

Federal Defender Ombuds Office Charter

I. Introduction

Federal Defender Program, Inc. (the "FDP") has engaged MWI, an outsourced ombuds services provider, to establish the FDP Ombuds Office ("Ombuds Office," or "Ombuds Resource") to provide ombuds services to help foster an environment of respect, honesty, fairness, and integrity, and to bolster a supportive and civil working climate at the FDP for all of its employees. In keeping with standard ombuds norms, those who utilize the Ombuds Office, are referred to as "visitors." When a visitor consults with members of the Ombuds Team ("Ombuds") will listen, serve as a strategic thought partner, help the visitor explore or develop options for the visitor to resolve conflict or to surface an issue, provide resources and information about FDP's policies and systems, and otherwise assist with informal conflict resolution and problem-solving. In each case, the Ombuds Office provides support that is independent, confidential, impartial, and informal. This Charter ("Charter") defines the terms, conditions, and principles on which the Ombuds Office has been established and describes the privileges, responsibilities, and authority of that Office and the Ombuds.

II. PURPOSE AND SCOPE OF THE OMBUDS OFFICE

A. *Mission Statement*

The primary mission of the Ombuds Office is to provide an independent, impartial, informal, and confidential resource to assist individuals to surface, manage, and/or resolve work-related issues, including early and informal resolution of conflicts at the lowest levels possible without the need to pursue formal grievance processes. In addition, the Ombuds Office is designed to alert FDP officials, without breaching confidentiality, about systemic problems or general trends that merit further review or consideration for the good of the FDP and its employees. The Ombuds is neither an advocate for its visitors nor represents FDP management. Rather, the Ombuds is an advocate for respectful dialogue, fair practices, and mutual understanding.

B. *Responsibilities of the Ombuds Office*

The Ombuds Office is responsible for the following:

- providing Ombuds services to eligible visitors
- supplementing, as an informal resource for communication but without replacing, formal organizational channels such as HR, Compliance, Legal, Internal Audit, and management
- fostering equitable and fair treatment of all people
- helping employees comply with FDP's Code of Conduct to promote more ethical business practices, innovation, and resiliency
- helping the FDP protect its reputation and its financial, human, and capital

resources

- helping the FDP as an early warning system by sharing general trends and emerging issues with management or senior leadership while maintaining the confidentiality of the identity of visitors to the Office and their confidential communications with the Ombuds
- facilitating, where requested, communication between parties that find themselves in a dispute with others
- conducting outreach and education throughout the FDP about Ombuds Office services and conflict management and resolution techniques
- developing and maintaining administrative procedures for effective and efficient operation of the Ombuds Office

C. Constituents Served by the Ombuds Office

The Ombuds Office may provide service to individuals in the following groups:

- FDP staff
- FDP management

Individuals who contact the Ombuds Office who do not belong to one of the above groups will be given appropriate referral information to other resources.

III. STANDARDS OF PRACTICE AND CODE OF ETHICS

Each Ombuds shall adhere to the Code of Ethics and the Standards of Practice of the International Ombuds Association¹, which are incorporated by reference in this Charter. As noted below, the Ombuds Office functions independently and confidentially, it remains neutral, and it limits the scope of its services to provide informal assistance in conflict management and resolution and in surfacing workplace issues.

The Ombuds will establish and follow consistent practices and policies for the Office, which will be posted on the Ombuds Office website. The Ombuds will publicize on its website and elsewhere the key principles on which the program is based, including the confidential, independent, impartial, and informal nature of the Office's services, and will clearly explain each of these Standards of Practice to their visitors.

¹ "The mission of the International Ombuds Association is to support and advance the global organizational ombuds profession and ensure that practitioners work to the highest professional standards." International Ombuds Association, <http://www.ombudsassociation.org/>.

A. *Independence*

The FDP has established an independent Ombuds Office, which allows visitors to come forward and confidentially discuss concerns from any area of the FDP without fear of retribution. Although the Ombuds Office has a direct line of communication to FDP's Executive Director, the Ombuds Office shall be, and shall appear to be, free from interference in the legitimate performance of its duties.

The Ombuds are not part of the FDP management team. The Ombuds exercise sole discretion over whether and how to act regarding individual matters or systemic concerns, consistent with the terms of authority described below in Section IV: "AUTHORITY/LIMITATIONS OF THE OMBUDS OFFICE."

