

Where Are the Ombuds?

The Hidden Potential of Law Firm Ombuds

BY SARA THACKER

Lawyers are leaving law firms at alarming rates. According to the National Association for Law Placement (NALP), law firms have an annual attrition rate of 19% and 80% of associates leave their firms within five years. The healthy six-figure median starting salary of first year associates has proven insufficient to stop this revolving door, and associate attrition rates are now at an all-time high.

To improve retention, firm relations, and the work environment, some law firms have invested in human resource positions such as Legal Recruiting Directors, Associate Relations Specialists, Legal Personnel Coordinators, and Attorney Development Managers. But where are the Ombuds?

Headquartered in New York City, Chadbourne & Parke LLP is one the few law firms to have an ombuds office. **Stephen Buchman**, a retired partner and current ombuds, serves as a designated neutral providing confidential, independent, and informal assistance to address and constructively resolve attorney and staff concerns.¹

This neutrality, confidentiality, independence, and informality that define the ombuds role are unique, and these guiding principles could prove particularly beneficial in a law firm environment.



Guiding Principles for Law Firm Ombuds

NEUTRALITY

Trained to win arguments and rewarded for good analytical and decision-making ability, lawyers are competitive by nature. Associates who have concerns or questions might not raise them with HR, a partner, supervisor, or even another colleague for fear of being judged or not measuring up to their peers.

Walking into an ombuds office to discuss a problem without fear of judgment could be a refreshing experience for associates. "The main thing I've discovered is that people want to unburden themselves with a neutral," said Buchman. "A lot of people think about their problems and toss and turn . . . but they don't have a place where they can go to talk about their thoughts in an organized objective way."

The ombuds is not an advocate, but rather assists associates in defining the issues, considering different perspectives, and developing

multiple options to resolve workplace disputes. Reflecting the importance of self-determination in conflict, visitors to the ombuds office choose the option that best suits their needs.

"Many times a full and frank discussion of a concern actually suggests the solution to the problem," Buchman explains. Brainstorming and developing options to resolve a problem in the workplace can provide relief for associates who feel that the only option available is to leave the firm.

CONFIDENTIALITY

Good judgment and problem solving skills are critical to the success of associates. As a result, lawyers who experience difficulties in the workplace "are much less likely to come forward for fear that they will be considered to have poor judgment and not able to handle their own problems," said **Dr. Freada Kapor Klein**, Founder and Board Chair of Level the Playing Field, a non-profit organization that promotes fairness and inclusion in the workplace.

Dr. Klein concludes that providing an ombuds with guaranteed confidentiality encourages associates to come forward. Trained as a survey researcher, Dr. Klein will recommend ombuds to law firms only when the data supports it. The data has to suggest that individuals experienced

(continued on page 9)

(continued from page 8)

problems, but did not come forward, Dr. Klein explained.

Under the Corporate Leavers Research Initiative, the first diversity-focused national study of why companies lose employees, Dr. Klein has often found that individuals would have remained with their employers had there been a confidential resource available to discuss and address problems encountered in the workplace.

The Minority Corporate Counsel Association also concluded in its Law Firm Diversity Recommended Practices study that law firms “should have resources that allow all attorneys to voice their concerns, doubts, and ideas in a confidential or even anonymous forum where there is no fear of retaliation or retribution from senior management. . . . [T]hose without confidential forums will be hampered by reticent and unhappy associates who may depart as soon as another opportunity presents itself.”

Looking for an anonymous resource to discuss problems encountered at law firms, some associates even turn to internet websites.

Greedyassociates.com is one such site that provides anonymous message boards for attorneys.

Writes a second-year female associate experiencing sexual harassment: “I feel as if I say something I’ll be killing my whole legal career – especially at this firm where there are few women partners, and even fewer female associates,” she wrote. “He is a [junior] partner [who has] been with the firm for 7 yrs [and] is really well liked by everyone. . . . Is my only option to just leave the firm? Has anyone out there been through something similar, or seen it handled at their firm?”

