

OMBUDS CHARTER
Staff Ombuds Office
University of California, Berkeley

I. Introduction

The University of California, Berkeley ("UC Berkeley" or the "University"), has engaged MWI, an organizational ombuds services provider, to deliver ombuds services to the Staff Ombuds Office ("Ombuds Office," or "Office"). The Staff Ombuds Office was established in 1984 by the then Chancellor, Ira Michael Heyman, upon the recommendation of the Chancellor's Advisory Committee ("CSAC") to help foster an environment of respect, honesty, fairness, and integrity and to help UC Berkeley staff resolve conflict and surface issues in a supportive and civil climate. The Ombuds Office has continuously served the staff of UC Berkeley since its creation in 1984 under the leadership of seven Office Directors.

In keeping with national norms, those who utilize the Ombuds Office are referred to as "visitors." When a visitor seeks support, a member of the UC Berkeley Staff Ombuds Team ("Ombuds") can listen, serve as a strategic thought partner, help plan or develop options to resolve conflict or to surface an issue, provide resources and information about University policies and systems, and otherwise assist with informal conflict resolution and problem-solving. In every case, the Office provides support that is independent, confidential, impartial, and informal.

This Charter document defines the terms, conditions, and principles on which the Ombuds Office continues to function and describes the privileges, responsibilities, and authority of the Ombuds and the Ombuds Office.

II. Purpose, Mission, and Scope of Services

The purpose and mission of the Ombuds Office is to enhance an ethical, supportive, and responsive culture for the staff of the UC Berkeley community by providing confidential, impartial, independent, and informal conflict resolution services and problem-solving support for UC Berkeley staff. The Ombuds Office also elevates systemic trends or concerns to the attention of University leadership to improve the fairness and effectiveness of University programs at a systems level.

Day to day, Ombuds fulfill this purpose and mission by confidentially receiving inquiries, concerns, or questions from staff, and tailors their response based on the specific needs of each situation. As appropriate, the Ombuds: listen, clarify issues, serve as a strategic thought-partner and conflict coach, make informal inquiries, gather additional information, provide referrals, or offer information on available resources, identify available pathways and options to address or raise concerns and facilitate difficult conversations or mediate conflicts directly.

III. Standards of Practice

The Staff Ombuds Office and all Staff 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 University-related issues.

The Ombuds Office 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.

- A. Independence:** The Ombuds Office will be, and will endeavor to be perceived as, free from interference in the performance of their duties. The University will not attempt to direct or influence the substantive work of the Ombuds Office, including with whom the Ombuds meet and how they manage any given concern. The Ombuds exercises sole discretion over whether and how to act regarding individual matters or systemic concerns, consistent with the terms of authority described below in Section V, "AUTHORITY/Limitations on the Authority of the Ombuds Office." The University will also not attempt to interfere with or control the substance of any recommendations for changes within the University that the Ombuds might offer. The independence of the Staff Ombuds Office is accomplished by: this Charter, which reflects the University's recognition of the Office and enumerates the terms and conditions under which it operates, a reporting structure in which the Staff Ombuds Office has direct access to the University Chancellor and the Chancellor's Office, freedom from direction or interference in the substance of its work, and by being distinct from all other organizational entities. Staff Ombuds hold no other position within the University and has sole discretion over how or whether to address visitors' concerns.

- B. Informality:** The Ombuds Office provides informal assistance to its visitors. It has no authority to receive notice of formal complaints or claims against the University, conduct formal investigations, or make or change business or policy decisions for the University. It does not participate in formal adjudicative processes or outside agency complaints or lawsuits. Instead, the Ombuds Office provides visitors with an opportunity to act informally for themselves to resolve their issues or to collaborate to accomplish mutually acceptable outcomes.

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/>.

The Ombuds Office does not create or maintain permanent business records for the use of any party utilizing its services and shall not create or maintain documents or records for the University 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 that is available at the University.

To the maximum extent permitted by law, Ombuds are not mandatory reporters, as provided below in Section V. B. 2.

The Ombuds Office and the Ombuds are not authorized to accept notice of any administrative or legal claims—including, without limitation, claims of discrimination, harassment, criminal activity, or other misconduct—on behalf of the University.

- 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 University 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 Office cannot, under the terms of this Charter, and will not participate in formal proceedings of the University 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 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 University policies related to conflicts of interest.

- D. Confidentiality:** Confidentiality is the defining feature of the Staff 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 University may compel the Ombuds to disclose confidential information.

The Ombuds will not reveal any information disclosed to them in confidence except where disclosure is permitted by 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 disclose otherwise confidential information if they determine there is an imminent risk of serious physical harm or as necessary in the defense of a professional misconduct claim.

