



National Association of College and University Attorneys  
Presents:

## **What General Counsel Need to Know About Ombuds**

**Webinar**

**May 30, 2023**

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9:00 AM – 10:15 AM Pacific

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**Ellen Miller**

International Ombuds Association

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A new resource that details Ombuds Confidentiality will be available after June 15, 2023  
<https://www.ombudsassociation.org/creating-an-ombuds-office>

*This webinar has not been accredited for CLE. The following educational course materials are provided for informational and illustrative purposes only and do not constitute legal, tax or other formal advice.*

## What General Counsel Need to Know about Ombuds



**Janet P. Judge** is a Partner with the Education & Sports Law Group, LLC. An active association member since 2004, Janet currently serves on the on the NACUA Board and the Committee on Programming for the Annual Conference. She has presented, moderated, and led group discussions at more than 25 NACUA events, is an instructor for NACUA’s Title IX Coordinators Training, and co-presented NACUA’s briefing on Title IX and Challenges to Sex-Based Scholarships.

A three-time Lawyer of the Year (Sports), including in 2022 (Boston), Janet is the co-author of the NCAA Manual on Gender Equity, and a contributing author of the NCAA’s Toolkit on Sexual Violence, and HazingPrevention.Org’s A Coach’s Guide to Hazing Prevention, She also serves on the Board of Directors for HazingPrevention.Org and is a member of the American Medical Society for Sports Medicine’s Task Force on Sexual Violence and Harassment in Sport. Janet formerly served on the Board for USA Ultimate, as Vice Chair of the Visiting Committee to Oversee Harvard Athletics, and as an appointed member of the Special Independent Commission on Title IX Resources and Programs for the University of Tennessee.

Janet is a graduate of Harvard College and Boston University School of Law, a former three-sport Division 1 student-athlete, sports administrator, and two-sport college coach. Following law school, Janet clerked for Judge Stahl on the First Circuit Court of Appeals. She is a former recipient of NACUA’s First Decade Award.



**Jessica Kuchta-Miller** (pronounced “cook-ta”), MA, JD, was recently named as the University ombuds at Duke University. Before joining Duke University in the fall of 2022, Jessica served as the inaugural staff ombuds at Washington University in St. Louis for seven years and taught Mediation Theory & Practice as an adjunct law professor. She started her career as an organizational ombuds at the University of Colorado Boulder as an associate ombuds where she worked with students, staff, and faculty. Prior to becoming an organizational ombuds, Jessica worked for 11 years at Mitchell Hamline School of Law in St. Paul, Minnesota. At Mitchell

Hamline, she taught as an adjunct clinical professor for the law school’s Mediation Clinic, where she

developed curriculum and supervised law student mediators in area conciliation and housing courts. She also served for five years as a project administrator for Mitchell Hamline's nationally-ranked Dispute Resolution Institute. While at Mitchell Hamline, she was appointed by the Minnesota Supreme Court to the Alternative Dispute Resolution Ethics Board whose purpose is to promote the ethical use of alternative dispute resolution in the state courts.

A licensed attorney and qualified neutral, she has presented at numerous conferences and seminars and has trained hundreds of individuals in mediation, negotiation, conflict resolution, and communication skills.

Jessica is an active member of the International Ombuds Association (IOA)--the largest professional association of organizational ombudsman practitioners worldwide. She recently completed a term on the board of directors and currently serves as IOA's primary representative to the National Academies of Sciences, Engineering and Medicine's Action Collaborative on Preventing Sexual Harassment in Higher Education. She is a member of the Advocacy Committee, frequently teaches the Foundations of the Organizational Ombuds course and mentors new ombuds.



**Ellen Miller** became the second Executive Director of the International Ombuds Association. She is a collaborative, creative leader with more than 25 years of association and governance experience including organizational management, program development, advocacy, stakeholder engagement, service implementation, and strategic planning /positioning. A trained mediator and facilitator, Ellen has a proven ability to develop and maintain strong, effective relationships to create sustainable solutions. Ellen is particularly recognized for her skills in assessing, prioritizing, and aligning organizational big-picture needs and working collaboratively to develop

effective solutions. She is seen as a problem-solver and innovator in organizational management and stakeholder engagement. Born and raised in Canada, she addresses DEIB and other association opportunities through a unique lens.