B. *Informality*

The Ombuds Office provides informal assistance to its visitors. It has no authority to receive notice of formal complaints against the FDP, conduct formal investigations, or make business or policy decisions for the FDP. It will not participate in formal adjudicative processes, outside agency complaints, and lawsuits. Instead, the Ombuds Office provides visitors with an opportunity to informally take action themselves to resolve their issues or to collaborate to accomplish mutually acceptable outcomes.

The Office does not create or maintain business records for any party utilizing its services and shall not create or maintain documents or records for the FDP about individual cases.

As an informal resource, the Ombuds Office is always a voluntary option. It is not a required step in any formal process available at the FDP.

C. *Neutrality and Impartiality*

The Ombuds Office shall always be a neutral and impartial resource and shall not take sides or advocate on behalf of the FDP or any individual or cause. The Ombuds will impartially consider the interests and concerns of all parties involved in a situation.

Consistent with its position of neutrality, the Ombuds cannot, under the terms of this Charter, and will not participate in formal proceedings of the FDP that concern issues visitors have discussed with the Ombuds Office.

The Ombuds shall avoid involvement in matters where there may be a real or perceived conflict of interest for an Ombuds team member or the Office, i.e., the Ombuds' private interests interfere with the neutrality of the Ombuds Office. When a real or perceived conflict of interest exists, the Ombuds shall take appropriate action to disclose and/or avoid the conflict. The Ombuds shall also comply with FDP policies related to conflicts of interest.

D. *Confidentiality*

Confidentiality is the defining feature of the Ombuds Office. Communications with the Ombuds are confidential to the maximum extent permitted by law. The Ombuds will hold all communications in strict confidence and will not reveal--and must not be required to reveal--the identity of visitors to the Ombuds Office. No employee at any level of the FDP may compel the Ombuds to disclose confidential information.

The Ombuds will not reveal any information disclosed to them in confidence except in accordance with the IOA Standards of Practice, including not disclosing such information without a visitor's express permission and then only at the discretion of the Ombuds. The Ombuds may, however, disclose otherwise confidential information if they determine there is an imminent risk of serious physical harm.

The FDP fully supports the confidentiality of the Ombuds Office. It encourages parties to come forward confidentially, share their concerns, and attempt early and collaborative resolution instead of resorting to prolonged appeals or litigation. In order to achieve a mutually acceptable outcome, the opportunity for a frank and confidential discussion of issues, options, and possible outcomes is necessary.

Because the Ombuds Office is a purely voluntary resource that no one is required to use, those who do so will be understood to have agreed to abide by the terms, conditions, and principles upon which it was established and not call on the Ombuds to testify or produce documents relating to confidential communications in any legal, administrative, or other proceedings. The FDP has also agreed to respect the terms, conditions, and principles on which the Office was created and not call on the Ombuds to testify or produce documents relating to confidential communications in any legal, administrative, or other proceedings.

The confidentiality of communications with the Ombuds may not be waived by others. The Ombuds Office will resist any attempts by visitors or third parties to compel disclosure of confidential communications or documents by invoking the terms, conditions, and principles of this Charter and by asserting a claim of confidentiality under any applicable rule or statute under which confidential communications may be protected, including where applicable, rules or statutes dealing with mediation and other methods of alternative dispute resolution.

The Ombuds and the FDP will cooperate with each other to implement policies and practices to protect the confidentiality of visitor identities and Ombuds' confidential communications. In addition, FDP will notify the Ombuds Office of any subpoena or request for the production of documents served on the FDP seeking disclosure of Ombuds' confidential communications and cooperate with Ombuds to take all reasonable steps to resist such attempts to compel disclosure of Ombuds' confidential communications or documents, including filing a motion for protective order or taking other legal action to resist such attempts.

The Ombuds will maintain any case-related information (e.g., notes, phone messages,

appointment calendars) in a secure location and manner, protected from inspection by others and will have a consistent and standard practice for the regular destruction of such information. The Ombuds will prepare any data or reports to be shared with the FDP or the FDP's leadership in ways that protect visitor confidentiality.

IV. DISCUSSIONS FACILITATED BY THE OMBUDS

Ombuds use several tools when working with visitors, including offering them the option to participate in a facilitated discussion. A facilitated discussion is an informal and voluntary process where the Ombuds offers to assist the visitor and the person of concern (another employee or a manager, etc.,) with an opportunity to speak with one another about the concern in a private setting.

