

DECLARATION OF BEST PRACTICES FOR UNIVERSITY OF CALIFORNIA OMBUDS OFFICES

Table of Contents

I.	Introduction and Background
II.	Purpose and Scope of the Ombuds Offices
III.	Standards of Practice and Code of Ethics
A.	Independence
B.	Confidentiality
C.	Neutrality
D.	Informality
IV.	Authority and Limits of the Ombuds Offices
A.	Authority of the Ombuds Offices
B.	Limitations on Authority of the Ombuds Offices
1.	Receiving Notice for the University
2.	Collective Bargaining Agreements
3.	Formal Processes and Investigations
4.	Record Keeping
5.	Advocacy for Parties
6.	Adjudication of Issues
7.	Conflict of Interest
V.	Retaliation for Using the Ombuds Office
VI.	Office Structure
VII.	Procedures for Revisions and Amendment of this Document
Appendix A	University of California Ombuds Offices Websites
Appendix B	Professional Standards of Practice and Code of Ethics

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I. Introduction and Background

This document defines and clarifies the highest standards and best practices in the Ombuds profession, as they apply within the context of the University of California (“UC”) and its various Ombuds Offices.¹ This document is consistent with the International Ombudsman Association (“IOA”) Standards of Practice and resulted from more than a year of dialogue and collaboration which incorporated the collected wisdom of leading ombuds in the profession and attorneys that represent ombuds offices nationwide.

Each Ombuds Office serves as a resource which provides confidential, neutral, informal and independent dispute resolution and mediation services to its community.² This document applies to all Ombuds Offices in the UC system. “Ombuds Offices” shall include professional staff, sometimes called “ombuds,” “ombudsperson,” or “ombudsman,” as well as any support staff.

The intent of this document is: (1) to educate the University community about the role of the Ombuds Office; (2) to proactively encourage all Ombuds Offices to operate in a manner consistent with professional standards, codes of ethics and best practices; (3) to discourage programs which do not comply with best practices; and (4) to discourage the use of the title “ombuds” for those programs which choose not to operate consistently with professional standards. The term “ombuds” carries with it certain professional and legal responsibilities, and therefore should only be used by offices following the longstanding professional tenets outlined in this document.

¹ The University of California currently has Ombuds Offices in operation at seven (7) of its campus locations (Berkeley staff, Berkeley student, Berkeley faculty, Irvine, Los Angeles, Riverside, San Diego, Santa Barbara, and Santa Cruz) and three (3) of its affiliated national laboratories (Lawrence Berkeley, Lawrence Livermore, and Los Alamos). A list of the websites for each of these Offices is attached at Appendix A.

² In accordance with the California Mediation Act (California Evidence Code Section 1115-1128), UC Ombuds are neutrals who meet the definition of mediators and whose communications with visitors are for the purpose of initiating, considering, or reconvening a mediation or retaining the ombuds, and thus assert the mediator’s privilege for all communications with visitors. Additionally, UC Ombuds assert that all communications with their offices are made with the expectation of confidentiality and are therefore entitled to a privilege under the California State Constitution. By providing visitors with a confidential reporting mechanism, Ombuds Offices also assist the University in meeting the important public objectives set forth in the Federal Sentencing Guidelines and the Sarbanes-Oxley Act.

II. Purpose and Scope of the Ombuds Offices

The Ombuds Offices at the University of California system of campuses, medical centers and national laboratories shall provide informal dispute resolution and mediation services to faculty, staff and/or students at the respective locations, and where appropriate, to others who encounter difficulties with the university, i.e., alumni, patients, applicants, family members, etc. The Ombuds Office shall be a place where members of the University of California community can seek guidance regarding the addressing or resolution of disputes or concerns through a resource which is confidential, neutral, informal and independent. The specific scope of each Ombuds Office shall be defined in its local charter.

