

NEW MEXICO Lawyer

July 2018 Volume 13, No. 1

www.nmbar.org

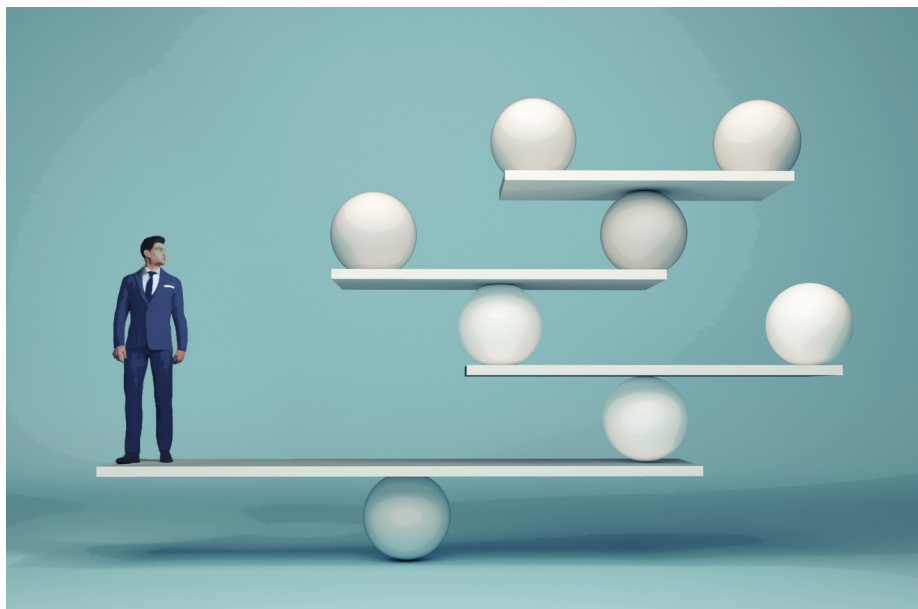


Steering ADR
Into the Future—
*Discussions and Updates on
Alternative Dispute Resolution*

Alternative Methods of Dispute Resolution Committee

Classical, Advocate, and Organizational: An Overview of Ombuds from Scandinavian Origins to the Governments, Corporations, and Universities of America

by Jon Lee



In 2017, the American Bar Association House of Delegates unanimously passed the following resolution:

“RESOLVED that the American Bar Association encourages greater use and development of ombuds programs...as an effective means of preventing, managing, and resolving individual and systemic conflicts and disputes.”

The term *ombud* (or *ombudsman*, *ombudsperson*) refers to an individual who offers conflict management resources as an alternative to formal channels, reports misconduct, or investigates allegations of malfeasance. The profession has evolved into three major distinctions: Classical, Advocate, and Organizational.

The Origins and Spread of Ombuds
King Charles XII of Sweden appointed the first ombud in 1713. The role was codified in the Swedish Constitution of 1809 under the term *Justitieombudsman*, or “the agent of justice” for the common man. The concept of ombuds spread throughout Europe with Finland establishing a similar role in 1919, Denmark in 1954, and Norway in 1963. Canada and the United

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Kingdom established ombuds in the 1960s, and the United States created its first ombud in 1966.

The first United States academic institution to create an ombuds program was Eastern Montana College in 1966. Hawaii was the first government to create an office in 1969, and the Nursing Home Ombudsman Project in 1972 was precursor to long-term care ombudsmen established by the Older Americans Act. By the end of the 1970s, an estimated 190 universities employed ombuds, and in 1987 roughly 200 corporations maintained ombuds offices. During the same time, ombuds programs opened in the U.S. Department of Health, Education & Welfare, the Smithsonian Institute, and the U.S. Secret Service.

Formal Definitions

The American Bar Association defines ombuds as those who:

“...receive complaints and questions from individuals concerning people within an entity or the functioning of an entity. They work for the resolution of particular issues and, where appropriate, make recommendations for the improvement of the general administration of the entities they serve.”

The United States Ombudsman Association describes the classical ombud as:

“...an independent, nonpartisan officer of the legislative branch. This enables the Ombudsman to be independent of the executive agencies under his or her jurisdiction and identifies the Ombudsman’s investigative role as an extension of the power of legislative oversight.”

The International Ombudsman Association describes an organizational ombud as:

“...a designated neutral who is appointed or employed by an organization to facilitate the informal resolution of concerns of employees, managers, students, and, sometimes, external clients of the organization.”

Classical Ombuds

The primary duty of a classical ombud is to receive complaints from government workers and the general public about the actions of government officials and public employees. The classical ombud has investigative authority and may issue subpoenas and public reports on investigative findings, and push for systemic change internally and publicly.