The Ombuds has no authority to impose an outcome, mandate participation in the process, or determine an outcome. Should both the visitor and a person of concern elect to participate in a facilitated discussion, they should expect the following:

- 1) The Ombuds will remain a neutral facilitator of the process. The Ombuds' role is to assist the parties to identify their interests and develop options for resolution that the parties may determine solely in the end by agreement.
- 2) The Ombuds will not represent or advocate for any side. The Ombuds is an advocate for a fair process and will conduct themselves accordingly as they facilitate the discussion.
- 3) Participants in a facilitated discussion cannot create new policies, rights and/or privileges by agreement.
- 4) Any written agreements that would benefit from the oversight by a third party (e.g., leadership or HR), will be provided to the third party, with the knowledge and consent of the parties, to monitor compliance. The Ombuds will not monitor or enforce the terms of any agreement.
- 5) In alignment with their commitment to confidentiality, the Ombuds will not reveal the contents of the facilitated discussion to anyone unless a participant shares information that the Ombuds determines represents an imminent threat of serious harm or as authorized by the IOA's Standard of Practice.
- 6) Facilitated discussions are voluntary for all parties including the Ombuds. Should a facilitated discussion end without resolution, all other options remain for the visitor including continuing to work with the Ombuds, reaching out to HR, or pursuing formal options for resolution.
- 7) Unlike a traditional mediation, the participants and the Ombuds do not sign an Agreement to Participate / Confidentiality Agreement for each facilitated discussion and instead will be bound to the principles and terms and conditions of confidentiality, informality, independence, and neutrality contained in this Charter.

V. AUTHORITY/LIMITATIONS OF THE OMBUDS OFFICE

The authority of the Ombuds Office is both defined and limited in a manner that enables it to best serve the FDP and people served by the Ombuds Office. The authority of the Ombuds Office derives from FDP leadership and this Charter, as manifested by the endorsement of this Charter by the Executive Director.

A. *Authority of the Ombuds Office*

1) Providing Services to Visitors

The Ombuds will listen to each visitor's concerns or questions and then try to help the visitor develop options appropriate to the dynamics of each situation. These responses may include providing policy information or referral assistance, identifying, and reframing the issues, helping a visitor develop options or a communication strategy, conflict coaching, making informal inquiries or facilitating a discussion between visitors (with their permission). The Ombuds also can help visitors assess their different options for conflict management or resolution. The Ombuds are authorized to discuss issues with visitors that fall under federal, state, local labor and employment laws, rules, and regulations, but the Office of Ombuds is not authorized to accept service or receive formal or legal notice of claims against the FDP or its agents.

2) Initiating Informal Inquiries and Accessing Information

The FDP values early and informal conflict resolution. To pursue this goal, the Ombuds may, on occasion, need to make inquiries or seek assistance in order to gain an understanding of all aspects of a dispute. FDP employees and management are encouraged to cooperate with these efforts of the Ombuds Office. (Any inquiry made by the Ombuds does not constitute a formal investigation by either the Ombuds Office or the FDP.)

3) Addressing Perceived Systemic Trends

The Ombuds may inquire into adverse trends that the Ombuds observes or perceives. The Ombuds may also bring adverse trends to the attention of appropriate FDP management in a manner that protects the confidentiality of individuals who may have shared information with the Ombuds about such trends.

4) Ending Involvement in Matters

The Ombuds may decline to participate in a visitor's case or withdraw from it if the Ombuds believes that involvement in the case would be inappropriate for any reason.

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

1) No Authority to Investigate, Adjudicate, Sanction, Change, Bind, or Enforce

The Ombuds Office may not conduct formal investigations of any kind, nor is it authorized to adjudicate disputes, issue findings, or impose remedies or sanctions. The Ombuds may not make business or policy decisions on behalf of the FDP, its managers, or its employees.

While the Ombuds Office can provide visitors with information and assistance in conflict management, visitors are solely responsible for deciding what action they wish to take and for managing their own conflicts.

The Ombuds Office is not authorized to unilaterally change management decisions or FDP policies/procedures. The Ombuds Office is not authorized to make any statements or commitments that bind the FDP, financially, contractually, or otherwise.

Neither the Ombuds Office nor the FDP shall be responsible for enforcing any agreement that visitors may reach solely between themselves due to information or assistance they receive from the Ombuds Office. This Charter does not affect or impede the FDP's right to enforce any policy or any agreement to which the FDP is a party.

