

**DECLARATION OF BEST PRACTICES FOR
UNIVERSITY OF CALIFORNIA OMBUDS OFFICES
(Updated April 2017)**

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I. Introduction and Background

This document defines and clarifies a common set of 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. This document is consistent with the International Ombudsman Association (“IOA”) Standards of Practice. The original version of this document resulted from more than a year of dialogue and collaboration that incorporated the collected wisdom of leading Ombuds in the profession and attorneys who represented Ombuds offices nationwide. In 2017, the UC Ombuds reviewed and revised this document.¹

Each Ombuds Office serves as a resource that 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. The terms “Ombuds” and “Ombuds Offices” may be used interchangeably and include professional staff, sometimes called “Ombuds,” “Ombudsperson,” or “Ombudsman,” as well as any support staff.

The intent of this document is: (1) to articulate the common set of professional practices, principles and standards shared by all the UC Ombuds; (2) to educate the University community about the role of the Ombuds Office; (3) to proactively encourage all Ombuds Offices to operate in a manner consistent with professional standards, codes of ethics, and best practices; and (4) to encourage the campus community to use the term “Ombuds” to refer only to those offices within the UC System which subscribe to the longstanding professional tenets outlined in this document.

¹ The original version of this document, written November 6, 2006, was the result of collaboration and input from representatives from all UC Ombuds offices in existence at the time: UC Berkeley; UC Irvine; UC Los Angeles; UC Riverside; UC San Diego; UC Santa Barbara; UC Santa Cruz; Los Alamos National Laboratory; and Lawrence Livermore National Laboratory. The second version of this document, revised and endorsed in April 2017, is the result of collaboration and input from representatives of all the current UC Ombuds Offices: UC Berkeley; UC Davis; UC Irvine; UC Los Angeles; UC Merced; UC Riverside; UC San Diego; UC San Francisco; and UC Santa Barbara. A list of websites for each of these Offices is attached at Appendix A.

² In accordance with the California Mediation Act (California Evidence Code Sections, 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 campuses³ provide informal dispute resolution and mediation services to faculty, academic personnel, administrators, staff, students, and others with university-related concerns. The Ombuds Office is a place where members of the University of California community can seek guidance to address or resolve disputes or concerns through a resource that is confidential, informal, independent, and neutral and impartial. The specific scope of each Ombuds Office is defined in its local charter, job descriptions, and/or Ombuds Office procedures.

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

Services of the Ombuds Offices do not replace other processes at the University. The Ombuds Offices work to facilitate communication and assist parties in reaching mutually acceptable, fair, and equitable resolutions that are consistent with the mission and ideals 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.

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.⁴ These tenets require that Ombuds Offices function independently of the organization, are confidential as well as neutral and impartial, and 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 strive to operate to “best practices” and to manage the Ombuds Offices in a way that serves the best interests of the University of California and the communities they serve. Each office takes appropriate steps to make this

³ Campuses include the medical centers at Davis, Irvine, Los Angeles, San Diego, and San Francisco.

⁴ The IOA Standards of Practice and Code of Ethics are attached at Appendix B.

Declaration of Best Practices and the tenets of best practices of the Ombuds profession available to the University community.

A. Independence

The Ombuds Offices are and 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 and impartiality. To ensure objectivity, the Ombuds Offices should 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 report, 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 should have access to their Chancellor.

B. Confidentiality

The Ombuds Offices do not disclose nor should they 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 visitors⁵ and their issues. The Ombuds Offices do 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. By using the Ombuds Office, the visitor agrees that any communications with the Ombuds are confidential and that he or she will not call the Ombuds as a witness in legal or other formal proceedings with respect to confidential communications. The Ombuds Offices object to participation in any process inside or outside the University in which they would be compelled to disclose confidential communications.

C. Neutrality and Impartiality

The Ombuds Offices consider the interests and concerns of all parties involved in a situation impartially and look for opportunities to facilitate communication and assist the parties in reaching mutually acceptable agreements. The Ombuds Offices may advocate for fair and

⁵ Ombuds refer to the individuals they assist as "visitors" instead of "clients," as a reference to clients may connote that the Ombuds is serving as an advocate instead of a neutral.

equitably administered processes. However, the Ombuds Offices do not advocate for any individual, group, or entity in any conflict or dispute.

D. Informality

The Ombuds Offices are a resource for informal dispute resolution. Ombuds Offices do 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 related to their cases for the University and do not create or maintain documents or records for the University about individual cases.

IV. Authority and Limits of the Ombuds Offices

Specific areas of authority and limitations on the authority of the Ombuds Offices are delineated in their local charters, job descriptions, and/or Ombuds Office procedures, 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.

The Ombuds Offices are entitled to inquire about any issue concerning the University that affects any member of the University community. Ombuds have access to all campus records and personnel for the purpose of fulfilling their duties. 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.

Ombuds may elect to serve on system-wide and campus committees, task forces or working groups. Ombuds have the discretion to participate in an advisory or non-voting capacity, or to decline participation altogether. When determining their participation in such groups, Ombuds strive to avoid any actual or perceived conflicts of interest, recognizing that someone may later object to the actions or work product of the group and seek out the impartial assistance of the Ombuds. Ombuds do not participate as decision makers in developing University policies or processes.

