

10

Beginnings of CO-OP
(Certification) 1 of 2 2005 - 2006

Cert's
#1

Evolution of Organizational Ombudsman Standards of Practice

- Corporate Ombudsman Association, Code of Ethics, 1987
Neutrality/Impartiality, Confidentiality, Professionalism
(does not include Independence, Informality)
- McDonnell Douglas Ombudsman Handbook, Mission Statement, 1991
Confidentiality, Neutrality, Informality
(does not include Independence)
- University and College Ombudsman Association, Ethical Principles for University and College Ombudsmen, 1991
Objectivity, Independence, Accessibility, Confidentiality, Justice, Professionalism
(does not include Informality)
- University and College Ombudsman Association, Best Practices for a College or University Ombuds Office (unofficial), 1994
Confidentiality, Impartiality, Independence, Informal assistance
- The Ombudsman Association, Standards of Practice, 1995
Confidentiality, Privilege, Discretion, Neutrality, Independence, Informality, Systems Change, Professionalism
- University and College Ombuds Association, Standards of Practice, 2000
Independence, Impartiality/Neutrality, Confidentiality, Informality, Accessibility, Professionalism
- American Bar Association, Standards for the Establishment and Operation of Ombuds Offices, August 2001 and February 2004
Independence, Impartiality, Confidentiality
(does not include Informality)
Please note: IOA Guidance for Best Practices and Commentary on the ABA Standards..., March 2006
- International Ombudsman Association, Standards of Practice, 2006
Independence, Neutrality/Impartiality, Confidentiality, Informality, Professionalism
- International Ombudsman Association, Ombudsman 101 Syllabus
Added "Independence" as a Principle in 2001
Separated "Principles" – Confidentiality and Privilege, Independence, and Neutrality — from "Tools" – Listening, Negotiation, System Change, etc.
(does not include Informality as a separate Principle or Tool)

INFORMAL VERSUS FORMAL

	Informal System	Formal System
Confidentiality	X	
Independence	X	
Neutral/Impartial	X	X
Rights-Based		X
All Conflicts Considered	X	
Due Process (Substance and Procedure)		X
Direct Parties Decide	X	
Third-Party Decides		X
Flexibility/Creativity/Improvisation/Outside the Box	X	
Emotions Considered	X	
On the Record		X
Level Playing Field	X	
Precedent		X
Decision Reviewable		X
Enforceable	X	X
Anonymity	X	
Relationships Enhanced	X	
Public Pronouncement		X
Establish Principle		X
Discipline, Penalty, Fine		X
Resolution	X	X

Certified Organizational Ombudsman PractitionerSM

Certification Examination

The new Board of Certification of the International Ombudsman Association (IOA) will offer the certification examination for the first time during the week November 30 – December 5, 2009. Deadline for registration is November 19. To register, go to the following website and click on International Ombudsman Association, then follow the directions given:

<http://www.isoqualitytesting.com/takeatest.aspx>

This is a two-hour computer-based exam that will be available in a variety of test sites in major cities. When you register, you may select the location and time during this one-week period most convenient to you. More details about the examination content, administration and registration process are available on the website:

<http://www.ombudsassociation.org/boc/obtain/exam/>

The certification examination, newly launched this fall, is a preliminary examination; the new certification program is eager to receive feedback from participants and is offering this exam for the first time at a special low cost of \$375; the cost is expected to increase for future opportunities.

Passing the examination is one step in the process of receiving the credential of Certified Organizational Ombudsman PractitionerSM. The certification credential requires other qualifications, including at least one year of full-time experience working in the role of an organizational ombudsman who adheres to IOA Standards of Practice. The examination is available for those who already have achieved the other qualifications or expect to achieve them in the next three years.

Those who are not yet serving in the role of organizational ombudsman may also wish to take the certification examination and, if successful, they may refer to having passed it in job applications or resumes. Individuals are not required to have training or experience in order to register for and take the certification examination. An individual who has passed the examination, but does not meet the other eligibility requirements for certification, may not claim to hold certification status. (Any individual who uses the certification credential before having been awarded certification by the Board of Certification may be ineligible for certification in the future.) This is an entry-level examination to test basic knowledge about the job tasks and standards of practice of the organizational ombudsman.

Once you submit your online registration form and your online payment has cleared, you will receive an "Applicant Admission Notice." This notice is required for test entry and instructs you about the rules and regulations, as well as the logistics, for the day of the examination. If you have any questions about the online registration, you may contact the testing service, IQT, at 1-866-773-1114. For other questions, please contact certification@ombudsassociation.org.

IOA Committee on Professional Ethics, Standards and Best Practices

MISSION

The mission of IOA's Standing Committee on Professional Ethics, Standards, and Best Practices is to identify, define, and provide guidance on the ethical principles and standards of practice for organizational ombuds professionals.

PRIORITIES

- Revise and, as needed, update and improve IOA's guiding documents, the Code of Ethics and Standards of Practice
- Revise and, as needed, update and improve IOA's Best Practices guidance for organizational ombuds
- Provide ethical guidance to IOA members seeking assistance
- Co-ordinate activities of this Standing Committee with the activities of related committees such as Legal and Legislative Affairs, Professional Development, Membership, etc.
- Promote awareness of IOA's ethical principles and standards of practice

ACCOMPLISHMENTS

- The IOA Code of Ethics and Standards of Practice Task Force (reporting to this standing committee) has identified the most essential ingredients of the UCOA and TOA codes of ethics and standards or practice and woven them together to create new IOA documents: the IOA Code of Ethics and IOA Standards of Practice. These new documents have been approved by the IOA Board of Directors.
- The IOA Code of Ethics and Standards of Practice Task Force also identified a list of items related to professional practice that would be more suitable in a Best Practices document.

MEMBERS

- The IOA Code of Ethics and Standards of Practice Task Force members were Howard Gadlin, Tim Griffin, Francine Montemurro, Dave Talbot, and Marsha Wagner. THANK YOU!
- The Standing Committee is in formation and will soon meet to plan and prioritize the next activities.

TO JOIN: Please contact Marsha Wagner (chair), (212) 854-1234,
wagner@columbia.edu.

Marsha Wagner

Distribution List Name: PESBP Standing Committee

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2/2007

Professional Ethics, Standards and Best Practices Committee

MISSION

The mission of IOA's Standing Committee on Professional Ethics, Standards, and Best Practices is to identify, define and provide guidance on the ethical principles and standards of practice for organizational ombuds professionals.

PRIORITIES

- Periodically review and update IOA's guiding documents, the Code of Ethics and Standards of Practice, and assure that they are consistent with Bylaws and membership criteria
- Periodically review and update IOA's guidances on Best Practices
- Promote awareness of IOA's ethical principles and standards of practice by coordinating with professional development programs, the Communications Committee, the conference planning committee, etc.
- Coordinate activities to encourage adherence to Code of Ethics and Standards of Practice with other relevant committees, such as the Membership Committee and Legal and Legislative Affairs Committee
- Provide ethical guidance to IOA members seeking assistance, and for organizational principles (such as guidelines for confidentiality for collegial sharing among participants in training sessions and conferences, for advertising opportunities for corporate donors, etc.).

ACCOMPLISHMENTS

- The IOA Code of Ethics and Standards of Practice Task Force has alerted the IOA Board to outstanding considerations of consistency among the Standards of Practice, IOA Bylaws, and membership criteria that need to be aligned before a final Standards of Practice document can be officially ratified
- The IOA Best Practices Task Force has nearly completed a new, expanded Best Practices guidance document to submit to the IOA Board for approval
- The IOA Professional Ethics, Standards of Practice and Best Practices Standing Committee has initiated discussions of ways to provide ethical guidance for IOA as an organization and for IOA members.

MEMBERS: Howard Gadlin, Tim Griffin, Kevin Jessar, Francine Montemurro, Dave Talbot, Marsha Wagner (chair), and Margo Wesley

TO JOIN: Please contact Marsha Wagner (212 854-1234), wagner@columbia.edu

The Ombudsman Association

CERTIFICATION SUB-COMMITTEE

RECOMMENDATION FOR OMBUDSMAN CERTIFICATION

February 1, 2004

CONTENTS

I. Introduction

Advantages	1
Disadvantages	2

II. Certification Requirements

Certified Organizational Ombuds I	4
Certified Organizational Ombuds II	5
Re-certification	6

III. Additional Considerations

Timing	6
Course Titles	7
Issues in Need of Further Clarification	
Notice	7
Grandfathering	7
Equivalent Courses	7
Short Courses	8
Eligibility	8
Appeals Procedure	8
Examinations	9
Miscellaneous	9

Principles for Certification Programs	9
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Bibliography	11
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Sample Multiple Choice Examination Questions	12
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The Ombudsman Association

CERTIFICATION SUB-COMMITTEE

RECOMMENDATION FOR OMBUDSMAN CERTIFICATION

February 1, 2004

I. Introduction

The Certification Sub-committee was established by TOA's Curriculum Development Committee (CDC) in June 2003 to look into what would be involved in the creation of a professional certification program for organizational ombuds. We were asked to present a report or proposal to the CDC by February 1, 2004; the understanding was that the CDC would decide how to respond to our presentation, and would determine whether or not to transmit it to the TOA Board or other relevant committees, including the UCOA Board and transition committees.

Members of the Certification Sub-committee are Joanne De Siato (University of Maryland), Wendy Friede (American Express), Helen Hasenfeld (Cal Tech), Carolyn Noorbakhsh (Coors), Bonnie Oh (Georgetown University), Patrick Robardet (Université Laval, Quebec), and Marsha Wagner (Columbia University, chair). John Barkat frequently provided guidance, and we were also supported with information and thoughtful suggestions by Joanne Cole (PMA), Wilbur Hicks (Shell), and Linda Wilcox (Harvard Medical Center).

Advantages: There are many justifications for establishing a certification program for organizational ombuds, from promoting professional competence to increasing public recognition and prestige of the ombuds as a professional. Some of the major goals include:

- To enhance the credibility and professionalism of the ombuds practice
- To reinforce key ethical values and standards
- To maximize uniformity and high quality of practice among practitioners
- To continually evaluate practice standards, with a focus on skills and sophistication, including strengthening the theoretical foundations
- To strengthen documentation that can be presented to judges when an ombuds officer is resisting a subpoena or being called to testify in a formal proceeding
- To assist in unifying practice in a profession which practitioners have entered from a variety of backgrounds and other professional experiences
- To protect employers and assist them maintaining high quality of ombuds competence by encouraging (but not requiring) certification as a selection criterion for a new ombuds and as a goal for a continuing ombuds
- To mirror, at least in part, other related professional groups (employee assistance professionals, mediators, long term care ombuds, etc.)

- To support our professional association by offering certification as an incentive for participation in our training programs; however, the Sub-committee wishes to emphasize that increasing revenue for the professional association is a desirable by-product but not a goal of the certification program.

The Sub-committee recognized that a long-term vision might include two kinds of credentialing, and we are addressing only the first: to certify that a practitioner has successfully completed a certain set of requirements. We recommend postponement of the second type of certification, to assess whether or not a particular ombuds is practicing competently, ethically, or in accordance with standards. We do not feel our profession at this time can manage a process or enforce specific criteria for substantive decertification, and therefore the only decertification that we recommend would result from failure to maintain certified status.

As outlined below, the Sub-committee recommends two levels of certification: a basic level of competence for new ombuds, and an advanced certification for more experienced ombuds. Each individual's certification, once granted, would be in effect for a period of four years; at the end of that time, it would expire unless the individual recertified through a statement of practicing to standards and additional training. The goals of recertification and continued professional training are similar to those stated above to enhance the credibility of the profession, but also include

- To assure the practitioner's review of the basic principles of ombuds ethics and standards of practice
- To refresh the practitioner in skills, and to foster constructive interactions and feedback loops with colleagues
- To encourage self-evaluation, reflective practice, and continued benchmarking of each ombuds office in the context of uniform professional standards of competence
- To update each ombuds practitioner on new developments in the field, or in the law, and on possible changes in standards of practice
- To learn new skills, new specialized areas of expertise, and new theoretical frameworks for professional enrichment

The Sub-committee recognizes the need for continued collaboration between those who are planning and administering a certification program and those who design and teach courses, to assure that all courses are updated to reflect new developments in the field, and also to include a "refresher" aspect to address the needs of practitioners who are engaging in continual professional education to review the knowledge, skills, and abilities presented in Ombuds 101 and 102.

Disadvantages: The primary disadvantages to the establishment of a certification program are the financial cost and time demanded of members to administer the program. The Sub-committee is sobered by the reality of the expenses and the administrative commitment necessary to plan, launch, and maintain a fair, responsible process with consistently high standards –

including, for example, timely reminders of certifications about to expire, fresh and up-to-date content on examinations, and an independent appeal process for adverse decisions. Once a certification program is begun, it is awkward and professionally destabilizing to phase it out, so if our ombuds organizations do not have the passion, energy and commitment to support and sustain a program, it would be preferable not to start it.

Costs: Joanne Cole estimated the up-front costs of hiring a psychometrician to design a written (multiple choice) exam and a lawyer to approve the program's guidelines at \$50,000 - \$100,000. Stunned by this figure, some of us (especially those from universities) felt that we could do most of the creation of the examination and the program guidelines ourselves, and have a psychometrician and lawyer look over the results, for a much lower figure. We would hope to keep such expenses under \$10,000.

Maintenance would require either member volunteers or paid staff to market the program, teach the courses, oversee and continually update the exams, manage the process for evaluating eligibility and whether or not each applicant has successfully demonstrated the qualifications for certification (including a separate appeal process for adverse decisions). Those who set policy for the certification program, and perhaps those who determine eligibility, criteria for passing the examinations and receiving credit for outside training programs, and certainly those who adjudicate appeals of adverse decisions, should be autonomous from the professional association of ombuds that has an economic interest in the program.

II. Certification Requirements

Certification requirements generally include a combination of experience in the practice, evidence of practicing to standards, training and evaluation. The examination is generally objective – a combination of multiple-choice and essay. Evaluating an oral examination or a demonstration of skills in a role play is generally considered too subjective. The requirements should be considered reasonable – that is, no more stringent than to ensure minimum competency for the basic certification. With these principles in mind, the Sub-committee proposes the following set of requirements. We realize these may be debated and modified in the process.

