have terms of employment that indicate that his or her stature in the organization is not subordinate to senior officials.

The Ombudsman should be able to function independently from control, limitation, or interference imposed by any official in the entity.

The Ombudsman should be protected from retaliation (such as of elimination of the office or the Ombudsman, or reduction of the Ombudsman budget or other resources) by any person who may be the subject of a complaint or inquiry.

The Ombudsman should have a set and renewable term, or should be removable only for neglect of duty, misconduct, or medical incapacity, and only by means of a fair process and procedure.

The Ombudsman should obtain assurance from the organization at the outset, and apart from any particular dispute, of access to outside legal counsel at his or her own discretion.

The expense of outside counsel should be covered by the organization and included in the overall budget for the Ombudsman Office. The Ombudsman should have an understanding with the organization that the Ombudsman is not required to inform the organization when it communicates with or accesses outside counsel.

The purpose of outside legal counsel should be to enhance the Ombudsman's ability to practice according to the Standards of Practice. The Ombudsman should consider how outside counsel may assist in a variety of situations, including when the entity and the Ombudsman need to strategize how best to handle a discovery request made of the Ombudsman, or when the Ombudsman and the entity could benefit from consultation with outside counsel regarding how best to establish and operate the office so as to ensure the integrity of function, and to protect the Ombudsman.

1.2 The Ombudsman holds no other position within the organization which might compromise independence.

See Sections 2.3 and 2.4.

1.3 The Ombudsman exercises sole discretion over whether or how to act regarding an individual's concern, a trend or concerns of multiple individuals over time. The Ombudsman may also initiate action on a concern identified through the Ombudsman's direct observation.

The Ombudsman should bring to the attention of the appropriate office those policies, programs, procedures or practices which may be problematic for the organization or which negatively affect people's health, safety or rights.

The Ombudsman should issue periodic reports summarizing activities, problem areas identified, and recommendations for systemic change. Ombudsman Office materials (websites, brochures, etc.) should state that all such reporting is conducted in a manner that protects the identity of individuals and does not place the organization on notice.

1.4 The Ombudsman has access to all information and all individuals in the organization, as permitted by law.

1.5 The Ombudsman has authority to select Ombudsman Office staff and manage Ombudsman Office budget and operations.

The Ombudsman Office must be provided with sufficient resources to operate an independent and effective program. These resources include adequate space, equipment, staffing, staff development, and the production and distribution of informational materials.

The independence of the Ombudsman Office may be supported by having the selection and evaluation of the Ombudsman, as well as the establishment of an appropriate level of funding, be determined by or in consultation with committees representative of various institutional constituencies.

NEUTRALITY AND IMPARTIALITY

2.1 The Ombudsman is neutral, impartial, and unaligned.

See Section 1.2.

2.2 The Ombudsman strives for impartiality, fairness and objectivity in the treatment of people and the consideration of issues. The Ombudsman advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization.

All members of the specified community served by the Ombudsman may voluntarily seek services from the Ombudsman Office and will be treated with respect and dignity. The Ombudsman should assure access impartially, including to people with disabilities, people who

need language interpreters, or people whose work hours require flexibility in scheduling appointment times.

The organization should assure that all specified members of the organization have the right to consult with the Ombudsman, and retaliation for exercising that right will not be tolerated.

2.3 The Ombudsman is a designated neutral reporting to the highest possible level of the organization and operating independently of ordinary line and staff structures. The Ombudsman should not report to nor be structurally affiliated with any compliance function of the organization.

The Ombudsman should have direct access to the board of directors (or other oversight body as appropriate). See Sections 1.1 and 1.2.

While the Ombudsman should be an internal position, it should not report to, nor have the appearance of reporting to, any compliance office or function of the organization.

The Charter or Terms of Reference for the Ombudsman Office should state specifically that the Ombudsman does not serve as an agent of notice for the organization.

2.4 The Ombudsman serves in no additional role within the organization which would compromise the Ombudsman's neutrality. The Ombudsman should not be aligned with any formal or informal associations within the organization in a way that might create actual or perceived conflicts of interest for the Ombudsman. The Ombudsman should have no personal interest or stake in, and incur no gain or loss from, the outcome of an issue.

See Sections 1.2, 4.4, and 4.5.

Except in the administrative capacity as manager of the Ombudsman Office, the Ombudsman should not participate in formal management functions or serve in any other role that poses an actual conflict of interest or creates the perception of one. For example, an Ombudsman ought not conduct formal investigations; serve in a position or role that is designated by the organization as a place to receive notice on behalf of the organization; serve as a voting member on a search committee (other than for Ombudsman staff); handle formal appeals of management actions; keep case records on behalf of the organization; or be charged in any way to make, change, enforce or set aside a law, rule or management decision.

