

September 8, 2008

**University of Minnesota
Senate Committee on Faculty Affairs
Subcommittee on Faculty Ombuds Services**

Report and Recommendations for Faculty Ombuds Services

Introduction

In December of last year (2007), the University Senate Committee on Faculty Affairs (SCFA) heard from Professor Carol Chomsky of the Faculty Consultative Committee (FCC) regarding an issue that has arisen repeatedly and in various venues over the past several years. The issue is whether ombuds services should be provided to University of Minnesota faculty through one or more members of the regular faculty to be designated for that purpose. Professor Chomsky called attention to perennial confusion among faculty regarding the jurisdictional boundaries and respective competencies of different University grievance mechanisms. Additionally, faculty appear to be unaware of the ombuds services that are presently available through the Office for Conflict Resolution (OCR), and there is anecdotal evidence that as a group some may be disinclined to use even confidential ombuds services that are not delivered through a faculty peer. She noted the existence of more visible ombuds services designated for faculty at peer CIC universities, and reported the perception of some that having a faculty ombuds officer¹ would benefit faculty worklife, increase faculty productivity, and raise the level of institutional satisfaction among the faculty. She concluded by suggesting that failing to provide adequate opportunity for the satisfactory resolution of faculty issues causes them to fester and possibly worsen, while undermining faculty performance and institutional loyalty.

Interested SCFA members--Professors Tom Clayton, George Sheets, Rod Squires and Lecturer Holly Littlefield--volunteered to be part of an ad-hoc subcommittee to examine these issues and report back to SCFA. They were joined by Professor David Born and Carolyn Chalmers (Office for Conflict Resolution), Karen Zentner Bacig (Vice Provost Carney's office), Nan Wilhelmson (Human Resources) and Jan Morse (Student Conflict Resolution Center). Professor George Sheets chaired the subcommittee, which met bi-weekly during spring 2008, reached several conclusions, and agreed on several recommendations. These were reported orally to SCFA at its May 13, 2008 meeting. Following the oral report Professor Sheets undertook to oversee the preparation of a written report of the subcommittee's findings and recommendations for discussion by SCFA in the fall of 2008. This is that written report. It concludes that there is indeed a presently un-

¹ The International Ombudsman Association, which is the professional association of providers of ombuds services, refers to an ombuds provider as an "ombudsman." Elsewhere ombuds providers may be called "ombuds persons" or simply "ombuds." In this report we use the term "ombuds officer," except when quoting a different usage from other documents. By "ombuds officer" we mean what the IOA calls an "ombudsman."

met need for ombuds services that are tailored specifically to the faculty of the University of Minnesota.

Characteristics and Benefits of Ombuds Services in General

An ombuds officer is an advocate for fair resolution of a dispute, but not an advocate for any party to the dispute.² Ombuds services are widely offered today in a variety of institutions including corporations, universities and government agencies. Ombuds offices adhere to established standards. Under the Code of Ethics of the International Ombudsman Association (IOA), the essential characteristics of the ombuds role are: independence, neutrality and impartiality, confidentiality, and informality. The IOA's Best Practices note that the director of an Ombuds Office should report directly to the highest level of the organization independently of normal line and staff functions.

In 2001, the House of Delegates of the American Bar Association passed a resolution encouraging greater use of ombuds services in all public and private entities in order to respond to demands for fairness and responsiveness from organizations. The ABA resolution provides a useful definition of the role of ombuds officers:

Ombuds [officers] receive complaints and questions from individuals concerning people within an entity or the functioning of an entity. They work for the resolution of particular issues and, where appropriate, make recommendations for the improvement of the general administration of the entities they serve. Ombuds protect: the legitimate interests and rights of individuals with respect to each other; individual rights against the excesses of public and private bureaucracies; and those who are affected by and those who work within these organizations.

Within universities, unmanaged conflict—particularly conflicts among faculty—can have destructive consequences. There is a growing appreciation of the magnitude of the damage, to individual faculty and to larger university units, that results from festering conflicts. See: Darla J. Twale and Barbara M. De Luca, *Faculty Incivility: The Rise of the Academic Bully Culture and What to do About It*, JB Anker Series, 2008; John Frazee, "Why We Can't Just Get Along," *The Chronicle of Higher Education* (April 1, 2008). While universities may have policies to address specific types of serious misconduct such as sexual harassment, research misconduct and fiscal impropriety, often they lack mechanisms to address inappropriate conduct that does not constitute the clear violation of an explicit policy. Responsibility for resolving conflicts among faculty generally defaults to administrators who do not have the time to work through the issues, view the task as a disagreeable distraction from their real work, and cannot conduct effective facilitation by virtue of their supervisory position.

