

The Peacemaker

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Ombuds in Private Law Firms? Lessons Learned from My Work at the NC State Faculty Ombuds Office

By Roy Baroff

Back in 2007, I attended an ombuds training offered by the International Ombudsman Association with the idea of adding an ombuds service to my existing work in the ADR field. I imagined the ombuds role as a bringing together of my conflict resolution skills, including my mediation and facilitation experience, and connecting it to an organization in an ongoing relationship. I also wondered aloud about whether such a service might be helpful to law firms in a commentary that was published in North Carolina Lawyers Weekly.

Fast forward to 2016. As part of my dispute resolution practice, beginning in December 2014, I established and now staff (on a part-time basis) the N.C. State Faculty Ombuds office. I've found the work does indeed bring together a range of conflict resolution skills and allows me as a practitioner to connect with and build ongoing relationships with the institution and people being served. With this background, let me provide a brief explanation of the ombuds role and consider what role it might play in the legal field.

First, let's tackle the word "ombuds" itself. It comes from the Swedish term "ombudsman," meaning "representative." The ombudsman role in Sweden was to safeguard the rights of citizens when needed to support existing laws. Over time, the concept of an organizational ombuds spread to U.S. colleges and universities in the 1970s and to businesses in the 1980s. Today the term ombudsman has morphed to "ombuds" or "ombudsperson," although some have kept the traditional Swedish term. I prefer the term "ombuds."

Generally, in defining the role, an ombuds can be thought of as a dispute resolution champion for an organization by providing independent, impartial, confidential, and informal issue and conflict resolution services. An ombuds provides a range of services, including: listening; coaching an individual in a conflict by helping one consider options or prepare for a difficult conversation; providing policy and procedure information; serving as mediator for a situation; investigating concerns raised; and providing an organization with information about trends that need attention. An ombuds can be an employee or contractor to an organization and is set up in a structure that is outside the normal chain of command, with direct access to the CEO, board, chancellor, or others at high levels of the organization. At N.C. State, the Faculty Ombuds Office is not part of any department and reports administratively directly to the chancellor and provost.

The benefits of an organizational ombuds include early resolution of conflict, saving individuals and organizations relationships, time, and money. An ombuds service can enhance productivity and retention. An ombuds can also provide employees with a confidential and informal resource. Further, in addition to providing individual services, an ombuds can play a larger role by identifying systemic issues and trends, passing this information on to the appropriate person in the organization while maintaining the confidentiality of the information source. An ombuds without significant experience with the institution being served can

also offer an “outsider” perspective that may be helpful. Overall, an ombuds can help create an organizational atmosphere that is open and willing to address conflict. The office can help build conflict competence. At the N.C. State Faculty Ombuds Office, we “think and do” conflict resolution, matching the strategic approach taken by N.C. State as a whole.

My experience at N.C. State confirms my belief that an ombuds could serve a valuable role in many private law firms. Back in 2007, I did some research and, according to Sara Thacker, an associate ombuds at the University of California – Berkeley campus and former faculty member and Hewlett Fellow at the Georgetown University Law Center, there are very few law firm ombuds to be found. Thacker wrote an article in the “Independent Voice,” the quarterly newsletter for the International Ombuds(man) Association, titled “Where are the Ombuds? The Hidden Potential of Law Firm Ombuds,” where she noted that many aspects of our legal culture both call for and create barriers to the introduction of an ombuds.

With respect to the ombuds feature of neutrality and confidentiality, Thacker explained that lawyers are “[t]rained to win arguments and rewarded for good analytical and decision-making ability, [and] competitive by nature.” Accordingly, “[a]ssociates who have concerns or questions might not raise them with HR, a partner, supervisor, or even another colleague for fear of being judged or not measuring up to their peers.” A neutral and confidential ombuds could provide a safe and non-judgmental setting for an associate or staff member to bring and discuss concerns.

Thacker also noted that lawyers understand that making “formal complaints” about supervisors or co-workers in their firms may have significant career implications. Lawyers may be worried that sharing concerns about a colleague’s performance, such as a serious violation of ethics rules, impairment, or incompetence, may cause them to be blacklisted inside and outside of their firm. Elizabeth Pino, who started the first law firm ombuds office in the country at Palmer & Dodge, LLP in 1992 and became the Director of Ombuds Programs at McKinsey & Company, described having an ombuds as “no risk, no regret.” In other words, an informal and confidential discussion with an ombuds is not formal

notice to an organization on a particular issue.

What else could an ombuds do for a law firm? An ombuds may help with retention. Data from the National Association for Law Placement (NALP) reported by Russell Ford in his article “Why associates leave. How to get them to stay.” (The Complete Lawyer - Vol. 3, No. 4) back in 2007 showed that “one of every seven associates changes jobs within a given year” and “[r]oughly 8 in 10 associates will leave their firms by the time they are in their fifth year of practice.” Ford argued that promoting positive relationships between attorneys is a step that aids retention. Providing associates with clarity about partnership tracks is another, as is a commitment to ongoing training and mentoring. An ombuds within a law firm might be able to assist with these tasks. For example, an ombuds could coach an associate in preparation for a conversation about partnership or a staff person seeking advancement. Additionally, an ombuds could help reduce workplace conflicts, allowing attorneys and staff to maintain a clear focus on the firm’s mission and work flow. While Ford’s data from 2007 may not fully reflect today, nonetheless, retention and a more harmonious and productive work environment remain significant issues in the legal field.

Finally, a law firm ombuds may be able to spot organizational or industry-wide trends that can be brought to the firm’s leadership for consideration. As an outsider to the management structure of the firm, the ombuds is able to present such information in a neutral and detached way. The ombuds can also recommend that the firm review its policies and procedures to ensure a more supportive and just workplace.

In sum, I’ve found my job as the first Faculty Ombuds for N.C. State University to be both challenging and rewarding, and I am truly honored to serve in this role. Based on my experience to date and because of the many benefits an ombuds role provides, I encourage lawyers to learn about the ombuds role and believe private law firms should consider employing ombuds.

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