



# Sexual Harassment, Consensual Relationships, and the Ombuds Profession

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## ABSTRACT

With the first organizational ombuds offices emerging in America in the 1960s, the profession is still relatively young. As it enters a more mature phase of its development, it becomes increasingly important to identify the ethical challenges inherent to the work, and to create and refine guidelines for practitioners. As advocates for fair processes and adherence to policy, organizational ombuds work on the cutting edge of a dynamic, new normal for equitable and respectful relationships in our institutions. Ombuds have traditionally assisted visitors concerned about sexual harassment and problematic consensual relationships within their organizations, but as neutral, impartial, and independent as they strive to be, ombuds are human, and not immune to gender, sexual, and power

dynamics. In this article, the authors examine the risks of sexual harassment and problematic consensual relationships for ombuds, visitors, and the profession. Several strategies for addressing these concerns are recommended including: expanding IOA ethical guidelines, updating policies and procedures for ethical and conflict of interest issues, and developing a sexual harassment policy for the profession

**KEYWORDS:** : ombuds, sexual, harassment, standards, practice, ethics



## INTRODUCTION

The organizational ombuds profession is young, but it continues to professionalize and its reputation and reach are developing. (See e.g. Houk, 2016; Johnsen, 2019; and ABA Resolution 103, 2017). As the ombuds role is increasingly cited as a tool to address sexual harassment (IOA Press Release, June 23, 2020), it becomes increasingly important to identify certain ethical challenges inherent to the work, and to create and refine guidelines for practitioners. In this article, the authors examine the risks of sexual harassment and problematic consensual relationships for ombuds, visitors, and the profession. Several strategies for addressing these concerns are recommended.

As advocates for fair processes and adherence to policy, organizational ombuds work is on the cutting edge of a dynamic, new normal for equitable and respectful relationships in our institutions. Ombuds have traditionally assisted visitors concerned about sexual harassment and problematic consensual relationships within their organizations, but have they looked at their own actions in this regard? As neutral, impartial, and independent as they strive to be, ombuds are human, and not immune to gender, sexual, and power dynamics. At this point, to ignore these issues could result in harm to ombuds professionals and the individuals and organizations they serve.

## OMBUDS AND SEXUAL HARASSMENT

### OMBUDS AS HARASSER

As #MeToo and related cultural movements have demonstrated, sexual harassment is a significant problem for many organizations, institutions, and professional associations. Although people commonly think of assaults and quid pro quo sexual harassment as the primary problems, a recent NASEM [study](#) has shown that other forms of sexual harassment, such as unwanted sexual attention and gender harassment, are actually much more prevalent. Despite the current prominence and ubiquity of these issues, organizational ombuds have not yet formally examined the implications for their own profession.

By their nature, many ombuds meetings are likely to involve visitors who feel mistreated, vulnerable, disempowered, or anxious. These confidential conversations take place behind closed doors, often in a location that is secluded or discrete by design. The ombuds may be perceived as nurturing and supportive, but also as having power relative to the visitor's concern and the institution. The potential for boundary violations or exploitation exists by the very nature of this relationship. It would be naïve to assume that no ombuds has had, or would ever have, a lapse of judgement or self-discipline while serving in this role.

Behaviors that may not violate sexual harassment policies or law can still make a visitor feel uncomfortable, confused, unsafe, or violated. An ombuds might make conscious or unconscious assumptions about a visitor's abilities, situation, or aspirations based on gender, which could affect the quality of the meeting. While most organizations have sexual harassment policies that don't prohibit commenting on someone's appearance, asking about marital status, or asking someone out, an ombuds must be particularly cautious about engaging in conversations such as these.

Ombuds understand that even good intentions can have a negative effect. For example, an ombuds' rapport building comments may be perceived as flirtatious, or as an infringement upon personal space and not central to the visitor's main concern. Following up too strongly or frequently may generate discomfort or questions about the ombuds' motives. An unexpected hug could set off alarms. Differences in age, gender identity, sexual orientation, culture, and language can all lead to misunderstandings and/or errors in judgement. Ombuds, particularly new ombuds, need guidance about how to make skillful and informed decisions related to visitor relationships. Visitors, in turn, need to know where to go to voice concerns about the ombuds.



There have been numerous instances in which [psychologists](#), [lawyers](#), and [medical doctors](#) have been accused and found guilty of very serious sexual harassment or sexual assault. This could easily happen within the ombuds profession as well. Given the crucial role that trust plays in an ombuds' role, complaints of sexual harassment against an ombuds have the potential to be particularly damaging to all individuals involved, and to the profession.