If possible, the Ombudsman should hold only one position in the organization.

If the Ombudsman does hold another role within the organization, the different roles should be structured so that they are as separate and distinct as possible. The Ombudsman should not provide Ombudsman services to people whom the Ombudsman -- in the other role -- serves, manages, reports to, teaches, advises, or evaluates, in order to avoid partiality or perceptions of conflict of interest. The Ombudsman should provide Ombudsman services in a location that is different from the location in which the Ombudsman, in the other role, works, teaches, counsels, etc., to clarify the distinctions between roles, and to assure confidentiality and off-the-record

informality of the Ombudsman communications. The Ombudsman's support staff (people who take messages or receive visitors, for example) for the Ombudsman role should be separate and distinct from the support staff in any other role. The Ombudsman should continually call attention to the role in which he or she is acting at any given time, and repeatedly educate members of the organization about the principles in the Ombudsman Office's Charter. The Ombudsman should attempt to provide alternatives for people and situations in which the Ombudsman cannot serve as Ombudsman due to actual or perceived conflicts of interest.

2.5 The Ombudsman has a responsibility to consider the legitimate concerns and interests of all individuals affected by the matter under consideration.

2.6 The Ombudsman helps develop a range of responsible options to resolve problems and facilitate discussion to identify the best options.

An Ombudsman should help the visitor explore and assess an appropriate range of options, from the very informal to the most formal. Formal options may include ways to put management on notice of an issue, referrals to rights-based elements of the organization's conflict resolution system, or the provision of information about the possibility of seeking external resources or assistance. The Ombudsman should never provide legal advice.

When the Ombudsman works with the visitor to address issues that may involve formal alternatives (under laws, policies, rules, or regulations), the Ombudsman should make clear to the visitor that an informal approach does not automatically exclude the visitor's later participation in more formal options, but that the visitor should keep in mind possible time limits and their potential impact on the visitor's formal options. See Section 4.4.

The impartiality of the Ombudsman Office may be supported by consultation with various organizational constituencies regarding the Ombudsman Office's effectiveness.

CONFIDENTIALITY

3.1 The Ombudsman holds all communications with those seeking assistance in strict confidence and takes all reasonable steps to safeguard confidentiality, including the following:

The Ombudsman does not reveal, and must not be required to reveal, the identity of any individual contacting the Ombudsman Office, nor does the Ombudsman reveal information provided in confidence that could lead to the identification of any individual contacting the Ombudsman Office, without that individual's express permission, given in the course of informal discussions with the Ombudsman; the Ombudsman takes specific action related to an individual's issue only with the individual's express permission and only to the extent permitted, and even then at the sole discretion of the Ombudsman, unless such action can be taken in a way that safeguards the identity of the individual contacting the Ombudsman Office. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm, and where there is no other reasonable option. Whether this risk exists is a determination to be made by the Ombudsman.

The Ombudsman publicizes the confidential nature of Ombudsman work.

The Ombudsman Office should be situated in an appropriate location to protect the privacy of visitors to the office.

When an individual gives the Ombudsman permission to reveal his or her identity, disclose information, or act on his or her concerns, such permission must be given at the time that the Ombudsman is engaged in the informal conflict resolution process, not as part of a formal process.

The Ombudsman Office Charter for each organization should specify what types of events rise to the level of “imminent risk of serious harm.” The Ombudsman may negotiate with the organization to be exempt, based on Ombudsman confidentiality, from some mandates that require reporting by other employees. Best practice is to interpret “imminent risk of serious harm” as narrowly as possible – for example, imminent risk to human life.

3.2 Communications between the Ombudsman and others (made while the Ombudsman is serving in that capacity) are considered privileged. The privilege belongs to the Ombudsman and the Ombudsman Office, rather than to any party to an issue. Others cannot waive this privilege.

The confidentiality privilege is critical to making the Ombudsman Office a place where people can raise any issue, including an alleged violation of statute, regulation, rule, policy, or ethical standard.

IOA asserts that communications made to the Ombudsman do not constitute “notice” to the organization. No one, including the employing entity, should consider the Ombudsman Office to be agent of notice (that is, an office that receives formal notice on behalf of the organization) and no one, including the entity, should seek information about communications to the Ombudsman Office.

The nature and role of confidentiality should be explained to the visitor, who should understand that the Ombudsman claims the privilege for the office and that it is not the visitor’s privilege to waive. Whenever possible, this information should be communicated prior to discussing the concerns brought by the visitor.