² Various University bodies, such as the University Senate Judicial Committee and the Office of Conflict Resolution, have from time to time pointed to the need for an advocacy service for faculty involved in disputes with the University, but we do not address that question in this report.

Many large research universities that are comparable to the University of Minnesota have responded to these concerns by establishing or strengthening faculty ombuds services. A few of these include the University of Iowa; the University of Michigan; Ohio State University; the University of Wisconsin, Madison; the Massachusetts Institute of Technology; the University of Colorado at Boulder; the University of Washington; and the University of California, Berkeley. The size and structure of the function differs from university to university, but common to all these examples is a service dedicated specifically to dealing with the concerns of the instructional faculty.

History of Ombuds Services at the University of Minnesota

Ombuds services for students were established at the University in 1968 and have been provided continuously since that time. The Student Conflict Resolution Center currently provides both ombuds and advocacy services to students and to faculty who are involved in academic disputes with students.

For faculty employment conflicts, services at a University-wide level have been less consistently available. In the early 1990's a part-time ombuds position was established and staffed for a few years. The office-holder was called the "Faculty and Academic Staff Assistance Officer." This position was discontinued about the time that a University Grievance Policy was adopted by the Regents in 1993. Pursuant to this policy, a University-wide Grievance Office and a Grievance Advisory Committee were established for faculty and staff employment-related complaints. The Grievance Policy established a semi-formal peer-hearing process for faculty and staff grievances about non-compliance with University policy. The office has been staffed by a director with a law background (on a P&A appointment) and a program coordinator (on a Civil Service appointment).

In September, 2002, the Faculty Consultative Committee (FCC) referred to the Grievance Advisory Committee the question of whether more informal ombuds services were needed to supplement the more formal mechanisms afforded by the Grievance Policy. The Grievance Advisory Committee's "Interim Report and Preliminary Recommendations for Ombuds Services for University Employees" (April 2003) concluded that there were significant unmet needs for managing employment-related conflicts at the University. These included lack of transparency of existing services, jurisdictional limitations on existing services, employee desire for non-adversarial dispute-resolution options and lack of a comprehensive, neutral source of information about employment issues. The report recommended the provision of new ombuds services to meet these needs. Recognizing the budget challenges of 2003-2004, however, the Report drew a distinction between what could be done immediately at essentially no financial cost, and what might be aspired to in "the future" (p. 6-7). For the present it recommended a reconfiguration of the Grievance Office as described below.

The FCC endorsed the Interim Report, and President Bruininks took action on its recommendations in August 2003, asking the Grievance Advisory Committee and the Grievance Officer to convene a working group of appropriate University offices to implement

the cost-free recommendations. The President charged the Dispute Resolution Work Group with: (1) evaluating and amending policies and practices to better integrate and coordinate dispute-resolution services, (2) coordinating outreach efforts, and (3) evaluating the Grievance Policy to determine if it could be amended to produce a less adversarial conflict-resolution process. The Dispute Resolution Work Group issued its report in August, 2004, recommending a new Conflict Resolution Policy to replace the Grievance Policy and a new Conflict Resolution Office to replace the Grievance Office. These recommendations were forwarded to the Board of Regents for action.

In February, 2005, The Board of Regents replaced the Grievance Policy with a new policy entitled: "Conflict Resolution Process for Employees." The new policy:

1. replaced grievance terminology with conflict-resolution terminology;
2. rewrote the administrative procedures, using language that was less technical and legalistic;
3. added provisions for informal conflict-resolution processes to help employees resolve disputes without the necessity of filing a grievance or pursuing quasi-judicial procedures; and
4. retained the formal processes of peer hearing, final University decision, and the availability of arbitration as provided for in the previous Grievance Policy, with modest revisions and changes in terminology.

Notably absent from the new policy was any specific focus on faculty needs.

Unmet Need for Peer Faculty Ombuds Services in 2008

Three years have passed since adoption of the 2005 Regents Policy. While informal problem-solving resources have been available to faculty and staff under the new policy, the subcommittee finds that the need for ombuds services specifically targeted to faculty conflicts persists. This conclusion is based on review of the following documents and discussions with various individuals involved in preparing them.

