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Beginning of co-op certification 2 of 2

2005-2006

The Ombudsman Association

CERTIFICATION SUB-COMMITTEE

Summary of Planning for an Organizational  
Ombudsman Certification Program,  
June 2003- July 2006

Prepared for the IOA Board meeting,  
August 17-18, 2006

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*Part One*  
*Summary of History and Current Status of Planning for*  
*Organizational Ombuds Certification*

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. The group included a UCOA liaison member. We presented an 11-page report to the CDC on February 1, 2004; with the general approval of the CDC, this report was then transmitted to the Boards of TOA and (later) UCOA.

The 2004 report summarized the advantages and disadvantages of establishing a certification program, and proposed a two-tiered structure for "basic" and "advanced" proficiency certification, listing the proposed requirements for each level and for re-certification after three years. The 2004 report also proposed a time-line and coordination with TOA courses, and enumerated some of the generally accepted legal and professional principles for all creditable certification programs. It also generally listed several issues in need of further research, clarification, and planning.

The TOA Board expressed general support for the sub-committee's recommendation to move forward in planning a certification program at its annual meeting in April 2004, restructured the sub-committee as a committee of the Board, and asked for clarification of some of the outstanding issues and implementation details. This resulted in the second report, presented to the TOA Board on January 31, 2005, as a supplement to the first (2004) report.

The 2005 report addressed the new proposal to certify organizations with an ombuds office that adheres to standards of practice, as well as certifying individual practitioners. It also made recommendations – for individual certification -- on eligibility criteria, grandfathering, training equivalencies (for courses outside TOA), the examination procedure, governance of the certification program, formalities of establishing a program such as legal approval and trademarking, a timetable for implementation including giving sufficient notice to stakeholders, and a budget proposal.

Since TOA and UCOA were involved in merger discussions during the spring 2005 – and indeed throughout the summer and fall of 2005 as well, there was a general inclination to postpone further decision-making or implementation planning until other aspects of the transition had been completed. However, both of the reports were circulated to all TOA and UCOA members on their respective

list serves (the TOA distribution in February 2005 and UCOA distribution in March 2005), and that circulation was introduced as signaling the beginning as a period of "notice to the stakeholders" and a general comment period, which would precede the annual conference (April 10-14, 2005, in Atlanta) and continue for three months after the conference, until late July 2005. The reports were also widely available at the 2005 annual conference, and were discussed in several sessions, including a special break-out session.

There was no standardized way of submitting comments to the certification program recommendations. Many people, from TOA and UCOA members to guest speakers, expressed their opinions at the conferences; others talked directly with members of the Boards and of the committee. During the 2005 comment period, about 50 people wrote email messages or comments on the listserv, with the majority of them encouraging or positive during the months February – June, and then a flurry of skeptical or negative comments in the month of July.

Additional comments were made at the April 2006 annual conference, both during the plenary session on certification and during the "town hall" break out session. Again, these ranged from the very positive (certification will enhance the profession and we should implement it immediately before another non-ombuds organization does) to qualified support (it's a good idea, but we should go slowly, after benchmarking and thorough planning) to questioning of details (it's a good plan except [need to add mentoring/need to clarify experience criteria/need to define alternatives to IOA training, etc.]) to resistance (certification won't insure best practice, it would be embarrassing to fail the exam) to opposition (it's not a priority, we can't afford it, it could be divisive and lead to elitism and exclusiveness, etc.). The 20 comments on the written conference evaluation forms for the plenary session on certification included 9 on format and presentation style, 2 who wished a panelist had addressed the disadvantages, 2 who expressed opposition, 2 who expressed unqualified support, 3 comments generally supportive but somewhat skeptical ("still have a lot more work to do," "just need to be aware of the culture differences," "I am also concerned about cost") and 2 irrelevant comments.

Considering all the feedback, the newly reconstituted Certification Subcommittee of IOA's Professional Development Committee is continuing to plan for certification. We are following the recommendations made during the PDC's monthly teleconference of May 11, 2006, as recorded in the teleconference notes: the Certification Sub-committee should "develop a business plan, looking toward implementation. The business plan would include specific steps and a time line.....among other things, looking at teaching points in Ombuds 101 so that they would provide basic certification requirements, look at the entire training curriculum so that the curriculum would align with certification requirements, and exploring possible examination questions. Kevin Jessar agreed to serve as the sub-committee liaison to the Board. In this regard, he would consult with the Board to discover its interests in the certification program."

Currently the 10-member Certification Sub-committee has the following members:

Judy Bruner  
Mary Chavez-Rudolph  
Joanne De Siato  
Judy Guillermo Newton  
Helen Hasenfeld  
Kevin Jessar  
Carolyn Noorbakhsh  
Marsha Wagner  
Merle Waxman  
Jennifer Wolf

Judy Guillermo-Newton is doing some benchmarking of what might be comparable professional certification programs. We have divided into six Small Working Groups who are preparing reports in the following areas:

1. Time line for implementing organizational and individual IOA certification
2. Business plan (finances, costs and revenues) of a certification program
3. Ombuds 101 knowledge, skills, and information likely to be required for basic certification
4. Other organizational ombuds knowledge, skills and information (from experience, specialized and advanced courses) likely to be required for basic or advanced certification; and other relevant training that might be recognized as "equivalent" or alternatives to ombuds training (mediation, etc.)
5. The requirement of experience in the position, practicing to standards, for certification – how to measure, how to include mentoring, guidance and case consultation for new ombuds
6. Certification program for the ombuds office itself, within an organization (rather than for the individual practitioners)

We eagerly await more guidance and direction from the IOA Board.

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***Part Two***  
***Proposals and Recommendations for Organizational  
 Ombuds Certification from Previous Reports***

The remainder of this report will summarize relevant sections of the first certification recommendations, from 2004 and 2005. Please note that some of the recommendations in this section may be modified or updated by the work of the Sub-committee's current Small Working Groups, especially in the areas of budget, timeline, certification for ombuds offices, and enhancement of the requirement of experience as a practicing organizational ombuds.

**I. CLARIFICATION THAT A CERTIFICATION PROGRAM IS NOT A LICENSE, NOT A REQUIREMENT FOR PRACTICE, NOT AN ASSESSMENT OF PRACTICE, DOES NOT MONITOR OR GUARANTEE FUTURE PRACTICE OR COMPETENCE**

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. "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" (see Bibliography, Knapp and Gallery, p. 30).

**II. ADVANTAGES AND DISADVANTAGES OF A CERTIFICATION PROGRAM (from the 2004 proposal)**

**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.

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 other IOA courses.