Previously, Ellen served as Executive Director of the California Lawyers Foundation, and Associate Executive Director (Initiatives and External Relations) of the California Lawyers Association where she provided strategic direction and organizational development for a myriad of new programs and initiatives including DEI, access to justice, health and wellness, public education, and bar relations, and several foundational projects. Prior to joining CLF/CLA, she served as the Executive Director/CEO of the San Diego County Bar Association and as Section Director of the Section of Dispute Resolution at the American Bar Association.

An active volunteer, she is president of the National Association of Bar Executives and a member of the American Society of Association Executives and the California Society of Association Executives. In her spare time, she loves to cook, golf with her husband, visit her daughter at Bryn Mawr College in Philadelphia, PA, and is completing a certificate in Change Management from Cornell. She lives in San Diego, CA.



**Steven Prevaux** is the Faculty and Staff Ombuds for the University of South Florida serving over 15,000 employees across campus locations in Tampa, St. Petersburg and Sarasota. Steve served as General Counsel for the USF Board of Trustees for 12 years prior to launching the Ombuds Office in 2016. He is an active Certified Organizational Ombudsman Practitioners (CO-OP©) and Florida Supreme Court Certified Circuit Civil and Appellate Mediator. He earned separate Board Certification as a Legal Specialist in Education Law (2011-2021) and has been named as among the “Florida Legal Elite” by Florida Trend Magazine.

While serving on the Board of Directors of the International Ombudsman Association (IOA) he was elected Vice President (2020-2022). He previously served on the Board of Directors the Florida Academy of Professional Mediators (FAPM) and of the National Association of College and University Attorneys (NACUA). He is a founding member of the Florida Bar Education Law Committee and was awarded “Top Corporate Counsel” by the Tampa Bay Business Journal in 2014.

Steven earned his B.A., with distinction, from the University of Michigan in Ann Arbor and his J.D. from the University of North Carolina at Chapel Hill. He received a Fulbright award and participated in the Fulbright International Education Administrators Program in France in 2015. He has served as an IEA Peer Reviewer for the U.S. Fulbright Commission.



## IOA STANDARDS OF PRACTICE

### 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.

### STANDARDS OF PRACTICE

#### 1. INDEPENDENCE

- 1.1 The Ombudsman Office and the Ombudsman are independent from other organizational entities.
- 1.2 The Ombudsman holds no other position within the organization which might compromise independence.
- 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.
- 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.

#### 2. NEUTRALITY AND IMPARTIALITY

- 2.1 The Ombudsman is neutral, impartial, and unaligned.
- 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.

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

### 3. 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.
- 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.



- 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 the Ombudsman 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.
- 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.
- 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.
- 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.

#### 4. 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.
- 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.
- 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.



- 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.
- 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.
- 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.

<sup>1</sup> The term "Ombuds" includes all applicable nomenclature in use for an organizational ombudsperson.  
International Ombuds Association [www.ombudsassociation.org](http://www.ombudsassociation.org)

Adopted 17 March 2022



## CODE OF ETHICS

### PREAMBLE

The International Ombuds Association (IOA) is dedicated to excellence in Organizational Ombuds<sup>1</sup> practice. The Code of Ethics provides Practice Principles and Core Values that are the foundation for the IOA Standards of Practice.

This Code of Ethics reflects IOA's commitment to the establishment of consistently structured Ombuds programs, ethical conduct by Ombuds, and the integrity of the Organizational Ombuds profession.

### CORE VALUES

The Ombuds role requires Ombuds to conduct themselves as professionals. The following Core Values are essential to the work of Ombuds:

- Act with honesty and integrity;
- Promote fairness and support fair process;
- Remain non-judgmental, with empathy and respect for individual differences;
- Promote dignity, diversity, equity, inclusion, and belonging;
- Communicate accurate understanding through active listening;
- Promote individual empowerment, self-determination, and collaborative problem-solving; and
- Endeavor to be an accessible, trusted, and respected informal resource.

### FUNDAMENTAL PRINCIPLES

#### INDEPENDENCE

The Ombuds is independent in structure, function, appearance, and decision-making. The Ombuds reports to the highest possible level within the organization and does not report to a function or entity that could affect, or be perceived as affecting, the Ombuds' independence.

#### IMPARTIALITY

The Ombuds is a designated neutral and impartial resource who does not take sides or serve as an advocate for any person or entity. The Ombuds avoids conflicts of interest and conduct that could be perceived as a conflict of interest.