1. The Report of the Task Force on Faculty Culture recognized a need for faculty ombuds services.

Professor Jeffrey Kahn, who co-chaired the Faculty Culture Task Force with Professor Kirt Wilson, met with the subcommittee. Karen Zentner Bacig, staff support to the Faculty Culture Task Force and a member of the subcommittee, also contributed to this discussion. After extensive data collection and analysis, committee discussion and focus-group discussion, the Faculty Culture Task Force issued a report in May, 2006. Their report pointed out that the most successful departments in the University were also the most collegial. It identified collaboration as one of the four core values of a productive faculty culture. In order to create a culture of collaboration, the Task Force recommended the provision of ombuds services to facilitate interdisciplinary collaboration.

A new office should be created at the Provostal level that can facilitate interdisciplinary efforts. It can consist of a single person, reporting to the Provost, who can answer questions, offer advice, and facilitate efforts as an ombudsperson. Report, p. 15.

Pursuant to this recommendation the position of Assistant Vice Provost for Interdisciplinarity was established, along with a Provost's Interdisciplinary Committee of senior academic administrators.³ While the new committee has been actively engaged in promoting and facilitating the development of interdisciplinary research and education, *no ombuds function was included within its charge.*

2. Recent University-survey data confirm the critical importance of a collegial environment for successful recruitment and retention of faculty.

The University has participated in both national and internal surveys to assess faculty satisfaction. These are expensive projects and the resulting data provide a rich opportunity to build a sound foundation for strategic planning. In the judgment of the subcommittee these data support the need for increased ombuds services that are targeted to the improvement of faculty climate and culture.

- ◆ **COACHE survey of probationary faculty.** In 2005 the University participated in a national survey of probationary faculty conducted by Harvard's Collaborative on Academic Careers in Higher Education. Requests to participate were sent to probationary faculty who met the following criteria: (a) full time, (b) hired before summer 2005, (c) not clinical-track faculty, and (d) not in a terminal year after being denied tenure. About 58% of Minnesota's probationary faculty who were invited to participate responded to the survey. Answers were compared to those in five peer institutions selected by the University: University of Virginia, University of North Carolina (Chapel Hill), University of Arizona, University of Illinois (Urbana-Champaign), and Ohio State University. Five thematic categories were explored: tenure; nature of work; policies and practices; climate, culture, and collegiality; and "global satisfaction." On the "global satisfaction" measure, the experience of Minnesota probationary faculty was about the same as or better than at the other five universities. However, in the area of "climate, culture, and collegiality" nearly 60% of the responses were "worse than peers" (defined as one standard deviation below the mean of the University's selected peer group).
- ◆ **PULSE faculty survey.** In 2004 the University surveyed faculty and staff using the validated PULSE survey tool. Faculty responses were compiled separately from staff responses. "Faculty" was defined to include all full-time instructional faculty—tenured, probationary, P&A and other contract faculty. In 2006 the PULSE survey was repeated with a randomly selected sample and about 575 fac-

³ The Committee membership consists of the Assistant Vice Provost for Interdisciplinarity, the Vice Provost for Research, the Vice Provost for Faculty and Academic Affairs, the Dean of the Graduate School, and the Dean of Undergraduate Studies.

ulty responded for a response rate of 20%. Of these, 65% were tenured and the average age was 49.

The 2006 PULSE faculty survey revealed that about 24% of current faculty reported having "been a target of discrimination, harassment, or hostility on campus" rarely (12%), occasionally (10%), or frequently (2%) in just the previous six months. For nearly all of those reporting, the offensive conduct was by a person within the unit.

With regard to "workplace misconduct," such as "violation of law, workplace rules, or significant University policy," 15% claimed to have "experienced or observed a significant misconduct . . . in [their] unit/department within the [previous] twelve months." Of that group 60% either reported the misconduct themselves or believed someone else had done so. Of these respondents, in turn, 63% stated that University officials did *not* take "appropriate corrective action." Additionally, in response to the question of whether someone who reported a suspected violation of University policy "would be protected from retaliation," fully 50% of *all* respondents indicated that they were "uncertain" (26%), "disagreed" (12%), or "strongly disagreed" (12%).

- ◆ **Faculty exit interviews.** The Office of Human Resources for several years has made efforts to conduct exit interviews with faculty leaving the University. These have been done at some times electronically and at other times by telephone interviews. Faculty—2005 (9 responses), 2006 (18), and 2007 (19)—were The exit interviews of faculty in 2005 (9 responses), 2006 (18 responses) and 2007 (19 responses) were reported to the committee by Nan Wilhelmson and Jim Meland, who counsels faculty through the Employee Assistance Program. As Jim Meland had reported to SCFA earlier this year, "environment" was one of the top three reasons faculty gave for leaving the University. Within the environment set of questions, the 2006 exit-interview data indicate that "problem resolution" and "equitable treatment from supervisors/administration" were factors leading to the departures of 26% of the respondents—the highest percentage for any of the listed factors within the "Environment" cluster.