Writes a first year associate concerned about meeting the billable hour requirement: “I’m typically at work 10 hours a day, 5 days a week, but after the first couple of months, I’m finding myself way short on my hours. I’m billing, on average, 6-6.5 hours a day out of 9 office-hours (taking off for lunch). . . . [W]ho really thinks all these people are being productive 8 hours a day every day with no vacation, no time to chat with coworkers, no time to so much as use the bathroom without making up every single minute? Is it just me, or are a very significant proportion of

help, the ombuds provides an additional resource and acts as potential safety net for problems that would otherwise go unidentified or unaddressed.

INDEPENDENCE

In addition to confidentiality, the independence of the ombuds office ensures that associates feel safe discussing their concerns. Because ombuds are independent from other entities and report only to the highest officers within an organization, they are free to function

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BigLaw attorneys, who seem to be at the office the same 10 hours I am, but billing 2000+ [hours], padding heavily?”

In both these instances, associates felt more comfortable asking anonymous associates for help than turning to individuals within the firm. Because this forum provides the protection of anonymity, associates feel safe revealing sensitive information.

Similarly, associates who would not otherwise come forward often approach the ombuds because of the protection confidentiality offers.² While associates could turn to human resources or partners for

without interference or control by others.

Ombuds should not hold any position that would compromise their independence. As a former partner at Chadbourne & Parke, Buchman is sensitive to the perception that he may be seen as aligned with management. As a result, he stopped being as public with other partners. “An ombuds can be a very isolating position,” he said.

At the same time, Buchman believes that his prior experience at the firm is helpful in his current ombuds position. “I knew the firm well,” said

(continued on page 10)

(continued from page 9)

Buchman. "I could give you a context for things that I otherwise wouldn't have."

Not all law firm ombuds come from within. **Jane Bermont** of Bermont & Associates LLC, a management and diversity consulting firm in Newton, MA, believes that ombuds can be both independent and have visible interactions with others. Bermont tries to connect with everyone even in the hallways. "It is important that others see you and start talking with you," Bermont said.

Both these ombuds have different styles of interaction within the firm; however, each require and seek to create an atmosphere where employees believe in the independence of the ombuds office.

INFORMALITY

Attorneys are familiar with formal complaints and know the harsh realities of litigation — countless depositions, discovery, publicity, high costs, and years spent in court. Consequently, many attorneys hesitate to file formal complaints or use formal internal complaint channels that subject their professional lives to scrutiny.

"Lawyers are concerned about raising issues and the impact it will have on their careers now and in 10 years down the road," said **Elizabeth Pino**, who started the first law firm ombuds office in the country at Palmer & Dodge, LLP. Pino, now Director of Ombuds Programs at McKinsey & Company, describes ombuds as a "no risk, no regret option."

Sometimes associates who approach the ombuds simply want to talk informally about a concern without fear that it will escalate into a formal complaint. Ombuds function

informally by listening, providing and receiving information, or helping to identify issues and options to resolve problems or disputes.

Ombuds also work with individuals who want help dealing directly with a problem. Buchman coaches individuals on how to resolve disputes by discussing why a problem exists and how to approach and communicate with the source of the problem. Associates role-play or discuss what to say and may even address practicalities such as what time of day is best to have a conversation. In addition, ombuds can provide firm-wide training on how to improve communication, collaborate, problem-solve, or handle conflict and different working styles.

If an individual would like the ombuds to intervene, the ombuds may at his discretion initiate informal shuttle diplomacy by going back and forth between the parties or bring the parties together to find a resolution. This is useful when an associate does not feel comfortable dealing directly with another associate, staff person, or partner alone.

Generic approaches also work to resolve certain problems. For example, an associate concerned that her religious practices could interfere with her work schedule talks with the ombuds. With her permission and approval, the ombuds then approaches management about her concerns. The result: the firm distributes a memorandum each year discussing the accommodation, acceptance, support and needs of religious practices.

While ombuds cannot reveal information that could lead to the identification of a visitor without

permission, they may alert the firm to trends or emerging issues that require attention. In this way, ombuds provide upward feedback and serve as an early warning system for emerging concerns within the firm.



A Case of Dollars & Sense

RETENTION

While associate salaries are reaching record numbers, so is associate attrition. It is clear that more and more associates are breaking the "golden handcuffs" and greenbacks alone will not retain them.

In a survey conducted by **The American Lawyer** last year, law firm leaders cited poor associate retention as their greatest disappointment. Not only do firms lose talent, they lose money.