**Disadvantages:** The primary disadvantages to the establishment of a certification program are the financial cost and the 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.

Please note: additional disadvantages have recently been articulated by IOA members who question or oppose a certification program. See Part One above.

IOA's certification program would need to avoid legal liability. 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 in training.

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.

### **III. CERTIFICATION REQUIREMENTS FOR INDIVIDUALS**

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 IOA 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 IOA 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 PDC (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 IOA 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.

### **A Note on Course Titles**

It is clear from the certification requirements that the Certification Sub-Committee, in considering the structure of IOA 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.

The PDC 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).

#### **IV. ADMINISTRATION OF A CERTIFICATION PROGRAM**

##### **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 Sub-committee has begun this work. After the launch of the program, maintenance would include oversight and decision-making by the Board: 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 IOA 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 Board. Membership on the committee should overlap very little, if at all, with membership on the IOA 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.

### **Examination Procedure**

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 or 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 examination questions in Appendix Two.

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.

The Certification Sub-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 Sub-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.). 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 Sub-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. A handful of highly respected and recently retired ombuds have volunteered to serve in this capacity. They 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.

## **APPEALS COMMITTEE**

The Certification Sub-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 IOA 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 IOA-member representatives on the Appeals Committee should have no other functions within IOA. 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 VIII, below).

## V. GENERAL PRINCIPLES AND GUIDELINES

### Fairness

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).

### Eligibility Standards and the Measuring of Experience

The Certification Sub-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 Sub-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 perhaps not satisfy the practice to standards requirement.) Finally, the Sub-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 Sub-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 Sub-committee recommends that eligibility for Certified Organizational Ombuds I (basic proficiency certification) requires, in addition to a signed statement attesting

that one practices to IOA 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 Sub-committee recommends that eligibility requires, in addition to completion of the basic certification requirements, a signed statement attesting that one continues to practice to IOA 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 IOA standards, and completion of a minimum of 5 additional points of continuing professional training, but there is no experience requirement for renewal.

### **Grandfathering**

After considerable reflection, the Certification Sub-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 Sub-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 Sub-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 Sub-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 Sub-committee believes that the IOA training courses are so well conceived, and provide information and practice skills so essential to best practice in ombudsmanry, it decided to recommend that there be no "alternate route" to certification that allowed bypassing this requirement through grandfathering.

### **Equivalent or Alternative Courses**

It is important for a non-exclusive certification program to allow some substitutions for IOA training courses, in order to avoid allegations of monopoly or anti-trust violation. The Certification Sub-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 ombudsmanry should be considered as possible equivalencies to IOA programs. Past TOA and UCOA courses, for example, would almost certainly be accepted as equivalents. Teaching (rather than registering for) an IOA course would also be an equivalent. Continuing legal education courses in ADR would be likely to be accepted; at present, however, IOA 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.

### **Notice to the Stakeholders**

Standard guidelines for establishing professional certification programs 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 process of communication could be extended to stakeholders other than IOA members, perhaps even including potential employers or users of certified organizational ombuds' services.

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. TOA and UCOA have engaged in this process by making the 2004 and 2005 recommendations available on the listserves and elsewhere, by announcing "comment period" between February and July 2005, and by open discussion at conference sessions, annual business meetings, and elsewhere. (See Part One.)

Stakeholders also include the organizations that employ or might employ ombuds, and potential future organizational ombuds. The communication effort could be extended – for

example, by spreading the word among other organizational ombuds practitioners, those interested in entering the field, appropriate senior managers at their institutions, etc.

"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" (Knapp and Gallery, 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).

The Sub-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 Sub-committee does not recommend an expensive public information campaign.

### **Approvals, Recognition and Trademarking**

Limited legal approval is required for establishing certification programs. 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 ([www.ANSI.org](http://www.ANSI.org); a fee is charged). The approval process, once a program is defined, involves review by an attorney (PMA could identify a list of appropriate lawyers) and then approval by the Board and members. After careful review, the Certification Sub-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.

## **VI. CERTIFICATION OF OMBUDS OFFICES WITHIN 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 ombuds office, 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 office certification for organizations would include a charter as evidence that the ombuds office practices to the IOA 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 ombuds office certification includes adherence to Best Practices, the certification could grant an office the title, "an IOA Certified Best Practice Organizational Ombuds Office" (modified to use whatever is the certification program acronym). Certified organizational ombuds offices could be listed in IOA publications, could be highlighted at conferences, and otherwise recognized on webpages and elsewhere.

Administrative procedures for the certification of ombuds offices 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.

## **VII. TIMETABLE FOR LAUNCHING THE PROGRAM**

The Certification Sub-committee proposes that the IOA Board respond to this report with some guidance concerning next steps and the pace at which this activity should proceed.

A certification program for organizational ombuds offices is a less complex project than individual certification, and could be implemented before a certification program for individuals. Organizations currently employing ombuds would be notified of the advantages of organizational ombuds office 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 Sub-committee estimates that this program could be implemented as early as January 2007.

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 Sub-committee estimates the first applications might be received, and the first examination scheduled, by summer or fall 2007.

## **VIII. BUSINESS PLAN AND BUDGET**

The Certification Sub-committee considered implementing the certification program under a tax-exempt educational foundation as a separate corporation, exempt under IRS Section 501(c) 3, with a separate board of directors. However, in March 2006, we received the advice of IOA's attorney, C. Michael Deese, that it would not be appropriate under IRS guidelines to place the certification program under a foundation (although IOA might decide, sometime in the future, to place some educational programs and receiving of gifts and grants under such a

foundation). The certification program, however, would remain in IOA, taxed under the IRC Section 501 (c)(6).

PRELIMINARY BUSINESS PLAN. The Certification Sub-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 IOA's assets. 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 other IOA revenue.

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 Sub-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 Sub-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.

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.

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	\$5,000
Trademarking	2,500
Psychometrician to look over and edit the first "bank" of written examination questions (approx. 300)	10,000
<u>Total up-front costs</u>	<u>\$17,500</u>

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>	<u>\$7,000</u>

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.

An alternative, more optimistic plan would involve considering the one-time start-up costs an "investment," 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.

## APPENDIX ONE: REFERENCE AND BIBLIOGRAPHY

The Certification Sub-committee found the advice and information shared with us by Joanne Cole of PMA, and the articles (see Bibliography below) on the professional guidelines for credentialing, to be extremely helpful.

“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.