Visitors should understand that as a condition for accepting and benefiting from the Ombudsman Office services, they have the obligation to support the Ombudsman claim of privilege and not to attempt to breach this claim.

The Ombudsman should emphasize in office materials and with the management of the organization:

- that the ability to have confidential communications that do not constitute “notice” to the organization is essential to the effective functioning of an Ombudsman Office and distinguishes the Ombudsman from formal reporting channels;

- that it is the “off-the-record” aspects of the office that lead people who use the Ombudsman to do so before taking any official or formal action;
- that the Ombudsman Office enables people to come forward with an issue when they might otherwise be afraid to do so or when they fear retaliation from managers or peers;
- that only by offering the security of confidentiality can the Ombudsman facilitate organizational responsibility and accountability, which are at the heart of provisions contained in the U.S. Sentencing Guidelines and the Sarbanes-Oxley Act that call for mechanisms of confidential reporting and/or guidance;
- that where issues cannot be confidentially raised, they may not be raised at all, thereby depriving the organization of an opportunity to address issues and rectify misconduct that has not yet surfaced through other channels.

3.3 The Ombudsman does not testify in any formal process inside the organization and resists testifying in any formal process outside of the organization regarding a visitor’s contact with or confidential information communicated to the Ombudsman, even if given permission or requested to do so. The Ombudsman may, however, provide general, non-confidential information about the Ombudsman Office or the Ombudsman profession.

The IOA Board has asked the IOA Standing Committee on Professional Ethics, Standards, and Best Practices to review the language and interpretation of 3.3. Please look for updates in the near future.

See Section 4 on informality.

3.4 If the Ombudsman pursues an issue systemically (e.g., provides feedback on trends, issues, policies and practices) the Ombudsman does so in a way that safeguards the identity of individuals.

Ombudsman materials should state that any Ombudsman reporting of trends, or communication of recommendations for systemic change, is done in a manner that protects the identity of individuals.

3.5 The Ombudsman keeps no records containing identifying information on behalf of the organization.

3.6 The Ombudsman maintains information (e.g., notes, phone messages, appointment calendars) in a secure location and manner, protected from inspection by others (including management), and has a consistent and standard practice for the destruction of such information.

The Ombudsman record-keeping systems and/or database should be independent of the organization’s technology system, with access allowed only to Ombudsman Office personnel. The Ombudsman Office should also be secure to protect private information and records. The office should develop and implement processes and procedures to regularly purge information that could identify individual visitors to the office. Records such as phone bills, which may indicate with whom the office has communicated, should be made available only to the

Ombudsman Office staff. The Ombudsman should take all reasonable steps to protect the confidentiality of any temporary notes or documents, such as locking file drawers and offices, and exercising extreme vigilance if any notes are carried from one place to another.

3.7 The Ombudsman prepares any data and/or reports in a manner that protects confidentiality.

3.8 Communications made to the Ombudsman are not notice to the organization. The Ombudsman neither acts as agent for, nor accepts notice on behalf of, the organization and shall not serve in a position or role that is designated by the organization as a place to receive notice on behalf of the organization. However, the Ombudsman may refer individuals to the appropriate place where formal notice can be made.

Except in the administrative capacity as manager of the Ombudsman Office, the Ombudsman is never an agent of notice (that is, an officer who receives notice for the organization), and communications to the Ombudsman Office never constitute notice to the organization.

If a visitor wishes to make a record, or put the organization “on notice,” the Ombudsman can provide information about how to do so.

Best practice is for the organization to receive allegations of wrongdoing directly from a complainant or witness, and not indirectly through the Ombudsman.

If the visitor is reluctant to make a formal report to the organization, the Ombudsman can work with the visitor to address the reasons the visitor resists reporting, or to work with the organization to make formal reporting channels more accessible.

If the visitor gives the Ombudsman permission to discuss a concern with a manager, and if the concern may involve some allegation of wrongdoing, the Ombudsman should pass on information only in general terms (without specifying names, dates, or events). If the Ombudsman does pass on allegations of wrongdoing, the Ombudsman should emphasize the he or she has not confirmed the accuracy of the allegations. It is not appropriate for the organization to take any adverse action on the basis of information reported informally through the Ombudsman. The Ombudsman may coach the manager on how to make reporting channels more accessible or how to gather information himself or herself.

