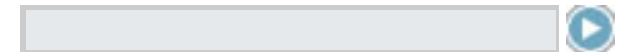




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Ombuds 101: Are law firms ready for an ombudsman?

As lawyers practicing in North Carolina, we have become quite familiar with mediation through the various court-sponsored programs, and many of us serve as mediators. Thus, the idea of a neutral third party to assist in the resolution of a dispute or conflict is well-established. Further, many of the larger corporations and universities across the country employ a neutral third party to assist with conflict resolution within the organization. The ombuds or ombudsman role is generally well known; however, there are very few ombuds who work for law firms. This

article is a brief review of the ombuds role, the benefits such a role can provide for a law firm and a query as to their use.

First, an ombuds is an individual who serves as an alternative dispute resolution champion for an organization by providing independent, impartial, confidential and informal conflict resolution services. An ombuds provides a range of services from listening, coaching an individual in a dispute by helping him or her consider options or prepare for difficult conversations, providing policy and procedure information, serving as a mediator for the dispute, investigating concerns, and providing an organization with information about trends that need attention.

Traditionally, the ombuds was an employee of the organization, set up in a structure that was outside the normal chain of command, with direct access to the CEO or board or others at high levels of the organization. More recently dispute resolution professionals have offered services as external ombuds, providing the same ombuds services on an independent contractor basis.

In general, the benefits of having an ombuds can include early resolution of conflict, saving individuals and organizations time and money. This can enhance productivity and retention. An ombuds can also give employees a confidential and informal resource such that notice of an issue to an ombuds does not equate with notice to an organization. Further, an ombuds can identify trends allowing an organization to revise policies accordingly. The external ombuds can also offer an "outside" perspective on a particular situation. Overall, an ombuds can help create an organizational atmosphere that is open and willing to address conflict. And by addressing conflict, the organization can stay focused on its mission and on its day-to-day work.

So, while many Fortune 500 companies and universities have an ombuds, where are the law firm ombuds? 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 only a few law firm

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Fellow at the Georgetown University Law Center, there are only a few law firm ombuds to be found.

Thacker recently wrote an article in the “Independent Voice,” the quarterly newsletter for the International Ombuds(man) Association. Entitled “Where are the Ombuds? The Hidden Potential of Law Firm Ombuds”, the article notes that there are many aspects of our legal culture that both call for and create barriers to the introduction of an ombuds.

With respect to the ombuds features of neutrality and confidentiality, Thacker explains that lawyers are “[t]rained to win arguments and rewarded for good analytical and decision-making ability. Lawyers are competitive by nature. Associates 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.” The neutral and confidential ombuds provides a safe and non-judgmental setting for an associate or staff member to discuss concerns.

Thacker also notes that lawyers are all too familiar with “formal complaints” and that taking such a path has significant career implications. ““Lawyers are concerned about raising issues and the impact it will have on their careers now and in 10 years down the road,” said Elizabeth Pino, who started the first law firm

ombuds office in the country at Palmer & Dodge, LLP. Pino, now director of ombuds programs at McKinsey & Co., describes ombuds as a “no risk, no regret.” Thus, an informal and confidential discussion with an ombuds is not formal notice to an organization on a particular issue.

So, what can an ombuds do for a law firm? In addition to the broad outline noted above, perhaps the largest area of help may be in the area of retention. According to a number of sources, law firms today, whether big or small, have difficulties with retention of associates. Data from the National Association for Law Placement (NALP), as reported by Russell Ford in his article “Why Associates Leave: How to Get Them to Stay” in a recent issue of The Complete Lawyer, notes that “one of every seven associates changes jobs within a given year. Roughly eight in 10 associates will leave their firms by the time they are in their fifth year of practice.”

Ford, an associate at Littler Mendelson, also notes that developing positive relationships among attorneys is a step to aid retention. Clarity about partnership tracks is another, as is a commitment to ongoing training and mentoring. Establishing an ombuds program will help lawyers and staff craft solutions to concerns that otherwise might send them to a new firm. For example an ombuds could coach an associate in preparation for a conversation about partnership or a staff person seeking advancement.

Additionally, the law firm ombuds as ADR champion can help reduce workplace conflict and allow attorneys and staff to maintain a clear focus on the firm’s mission and work flow.

Finally, a firm ombuds may be able to spot organizational trends that can be brought to the firm’s leadership for consideration. In the process, policies may be reviewed and actions taken to ensure a supportive and just workplace.

In conclusion, Thacker suggests that “[l]aw firms need a new recipe. If an improved work environment is not sufficient motivation to establish an ombuds office, what is? Even if law firms look only to the bottom line, it is clear ombuds can contribute. If an ombuds helps retain even one associate per year, it is a cost-effective measure. In short, establishing an ombuds office saves dollars, and that makes sense.”

Thus, in this age of the 24/7 attorney and staff, adding an ombuds either in-house or as an external may provide another component to comprehensively manage the law firm of today.

Editor’s note: Roy Baroff is an attorney who specializes in dispute resolution services including mediation, arbitration and ombuds services. He can be reached at www.roybaroffmediation.com or (919) 542-2575.



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Most Important Opinions

1. Real Property – Contract – Material Lien – Subsequent Purchaser – Mortgage – Unjust Enrichment

John Conner Construction, Inc. v. Grandfather Holding Co. Where the majority opinion of the North Carolina Court of Appeals held, Where the plaintiff contractors started working on the land before Grandfather Holding even entered into formal negotiations to buy the land, the contractors had no statutory right to file a claim of lien on the property, the ruling without precedential value

2. Criminal Practice – Search & Seizure – Defendant’s Residence – Protective Sweep – Weapon

State v. Dial Even if Deputy Burger’s testimony about prior arrests at defendant’s home included one felony drug arrest, the trial court’s finding that Burger “had dealt with defendant on other occasions as well, in making felony drug arrests at the residence was not prejudicial

3. Workers’ Compensation – Change of Condition – Insufficient Showing – Doctor’s Testimony

Wilhite v. Pike Electric, Inc. Although plaintiff doctor agreed with plaintiff’s counsel’s assertion that plaintiff was “100 percent disabled, the doctor’s opinion on this point was not based solely upon plaintiff’s medical condition – which the doctor said was unchanged – or on the doctor’s medical expertise; rather, the doctor agreed with counsel’s assessment based on the doctor’s consideration of plaintiff’s “skill set and educational background.”

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