Services of the Ombuds Offices do not replace other processes at the University. The Offices work to facilitate communication and assist parties in reaching mutually acceptable, fair and equitable resolutions that are consistent with the ideals and objectives of the University. Ombuds Offices also report general trends and provide feedback throughout the organization, and advocate systemic change when appropriate without disclosing confidential communications.

The Ombuds Office shall confidentially receive complaints, concerns or inquiries about alleged acts, omissions, improprieties, and/or broader systemic problems. In response, each Ombuds Office will listen, make informal inquiries or otherwise review matters received, offer options, make referrals, and facilitate resolutions independently and impartially. In addition, each Ombuds Office shall serve as an information and communication resource, consultant, dispute resolution expert and catalyst for institutional change for its location.

III. Standards of Practice and Code of Ethics

The Ombuds Offices adhere to the International Ombudsman Association (“IOA”) Standards of Practice and Code of Ethics.³ These tenets require that Ombuds Offices shall function independently of the organization, shall be confidential and neutral, and shall limit the scope of their services to informal means of dispute resolution. The IOA Standards and Code delineate minimum standards, and the UC Ombuds Offices shall always strive to operate to “best practices” and to manage the Ombuds Offices in a way that serves the best interests of the

³ The IOA Standards of Practice and Code of Ethics are attached at Appendix B.

University of California. Each office shall take appropriate steps to make this Declaration of Best Practices and the tenets of best practices of the Ombuds profession available to the University and to the communities they serve.

A. Independence

The Ombuds Offices shall be, and shall appear to be, free from interference in the legitimate performance of their duties. This independence is achieved primarily through organizational recognition, reporting structure, and neutrality. To ensure objectivity, the Ombuds Offices shall operate independently of administrative authorities. This includes not disclosing confidential information about matters discussed in the Ombuds Offices with anyone in their organization, including the person to whom the Ombuds Offices reports, except as clearly delineated in Section III.B. The Ombuds Offices should report administratively to the highest office at each location. In all cases, the Ombuds Offices shall have access to the Chancellor or the Lab Director.

B. Confidentiality

The Ombuds Offices shall not disclose or be required to disclose any information provided in confidence, except to address an imminent risk of serious harm. The Ombuds Offices assert that there is a privilege with respect to the identity of visitors and their issues. The Ombuds Offices shall not confirm communicating with any party or parties, or disclose any confidential information without the party's or parties' express permission provided in the course of discussions with the Ombuds Office, and at the discretion of the Ombuds Office. The Ombuds Offices shall not participate as witnesses with respect to any confidential communication, nor shall they participate in any formal process inside or outside the University.

C. Neutrality

The Ombuds Offices shall not take sides in any conflict, dispute or issue. The Ombuds Offices shall consider the interests and concerns of all parties involved in a situation impartially with the aim of facilitating communication and assisting the parties in reaching mutually acceptable agreements that are fair and equitable.

D. Informality

The Ombuds Offices shall be a resource for informal dispute resolution. Ombuds Offices shall not investigate, arbitrate, adjudicate or in any other way participate in any internal or external formal process or action. The Ombuds Offices do not keep records for the University, and shall not create or maintain documents or records for the University about individual cases. Notes, if any, taken during the course of working on a case should be routinely destroyed at regular intervals to be specified in the local charter.

IV. Authority and Limits of the Ombuds Offices

Specific areas of authority and limitations on the authority of the Ombuds Offices shall be delineated in their local charters, including those listed below:

A. Authority of the Ombuds Offices

The authority of the Ombuds Offices derives from the administration at the individual locations in which the program is located and should come from the Chancellor or Laboratory Director, as appropriate.

The Ombuds Offices shall be entitled to inquire about any issue concerning the university which affects any member of the University community, and shall respect the confidentiality of that information. The Ombuds Offices shall have access to records and personnel of the locations in which they serve, for the purpose of facilitating the situation. The Ombuds Offices have the authority to break confidence if the Ombuds believes there is an imminent risk of serious harm.