“At the conclusion of an investigation, the Ombudsman may make findings and recommendations for corrective action, as appropriate. However,

the Ombudsman has no power to enforce these recommendations or to compel an agency to take any corrective action, and instead, must rely on reasoned persuasion. Therefore, the findings, conclusions, and recommendations the Ombudsman makes must be fair and reasonable, firmly grounded in fact, administratively sound, and in accordance with law.”

As an example, the King County Ombuds Office in the state of Washington opened 665 cases and inquiries from residents and county employees between September 1, 2017 and February 28, 2018. Twenty-six of those cases were classified as investigations, and the “allegations that initiated these investigations related to potential improper administrative conduct, as well as violations of the county’s ethics and whistleblower codes, including allegations of conflicts of interest, retaliation, and improper governmental action.”

Organizational Ombuds

According to the International Ombudsman Association, organizational ombuds “facilitate fair and equitable resolutions of concerns held by members within an organization.” They do not advocate for any particular individual, group, or the organization itself, and they function informally as complements to formal processes. Unlike classical and advocate ombuds who have authority to investigate or provide assistance, the organizational ombud provides neutral and impartial services such as one-on-one visits, mediations, group facilitations, training, resource referrals, and trend reporting.

At the University of New Mexico, the Ombuds Services for Staff Program provided 288 one-on-one visits and 15 two-party mediations in 2017 supporting employees of the university with “building communication and collaboration to reduce the human and organizational costs of conflict.” The program identified Respect/Treatment, Communication, and Supervisory Effectiveness under the category of Evaluative Relationships as the top three conflict trends reported by visitors that responded to an anonymous feedback survey. When asked what they would have done without Ombuds Services, 28.4 percent of respondents indicated that they would have left UNM

and 29 percent would have changed positions within the University.

Advocate Ombuds

Advocate ombuds work on behalf of specific populations designated in their establishing charters. They have authority to represent the interests of the populations they serve, and they provide individual complaint assistance while simultaneously pursuing opportunities to affect systems change. Advocate ombuds have the authority to provide information, advice, and assistance to their constituents and initiate judicial or administrative actions on behalf of individuals.

One example is the United States Long-Term Care Ombuds Program. In 2015, the 53 State ombuds in the program provided information regarding long-term care to 398,057 individuals. The program resolved or partially resolved 74 percent of all complaints to the satisfaction of the complainants and worked to resolve 199,238 complaints

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initiated by residents, their families, and other concerned individuals. The three most frequent nursing facility complaints handled by ombuds were improper eviction or inadequate discharge/planning, unanswered requests for assistance, and lack of respect for residents/poor staff attitudes.

Conclusion: The Benefits of Ombuds Services

Ombuds of all kinds give individuals the opportunity to speak openly and honestly about issues they identify and a place to find resources and assistance when navigating through those issues. They can also provide “upward feedback” by communicating with leadership of organizations and governments regarding risks and trends.

The economic benefits of ombuds come in the form of preventative risk management,

expanded productivity, reduced turnover, and preserved management time. The organizational benefits include heightened accountability and increased ethical behaviors. Lastly, the humanitarian benefits are expanded fairness, improved and preserved working relationships, reduced incivility, and greater professional satisfaction. ■

Endnotes

¹ See Resolution 103 (2017 Resolution), ABA Resolutions with Reports to the House of Delegates, available at: https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/2017_hod_annual_electronic_report_book.authcheckdam.pdf (last accessed May 21, 2018).

² Janzen, Fred G. (1971). A Historical Study of the Campus Ombudsman in United States Higher Education (Doctoral Dissertation). Retrieved from <https://ttu-ir.tdl.org/ttu-ir/bitstream/handle/2346/15381/31295002233558.pdf> (last accessed May 21, 2018).

³ “The Organizational Ombudsman: Origins, Roles, and Operations: A Legal Guide,” Charles L. Howard, ABA Section of Dispute Resolution, 2010. pp. 6-9.

⁴ “What is an Organizational Ombudsman,” International Ombudsman Association, available at: <https://www.ombudsassociation.org/Resources/Frequently-Asked-Questions/What-is-an-Organizational-Ombudsman.aspx> (last accessed May 21, 2018).

⁵ Semi-Annual Report, King County Ombuds Office, available at <https://www.kingcounty.gov/~media/independent/ombuds/documents/2018/KCOmbudsSemi-AnnualReport-Sept2017-Feb2018.ashx?la=en> (last accessed June 30, 2018)

⁶ 2017 Annual Report, UNM Ombuds Services for Staff, available at <http://ombudsforstaff.unm.edu/common/images/documents/2017annualreport.pdf> (last accessed June 30, 2018)

⁷ See Long-Term Care Ombudsman Program, Administration for Community Living, available at <https://www.acl.gov/programs/protecting-rights-and-preventing-abuse/long-term-care-ombudsman-program> (last accessed June 30, 2018)

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