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](http://www.noca.org)

National Certification Association  
[www.inc.com/users/jaffeson.html](http://www.inc.com/users/jaffeson.html)

**APPENDIX TWO:****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 SUB-COMMITTEE  
RECOMMENDATION FOR OMBUDSMAN CERTIFICATION

February 1, 2004

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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](http://www.noca.org)

National Certification Association  
[www.inc.com/users/jaffeson.html](http://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.



## A Preliminary List of Questions about Standards of Practice, Best Practices, and Membership Criteria that arise as a result of the new Bylaws

When are the changes effective in terms of assigning new members to membership categories? (Presumably renewing members will be re-evaluated at the time of renewal.)

The membership committee will need a process for changing the membership application. Who should create and approve this new form? What should be included, in terms of new questions for self-reporting about adherence to SOPs and CoE, other documentation to be provided (terms of reference or charter? Office website or brochure?), and perhaps a checklist of how an applicant with other job functions avoids compromise to SOPs ?

Who has the authority to interpret how to apply, in specific cases, the generalizations of the new Bylaws? What process should be followed?

Examples of questions of interpretation of the language of the new Bylaws:

“Practicing organizational ombudsman”: defined only by currency of practice, (in the present only, past or future practice is not sufficient), not by amount of time in practice or number of cases?

“Adheres to SOPs and CoE”: presumably determined by self-reporting and charter, website, etc.?

“In instances where O has other job functions.... Must not compromise the independence, neutrality, confidentiality or informality of the O role”: How to assess “compromise”? For example, for independence, must report to CEO, or should SOPs or should Best Practices or Membership Criteria specify ideally to the CEO, or at least very high in the structure with access to the CEO? For neutrality and confidentiality, follow the criteria proposed in the draft Best Practices (2.4) of conducting the O role among people separate from those involved in the other job function, in a location separate from that in which the other job function is performed, and using support staff different from the staff that supports the other job function? Other criteria?

“No job function that would make the O an agent of notice in the non-O role”: How to assess agent of notice? Ask the organization to declare whether or not the other job function is a notice position?

How to best structure Board representation on/liaison with the PESBP and Membership Committees?

How to best structure coordination and congruence of SOPs and Best Practices with interpretation of membership category criteria?

Is there agreement that once an applicant is accepted for a category of membership, the renewal process in subsequent years would include simply a question about any changes to the job in terms of the criteria for membership status?

Should all members of the Membership Committee and the Committee on Professional Ethics, Standards and Best Practices be full members of IOA? (This might align with the new Bylaws' voting rights.)

# Organizational Ombudsman Code of Ethics and Standards of Practice

## HISTORY

By the mid-1980s, there were several organizational ombuds groups

The University and College Ombuds Association bylaws were approved in 1985

The Corporate Ombudsman Association (COA) bylaws were adopted in 1985

The Corporate Ombudsman Association created a Code of Ethics in 1987. After the COA became The Ombudsman Association (TOA), it added to that a Standards of Practice, after two years of membership debate, in 1995.

The University and College Ombuds Association (UCOA) ratified a Code of Ethics and Standards of Practice in 2000.

In February 2004, The American Bar Association adopted a Resolution on Standards for the Establishment and Operation of Ombuds Offices, with mixed collaboration with organizational ombuds.

In response, in August 2004, TOA and UCOA issued statements indicating that "the ABA Resolution significantly departs . . . from the SOPs adopted by TOA and UCOA, which were derived from the best practices of organizational ombuds based on many years of collective experience," and TOA and UCOA "reaffirms their Standards of Practice."

TOA and UCOA collaborated, before and after the merger to form the International Ombudsman Association in summer 2005, and in March 2006 issued "IOA Guidance for Best Practices and Commentary on the American Bar Association Standards for the Establishment and Operation of Ombuds Offices" (available on the members-only section of the IOA website).

After the summer 2005 merger of UCOA and TOA, work began on a new integrated IOA Code of Ethics and Standards of Practice in fall 2005; a working version of these documents was approved by IOA Board in spring 2006. The IOA Best Practices draft is now under discussion, approaching completion

## PRINCIPLES

The Code of Ethics establishes a foundation of professional ethical guidelines, "based on the traditions and values of Ombudsman practice," emphasizing four principles:

Independence

Confidentiality

Neutrality and Impartiality

Informality

The Standards of Practice are derived from the Code of Ethics. Best Practices explain and describe the practitioner's optimal application of the principles of the Code of Ethics and the Standards of Practice

The Organizational Ombudsman Codes of Ethics and Standards of Practice have grown out of the practice experience, deliberation, and collaborative drafting committees of organizational ombuds. They have not been imposed by outside groups, by-laws or legislative bodies.

### THE VALUE OF COMMON STANDARDS OF PRACTICE

Members of every recognized profession operates by adhering to certain basic characteristics and principles: this is a definition of a "profession."

When Organizational Ombudsman practice is consistent, people who seek the resources of the Ombudsman Office may have clearer expectations and more confidence in the integrity of the process.

Clear ethics and standards are helpful to newcomers to the Organizational Ombudsman profession, providing guidelines for effective definition of the role and function, and a language for explaining their practice to their organizations.

The general public will have a clearer understanding of the role of the Organizational Ombudsman if there is consistency of practice from among various organizations.

Experienced Organizational Ombuds may examine stated principles, standards, and best practices to continually seek ways to refine skills, sharpen practice interpretations, explore theoretical implications, and evolve ever-increasing sophisticated guidance for professional development.

Courts that have recognized the common law Ombudsman confidentiality privilege have done so, among other considerations, only when the Ombudsman Office practiced according to recognized professional ethics and standards. We practice in a time of uncertainty with regard to an Ombudsman confidentiality privilege and the reality is that how we operate our office can have an impact on a confidentiality privilege for all other Ombudsman Offices.

Consistency of practice within a Code of Ethics and Standards of Practice also establishes a strong basis for states to approve Organizational Ombudsman shield laws: the current shield law being introduced in Texas states that "the program shall adhere to generally accepted standards for organizational ombudsman programs to preserve confidentiality of communications."