Certified Organizational Ombuds I – (the basic proficiency certification)

Requirements:

Two years of practice as a full-time ombuds

(three years for a part-time or collateral duty ombuds)

A signed statement attesting that one practices to (TOA/UCOA) standards

(signed by the practicing ombuds and by the person in the organization to whom the ombuds office reports)

Completion of several courses (15 points total):

Ombuds 101: Basic Functions and Skills

A 2½-day introductory course (5 points)

Ombuds 102: Mastering Challenges and Opportunities

(Formerly, The Intermediate Workshop) A 2-day workshop, including application of Ombuds 101 skills, understanding one's work within the organization, and a case study involving role play. Pre-requisites: completion of Ombuds 101 and 6 months of organizational ombuds practice. It is recommended to take this course within one year of Ombuds 101. (4 points)

Short courses, or equivalent, adding up to 6 points

Short courses may be selected from the offerings of one-day courses (formerly called "specialized courses"), 2 pts each; or half-day courses such as pre-conference half-day courses or Promoting the Ombuds Role (formerly, Ombuds 101 Plus), 1 point each.

It is recommended, but not required, that short courses be selected from a variety of the categories defined by the CDC (interaction with the visitor, legal & safety issues, negotiation & conflict resolution, individual and group dynamics, the ombuds and the organization).

Passing a written examination

The 90-minute written examination will be in two parts:

Part I: Multiple choice. 45 minutes. Approximately 30 questions on knowledge, skills, and abilities, taken primarily from the Code of Ethics, Standards of Practice, and essential teaching points from Ombuds 101 and Ombuds 202. Questions change every time the exam is given, and are taken from a large "bank" of questions. Some questions might involve responses to brief vignettes.

Part II. Essay. 45 minutes. An essay responding to a scenario (perhaps presented on a video?) answering a what-would-you-do question to demonstrate application of principles, knowledge and skills, and/or critiquing the practice of the ombuds actor on the video. (Or, two essay questions with two different kinds of scenarios – perhaps something specialized by sector, such as a student issue for a university ombuds?)

Certified Organizational Ombuds II – (the advanced proficiency certification)

Requirements:

Completion of Certified Organizational Ombuds I

Four years of practice as a full-time ombuds

(six years for a part-time or collateral duty ombuds)

A signed statement attesting that one practices to (TOA/UCOA) standards

(signed by the practicing ombuds and by the person in the organization to whom the ombuds office reports)

Completion of several courses (12 points total)

At least one and up to three seminars in the "Advanced Series":

A series of two-day courses on rotating specialized topics, conducted in a seminar (small group) format, with very experienced ombuds, including both theory and practice, on topics such as conflict theory, power imbalances, unwritten rules of the organization, diversity, communications, the ombuds in a scientific community, dangerous/emergency situations, etc. (4 points each seminar)

If only one or two "Advanced Series" seminars are taken, short courses, or equivalent, to add up to 12 points

Short courses may be selected from the offerings of one-day courses (formerly called "specialized courses"), 2 pts each; or half-day courses such as pre-conference half-day courses or Promoting the Ombuds Role (formerly, Ombuds 101 Plus), 1 point each.

It is recommended, but not required, that short courses be selected from a variety of the categories defined by the CDC (interaction with the visitor, legal & safety issues, negotiation & conflict resolution, individual and group dynamics, the ombuds and the organization).

Re-Certification

Three years after certification has been granted, the ombuds will receive a reminder that the certification will expire after four years unless the practitioner takes the initiative to re-certify, at the same level as the previous certification.

Requirements for re-certification:

A signed statement attesting that one practices to (TOA/UCOA) standards
(signed by the practicing ombuds and by the person in the organization to whom the ombuds office reports)

Completion of several courses as continuing professional education, adding up to a total of 5 points

The courses may include pre-conference courses, one-day courses, the "Advanced Series" seminars, or the equivalent. However, courses used to fulfill the requirement for the Certified Organizational Ombuds II (the advanced proficiency certification) may not be used also to fulfill course requirements for re-certification.

III. Additional Considerations

The Sub-committee is aware there are several details that will need to be addressed if this recommendation is approved. We comment on some of these, and acknowledge that others will emerge as the program evolves.

A. Timing.

Both the Certification Sub-committee and the groups looking into TOA-UCOA merger are concerned with the goal of unification and consistency among practicing ombuds. Merger, or at least close coordination of training of new and continuing ombuds, would provide a strong foundation for a certification program.

The Certification Sub-committee as it existed in the past year is a TOA initiative, reporting to the CDC. However, we are aware that many UCOA members are also keenly interested in thinking about certification and it is vitally important for UCOA to be involved in future steps. We emphasize the need for close coordination with TOA-UCOA Merger Training Committee on training levels, mediums/formats, and content.

It might be that the energy to launch a certification program would be more available after the merger decision and planning are behind us. However, before a certification program could be launched, there is still much preparation to be done, and that could proceed concurrently with the merger decision process. If CDC, and the TOA and UCOA Boards, support this recommendation, they might consider how to integrate the timetables for merger planning and certification planning.

B. Course titles.

It is clear from the certification requirements that the Certification Subcommittee, in considering the structure of TOA courses, proposes changes to some of the course titles, primarily for the purpose of clarifying the course levels, sequences and purposes. Our specific recommendations:

Change Ombuds 101 to	Ombuds 101: Basic Functions and Skills
Change Intermediate Workshop to	Ombuds 102: Mastering Challenges and Opportunities
Change "specialized courses" to	Short courses (which would include pre-conference courses, etc.): full-day course 2 points half-day course 1 point
Change Ombuds 101 Plus to	Promoting the Ombuds Role (a 1-point, ½-day course)

On the principle of one point for a half-day course, and two points for a full-day course, a two-day course would be worth four points, etc.

C. Issues in need of further clarification.

Notice. Guidelines indicate that reasonable notice must be given to all those who may be affected by certification requirements, offering them an opportunity to participate in establishing certification requirements, for example by commenting on proposed criteria before they are officially established. This would obviously involve a process of communication with professional association membership, but also with others, perhaps even including potential employers or users of certified organizational ombuds' services.

Grandfathering. It would not be reasonable to require very experienced ombuds, including those who have designed and taught courses for organizational ombuds, to register for courses or perhaps to take the examination for basic certification. On the other hand, guidelines indicate it is not clear whether it is legal to summarily grandfather in current members without any means of determining if they meet requirements. One option is to develop a temporary track for veteran practitioners to be able to sit for the exam, and taking the examination might be a substitute for taking courses. The temporary track might be open for five or eight years, after which even veteran ombuds would have to fulfill all the requirements for certification. In any case, it will be necessary to come up with fair and reasonable criteria for "grandfathering."

Equivalent courses. Certification programs that appear to be attempting to monopolize a profession may be open to legal challenge under anti-trust principles. Therefore, it is important not to limit the training that may satisfy requirements for certification to only courses offered by our association. We will need to consider criteria for recognizing equivalency and granting "points" of eligibility credit for other education or training sessions relevant to practicing organizational ombuds. (These may include training in mediation, employment law, conflict resolution or negotiation.) Other "equivalent credit" might be given

for taking university courses, conference attendance, or publishing articles. It might be reasonable to give points of "credit" to ombuds who have designed and taught courses, in addition to given the credit to those who have registered for and attended the courses. It would be important to have a committee that develops these criteria and then evaluates each request, on a case-by-case basis, to determine if an outside course satisfies the criteria for a training program relevant to ombuds practice that could count (as "transfer credit") toward the certification. However, arguments could be made that almost any course on culture, religion, anthropology, social justice, ethics, environmental health, stress management, etc., etc., could be "relevant," and it is important to limit equivalent courses to those that are necessary for fundamental ombuds practice competence.

Another set of considerations in granting "equivalent" substitutional credit involve whether the basic training requirements are too expensive or geographically inaccessible for some potential candidates.

We might need to consider granting 1.5 points for a course that is longer than ½ day (4 hours) but shorter than a full day (7 hours).

Short courses. The CDC and the Certification Sub-committee have discussed the possibility of dividing CDC's one-day courses into "basic" and "advanced" levels. The Sub-committee tends to feel that any one-day course can be valuable as an occasion for review, learning, interacting thoughtfully with colleagues, and improving professional skills and knowledge. Moreover, a new ombuds may encounter very complex and challenging issues in the first week of practice; a seasoned veteran may benefit from refreshing some of the most basic listening or upward feedback skills that are used every day. We are therefore disinclined to identify courses in this way. However, we are very supportive of the approach to one-day courses that would aim for a balance of "categories" (such as interaction with the visitor, legal and safety issues, negotiation and conflict resolution, individual and group dynamics, the ombuds and the Organization).

Eligibility. Some of the details for eligibility for certification will need to be further refined. For example, is number of cases handled a reasonable criterion for experience? Should a collateral duty ombuds who has six years of experience handling an average of five cases per year qualify for the advanced level? For both levels of certification, should the years of practice be required to be continuous, or could they be cumulative? At this preliminary stage, the Sub-committee did not attempt to resolve all these fine points.

Appeals procedure. The certification program would require specific groups (generally, volunteer ombuds) to evaluate applicants for eligibility, to grant "equivalent" credit to courses or training programs conducted elsewhere, to administer and grade examinations (probably pass-not pass). Standards for refusing certification must be specific and transparent. Denial of certification should be made in written communication to the candidate, stating the reasons for the denial. Probably each of these decision procedures should have an appeals process for adverse decisions. Guidelines indicate that members of the appeals committee should be different from the individuals involved in the credentialing

program, and should include outsiders from related fields, such as a mediator. Such a decision-making body is viewed as more objective if it is not composed exclusively of those who have received this credential.

Examinations. The Sub-committee believes that passing a multiple-choice exam can demonstrate that an ombuds who has attended training programs has learned and can articulate the skills and knowledge, or teaching points, covered in those classes. The examination would be based on a consensus of the knowledge, skills, and abilities (KSA) of a qualified practitioner. Multiple-choice is more objective, and more efficient, since it can be graded by a computer. As the curriculum is refined, it is of paramount importance to continue to enhance awareness of covering the basic skills and knowledge required for organizational ombuds competence. Various task forces of the CDC and course directors have been involved in this knowledge-practice analysis over the past several years, and Mary Rowe's article, "Options, Functions and Skills: What an organizational ombudsperson might want to know" is also a strong foundation we can build on.

The Sub-committee believes that one of two essays responding to case handling would demonstrate practical skills. Essay answers could be read by ombuds volunteers who have agreed on the basic points that should be covered in a passing essay. The Sub-committee has not defined what percentage of correct answers should constitute a passing score.

Other professions (such as EAP or CPA) have exams that are often three hours in length. At this point, we recommend a written examination that is 1½ hours long; however, research may indicate that to cover the basics (if that can be done, for example, with 30 multiple choice questions) more time is necessary. We have not explored, for example, the standard amount of time allowed per multiple choice question. See attached sample questions.

Further consideration should be given to the frequency of the administration of the examination and whether it should be offered at multiple locations or by video or other electronic transmission. Accommodations of course should be made for candidates with disabilities to assure that the examination is accessible. Should somewhat different versions of the exam be tailored to ombuds in different sectors (academic, government, corporate, etc.)?

Miscellaneous. The Sub-committee has not explored the advantages and disadvantages of collaboration with other organizational ombuds organizations, such as Canadian or other international organizations. Must standards of practice be identical for collaboration, or eligibility for certification?

D. Principles for certification programs.

The Sub-committee found the articles distributed by Joanne Cole (see Bibliography below) on the professional guidelines for credentialing to be extremely helpful. Throughout this process, it is important to keep in mind these principles, in particular:

Certification programs that have been legally challenged tend to be those which are suspected of being too closely tied to revenue-generation for a particular organization or to advancing the opportunities of members of one group

in a way that disadvantages outsiders; in other words, for anti-trust reasons, gaining a competitive monopoly, or appearance of same, should be avoided. The certification program should not appear too exclusive or like a "club," and should not appear to attempt to corner the market.

Otherwise, limited legal approval is required. States are involved only in licensing programs, not in certification. It is optional, and not required, to get approval from the American National Standards Institute (ANSI.org; a fee is charged). The approval process, once a program is defined, involved review by an attorney (PMA could identify a list of appropriate lawyers) and then approval by the Board and members of sponsoring associations, such as TOA and UCOA.

Certification, re-certification, and courses should be open to professional association members and non-members. Access to the certification should be equitable and fair, not arbitrary or discriminatory. Participation should be voluntary.

Policy-making functions of the certification program should be kept as independent as feasible from the influence or domination of a professional association which has an economic interest in the program.

Though certification may be promoted, non-certified individuals should not be disparaged. Using standards to eliminate or harm competitors raises anti-trust risk.

Certification criteria must be fair and reasonable, and should be the least restrictive criteria – in other words, minimum criteria -- to certify fundamental competence. On the other hand, since a major goal of the certification program would be professional respect and adherence to standards, it is important to have high standards for the certification from the beginning (for example, starting with an easier exam with a plan to make it more sophisticated later could give a negative image of a profession with low standards).

"Certification does not guarantee that an individual will perform competently. Certification simply demonstrates that at a given point in time the individual met the standards and requirements set by the certifying organization" (Knapp and Gallery, p. 30).

"Too many associations have found out the hard way that the 'if we build it, they will come' approach to certification programs is an extremely risky one. In-depth market research is needed to gauge the potential for program success" (ibid, p. 31). Employer buy-in is also a significant factor: "...the viability of a credentialing program is directly related to the value that key constituencies associate with the credential, and establishing this value requires a substantial commitment on the part of the sponsoring organization" (ibid, p. 32).

Bibliography

“Professional Credentialing,” chapter 64 of Association Law Handbook, pp.340-346.

Knapp, Lenora G. and Michael E. Gallery, CAE, “Certification Appeal: Consider all the angles before developing a certification program.” Association Management (November 2003), pp. 29-33.

Also available (not yet consulted)

Knapp, Lenora and Joan. The Business of Certification.

Hamm, Michael S. The Fundamentals of Accreditation.

Jacobs, Jerald, Esq. Certification and Accreditation Law Handbook.

Services to advise associations

National Organization for Competency Assurance (NOCA)
www.noca.org

National Certification Association
www.inc.com/users/jaffeson.html

Sample Multiple-Choice Examination Questions

The Certification Sub-committee believes that multiple-choice questions would provide a fair, objective way to assess whether a candidate for certification has acquired the fundamental skills and knowledge necessary to practice as a competent ombuds. Multiple choice questions could be both factual and also involve application of knowledge and skills to practical vignettes. The following examples by Marsha Wagner and Carolyn Noorbakhsh are intended to demonstrate the range of questions that might be composed. They have not been looked over by a psychometrician, and may not be presented in the best way. (Some are admittedly questionable.) Please consider them as draft examples, not as finished products. And consider contributing your own sample questions!