3. The University needs to increase the ombuds services available to faculty who are, or who believe they are, experiencing mistreatment that damages the faculty climate and culture.

The Board of Regents Policy: Code of Conduct was revised in December 2006. The Code of Conduct says it is intended to reflect other University policies and does not create any additional substantive rights or duties (Section 1). In Section III of the Code several standards of conduct are identified, of which some are incorporated into other University policies. Examples of these include standards requiring fiscal responsibility (Subd. 4), compliance with law and regulation (Subd. 5), academic freedom and responsibility (Subd. 6), responsible conduct of research (Subd. 7), avoidance of conflict of in-

terest (Subd. 8), responsible information-management (Subd. 9) and health and safety in the workplace (Subd. 10).

However, the Code's standards of respectful, fair and civil conduct (Subd. 2) and managing responsibly, including promoting "a healthy, innovative and productive atmosphere that encourages dialogue and is responsive to concerns" (Subd. 3), are not codified in other university policies. Moreover, although the Code states that appropriate administrative policies are to be maintained to support the Code, *it does not appear that any administrative policies exist to support the standards in Section III, Subdivisions 2 and 3*. For example, although there is abundant anecdotal evidence of incivility and occasional bullying in the academic workplace, there appears to be no institutional means of taking notice of such conduct, much less dealing with it in a manner that mitigates its effects and promotes accountability. More-robust ombuds services that are devoted specifically to addressing faculty issues could be expected to mitigate such behaviors, ameliorate their negative effects, and generally improve the working conditions for faculty.

Recommendations

"Faculty" in the following recommendations includes all "full-time" instructional faculty: probationary, tenured, P&A and term/contract appointments.

1. One or more tenured faculty members should be appointed to the role of Faculty Ombuds Officer. We recommend that initially the appointment should be at .5 FTE in the aggregate (e.g., 50% time of a single individual, or perhaps 25% time of two individuals). If more than one person is in the role, the additional provider(s) might be term faculty. The ombuds service that is provided by or through the Faculty Ombuds Officer should conform to generally recognized principles of ombuds services, including confidentiality, impartiality, and administrative independence. The individual appointed to serve as Faculty Ombuds Officer should be a current member of the University tenured-faculty or a retired member. Ideally, s/he should have extensive teaching, research and service experience as well as some administrative experience in the academy. All of the individuals providing ombuds services to faculty should be professionally trained in conflict management and in the standards of the IOA.
2. The services of the Faculty Ombuds Officer should be provided in close association and coordination with existing dispute-resolution services, including specifically the Office for Conflict Resolution. If the recommendations of this report are accepted, a committee of appropriate individuals, including the Director of OCR, should be formed and charged with the next step of developing specific steps to their full implementation. It is expected that the new Faculty Ombuds Officer would supplement but not replace existing resources for resolving faculty disputes. Working out the details of an efficient structural and functional relationship between the services should be entrusted to the committee referred to earlier in this paragraph.

3. The Faculty Culture Task Force noted that a productive workplace culture can be shaped by effective leadership. It encouraged strong leadership from Morrill Hall and the Deans for promoting a collaborative faculty culture. The necessity of strong support from senior administration was underscored by interviews with the providers of faculty ombuds services at other universities. The Faculty Ombuds Officer should therefore report at a high administrative level, such as the Provost.
5. The faculty ombudsperson should not only deal with specific disputes between individuals, but also address systemic problems by recommending policy to appropriate administrators, such as the Vice Provost for Faculty and Academic Affairs, and Faculty Senate committees. This advisory function, however, should not compromise the person's primary role of providing ombuds services, which by definition are to be confidential, independent, and neutral.
6. It is to be expected that a faculty ombudsperson would support and collaborate with the University's continuing participation in national surveys of faculty satisfaction, as well as insitutional efforts to improve the faculty culture.

Conclusion

The incremental cost of providing a 50%-time Faculty Ombuds Officer need not be substantial. It might well be covered by course releases and appropriate salary augmentation of B-base appointees. If integrated with the Office for Conflict Resolution, administrative support services could be shared. In the committee's judgment, providing ombuds services through a Faculty Ombuds Officer is fully aligned with the University's strategic goals of recruiting and retaining exceptional faculty, promoting interdisciplinary work and competing successfully with other public universities.

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