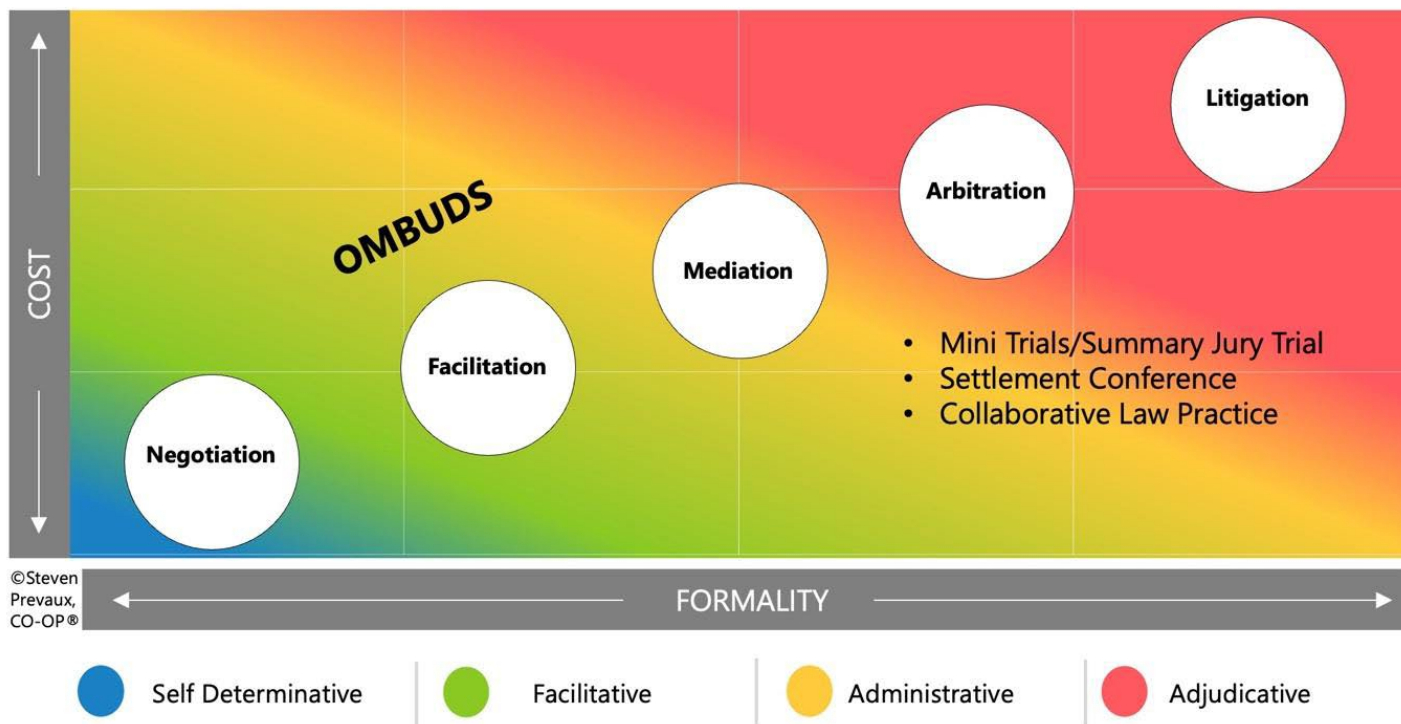
## INFORMALITY

The Ombuds does not participate in any evaluative, disciplinary, legal, or administrative proceedings related to concerns brought to the Ombuds' attention. The Ombuds is not authorized to make business and policy decisions or conduct formal investigations on behalf of the organization. The Ombuds is not an agent of the organization for purposes of receiving notice of claims against the organization and is not authorized to be a formal reporting channel for the organization on matters brought to the Ombuds' attention except when specifically and expressly mandated by law.

## CONFIDENTIALITY

Confidentiality is the defining characteristic of Ombuds practice. The identity of those seeking assistance from the Ombuds and all communications with them are confidential to the maximum extent permitted by law. The Ombuds may, at their sole discretion, disclose confidential information when the person seeking assistance gives permission to do so; when failure to do so might result in an imminent risk of serious harm; or as necessary to defend against a formal complaint of professional misconduct.