The Ombuds Offices may, without having received a specific complaint from a member of the university community, inquire about matters which the Ombuds Offices believe warrant attention.

The Ombuds Offices may decline to inquire into a matter or may withdraw from a case if the Ombuds believes involvement is inappropriate for any reason, including matters not brought in good faith, or which appear to be a misuse of the Ombuds function.

The Ombuds Offices have the authority to discuss a range of options available to the visitor, including both informal and formal processes.

The Ombuds Offices may require legal or other professional advice, from time to time, in order to fulfill their required functions. The Ombuds Offices should be provided legal counsel independent from the University in the event they are asked for documents or testimony related to any litigation or other formal process, or when any other conflict of interest arises between the Ombuds Office and the administration or the University.

B. Limitations on the Authority of the Ombuds Offices

1. Receiving Notice for the University

Communication to the Ombuds Offices shall not constitute notice to the University. The Ombuds Offices shall publicize their non-notice role to the university. This includes allegations that may be perceived to be violations of laws, regulations or policies, such as sexual harassment, issues covered by the Whistleblower policy, or incidents subject to reporting under the Clery Act. Because the Ombuds does not function as part of the administration of the University, even if the Ombuds becomes aware of such allegations, the Ombuds is not required to report them to the University. If a visitor would like to put the University on notice regarding a specific situation, or wishes for information to be provided to the University, the Ombuds will provide the visitor with information so that the visitor may do so himself/herself.

2. Collective Bargaining Agreements

The Ombuds Offices shall not address any issues arising under a collective bargaining agreement (“CBA”), unless allowed by specific language in the CBA. This means that while the Ombuds Offices may provide services to union members, those services may not include addressing issues that are covered in the CBA, including, but not limited to, issues such as grievable claims for termination of employment or formal discipline. In those cases, the ombuds shall refer the employee to the CBA and to their union representative. The Ombuds Offices may work with union members regarding all other issues not covered by the contracts, such as communication issues with co-workers.

3. Formal Processes and Investigations

The Ombuds Offices shall not conduct formal investigations of any kind. They also shall not participate in formal dispute processes or outside agency complaints or lawsuits, either on behalf of a visitor to the Ombuds Office or on behalf of the University. Because confidentiality and informality are critically important to the Ombuds Offices, all communications with the office are made with the understanding that they are confidential, off-the-record, and that no one from the office will be called to testify as a witness in any formal or legal proceeding to reveal confidential communications. The Ombuds Offices provide an alternate channel for dispute resolution, and all use of ombuds services shall be voluntary.

4. Record Keeping

The Ombuds Offices do not keep records for the University, and shall not create or maintain documents or records for the University about individual cases. Notes, if any, taken during the course of working on a case should be routinely destroyed at regular intervals to be specified in the local charter. All materials related to a case should be maintained in a secure location and manner, and should be destroyed once the case is concluded. The Ombuds may maintain non-confidential statistical data to assist the Ombuds in reporting trends and giving feedback.

5. Advocacy for Parties

The Ombuds Offices shall not act as an advocate for any party in a dispute, nor shall they represent management or visitors to their office.

6. Adjudication of Issues

The Ombuds Offices shall not have authority to adjudicate, impose remedies or sanctions, or to enforce or change policies or rules.

7. Conflict of Interest

Individual ombuds shall avoid involvement in cases where there may be a conflict of interest. A conflict of interest occurs when the ombuds' private interests, real or perceived, supersede or compete with his or her dedication to the impartial and independent nature of the

role of the ombuds. When a real or perceived conflict exists, the ombuds should take all steps necessary to disclose and/or avoid the conflict.

V. Retaliation for Using the Ombuds Office

All members of the constituencies served by the Ombuds Offices shall have the right to consult the Ombuds Office without reprisal. The Ombuds Offices should work with their institutions to create policies to protect visitors from reprisals.