## **OMBUDS LEGAL AND PROFESSIONAL STANDARDS UPDATE**

2005 Annual Conference  
The Ombudsman Association  
University and College Ombuds Association  
April 12, 2005

Chuck Howard  
choward@goodwin.com



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### **International Issues and Developments**

- Recent TOA Newsletter Articles
- Quebec – Act Respecting Labor Standards – Psychological Harassment (June 1, 2004)
- Canadian Public Service Labour Relations Act
- Other Developments

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### **U.S. Legal Issues and Developments**

- ABA Standards
- United States Sentencing Guidelines
- SEC Activity and Task Force Response
- CalPERS Initiative
- Proposed Texas Shield Law
- Professional Standards and Certification
- Business Practices
- Cases and Other Developments

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## International Issues and Developments

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## TOA Newsletter Articles

- Organizational Ombuds Checklist  
Charles L. Howard and Jan Sullivan-Chalmers  
TOA ombudsmanNEWS  
2004, fourth issue; 2005, second issue
- TOA Ombudsman 101 in Geneva  
Wilbur Hicks  
TOA ombudsmanNEWS  
2004, fourth issue
- Upcoming topics will include data privacy directives  
from European Union and Pacific rim countries

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## Quebec: Act Respecting Labour Standards

§ 81.19

Every employee has a right to a work environment free from psychological harassment.

Employers must take reasonable action to prevent psychological harassment, and whenever they become aware of such behaviour, to put a stop to it.

(In force on June 1, 2004)

2002, c. 80, s. 47

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Quebec:

**Act Respecting Labour Standards (cont.)**

§ 81.18

For the purpose of this Act, "psychological harassment" means any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee's dignity or psychological or physical integrity and that results in a harmful work environment for the employee.

A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.

(In force on June 1, 2004)  
2002, c. 80, s. 47

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Quebec:

**Act Respecting Labour Standards (cont.)**

- Applies to all employees in Quebec except those under jurisdiction of Federal Government.
- Management is responsible for ensuring that there is no psychological harassment
- Remedies:
  - non-union employees and senior managerial staff
  - unionized employees
  - non-unionized government employees and agency heads

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**Canadian Public Service  
Labour Relations Act**

- Effective April 1, 2005
- Applies to "core public administration"
- Requires every deputy department head, in consultation with bargaining agents, to establish an Informal Conflict Management System (ICMS)

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**Canadian Public Service  
Labour Relations Act (cont.)**

- Ten essential elements of ICMS (per Directive dated October 6, 2004), including:
  - Use of system is voluntary
  - Flexible
  - Confidentiality
  - Impartial and neutral
  - No retaliation or reprisal
  - Identify a Senior ICMS Officer

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**Other Developments**

Forum of Canadian Ombudsman  
([www.ombudsmanforum.ca](http://www.ombudsmanforum.ca))

- Case law and papers
- 2005 Conference (May 15-17, 2005)

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**U.S. Legal Issues**

and

**Developments**

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American Bar Association Standards for the Establishment and Operation of Ombuds Offices, revised February 2004

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**ABA Resolution**  
Key Provisions of Section F: Notice

- "Miranda" warnings
- When ombuds' communications with entity constitute notice to entity
- When communications with ombuds can and cannot be imputed to the entity

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**ABA Resolution**  
TOA and UCOA Resolution:

**RESOLVED:**  
The Ombudsman Association (TOA) and the University and College Ombuds Association (UCOA) note the Resolution adopted by the American Bar Association (ABA) 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 TOA and UCOA, which were derived from the best practices of organizational ombuds based on many years of collective experience. TOA and UCOA therefore reaffirm their respective Standards of Practice.

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## ABA Resolution

### TOA and UCOA

Recommendations for Best Practices and  
Commentary, Draft of February 3, 2005

Committee: Marsha Wagner (Chair), John Barkat,  
Judy Bruner, Howard Gadlin, Bruce MacAllister,  
Martha McKee, Francine Montmurro, David Talbot,  
and Margo Wesley (UCOA Liaison)

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## ABA Resolution

### Best Practices Recommendations:

- Charter
- Limitations on Ombuds authority
- Notice recommendations
- Sample language

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## ABA Resolution

### Practice Points:

- Familiarity with provisions of ABA Resolution
- Be mindful of references to ABA Standards in brochures and other program materials (2001 vs. 2004)
- Implement best practices from TOA/UCOA Best Practices and Commentary and document same
- "Miranda" warnings should be given in publicly available program materials, and if possible, orally to visitors

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## ABA Resolution (cont.)

### Practice Points (cont.):

- Importance of "no notice" language in program materials
- Careful consideration of when and how an ombuds communicates with entity representatives
- Fact question on notice and impact on court proceedings

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## Amendments to the Organizational Sentencing Guidelines promulgated by the United States Sentencing Commission

May 10, 2004

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## Final Action by Commission

### Guideline § 8B2.1(b)(5)(C)

"(5) The organization shall take reasonable steps – ...

(C) to have and publicize a **system, which may include mechanisms that allow for anonymity and confidentiality**, whereby the organization's employees and agents may report or **seek guidance** regarding potential or actual conduct without fear of retaliation."

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## United States Sentencing Guidelines

### Impact of Supreme Court Rulings:

- Blakely v. Washington (June 2004)
- U.S. v. Booker and U.S. v. Fanfan (January 2005)

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## Practice Points

- Refer to U.S. Sentencing Guidelines and other significant public policies in materials describing ombuds programs
- Refer to ombuds programs as a place where employees may "seek guidance" in other policies and materials relating to compliance
- Use Advisory Committee's Report references to demonstrate need for confidentiality

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## SEC Orders

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## SEC Orders

### Example 1

Xxx shall establish a corporate ombudsman to whom Xxx's employees may convey concerns about xxx business matters that they believe implicate matters of ethics or questionable practices. Xxx shall establish procedures to investigate matters brought to the attention of the ombudsman, and these procedures shall be presented for review and approval by the independent directors of Xxx. Xxx shall also review matters to the extent relating to fund business brought to the attention of the ombudsman, along with any resolution of such matters, with the independent directors of Xxx with such frequency as the independent directors of such funds may instruct.

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## SEC Orders (cont.)

### Example 2

... Xxx at its own expense will strengthen its compliance and legal and ethics oversight infrastructure by:

- (i) Hiring a CCO [Chief Compliance Officer] ...  
In addition to these duties, the CCO shall, among other things: ...
- (b) be the corporate ombudsman ...

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## SEC Orders (cont.)

### TOA Response

**Task Force** – John Zinsser, Andrea Schenck (Co-Chairs), Howard Gadlin, Chuck Howard, Mariann Miller, Greg Muse, Mary Rowe, Bernie Thompson, Mike Turpenoff, Ella Wheaton, Thomas Zgambo, Judi Segall, John Barkat

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### SEC Orders (cont.)