1. The following are all open-ended questions except:
 - A. What happened next?
 - B. Did you report it to your supervisor?
 - C. How did you feel?
 - D. Could you tell me more about it?

2. As the visitor leaves the office, it would be appropriate for the ombuds to say,
 - A. Good luck! I hope you get what you want!
 - B. I'm sure you will feel better once you've made a formal report.
 - C. If anyone else contacts me about this situation, I'll let you know.
 - D. Please let me know how it turns out.

3. When the in-house attorney contacts the ombuds and says a plaintiff who has sued the organization has requested documents from the ombuds' files, an appropriate response would be:
 - A. To send the relevant files to the in-house lawyer's office and ask them to determine how to respond to the document request, under lawyer-client privilege.
 - B. To shred all the relevant notes and then tell the in-house lawyer there are no relevant documents.
 - C. To request to speak to a separate lawyer who would represent only the ombuds, not the organization.
 - D. To take the relevant notes home for safe-keeping and refuse to respond to the in-house attorney.

4. The purpose of mediation is:
 - A. To assist the parties in reaching a resolution that is mutually agreeable to them
 - B. To assist the parties in reaching a resolution that the organization believes will set a constructive precedent for resolving future disputes
 - C. To assist the parties in reaching a resolution that the ombuds feels is fair
 - D. To assist the parties in reaching a resolution that is low-cost to the organization

5. All of the following are inappropriate framed objects in an ombuds office except:
 - A. A poster indicating a behavioral spectrum of civility and respect.
 - B. A poster announcing a pro-choice demonstration.
 - C. A free calendar from the local topless bar.
 - D. The ombuds officer's local golf club membership certificate.

6. As an advocate for "system change," the ombuds might recommend any of the following except:
 - A. Consideration of flex-time work hours for those with family responsibilities
 - B. Consideration of a policy allowing "floating holidays" for any employee who wishes to observe a religious holiday
 - C. Consideration of a company-wide picnic and sports day to improve employee morale
 - D. Consideration of a recruitment policy to create a more balanced workforce by employing more staff who are registered Democrats

7. (Following a brief vignette). This situation may be an emergency because:
 - A. The visitor to the office said the organization's chief financial officer may be involved.
 - B. The visitor to the office believes this story may be reported in tomorrow's local news.
 - C. The visitor to the office has heard another employee make a credible imminent threat to life.
 - D. The visitor to the office believes his supervisor will retaliate against him for contacting the ombuds office.

8. A student complains that he received a B+ in a course in which he believes he deserved an A, and requests the ombuds to bring this matter, neutrally, to the university president immediately. The ombuds declines to bring this matter to the attention of the president at this time, and suggests alternative options, because:
 - A. We exercise discretion whether to act upon a concern of an individual contacting the office.
 - B. We do not serve as advocates for any person in a dispute within an organization.
 - C. We base our practice on confidentiality.
 - D. Individuals should not be required to meet with an ombudsman.

9. Which of the following would not be an example of a neutral comment to a visitor?
 - A. Your concern seems somewhat minor. I'm confident you can handle it on your own.
 - B. Tell me what you believe your manager would say about this issue?
 - C. Help me understand why you're bringing this concern to me?
 - D. Do you think you have agreement from your co-workers on this issue?

10. The Vice President of Human Resources says to you, "I'm aware that several of my staff have come to see you. I'd appreciate some feedback from you as to the kind of issues they are presenting, so their concerns can be addressed."
How would you respond?
- A. Well, I must say they are quite concerned about the leadership in HR.
 - B. This is off the record. HR visitors tell me they do not feel they have any direction.
 - C. What do you think their issues are?
 - D. I'm sure you remember that the parameters of my office do not allow me to comment on who I see or do not see. If or when the time comes that it would be appropriate for me to discuss trends, trust that I will do so if appropriate.
11. You have been shredding notes and identifying information about visitors upon the conclusion of your work together. The CEO asks you for information that would require you to keep records beyond the closing of a case. What do you do?
- A. Ignore the CEO and continue to do as you've always done
 - B. Change your practice to keep documentation for 6 months after closing a case.
 - C. Tell your CEO you appreciate /her interest, but the policy of your office, and best practice standards suggest that records not be kept beyond the closure of a case. Brainstorm with the CEO how else they may be able to come by the data.
 - D. Suggest to the CEO that you would be willing to keep records for 3 months beyond the conclusion of a case, but no longer than that.
12. You are having a generic conversation with a department V.P. about horrific uncivil behavior by one of his/her directors. Many people have complained to you, but no one is willing to be identified. The V.P. says, "Well if I don't know who is complaining, I don't know how I can help you." What do you say?
- A. "You must address these concerns with your director before a hostile work environment suit is filed".
 - B. "It would behoove you to deal with these concerns. If nothing is remedied, I'm afraid I will have to take the concern higher until someone is willing to correct the director's behavior.
 - C. Given the standards of practice of my profession, I cannot identify the visitors to my office w/out permission. How might I help you to discover the validity of their concerns?
 - D. I can tell you who has expressed concerns, but you must not tell their director, because they fear retaliation.

The Ombudsman Association
CERTIFICATION COMMITTEE
SECOND RECOMMENDATIONS REPORT

January 31, 2005

CONTENTS

- I. Overview
- II. Recapitulation of First "Recommendations" Report
- III. Certification of Organizations
- IV. Eligibility
- V. Grandfathering
- VI. Equivalent Courses
- VII. Examination Procedure
- VIII. Governance
 - Administration
 - Certification Eligibility and Qualification Committee
 - Appeals Committee
- IX. Approvals, Recognition and Trademarking
- X. Notice to the Stakeholders
- XI. Timing of the Launch of the Program
- XII. Budget
 - Tax-Exempt Foundation
 - Preliminary Business Plan

Certification Committee members: John Barkat, Joanne DeSiato (UCOA liaison), Wendy Friede, Brodrick Hill, Kevin Jessar, Michael Kaplan, James Lee, Carolyn Noorbakhsh, Bonnie Oh, Patrick Robardet, Marsha Wagner (chair), Merle Waxman

The committee wishes to thank Joanne Cole of Professional Management Association for her expertise, sound judgment and excellent advice throughout our process.

I. Overview

On February 1, 2004, the Certification Sub-Committee of TOA's Curriculum Development Committee submitted its "Recommendation for Ombudsman Certification," which articulated the major advantages and disadvantages of a certification program for organizational ombuds, described the general requirements and procedures, and listed several areas that required more research, consideration, and planning. The CDC generally approved this report and passed it on to the TOA Board of Directors. At the annual meeting held in conjunction with the annual conference in April 2004, the TOA Board expressed general support for the sub-committee's recommendation that we move forward in planning a certification program, and asked the committee (restructured as a committee of the Board) to clarify some of the outstanding issues and implementation details. This January 2005 report is the result of the last eight months of committee work. *It should be read as a supplement to the February 1, 2004, "Recommendation for Ombudsman Certification."*

Other relevant developments have occurred since Spring 2004. The Board of the University and College Ombuds Association (UCOA) also expressed support of moving forward with planning for an organizational ombuds certification program. Our work in 2004 took place in the context of expecting a TOA-UCOA merger in the near future, and a member of our committee, Joanne DeSiato, served as the liaison to the UCOA Board. We also kept in mind the possibility of other merger-related changes, such as internal governance and professional management. The tentative plan for a future 501 (c) 3 (tax exempt) foundation for organizational ombuds educational programs, discussed by the TOA Board, would provide a significant structural independence to the certification program. (See Section XII, Budget, below.)

Furthermore, in the past eight months, support for an organizational ombuds certification program has come from many different sources. Countless individual ombuds have expressed enthusiasm for professional certification. The February 2004 ABA resolution's encouragement of uniformity among ombuds "so that individuals who avail themselves of their aid may do so with greater confidence in the integrity of the process" is consistent with the development of a certification program. Craig McEwen, in his keynote speech to the annual TOA-UCOA joint conference in April, 2004, "Valuing Professionalism: Challenges to the Ombuds," addressed the advantages of certification programs both for individual practitioners and also for organizations that employ ombuds. Chuck Howard, an attorney who advises ombuds programs, and others reinforced these concerns at the conference and elsewhere. The committee's observation is that the advantages of a certification program, as articulated in the first "Recommendations," have been echoed and reasserted in many ways since last spring.

II. Recapitulation of the First "Recommendations" Report

The Certification Committee chose not to change the fundamental certification requirements as spelled out in the first "Recommendations" of the Certification Sub-Committee on February 1, 2004. That document is attached, but a brief recapitulation may help clarify the basic conception of the proposed certification program:

We emphasize that we propose a program that identifies with "certification" those practitioners who have successfully completed a certain set of requirements: experience practicing to standards, appropriate professional development training, passing a written examination, and payment of a fee. This conception is not a licensing or assessment program that guarantees future competence, ethics, or standards of practice of an individual. It does not include a process for investigation of practice, complaint handling about practice, or substantive decertification. (The only "decertification" recommended by the committee would result from expiration due to failure to maintain certified status.)

The recommendation is for two levels of certification: a basic level of competence for new ombuds and an advanced certification for more experienced ombuds. Once granted, each individual's certification would be in effect for four years; at the end of that time, it would expire unless the individual recertified through a statement of continued practicing to standards and some additional professional training.

Basic proficiency certification (Certified Organizational Ombuds I) requires two years of practice as a full-time ombuds; a signed statement attesting that one practices to TOA/UCOA standards; completion of 15 points of ombuds training courses (including Ombuds 101, Ombuds 102 or "intermediate workshop," and short courses, or equivalent); passing a 90-minute written examination; submission of an application form and payment of an accompanying fee.

Advanced proficiency certification (Certified Organizational Ombuds II) requires completion of the basic proficiency requirements plus a total of at least four years of practice as a full-time ombuds; a signed statement attesting that one continues to practice to TOA/UCOA standards; completion of 12 additional points of ombuds training courses (including at least one "advanced series seminars," or equivalent); submission of an application form and payment of an accompanying fee.

Certified status expires four years after certification unless the practitioner re-certifies. Re-certification at the same level as the previous certification requires submission of a signed statement attesting that one continues to practice to TOA/UCOA standards; completion of at least 5 points of continuing professional training during the four years since certification; submission of an application form and payment of an accompanying fee.

In both reports, the Sub-Committee and the current Certification Committee have been guided by a set of principles, based on professional association guidelines, which assure a certification program with high standards and a fair and transparent process. We have sought to develop procedures that would assure timely and efficient responsiveness to inquiries; open, fair and non-discriminatory access to the program; specific and transparent standards for granting or rejecting certification. Furthermore, we have recognized the importance, to avoid legal challenges, of avoiding exclusivity or the appearance of "cornering the market." Therefore, a body separate from The Ombudsman Association should set the policies and procedures for certification, evaluate those who do and do not meet the requirements, write and score the examination, and adjudicate appeals of negative decisions, to keep standards separate from economic interests of TOA. Under "Budget" (Section XII, below), we explain how this can be structured through a tax-exempt educational foundation. We recommend two committees, a

Certification Eligibility and Qualification Committee and an Appeals Committee, composed largely of volunteer practicing (and retired) organizational ombuds, probably including some outsiders from related fields. Those who serve on the board of the educational foundation and those who develop the program should be different from the individuals who hold leadership positions in TOA/UCOA and from those who handle certification appeals. Members of the Certification Eligibility and Qualification Committee and the Appeals Committee should be widely respected both for their integrity and also for their ombuds practitioner knowledge, skills and abilities.

The first "Recommendations" listed several issues that required additional consideration. This list set the agenda for the Certification Committee's work for the past eight months, and constitutes the remainder of this report, item by item.

III. Certification of Organizations

A program to certify that organizations have established an ombuds office that practices to standards would have three components: criteria to qualify as a certified organization, a process for applying for certification, and benefits for the organization. Such certification would help promote a culture in which the standards of practice are institutionalized rather than being the choice of an individual ombuds, thus promoting consistency over time and personnel transitions. It would also assist the organization in legally defending privilege for their ombuds practitioners.

The criteria for organizational ombuds certification for organizations would include a charter as evidence that the ombuds office practices to the TOA/UCOA Code of Ethics, Standards of Practice and Best Practices. The application would require both the ombuds incumbent and the senior manager to whom that ombuds reports to complete and sign a questionnaire on these practices. The application fee for organizations could be the same as that for individuals, \$200. However, since no continuing professional development is required, the renewal would take place annually, with an updated questionnaire and a \$200 renewal fee each year.

Since the organizational certification includes adherence to Best Practices, the certification could grant an organization the title, "a TOA/UCOA Certified Best Practice Organization" (modified to use whatever is the certification program acronym). Certified organizations could be listed in TOA/UCOA publications, could be highlighted at conferences, and otherwise recognized on webpages and elsewhere.

Administrative procedures for the certification of organizations would include communicating information about the program, receiving applications and fees, distributing applications to the Certification Eligibility and Qualification Committee for review, notifying the organization of the outcome of the review, sending notices reminding the organization, annually, when the certification is due for expiration or renewal.

The remainder of this report will address certification of individuals.

IV. Eligibility

The Certification Committee considered the possibility of allowing individuals to apply for certification after completing Ombuds 101, additional training programs, and passing the examination, but before gaining experience as a practicing ombuds. We recognized that such certification might assist an individual in receiving an initial position, but we also felt it unlikely that it would be a major factor: when an internal candidate is hired for an ombuds position in an organization, in-house experience and reputation is probably most valued; when an external candidate is hired, practice experience is probably most valued, and practice experience would fulfill the certification requirement. The committee therefore decided to retain the practice experience requirement for certification.

The next challenge was to fine-tune how to measure experience. The first "Recommendations" report specified "two years of practice as a full-time ombuds (three years for a part-time or collateral duty ombuds)," but the Certification Committee felt that was too vague. The committee considered and rejected using the number of cases handled as the measurement. There is considerable variation in the caseloads of full-time ombuds, but an even wider range in the number of cases handled by part-time ombuds. (Collateral duty ombuds would probably not satisfy the practice to standards requirement.) Finally, the committee decided to specify number of hours as a clarification of "years" of experience. One year of full-time service was counted as 1,500 hours. Moreover, the committee decided not to limit the count of hours to ombuds case-handling only: attendance as organizational ombuds at informational administrative meetings, outreach to the organization, training, office management, professional development, and other job-related activities could be included in the measurement of experience time.

