



# University of California, San Francisco Office of the Ombuds Charter Agreement

## **I. Introduction**

The Office of the Ombuds at the University of California, San Francisco was established in 2011 to provide confidential, neutral, informal, and independent dispute resolution and mediation services to members of the UCSF community, predicated on the principles of fairness, equity, and respect. The structure and practice of the office is built on independence, impartiality and confidentiality. In the spirit of these important functions, this Charter Agreement defines the privileges and responsibilities of the Office of the Ombuds.

## **II. Purpose & Scope of Services**

The Office of the Ombuds provides confidential, impartial, independent and informal dispute resolution and mediation services. The office is available to all members of the UCSF community, including faculty, staff, students, post-doctoral fellows and other trainees who seek assistance with matters brought to the attention of the Ombuds. Participation for any party is on a voluntary basis.

The Office of the Ombuds receives complaints, concerns or inquiries about alleged acts, omissions, improprieties, and/or broader systemic problems within the Office's defined jurisdiction. These are received in confidence as defined in section IV. B. of this document. In response, the Office of the Ombuds will listen, review matters received, make informal inquiries, offer options, make referrals, and facilitate resolutions independently and impartially. In addition, the Office of the Ombuds shall serve as an information and communication resource, consultant, dispute resolution expert and catalyst for institutional change.

The Office of the Ombuds supplements but does not replace or substitute for formal, investigative or appeals processes made available by the University. Use of the services of the Ombuds office does not delay filing requirements associated with the University's complaint and/or grievance procedures.

The Office of the Ombuds functions to assist parties in reaching mutually acceptable agreements in order to find fair and equitable resolutions to concerns that arise at the university. Use of the office is voluntary. The Office of the Ombuds also reports general trends of issues and provides feedback throughout the organization, and recommends systems change when appropriate, without disclosing confidential communications.

## **III. Reporting**

The Office of the Ombuds functions independently with respect to case handling and issue management. For administrative and budgetary purposes only, it reports to the Vice Provost of Academic Affairs. To fulfill its functions, the Office of the Ombuds shall have a specific allocated budget, adequate space, and sufficient resources to meet operating needs and pursue continuing professional development.

#### **IV. Standards & Ethics**

The Office of the Ombuds staff shall adhere to The International Ombudsman Association (IOA) Code of Ethics and Standards of Practice which may be found on its website at [ombuds.ucsf.edu](http://ombuds.ucsf.edu). This Charter adopts and incorporates by reference the IOA Standards of Practice, IOA Code of Ethics, and IOA Best Practices. These tenets require the Office of the Ombuds to function independently of the organization, to be confidential and neutral, and to limit the scope of its services to informal means of dispute resolution. The IOA Standards, Code, and Best Practices delineate minimum standards, and the Office of the Ombuds shall always strive to operate to “best practices”<sup>1</sup> and to serve the best interests of all concerned. The Office of the Ombuds also adheres to best practices within the University of California system, as delineated in the “Declaration of Best Practices for University of California Ombuds Offices”.

##### **A. Independence**

Independence is essential to the effective functioning of the Office of the Ombuds. The Office of the Ombuds shall be, and shall appear to be, free from interference in the legitimate performance of its duties. This independence is achieved primarily through reporting structure, neutrality and organizational recognition and respect for the independent role of the Office of the Ombuds. To ensure objectivity, the Office of the Ombuds shall function independently from administrative authorities. This includes not disclosing confidential information about matters discussed in the Office of the Ombuds with anyone in the organization, including the person to whom the Office of the Ombuds reports, except as clearly delineated in Section IV. B. In addition, the Office of the Ombuds will have the authority to manage the budget and operations of the office.

##### **B. Confidentiality**

The Office of the Ombuds shall not disclose any information provided in confidence, unless in the course of discussions with an inquirer, the Ombuds asks for and receives permission to make a disclosure or unless the Ombuds determines that there is an imminent risk of serious harm. The Office of the Ombuds asserts that there is a privilege of confidentiality with respect to the identity of visitors and their issues, and therefore cannot be required to disclose confidential communications<sup>2</sup>. The Office of the Ombuds shall not confirm communicating with any party or parties. The Office of the Ombuds shall neither willingly participate as witnesses with respect to any confidential communication, nor participate in any formal process inside or outside the University.

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<sup>1</sup> “Best practices” are defined as operating in accordance with the guidelines and definitions contained within this document, IOA Standards of Practice, IOA Code of Ethics, IOA Best Practices: A Supplement to IOA’s Standards of Practice – Version 2, IOA Guidance for Best Practices and Commentary on the American Bar Association Standards for the Establishment and Operation of Ombuds Offices, and Declaration of Best Practices for University of California Ombuds Offices.

<sup>2</sup> As stated in the Declaration of Best Practices of University of California Ombuds Offices, “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 protection 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.” The UCSF Office of the Ombuds will assert any and all legal privileges related to confidential communications made with the office.

### C. Impartiality

The Office of the Ombuds shall not take sides in any conflict, dispute or issue. The Office of the Ombuds 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, and consistent with the policies of the University.

### D. Informality

The Office of the Ombuds shall be a resource for informal dispute resolution and mediation services. The Office of the Ombuds shall not investigate, arbitrate, adjudicate or in any other way participate in any internal or external formal process or action. The Office of the Ombuds does not keep records for the University, and shall not create or maintain documents or records for the University about individual cases. Use of the Office of the Ombuds will be voluntary and not a required step in any grievance, formal complaint process or University policy.