2) Not a Recipient of "Notice"

Because the Ombuds Office is designed to be a confidential resource for informal conflict resolution, communication with the Ombuds Office is always "off the record" (unless it falls in one of the exceptions to confidentiality recognized in the IOA Standards of Practice). Therefore, the Ombuds Office is not authorized to receive notice for the FDP about any alleged misconduct. The Office shall publicize to all constituents of the Office that it does not have authority to receive notice of claims against the FDP or its agents and that the Ombuds is not required to report any such matters to the FDP. If a visitor would like to put the FDP on notice of claims regarding a specific situation or wishes to obtain information on how to notify the FDP of a claim, the Ombuds will provide the visitor with the information appropriate for them to do so.

Important Note: The Ombuds is not obligated to maintain the confidentiality of information that the Ombuds determines represents an imminent threat of serious harm.

3) Collective Bargaining Agreements

The Ombuds is not authorized to inquire into or discuss with a visitor the

application or interpretation of any collective bargaining agreement that is applicable to employees of the FDP or an alleged violation of the duty of fair representation against a certified union.

4) Recordkeeping

Because it is a confidential resource, the Ombuds Office does not keep identifying information from individual cases. Any recordkeeping or note-taking related to a specific case shall only be used to help informally manage or resolve the visitor's concerns. Records created by the Ombuds Office and related to open cases are kept in the sole possession of MWI, the provider of Ombuds services, will be maintained in a secure manner and location, and all identifying information will be deleted 30-days after the case is closed and/or follow-up is complete.

The Ombuds Office also may maintain generic data related to the general categories of visitors who seek assistance from the Ombuds Office. Generic data may be used for general purposes like annual reports.

5) Not Authorized to Serve as an Advocate or Representative or Provide Professional Counseling

The Ombuds will not advocate for any party in a dispute, represent either the FDP or visitors to the Office, or provide mental health counseling or legal and psychological advice. Important rights may be affected when formal action is instituted and when the FDP is informed of allegedly inappropriate or wrongful conduct, and while working with the Ombuds may address a problem or concern effectively, it may not protect the rights of a visitor contacting the Office. The Ombuds Office is not, and is not a substitute for, anyone's lawyer, representative, or counselor, and a person may wish to consult with a lawyer or other representative with respect to those rights.

VI. INQUIRY ABOUT USE OF THE OMBUDS OFFICE IS INAPPROPRIATE; RETALIATION FOR DOING SO IS PROHIBITED

The FDP supports efforts to manage and resolve conflicts informally to preserve collegial and effective working relationships, maintain a vibrant FDP community, and avoid the time and expense required for formal proceedings or litigation. Because the Ombuds Office is intended to be a confidential resource, it is not appropriate for management or other employees to inquire about an individual's use of the Ombuds Office or any communication that may have occurred. Furthermore, discouraging or preventing eligible visitors from using the Ombuds Office is inappropriate because it is contrary to the FDP's intent of providing the office as a resource for early and informal management and resolution of conflicts.

While the FDP supports and encourages the use of the Ombuds Office for conflict management, an individual's use of the Ombuds Office must always be completely voluntary. It is acceptable

to remind individuals that the Ombuds Office is available as an option or a resource. However, no one may be ordered or required to visit the Ombuds Office, nor may an individual be punished for not visiting it.

All employees shall have the right to consult the Ombuds Office without fear of retaliation or reprisal. Retaliation against any employee for consulting with the Ombuds Office or against the Ombuds for actions within the legitimate scope of their duties as described in the Charter is prohibited.

VII. PROTECTION OF OMBUDS CONFIDENTIALITY

The FDP agrees, upon a request by MWI, to pay reasonable costs to enable Ombuds to obtain independent counsel to provide independent legal advice to Ombuds in connection with the defense of the Ombuds Program and to assist Ombuds in resisting any attempts by inquirers or third parties to compel Ombuds to disclose confidential communications or documents relating to the FDP.

VIII. PROCEDURE FOR REVISION OR REVOCATION OF THIS DOCUMENT

This Charter remains in effect unless otherwise revoked by the Executive Director, and such revocation shall be provided in writing to the Ombuds. Any revision to this Charter shall be jointly agreed to in writing by both the Executive Director and the Ombuds representative from MWI and shall be appended to this document.

FDP

MWI


Signed: Stephanie Kearns
Stephanie Kearns (Oct 30, 2023 12:33 EDT)

Name: Stephanie Kearns

Title: Executive Director

Date: Oct 30, 2023

Duly Authorized Hereunto

Signed: 

Name: Chuck Doran

Title: Ombuds

Date: Oct 30, 2023

Duly Authorized Hereunto








Federal Defender Ombuds Office Charter

Final Audit Report

2023-10-30

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