#### TOA Response

- January 3, 2005 Meeting - Division of Enforcement
- January 27, 2005 Meeting - Office of Compliance, Inspections and Examinations
- Follow ups

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### CalPERS Initiative, May 2004

Adopted new code of ethics for external money managers, requiring them to:

- "Designate an officer to address potential conflicts of interest."
- Establish an independent ombudsperson to receive reported problems or compliance issues."

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### CalPERS Initiative, May 2004

- TOA letter to CalPERS, June 2004
- Impact unknown

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**Proposed Texas Shield Law**

- Background
- Ombudsman Shield Law Coalition
- SB 508
- Need for financial sponsors and letters of support

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**Texas SB 508**

Definitions:

- "Employee"
- "Employer"
- "Investigation"

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**Texas SB 508**

Essential elements of ombudsman's office (Section 104.002):

- Independent and neutral
- No authority to make managerial decisions on any issue brought to the office
- Not responsible for essential business functions
- Not officers or directors of employer
- Direct access to employer's senior management

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**Texas SB 508**

**Essential elements of ombudsman's office  
(Section 104.002) (cont.):**

- No authority to conduct a formal investigation for employer
- Adequate publicity to inform employees that communications are confidential
- Adequate physical measures to preserve confidential communications
- Adherence to standard practices and procedures to preserve confidentiality of communications

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**Texas SB 508**

**"Confidentiality Provisions (Section 104.003):**

- (a) This section applies only to an ombudsman office that meets the requirements of Section 104.002.
- (a) The following oral and written communications are confidential:
  - (1) communications between a member of the staff of the office who is acting within the scope of the person's employment and an employee or other person who is consulting the office;
  - (2) communications between a member of the staff of the office and an employee with regard to a matter brought to the attention of the office; and
  - (3) communications between members of the staff of the office.

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**Texas SB 508**

**Confidentiality Provisions (Section 104.003)  
(cont.):**

- (c) The staff of an ombudsman's office may not voluntarily disclose or be compelled to disclose confidential information, unless the person determines that disclosure is necessary to prevent an imminent threat of serious harm.
- (d) Information disclosed in violation of this chapter is not admissible as evidence in any proceeding or for any other purpose."

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**Texas SB 508**

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Other provisions:

- Application of Other Law
- Admissibility of Other Information

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**Professional Standards**

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**Professional Standards**

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- Presentation by Craig McEwan last year
- Who controls the profession? Five challenges:
  - Balancing self interest with public interest
  - Building strong professional identity among diverse practitioners
  - Building mechanisms for collegial control
  - Making professionalism and control meaningful
  - Recognizing boundary issues

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### Professional Standards (cont.)

#### Sources of Standards:

- Charters and position descriptions
- Codes of Ethics and Standards of Practice
- ABA Resolutions
- Case Law
- Legislation

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### Professional Standards (cont.)

- Too much or not enough?
- Why would ombuds want more clarity or control over who is an ombuds and what he or she does?

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### Professional Standards (cont.)

#### The Power of Bad Precedent:

- Carman v. McDonnell Douglas Corp., 114 F.3d 790 (8<sup>th</sup> Cir. 1997).
  - Ombuds program did not exist at time of the case
  - No separate representation
  - No evidence presented to court to support claim of privilege

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**Professional Standards (cont.)**

**Carman progeny:**

"It is clear that neither Colorado law nor federal law, including the decisions of this circuit, recognize an ombudsman privilege. Other federal courts have gone both ways on the issue. Compare Carman v. McDonnell Douglas . . ."

Miller v. Regents of the University of Colorado, (10<sup>th</sup> Cir) 1999 U.S. App. Lexis 16712 at \*42.

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**Professional Standards (cont.)**

**Carman progeny:**

"The Eighth Circuit in Carman appears to be the only appellate court to have considered whether to create a federal ombudsman privilege. The court's reasons for rejecting the privilege are persuasive."

Solorzano v. Shell Chemical Co., (U.S. Dist. Ct. for Eastern Dist. of La.) 2000 U.S. Dist. LEXIS 12072 at \*16-\*17.

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**Professional Standards (cont.)**

**TOA/UCOA Response:**

**Recommendation for Ombudsman Certification**

Certification Subcommittee: Marsha Wagner (Chair), John Barkat, Joanne DeSiato, Wendy Friede, Broderick Hill, Kerin Jessar, Michael Kaplan, James Lee, Carolyn Nourbakhsh, Bonnie Oh, Patrick Robardet, and Merle Waxman.

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## Professional Standards

### TOA/UCOA Response:

First Recommendation Report (February 1, 2004)

- Certification for:
  - Organizational Ombuds I
  - Organizational Ombuds II
- Testing Procedures
- Recertification every four years

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## Professional Standards

### TOA/UCOA Response:

Second Recommendation Report (January 31, 2005)

- Certification of organizations
- Clarification on standards, hours instead of years
- No grandfathering
- Examination procedures
- Governance
  - Tax exempt foundation
  - Eligibility and Qualifications Committee
  - Appeals Committee
  - Trademark

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## Professional Standards

### Practice points:

- Certification of offices and ombuds will help create pressure on institutions to properly structure offices and help ombuds protect confidentiality.
- When programs that do not meet professional standards try to protect confidentiality, the result is bad law for everyone.
- Vigilance is required in establishing, documenting, and operating an ombuds office.
- Adequate response to legal challenges is important.

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Best Practices Recommendation  
February 11, 2005

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Best Practices

- Terms of reference
- Reporting structure
- Physical security / privacy protection
- No role in management functions
- Not agent for "notice"
- Access to information
- Adequate staffing
- Maintain confidentiality
- Independent legal counsel
- Adequate publicity

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Case Update

EEOC as plaintiff

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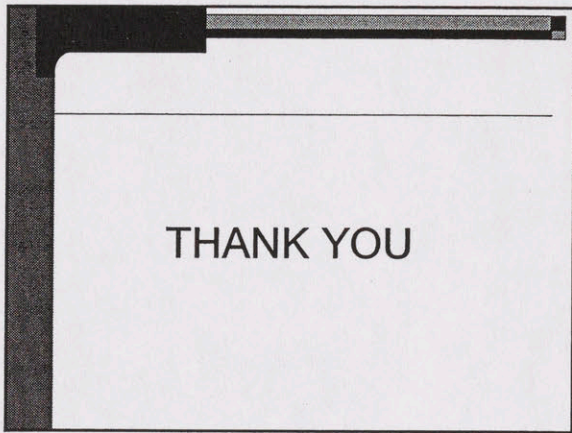
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Columbia University in the City of New York | New York, N.Y. 10027

OMBUDS OFFICE

659 Schermerhorn Extension  
Telephone (212) 854-1234  
FAX (212) 932-3712

August 10, 1992

To: Michael Sovern

Fr: Marsha Wagner *mmw*

Re: Ombuds Office CHARTER - ROUGH DRAFT

Attached is an attempt at clarifying the terms of reference for the Ombuds Officer, and the functions and responsibilities of the Ombuds Office.