# Organizational Conflict Matrix



# Why Should My Organization Have an Ombuds?

## The Value of the Organizational Ombuds Role

Whether you are in a Higher Ed, corporate, government, NGO/association, K-12 or research setting, adding an organizational ombuds is a proven and effective way to:

- Build and improve workplace culture
- Support employees and other stakeholders
- Provide an informal and confidential space to identify and address issues
- Support DEIB efforts including racial and social injustice
- Support those impacted by harassment
- Prevent bias and harassment issues from escalating
- Reduce complaint investigation time
- Reduce litigation costs
- Reduce employment litigation insurance premiums.
- Improve governance
- Address interpersonal and group conflict
- Uncover and address systemic issues to create healthier organizations, and
- A myriad of other concerns

Below are several resources to help you learn more. Whether you are in the C-suite or hold another leadership position in your organization, serve on a Board of Trustees or Directors, or are a lawyer advising organizations or shareholders, the International Ombuds Association is here to help you get started. Contact our Executive Director, Ellen Miller at [emiller@ombudsassociation.org](mailto:emiller@ombudsassociation.org) to set up an appointment.

<https://www.ombudsassociation.org/why-should-my-organization-have-an-ombuds>

# What Is an Organizational Ombuds? <sup>1</sup>

Organizational ombuds help both people and organizations. They help people resolve conflict and surface issues by providing information, offering coaching and guidance, and assisting people in developing options for taking action. They also help organizations by providing feedback to an organization’s senior leadership about systemic issues and trends in the organization without disclosing the identities of or any confidential communications with those who consult with the ombuds (commonly called “visitors”).

The ombuds (or ombudsman or ombudsperson) concept is relatively new in the United States, having first been introduced in the early 1960s and subsequently evolving in divergent ways in government, colleges and universities, and business organizations. As a result, there are other types of ombuds who function differently from organizational ombuds, but these differences are not well understood, with the result that many people believe or assume erroneously that all ombuds are the same, when they are not. This has led to confusion about what an organizational ombuds is and does. Because this book is focused solely on *organizational* ombuds, however, it is important to begin by summarizing what organizational ombuds programs are and what they do and do not do.

The work and structure of organizational ombuds programs are based on compliance with four key practice principles: independence, impartiality, informality, and confidentiality. These principles are embodied in the International Ombuds Association’s (IOA’s) Code of Ethics and Standards of Practice.

Ombuds programs that comply with the IOA Code of Ethics and Standards of Practice operate independent of management, reporting to the highest level possible in the organization. Though most frequently embedded in an organization, they can be created as external resources under a contract with an organization. They are designed to be neutral and impartial, neither part of management nor advocating for employees or other groups served by them. They advocate only for fair process. They are a valuable ADR (alternate dispute resolution) mechanism, using tools such as mediation, facilitated conversations, supplying information, and coaching to help people resolve conflict. As such, they operate informally. They do not maintain business records for their organizations, and they are not a “formal channel” of the organization to be used to notify the organization if someone wants to assert a claim against it. Because organizational ombuds are independent, impartial, and informal, they also can have the superpower of being confidential—which both makes them distinct and unique compared to formal channels and makes them a safe place and ideally suited to help people resolve conflict or surface issues that they are unwilling or afraid to bring to formal channels.

The practices of organizational ombuds programs grounded on these principles have transcended the organizational settings in which they operate. Organizational ombuds—whether in corporations, universities, or government—now function in remarkably similar ways.

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<sup>1</sup> Shared with permission, from Chuck Howard: [A Practical Guide to Organizational Ombuds: How They Help People and Organizations](#), pp. 3-6, Charles L. Howard, American Bar Association (2022).

Even though the practices of organizational ombuds have coalesced around the IOA Standards of Practice, a final point about these ombuds is important: ombuds services today can be delivered in a wide variety of ways that can be adapted to the needs of an organization and the context in which they operate. Ombuds can be employees or external services providers, they can be full time or part time, they can be created in multinational corporations and small organizations, and they can be created in virtually any organizational setting. While the daily work of an ombuds might vary somewhat depending on the organization and the constituents served, organizations should understand that they can design a program that complies with the IOA Standards of Practice to meet virtually any organization's needs and objectives. For simplicity and clarity, let me summarize what organizational ombuds do and do not do.