An ombudsman may place the organization on “notice” when the ombudsman evaluates the circumstances and specifically elects to place the organization on notice by identifying an appropriate point of contact within the organization and communicating to that point of contact specific information which the ombudsman expressly intends to share for the purpose of placing the organization on notice of a specific concern or specific situation. If an ombudsman makes such an intentional notice communication, confidentiality is waived only with regard to the specific communication made with the point of contact for purposes of the notice communication. It is the conversation between the ombudsman and the appropriate point of contact within the organization that constitutes notice and not the conversation between the ombudsman and the visitor. Thus, under no circumstances, is the original communication to the ombudsman part of the notice communication.

All ombudsman offices should have a well-defined and generally available procedure detailing the limited circumstances and the processes under which the ombudsman may provide notice. If the ombudsman elects to place the organization on notice under the conditions above, the ombudsman should follow the protocol of the particular ombudsman office regarding this unusual action. The protocols should include specific steps so that is clear that the ombudsman made an intentional decision to make a notice disclosure.

INFORMALITY AND OTHER STANDARDS

4.1 The Ombudsman functions on an informal basis by such means as: listening, providing and receiving information, identifying and reframing issues, developing a range of responsible options, and – with permission and at Ombudsman discretion – engaging in informal third-party intervention. When possible, the Ombudsman helps people develop new ways to solve problems themselves.

The Ombudsman should work with the organization to encourage it to provide its constituents with a variety of effective formal (rights-based) and informal (confidential and interest-based) options for surfacing and resolving concerns. All options should be well established and clearly and regularly communicated to the entire organization.

As the visitor may wish to consult with additional resources and services, such as the employee assistance program, human resources, or the benefits office, the Ombudsman should describe resources that might be appropriate to the visitor’s presenting circumstances. See Section 2.6

The Ombudsman may consider issues, perceptions, interpretations, information, and concerns about inappropriate acts, omissions, or improprieties presented by individuals or groups.

Ombudsman functions include informal third-party intervention, such as shuttle diplomacy, facilitating communication, and informal mediation, which is voluntary and may or may not produce a written agreement.

Any documents or written agreements resulting from informal processes should not be maintained by or within the Ombudsman Office.

The Ombudsman uses a flexible approach with regard to concerns brought to the Ombudsman Office; options are tailored to individual circumstances.

4.2 The Ombudsman as an informal and off-the-record resource pursues resolution of concerns and looks into procedural irregularities and/or broader systemic problems when appropriate.

4.3 The Ombudsman does not make binding decisions, mandate policies, or formally adjudicate issues for the organization.

The Ombudsman should not participate in formal management functions. See Section 2.4.

4.4 The Ombudsman supplements, but does not replace, any formal channels. Use of the Ombudsman Office is voluntary, and is not a required step in any grievance process or organizational policy.

For most entities, it is the combination of informal services and formal grievance procedures, embodied in a conflict management system, that provides the appropriate range of options to allow for early identification and resolution of potential legal issues or concerns. The Ombudsman should give visitors information about the entity's formal procedures and remedies whenever appropriate. While a visitor may choose to explore informal options for a wide variety of reasons, the Ombudsman should remind the visitor to keep in mind possible time limits and their potential impact on the visitor's formal options. See Section 2.6.

The Ombudsman Charter or Terms of Reference should define the role, if any, of the Ombudsman in relation to employees and issues covered by collective bargaining agreements (CBAs). This role definition should also, where possible, be incorporated in CBAs, and should include a statement that although the CBA permits the Ombudsman to function in these defined ways, the Ombudsman nevertheless retains the authority to decline to be involved. (See Section 1.3.) The union and management may also enter into an ad hoc agreement permitting an Ombudsman to handle an issue.

4.5 The Ombudsman does not participate in any formal investigative or adjudicative procedures. Formal investigations should be conducted by others. When a formal investigation is requested, the Ombudsman refers individuals to the appropriate offices or individual

The Ombudsman may be requested or required to speak with public officials, in a private or public setting, about the functions of the Ombudsman Office, or about trends published in a written report. If so, the Ombudsman should still observe the confidentiality standards as stated in 3.1 and 3.3.

4.6 The Ombudsman identifies trends, issues and concerns about policies and procedures, including potential future issues and concerns, without breaching confidentiality or anonymity, and provides recommendations for responsibly addressing them.

The Ombudsman should be particularly careful to maintain neutrality when making recommendations for system change.

4.7 The Ombudsman acts in accordance with the IOA Code of Ethics and Standards of Practice, keeps professionally current by pursuing continuing education, and provides opportunities for staff to pursue professional training.

4.8 The Ombudsman endeavors to be worthy of the trust placed in the Ombudsman Office.

¹See www.ombudsassociation.org/standards-of-practice-code-of-ethics

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