I thought you might like to see this at the same time as the annual report and the brochure copy, because they reflect on one another.

The language includes phrasing suggested by Frank Grad and Elizabeth Head, ideas lifted from ombudsmen's professional organizations' ethical codes, similar statements used in other university ombudspeople's documents, and some of my own tentative formulations.

This statement may too long, and it may omit significant issues. I would be very grateful for your response -- particularly on the appropriate approval process. After approval, this charter might be distributed to senior administrators, or at least to members of the not-yet-formed Advisory Board of the Ombuds Office.

Finally, I would like to discuss with you the membership and purposes of the Ombuds Office Advisory Board.

Thank you.

## Proposed Certification Program for Organizational Ombuds

Planning a certification program for organizational ombuds has been a multi-year process. TOA formed a Certification Sub-Committee in June 2003, with UCOA representation; a preliminary report was issued in February 2004 and a second report was also distributed among the membership in January 2005. Though the Sub-Committee realized that a certification program could require a significant financial commitment, especially in the early years, the reports emphasized the advantages: enhancing the credibility of the organizational ombuds profession, maximizing uniformity and high quality of practice, reinforcing our ethics and standards, and mirroring other related professional groups who have certifications (ranging from employee assistance professionals to mediators).

The Sub-Committee did its own research by comparing certification programs in other professions, offered a "comment period" on the listserv in 2005, and discussed the pros and cons of certification in various annual conference programs. In the fall of 2006, we realized our planning and assessment of the feasibility of a certification program for our profession could benefit from outside professional guidance. The biggest development during the past year is that we abandoned the "home made" or "amateur" approach, and decided to "do it right." We determined to learn about, and plan to adhere to, the recognized professional standards in the fields of testing, credentialing, accrediting, and certifying – to avoid creating a flawed program, or a program vulnerable to legal challenge, or a program that would have to be revamped later after problems emerged. Our planning process is now guided by the principles and criteria of the two nationally recognized accreditation organizations: the National Commission for Certifying Agencies (NCCA) or National Organization for Competency Assurance (NOCA).

In late 2006, with IOA Board approval, we sent out a "request for proposals" from various consulting organizations that assist professional groups in establishing certification programs. We received three serious proposals, which we evaluated with the assistance of an independent consultant (Bostrum). We determined the most suitable consultants for our organization would be Schroeder Measurement Technologies (SMT). SMT has a staff that includes professional psychometricians, information systems managers, and testing specialists. They now serve dozens of credentialing organizations and they administer examinations in over forty professional categories each year. They maintain offices in Florida and Delaware, London, Tokyo and Hong Kong. In late September 2007 we held a two-day meeting at their headquarters in Florida. Participants were 5 members of the Certification Sub-Committee (Mary Chavez-Rudolph, Carolyn Noorbakhsh, Marsha Wagner, Merle Waxman, and Jennifer Wolf) as well as 5 other representatives of the Board and Ombuds 101 instructors (Tom Barnette, Sean Banks, Wilbur Hicks, Jan Schonauer, and Gary Yamashita).

Our SMT consultant, Richard Soule, introduced us to the basic principles of developing, maintaining, financing and administering a professional certification program. We first determined that our mission and goals for the profession were



consistent with launching a certification program. Mr. Soule then briefed us on a range of considerations: he explained to us the importance of systematically "marketing" a new program, and advised that most programs begin with entry-level certification and add an advanced level only if there is a significant demand among practitioners. He explained why "grandfathering" would be difficult to defend if challenged, and how to address some of the logistical challenges of offering the examination in various language translations.

During the two-day meeting we became familiar with the steps involved in establishing a certification program, if IOA decides to move forward with it, adhering to rigorous and defensible professional standards. To summarize, the first stage involves "job analysis": practitioners from a variety of sectors and geographic locations are surveyed to identify and rate the importance of the various kinds of knowledge, skills, and abilities ("KSAs") that an organizational ombuds needs. The purpose of identifying the elements of the job is to assure that the qualifying examination's content covers the significant material, and devotes appropriate attention to each area of the KSAs. The job analysis also helps to determine the type of examination that will be most suitable (multiple choice, true/false, short answer, essay, portfolio, etc.).

The next stage is test development, which involves a meeting of about a dozen "subject matter experts" (people who are experienced as organizational ombuds) who are trained to write fair and appropriate questions. (Questions must be relevant to the profession, non-trivial, up-to-date, clear and unambiguous, with only one correct answer, etc.) These questions then go through editorial and psychometric review by specialists, and after approval they are accumulated in a "bank" of questions. Each time the examination is offered, it presents a different sub-set of the available questions, in a different order.

After the examination questions are prepared, the next step is to determine what percentage of correct answers are necessary to pass. Once again, there are accepted professional procedures for using subject matter experts in the field to determine the competency level for passing. This group of subject matter experts might consist of individuals who will not take the actual certification examination, and analysis of their exam performance will help determine the passing score. They might be ombuds who for various reasons are leaving the profession and thus are not interested in pursuing certification themselves, to avoid conflicts of interest. These results are statistically calibrated to correspond to the number of correct answers needed for others to pass, using a complex formula that factors in degree of difficulty, mean score, and several other variables.

IOA would need to determine how frequently to offer the examination, whether online or paper-and-pencil, and in how many different locations. We would also need to set an application fee that would cover the administrative costs and over time contribute to the costs of developing the program. We would need to have procedures for various administrative tasks: providing a handbook to applicants before they take the exam, reviewing the applications for certification from practicing ombuds who have both passed

the exam and also served in an organizational ombuds position, reminding certified practitioners when they need to recertify, determining criteria for de-certification, and handling appeals or complaints about any aspect of the process. It was a relief to the Sub-Committee to learn that guidance is available on professional approaches to all these issues, and we do not need to start from scratch in determining the procedures or logistics.