Most established professions that involve confidential meetings, such as [psychology](#), [law](#), [medicine](#), and [social work](#), have already developed policies and procedures about sexual harassment within their membership. The [judiciary](#) has also been working to address harassment within its ranks. These professions have all established clear policies and guidelines regarding behavior that is not acceptable. Currently, the ombuds profession is behind the curve, and by neglecting to address these issues, ombuds are increasing the risk of psychological harm to visitors, legal or professional damage to ombuds, and reputational damage to the profession.

## OMBUDS AS TARGET

Over [40%](#) of women and [10%](#) of men experience sexual harassment at work. [Rates](#) of sexual harassment are about 50% greater for LGBTQ and Native American women. An ombuds can be on the receiving end of sexual harassment in the workplace, through actions taken either by visitors or colleagues. In addition to emotional trauma, experiencing sexual harassment from a visitor during a session could also affect an ombuds' neutrality in relation to the visitor, their department, the sexual harassment investigator, and perhaps the administration overall. Raising a complaint about such an issue has the potential to negatively affect the reputation of the ombuds and the office. A visitor's statements about a meeting may be quite different from the ombuds' recollection or statements, and determining the truth about what went on during a confidential meeting may be very challenging, if not impossible. An ombuds' complaint could lead to questions about the ombuds' ability to protect confidentiality, or about the ombuds' judgment and actions.

Sexual harassment concerns involving ombuds who work in the same office have the potential to harm the careers of both parties. 54% of female attorneys in the U.S. have been sexually harassed by other attorneys at work, according to a 2019 [study](#). 44% have been harassed by clients. (Honigsberg, *et al.*, 1994). If professionals such as lawyers, who know the rules better than anyone, are crossing these lines and subjecting their colleagues to sexual harassment, then there is reason to believe that ombuds could find themselves in the same position. Again, the cost of reporting such incidents within the institution could be too high for an ombuds to take that risk. Having a channel to report to other ombuds who would be knowledgeable of the context could be a more viable option.

The ombuds profession is still a small field where job opportunities are scarce and newcomers often depend on seasoned ombuds to recommend them. This power differential creates conditions in which sexual harassment or exploitation may arise. New or aspiring ombuds may feel reluctant to set clear boundaries or report sexual harassment, out of fear of harming their professional futures.

## HARASSMENT AT CONFERENCES

A recent [survey](#) by the American Political Science Association has shed light on the fact that sexual harassment and assault are not uncommon experiences at professional conferences. Events that involve overnight stays away from the worksite, especially where alcohol is involved, increase the likelihood that some attendees will behave unethically or inappropriately. Many professional associations have begun to establish policies and procedures for providing support and reporting channels during conferences and training events, including the establishment of on-site ombuds services at conferences. The IOA's recent creation of a conference and an ongoing ombuds position is a positive step in this direction.



The IOA holds several trainings each year, as well as a major annual conference. Policies, procedures, and resources for reporting and addressing sexual harassment at these events are not currently provided. Other regional organizational ombuds groups also hold on-site meetings where overnight travel is required. The absence of clear reporting channels or guidance regarding unacceptable behavior may create unnecessary confusion and risk for adversely impacted attendees. One reading might be that there are no problematic conference behaviors to address; or conversely, current behavior is not seen as problematic. Another reading might be that the targets of harassment are self-sufficient and don't need the support of the organization; or conversely, the organization isn't responsible for supporting targets. At the very least, it seems important for ombuds to explore these issues more fully, as other professional associations have.

## SEXUAL HARASSMENT AND OMBUDS CONFIDENTIALITY

If incidents of sexual harassment occur during ombuds sessions, how do ombuds protect themselves and visitors, and also adhere to IOA's Standards of Practice? There are no current exceptions within the SOPs that would allow an ombuds to waive confidentiality to discuss an alleged violation that occurred during a visitor consultation. Our profession has not provided a means by which ombuds can be free of the muzzle of confidentiality, whether the ombuds is a complainant or defending themselves against an accusation.

Laws exist for psychotherapists regarding [exceptions to confidentiality](#) that include situations where a client is using the confidential setting to commit a crime or sue a psychotherapist. The American Bar Association's Model [Rules](#) of Professional Conduct permit an attorney to disclose information relating to the representation of a client to establish a claim or defense, or to respond to allegations. The ombuds profession should consider creating exceptions to confidentiality where an ombuds is on one side or another of a sexual harassment case.

### **The Feeling Is Mutual: Consensual Relationships**

Many ombuds see their profession as a noble act of service. Even if we assume that ombuds nobility implies a vow of celibacy within the SOPs regarding *visitor* relationships (which some ombuds may believe to be the case), an ombuds still may have to grapple with the complexities of being in a consensual relationship with someone else within the organization. There are a number of ethical questions to consider related to consensual relationships between ombuds, visitors to the ombuds office, or others within the organization.