The University 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 in this Charter and upon which the Office functions and not call on the Ombuds to testify or produce documents relating to the identity of Ombuds Office visitors or confidential communications in any legal, administrative, or other proceedings. The University has also agreed to respect the terms, conditions, and principles on which the Office operates and not call on the Ombuds to testify or produce documents relating to the identity of Ombuds Office visitors or 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 University will cooperate with each other to implement policies and practices to protect the confidentiality of visitor identities and Ombuds' confidential communications. In addition, the University will notify the Ombuds Office of any subpoena or request for the production of documents served on the University 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 temporary 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 University or the University'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 student, 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 identify their interests and develop options for resolution that the parties may determine solely in the end by agreement.
- 2) The Ombuds will not serve as a representative 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. The Ombuds will not monitor or enforce the terms of any agreement.
- 4) 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.
- 5) 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 HR, or pursuing formal options for resolution.
- 6) Unlike 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 University and visitors. The authority of the Ombuds Office derives from university leadership and this Charter, as manifested by the endorsement of this Charter by the Chancellor.

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 that are 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, shuttle diplomacy, making informal inquiries (with permission of the visitor), facilitating communication, or mediating a dispute. 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 University or its agents.

2) *Initiating Informal Inquiries and Accessing Information Related to Policies and Procedures*

The University values early and informal conflict resolution. In furtherance of this goal, the Ombuds may, on occasion, need to make inquiries or seek assistance in order to gain an understanding of all sides of a dispute. University 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 University.)

The Ombuds shall not have access to the confidential records of a visitor unless such confidentiality is waived in writing by the visitor.

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 officials in the University administration 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 has no authority to 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 University, 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 change management decisions or University policies/procedures. The Ombuds Office is not authorized to make

any statements or commitments that bind the University, financially, contractually, or otherwise.

2) *Not a Recipient of “Notice” of Claims*

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 be a recipient of notice to the University about any alleged misconduct. This includes allegations that may be perceived as violations of laws, regulations, or policies, including sexual harassment or incidents subject to reporting under the Clery Act or Title IX. Although visitors may discuss such issues with the Ombuds, the University has determined that the Ombuds are not a “campus security authority” under the Clery Act because they do not have significant responsibility for student or campus activities. They are not a mandatory reporter under Title IX because they are not an “official” of the University, having no authority to institute any corrective measures on behalf of the University, and because they have been designated as “confidential employees.” The Office shall publicize to all constituents of the Office that it does not have authority to receive notice of claims against the University or its agents and that an Ombuds is not required to report any such matters to the University. If a visitor would like to put the University on notice of claims regarding a specific situation or wishes to obtain information how to notify the University 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) *Recordkeeping*

Because it is a confidential resource, the Ombuds Office does not retain 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 the Staff Ombuds supplied by the provider of Ombuds services, will be maintained in a secure manner and location, and all identifying information will be deleted within 30-days after the case is closed and/or follow-up is complete.

The Ombuds Office 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.

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

The Ombuds shall not act as an advocate for any party in a dispute, represent either the University administration or visitors to the Office, or provide mental health counseling or legal and psychological advice. Important rights may be affected by when formal action is instituted and when the University 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 University supports efforts to manage and resolve conflicts informally to preserve collegial and effective working relationships, 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 administration, faculty, students, or other staff to inquire about an individual's use of the Ombuds Office or any communication that may have taken place there. Furthermore, discouraging or preventing eligible visitors from using the Ombuds Office is inappropriate because it is contrary to the University's intent of providing the office as a resource for early and informal management and resolution of conflicts.

While the University 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 staff shall have the right to consult the Ombuds Office without fear of retaliation or reprisal. Retaliation against any staff 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

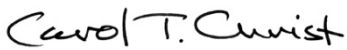
The University agrees, upon a request by Ombuds, to pay reasonable costs to enable Staff Ombuds to obtain independent counsel to provide independent legal advice to Ombuds in connection with the defense of the Ombuds Program in the event that University counsel has a conflict of interest and to assist Ombuds in resisting any attempts by inquirers or third parties to compel Ombuds to disclose confidential communications or documents (e.g., emails, work product of an ombuds, etc.) relating to MWI's service to the University.

VIII. PROCEDURE FOR REVISION OR REVOCATION OF THIS DOCUMENT

This Charter remains in effect unless otherwise revoked by the University, 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 University and the representatives from MWI and shall be appended to this document.

UC Berkeley

MWI

Signed: 

Signed: 

Name: Carol Christ

Name: Chuck Doran

Title: Chancellor

Title: Executive Director

Date: June 21, 2024

Date: June 21, 2024

Duly Authorized Hereunto

Duly Authorized Hereunto