Working with SMT was also a helpful way to project a business plan for a certification program. We ran through several versions of financial planning: obviously, the higher the fees charged to individuals or organizations for certification or accreditation, the sooner we would reach the financial break-even point. Before we move on to any of these next steps, **IOA needs to learn from this month's survey – distributed in early December via email -- how the membership feels about taking on this ambitious project and how members rate its value to the profession. The Certification Sub-Committee graciously requests that IO members complete the survey and provide candid feedback.**

The Sub-Committee believes that individual certification (on all three levels) and organizational accreditation can help us achieve enhanced professional status and credibility among ourselves, within the organizations where we work, and in the eyes of the general public. However, we want to emphasize that participation in these programs will be voluntary. We do not envision a licensing process – for example, like that of the American Bar Association, which restricts the practice of law to those who have received their permission to practice. Organizational ombuds certification will be a choice for those who feel they, and/or their ombuds programs, will benefit from it. But from the IOA perspective, the Sub-Committee feels that offering the option of certification will support the IOA's goal of advancing the organizational ombuds profession. The judges and legislators who may determine whether we have a legal privilege or shield law will want to know how we structure practitioners' adherence to standards. Organizational leaders will want to know how ombuds can be held professionally accountable. The general public will want to predict, if they have worked with an ombudsman in one organization, they can expect the same standards of practice from an ombudsman in another organization. For these reasons, we believe the recognition of our professional legitimacy will be fostered by the development of a certification program.

Marsha L. Wagner, Chair, IOA Certification Sub-Committee

## I. Summary

Schroeder Measurement Technologies, Inc (SMT) of Dunedin, Florida, conducted a certification market survey for the International Ombudsman Association (IOA) in December 2007 following an intensive two-day strategic planning meeting. The survey consisted of 30 questions, including comment fields. A total of 219 usable surveys responses were collected beginning December 5. Twenty-five of these respondents answered fewer than 75% of the questions, but all data was included in this summary.

The vast majority of the respondents (83%) reported being a full- or part-time ombudsman. The respondents represented a wide range of experience levels: 30% less than two years, 31% two to five years, 21% six to ten years, and 18% over ten years. Eighty-one percent reported having at least some graduate education. Only 3.3% lacked a bachelor's degree. Nearly half of the respondents represented the education sector, 22% came from corporate settings, 14% from government, and 14% from a variety of other settings. In terms of experience and practice sector, the single largest group of respondents (16%) came from ombuds with two to five years of experience practicing in an educational setting.

Fifty-nine percent of the responses came from regular IOA members; only five percent came from non-members. Nearly 90% of the respondents are practicing in the United States.

In general terms, the survey showed broad support for both certification and accreditation, although the support was certainly not universal. Forty-three percent of respondents felt both were equally important. Thirty-three percent considered certification more important, while 20% considered accreditation more important. Only four percent considered neither important.

Nearly two-thirds view being certified as important or very important, and a similar number indicated they would be likely or very likely to pursue certification. The data concerning accreditation showed some inconsistency. While 73% of respondents viewed it as important or very important to have their offices recognized as accredited organizational ombuds offices (question 11), only 53% said it was likely or very like they would pursue accreditation, but this may be explained by the fact that less than half believed their organization would pay for the accreditation.

While there were some differences in the support for certification and accreditation according to experience, education, practice sector, and IOA membership category, few of these differences were statistically significant. Support for certification is more pronounced among respondents with less experience, while support for accreditation was more consistent across levels of experience. Support for certification and accreditation was significantly higher in the corporate and education sectors than the government sector. Support for accreditation was significantly higher among regular IOA members than associate or affiliate members.

Since the IOA is an international organization, the survey asked participants about exam languages. Given the overwhelming (90%) number of respondents based in the U.S., it is not surprising that a similar number of respondents indicated languages other than English were not important. There were not enough respondents from other countries to draw conclusions about the necessity of offering exams in other languages.

Given the relatively small anticipated volume of certification clients, the certification committee was also interested in the price point for the program, and the survey presented four price ranges: \$400-599, \$600-749, \$750-999, and over \$1000. While these are not unusual prices for professional certification programs, most survey participants were probably not familiar with the cost of other programs. Respondent likelihood of pursuing certification was very high (83%) for the lowest price range and fell off rapidly at higher ranges. Only 27% indicated they would be very likely or somewhat likely to pursue certification if the cost exceeded \$1,000.

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.~~

**Deleted:** ,

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.

July 2008

Membership Application Taskforce  
(Beatriz Dale, Marvin Neal, Marsha Wagner)

**2009 MEMBERSHIP APPLICATION/PROCESS**

If we are to assign IOA applicants to categories of membership based on our Bylaws, we need some clear and consistent criteria for determining which category they fall into. Here are some suggestions of the type of criteria – basically, interpretations of our stated Standards of Practice – that might be applied:

**(FULL) MEMBER CATEGORY:**

1. Does the applicant indicate s/he is a practicing organizational ombudsman?
  - a. Example: what position does s/he hold, what organization, etc  
List the job title, name of organization, etc.  
Indicate this is a current position (not aspiring, not retired)
2. Does the applicant show s/he adheres to the SOP and COE?
  - a. This might be indicated by a statement or a “yes” on the membership application, and might be supported by office/program documents such as a charter, brochure, website, etc.
  - b. There should be a checklist for each of the elements, such as
    - i. Independence – to whom does s/he report? Is it high enough in the organization to provide structural independence and to be perceived as independent?
    - ii. Neutrality – is the office described as not an advocate for any group of people in the organization, does it consider all stakeholders in an issue, does it have no policy-making function, does it never issue fact-findings or does it never adjudicate issues or make judgments, etc.
    - iii. Confidentiality – does the office keep no records with individual identities, does it act on issues only with the permission of the person who brought the issue, does it have an agreement within the organization it will never be called to testify internally, does it have a policy to take all reasonable steps to avoid testifying externally (separate counsel to protect confidentiality, consistent “implied contract” etc.), does it assert it holds a privilege that others cannot waive, does it breach confidentiality only in the rare case of imminent (within a day or two) risk of serious risk (to human life or some comparably grave standard) harm?
    - iv. Informality – does the office not participate in any formal process (such as grievance hearings, investigations, disciplinary meetings, etc), does the office separate itself from decision-making or recommending adjudicative decisions or adverse action on any individual case, does the office pursue system change informally (not as part of management), does the office refer people elsewhere for investigations or formal on-the-record complaints?
3. Does the applicant have other job functions for the organization;

- a. If so, how does s/he show that fulfillment of those duties does not compromise the
  - i. Independence
  - ii. Neutrality
  - iii. Confidentiality
  - iv. Informality of the ombudsman role?