#### *Consensual Relationships with Visitors*

One can also imagine numerous scenarios in which a consensual relationship with a visitor could harm a visitor psychologically and professionally, as well as lead to violations of the SOPs related to neutrality and conflicts of interest. Notably, there is no statement in the [IOA Ethics Code](#), Standards of Practice or [Best Practices](#) documents that specifically prohibits sexual relationships with current or past visitors to an ombuds office, including with students. In this way, the IOA's Ethics Code differs dramatically from the ethics codes of [psychologists](#), [medical doctors](#), [coaches](#), and [mental health counselors](#), which all clearly prohibit sexual relationships between those professionals and the people they serve. [Attorneys](#) are also prohibited from engaging in consensual sexual relationships with clients unless the relationship began prior to representation.

In addition to the potential harm to individual visitors, the general trustworthiness, credibility, and reputation of the ombuds are all at stake. Lacking positional authority, an ombuds needs to command a high level of trust and respect and to be perceived as a viable resource. The ombuds stands on complex, shaky ground when it comes to romantic relationships at work. An ombuds who is romantically involved with a visitor may be perceived as taking advantage of their position for selfish reasons. Such an involvement could also be a deterrent to visitors who wish to consult with the ombuds about sexual harassment-related concerns. If the relationship ends badly, there will also be increased grievance and/or legal exposure for the ombuds and the institution related to claims of sexual harassment, and reputational damage for everyone concerned.



Similar complications could also arise for an ombuds who becomes romantically involved with a past visitor. In order to minimize the potential negative effects of this type of relationship, other professions [have instituted rules](#) such as a mandatory 'waiting period' following the end of provided services, before such a relationship could be considered to be ethically acceptable. The [ABA Model Standards of Conduct for Mediators](#) states that,

Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties . . . following a mediation . . . , the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

#### *CONSENSUAL RELATIONSHIPS WITH OTHERS WITHIN THE ORGANIZATION*

It is not uncommon for individuals within an organization to become romantically involved, and when this happens, conflicts of interest and awkwardness are often part of the territory. But when one of those individuals is an ombuds, these problems become significantly more complicated. Some of the potential problems regarding consensual romantic or sexual relationships are fairly obvious, while others are more subtle and require thoughtful consideration.

Consensual relationships between an ombuds and a constituent may occur in a number of ways. Ombuds are often selected from within an organization, and may already be married to or romantically involved with someone else affiliated with that organization. The ombuds may have recently separated or divorced from someone within the same organization. An ombuds may fall in love or simply be interested in dating a colleague at work. A consensual relationship of this sort creates the potential for numerous conflicts of interest with other visitors who know, work with, or have conflicts with the person whom the ombuds is involved with. Conflict of interest concerns could also emerge if an ombuds were to date a close relative, or ex-partner of a visitor.

An ombuds could unknowingly become involved with someone employed at the same workplace, or with a student. Shorter, serial romantic relationships are becoming more common with the use of dating apps, and people often don't know the real name of the person on the other end, let alone their profession or workplace, when they go on a date. This may pose less of a problem for ombuds who work in large metropolitan areas, but ombuds who date within smaller communities or isolated institutions may have little choice but to seek relationships within their institutions. The [IOA Code of Ethics](#) states, "[t]he Ombudsman does not engage in any situation which could create a conflict of interest." Given that anyone could become a visitor, does this mean that the ombuds should not have a romantic relationship with anyone in the organization? There is much to be thoughtful about when considering the ethical implications of these relationships.

Let's consider consensual relationships between an ombuds and a student over the age of 18. Some academic institutions prohibit staff-student relationships. Others permit staff to become involved with students, unless they serve in an evaluative capacity over that student. Consequently, some academic ombuds would technically be within their rights under their institution's policy to date students; but is this truly ethical behavior from the perspective of the ombuds profession? Such a relationship could be fraught with risks for everyone involved, and create reputational damage to the office and the profession. Does it make a difference if the student is older than the traditional student age? As ombuds, we should discuss and clarify the appropriate professional expectations regarding sexual involvements with students.

#### **OMBUDS RECUSAL**

The IOA's Best Practices document states that an ombuds should recuse him or herself from working with a client when made aware of a conflict of interest, but the mechanics of this process



are unclear. Does the ombuds have any guidelines that clarify which conflicts of interest are significant enough to warrant a recusal? Whom can they consult with when there are shades of gray? What should an ombuds say to a visitor about being unable to work with them due to a consensual relationship or other conflict of interest, especially if the reason for the conflict of interest is confidential or personal? Do visitors have the right to see another ombuds when an ombuds recuses him or herself? Where would a recused ombuds refer a visitor if the ombuds is a solo practitioner? Answers to questions such as these would aid practitioners who encounter these situations. Ombuds could look to some of the practices which have guided other neutrals in this regard. The [ABA Model Standards of Conduct for Mediators](#), for example, requires that mediators disclose potential conflicts of interest as soon as possible.