The value added by ombuds is great, Buchman said. "If you keep one associate that you would have lost, you could save \$50,000 on a headhunter's fee alone." Costs associated with recruiting, training, firm disruption and decreased productivity add to the loss. The Project for Attorney Retention, an initiative of the

(continued on page 11)

(continued from page 10)

University of California Hastings College of the Law, found that it costs more than \$200,000 to replace each associate that leaves.

By helping associates find solutions to problems in the workplace, ombuds help retain associates who might otherwise depart. Due to the constraints of confidentiality, an ombuds is unable to inform the law firm of these individual cases. "One of the ironies is that you can't tell people about your successes," Buchman said.

But attorneys are aware of the success law firms have in retaining associates. If a firm experiences above average associate losses, word spreads quickly and can affect recruiting quality candidates who often have other options. Above average turnover may also affect firms who seek profit maximization

through high associate to partner ratios. If this leverage ratio falls, profits often fall with it.

Clients are also increasingly aware of high attrition rates and the impact it has on service. According to the 2005 Association of Corporate Counsel/Serengeti Managing Outside Counsel Survey, in-house counsel are becoming more systematic in how they manage work with law firms and increasingly require up-front parameters, such as a minimum level of experience for associates or a ban on changing associates assigned to a matter without prior approval.

"Clients are becoming increasingly dissatisfied with attorney turnover. They invest significant time and money into educating their outside counsel and developing relation-

ships with them, and are seeking to protect that investment by hiring law firms with low attrition rates," found the Project for Attorney Retention.

As an independent consultant providing ombuds services for law firms, Bermont found that some attorneys simply want to talk about staying at the firm and the options available. "Attorneys who are or will be parents need a place to talk over and think through their options," she said. "Even though most firms have part-time policies, many are loathe to take advantage of them for fear of career consequences. It's a tremendous bind for women, and increasingly for men, who want to have some flexibility."

Attrition rates for women and minorities are particularly high at law

(continued on page 12)

Advertisement

UNIVERSITY OF CALIFORNIA, SANTA BARBARA

Campus Ombudsperson

The University of California, Santa Barbara invites applications for the Campus Ombudsperson. The Ombudsperson provides confidential and informal conflict management services for faculty, staff, and students. Clarifies issues, resolves problems, and mediates disputes. Receives and responds to complaints, offers options, provides coaching, and refers to appropriate resources. Coordinates conflict prevention and outreach effort. Identifies institutional patterns and trends. Establishes and manages campus mediation program. Responsible for all administrative aspects of the office, including oversight of budget and personnel.

Requirements: Possess an advanced level of knowledge and demonstrated experience in mediation and negotiation on a wide range of issues; experience and demonstrated ability to work effectively in a large, complex research university environment; excellent communication skills across a wide variety of audiences including executives, faculty, managers, employees, and students; proven ability to maintain strict confidentiality of privileged information; excellent interpersonal skills to interact with personnel at all levels; analytical skills to evaluate and make decisions independently; sensitivity and skill working with gender, sexual orientation, ethnic and cultural diversity issues; excellent investigative and collaborative skills; ability to understand and analyze policy and procedures and recommend changes; ability to resolve problems and issues for the total University community.

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The UCSB campus is located on the California coast, approximately 10 miles north of the city of Santa Barbara and approximately 100 miles north of Los Angeles. UCSB's workforce is the largest in Santa Barbara County with over 9,500 employees, including nearly 1,000 faculty members. Annual student enrollment is currently over 20,000 students, of which approximately 18,000 are undergraduates.

(continued from page 11)

firms and corporate clients are beginning to take note. In an effort to promote diversity in law firms, more than 100 major corporations committed to a Call to Action. These corporations pledged to “make decisions regarding which law firms represent our companies based in significant part on the diversity performance of the firms. . . [and] to end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse.”³ An ombuds office demonstrates a firm’s commitment to diversity by providing a resource for those who feel uncomfortable coming forward, including women and minorities.

For many associates, the only way to address a significant problem at their firm is to tolerate it, or resign. Establishment of an ombuds office creates a mechanism for potential resolution of these problems and can also serve to address smaller issues and concerns before they rise to a level that could prompt an individual to leave. This effective mechanism for conflict resolution leads to an improved work environment, which has a positive impact on morale and retention.

