OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: September 25, 2007 **IBA Report Number:** 07-93

Subject: Discussion of Ombuds Services and the City of San Diego

OVERVIEW

At the Rules Committee meeting of May 23, 2007, the Committee heard a presentation by Judith Bruner, the Ombudsperson for the University of California, San Diego. Ms. Bruner discussed the International Ombudsman Associations' Standards of Practice, the history of public sector Ombuds, and the disparate roles of Classical/Legislative, Executive, Advocate, and Organizational Ombuds.

There are four models of Ombuds as referenced above. UCSD has an Organizational Ombuds office providing confidential, neutral, and informal dispute resolution and organizational feedback to mend systemic problems within the organization. In contrast, most governments utilize the Classical/Legislative Ombuds model, which does not mediate, but conducts independent investigations on behalf of citizens and usually in response to citizen complaints. A Classical/Legislative Ombudsperson is appointed by the legislative branch of government to investigate complaints against a government's administrative acts. Independence is integral to the Ombuds in both models and the Ombudsperson should ideally be separate from the executive in either case. Executive Ombuds serve in the same capacity as a Classical/Legislative Ombuds, but are appointed and accountable to the executive branch rather than the legislative branch. This model is not commonly utilized in the public or private sector. An Advocate Ombuds serves a vulnerable population, such as children or the elderly, to initiate formal change or relief.

> An Organizational Ombuds office provides confidential, neutral, and informal dispute resolution and organizational feedback to mend systemic problems within the organization.

> A Classical/Legislative Ombudsperson is appointed by the legislative branch of government to conduct independent investigations of citizen complaints against a government's administrative acts.

At the Rules Committee meeting, the IBA was asked to look at the structure and function of Ombuds offices and applicability to the City of San Diego. This report responds to that request and also evaluates existing Ombuds-related functions currently operating in the City of San Diego.

FISCAL/POLICY DISCUSSION

Comparative Data

To begin, the IBA researched Ombuds functions in other municipalities to gather more information on services provided in a municipal context. The IBA found five cities in the United States with Ombuds services. In an effort to cast a wider net, the IBA has included three county and four state Ombuds offices in our survey. The IBA has evaluated these offices structurally and functionally by assessing appointment, removal, reporting, and mandated duties. The surveyed Ombuds offices generally follow the Classical/Legislative Ombuds model with a few variations in New York, Portland, and Boise. Detailed information on each local entity's Ombuds office is provided in the attached survey (Attachment I). The following paragraphs will provide some overarching conclusions on the structure and function of Ombuds offices included in the IBA survey.

Structure

In nine of the 12 Ombuds offices surveyed, the Ombuds is directly selected by a majority or super-majority vote of the legislative body. The Ombudsperson reports directly to the legislature. Removal for cause is accomplished by a vote of the legislative body.

The three remaining Ombuds offices were structured differently. New York's Ombudsperson is an elected citywide official that presides at City Council and Committee meetings as an ex-officio member. In Portland, the Ombudsperson is selected and removed by the elected City Auditor, which is independent from the Mayor and Council. The Portland Ombudsperson reports to the Auditor and the City Council. Boise's Ombudsperson is appointed by the Mayor and confirmed by the Council. Removal is accomplished by a Council resolution upon either recommendation of the Mayor or a vote of no less than five members of the full, six-member Council. Although Boise has a mayor-council form of government, the Mayor chairs all meetings of the City Council and can vote in the case of a tie.

At the May 23, 2007 Rules Committee meeting, Ms. Bruner expressed some concern over an Ombuds model that places the Ombudsperson under the executive. She indicated that some practicing Ombuds have expressed concern that the existence or perception of compromised independence under such a model could hinder the Ombudsperson from pursuing inquiries or investigations. The degree to which independence may be compromised under the executive is dependent upon the model of Ombuds used and the organization's structural and cultural protections for the Ombuds Office.

