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The Ombudsman Association standards  
of practice scripts

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Teaching,  
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# RESOLUTION RESOURCES CORPORATION

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## Facsimile Transmission

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**Subject:** TOA Scripts

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**Comments:**

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## TOA STANDARDS STANDARDS OF PRACTICE: DISCUSSION POINTS

This section is designed to clarify TOA's Standards of Practice and to help members maintain their practice according to these Standards. It contains more detailed discussion of various points and sample scripts and memos to provide concrete examples in the more difficult areas.

The Standards appear below in italics. Discussion points, sample scripts and memos are in standard type. Key issues are highlighted by a box. To facilitate referencing the Standards for further discussion both the standards and their subpoints are numbered in this section.

### TOA STANDARDS OF PRACTICE

*The mission of the organizational ombudsman is to provide a confidential, neutral and informal process which facilitates fair and equitable resolutions to concerns that arise in the organization. In performing this mission, the ombudsman serves as an information and communication resource, upward feedback channel, advisor, conflict resolution expert and change agent.*

*While serving in this role:*

**Standard # 1:** *We adhere to The Ombudsman Association Code of Ethics.*

#### *Code of Ethics*

*The ombudsman, as a designated neutral, has the responsibility of maintaining strict confidentiality concerning matters that are brought to his/her attention unless given permission to do otherwise. The only exceptions, at the sole discretion of the ombudsman, are where there appears to be imminent threat of serious harm.*

*The ombudsman must take all reasonable steps to protect any records and files pertaining to confidential discussions from inspection by all other persons, including management*

*The ombudsman should not testify in any formal judicial or administrative hearing about concerns brought to his/her attention.*

*When making recommendations, the ombudsman has the responsibility to suggest actions or policies that will be equitable to all parties.*

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Issue: What is "serious harm"

A complete definition of serious harm is not easy to agree upon, but ombuds can agree that at a minimum it is a threat to human life. Many ombuds consider this the only acceptable definition of serious harm. They evaluate any threat in relationship to this potential. For example, any bomb threat would be viewed as a threat to human life. Theft in general would not be viewed as having a potential for serious harm. However, there are exceptions. For example, theft of arsine gas or explosives may well represent a threat to human life.

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Some ombuds take the position that company theft in and of itself also represents serious harm and should be reported. However, the experience of long term ombuds indicates that with persistence there are almost always other ways to handle such threats rather than the ombudsman having to report it. This often involves extensive counseling of the individual who comes to the ombuds to report her or his intention of or role in committing theft of company property.

Individual: I wanted to talk to you confidentially because I have been stealing computer equipment from the company. I don't want you tell anyone about this. I just want to get it off my chest.

Ombuds: Your coming to me with "something on your chest" sounds like something is bothering you. Let's talk more about this.

This and similar dialogues may need to continue over many sessions, but the ombudsman is likely to succeed in helping the individual resolve this responsibly without the ombudsman needing to report it. This is also true in the following example.

WEAPONS

Individual 1: I know there is a policy forbidding guns at work, but I work late, I live in a dangerous part of town. I take the bus home and have a long walk to my house. I have always carried a gun in person and I can't stop now. This is the best paying job I have ever had and I don't want to lose my job, but the company isn't going to feed my children if I get killed and they are not going to give me a police escort home at night. Thanks. I feel better. It was good to get that off my chest.

OR

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Individual 2: I just wanted you to know that I keep a gun in my desk regardless of what company policy says. It is there and it is going to stay there. I am not going to get killed by some maniac who and comes in here and guns down me and my friends. At least in my area people will be safe.

Ombudsman: It is obvious that some part of you wants to deal with this otherwise you wouldn't have come to see me. Let's work together and figure out an option for dealing with this in a way that we both agree is responsible.

*Standard #2 We base our practice on confidentiality*

*2.1 An ombudsman should not use the names of individuals or mention their employers without express permission.*

Ombudsman to Ombudsman

All ombuds-related discussions between ombuds should be assumed to be confidential. Unless you have the express permission from a fellow ombudsman to reveal the name of her or his organization, use only anonymous examples in discussions with others.

Your CEO: Do you know of any other organizations with this problem and if so which ones? I want specifics.

Ombudsman: Over the past two years several other organizations have reported similar problems (you may include anonymous examples).

Your CEO: That's interesting, but not enough. What companies?

Ombudsman: Would you like for me to see if I can get permission to give you the names of those companies?