VI. Ombuds Office Structure

The Ombuds Offices should report to their supervisors for administrative and budgetary purposes only. Each Ombuds Office, in consultation with its location, shall determine appropriate mechanisms for accountability. To fulfill their functions, the Ombuds Offices should each have a specific allocated budget, adequate space, and sufficient resources to meet operating needs and pursue continuing professional development.

VII. Procedures for Revisions of this Document

This document reflects current best practices in the ombuds profession. It may be revised as needed by the UC Ombuds Offices.

Appendix A

University of California Ombuds Offices Websites

UC Berkeley

Staff	http://ombudsforstaff.berkeley.edu
Student	[none]
Faculty	http://academic-senate.berkeley.edu/committees/omb.html

UC Irvine <http://www.ombuds.uci.edu>

UC Los Angeles <http://www.ombuds.ucla.edu>

UC Riverside <http://www.ombuds.ucr.edu>

UC San Diego <http://www.ombuds.ucsd.edu>

UC Santa Barbara <http://www.ombuds.ucsb.edu>

UC Santa Cruz <http://www2.ucsc.edu/ombudsman/index.htm>

Lawrence Berkeley National Laboratory

<http://www.lbl.gov/Workplace/WFDO/ombuds-roles.html>

Lawrence Livermore National Laboratory

<http://www.llnl.gov/ahrd/sh/ombuds.html>

Los Alamos National Laboratory

<http://www.lanl.gov/ombuds/>

Appendix B

IOA Standards of Practice

Preamble

The IOA Standards of Practice are based upon and derived from the ethical principles stated in the IOA Code of Ethics.

Each Ombuds office should have an organizational Charter or Terms of Reference, approved by senior management, articulating the principles of the Ombuds function in that organization and their consistency with the IOA Standards of Practice.

Standards of Practice

Independence

1.1 The Ombuds Office and the Ombuds are independent from other organizational entities.

1.2 The Ombuds holds no other position within the organization which might compromise independence.

1.3 The Ombuds exercises sole discretion over whether or how to act regarding an individual's concern, a trend or concerns of multiple individuals over time. The Ombuds may also initiate action on a concern identified through the Ombuds' direct observation.

1.4 The Ombuds has access to all information and all individuals in the organization, as permitted by law.

1.5 The Ombuds has authority to select Ombuds Office staff and manage Ombuds Office budget and operations.

Neutrality and Impartiality

2.1 The Ombuds is neutral, impartial, and unaligned.

2.2 The Ombuds strives for impartiality, fairness and objectivity in the treatment of people and the consideration of issues. The Ombuds advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization.

2.3 The Ombuds is a designated neutral reporting to the highest possible level of the organization and operating independent of ordinary line and staff structures. The Ombuds should not report to nor be structurally affiliated with any compliance function of the organization.

2.4 The Ombuds serves in no additional role within the organization which would compromise the Ombuds' neutrality. The Ombuds should not be aligned with any formal or informal associations within the organization in a way that might create actual or perceived conflicts of interest for the Ombuds. The Ombuds should have no personal interest or stake in, and incur no gain or loss from, the outcome of an issue.

2.5 The Ombuds has a responsibility to consider the legitimate concerns and interests of all individuals affected by the matter under consideration.

2.6 The Ombuds helps develop a range of responsible options to resolve problems and facilitate discussion to identify the best options.

Confidentiality

3.1 The Ombuds holds all communications with those seeking assistance in strict confidence and takes all reasonable steps to safeguard confidentiality, including the following:
The Ombuds does not disclose confidential communications unless given permission to do so in the course of informal discussions with the Ombuds, and even then at the sole discretion of the Ombuds; the Ombuds does not reveal, and must not be required to reveal, the identity of any individual contacting the Ombuds Office, nor does the Ombuds reveal information provided in confidence that could lead to the identification of any individual contacting the Ombuds Office, without that individual's express permission; the Ombuds takes specific action related to an individual's issue only with the individual's express permission and only to the extent permitted, unless such action can be taken in a way that safeguards the identity of the individual contacting the Ombuds Office. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm, and where there is no other reasonable option. Whether this risk exists is a determination to be made by the Ombuds.

