

May-October 2010

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American Arbitration Association

Dispute Resolution Services Worldwide

Everything You Ever Wanted to Know about Ombuds

The Organizational Ombudsman: Origins, Roles and Operations
—A Legal Guide

By Charles L. Howard. American Bar Association, ISBN No. 978-1-60442-778-3;
(www.ababooks.org), 2009. Softcover. \$89.95. 642 pages.

Reviewed by James G. Noll

Mr. Noll is a vice president of the American Arbitration Association with the Labor, Employment & Elections Division in the Cincinnati, Ohio, office.

Charles Howard has written a masterful authoritative work on the organizational ombudsman that should be regarded as the leading source of information on ombuds for many years to come.

Early on, Howard makes important distinctions between a “classical” ombuds, an “advocate ombuds” and an “organizational ombuds.” The classical ombuds is an independent government official with the power to issue subpoenas, conduct investigations and issue reports. The advocate ombuds is an independent office within an organization that advocates for a designated constituency. The organizational ombuds “facilitates fair and equitable resolutions of concerns” that arise within an organization and should be authorized to: (1) “undertake inquiries and function by informal processes as specified by the charter,” (2) “conduct independent and impartial inquiries into matters within the prescribed jurisdiction of the office,” (3) “issue reports,” and (4) “advocate for change within the entity.”

The American Bar Association (ABA) has adopted at least two resolutions about ombuds offices. A 1969

resolution identified three essential characteristics of an ombudsman— independence, impartiality and confidentiality. These standards became the model for numerous state and municipal ombuds offices.

A 2001 ABA resolution expanded on the essential characteristics in the

The organizational ombuds facilitates fair and equitable resolutions of concerns that arise within an organization.

earlier resolution. It described what an organizational ombudsman’s jurisdiction should include and should not include. For example, it states that an ombudsman should be authorized to “undertake inquiries and function by informal process as specified by charter” (i.e., a written policy or law establishing the office); conducting independent and impartial inquiries into matters within the prescribed jurisdiction of the office, issuing reports, and advocating for change within an entity. With regard to limits on the ombuds’ role, the resolution states that the ombuds cannot:

(1) make, change, or set aside law, policy, or administrative decisions, (2) make binding decisions or determine rights, (3) directly compel an entity or person to implement the ombuds’ recommendations, (4) conduct an investigation that substitutes for legal proceedings, (5) accept jurisdiction over an issue pending in a legal forum without the explicit consent of all parties and the presiding officer in that action, (6) address any issue arising under a labor agreement or within the purview of federal, state, or local labor, or employment law, or (7) act in a manner inconsistent with the jurisdiction of its office.

Origins of Ombudsmen

The ombudsman originated in the early 18th century when Sweden’s king appointed a person with legal ability and outstanding integrity to

ensure that government officials followed the law and carried out their responsibilities. The king’s ombudsman investigated and prosecuted wrongdoing and negligence by officials—a sort of 18th century inspector general. In later years the ombuds role became less like a government prosecutor and more like a public advocate, protecting citizens from incompetent or unscrupulous officials.

Coaching Skills for Nonprofit Managers and Leaders

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tion to provide formal coaching to other staff.

Peer Coaching: Bringing peers together to coach each other, such as for internal staff development purposes.

This book was written for the non-

profit sector, but the leadership tools it offers are also useful to managers in the for-profit sector. The authors provide case studies, examples and exercises throughout the book to help bring home the point that coaching is not an abstract concept but a practical skill. Although this book is not about ADR, it offers communication strategies that many mediators and arbitrators will find helpful. ■

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Volunteers may keep the books they review.

The ombudsman expanded to Canada and the United States in the 1960s and '70s, where legal scholars and experts in administrative law championed the paradigm as a new way of problem solving and cutting through bureaucratic red tape. The word "ombudsman" made its first appearance in *Webster's Dictionary* in 1967. Today it is often replaced by the word "ombuds" or "ombudsperson" as a matter of political correctness.

In the mid-late 1960s, the ombuds office found a comfortable home in colleges and universities across the United States as a result of student unrest and social change. Michigan State was the first major university to create an ombuds office. Today hundreds of universities and colleges have one.

Organization of the Book

The Organizational Ombudsman is divided into four chapters. The first addresses what an organizational ombudsman is and does. Chapter 2 addresses why organizations should create an ombuds office. Chapter 3 deals with the confidentiality of communications with the ombuds office. Chapter 4 is a catchall chapter, full of helpful information that an organizational ombudsman should know. Each chapter is broken down into subsections to make it easy for readers to find particular subjects of interest.

The author provides many examples of situations that ombuds deal with, some based on real situations. In one case, employees were afraid of a senior leader who had a bad temper. Even his direct reports were afraid to talk to him. The senior leader was being considered for a promotion and the employees wanted to express their feelings but feared being identified. They spoke privately of their concerns with the company ombudsman, who shared those concerns with the company's CEO. The CEO expressed appreciation for the information and arranged for an executive coach to assist the senior leader.

Another example involved an employee who felt that his boss was

discriminating against him because of his sexual orientation. He feared retaliation if he spoke to his boss or anyone in Human Resources about his concerns. Instead, he spoke with the company's ombudsman. At that point he was close to a decision to quit and sue the company. The ombudsman helped him find a manager in another area of the company who was willing to help him look for another job inside the company or with another employer. The employ-

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 expressing and resolving concerns.

ee eventually found another position and a lawsuit was avoided.

Author Charles Howard is a practicing Connecticut attorney who has worked with ombuds issues throughout his legal career and is a leading expert in the field. He first learned of ombudsmen in 1990 when a general counsel hired him to serve as independent counsel for an ombudsman in order to protect the confidentiality of a particular communication between the ombudsman and an employee. Howard succeeded in obtaining a court ruling that protected the document's confidentiality, but only later realized that the legal basis for ombuds confidentiality and privilege evolved from that ruling.

Why Have an Ombuds Office?

Howard uses his previous service on an *ad hoc* Advisory Group to the U.S. Sentencing Commission to advocate for ombuds programs in corpora-

tions. He explains how the rise of the multi-national corporation, the spate of corporate scandals, and the passage of the Foreign Corrupt Practices Act (1977) have increased corporate exposure to criminal liability for criminal conduct of agents intended to benefit the corporation when those agents act within the scope of their employment, even if their conduct may be contrary to corporate policy. According to Howard, an ombuds office may well be the first place that a would-be whistleblower makes an allegation of misfeasance or misused funds.

The guidelines adopted by the U.S. Sentencing Commission led corporations to develop corporate compliance programs and pay more attention to corporate governance. It also led to the creation of best-practice policies and procedures for complying with the 2002 Sarbanes Oxley Act.

Howard suggests other reasons besides potential criminal liability for creating an ombuds program, among them the increased need for diversity in the workplace, the rise in technology and globalization, and the increasing prevalence of virtual workspaces.

Useful Appendices

The book has 150 pages of appendices. Some documents may seem unnecessary but others are quite useful, including the Ombudsman Association Code of Ethics and Standards of Practice, Ethical Principles for University and College Ombudsman, Standards for the Establishment and Operation of Ombuds Offices, the Ombudsman Association Standards of Practice, the International Ombudsman Association Standards of Practice, and a 2009 whistleblower statute. Howard's inclusion of this recent statute suggests that the organizational ombuds office is as relevant today as it has ever been.

The Organizational Ombudsman is a terrific resource. It belongs on the shelf in the office of every ombudsperson. Those who want to become ombuds must read it, as should corporate officers and legal counsel, managers and staff who are seeking to establish an ombuds office. ■