PRODUCTIVITY & WORK PRODUCT

Workplace conflicts often distract associates and interfere with productivity. While it is difficult to calculate the revenue lost, every minute an associate loses to unresolved disputes costs money. According to the Altman Weil Survey of Law Firm Economics, the median hourly rate for associates at large law firms is \$220 per hour. By helping resolve associate problems and concerns early on, ombuds assist in retaining revenue otherwise lost.

Most large legal cases require working in teams. Good teamwork depends on positive personal interactions and constructive communication. When breakdowns occur, ombuds can play a vital role in improving communication and relations between attorneys, which contributes to a better work product. Associates may have questions about a particular assignment, want more feedback on work completed or in progress, be unsure how to address a mistake, or have difficulty

responsibilities insofar as the requirement ignores pro bono work and encourages ‘padding’ of hours, inefficient work, repetition of tasks, and other problems.” When this memorandum became public, the firm became the subject of scrutiny and bad press. A law firm ombuds could have provided early warning of these complaints and the allegations of “padding” of hours by providing data trending the number of visitors who made similar complaints.

Even if law firms look only to the bottom line, it is clear ombuds can contribute. If an ombuds helps retain even one associate per year, it is a cost-effective measure.

working with another attorney. Associates who do not feel comfortable bringing up these issues with a supervisor, can approach the ombuds to discuss how best to communicate in these situations and weigh the responsible options available.

MINIMIZING RISK

Law firms are not immune to scandal, but an ombuds office can help bring problems to a firm’s attention before they rise to a more damaging level. Four years ago, associates at Clifford Chance distributed an internal memorandum highlighting major problem areas within the firm, including a 2420 billable hour requirement. Associates reported “the stress on billable hours dehumanizing and verging on an abdication of our professional

More recently, the law firm of Greenberg & Traurig was in the spotlight for the activities of **Jack Abramoff**, who worked for Greenberg as a lobbyist from 2001 until his termination in 2004. Abramoff pled guilty to fraud, tax evasion and conspiracy to bribe public officials. Abramoff’s activities while at Greenberg exposed the firm to liability. Former Abramoff clients filed suit against Greenberg, and the firm has reached confidential settlements in some of these cases. Had a law firm ombuds existed, associates or staff might have felt safe coming forward to discuss alleged fabrication of hours, kickbacks, and conflicts of interests against one of the most powerful lobbyist in Washington.

(continued on page 13)

(continued from page 12)

While the protection of confidentiality encourages employees to come forward, ombuds do not encourage employees to hide misconduct. Ombuds may provide visitors with information about (1) laws or policies requiring employees to report misconduct, (2) the proper procedures to follow when reporting misconduct, and (3) the organization's anti-retaliation policies that encourage disclosure.

In addition to providing information, ombuds discuss options with visitors who want to report misconduct, but do not want their identities revealed. In these situations and with the visitors' consent, the ombuds may report misconduct on behalf of visitors. In this capacity, ombuds increase reporting of misconduct and minimize a firm's exposure to risk.

LAW FIRM OMBUDS IN NAME ONLY

The American Bar Association's Standards for the Establishment and Operation of Ombuds Offices require independence, impartiality, and confidentiality of ombuds. Regrettably, however, few law firms have instituted "ombuds" who meet the essential characteristics of this role.

Some law firms have appointed "ombuds" who also serve as partners and cannot be considered independent. Because these "ombuds" are also managing agents of the firm, any communication made to them places the organization on notice of misconduct or alleged violations of law, which may subject the firm to liability. According to the ABA Standards, ombuds, who are independent, impartial, and confidential, are *not* considered to be agents of the firm for purposes of receiving notice.

In addition, some law firm "ombuds" do not offer confidentiality or provide confidentiality only on a limited or discretionary basis. "We do not offer complete confidentiality, but a system where we would work with the associate to find fixes that meet with their approval and expectations," said **Barbara Dawson**, Partner and former Ombuds Program Coordinator at Snell & Wilmer, LLP.

"As a society and culture, we are hostile about the notion of confidentiality. We feel we should know everything about our employees and staff and that nothing should be confidential," said **Sharan Levine**, a shareholder in the law firm Levine & Levine whose practice includes counseling ombuds.