3.2 Communications between the Ombuds and others (made while the Ombuds is serving in that capacity) are considered privileged. The privilege belongs to the Ombuds and the Ombuds Office, rather than to any party to an issue. Others cannot waive this privilege.

3.3 The Ombuds does not testify in any formal process inside the organization and resists testifying in any formal process outside of the organization, even if given permission or requested to do so.

3.4 If the Ombuds pursues an issue systemically (e.g., provides feedback on trends, issues, policies and practices) the Ombuds does so in a way that safeguards the identity of individuals.

3.5 The Ombuds keeps no records containing identifying information on behalf of the organization.

3.6 The Ombuds maintains information (e.g., notes, phone messages, appointment calendars) in a secure location and manner, protected from inspection by others (including

management), and has a consistent and standard practice for the destruction of such information.

3.7 The Ombuds prepares any data and/or reports in a manner that protects confidentiality.

3.8 Communications made to the Ombuds are not notice to the organization. The Ombuds neither acts as agent for, nor accepts notice on behalf of, the organization. However, the Ombuds may refer individuals to the appropriate place where formal notice can be made.

Informality and Other Standards

4.1 The Ombuds functions on an informal basis by such means as: listening, providing and receiving information, identifying and reframing issues, developing a range of responsible options, and – with permission and at Ombuds discretion – engaging in informal third-party intervention. When possible, the Ombuds helps people develop new ways to solve problems themselves.

4.2 The Ombuds as an informal and off-the-record resource pursues resolution of concerns and looks into procedural irregularities and/or broader systemic problems when appropriate.

4.3 The Ombuds does not make binding decisions, mandate policies, or formally adjudicate issues for the organization.

4.4 The Ombuds supplements, but does not replace, any formal channels. Use of the Ombuds Office is voluntary, and is not a required step in any grievance process or organizational policy.

4.5 The Ombuds does not participate in any formal investigative or adjudicative procedures. Formal investigations should be conducted by others. When a formal investigation is requested, the Ombuds refers individuals to the appropriate offices or individual.

4.6 The Ombuds identifies trends, issues and concerns about policies and procedures, including potential future issues and concerns, without breaching confidentiality or anonymity, and provides recommendations for responsibly addressing them.

4.7 The Ombuds acts in accordance with the IOA Code of Ethics and Standards of Practice, keeps professionally current by pursuing continuing education, and provides opportunities for staff to pursue professional training.

4.8 The Ombuds endeavors to be worthy of the trust placed in the Ombuds Office.

February 22, 2006

IOA Code of Ethics

Preamble

The IOA is dedicated to excellence in the practice of Ombuds work. The IOA Code of Ethics provides a common set of professional ethical principles to which members adhere in their organizational Ombuds practice.

Based on the traditions and values of Ombuds practice, the Code of Ethics reflects a commitment to promote ethical conduct in the performance of the Ombuds role and to maintain the integrity of the Ombuds profession.

The Ombuds shall be truthful and act with integrity, shall foster respect for all members of the organization he or she serves, and shall promote procedural fairness in the content and administration of those organizations' practices, processes, and policies.

Ethical Principles

Independence

The Ombuds is independent in structure, function, and appearance to the highest degree possible within the organization.

Neutrality and Impartiality

The Ombuds, as a designated neutral, remains unaligned and impartial. The Ombuds does not engage in any situation which could create a conflict of interest.

Confidentiality

The Ombuds holds all communications with those seeking assistance in strict confidence, and does not disclose confidential communications unless given permission to do so. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm.

Informality

The Ombuds, as an informal resource, does not participate in any formal adjudicative or administrative procedure related to concerns brought to his/her attention.

22 February 2006