## **EXPANDING THE IOA'S CODE OF ETHICS, STANDARDS OF PRACTICE AND BEST PRACTICES DOCUMENTS**

The purpose of an ethics code for a profession is to establish guidelines for honest, respectful, ethical, and safe behavior within that professional role. The IOA's current Code of Ethics describes the fundamental features that define organizational ombuds work but is quite short and too limited in scope to adequately establish the guidelines requisite for our complex profession. The IOA's Standards of Practice and Best Practices documents primarily reinforce and explicate the current Code of Ethics, but a number of important ethical concerns remain unaddressed. For example, none of IOA's official documents address the risks of potential harm to visitors, colleagues, interns, students, members of the community or ombuds staff, as a result of interactions with the ombuds. They also do not specifically acknowledge the ethical challenges that can arise in the ombuds profession from sexual harassment and consensual relationships. Ombuds understand problems related to sexual harassment, conflicts of interest, and the lack of effective policies, because people bring these issues to their offices every day. The training, experience, and skills that ombuds have to assist people with these struggles are what make ombuds such a unique and valuable resource. It is time for ombuds to integrate their refined understanding of inequity, oppression, and conflicts of interest with the foundations of their own profession. Ombuds should be role models around these issues and establish best practices within their own professional contexts.

Institutions normally have clear sexual harassment policies, and ombuds are accustomed to applying them in the context of concerns and options for visitors. Should there also be IOA best practices established for investigations, processes, and sanctions regarding ombuds misbehavior? As we have discussed, the ombuds serves a unique role; one of independence, confidentiality, and neutrality, which may require unique processes for handling the complexities of sexual harassment complaints.

## **RECOMMENDATIONS**

One path forward would be to make a recommendation to the IOA Board to expand the Ethics Code, Standards of Practice, and Best Practices documents to address these issues more specifically. Such recommendations could include:

- 1) Developing a clear statement regarding sexual harassment behavior by ombuds;
- 2) Establishing a committee and creating policies for handling sexual harassment complaints that involve ombuds; including definitions, reporting channels, investigative procedures, due process, confidentiality, findings, and application of sanctions if warranted. This could be modeled on existing policies used by other professional associations and the Professional Practices Committee of CO-OP®. Sanctions could include, but not be limited to, suspension or loss of CO-OP® status and/or IOA membership, exclusion from conferences, verbal or written censure, and recommendations for coaching, counseling or training;
- 3) Making a clear statement regarding sexual and romantic relationships with visitors;
- 4) Developing best practices regarding the varieties and risks of consensual relationships between an ombuds and others within the organization;



- 5) Clarifying the definition of 'conflicts of interest' and creating best practices for recusing oneself from an ombuds case; and/or
- 6) Developing mechanisms to provide expanded communication, resources, and guidance to IOA members about issues connected with sexual harassment and consensual relationships.

#### CONFERENCES AND TRAININGS

Recommendations for addressing the issues of sexual harassment and consensual relationships during conferences and trainings include:

- 1) Establishing and publicizing behavioral expectations at IOA conferences and trainings;
- 2) Creating procedures for reporting sexual harassment, and providing safety resources for sexual harassment, sexual assault, or other disturbing or criminal behavior by attendees, and publicizing these widely;
- 3) Enhancing IOA Foundations training in the areas of ombuds ethics, sexual harassment, consensual relationships, and conflicts of interest;
- 4) Expanding the CO-OP® exam to include additional questions about ethics; including sexual harassment, conflicts of interest, and consensual relationships;
- 5) Requiring candidates for CO-OP® certification to take ethics training for ombuds;
- 6) Requiring a certain number of professional development hours of sexual harassment and ethics training for CO-OP® certification renewal; and/or
- 7) Developing an IOA training focused on ethics. This training would address ethical issues not currently addressed in the Foundations course, including topics related to sexual harassment, conflicts of interest and consensual relationships. It could be designed to satisfy a potential CO-OP® renewal requirement for PDHs on ethics.

#### RESEARCH

To help guide decisions about addressing these issues, it would also be helpful to:

- 1) Survey membership anonymously regarding sexual harassment and consensual relationships;
- 2) Develop mechanisms to solicit input from the membership on possible remedies and sanctions; and
- 3) Seek input to develop policies that are applicable internationally.

#### CONCLUSION

Ombuds are the very people from whom others seek guidance related to complex and challenging situations involving sexual harassment and consensual relationships, yet the organizational ombuds profession has not kept current with other similar professions in addressing these issues within their own ranks. This unnecessarily increases the risk of trauma, law suits, embarrassment, bad publicity, and damaged reputations. As the profession matures into its young adulthood, it is time for organizational ombuds to put their own house in order. It's imperative to articulate a clear position on sexual harassment and consensual relationships, and to create or update related policies and practices.



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