Unless we can assure each other confidentiality, we cannot exchange ideas and strategies that help us serve our organizations on the complicated and difficult problems. For example, if I am an ombudsman in a health care organization, I will not want to discuss problems of institutional transferred health problems occurring in my organization if there is any chance that this information may become public knowledge.

Issue: Assuring Permission to Release a Name

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Ombudsman: Before we end, let me just say back to you what I understand we have agreed to...

OR

Ombuds: I would like to clarify what you are asking me to do so that we avoid any misunderstandings which might breach your confidentiality. You would like me to approach [name of third party] on your behalf, release your name to her/him, and share [specific information to be shared]. Have I understood you correctly -- is this what you are asking me to do?

Client: Yes

Ombudsman: I will ask [name of third party] to handle your concern as discreetly as possible, but I can't control what another party may say. Others may know that you contacted the ombudsman. Are you concerned about that? Is it important to you that other people not know of our contact?

Issue: Another Option in Making Referrals to a Third Party

One of the simplest strategies for an ombudsman to use in referring an individual to a third party is to facilitate the referral without a name. Using this method the ombuds briefs the third party about the issues and the individual releases her or his own name to the third party. This method is consistent with the goal of helping individuals help themselves but still provides needed assistance in paving the way.

Issue: "It's Okay to Release My Name"

Some individuals may tell you, "Feel free to use my name." In spite of such openness, the prudent ombudsman will evaluate whether use of the person's name is in the best interest of that person and the organization. Does using the name aid or hinder maintaining focus on the issue? In evaluating this the ombudsman will also want to consider what may be motivating this openness.

Individual: Feel free to release my name. I have nothing to hide.

Ombudsman: What stops you from doing this yourself?

Individual: Well they will pay more attention if you do it.

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Ombudsman: Would you want to consider trying some role-playing with me to see if we can come up for a way to get them to listen to you?

Issue: When Someone Says,  
"I Know You Saw [name of person you may or may not have seen]."

Ombuds: In order to protect the confidentiality of the people who come to see me I can't confirm or deny that I have seen someone. How about if we talk about what brought you here today?

Issue: When There Has Been a Referral from a Third Party

If the party who made the referral talked to you first, the prudent (and ever alert!) ombudsman will want to verify that it is okay with the referring party to acknowledge the conversation with the ombudsman.

Ombudsman: Would it be alright for me to acknowledge that we have spoken?

If the ombudsman has not received direct permission to acknowledge a referral source, then the ombudsman will need to respond in a manner similar to the one above when a meeting with the referred individual.

Visitor: I know you spoke with my manager last week. She suggested that I talk with you because I have a concern similar to hers.

Ombudsman: In order to protect confidentiality I don't even confirm or deny that I have seen someone without their specific permission to do so. It will be the same for you. No one will know from me that we have talked unless I have your permission. What brings you here today?

Issue: A Demand from Management for Information

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Caller: Joe Smith has filed suit against the company and he says that he saw you. Did you?

Ombudsman: I hope you will understand, but that is not a question that no ombudsman can answer.

Caller: You don't understand, you have to talk to us about this.

Ombuds: I mean this most respectfully, but I cannot. Perhaps if you would tell me more about the situation I might be able to help in a different way.

A Sample Memo from the Ombudsman to Corporate Counsel  
Refusing to Turn Over Information

This memo is in response to your request for files from the Corporate Ombudsman on former employee, [name]. In accordance with our practice\* we keep no records for (XYZ Corp.)

This practice is based on the Code of Ethics of The Ombudsman Association, which is displayed prominently in our office. "The ombudsman must take all reasonable steps to protect any records and files pertaining to confidential discussions from inspection by all other persons, including management." (copy attached)

If you require more information about this practice or the ombudsman privilege, which we will assert in any situation where our information or testimony are being compelled, please let me know.

\* you may wish to add, "and as agreed upon with the company in establishing this office."

If you are put in the position of having to defend against such demands it may also be helpful to attach examples of relevant case law to educate your counsel.

2.2 *During the problem-solving process an ombudsman may make known information as long as the identity of the individual contacting the office is not compromised.*

Many issues brought to an ombudsman are not specific to an individual and can be discussed with members of management without revealing the identity of the presenting individual. Before proceeding to such discussions



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the ombuds should consider the problem from multiple directions to avoid inadvertently revealing the individual's identity.