It is compelling to draw parallel comparisons between the independent investigatory functions of a Classical/Legislative Ombuds and an Internal Auditor conducting performance and operational audits. It may seem appropriate to place a **Classical/Legislative** Ombudsperson under the purview of an independent Internal Auditor, since both serve as internal safeguards against abuses in government. However, as Ms. Bruner noted on May 23, an **Organizational** Ombuds should not be placed under the purview of an Auditor's Office since the informal, confidential, neutral, non-notice features of the Organizational Ombuds are not compatible with a formal, investigatory

compliance function like an Auditor's Office. The International Ombudsman Associations' Standards of Practice explicitly state that this structure may compromise the neutral reporting of an Ombudsperson. Therefore, the distinction between an Audit function, which ensures that the government is complying with the law, should be separate and apart from the Organizational Ombuds office, whose primary purpose is to provide informal feedback to the organization to assist them in identifying and correcting systemic problems.

> International Ombudsman Associations' Standards of Practice 2.3 "The Ombudsman is a designated neutral reporting to the highest possible level of the organization and operating independent of ordinary line and staff structures. The Ombudsman should not report to nor be structurally affiliated with any compliance function of the organization."

Function

The functions of the majority of Ombuds offices within the IBA's survey fall under the Classical/Legislative Ombuds model. The primary responsibility of these offices is the independent investigation of citizen complaints leading to formal, written recommendations based upon those findings. Nine of the offices are empowered to initiate investigations in the absence of a formal citizen complaint.[1] The Ombuds offices are mandated to report at least annually to the legislative and executive branches on their activities.

The power of subpoena is granted to many of these offices, including Ombuds offices in the cities of Anchorage and Detroit, the County of King Oregon, and the states of Alaska, Arizona, Hawaii, and Iowa. The three remaining Ombuds offices that conduct independent investigations, but do not have the power of subpoena, are empowered with other means of compelling witnesses and testimony through Charter or Municipal Code provisions. These offices are found in the cities of New York, Portland, and Boise. Ombuds offices within the Counties of Los Angeles and Dayton do not have the power to conduct independent investigations, rendering the power of subpoena moot.

Several of the surveyed Ombuds offices focused on specific government abuses. Investigations into administrative acts related to public safety and public health were found in the City of Boise, Los Angeles County, and Dayton County. These offices have duties found under an Advocate Ombudsman, which serves designated, vulnerable populations.

The IBA also found several municipal offices akin to the Organizational Ombudsman model that provides confidential, neutral, and informal dispute resolution to resolve organizational problems. The Ombuds offices of Los Angeles County, the City of Boise, and the State of Arizona are offices in the IBA survey that conduct informal, alternative dispute resolution, but still focus primarily on mediation between members of the public

[1] Offices in the City of Detroit, the Counties of Los Angeles and Dayton, and the State of Arizona cannot initiate an investigation on their own motion. The City of Boise Ombuds office can conduct independent investigations only in the instance of a critical incident where a City employee of the Police or Air Peace Officers division is involved as a principal, victim, witness or custodial officer, in which death or bodily injury results.

and the organization, rather than within the organization itself, as is typically the case with the Organizational Ombuds model. Notwithstanding this lack of Organizational Ombuds in our survey, the IBA acknowledges that other municipalities may provide similar services under different names, and that the Organizational Ombuds model is used widely in the public and private sector, as discussed by Ms. Bruner during her presentation to the Rules Committee.

Ombuds-like services in San Diego

The City of San Diego currently has several scattered resources that may be viewed as providing Ombuds-related services: the Employee Hotline, the Citizens' Assistance Program, and the Office of Ethics and Integrity (OEI). These programs are not independent from the executive which could compromise independence under the Organizational Ombuds model according to the International Ombudsman Associations' Standard of Practice (see Attachment II) and is not consistent with the Classical/Legislative model as applied in other municipalities. In addition, these programs are not empowered to initiate investigations into administrative acts; instead, these programs are reactive to complaints received. None of the three programs provide alternative dispute resolution services nor do they provide informal feedback on trends and systemic organizational issues.

Whistleblower complaints are sometimes within the purview of the Ombudsperson in an organization. The Employee Hotline, currently administered by the Mayor's Office of Ethics and Integrity, is essentially a whistleblower hotline. This hotline is a resource for City employees to report unethical behavior, fraud, waste, and abuse by another City employee, contractor, or vendor, in situations where complainants would otherwise feel uncomfortable utilizing the chain of command, as is directed by City procedures and department instructions. The Employee Hotline is operated by The Network, a firm that provides third-party employee complaint services to public and private organizations. Confidential employee complaints are forwarded to the Office of Ethics and Integrity for review and resolution. This is a function that is often a supplement to an Ombuds office, particularly in the Classical/Legislative model, but would not be the primary tool for complaints to be received or investigated.