Organizational ombuds DO the following as a confidential resource:

- Assist people at all levels in the organization as an easily accessible (“no-barrier”) resource
- Listen to people to help them sort or frame issues to navigate situations
- Serve as a source of information or a sounding board for visitors with sensitive or confidential concerns
- Explain process, policies, and procedures and advocate for fair process
- Provide assistance on a full spectrum of issues
- Provide a safe place where people can develop options BEFORE taking action to address their concerns
- Help people consider and evaluate formal and informal strategies to resolve conflict or report misconduct
- Provide coaching on virtually any organization-related matter, including on how visitors can best articulate concerns
- Provide mediation and facilitated conversations with the permission of the participants
- Provide trend and reporting of systemic issues to senior leadership of the organization both on an “as needed” basis and through annual reports
- Serve as an early warning “listening post” for the organization to identify emerging issues
- Maintain confidentiality, except in very limited situations such as where the ombuds determines there to be an imminent threat of serious harm or the visitor gives permission and the ombuds agrees to make a disclosure
- Provide conflict resolution training and education for the organization
- Complement formal channels—such as managers, human resources, and compliance personnel by helping people who will not or who are afraid to go directly to those channels

As important as it is to understand what organizational ombuds do, it is just as important to know what they do not do. Organizational ombuds DO NOT:

- Have authority to receive notice of claims against the organization
- Have management responsibility except for their own office
- Have authority to conduct investigations or engage in fact finding
- Have authority to make management decisions or policy
- Advocate or take sides between management and employees or leadership and other constituencies



- Maintain business records of confidential communications for their organization
- Serve as a substitute for formal channels
- Testify or produce documents with respect to confidential communications in formal, legal, or administrative proceedings.



## Ombuds Office Programs Complement the Roles of Other Conflict Management Channels

Roles and Responsibilities of Various Offices	Formal Channel Hotline	Other Formal Channels: Ethics, HR*, Compliance	Informal Ombuds
Designated as a neutral	NO	NO	YES
Configured to be independent of ordinary line and staff management structures and operates as an informal entity reporting to top management and/or board members	NO	NO	YES
Makes management decisions; sets and enforces policy	NO	YES	NO
Performs formal investigations, acts an advocate, accepts appeals	NO	YES	NO
Provides a channel to give the organization notice of claims against it	YES	YES	NO
Maintains business records for the organization	YES	YES	NO
Provides internal and external compliance reports for the organization	YES	YES	NO
Accepts anonymous calls; provides anonymity	LIMITED	LIMITED	YES
Provides data from a neutral viewpoint to the Board and senior executives	LIMITED	LIMITED	YES
Acts as proactive change catalyst to help prevent problems	NO	YES	YES
Provides a channel for employees and managers to seek confidential guidance, based on assertion of a privilege under Federal Rule of Evidence 501 and based on the terms under which the ombuds program is made available	NO	NO	YES
Allows employees to maintain control and determine resolution options (except for cases with imminent threat of serious harm)	NO	NO	YES
Provides off-the-record coaching for options to resolve problems and guidance to get information to the most appropriate channel in a timely manner	NO	NO	YES
Provides guidance and options for all cohorts, throughout the entire organization, on all types of work-related issues	NO	NO	YES

\*Also includes Corporate Secretary, Legal, Line Management, Audit, Security, and Finance.

“Cutting Edge Advances in Resolving Workplace Disputes” in CPR MASTER GUIDES on Conflict Prevention and Resolution, Jay W. Waks, Nancy L. Vinderlip and David B. Lipsky, Cornell University (2014). Used with permission of Mary Rowe (MIT).

# ORGANIZATIONAL OMBUDS BENEFITS



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## CONTACT

**International**

**Ombuds Association**

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<https://www.ombudsassociation.org>

## COLLEGE & UNIVERSITY COUNSEL

RE: TOP 10 BENEFITS OF ORGANIZATIONAL OMBUDS

Dear College & University Counsel,

Congratulations on using your legal skills to advance the mission of education! So many of us were attracted to this noble calling through a heartfelt desire to help others learn, grow, and succeed. If this sounds familiar, then please consider how the rapidly developing profession of Organizational Ombuds can further empower your mission now. In the brief form of a “Top 10” list here are some essential ways that ombuds can help college and university counsel succeed:

### **10. Reputational Preservation**

Avoiding unnecessary reputational damage to individuals and institutions is possible with early interception. Because Ombuds maintain strict confidentiality, those who use their services remain confident in discretion and communications that would harm reputations dissipate.