The Certification Committee recommends that eligibility for Certified Organizational Ombuds I (basic proficiency certification) requires, in addition to a signed statement attesting that one practices to TOA/UCOA standards, completion of 15 points of coursework, passing the written examination, and

A minimum of 3,000 cumulative hours, or two years of full-time experience, as a practicing ombuds. This experience should be obtained within the most recent five-year period prior to applying for certification.

For the advanced proficiency certification, Certified Organizational Ombuds II, the Certification Committee recommends that eligibility requires, in addition to completion of the basic certification requirements, a signed statement attesting that one continues to practice to TOA/UCOA standards, completion of 12 additional points of coursework, and

A minimum of 6,000 cumulative hours, or four years of full-time experience, as a practicing ombuds. This experience should be obtained within the most recent ten-year period prior to applying for certification.

Re-certification every four years requires a signed statement that one continues to practice to TOA/UCOA standards, and completion of a minimum of 5 additional points of continuing professional training, but there is no experience requirement for renewal.

V. Grandfathering

After considerable reflection, the Certification Committee recommends against grandfathering. The primary reason for this is an emphasis on high standards of certification; other justifications include consistency and equitable treatment, transparency, and the relatively small number of practitioners in our profession.

The Certification Committee recommends that all ombuds seeking certification be required to fulfill all of the pre-requisites. For many veteran practitioners who have taken or taught training courses, this means filling out an application form, paying a fee, and taking the written examination for basic proficiency certification. The committee believes that the more rigorous the standards of certification, the more credibility and prestige the program will have. Grandfathering could appear to de-value the requirements of the program (if one practitioner could "waive" the examination, why couldn't all?), and could also appear to de-value the individual who is grandfathered. A major purpose of the certification program is to enhance the credibility and status of our profession; insistence that every "certified" organizational ombuds has satisfied all requirements of the program assures that we can provide all parties (practitioners, organizations that employ them, and users of the office) with the best practitioners as measured by the knowledge, skills and abilities demonstrated by professional training and examination performance.

Grandfathering could also lead to appeals or even legal challenges from those who were not allowed to be grandfathered. The committee was concerned that if only a very few veteran practitioners were allowed to be grandfathered, questions of favoritism could arise. On the other hand, if virtually every ombuds practicing to standards for more than two years were grandfathered, it might be perceived as divisive because it created two tiers: the grandfathered or "honorary" ombuds who didn't need to give evidence of courses taken or taught and examinations passed as opposed to those who "earned" their certification by fulfilling these requirements.

Because the committee believes that the TOA training courses are so well conceived, and provide information and practice skills so essential to best practice in ombudsmanny, it decided to recommend that there be no "alternate route" to certification that allowed bypassing this requirement through grandfathering.

VI. Equivalent Courses

However, it is important for a non-exclusive certification program to allow some substitutions for TOA training courses, in order to avoid allegations of monopoly or anti-trust violation. The Certification Committee believes that formal training as provided in seminars, workshops, pre-conference courses, and professional development courses (half-day, full-day, or multi-day) is necessary for best ombuds practice. Therefore, practical on-the-job experience or

attendance at regional, national or international conferences would not be considered an equivalent to training programs. However, courses that cover similar material – such as negotiation theory, conflict resolution skills, mediation practice and other training in ombudsmanship should be considered as possible equivalencies to TOA programs. UCOA courses, for example, would almost certainly be accepted as equivalents. Teaching (rather than registering for) a TOA course would also be an equivalent. Continuing legal education courses in ADR would be likely to be accepted; at present, however, TOA does not offer courses in database management for ombuds case handling or linguistic skills for practicing as an international ombuds, so computer programming and foreign language classes would be unlikely to be accepted as equivalents. Courses designed specifically for ombuds practitioners would be preferred, but a certain proportion of training requirements – perhaps up to a third – could be fulfilled by relevant courses in particular topics (employment law or cultural diversity) or skills (transformational mediation, interviewing techniques). The Certification Eligibility and Qualification Committee would be given the responsibility to articulate principles of equivalency and criteria for evaluation.

VII. Examination Procedure

The Certification Committee recommends that the qualifying examination might be offered two times in the first year, three times in the second year of the program, and two or three times each year in the future, depending on demand. It would be administratively convenient to schedule one of the annual written examinations at the time and place of the annual conference; this would also help to bring attention to the certification program (as would announcing the names of newly certified ombuds at the conference). Additional examination locations could be determined in conjunction with training programs or in response to applications, if they happened to cluster in one region.

The Certification Committee, after extensive consideration, recommends a single examination, with no variations for USA or international practitioners, and no variation by sector (academic, corporate, etc.) It is important for those who design the examination, and the psychometrician, to remember our international constituency of practicing ombuds and to “de-Americanize” the contents. The committee recommends that the examination avoid questions based on U.S. law or other nationally specific practice, or on sector-specific issues (academic tenure or dormitory life, hospital patient rights, government organization personnel ranks, etc.). (For more details on the written examination, please see the February 2004 first “Recommendations” report.) Moreover, at some point in our professional internationalization, we may need to consider translating the examination (as well as the Code of Ethics and Standards of Practice) into different languages.

An interesting question discussed by the Certification Committee was how to assign responsibility for administering the first examination. It would be important for a group of experienced practitioners to themselves become certified so they could then serve on the Certification Eligibility and Qualification Committee and the Appeals Committee, and also serve as volunteers to administer the program -- including selecting questions for the subsequent examinations. However, they could not themselves select the questions for the first examination. The committee decided that without grandfathering or giving “honorary

certification" status to any individuals, it would be important to identify a few recently retired organizational ombuds, who are richly experienced and highly respected, but not interested in becoming certified themselves. This group of two or three could select questions from the "bank" of examination questions for the first examination, perhaps modifying them somewhat. Those who pass the first examination and satisfy the other requirements for certification would then be eligible to serve as volunteer administrators, overseeing subsequent examinations, or members of the two governance committees.

VIII. Governance

ADMINISTRATION

To make this program financially feasible, it is essential to rely on practicing organizational ombuds for many aspects of program planning, implementation, communication, and ongoing administration. The Certification Committee has begun this work. After the launch of the program, maintenance would include oversight and decision-making by the board of the proposed educational foundation: to continue to spread the word and encourage participation; to assure that courses offered are in sync with requirements (including review of basic skills and knowledge and updates reflecting profession developments); to design the written examination, write the original bank of examination questions, and periodically update and expand the bank of questions; to administer the policy and process for applying, taking and scoring the examination; to review the fee schedule; to handle the reasonable accommodations process for applicants with disabilities; and to assure the paid administrative processing (receipt and acknowledgement of application fees, reminders for re-certification, etc.) is appropriately and efficiently conducted.

Paid administration by the management association would include distributing information and answering inquiries about the certification program, processing receipt of applications and application fees, notification of written examination scheduling and receiving registrations from those who wish to take the examination, booking space and proctors for the examinations, sending out reminders to those whose certification will expire, and other correspondence and paperwork handling.

CERTIFICATION ELIGIBILITY AND QUALIFICATION COMMITTEE

The committee to evaluate applications and determine if certification requirements have been satisfied, consisting of approximately five members, would be composed of TOA/UCOA membership representatives, particularly highly respected practitioners, with perhaps outside counsel (as a resource as needed). Members might be appointed by a chair of the committee, who might be appointed by the educational foundation board. Membership on the committee should overlap very little, if at all, with membership on the TOA Board, to avoid the appearance of a leadership "clique." After the initial phase of the program, members of the committee should themselves be certified ombuds professionals. Members of the committee should represent all ombuds sectors (corporate, academic, government, etc.), and they should be internationally diverse. Committee membership could rotate on staggered three-year terms.

The Certification Eligibility and Qualification Committee would need a budget to pay for expenses not covered on a voluntary basis, such as teleconferences, photocopying (of applications, etc.), costs of reproducing and administering the examination, and the services of an attorney and psychometrician, as needed (see Budget, Section XII, below).

APPEALS COMMITTEE

The Certification Committee anticipates that there will be instances in which an organization or an individual wishes to appeal a negative decision made by the Certification Eligibility and Qualification Committee. A practicing ombuds might be determined to be ineligible due to insufficient experience in a part-time position or due to not practicing to standards. Outside training in international human rights or employee assistance counseling might not be determined to be equivalent to ombuds training courses. There might be a dispute about the amount of coursework necessary for an ombuds who has been practicing for a decade with no structured training. Therefore, for fair process and transparency, it is important to establish an Appeals Committee.

The appeals process should be simple, accessible and easy to understand. The Appeals Committee would consist of five (must be an odd number) members, with international and sector representation, including highly respected TOA/UCOA members, probably at least one non-organizational ombuds who practices in a related field (such as a mediator), and either an independent outside counsel with expertise in certification (since the next step is "see you in court"), or access to legal advice as needed. The TOA/UCOA-member representatives on the Appeals Committee should have no other functions within TOA/UCOA or the educational foundation. The Appeals Committee would be appointed by the board of the educational foundation. After a brief initial phase of the program, members of the committee should themselves be certified ombuds professionals. Committee membership, except perhaps for outside counsel, would rotate on staggered three-year terms.

The Appeals Committee would need a budget to pay for expenses not covered on a voluntary basis, such as teleconferences, photocopying (of written appeal documents), and the services of an attorney and psychometrician, as needed (see Budget, Section XIII, below).

IX. Approvals, Recognition and Trademarking

After careful review, the Certification Committee concluded that, for our relatively small-scale program, it would not be necessary to obtain approval of recognized professional certification organizations such as the American National Standards Institute (ANSI).

It is important to trademark the name and acronym of the certification program. (The trademark could form the basis for a badge or certificate seal or lapel pin that is awarded to those who become certified.) This involves running a search to be sure the name and acronym are not too close to those of another organization. Specifically, we need a search of federal and state trademark, service mark and certification mark registrations to confirm that the chosen acronym is not precluded by someone else's prior registration. The search cost is approximately \$500.

Then the development and filing of a service mark or certification mark registration application usually runs about \$1500-\$2000, including the \$400 federal filing fee.

X. Notice to the Stakeholders

Best practice for a profession that is creating a certification program is to make the proposal available to all stakeholders for a public comment period. A comment period allows potential participants to contribute to the planning, and to voice their concerns in advance so adjustments can be made. It is also a way to assess, in part, the "market" for the program and to predict, to some extent, the amount of anticipated participation.

The Certification Committee proposes that, if the TOA and UCOA Boards agree, we should make efforts to inform TOA and UCOA members of the certification program proposal and comment period before the annual conferences in April 2005 by means of organizational websites, newsletters and listserve announcements. We hope to have time at the business meetings of TOA and UCOA, and/or at other times during the conferences, to mention this comment period. We plan to have photocopies of the proposal available for conference attendees to pick up from tables, or distributed with conference registration materials. These materials, as well as newsletter and listserve announcements, will instruct conference participants how to comment on the proposed program. We could also distribute some informal "survey" forms asking for responses from those who do or do not feel inclined to participate in the certification program, with their reasons.

Stakeholders also include the organizations that employ or might employ ombuds, and potential future organizational ombuds. The committee recommends that we urge all practicing ombuds not only to spread the word among other organizational ombuds practitioners but also to notify appropriate senior managers at their institutions about this comment period. The committee suggests consideration of a notification, perhaps by email, to members of ACR or other "related" organizations of mediators or ADR professionals with information about the comment period. The committee does not recommend an expensive public information campaign.

Comments could be sent to Marsha Wagner, chair, who could share comments with the Certification Committee. It is possible that some comments could indicate important considerations that were not included in this planning period but should be addressed at this point, or important modifications that might be considered for the program's structure, procedures, or requirements.

XI. Timing of the Launch of the Program

The Certification Committee proposes that this report first be considered by the TOA and UCOA Boards. If they approve, the next step would be to open the three-month comment period in advance of the annual conferences in April 2005. The Committee feels it is preferable to have some announcement made before the conferences to prepare members to consider the proposal. (The timing of the first announcement might be determined by the two organizations' newsletter schedules.) If three months are allowed for comments after the April conferences, the comment

period would terminate in mid-July 2005. At that point, the Certification Committee could share comments received with the TOA and UCOA Boards and then the Boards could decide to: a) go ahead with the program implementation as recommended by the committee; b) go ahead with minor modifications as suggested during the comments period by Board members or other stakeholders; c) make major modifications; d) postpone or cancel implementation (for any reasons, such as finances, impending organizational merger, to allow time to establish the educational foundation, etc.)

A certification program for organizations is a less complex project, and could be implemented before a certification program for individuals. Organizations currently employing ombuds would be notified of the advantages of organizational certification. They would be informed of the requirements of a "standards of practice" ombuds function, and would be invited to submit materials attesting to the standards of practice of their office. The Certification Eligibility and Qualification Committee would examine the materials submitted with the application and determine whether or not to grant the certification. Administratively, fees would need to be received and acknowledged and a certificate mailed to the organization. The committee estimates that this program could be implemented as early as January 2006.

The certification program for individuals would begin with an announcement of the advantages of certification and the requirements for the basic and advanced levels of certification. The process for submitting applications and registering for the written examination would be communicated. The Certification Eligibility and Qualification Committee and Appeals Committee would be established. The written examination would be prepared. The committee estimates the first applications might be received, and the first examination scheduled, by summer or fall 2006.

The Certification Committee has not researched the timetable for establishing a 501 (c) 3 (tax exempt) educational foundation. It has also not researched whether a certification program could be implemented without such a foundation in place, and then transferred to that foundation as soon as it was created. Obviously, administrative requirements for establishing such a foundation, if the certification program's activities were to fall under such an entity, would be a factor in planning for the timing of the launch of the program.

XII. Budget

TAX-EXEMPT ORGANIZATION. The Certification Committee recommends the establishment of a tax-exempt educational foundation to oversee and administer training and certification programs. This Ombuds Educational Foundation would be a separate corporation, exempt under IRS Section 501(c) 3, with a separate board of directors (some of whom could be crossovers from the TOA (c) 6 Board – for example, the immediate past president of TOA, or the Chair of the CDC of TOA, could be the president of the foundation).

PMA's analysis indicates that the fees to set up such a foundation would be recouped in the first year of its existence by not paying sales tax on the costs to run the 101 course and specialized courses. The foundation could also generate revenue by applying for grants and well as receiving tax-deductible contributions. (One corporation last year offered a donation to TOA

and then withdrew the offer when they discovered TOA is not a (c) 3 organization.) The hope would be that this foundation could fund the up-front costs of starting a certification program with donations or grants.