Another example of a Classical Ombuds-related program in the City of San Diego is the Citizens' Assistance Program administered by the Customer Services Department. In the FY 2008 Budget, the department description states that this program "administers the Citywide Route Slip Tracking System for responses to public inquiries, complaints, and service requests directed to the City's legislative officials." These complaints may come from citizen telephone calls to Council offices or complaints and inquiries made by the public at community meetings. Council Representatives are responsible for preparing route slips with complaints that are then delegated to the appropriate department. The Citizens' Assistance Office helps to coordinate a response to these complaints through tracking and monitoring of route slips to ensure citizens' concerns are responded to appropriately. The department description additionally states: "Citizens' Assistance also performs as needed ombudsman services for customers." Although "ombudsman services" are not specified in the Municipal Code or City Charter, the Citizen's

Assistance Office provides informal guidance to citizens that have issues that cross departmental boundaries or involve multiple City agencies.

Nonetheless, the Citizens' Assistance Program does not encompass all duties or characteristics of either an Organizational Ombuds or Classical/Legislative Ombuds. The Program cannot initiate impartial investigations and does not make formal, public reports of recommendations to the City regarding organizational or program improvements. Additionally, the Program is located within a Mayoral department, thus is not independent from the executive. Finally, it is not related to an Organizational Ombuds Office in that it does not provide mediation or organizational feedback on systemic trends.

As mentioned above, the OEI currently administers the Employee Hotline, which is sometimes a function associated with a Classical/Legislative Ombuds. The OEI also oversees the Human Relations Commission and Citizen's Review Board, which are also similar to a Classical/Legislative Ombuds function. The OEI does not provide Organizational Ombuds services such as mediation or informal feedback on systemic trends. We would note that the OEI provides training and information to employees intended to diminish or avoid systemic organizational issues with regard to ethics and values, but this is not a standard Ombuds function.

Possible Ombuds Services in San Diego

The IBA suggests that the Classical/Legislative and Organizational Ombuds are the two models best suited for consideration by the City of San Diego. Before further studies are initiated, further discussion should take place as to which issues or potential issues are to be addressed in the City and thus which model of Ombuds may be most effective. As described by Ms. Bruner and herein, the Classical/Legislative Ombuds could provide a one stop shop for investigation of citizen complaints of any kind, as well as proactive initiation of investigations. The Classical/Legislative Ombuds should report on its investigations to the Mayor and City Council no less frequently than annually and usually at the conclusion of each formal investigation.

The Organizational Ombuds would be valuable to provide informal channels that enable the organization to identify changes in practice or policies that will improve the employee and organizational environment. The Ombuds may provide alternative dispute resolution and guidance and assistance to employees who are possible subjects of discrimination or harassment to use the appropriate labor relations and grievance procedures as necessary. This may take the shape of anything from minor employee disputes to instances of major malfeasance. It's important to note that the Ombuds would never replace any of the labor relations procedures in place in the City of San Diego. The Organizational Ombuds is a liaison within the organization so that employees can use the proper channels for their concerns more safely and effectively and the organization may receive feedback to improve those channels as necessary. Through these improvements, the City may be able to implement improvement in the work produced and provided to the public and other agencies.

Any discussion of implementing formal Ombuds services in San Diego should include a commitment to assemble the disparate ombuds-related services already provided by a variety of offices and departments. This will require significant analysis and coordination as well as organization restructuring, should an Ombuds Office be implemented. Analysis should include a discussion of duplication of services and identification of cost impacts for the current and proposed models of service provision. Particularly with regard to the Classical/Legislative Ombuds model, awareness of potential overlap with the Internal Audit function that is currently being established, and may be further refined through Charter amendments next year, is key.

CONCLUSION

As shown, the City of San Diego provides a variety of ombuds-related services, although they are disparately situated throughout the organization and do not provide the full scope of Classical/Legislative Ombuds services. The City provides very few services related to the Organizational Ombuds model. Policymakers may wish to identify services that would be valuable to the City of San Diego to evaluate whether one or both of the Ombuds models are desirable for implementation, while also being cautious about potential cost impacts and duplication of services.

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Attachment I: IBA Survey of Ombuds Structures/Duties in U.S. Cities, Counties, and States
Attachment II: International Ombudsman Association Standards of Practice