### **9. Liability Mitigation**

Claims avoidance and cost mitigation are resulting outcomes of treating people fairly and identifying pathways for practical resolutions of concerns. Ombuds respond early in the conflict cycle diffusing matters and averting escalation into legal, financial or governance liabilities.

### **8. Healthy Conflict Engagement**

Ombuds model ways to engage conflict directly and constructively using established ethics and data-informed practices. Equipping others with tools to effectively deescalate conflict builds individual awareness, boosts engagement, and nourishes creativity plus productivity in the organization.

## **7. Promoting Organizational Wellness**

Organizations that provide Ombuds resources send a powerful message to faculty, staff and students that the university genuinely cares about their individual success. Resolving disputes, conflicts and concerns of consequence strengthens relationships resulting in greater productivity yielding positive results. Hearing the “unheard” advances fairness.

## **6. Enhancing a Culture of Compliance**

Filing a formal complaint is often an intimidating process for employees or students. Undisclosed complaints, unresolved conflicts and ambiguity create compliance gaps leaving individuals in uncertainty. Impartial ombuds services provide an effective option and may help demonstrate compliance with U.S. Sentencing Guidelines and the Sarbanes-Oxley Act. Ombuds help individuals who are uncertain of options, fearful of retaliation or unaware of processes and options before deciding upon action.

## **5. Bridging the Information “Divide”**

When high profile cases break in the media, the public often asks, “why didn’t anybody say something!?” Fear of reprisal and distrust creates information valleys impeding the flow of critical negative information. The desire and power to take corrective action rests idle when leadership never receives notice. Ombuds appropriately bridge divides by surfacing credible alerts. Individuals retain their agency with respect.

## **4. Collaboration Over Conflict**

Conflict without trust breeds confusion. Constructive dialogue that facilitates robust consideration of different perspectives catalyzes innovation. Ombuds facilitate direct and open communication fostering collaboration in lieu of acrimonious interpersonal disputes. Unlike many formal process options, ombuds services generally restore relationships.

## **3. Reporting Trending Concerns**

Spotlighting trending concerns and detecting patterns of persistent problems are inherent returns-on-investment from a well-structured Ombuds office. Ongoing feedback to stakeholders via Ombuds provides systemic information that would not typically surface to management.

## **2. Hearing Different Frequencies**

Every good in-house attorney has realized that there are some liability precursors beyond their capacity to detect. Because Ombuds listen, constantly and deeply, they may detect fulminating concerns before talent leaves or formal complaints are filed. Ombuds may hear “pre-whistleblower” concerns that, if listened to fully, may be amicably resolved without the need for external intervention.

## **1. Counsel for Counsel**

Upon appropriate occasion a university Provost, President or even General Counsel may have need for a crucial personal conversation. The existing professional roles and boundaries incumbent upon such leaders makes it exceedingly difficult to find a professional colleague for sound-

boarding who understands the corporate culture in context, possesses the skills to help and abides by the ethics to keep true confidence.

Respectfully,

**Steven D. Prevaux, Esq., CO-OP®**

Faculty Staff Ombuds- University of South Florida

Florida Supreme Court Certified Mediator

NACUA Board Member 2006-2009

USF General Counsel 2003-2015

IOA Vice President 2020-2022



## **Is it time to Call the Ombuds? How Organizational Ombuds Help Increasingly Complex Organizations**

Ellen M. Miller, Executive Director of the International Ombuds Association

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Today, a growing number of corporations, non-profits, government agencies and world-class university systems are experiencing the disruptive power of social, political, economic and technological change.

A younger generation is joining the workforce, challenging long-held management and organizational norms. Technology continues to change professional interactions, personal relationships and our perceptions of others. An unprecedented volume and variety of information is shared, consumed and internalized in entirely new ways. And more than ever, communities reflecting a greater diversity of backgrounds, experiences, beliefs, values and viewpoints are making their voices heard and driving the demand for progress.

Add to these trends the challenges associated with COVID and return-to-office policies, gender equity issues, the #MeToo movement, a tumultuous reckoning over race, and other potential stressors, and there has perhaps never been a more complex or fraught time for those who manage organizations or the people they employ.

In this complex environment, executives and other leaders remain under increasing pressure to manage costs, pursue growth, achieve mission objectives and avoid risk – while demonstrating measurable effectiveness.

From Fortune 500 companies to renowned academic institutions to government entities, an ever-growing number of organizations are turning to organizational ombuds as sources of information, insight and guidance.