TOA could make contributions to the foundation – for example, some “start-up” funding. But the goal would be for the foundation to be self-supporting. The more it generated from course registration fees, certification application fees, etc., the more funding would be available to enhance those professional development options, and possibly to add more educational programs – for example, awarding grants for research on ombuds practice or publishing a journal. The foundation could not fund TOA, which would have to rely on membership fees and other non-educational programming revenue for its budget.

This foundation would not only make sense financially in sales tax savings and eligibility to receive grants and tax-deductible donations; it would also signal the structural and financial independence of the educational (training) and certification program from TOA itself. The “arm’s length” separation of the two corporations, even with crossover leadership, would send an important message of avoiding conflict of interest, one of the cornerstone principles for a certification program’s protection against being viewed as monopolistic.

All 501 (c) 3 organizations are prohibited from lobbying or participating in political campaigns or proposing, supporting, or opposing legislation. However, TOA as a separate organization could engage in lobbying and legislative advocacy activities.

In addition to legal and administrative costs for setting up a foundation, there will be an on-going annual expense of an audit each year for the foundation.

PRELIMINARY BUSINESS PLAN. The Certification Committee believes there are two types of expenses for a certification program: up-front one-time-only costs of establishing the program, and ongoing administrative and maintenance costs. Funding for the up-front costs could come from TOA’s assets, from donations or contributions, or from grants. Funding for the on-going administrative costs would come from the fees required of those (individuals and organizations) who apply to be certified, and from the revenue of other educational programs – such as training programs -- organized under the foundation’s auspices.

The only way our profession can afford to establish this certification program is by relying on the skills, time, and administrative contributions of our members. It is assumed that volunteers from among practicing (or retired) organizational ombuds would publicize the program and encourage participation, determine fees and procedures, staff the committees that review applications to determine eligibility, design examinations and write examination questions, grade examinations and determine who has fulfilled all certification requirements, including evaluating outside training programs for equivalency, determine frequency and location of examinations, and serve on the appeals committee.

In addition to heavy reliance on volunteers, the Certification Committee recommends a modest and “home made” approach to the certification program, in order to be financially conservative. For example, rather than sending written examinations out to a printer, we could

type and print them from a desktop computer; rather than paying a vendor to score multiple choice examination questions electronically (as "bubble tests"), we could grade them by hand. We propose doing "marketing" by email and word-of-mouth, and minimizing expensive printed materials such as glossy brochures. The Certification Committee does not believe that a low-budget operation would detract from the professional prestige of the program. However, if the program is very successful financially, or if grants or contributions were sufficient, much volunteer labor could be eventually re-assigned to paid vendors or administrators.

The estimates for up-front costs and on-going expenses and revenues for an organizational ombuds certification program are listed below:

Estimated up-front costs:

Legal review of documentation to establish the certification program, its governance and structure (2005)	\$5,000
Trademarking (2005)	2,500
Psychometrician to look over and edit the first "bank" of written examination questions (approx. 300) (2006)	10,000
<u>Total up-front costs</u>	\$17,500

Note: The dates of these one-time expenses depends on the other factors such as TOA-UCOA merger. The earliest scenario might be the following: if the Board(s) approve going forward with a certification program after the comment period that ends in July 2005, the legal review and trademarking costs could occur in fall 2005; examination questions would probably not be ready for psychometrician review until spring 2006.

Estimated on-going costs (per year):

Legal advice on specific issues as they may arise, such as appeals or governance	\$2,000
Psychometrician to advise in revision, updating, or expanding bank of examination questions	2,000
Administrative costs (receiving applications and processing fees, sending reminder notices to those whose certification will expire, booking space for written examinations, proctoring exams, etc.) 50 hours per year @ \$20 per hour	1,000
Printing and mailing	500
Room rental for two written examinations per year	1,000
Teleconferences for volunteer administrative committees (Certification qualifying and appeals committees)	500
<u>Total annual administrative and maintenance costs</u>	\$7,000

Estimated on-going revenue (per year):

Application fees	\$7,000 +
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If the application fee for individuals and organizations is \$200, and if 35 application fees were received each year, the revenue from application fees would be equivalent to the costs of maintaining and administering the program. Breaking even would be appropriate for a not-for-profit organization. Training course revenue and tax-deductible contributions would also be available within the foundation to cover unanticipated costs or a decrease in certification applications.

An alternative, more optimistic plan would involve considering the one-time start-up costs an "investment" or a sort of loan, to be recovered or repaid when the program begins to function as a revenue source, after three to five years, when the amount of application fees received is higher than the annual administrative costs.

Sep 2006

Professional Ethics, Standards and Best Practices Committee

MISSION

The mission of IOA's Standing Committee on Professional Ethics, Standards, and Best Practices is to identify, define, and provide guidance on the ethical principles and standards of practice for organizational ombuds professionals.

PRIORITIES

- Revise and, as needed, update and improve IOA's guiding documents, the Code of Ethics and Standards of Practice
- Revise and, as needed, update and improve IOA's Best Practices guidance for organizational ombuds
- Provide ethical guidance to IOA members seeking assistance
- Co-ordinate activities of this Standing Committee with the activities of related committees such as Legal and Legislative Affairs, Professional Development, Membership, etc.
- Promote awareness of IOA's ethical principles and standards of practice

ACCOMPLISHMENTS

- The IOA Code of Ethics and Standards of Practice Task Force (reporting to this standing committee) has identified the most essential ingredients of the UCOA and TOA codes of ethics and standards or practice and woven them together to create new IOA documents: the IOA Code of Ethics and IOA Standards of Practice. These new documents have been approved by the IOA Board of Directors.
- The IOA Code of Ethics and Standards of Practice Task Force also identified a list of items related to professional practice that would be more suitable in a Best Practices document.

MEMBERS

- Howard Gadlin, Tim Griffin, Francine Montemurro, Dave Talbot, and Marsha Wagner (Chair). THANK YOU!
- The Standing Committee is in formation and will soon meet to plan and prioritize the next activities.

TO JOIN: Please contact Marsha Wagner (212) 854-1234, wagner@columbia.edu.

EFFECTIVENESS SUBCOMMITTEE

The Effectiveness Subcommittee is a standing subcommittee under the Professional Ethics, Standards and Best Practices Committee.

MISSION

The mission of the Effectiveness Subcommittee is to heighten awareness of the importance of determining effectiveness measures for Ombuds programs within the

organizations in which they are housed. Additionally, work to define some effectiveness measures that are deemed to be fundamentally essential to Ombuds programs.

PRIORITIES

- Work with the Professional Development Committee to get time in the 101 class to present an Effectiveness module.
- Develop module for 101.
- Work with the Professional Development Committee to establish an Effectiveness Specialized Course.
- Develop Effectiveness Specialized Course.
- Determine core effectiveness measures that are deemed to be fundamentally essential to Ombuds programs.

ACCOMPLISHMENTS

- Obtained the approval to develop Effectiveness module for 101
- Developed module and presented in 101 in February, 2006.

MEMBERS

Carolyn Noorbakhsh, (chair), Jan Morse, Sue Morris, Mary Rowe, Judi Segall, Randy Williams, John Zinnser

TO JOIN: Please contact Carolyn Noorbakhsh, (303) 492-5077 or carolyn.noorbakhsh@colorado.edu

Marsha Wagner

Distribution List Name: PESBP Standing Committee

Members:

Dave Talbot
Dina Beach Lynch
Francine Montemurro
Howard Gadlin
John Willis
Kevin Jessar
Marsha Wagner
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IOA Standing Committee on Professional Ethics, Standards and Best Practices

Proposed Changes

Submitted to the IOA Board November 27, 2007

(original text plus changes in trackings)

STANDARD 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.

Deleted: The Ombudsman does not disclose confidential communications unless given permission to do so in the course of informal discussions with the Ombudsman, and even then at the sole discretion of the Ombudsman;

STANDARD 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 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.~~

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BEST PRACTICE attached to STANDARD 4.5

[STANDARD 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.]

The Ombudsman may be requested or required to speak with public officials, in a private or public setting, about the functions of the Ombudsman Office, or about trends published in a written report. If so, the Ombudsman should still observe the confidentiality standards as stated in 3.1.

PESBP's proposed changes to SOPs

CURRENT 3.1 *plus changes in underlined red type*

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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 disclose confidential communications in a way that identifies an individual person unless given permission to do so in the course of informal discussions with the Ombudsman, and even then at the sole discretion of the Ombudsman

Deleted:

CURRENT 3.3 *plus changes in underlined red type*

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The Ombudsman does not testify in any formal process inside the organization and resists testifying in any formal process outside of the organization, regarding 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.

Best Practice attached to 4.5

The Ombudsman – ~~especially one who serves in a public organization~~ – may be ^{requested or required} asked to speak with public officials in a private or public setting, about the functions of the Ombudsman Office, or about trends published in a written report. If so, the Ombudsman should still observe the confidentiality standards as stated in 3.1.

The Ombudsman Association
CERTIFICATION COMMITTEE
SECOND RECOMMENDATIONS REPORT

January 2005

CONTENTS

- I. Overview
- II. Recapitulation of First "Recommendations" Report
- III. Certification of Organizations
- IV. Eligibility
- V. Grandfathering
- VI. Equivalent Courses
- VII. Governance
 - Administration
 - Certification Eligibility and Qualification Committee
 - Appeals Committee
- VIII. Appeals Procedure
- IX. Examination Procedure
- X. Approvals, Recognition and Trademarking
- XI. Notice to the Stakeholders
- XII. Timing of the Launch of the Program
- XIII. Budget
 - Tax-Exempt Organization
 - Preliminary Business Plan

Certification Committee members: John Barkat, Joanne DeSiato (UCOA liaison), Wendy Friede, Brodrick Hill, Kevin Jessar, Michael Kaplan, James Lee, Carolyn Noorbakhsh, Bonnie Oh, Patrick Robardet, Marsha Wagner (chair), Merle Waxman

The committee wishes to thank Joanne Cole of Professional Management Association for her expertise, sound judgment and excellent advice throughout our process.

professional

I. Overview

On February 1, 2004, the Certification Sub-Committee of TOA's Curriculum Development Committee submitted its "Recommendation for Ombudsman Certification," which articulated the major advantages and disadvantages of a certification program for organizational ombuds, described the general requirements and procedures, and listed several areas that required more research, consideration, and planning. The CDC generally approved this report and passed it on to the TOA Board of Directors. At the annual meeting held in conjunction with the annual conference in April 2004, the TOA Board expressed general support for the sub-committee's recommendation that we move forward in planning a certification program, and asked the committee (restructured as a committee of the Board) to clarify some of the outstanding issues and implementation details. This January 2005 report is the result of the last eight months of committee work. *It should be read as a supplement to the February 1, 2004, "Recommendation for Ombudsman Certification."*

Other relevant developments have occurred since Spring 2004. The Board of the University and College Ombuds Association also expressed support of moving forward with planning for an organizational ombuds certification program. Our work in 2004 took place in the context of expecting a TOA-UCOA merger in the near future, and a member of our committee, Joanne DeSiato, served as the liaison to the UCOA Board. We also kept in mind the possibility of other merger-related changes, such as internal governance and professional management. The tentative plan for a future 501 (c) 3 (tax exempt) foundation for organizational ombuds educational programs, discussed by the TOA Board, would provide a significant structural independence to the certification program.

Furthermore, in the past eight months, support for an organizational ombuds certification program has come from many different sources. Countless individual ombuds have expressed enthusiasm for professional certification. The February 2004 ABA resolution's encouragement of uniformity in ombuds practice "so that individuals who avail themselves of their aid may do so with greater confidence in the integrity of the process" is consistent with the development of a certification program. Craig McEwen, in his keynote speech to the annual TOA-UCOA joint conference in April, 2004, "Valuing Professionalism: Challenges to the Ombuds," addressed the advantages of certification programs both for individual practitioners and also for organizations that employ ombuds. Chuck Howard, an attorney who advises ombuds programs, and others reinforced these concerns at the conference and elsewhere. The committee's observation is that the advantages of a certification program, as articulated in the first "Recommendations," have been echoed and reasserted in many ways since last spring.

II. Recapitulation of the First "Recommendations" Report

The Certification Committee chose not to change the major certification requirements as spelled out in the first "Recommendations" of the Certification Sub-Committee on February 1,

2004. That document is attached, but a brief recapitulation may help clarify the basic conception of the proposed certification program:

We emphasize that we propose a program that identifies with "certification" those practitioners who have successfully completed a certain set of requirements: experience practicing to standards, appropriate professional development training, passing a written examination, and payment of a fee. This conception is not a licensing or assessment program that guarantees future competence, ethics, or standards of practice of an individual. It does not include a process for investigation of practice, complaint handling about practice, or substantive decertification. (The only "decertification" recommended by the committee would result from expiration due to failure to maintain certified status.)

The recommendation is for two levels of certification: a basic level of competence for new ombuds and an advanced certification for more experienced ombuds. Once granted, each individual's certification would be in effect for four years; at the end of that time, it would expire unless the individual recertified through a statement of continued practicing to standards and some additional professional training.

Basic proficiency certification (Certified Organizational Ombuds I) requires two years of practice as a full-time ombuds; a signed statement attesting that one practices to TOA/UCOA standards; completion of 15 points of ombuds training courses (including Ombuds 101, Ombuds 102 or "intermediate workshop," and short courses, or equivalent); passing a 90-minute written examination; submission of an application form and payment of an accompanying fee.

Advanced proficiency certification (Certified Organizational Ombuds II) requires completion of the basic proficiency requirements plus a total of at least four years of practice as a full-time ombuds; a signed statement attesting that one continues to practice to TOA/UCOA standards; completion of 12 additional points of ombuds training courses (including at least one "advanced series seminars," or equivalent); submission of an application form and payment of an accompanying fee.

Certified status expires four years after certification unless the practitioner re-certifies. Re-certification at the same level as the previous certification requires submission of a signed statement attesting that one continues to practice to TOA/UCOA standards; completion of at least 5 points of continuing professional training during the four years since certification; submission of an application form and payment of an accompanying fee.