B. Limitations on the Authority of the Ombuds Offices

1. Receiving Notice for the University

Ombuds and Ombuds Offices are not officials of the University. They do not have the authority or the duty to take action or respond to particular issues on behalf of the institution, nor are they authorized to receive notice on behalf of the University. The Ombuds Offices publicize their non-notice role to the University community. This includes notice of allegations that may be perceived to be violations of laws, regulations or policies, including, but not limited to, sexual violence and sexual harassment, issues covered by the Whistleblower policy, or incidents subject to reporting under the Clery Act. Because the Ombuds does not function as an official 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 do not address any issues arising under a collective bargaining agreement (“CBA”), unless allowed by specific language in the CBA or by ad hoc agreement. Ombuds nevertheless retain the authority to decline to be involved in any individual case. This means that while the Ombuds Offices may provide services to union members, those services do 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 Offices refer these employees to the CBAs and their union representatives.

Ombuds do not represent employees or serve as advocates. The Ombuds Offices may work with union members regarding all issues not covered by the contracts, such as communication or workstyle issues.

3. Formal Processes and Investigations

The Ombuds Offices do not conduct formal investigations. They object to participation 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 the expectation of confidentiality from visitors and the campus community is critically important to the viability of Ombuds Offices, Ombuds object to requests or directives to testify as a witness or to produce documents to reveal confidential communications in any formal or legal proceeding. The Ombuds Offices provide an alternate channel for informal dispute resolution and all use of Ombuds services is voluntary.

4. Record Keeping

The Ombuds Offices do 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 and/or Ombuds Office procedures. All materials related to a case are maintained in a secure location and manner, and are destroyed once the case is concluded. The Ombuds may maintain anonymous statistical data to assist the Ombuds in reporting trends and giving feedback.

5. Advocacy for Parties

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

6. Adjudication of Issues

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

7. Conflict of Interest

Ombuds should avoid involvement in cases where there may be a conflict of interest. A conflict of interest occurs when an 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 an Ombuds becomes aware of a real or perceived conflict, the Ombuds should take 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 should have the right to consult the Ombuds Office without reprisal. Ombuds work with their institutions 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, should 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. 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 ombudsforstaff.berkeley.edu

Student sa.berkeley.edu/ombuds

UC Davis ombuds.ucdavis.edu

UC Irvine ombuds.uci.edu

UC Los Angeles ombuds.ucla.edu

UC Merced ombuds.ucmerced.edu

UC Riverside ombuds.ucr.edu

UC San Diego ombuds.ucsd.edu

UC San Francisco ombuds.ucsf.edu

UC Santa Barbara ombuds.ucsb.edu

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

STANDARDS OF PRACTICE

INDEPENDENCE

- 1.1** The Ombudsman Office and the Ombudsman are independent from other organizational entities.
- 1.2** The Ombudsman holds no other position within the organization which might compromise independence.
- 1.3** The Ombudsman exercises sole discretion over whether or how to act regarding an individual's concern, a trend or concerns of multiple individuals over time. The Ombudsman may also initiate action on a concern identified through the Ombudsman's direct observation.
- 1.4** The Ombudsman has access to all information and all individuals in the organization, as permitted by law.
- 1.5** The Ombudsman has authority to select Ombudsman Office staff and manage Ombudsman Office budget and operations.

NEUTRALITY AND IMPARTIALITY

- 2.1** The Ombudsman is neutral, impartial, and unaligned.
- 2.2** The Ombudsman strives for impartiality, fairness and objectivity in the treatment of people and the consideration of issues. The Ombudsman advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization.
- 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.
- 2.4** The Ombudsman serves in no additional role within the organization which would compromise the Ombudsman's neutrality. The Ombudsman 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 Ombudsman. The Ombudsman should have no personal interest or stake in, and incur no gain or loss from, the outcome of an issue.

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

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

CONFIDENTIALITY

3.1 The Ombudsman holds all communications with those seeking assistance in strict confidence and takes all reasonable steps to safeguard confidentiality, including the following: The Ombudsman does not reveal, and must not be required to reveal, the identity of any individual contacting the Ombudsman Office, nor does the Ombudsman reveal information provided in confidence that could lead to the identification of any individual contacting the Ombudsman Office, without that individual's express permission, given in the course of informal discussions with the Ombudsman; the Ombudsman takes specific action related to an individual's issue only with the individual's express permission and only to the extent permitted, and even then at the sole discretion of the Ombudsman, unless such action can be taken in a way that safeguards the identity of the individual contacting the Ombudsman 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 Ombudsman.

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

3.3 The Ombudsman does not testify in any formal process inside the organization and resists testifying in any formal process outside of the organization regarding a visitor's contact with the Ombudsman or confidential information communicated to the Ombudsman, even if given permission or requested to do so. The Ombudsman may, however, provide general, non-confidential information about the Ombudsman Office or the Ombudsman profession.

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

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

3.6 The Ombudsman 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 Ombudsman prepares any data and/or reports in a manner that protects confidentiality.

3.8 Communications made to the ombudsman are not notice to the organization. The ombudsman neither acts as agent for, nor accepts notice on behalf of, the organization and shall not serve in a position or role that is designated by the organization as a place to receive notice on behalf of the organization. However, the ombudsman may refer individuals to the appropriate place where formal notice can be made.

INFORMALITY AND OTHER STANDARDS

4.1 The Ombudsman 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 Ombudsman discretion – engaging in informal third-party intervention. When possible, the Ombudsman helps people develop new ways to solve problems themselves.

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

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

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

4.6 The Ombudsman 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 Ombudsman 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 Ombudsman endeavors to be worthy of the trust placed in the Ombudsman Office.

Revised October 2009

IOA CODE OF ETHICS

PREAMBLE

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

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

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

NEUTRALITY AND IMPARTIALITY

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

CONFIDENTIALITY

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

Revised January 2007