These often unseen and heralded individuals – found in workplaces around the world – act as constructive problem-solvers who provide valuable insights toward building communities, organizations and workforces built on fairness, justice, equity and inclusion.

But what exactly is an ombuds<sup>2</sup>, and what do they do? The short answer is this: ombuds and their offices offer a safe place for confidential communication and the ability to discuss

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<sup>2</sup> The type of ombuds referenced in this article are organizational ombuds



resources, options, and processes – before an employee chooses to take action with regard to a professional conflict, problem or challenge.

Supplementing traditional HR, legal and compliance channels and departments, an ombuds acts as a no-barrier, first-stop for employees, as well as executives, managers and others seeking guidance, information and insight from a trusted advisor who is independent, impartial, informal and always confidential.

An ombuds is not part of management, but also does not represent the individuals they work with. An ombuds does not take sides, instead working to develop options to address or surface issues that support empowerment and fair process – for individuals seeking assistance, and for the organization that employs them. Their work allows people to quickly resolve conflicts and get back to the business of pursuing their personal and professional goals.

What does this mean for leaders? For organizations and organizational leaders of all types, ombuds help survey the terrain, assess risk, monitor trends, help address challenges, and surface and identify issues the C-Suite needs to know about. In doing so, they often help organizations avoid litigation and costly damage to brands and reputations.

In its most recent survey of practicing organizational ombuds, the International Ombuds Association (IOA) found that ombuds routinely deal with serious workplace issues that entail high potential costs, and major gains or losses of possible benefits for “all constituents involved ... and for their organizations.”<sup>3</sup>

The IOA found that serious cases reported by ombuds in 2022 included sexual and racial harassment, disrespectful treatment and bullying, retaliation, unspecified ethics issues, safety issues, potential suicidal and homicidal behavior, gross negligence, research and financial misconduct, various forms of sabotage, insider threats, national security issues, and a variety of other integrity concerns.

“Savings in costs in a single high-risk case — if the case is handled effectively — may more than offset all the costs of an ombuds office,” their research concluded.

With the cost of workplace conflict estimated at \$359 billion per year<sup>4</sup> and more than \$144,000 per day lost to interpersonal conflict, miscommunication and poor decision-making, the impetus for effective conflict resolution has never been greater.<sup>5</sup>

In fact, IOA members report that “serious cases” are becoming even more complex. Today those cases often include multi-race-and-ethnic concerns, complex gender issues, multi-generational concerns, cases across units, cases involving conflicting rules, more cases with

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<sup>3</sup> International Ombuds Association 2022 Practice Survey © 2022; Communicating the Value of the Ombuds: Data about the Most Serious Cases, © 2022 Mary Rowe, Timothy Hedeem, Jennifer Schneider, and Hector Escalante.

<sup>4</sup> *CPP Global Human Capital Report*, July 2008, pg. 3. Based on average hourly earnings of \$17.95, seasonally adjusted, non-farm workers. Bureau of Labor Statistics, May 2008.

<sup>5</sup> *Harvard Business Review*, “Putting a Price on People Problems at Work,” by Tanya Menon and Leigh Thompson, August 23, 2016.

groups, and cases with bystanders. Organizational ombuds also reported more cases requiring consultation with compliance officers and counsel – driving the impetus for systemic responses.

Informing leaders who can driving positive, system change is central to the ombuds' role in creative problem-solving that can create and sustain strong and resilient communities and effective organizations. To the end, their work empowers individuals and their organizations to overcome disputes, conflicts and barriers that stand in the way of reaching their full potential.

How do they do it? It varies. An ombuds may conduct training and education, and coaching and facilitation for organizations and individuals facing challenges large and small. These may include workplace and employee conflicts, whistleblowing and compliance issues, or ethical, legal and policy violations.

For individuals, ombuds offer coaching, mediation and dispute resolution, but they don't just wait for problems to occur. Ombuds also identify systemic issues that keep leaders up at night to help them make informed business, policy and management decisions. They build and strengthen productive and effective relationships between organizational departments and professionals and perform outreach to diverse constituencies and stakeholders about alternatives to traditional conflict resolution.

But fundamentally, for the individuals who visit their offices, they provide a safe place to go for information and confidential guidance – a service becoming highly sought-after in a world of increasing complexity, uncertainty and accelerated change.