In both reports, the Sub-Committee and the current Certification Committee have been guided by a set of principles, based on professional association guidelines, which assure a certification program with high standards and a fair and transparent process. We have sought to develop procedures that would assure timely and efficient responsiveness to inquiries; open, fair and non-discriminatory access to the program; specific and transparent standards for granting or rejecting certification. Furthermore, we have recognized the importance, to avoid legal challenges, of avoiding exclusivity or the appearance of "cornering the market." Therefore, a body separate from The Ombudsman Association should set the policies and procedures for certification, evaluate those who do and do not meet the requirements, write and score the

examination, and adjudicate appeals of negative decisions, to keep standards separate from economic interests of TOA. Under "Budget" (Section XIII, below), we explain how this can be structured through a tax-exempt educational foundation. We recommend two committees, a Certification Eligibility and Qualifications Committee and an Appeals Committee, composed largely of volunteer practicing (and retired) organizational ombuds, probably including some outsiders from related fields. Those who serve on the board of the educational foundation and those who develop the program should be different from the individuals who hold leadership positions in TOA and from those who handle certification appeals. Members of the Certification Eligibility and Qualifications Committee and the Appeals Committee should be widely respected both for their integrity and also for their ombuds practitioner knowledge, skills and ability.

The first "Recommendations" listed several issues that required additional consideration. This list set the agenda for the Certification Committee's work for the past eight months, and constitutes the remainder of this report, item by item.

III. Certification of Organizations

Text to be provided

IV. Eligibility

Text to be provided

V. Grandfathering

Text to be provided

VI. Equivalent Courses

Text to be provided

VII. Governance

To make this program financially feasible, it is essential to rely on practicing organizational ombuds for many aspects of program planning, implementation, communication, and ongoing administration. The Certification Committee has begun this work. After the launch of the program, maintenance would include oversight and decision-making by the board of the proposed educational foundation, to continue to spread the word and encourage participation; to assure that courses offered are in sync with requirements (including review of basic skills and knowledge and updates reflecting profession developments), to design the written examination, write the original bank of examination questions, and periodically update and expand the bank of questions; to administer the policy and process for applying, taking and scoring the examination; to review the fee schedule; to handle the reasonable accommodations process for applicants with disabilities; and to make sure the paid administration processing (receipt and acknowledgement of application fees, reminders for re-certification, etc.) is appropriately and efficiently conducted.

CERTIFICATION ELIGIBILITY AND QUALIFICATIONS COMMITTEE

The committee of approximately 5 members would be composed of TOA/UCOA membership representatives, particularly highly respected practitioners, with perhaps outside counsel (as a resource as needed). Members might be appointed by a chair of the committee,

who might be appointed by the educational foundation Board. Membership on the committee should overlap very little, if at all, with membership on the TOA Board, to avoid the appearance of a leadership "clique." After the initial phase of the program, members of the committee should themselves be certified ombuds professionals. Members of the committee should represent all ombuds sectors (corporate, academic, government, etc.). Committee membership could rotate on staggered three-year terms.

The Certification Eligibility and Qualifications Committee would need a budget to cover such expenses not covered on a voluntarily basis, such as teleconferences, photocopying (of applications, etc.), costs of printing and administering the examination, and the services of an attorney and psychometrician, as needed (see Budget, Section XIII, below).

APPEALS COMMITTEE

The Appeals Committee would consist of five (must be an odd number) members, with international and sector diversity, including highly respected TOA/UCOA members, probably at least one non-organizational ombuds who practices in a related field (such as a mediator), and either an independent outside counsel with expertise in certification (since the next step is "see you in court"), or access to legal advice as needed. The TOA/UCOA-member representatives on the Appeals Committee should have no other functions within TOA/UCOA. The Appeals Committee would be appointed by the Board of the educational foundation. After the initial phase of the program, members of the committee should themselves be certified ombuds professionals. Committee membership, except perhaps for outside counsel, would rotate on staggered three-year terms.

The Appeals Committee would need a budget to cover such expenses not covered on a voluntarily basis, such as teleconferences, photocopying (of written appeal documents), and the services of an attorney and psychometrician, as needed (see Budget, Section XIII, below).

VIII. Appeals Procedure

Text to be provided

IX. Examination Procedure

The Certification Committee recommends that the qualifying examination might be offered two times in the first year, three times in the second year of the program, and two or three times each year in the future, depending on demand. It would be administratively convenient to schedule one of the annual written examinations at the time and place of the annual conference; this would also help to bring attention to the certification program (as would announcing the names of newly certified ombuds at the conference). Additional examination locations could be determined in conjunction with training programs or in response to applications, if they happened to cluster in one region.

The Certification Committee, after extensive consideration, recommends a single examination, with no variations for USA or international practitioners, and no variation by sector (academic, corporate, etc.) The committee recommends that the examination avoid questions

based on U.S. law or other nationally specific practice, or on sector-specific issues (academic tenure or dormitory life, hospital patient rights, government organization personnel ranks, etc.). For more details, please see the February 2004 first "Recommendations" report.)

X. Approvals, Recognition and Trademarking

After careful review, the Certification Committee concluded that, for our relatively small-scale program, it would not be necessary to obtain approval of recognized professional certification organizations such as ANSI.

XI. Notice to the Stakeholders

Best practice for a profession that is creating a certification program is to make the proposal available to all stakeholders for a public comment period. A comment period allows potential participants to contribute to the planning, and to voice their concerns in advance so adjustments can be made. It is also a way to assess, in part, the "market" for the program and to predict, to some extent, the amount of anticipated participation.

The Certification Committee proposes that, if the TOA and UCOA Boards agree, we should make efforts to inform TOA and UCOA members of the certification program proposal and comment period before the annual conferences in April 2005 by means of organizational websites, newsletters and listserv announcements. We hope to have time at the business meetings of TOA and UCOA, and/or at other times during the conferences, to mention this comment period. We plan to have photocopies of the proposal available for conference attendees to pick up from tables, or distributed with conference registration materials. These materials, as well as newsletter and listserv announcements, will instruct conference participants how to comment on the proposed program. We could also include some informal "survey" comments asking for responses from those who do or do not feel inclined to participate in the certification program, with their reasons.

Stakeholders also include the organizations that employ or might employ ombuds, and potential future organizational ombuds. The committee recommends that we urge all practicing ombuds not only to spread the word among other organizational ombuds practitioners but also to notify appropriate senior managers at their institutions about this comment period. The committee suggests consideration of a notification, perhaps by email, to members of ACR or other "related" organizations of mediators or ADR professionals with information about the comment period. The committee does not recommend an expensive public information campaign.

Comments could be sent to Marsha Wagner, chair, who could share comments with the Certification Committee. It is possible that some comments could indicate important considerations that were not included in this planning period but should be addressed at this point, or important modifications that might be considered for the program's structure, procedures, or requirements.

XII. Timing of the Launch of the Program

The Certification Committee proposes that this report first be considered by the TOA and UCOA Boards. If they approve, the next step would be to open the three-month comment period in advance of the annual conferences in April 2005. The Committee feels it is preferable to have some announcement made before the conferences to prepare members to consider the proposal. (The timing of the first announcement might be determined by the two organizations' newsletter schedules.) If three months are allowed for comments after the April conferences, the comment period would terminate in mid-July 2005. At that point, the Certification Committee could share comments received with the TOA and UCOA Boards and then the Boards could decide to: a) go ahead with the program implementation as recommended by the committee; b) go ahead with minor modifications as suggested during the comments period by Board members or other stakeholders; c) make major modifications; d) postpone or cancel implementation (for any reasons, such as finances, impending organizational merger, etc.)

A certification program for organizations is a less complex project, and could be implemented before a certification program for individuals. Organizations currently employing ombuds would be notified of the advantages of organizational certification. They would be informed of the requirements of a "standards of practice" ombuds function, and would be invited to submit materials attesting to the standards of practice of their office. An organizational ombuds certification committee would examine the materials submitted with the application and determine whether or not to grant the certification. Administratively, fees would need to be received and acknowledged and a certificate mailed to the organization. The committee estimates that this program could be implemented as early as January 2006.

The certification program for individuals would begin with an announcement of the advantages of certification and the requirements for the basic and advanced levels of certification. The process for submitting applications and registering for the written examination would be presented. The certification eligibility/approval committee and appeals committee would be established. The written examination would be prepared. The committee estimates the first applications might be received, and the first examination scheduled, by summer or fall 2006.

The committee has not researched the timetable for establishing a 501 (c) 3 (tax exempt) educational foundation. It has also not researched whether a certification program could be implemented without such a foundation in place, and then transferred to that foundation as soon as it was functioning. Obviously, administrative requirements for establishing such a foundation, if the certification program's activities were to fall under such an entity, would be a factor in planning for the timing of the launch of the program.

XIV. Budget

TAX-EXEMPT ORGANIZATION. The Certification Committee recommends the establishment of a tax-exempt educational foundation to oversee and administer training and certification programs. This Ombuds Educational Foundation would be a separate corporation, exempt under IRS Section 501(c) 3, with a separate board of directors (some of whom could be crossovers from the TOA (c) 6 Board – for example, the immediate past president of TOA, or the Chair of the CDC of TOA, could be the president of the foundation).

PMA's analysis indicates that the fees to set up such a foundation would be recouped in the first year of its existence by not paying sales tax on the costs to run the 101 course and specialized courses. The foundation could also generate revenue by applying for grants and well as receiving tax-deductible contributions. (One corporation last year offered a donation to TOA and then withdrew the offer when they discovered TOA is not a (c) 3 organization.) The hope would be that this foundation could fund the up-front costs of starting a certification program with donations or grants.

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 Total up-front costs	 \$15,500

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 Total annual administrative and maintenance costs	 \$7,000

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THE INTERNATIONAL OMBUDSMAN ASSOCIATION (IOA)
GUIDANCE FOR BEST PRACTICES AND
COMMENTARY ON THE AMERICAN BAR ASSOCIATION
STANDARDS FOR THE ESTABLISHMENT AND OPERATION OF OMBUDS
OFFICES, REVISED FEBRUARY 2004

March 14, 2006

	<i>page</i>
I. INTRODUCTION	2
II. OMBUDS OFFICE CHARTER <u>IOA Recommendation</u>	5
III. LIMITATIONS ON THE OMBUDS'S AUTHORITY	6
a. Quotation of Section D of the ABA Standards	
b. IOA Commentary and Recommendations	
i. Issues arising under a Collective Bargaining Agreement	
<u>IOA Recommendations</u>	
ii. Issues that fall within the purview of federal, state or	
local labor or employment laws	
<u>IOA Recommendations</u>	
IV. NOTICE	9
a. Quotation of Section F of the ABA Standards	
b. IOA Commentary and Recommendations on Sections	
F (2) and F (3)	
<u>IOA Recommendations</u>	
c. IOA Commentary & Recommendations on Section F (1)	
i. Communication of the Six Items in Section F (1) (a-f)	
<u>IOA Recommendations</u>	
ii. Voluntary Disclosure of Any Information -- Section F(1) (a)	
<u>IOA Recommendations</u>	
V. CONCLUSIONS AND FUTURE PLANNING	17

THE INTERNATIONAL OMBUDSMAN ASSOCIATION

**GUIDANCE FOR BEST PRACTICES AND
COMMENTARY ON THE AMERICAN BAR ASSOCIATION
STANDARDS FOR THE ESTABLISHMENT AND OPERATION OF OMBUDS
OFFICES, REVISED FEBRUARY 2004**

March 14, 2006

The International Ombudsman Association (IOA) wishes to clarify its own guidance on best practices for organizational ombuds in light of the 2004 modifications to the American Bar Association (ABA) Standards for the Establishment and Operations of Ombuds Offices as revised in February 2004 (hereafter, the "ABA Standards").

I. INTRODUCTION

Until recently, organizational ombuds standards have been asserted, without challenge, as a set of ideals for a role that was principally self-regulated. In the United States, there have been no laws or rules that define necessary credentials for declaring oneself an ombudsman, no training path required to be entitled to use the name, and no criteria for certifying any ombuds programs as legitimate. As the organizational role became more widely established, during the 1990s, the two United States organizational ombuds organizations, The Ombudsman Association (TOA) and The University and College Ombuds Association (UCOA), ratified their own Standards of Practice and criteria for professional association membership. These two organizations merged in July of 2005 to form The International Ombudsman Association, which developed its own IOA Standards of Practice and criteria for membership. Members of the ombuds profession hoped that the standards they defined for themselves would set the parameters for other efforts to define formal or legal terms of reference for the role. The ABA Standards for the Establishment and Operation of Ombuds Offices and accompanying Report, initially created in 2001, constituted the first time that another profession has fully examined the ombuds role in the light of its own perspectives and interests and offered its interpretation of the role. The ABA Standards were revised in February 2004. (In 1969 the ABA adopted a resolution "recommending that state and local governments consider establishing ombudsmen who would be authorized to inquire into administrative action and to make public criticism." That Report was written in reference to classical ombudsmen and did not address the organizational ombudsman role which was, at that time, in its infancy.)

The 2004 ABA Standards modified the Standards passed by the ABA in 2001. The 2001 document represented a partially successful compromise document as the result of the joint efforts of the Administrative Law and Alternative Dispute Resolution (ADR)

sections of the ABA working with representatives of several ombuds organizations. They guided a group proposing Standards that attempted to reflect the central concerns of the ombuds community while working closely and intensely with the various sectors of the ABA. The United States Ombudsman Association (USOA), which largely represents classical ombudsmen, was unhappy with the results and withdrew its support and disavowed the proposed report and recommendations.

In addition, certain issues, such as notice and the relation of organizational ombuds to unions, were not fully addressed in the 2001 Standards because it was not possible to reach a formulation satisfactory to all parties. The 2004 Standards represent a second compromise – that between the key ABA drafters of the earlier report and representatives of additional ABA sections who had voiced a variety of new concerns that emerged as different sections reacted to the first report. Because of internal dynamics within the ABA, representatives of the different ombuds organizations were not able to play as active a role in the development of the 2004 Standards as they had in the first process, and a number of the objections and critical changes offered by ombuds organizations were ultimately not included in the second report.

In August of 2004, the Boards of Directors of TOA and UCOA approved the following Resolution in response to the ABA Standards of 2004:

RESOLVED: The Ombudsman Association and The University and College Ombuds Association note the Resolution adopted by the American Bar Association House of Delegates on February 9, 2004, on Standards for the Establishment and Operation of Ombuds Offices. The ABA Resolution significantly departs – in provisions including but not limited to confidentiality and notice – from the Standards of Practice adopted by The Ombudsman Association and The University and College Ombuds Association, which were derived from the best practices of organizational ombuds based on many years of collective experience. The Ombudsman Association and The University and College Ombuds Association therefore reaffirm their Standards of Practice.

