

From: **Samantha Eisner** <Samantha.Eisner@icann.org>

Date: Wed, Nov 30, 2016 at 8:10 PM

Subject: Re: [Acct-Legal] Request on Ombuds questions

To: León Felipe Sánchez Ambía <leonfelipe@sanchez.mx>, John Jeffrey <JJ@icann.org>

Cc: "ccwg-accountability5@icann.org" <ccwg-accountability5@icann.org>, Accountability Staff <accountability-staff@icann.org>

Question: Is the current ICANN Ombudsman [and his predecessor] placing himself in a conflict of interest by participating in the sub-group which will have responsibility for the external review of the Office of the Ombudsman? If so what should the Ombudsman do to avoid such a conflict (completely recuse himself from all aspects or only from making or approving recommendations)?

Response: We do not believe that the scope of the WS2 work on the Ombudsman poses a conflict of interest such that the ICANN Ombudsman or his predecessor need to recuse themselves from the work of the subgroup. The current and prior Ombudsman each have identified interests in this work – the current Ombudsman has a contract with ICANN and is paid for his service as Ombudsman. The prior Ombudsman used to be. Any and all contributions of the Ombudsman can be considered with that identified interest in mind. The current and the prior Ombudsman each have a unique perspective on the ICANN Office of the Ombudsman, and the current Ombudsman is addressing how to take on the new roles assigned in the new Bylaws. Each likely has information that is invaluable to the group's deliberations. The ICANN Ombudsman is a unique role, and excluding the Ombudsman or his predecessor from attempts to improve and better understand that role could impair the achievements of the best results.

We would also expect that the current (and possibly the prior Ombudsman) will likely be interviewed by the reviewer, once selected. Once recommendations are made, just as in the organizational review process where the entity under review provides reactions to the recommendations, seeking the reaction of the Ombudsman may also be a valuable step here.

In summary, if the Ombudsman or his predecessor is willing to participate in the subgroup's work, we see no legal reason why they should not participate.

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From: León Sánchez Ambía <leonfelipe@sanchez.mx>
Date: Monday, November 21, 2016 at 10:35 AM
To: Samantha Eisner <samantha.eisner@icann.org>, John Jeffrey <JJ@ICANN.org>
Cc: Accountability Staff <accountability-staff@icann.org>, "ccwg-accountability5@icann.org" <ccwg-accountability5@icann.org>
Subject: Request on Ombuds questions

Dear Samantha and John,

As part of the CCWG-Legal Committee works, we hereby request for an expedited opinion from CCWG-Accountability WS2:

Background:

The CCWG-Accountability WS2 Ombudsman sub-group is working on recommending possible changes to the Office of the Ombudsman as required in the final report for WS1 of the CCWG-Accountability.

Given the focus of this sub-group the group working on implementing ATRT2 recommendations, which includes a requirement for an external review of the office of the Ombudsman, has proposed that the CCWG-Accountability WS2 Ombudsman sub-group take on the responsibility for this evaluation which it has accepted to do [with the agreement of the ccwg-WS2 plenary].

The current ICANN Ombudsman Herb Waye and his predecessor are both members of the Ombudsman sub-group drafting team.

Question:

Is the current ICANN Ombudsman [and his predecessor] placing himself in a conflict of interest by participating in the sub-group which will have responsibility for the external review of the Office of the Ombudsman? If so what should the Ombudsman do to avoid such a conflict (completely recuse himself from all aspects or only from making or approving recommendations)?

As the answers to these questions will enable to continue the work of the Ombuds Sub-group on different topics, we would kindly ask to have an answer to them as soon as possible.

Kind regards,
Leon Sanchez
CCWG-Accountability Co-Chair.