Some firms strive for confidentiality, but it is not absolute. "As long as [the problem] does not present a legal liability to the law firm, we will maintain confidentiality," said **Lynn Grayson**, Partner & Ombuds Program Chair at Jenner & Block, LLP.

While these firms provide a valuable additional channel for communication and problem-solving, the lack of confidentiality limits the programs' effectiveness. "Confidentiality is an essential characteristic of ombuds that permits the process to work effectively," wrote the ABA in its Report on Standards for the Establishment and Operation of Ombuds Offices. "Confidentiality promotes disclosure from reluctant complainants, elicits candid discussions by all parties, and provides an increased level of protection against retaliation to or by any party."

In addition, identifying individuals as "ombuds" when they do not meet the definition dilutes public under-

standing of the ombuds role. These individuals are more properly described as "attorney advisors" as they do not possess the essential characteristics of ombuds. These characteristics are set forth in the IOA Standards of Practice and the ABA Standards, to which all law firms should look for advice and guidance on the structure and operation of ombuds offices.

CONCLUSION

Associates who have left law firms sometimes joke they are "recovering attorneys" or "running from the law," but the statistics of associate retention are no laughing matter.

Ombuds have great potential to improve the organizational health and work environment of law firms. The neutrality, confidentiality, independence and informality offered by the ombuds office encourage associates to come forward to discuss and find solutions to problems that often interfere with their work. This alone has value.

While corporations such as American Express, Chevron Corporation, Coca-Cola, Dell, Halliburton, and United Technologies have established ombuds offices, so far law firms have not been as innovative. Few law firms have established ombuds offices; however, it remains to be seen whether they remain aberrations or become integrated as a "best practice" for law firms across the country.

Law firms who are truly looking to differentiate themselves from their competitors and establish a strategic advantage should follow the example of major corporations who

(continued on page 14)

(continued from page 13)

have recognized the potential of ombuds. According to renowned law firm consultant **David Maister**, “Lawyers are usually different. Presented with a new business idea, the first thing they ask is, ‘Which other law firms are doing this?’ . . . As long as we are no worse than anyone else, we don’t need to change!” Maister concluded this is “hardly a recipe for a strategic advantage.”⁴

Law firms need a new recipe. If an improved work environment is not sufficient motivation to establish an ombuds office, what is? Recent trends at major firms seem geared toward higher billable rates, higher billable hour requirements and greater leveraging, all resulting in larger firm profits. And while it is nice to talk about more positive work environments and effective mechanisms for conflict resolution, many cynically believe that law firm

practice is driven solely by dollars and cents.

Even if law firms look only to the bottom line, it is clear ombuds can contribute. If an ombuds helps retain even one associate per year, it is a cost-effective measure. In short, establishing an ombuds office saves dollars, and that makes sense. ●

Sara Thacker was the 2003-2005 Hewlett Fellow in Conflict Resolution & Legal Problem Solving at Georgetown University Law Center. She also served as an Adjunct Professor, teaching courses in mediation, negotiation, and dispute resolution. Prior to her work at Georgetown, Ms. Thacker was an associate at two international law firms. She currently resides in San Diego, CA and can be reached at thacker.sara@gmail.com or (202) 406-0680.

FOOTNOTES

¹ While this article focuses on the value ombuds provide for attorneys, law firm ombuds serve all employees of the firm, including legal and non-legal staff members alike.

² Ombuds are required to maintain confidentiality except when there is an “imminent risk of serious harm.” See IOA Standards of Practice (2006) and the ABA Standards for the Establishment and Operation of Ombuds Offices (2004).

³ Examples of corporate signatories include Eli Lilly & Company, Qwest Communications International Inc., The Boeing Company, Verizon, Hewlett Packard Company, Prudential Financial, JC Penney, Starbucks Coffee Company, Lockheed Martin Corporation, Halliburton Company, Johnson & Johnson, Intel Corporation, General Motors Corporation, The Coca-Cola Company, Shell Oil Company, and Wal-Mart. For a full list, see www.clocalltoaction.com.

⁴ David Maister, *Are Law Firms Manageable?* (2006), available at www.davidmaister.com.