The ABA Standards approved by the ABA Board of Delegates in February of 2004 include several changes that require the serious consideration of all practicing organizational ombuds and IOA members. Many of the principles stated in the ABA Standards are helpful to organizational ombuds, particularly the ABA's support for the essential ombuds characteristics of independence, impartiality, and confidentiality. Part II of this document (hereafter referred to as "IOA Guidance"), endorses the ABA's recommendation that the scope and authority of every organizational ombuds office be defined by a written charter.

Other areas of ombuds practice addressed in the 2004 ABA Standards raise serious concerns among the organizational ombuds community either because their implications are ambiguous or because they seem to constrain or undermine certain key aspects of the ombuds role. Key among these is Section D of the ABA Standards, entitled "Limitations on the Ombuds's Authority," which refers to the extent to which it is

appropriate for an organizational ombuds to address issues arising under a collective bargaining agreement or within the purview of federal, state, or local labor or employment laws. The third part of this IOA Guidance comments on Section D of the ABA Standards.

The language of Section F of the ABA Standards, entitled "Notice," also raises concerns for ombuds practitioners. The fourth part of this IOA Guidance therefore comments on issues regarding notice. The first half of the fourth section deals with general principles for ombuds practice to clarify that a visitor's communication to only the ombuds office does not constitute notice to the organization, but that under certain circumstances it is possible for the ombuds to put the entity on notice. The second half of the fourth section addresses how the ombuds should advise the visitor about the issues of confidentiality, notice to the organization and other aspects of the visitor's rights.

Sections D and F of the ABA Standards are quoted in full at the beginning of Parts III and IV below. The complete text of the ABA Standards is available at www.abanet.org/adminlaw/ombuds/115.pdf.

This IOA Guidance document, originally drafted by TOA and UCOA, was presented online to the members of those organizations in February 2005, and distributed and discussed in sessions of the annual conferences April 9-13, 2005; the memberships' open comment period extended from February through the end of April 2005. All comments received were carefully evaluated and many were incorporated into the document and/or will be integrated into ombuds training programs. The final revised version, presented to IOA members in March 2006 through the IOA Legal and Legislative Affairs Committee of IOA, is intended to provide:

1. Guidance for IOA members in interpreting the ABA Standards document, including recommendations for best practices in their offices and guidance when having discussions with their own organizations' management, counsel and other relevant parties about charter or terms of reference, job descriptions and related matters;
2. Guidance for instructors in IOA training courses regarding the implications of the ABA document for how IOA defines and explains the ombuds role;
3. Guidance for organizations considering the establishment of new ombuds programs or the review of existing programs;
4. Greater clarity regarding the key areas where the view expressed by ombuds professionals of their role and functions may vary somewhat from the view of the ABA.

It is important to emphasize that there are many elements of the ABA Standards that are supported by the ombuds community. In many ways the IOA Standards of Practice are consistent with the ABA Standards. In some of the commentary in this IOA

Guidance document, the perspective may be different from that of the ABA, but the ultimate definition of the ombuds function may be similar. Some of our recommendations may be compatible or even identical with the intentions of the ABA.

We recognize that both the ABA and the IOA are committed to creating greater uniformity in the formulation and practice of the ombuds role while simultaneously recognizing the value to society of informal, interest-based conflict resolution programs. It is to this end that we offer the following guidance and commentary.

II. OMBUDS OFFICE CHARTER

Most prominent among the helpful components of the ABA Standards is the stipulation that every organization with an ombuds should have a charter (also sometimes known as “terms of reference”) that specifies the functions, roles, limitations and protections of that ombuds office, especially the essential characteristics of independence, impartiality, and confidentiality. The charter will help each organization’s ombuds practice to maintain the highest standards and will help the organization and the individuals who use the office have a better understanding of its functions and confidence in the integrity of the process.

The ABA Standards includes a 12-page “Report” that includes a detailed description of the duties and authorities of the ombuds that should be defined in a written and publicly available charter. The recommendation for best practice below is a summary of the discussion of the ombuds office charter as found in the Report appended to the ABA Standards.

IOA Recommendation

- **Each entity that establishes an organizational ombuds office should ensure that the office has a charter that affirms the essential characteristics of the ombuds function – independence, impartiality, and confidentiality – that govern the role in which the ombuds receives complaints, works to resolve particular issues informally, and makes recommendations for the general improvement of the organization. The charter should also specify and define the ombuds’ scope of practice and limitations on the ombuds’ authority; qualifications to be an ombuds; office structure; procedures; confidentiality; and an understanding about the ombuds office not accepting notice on behalf of the entity.**

III. LIMITATIONS ON THE OMBUDS'S AUTHORITY

This part of the IOA Guidance for organizational ombuds responds to Section D (6) of the ABA Standards which presents limitations on the ombuds' authority to "address any issue arising under a collective bargaining agreement or which fall within the purview of any federal, state, or local labor or employment law, rule or regulation. . ."

We first quote from the relevant section of the ABA Standards:

a. Quotation

LIMITATIONS ON THE OMBUDS'S AUTHORITY

- D. An ombuds should not, nor should an entity expect or authorize an ombuds to:
- (1) make, change, or set aside a law, policy, or administrative decision
 - (2) make binding decisions or determine rights
 - (3) directly compel an entity or any person to implement the ombuds's recommendations
 - (4) conduct an investigation that substitutes for administrative or judicial proceedings
 - (5) accept jurisdiction over an issue that is currently pending in a legal forum unless all parties and the presiding officer in that action explicitly consent
 - (6) address any issue arising under a collective bargaining agreement or which falls within the purview of any federal, state, or local labor or employment law, rule, or regulation, unless there is no collective bargaining representative and the employer specifically authorizes the ombuds to do so,⁴ or
 - (7) act in a manner inconsistent with the grant of and limitations on the jurisdiction of the office when discharging the duties of the office of ombuds.

⁴ Under these Standards, the employer may authorize an ombuds to address issues of labor or employment law only if the entity has expressly provided the ombuds with the confidentiality specified in Paragraph C(3). An ombuds program as envisioned by these Standards supplements and does not substitute for other procedures and remedies necessary to meet the duty of employers to protect the legal rights of both employers and employees.

(ABA Standards, Section D)

We believe this section of the ABA Standards generally reinforces an important and long-standing principle of ombuds practice, namely to provide an informal, impartial and confidential resource for resolution of various workplace issues. Items (1) – (5) and item (7) are compatible with IOA Standards of Practice. Only item (6) raises concerns, which are discussed below.

b. IOA Commentary and Recommendations

i. Issues arising under a Collective Bargaining Agreement (CBA)

Ombuds generally have great respect for the principles and goals of organized labor's advocacy for fair and just treatment of workers, and many ombuds are routinely called upon to provide informal assistance to union members. These requests for assistance, or referrals, which may come from union representatives, managers, or the union members involved, normally do not involve issues arising under a collective bargaining agreement (for example, union members may seek the assistance of an ombuds to address concerns about the entity or workplace in general, or conflict between members of the same union or with a non-union co-worker). Ombuds do not participate in formal grievances or substitute for existing grievance procedures. Thus, if an issue *does* fall under a CBA, the ombuds must first consider whether it would be appropriate to listen to the concern or accept the referral. If the union representatives, management, and union member(s) all agree to refer the problem for informal resolution, the referral may be appropriate for the ombuds. Typically, these kinds of referrals are made in the spirit of cooperation and with the goal of benefiting union and non-union employees, management, and the workplace and entity as a whole. Moreover, ombuds intervention under these kinds of circumstances is consistent with the spirit of many workplace policies and CBAs that recommend that, where possible, problems should be addressed through means of alternative dispute resolution.

When an ombuds assists a union employee, he or she should discuss generally known and applicable union options and resources with the union employee, and should defer to the union process any issue covered by the CBA contract unless otherwise agreed to by the visitor, the organization, and the union. An ombuds is not expected to be a substitute for a union representative in terms of providing advice about formal union processes or available union benefits or services.

This practice is consistent with the role of the ombuds to supplement existing resources available to their constituents, rather than to circumvent, duplicate, or create alternative grievance mechanisms. We agree with the statement in the ABA Report that an entity's policy of allowing an ombuds to address labor or employment-related matters should not be considered a suspect or disfavored practice.

IOA Recommendations

- **The ombuds charter, and, where possible, any relevant collective bargaining agreement, should define the involvement of an ombuds with union employees and with issues that arise under the collective bargaining agreement. For those ombuds whose scope of services includes union employees, the ombuds should defer to the union process any issue covered by the CBA unless otherwise agreed to by the union, the entity, and the persons involved.**

- **The ombuds should always inform covered employees about the union process when providing assistance on an issue that might be covered by the CBA.**

- ii. Issues that fall within the purview of federal, state, or local labor or employment laws

In addition to issues arising under a CBA, Section D(6) also raises questions about whether the involvement of an ombuds, in matters of labor and employment-related laws, could raise sensitive issues that may affect the rights and liabilities of the parties under those laws. Our longstanding position has been and continues to be that unless specifically excluded from involvement in labor or employment law issues, the organizational ombuds may address these issues. The IOA believes that the ABA's position in this area is inconsistent with the sound principles of alternative dispute resolution.

We recognize that visitors to the ombuds office may discuss a wide range of workplace concerns, some of which may relate to federal, state, or local law, and we respect the ABA's concern for preserving visitors' legal rights. As clearly stated above, our position is that an ombuds may address issues that fall within the purview of federal, state or local labor and employment laws. The ombuds should adopt important safeguards and considerations when dealing with cases concerning rights arising under a CBA or potentially relevant employment law. This recommended practice enhances the ability of an ombuds to effectively and appropriately address certain cases. We believe the safeguards and considerations recommended by the ABA Standards mirror existing ombuds ethics, values and best practices. For example, the ABA Standards suggest that an entity authorize its ombuds office to address matters related to labor and employment law only if the office meets the three essential characteristics of independence, impartiality and confidentiality (ABA Standards, Section D (6), Footnote 4). These characteristics are of equal importance to the ombuds profession and are the foundation of ombuds standards, values and ethics.

For most entities, it is the combination of informal services and formal grievance procedures, embodied in a conflict management system, that provides the appropriate range of options and that allow for early identification and resolution of potential legal issues or concerns. Central to ombuds practice is the principle that an ombuds program supplements, but does not replace or seek to duplicate existing formal grievance procedures, and that it is the role and obligation of the ombuds to refer visitors to the entity's formal procedures and remedies whenever appropriate. Nevertheless, visitors will often choose to explore informal options for a wide variety of reasons.

We believe the recommended safeguards reaffirm this important principle, and that they afford an opportunity for ombuds to demonstrate support for the provision of equitable and adequate formal grievance procedures as well as informal ombuds conflict resolution options. We note that the ABA positions stated in the ABA Standards and the ABA Report are internally inconsistent. We, therefore, want to draw special attention to,

and express our concurrence with, the statement in the ABA Report that an entity's policy of allowing an ombuds to address labor or employment-related matters should not be considered a suspect or disfavored practice.

IOA Recommendations

- **Ombuds should function in a way that addresses concern for preserving the legal rights of visitors. An ombuds should present and if appropriate discuss an appropriate range of options available to the visitor from the very informal to the most formal. Formal options may include ways to put management on notice of an issue, referrals to rights-based elements of the organization's conflict resolution system, or the provision of information about seeking external legal advice (for example, providing contact information to the local bar association's attorney referral service).**
- **When the ombuds works with the visitor to address issues that may involve other formal alternatives (under law, rules, or regulations), it should be made clear to the visitor that an informal approach does not automatically exclude the visitor's later participation in more formal options. The ombuds should remind the visitor to keep in mind possible time limits and their potential impact on the visitor's more formal options. The ombuds should not provide legal advice, but should suggest alternatives that make the visitor aware of the possible need to seek legal advice.**

IV. NOTICE

This part of the IOA Guidance discusses the concept of legal notice in general, and responds to the ABA Standards for notice as set forth in Section (F) of the 2004 revised Standards. We first quote the relevant section of the ABA Standards:

a. Quotation

NOTICE

- F. An ombuds is intended to supplement, not replace, formal procedures.⁵ Therefore:
- (1) An ombuds should provide the following information in a general and publicly available manner and inform people who contact the ombuds for help or advice that-
 - (a) the ombuds will not voluntarily disclose to anyone outside the ombuds office, including the

- entity in which the ombuds acts, any information the person provides in confidence or the person's identity unless necessary to address an imminent risk of serious harm or with the person's express consent
- (b) important rights may be affected by when formal action is initiated and by and when the entity is informed of the allegedly inappropriate or wrongful behavior or conduct
 - (c) communications to the ombuds may not constitute notice to the entity unless the ombuds communicates with representatives of the entity as described in Paragraph 2
 - (d) working with the ombuds may address the problem or concern effectively, but may not protect the rights of either the person contacting the office or the entity in which the ombuds operates⁶
 - (e) the ombuds is not, and is not a substitute for, anyone's lawyer, representative or counselor, and
 - (f) the person may wish to consult a lawyer or other appropriate resource with respect to those rights.
- (2) If the ombuds communicates⁷ with representatives of the entity concerning an allegation of a violation, then-
- (a) a communication that reveals the facts of
 - (i) a specific allegation and the identity of the complainant or
 - (ii) allegations by multiple complainants that may reflect related behavior or conduct that is either inappropriate or wrongful should be regarded as providing notice to the entity of the alleged violation and the complainants should be advised that the ombuds communicated their allegations to the entity; but otherwise,
 - (b) whether or not the communication constitutes notice to the entity is a question that should be determined by the facts of the communication.
- (3) If an ombuds functions in accordance with Paragraph C, "Independence, Impartiality, and Confidentiality," of these standards, then-
- (a) no one, including the entity in which the ombuds operates, should deem the ombuds to be an agent of any person or entity, other than the office of the ombuds, for purposes of receiving notice of alleged violations, and

- (b) communications made to the ombuds should not be imputed to anyone else, including the entity in which the ombuds acts unless the ombuds communicates with representatives of the entity in which case Paragraph 2 applies.

⁵An ombuds program as envisioned by these Standards supplements and does not substitute for the need of an entity to establish formal procedures that may be necessary *to protect legal rights and to address allegedly inappropriate or wrongful behavior or conduct*

⁶The notice requirements of Paragraph F do not supercede or change the advocacy responsibilities of an Advocate Ombuds.