Applicants could be asked to explain the “firewalls” created such as not serving as ombudsman for any unit of the organization in which s/he holds a position of faculty or employee (researcher, etc.). other indications of separation could include having a separate receptionist or administrative assistant for the 2 functions, other mechanisms to indicate wearing a “separate hat” such as sitting in separate offices for the two functions, other mechanisms to avoid conflicts of interest between the 2 functions
4. Does the applicant show s/he has no job function that makes him/her an agent of the organization for purposes of notice?
  - a. This could be indicated by a statement in the charter/website, approved the organization’s counsel, that the ombudsman is not an agent of notice. Also the ombudsman job or any other job should not be sufficiently high in management to be an agent of notice.

**ASSOCIATE MEMBER CATEGORY**

1. Does the applicant indicate s/he is a practicing organizational ombudsman?
  - a. Example: what position does s/he he hold, what organization, etc  
List the job title, name of organization, etc.  
Indicate this is a current position (not aspiring, not retired)
2. Does the applicant have other job functions for the organization;
  - a. If so, how do those functions limit the
    - i. Independence
    - ii. Neutrality
    - iii. Confidentiality
    - iv. Informality of the ombudsman role?

Applicant should describe the limitations. Membership committee should determine if these limitations are indeed sufficiently limiting to be categorized as “associate member”
3. Does the applicant show s/he has no job function that makes him/her an agent of the organization for purposes of notice?
  - a. This could be indicated by a statement in the charter/website, approved the organization’s counsel, that the ombudsman is not an agent of notice. Also the ombudsman job or any other job should not be sufficiently high in management to be an agent of notice.
4. Does the applicant support the SOP and COE even though s/he is limited in the ability to adhere to them?
  - a. This could be indicated by a statement to which the applicant indicates “yes”

July 2008

Membership Application Taskforce  
(Beatriz Dale, Marvin Neal, Marsha Wagner)

**2009 MEMBERSHIP APPLICATION/PROCESS**

If we are to assign IOA applicants to categories of membership based on our Bylaws, we need some clear and consistent criteria for determining which category they fall into. Here are some suggestions of the type of criteria – basically, interpretations of our stated Standards of Practice – that might be applied:

**(FULL) MEMBER CATEGORY:**

1. Does the applicant indicate s/he is a practicing organizational ombudsman?
  - a. Example: what position does s/he hold, what organization, etc  
List the job title, name of organization, etc.  
Indicate this is a current position (not aspiring, not retired)
2. Does the applicant show s/he adheres to the SOP and COE?
  - a. This might be indicated by a statement or a “yes” on the membership application, and might be supported by office/program documents such as a charter, brochure, website, etc.
  - b. There should be a checklist for each of the elements, such as
    - i. Independence – to whom does s/he report? Is it high enough in the organization to provide structural independence and to be perceived as independent?
    - ii. Neutrality – is the office described as not an advocate for any group of people in the organization, does it consider all stakeholders in an issue, does it have no policy-making function, does it never issue fact-findings or does it never adjudicate issues or make judgments, etc.
    - iii. Confidentiality – does the office keep no records with individual identities, does it act on issues only with the permission of the person who brought the issue, does it have an agreement within the organization it will never be called to testify internally, does it have a policy to take all reasonable steps to avoid testifying externally (separate counsel to protect confidentiality, consistent “implied contract” etc.), does it assert it holds a privilege that others cannot waive, does it breach confidentiality only in the rare case of imminent (within a day or two) risk of serious risk (to human life or some comparably grave standard) harm?
    - iv. Informality – does the office not participate in any formal process (such as grievance hearings, investigations, disciplinary meetings, etc), does the office separate itself from decision-making or recommending adjudicative decisions or adverse action on any individual case, does the office pursue system change informally (not as part of management), does the office refer people elsewhere for investigations or formal on-the-record complaints?
3. Does the applicant have other job functions for the organization;



- a. If so, how does s/he show that fulfillment of those duties does not compromise the
  - i. Independence
  - ii. Neutrality
  - iii. Confidentiality
  - iv. Informality of the ombudsman role?

Applicants could be asked to explain the “firewalls” created such as not serving as ombudsman for any unit of the organization in which s/he holds a position of faculty or employee (researcher, etc.). other indications of separation could include having a separate receptionist or administrative assistant for the 2 functions, other mechanisms to indicate wearing a “separate hat” such as sitting in separate offices for the two functions, other mechanisms to avoid conflicts of interest between the 2 functions
4. Does the applicant show s/he has no job function that makes him/her an agent of the organization for purposes of notice?
  - a. This could be indicated by a statement in the charter/website, approved the organization’s counsel, that the ombudsman is not an agent of notice. Also the ombudsman job or any other job should not be sufficiently high in management to be an agent of notice.

#### **ASSOCIATE MEMBER CATEGORY**

1. Does the applicant indicate s/he is a practicing organizational ombudsman?
  - a. Example: what position does s/he he hold, what organization, etc  
List the job title, name of organization, etc.  
Indicate this is a current position (not aspiring, not retired)
2. Does the applicant have other job functions for the organization;
  - a. If so, how do those functions limit the
    - i. Independence
    - ii. Neutrality
    - iii. Confidentiality
    - iv. Informality of the ombudsman role?

Applicant should describe the limitations. Membership committee should determine if these limitations are indeed sufficiently limiting to be categorized as “associate member”
3. Does the applicant show s/he has no job function that makes him/her an agent of the organization for purposes of notice?
  - a. This could be indicated by a statement in the charter/website, approved the organization’s counsel, that the ombudsman is not an agent of notice. Also the ombudsman job or any other job should not be sufficiently high in management to be an agent of notice.
4. Does the applicant support the SOP and COE even though s/he is limited in the ability to adhere to them?
  - a. This could be indicated by a statement to which the applicant indicates “yes”

## Template for 2009 Membership Review Process

In review of a person's 2009 membership category, we suggest the following process:

- 1) Review their web site to assess if there is a charter or term of reference for the office.
- 2) Call the member and describe the Membership Committee's task of reviewing a random sample of **members** and **associate members** to confirm that they have been assigned to the proper membership category.

The following questions should be asked:

- a) To whom does the office report?
  - b) Does it have a charter or terms of reference?
  - c) Do they refer to the IOA Code of Ethics or Standards of Practice in their work?
  - d) Do they serve in any additional role for their employer?
  - e) Do they conduct investigations?
  - f) What, if any exceptions to confidentiality do they recognize?
- 3) If there is reason to think a change in membership category is appropriate; please indicate that to the person and tell them you will confer with the membership committee to determine if that is the case.

If there is not a reason to think a change is needed, thank them for their time and confirm their membership category.



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