Issue: Helping Individuals Preserve Their Own Confidentiality

The other concern is that employees can inadvertently betray their own confidentiality. An ombudsman can help prevent this problem by cautioning employees to protect their own confidentiality.

Watch out for Fishing Trips

Ombuds: As we have discussed, I am going to forward this issue to management, but I'm going to do this without using your name and without even indicating whether you are male or female. Sometimes supervisors go on what we ombuds call a "fishing trip" if they are upset about a problem that is reported. The supervisor might walk up to you and say, "I know you called the ombudsman." Don't take the supervisor's bait. I will be very careful not to raise the issue in any way that points to you. Don't let a supervisor trick you into breaking your own confidentiality.

And every now and then an ombudsman, completely scrupulous about protecting confidentiality, receives a call like this:

The caller on the other end of the phone is yelling at you about breaching her confidentiality. It seems her supervisor had just come to see her and blasted her for having contacted the ombudsman. The employee screams at you, "I thought you promised confidentiality!"

You are stunned. You are certain that you did not use the employee's name - or even gender - when forwarding the concern to management to look into. You had been very careful to explore the work area with the employee to assure that you did not inadvertently reveal her identity by some reference to location, position, etc. You had learned that there were approximately 45 people in the department with the same concern, there were employees who had been vocal about the issue and the employee was not among them, you had even asked the employee who else she had already talked to. The one thing that you had forgotten was to give the "Don't tell your dog, don't tell your mother speech," but surely the employee would not have betrayed her own confidentiality. Guess again.

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Don't Tell Your Mother, Don't Tell Your Dog

**Ombuds:** The other thing I recommend to you is that you not tell anyone else at work about this visit. Even a best friend or brother can slip and tell your secret to "just one person," who is likely to tell "just one person" and before you know it, the entire department knows that you have been to the ombudsman. I can only protect your confidentiality from my end; you have to protect it on your end.

2.3 *Any data that we prepare should be scrutinized carefully to safeguard the identity of each individual whose concerns are represented.*

Lack of attention to statistics can inadvertently reveal someone's identity. For example, if an ombudsman keeps statistics on race, gender and salary levels within the company, reporting these statistics can tell viewers more than was intended. In many areas there are so few of members of certain groups that revealing even minimal demographics can reveal the individual's identity.

2.4 *Publicity about our office conveys the confidential nature of our work.*

insert sample paragraphs

Please see page xx for a discussion of what is Not confidential, Standard # 6

**Standard # 3** *We assert that there is a privilege with respect to communications with the ombudsman and we resist testifying in any formal process inside or outside the organization.*<sup>1</sup>

Pending

3.1 *Communications between an ombudsman and others (made while the ombudsman is serving in that capacity) are considered privileged. Others cannot waive this privilege.*

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<sup>1</sup> Privilege is a legal term which describes a relationship which the law protects from forced disclosure. Traditional privileges are client/lawyer, doctor/patient, priest/penitent, husband/wife. An ombudsman privilege differs from these because the office holds the privilege (it lies in the ombudsman function) and it cannot be waived by others in the context of a formal hearing. The office holds the privilege to preserve the process where people may come forward to resolve their concerns in a confidential setting, free of the risk of reprisal

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- 3.2 *We do not serve in any additional function in an organization which would undermine the privileged nature of our work (such as compliance officer, arbitrator, etc.)*
- 3.3 *An ombudsman keeps no case records on behalf of the organization. If an ombudsman finds case notes necessary to manage the work, the ombudsman should establish and follow a consistent and standard practice for the destruction of any such written notes.*
- 3.4 *When necessary, the ombudsman's office will seek judicial protection for staff and records of the office. It may be necessary to seek representation by separate legal counsel to protect the privilege of the office.*

[Note: There is an amicus brief available through TOA in the event TOA members find it necessary to file for a protective order not to testify.]

Issue: Limits to Confidentiality and Privilege

*Standard # 4: We exercise discretion whether to act upon a concern of an individual contacting the office. An ombudsman may initiate action on a problem he or she perceives directly.*

Issue: But It's Your Job to Forward with This!

An ombudsman exercises judgment about acting upon an issue brought to the office. Nevertheless, individuals will occasionally insist that the ombudsman must forward an issue on her or his behalf.

Individual: I can't believe you won't help me with this. Obviously you are just a management pawn.

Ombuds: I know that you really want me to bring up this issue with management, but it is not something that I can agree to forward on.