⁷Under these standards, any such communication is subject to Paragraph C (3).

b. IOA Commentary and Recommendations on Sections F (2) and F (3)

Certain federal and state laws require an organization to take action when placed on "notice" of an alleged violation of the law. Therefore, there are situations where conversations within the workplace can place the organization "on notice," thus requiring the organization to act, whether or not that is the wish of the person involved. Typically, the organization establishes official reporting channels designated as points of contact for reporting certain concerns such as sexual harassment (e.g., the human resources office, the sexual harassment prevention office, women's resource center, or similar office) or fraud, waste and abuse of government/public/company resources (e.g., the ethics office, internal audit, or similar office). In addition, an organization may be placed on notice when information becomes known to certain organizational managers by virtue of the management level or seniority of their positions.

The ombuds office asserts that communications made to the ombuds are confidential, the office will assert a privilege to protect those communications, and therefore communications made to the ombuds are never notice to the organization.

The ombuds office's claim of confidentiality is based upon and supported by its founding tenets, in particular, by its establishment as an independent, neutral, informal and alternate channel for people to seek guidance on how to resolve workplace disputes or raise issues of concern. The ombuds' confidentiality is based upon many values, including prompt, informal resolution of workplace disputes; organizational critical self-examination and continuous improvement; and enhanced risk management in providing a safe, off-the-record channel for people who otherwise would not come forward to seek guidance or learn how they can resolve workplace disputes or report concerns. The sense of safety created by the ombuds as a confidential channel enhances the communication and articulation of concerns and thus the organization's ability to effectively respond to those concerns. The need to protect confidentiality of communications with the ombuds office is thus premised on "best practice" principles for organizational governance, including such important federal policies as those embodied in The Sarbanes-Oxley Act of 2002 and the U.S. Sentencing Guidelines for Organizations.

The ombuds office thus asserts a privilege, which is held by the office, that communications with the ombuds are confidential. This privilege is critical to making the ombuds office a place where people can raise any issue, including a violation of statute, regulation, or ethical standard. Only by offering the security of confidentiality can the ombuds facilitate organizational responsibility and accountability, which are at the heart of provisions contained in the U.S. Sentencing Guidelines and the Sarbanes-Oxley Act that call for mechanisms of confidential reporting and/or guidance. Where issues cannot be confidentially raised, they may not be raised at all, thereby depriving the organization of an opportunity to address issues and rectify misconduct that has not yet surfaced through other channels. The ability to have confidential communications that do not constitute "notice" to the organization is essential to the effective functioning of an ombuds office and distinguishes the ombuds from other reporting channels also generally available. It is the "off-the-record" aspects of the office that lead people who use the ombuds to do so before taking any official or formal action. The ombuds office enables people to come forward with an issue when they would otherwise be afraid to do so or when they fear retaliation from managers or peers.

Given the confidential nature of communications made to the ombuds office, and the privilege which should attach to those communications, IOA asserts, and the ABA agrees, that communications made to the ombuds do not constitute notice to the organization. Both the IOA and ABA assert as a part of their standards that no one, including the organization that employs the ombuds, should consider the ombuds office to be an agent of notice and no one, including the entity, should seek information about communications to the ombuds office. The IOA and ABA also agree that the nature and role of confidentiality should be explained to the visitor, who should understand that the ombuds claims the privilege for the office and that it is not the visitor's privilege to waive. Visitors should understand that as a condition for accepting and benefiting from the services, they have the obligation to support the ombuds claim of privilege and not to attempt to breach this claim.

While the IOA and ABA agree on many important principles for establishing and operating an ombuds program, the IOA believes that some of the provisions in the ABA Standards with respect to when an ombuds places an organization on notice are not well founded or legally supported. The ABA resolution suggests that circumstances may exist in which an Ombuds places an organization on notice other than by disclosing a specific allegation and the identity of the complainant or allegations by multiple complainants reflecting a pattern of "wrongful" conduct. In particular, the ABA addresses this possibility by noting that whether or not an ombuds communication constitutes notice to the entity is a question that should be determined by the "facts of the communication." We are concerned that this language does not capture accurately what may be a very limited number of peculiar situations, and instead offers an imprecise catch-all provision that could inadvertently invite courts to more closely examine communications to the ombuds as context for understanding communications by the ombuds to the entity. The ABA language, then, could jeopardize ombuds confidentiality and effectiveness.

The IOA takes the position that a communication to the ombuds *never constitutes notice to the organization*. As ombuds office administrative manager, the lead ombuds may be responsible for receiving notice about wrongful behavior of any ombuds office staff member whom the lead ombuds supervises. Except in this ombuds' administrative capacity as the manager of the ombuds office, the ombuds is never an agent of notice or a designated point of contact to accept formal claims or concerns. A communication between an ombuds and an organization's point of contact may serve as notice under some circumstances, as explained below, but the scope of that notice is limited strictly to the substance of the communication between the ombuds and the point of contact, and *never* includes any communications between the visitor and the ombuds. In most situations where notice to the organization may be appropriate, the ombuds helps direct the visitor to the proper point of contact. It is only in rare instances that the ombuds may choose to take action directly to place the organization on notice, such as in the unlikely event that the visitor to the ombuds office is not able or not willing to do so themselves.

Communications of a visitor to the ombuds are confidential, except in cases where the ombuds receives permission from the individual to share certain information or where the ombuds determines that there is an imminent risk of serious harm. An ombuds may place the organization on "notice" when the ombuds evaluates the circumstances and specifically elects to place the organization on notice by identifying an appropriate point of contact within the organization and communicating to that point of contact specific information which the ombuds expressly intends to share for the purpose of placing the organization on notice of a specific concern or specific situation. If an ombuds makes such an intentional notice communication, confidentiality is waived only with regard to the specific communication made with the point of contact for purposes of the notice communication. It is the conversation between the ombuds and the appropriate point of contact within the organization that constitutes notice and not the conversation between the ombuds and the visitor. Thus, under no circumstances, is the original communication to the ombuds part of the notice communication.

All ombuds offices should have a well-defined and generally available procedure detailing the limited circumstances and the processes under which the ombuds may provide notice. If the ombuds elects to place the organization on notice under the conditions above, the ombuds should follow the protocol of the particular ombuds office regarding this unusual action. The protocols should include specific steps so that is clear that the ombuds made an intentional decision to make a notice disclosure. The steps may include, for example:

- Identify the appropriate office of notice;
- Articulate the ombuds' intention of placing that agent of the organization on notice to take action;
- Give narrow and specific information (such as names and dates) regarding the allegations or concerns, sufficient to allow the organization to act on the notice;
- Provide the information in a way that preserves the maximum confidentiality possible, while providing information adequate for the organization's required response;

- Provide the recipient with narrow, carefully screened written information and instruct the recipient of the information to keep a record of the communication;
- Clarify that if called later to testify or to participate in a formal procedure that testimony is limited narrowly to questions pertaining directly to the ombuds' original notice communication to the organization and nothing more;
- Expressly state that limited disclosure of information necessary to provide notice does not act as a waiver to other information or conversations relevant to the matter.
- Remind the agent receiving the notice communication that he or she may not want to take specific adverse action based solely upon the notice of the communication, but instead may now be required to *investigate* the allegation, and then may want to consider whether any action is warranted based upon the results of his or her investigation.

In circumstances where the ombuds places the organization on notice, it may or may not be appropriate to seek permission from or to inform the original source(s) of the information. For example, in some circumstances the ombuds may determine that there is an imminent risk of serious harm to others besides the original source and seeking permission of the source could actually compromise otherwise protected information. In other situations the ombuds may determine that seeking permission of the visitor could actually cause the visitor harm. However, if it is appropriate and practical, the ombuds should advise complainants that the entity has been put on notice.

IOA Recommendations

- **Except in the administrative capacity as manager of the ombuds office, the ombuds is never an agent of notice, and communications to the ombuds office never constitute notice to the organization.**
- **The nature and role of confidentiality should be explained to the visitor, who should understand that the ombuds claims the privilege for the office and that it is not the visitor's privilege to waive.**
- **In most situations where notice to the organization may be appropriate, the ombuds helps direct the visitor to the proper point of contact. It is only in rare instances that the ombuds may take action, at his or her discretion, directly to place the organization on notice of an allegation of wrongdoing, such as in the rare event that the visitor to the ombuds office is not able or not willing to do so himself or herself.**
- **An ombuds may also place the organization on notice in the unusual situation in which the ombuds perceives there to be an imminent risk of serious harm. However, even in this instance, the original communication to the ombuds is not part of the notice communication.**
- **Every ombuds office should have a well-defined and generally available procedure detailing the limited circumstances and processes under which the ombuds may provide notice, and this protocol should be strictly followed when the ombuds takes the unusual action of placing the organization on notice.**

- **In circumstances where the ombuds places the organization on notice, it may or may not be appropriate to seek permission from or to inform the original source(s) of the information.**

c. IOA Commentary and Recommendations on Section F (1) (a) – (f)

i. Communication of the Six Items in Section F (1) (a-f)

Section F (1) (a) - Section F (1) (f) of the ABA Standards discusses the issue of “notice,” and proposes six subjects the ABA believes an ombuds “should” communicate to persons who contact the ombuds. We will first comment on these six items in general, and then add specific comments on the voluntary disclosure of information in trend reporting and the “imminent risk of serious harm” language of Section F (1) (a).

We believe it is unnecessarily burdensome to ombuds practitioners, and potentially awkward and problematic for the building of rapport with those who contact the ombuds for assistance, to tell each and every person, whether by phone or in person, all six of the items recommended by the ABA. For example, part of the ombuds role is referral to appropriate resources. It may be immediately obvious to an ombuds that the caller seeks only an answer to a simple policy question or a referral to another office, such as an employee assistance program or human resources. As another example, the person may simply want coaching on communication skills, in which case telling the visitor about potentially contacting a lawyer regarding their rights could be unnecessarily alarming and irrelevant. It would not be appropriate to recite all six items to someone for whom some or all of these items are irrelevant.

IOA Recommendations

- **It is extremely important for the ombuds to demonstrate consistent practice when discussing with visitors the potential impact and limits of “notice” to the organization. The ombuds should ensure that all visitors, at the very least, have access to materials that explain the ombuds role and limits in relation to notice in detail. In addition, the ombuds should develop criteria (specific to the environment and needs of the ombuds’ own organization) for a consistent approach to providing information about notice, where and when relevant. Failure to demonstrate consistency of practice in this regard may expose the ombuds to the need to discuss ombuds conversations on a case-by-case basis relevant to determining whether the visitor adequately understood the options and the notice implications.**
- **The six items listed in the ABA Standards Section F (1) (a) – (f) as appropriate communications to persons who contact the ombuds office should be published on the ombuds office website, in the ombuds office brochures and other explanatory information, as**

well as in the entity's charter for the ombuds office, so that this information is generally and publicly available.

- **The decision as to which, if any, of the six items should be communicated directly to the visitor should be left to the discretion of the ombuds, who will make the decision based on the overall circumstances and the criteria developed within the ombuds' own organization (consistent with these guidelines).**
- **When necessary or appropriate, the ombuds should clarify how an ombuds program "fits" with other systems and services by explaining to visitors that:**
 - a. **The visitor may have important legal rights that may be involved with the visitor's issue, and important time limits and other factors may be involved.**
 - b. **The ombuds program is not a substitute for a lawyer or other professional who might represent the visitor's rights, and the visitor may wish to consult with these other services separately from their conversation with the ombuds.**
 - c. **The visitor may wish to consult with additional resources and services (e.g., an employee assistance program) which the ombuds may describe if they might be appropriate given the visitor's presenting circumstances.**

ii. Voluntary Disclosure of Any Information – Section F (1) (a)

Section F (1) (a) recommends that ombuds inform users of services that "the ombuds will not voluntarily disclose to anyone outside the ombuds office, including the entity in which the ombuds acts, any information the person provides in confidence or the person's identity unless necessary to address an imminent risk of serious harm or with the person's express consent." This recommendation raises two concerns: trend reporting and "imminent risk of serious harm."

First, as part of trend reporting and advocacy for systemic change, both of which are appropriate ombuds roles, an ombuds may decide to disclose information to people outside the office even without a person's consent -- but only when this can be accomplished in a way that protects the person's confidentiality and/or identity. For example, if an ombuds is informed of a problem by many people, the ombuds may let someone higher up in the organization know that "several" people have communicated the problem.

We note that the ABA Standards are internally inconsistent on this topic. Other sections of the document encourage ombuds reporting: the ABA Standards identify ombuds roles as "making recommendations for the resolution of . . . a systemic problem to those persons who have the authority to act upon them," "identifying complaint patterns and trends," and "issuing periodic reports" [ABA Standards, Section A (7)]; the ABA Report states that the ombuds may "disclose confidential information so long as

doing so does not compromise the identity of the person who supplied it" (ABA Report, Section 3). Taken together, these statements seem inconsistent with the requirement in Section F (1) (a) that an ombuds not disclose "any" information provided in confidence without "the person's express consent."

Second, the reference to ombuds disclosure when there is "an imminent risk of serious harm" should include a proviso that the decision to make such a disclosure rests solely in the discretion of the ombuds.

IOA Recommendations

- **Ombuds materials (websites, brochures, etc.) should state that ombuds do report trends, and advocate for systemic change when appropriate, but that they do so in a manner that protects the identity of individuals.**
- **Ombuds materials that make reference to ombuds disclosure when there is "an imminent risk of serious harm" should always state that the decision to make such disclosure rests solely at the discretion of the ombuds.**

V. CONCLUSIONS AND FUTURE PLANNING

As stated in the introduction, the intent of this document is to provide guidance to IOA members in interpreting the ABA document and to make recommendations for best practices for organizational ombuds offices. IOA does not intend for this to be the end of the discussion about professional standards, but instead views this as a further step in understanding the application of our standards of practice to our daily professional activities. The road ahead should include consideration of the evolution of some of the legal and other issues raised here, as well as how to strengthen our legal standing in the future.

Specific next steps for our professional association include further clarification of our ethics, standards, and best practices, and enhancement of training programs to include these recommendations for best practices, with attention to giving practitioners greater awareness of the ABA Standards and other legal issues that may impact our practices.

The IOA looks forward to collaborations forging greater partnerships with the ABA and other organizations as we further define our profession and our professional standards.

-- Respectfully submitted by members of the task force that developed and revised this document, under the auspices of TOA, UCOA, and IOA: John Barkat, Judy Bruner, Howard Gadlin, Kevin Jessar, Bruce MacAllister, Martha McKee, Francine Montemurro, David Talbot, Marsha Wagner (chair), and Margo Wesley.



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