## V. Authority and Limits of the Office of the Ombuds

### A. Authority of the Office of the Ombuds

The Office of the Ombuds 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 Office of the Ombuds may informally address issues which fall under federal, state, local labor and employment laws, rules and regulations. The Office of the Ombuds shall have appropriate access to records and personnel at UCSF for the purpose of facilitating informal resolutions. The Office of the Ombuds has the authority to break confidence if the Ombuds believes there is an imminent risk of serious harm.

The Office of the Ombuds may, without having received a specific complaint from a member of the University community, act on its own discretion, and initiate inquiries concerning matters the Office of the Ombuds believe warrant such treatment. The Office of the Ombuds 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 misuses of the Ombuds function. In situations such as this, the Ombuds will directly communicate their intent to the visitor and refer them to other options which may be available.

The Office of the Ombuds has the authority to discuss a range of options available to the visitor, including both informal and formal processes. However, the Office of the Ombuds will have no actual authority to impose sanctions, remedies or to enforce or change any policy, rule or procedure. The Office of the Ombuds may require legal or other professional advice, from time to time, in order to fulfill their required functions. The Office of the Ombuds may be provided separate legal counsel in the event it is asked for documents or testimony related to any litigation or other formal process, or when a conflict of interest arises between the Office of the Ombuds and the administration or the University.

## B. Limitations on the Authority of the Office of the Ombuds

### 1. Receiving Notice for the University

Communication to the Office of the Ombuds shall not constitute notice to the University. The Office of the Ombuds shall publicize its 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 nor as a “Campus security authority” as defined in the Clery Act, even if the Ombuds becomes aware of such allegations, the Ombuds is not required to report it to the University or to law enforcement.

If a user of the Office of the Ombuds 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 that person with information so that the person may put the University on notice.

### 2. Collective Bargaining Agreements

The Office of the Ombuds shall not address any issues arising under any collective bargaining agreement (“CBA”), unless allowed by specific language in the CBA. This means that while the Office of the Ombuds may provide services to exclusively represented (i.e. unionized) employees, those services may not include addressing issues that are covered in the CBA, including, but not limited to, issues such as disciplinary or non-disciplinary performance management, dismissal or any other alleged violation of a CBA or University policy. In those cases, the Ombuds shall refer the employee to his or her union representative. The Office of the Ombuds may work with exclusively represented (i.e. unionized) employees regarding all other issues not covered by the contracts, such as communication issues, facilitating discussions, and improving teamwork with various other employees.

### 3. Formal Processes and Investigations

The Office of the Ombuds shall not conduct formal investigations of any kind. The Office of the Ombuds staff shall not willingly participate in formal dispute processes or outside agency complaints or lawsuits, either on behalf of a user of the Office of the Ombuds or on behalf of the University. The Office of the Ombuds provides an alternative to formal processes for dispute resolution. All use of Ombuds services shall be voluntary and shall not impact filing requirements within the University or outside agencies. Because confidentiality, neutrality and informality are critically important to the Office of the Ombuds, 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.

### 4. Record Keeping

The Office of the Ombuds does 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 are routinely destroyed at regular intervals and at the conclusion of a matter. All materials related to a case will be maintained in a secure location and manner, and will 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 to the University community.

#### 5. Advocacy & Psychological Counseling

The Office of the Ombuds shall not act as an advocate for any party in a dispute, nor shall they represent management or visitors to their office. In addition, the Office of the Ombuds does not provide legal or psychological assistance, but can provide referral to the appropriate resources if necessary.

#### 6. Adjudication of Issues

The Office of the Ombuds 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.

### **VI. Retaliation for Using the Office of the Ombuds**

All members of the constituencies served by the Office of the Ombuds shall have the right to consult the Office of the Ombuds without fear of retaliation or reprisal.

### **VII. Office of the Ombuds Structure**

All involvement and functions operate within the parameters and guidelines set forth in this charter and IOA principles. The Office of the Ombuds reports to the Office of the Vice Provost, Academic Affairs for administrative and budgetary purposes only.

**References:**

IOA Standards of Practice

<http://www.ombudsassociation.org/about-us/mission-vision-and-values/iaa-best-practices-standards-practice> *English, French, and Spanish versions.*

IOA Code of Ethics

<http://www.ombudsassociation.org/about-us/code-ethics> *English, French, and Spanish versions.*

IOA Best Practices: A Supplement to IOA's Standards of Practice – Version 2, March 31, 2008

[http://www.ombudsassociation.org/sites/default/files/IOA\\_Best\\_Practices\\_Version3\\_101309\\_0.pdf](http://www.ombudsassociation.org/sites/default/files/IOA_Best_Practices_Version3_101309_0.pdf)

IOA Guidance for Best Practices and Commentary on the American Bar Association Standards for the Establishment and Operation of Ombuds Offices, revised February 2004; March 14, 2006

[http://www.ombudsassociation.org/sites/default/files/GuidanceOnABAStandards\\_final.pdf](http://www.ombudsassociation.org/sites/default/files/GuidanceOnABAStandards_final.pdf)

Declaration of Best Practices for University of California Ombuds Offices

<http://ombuds.ucsf.edu/pdf/BestPracticesDeclarationUC.pdf>