

A Law Firm Ombuds – A Program Worth Considering

By Vaughan Finn and Chuck Howard

Corporations, universities, and state and local governments have long recognized that an ombuds is a valuable resource for employees dealing with workplace concerns. An employee troubled by potential improper conduct, unfair practices or other workplace stressors may be reluctant to raise the issue with a supervisor or Human Resources but might willingly explore solutions on a confidential basis with the organization's ombuds. These concerns are at least as common, if not more so, in the law firm setting as in the corporate world. Ombuds have been very effective in helping people within corporate and other organizations raise concerns over misconduct and resolve disputes. Although law firms face the same workplace problems as other organizations – as well as others endemic to the high-pressure practice of law – only a small number of them so far have tried to address these problems by creating their own ombuds position. Yet, based on our experience with ombuds issues generally and the creation of an ombuds program at our own firm, we believe that this is a resource that law firms should consider establishing.

An ombuds is authorized to address any workplace-related concern. Issues range from simple questions about workplace policies, to frictions with co-workers or supervisors, concerns about a co-worker's behavior and mental health, and even alarm over potentially illegal or unethical behavior. The three essential characteristics of an organizational ombuds, in whatever setting, are independence, impartiality and confidentiality.¹ Independence means that the ombuds is not part of management (and, within a law firm, not a partner or "owner" of the business), does not report to a managing partner or committee, and has sole discretion over whether or how to act regarding an individual's concern. Impartiality means that the ombuds is a designated neutral, who remains unaligned and impartial and does not "take sides" when an employee presents a concern. Confidentiality, the most important feature of the role, means that all communications with those seeking assistance are strictly private and will not be disclosed unless the ombuds is given permission to do so.

The promise of confidentiality sets the ombuds apart from management, Human Resources, compliance officers and other formal communication channels. The offer of confidentiality may be particularly important in a law firm setting because client confidentiality issues might underlie a concern brought to an ombuds. Confidentiality promotes disclosure from reluctant complainants, elicits candid discussions, and provides a level of protection against retaliation. A corollary of confidentiality is that communications made to the ombuds do not serve as notice to the organization: the ombuds should not be authorized either to act as an agent for, or to accept notice of claim on behalf of, the organization.

An ombuds also acts informally. The ombuds does not conduct formal investigations or make binding decisions but supplements, and does not replace, existing formal channels of communication. The ombuds' tools include listening, providing information, identifying issues and developing a range of responsive options. Depending on the situation, he or she may serve as an advocate, a sounding board or a facilitator. Only with permission, and at the ombuds' discretion, will the ombuds involve a third party in the discussions. The ombuds also serves as an

independent voice that provides an alternative line of communication to an organization's leadership about systemic issues and trends that need to be addressed.

A law firm and its partners, other lawyers, and staff, like any complex organization, all benefit from the services of an ombuds. Law firms are not immune from the workplace stresses faced by other organizations. In fact, in many ways the pressures on all of these constituents are greater since they are often dealing with highly charged matters of concern to clients with all of the pressures and confidentiality demands that practicing law entails.

Lawyers at law firms are expected to work long hours, bill at ever-higher rates, provide uniformly high quality work, and be available to clients at all times. Junior lawyers face the pressure of making partner; partners face the pressure of bringing in business. As many firms have consolidated into larger, almost corporate-like entities, these pressures have only increased as the demands to increase both hourly rates and billable hours go up. Law firms face other stressors that may be unique to their structure. Practice groups (or departments) are managed by successful lawyers, who are often not trained or naturally suited to address personnel issues, and are likely not evaluated based on leadership or management skills. Human Resources is more naturally oriented to address staff, not lawyer, issues. Regional offices may not readily be subject to centralized control.

Given these circumstances, it may not be surprising that recent studies suggest that anxiety, depression and substance abuse are much higher among lawyers than the non-legal population. In 2016, the Hazelden/Betty Ford Foundation and the ABA Commission on Lawyer Assistance Programs released a study of nearly 13,000 lawyers regarding mental health concerns in the legal profession. The study found that 21 percent of licensed, employed attorneys qualified as problem drinkers, 28 percent struggled with some level of depression, and 23 and 19 percent experienced symptoms of stress and anxiety, respectively.² Forty percent of the respondents worked in private firms. The study supports a widely held view that the legal profession faces significant challenges with regard to attorney well-being. It also found that the most common barriers for attorneys seeking help were fear of others finding out and general concerns about confidentiality "in the competitive, high-stakes environment found in many private firms."

All of these factors suggest that law firm lawyers would benefit from additional forms of communication and support. And, of course, a law firm ombuds program is not just for lawyers. Staff members working for stressed-out lawyers are likely to feel stressed themselves. Here, however, structural problems may hinder the effectiveness of existing channels. While the role of Human Resources personnel includes addressing staff concerns, these employees may not have the authority to change lawyer behavior. An ombuds who has been appointed by (and has the support of) the law firm leadership may be better situated to surface and resolve issues related to attorney behavior, as well as disputes occurring among staff members themselves.

Based on two years of operation at our law firm, we believe an ombuds program does offer a valuable supplemental resource for both attorneys and staff to address a variety of individual and group concerns about firm policies, co-worker and supervisor behavior, and the workplace environment. Our ombuds program has served as a vehicle to convey certain concerns directly to management while preserving confidentiality or to develop strategies for the inquirer

to bring an issue forward. Often, given the stresses of the law firm environment, a staff member or lawyer simply benefits from having a place to talk through a problem.

For all of these reasons, many law firms might find that an organizational ombuds would provide a useful additional channel of communication for lawyers and staff alike. The Attorneys Liability Assurance Society (ALAS), which insures over 60,000 lawyers at over 200 firms, has recommended that law firms adopt an ombuds program as an additional resource in recognition of the fact that some people are just not comfortable raising their concerns through traditional channels, such as the partner in charge of a matter. The website of the Ombuds Committee of the ABA's Dispute Resolution Section provides a sample charter, brochure and other valuable information about law firm ombuds programs and ombuds programs generally, which serve as helpful resources for any law firm interested in creating its own program. (See <http://apps.americanbar.org/dch/committee.cfm?com=DR589600>.)

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¹ See International Ombudsman Association, STANDARDS OF PRACTICE (rev. 2009), available at http://www.ombudsassociation.org/IOA_Main/media/SiteFiles/IOA_Standards_of_Practice_Oct09.pdf.

² Patrick Krill, Ryan Johnson, and Linda Albert, *The Prevalence of Substance use and Other Mental Health Concerns among American Attorneys*, 10 JOURNAL OF ADDICTION MEDICINE 46 (Jan./Feb. 2016) available at https://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx.