

College of William and Mary
Ombuds Office
Statement of Best Practices

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Note: This document is the result of collaboration and feedback from the following individuals at the College of William and Mary: Tatia Daniels Granger, University Ombuds; Michael Halleran, Provost; John Donaldson, Assistant to the Provost for Legal Affairs; Kiersten Boyce, Coordinator of Legal Affairs; Michael Stump, University Auditor; P. Geoffrey Feiss, Former Provost; and Elizabeth Barnes, Ombuds for Graduate Arts & Sciences (2007-09), . In addition, Ombuds colleagues from other organizations—Nick Diehl, Associate Ombudsman, The Center for Cooperative Resolution, National Institutes of Health; and Kellie Harmon, University Ombuds, University of Kansas—also contributed.

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This document defines and clarifies the highest standards and best practices in the Ombuds profession as they apply to the Ombuds Office within the context of the College of William and Mary. This document is consistent with the International Ombudsman Association (“IOA”) *Code of Ethics and Standards of Practice*. The College of William and Mary supports these practices toward the effectiveness of the Ombuds Office.

I. Code of Ethics and Standards of Practice

The Ombuds Office acts in accordance with the IOA *Code of Ethics and Standards of Practice*.¹ These tenets require that Ombuds Offices function independently within the structure of the organization, be confidential and neutral, and limit the scope of their services to informal means of dispute resolution. The Ombuds Office shall take appropriate steps to make the tenets of best practices of the Ombuds profession available to the University community.

A. Independence

The Ombuds Office shall be free from interference in the legitimate performance of its duties. This independence is achieved primarily through reporting structure, neutrality and organizational recognition. To ensure objectivity, the Ombuds Office shall operate independently of ordinary line and staff structures. An Ombuds will not disclose confidential information about matters discussed in the Ombuds Office with anyone in the organization, including the person to whom the Ombuds Office reports, except as clearly delineated in *Section III. B—Confidentiality*. The Ombuds Office shall report administratively to the Office of the Provost. In all cases, the Ombuds Office shall also have unobstructed access to the President of the University.

B. Informality

The Ombuds Office shall be a resource for informal dispute resolution. The Ombuds Office shall not investigate, arbitrate, adjudicate or in any other way participate in any internal or external formal process or action. The Ombuds Office does not keep records for the University, and shall not create or maintain documents or records for the

¹ Attached as Appendices A and B respectively.

University about individual cases. Notes, if any, taken during the course of working on a case shall be routinely destroyed at regular intervals. Use of the Ombuds Office is strictly voluntary and is not a required step in any grievance process. The College prohibits retaliation against any administrator, faculty, employee, or student for using the services provided by the Ombuds Office.

C. Neutrality

An Ombuds is a designated neutral party, operating independently in the structure of the University. An Ombuds shall not take sides in any conflict, dispute or issue. The Ombuds advocates for fair and equitably administered processes with the aim of facilitating communication and reaching mutually acceptable agreements. An Ombuds is neutral, impartial, and unaligned. An Ombuds should not serve in any additional role, including participation on committees within the University which would compromise the neutrality of the role. The Ombuds Office should not report to nor be affiliated with any compliance function of the university.

D. Confidentiality

The Ombuds Office shall not disclose or be required to disclose any information provided in confidence, unless given express permission to do so by the visitor or unless required by law. An exception to maintaining any such confidentiality would arise if the University Ombuds had a reasonable concern regarding a risk about possible violence or physical harm. The Ombuds Office shall not confirm communicating with any party or parties. An Ombuds shall not participate as a witness with respect to any confidential communication, nor participate in any formal process inside or outside of the University, unless compelled to do so by judicial subpoena or court order. The Ombuds Office considers all communication to be privileged, which means that it will not voluntarily disclose them, but the Commonwealth of Virginia does not recognize this privilege by statute, which means that it may be compelled to do so.

II. Authority and Limits of the Ombuds Office

Specific areas of authority and limitations on the authority of the Ombuds Office include those listed below:

A. Authority of the Ombuds Office

The University Ombuds shall be entitled to inquire about any issue concerning the University that affects any member of the University community, and shall respect the confidentiality of that information. The Provost, acting as the President's designee, has authorized the University Ombuds's access to all records and personnel of the College of William & Mary for the purpose of performing her/his duties. An Ombuds has the authority to discuss and refer to a range of options available to the visitor, including both informal and formal procedures.

An Ombuds may, without having received a specific complaint from a member of the University community, inquire about matters which she/he believes to warrant attention. The Ombuds Office may decline to inquire into a matter or may withdraw its services from a visitor if an Ombuds believes involvement is inappropriate for any reason, including, but not limited to, matters not brought in good faith, a conflict of interest, or matters that appear to be a misuse of the Ombuds function.

The Ombuds Office may have access to legal or other professional advice in order to fulfill its required functions.

B. Limitations on Authority of the Ombuds Office

1. Receiving Notice for the University

Communication to the Ombuds Office shall not constitute notice 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 criminal incidents subject to reporting under the Clery Act². Since the Ombuds Office is informal, off-the-record, confidential, and independent, an Ombuds is not required to report allegations to the University. If a visitor would like to put the University on notice regarding a specific situation, or wishes for information to be

² **The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act** or **Clery Act** is a federal statute that requires all colleges and universities that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses. Compliance is monitored by the United States Department of Education.

provided to the University, an Ombuds will provide the visitor with information and refer the visitor to an official who represents the University so that the visitor may do so directly. The Ombuds Office shall publicize its non-notice role to the university community.

2. Formal Processes and Investigations

The Ombuds Office shall not conduct formal investigations of any kind but may pursue fact-finding on behalf of visitors. An Ombuds shall also 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, subject to compliance with a judicial subpoena or court order. Because confidentiality and informality are critically important to the Ombuds Office, all communications with an Ombuds are made with the expectation that communication is confidential, off-the-record, and that no one from the Ombuds Office will be called to testify as a witness in any formal or legal proceeding to reveal confidential communications, unless compelled by judicial subpoena or court order. The Ombuds Office provides an alternate channel for dispute resolution, and all use of ombuds services shall be voluntary.

3. Record Keeping and Electronic Communication

The Ombuds Office 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 shall be routinely destroyed at regular intervals. An Ombuds may maintain non-confidential statistical data to assist in reporting trends and providing feedback to the University.

Because of concerns with confidentiality, the University Ombuds Office discourages the use of e-mail in communicating with its Office. If anyone wishes to communicate with an Ombuds via e-mail, confidentiality cannot be guaranteed. The University Ombuds Office will delete e-mail correspondence on a regular basis and publicize the limitations of e-mail toward supporting the confidentiality for Ombuds work.

4. Employee Associations and Unions

Specific sections of the *Code of Virginia* prohibit the University, as an agency of the Commonwealth, from “recognize[ing] any labor union or employee association as a bargaining agent of any public officers or employees.” In addition, the Ombuds has no authority to bargain or negotiate with the University on behalf of any employee. This means that no interaction between the Ombuds and any employee of the College constitutes “negotiating” or “bargaining.” Instead, all communications with the Ombuds are for the sole purpose of discussing and working toward resolution of workplace concerns. An employee’s affiliation with any employee association or union has no impact or relevance for the Ombuds.

5. Advocacy for Parties

The Ombuds shall not act as an advocate for any party in a dispute, nor shall it represent management or visitors to the Ombuds Office.

6. Adjudication of Issues

The Ombuds Office shall not have authority to adjudicate, impose remedies or sanctions, or 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. In addition to the conflict of interest prohibitions set forth in the State and Local Government Conflicts of Interest Act, a conflict of interest occurs when an Ombuds’ private or professional 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, an Ombuds should take all steps necessary to disclose and/or avoid the conflict.

III. Retaliation for Using the Ombuds Office

All members of the constituencies served by the Ombuds Office shall have the right to consult with an Ombuds without reprisal. The Ombuds Office shall work with the College of William & Mary to create policies to protect visitors from reprisals.

IV. Office Structure

Because of the independent nature of the Ombuds Office, and in congruence with IOA *Standards of Practice*, 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.”**

At the College of William and Mary, the Ombuds Office shall report to the Provost. To fulfill its function, the Ombuds Office shall have sufficient resources available to meet operating needs, including continuing professional development.

The Ombuds Office, in consultation with the Provost, shall determine appropriate mechanisms for accountability, including regular evaluation of the Ombuds Office (see below, “V. Evaluation of the Ombuds Office and Staff”).

V. Evaluation of the Ombuds Office and Staff

The Provost (or other appropriate designee of the Provost) is responsible for conducting an annual evaluation of the Ombuds Office and reporting its findings to the President. The evaluation will be partly based on a user survey instrument that is located online and whose results are compiled confidentially through the Office of Strategic Planning & Assessment. A paper version of the survey will also be available to visitors and may be returned anonymously to the appropriate contact. Survey data will be summarized and used in the annual evaluation of the University Ombuds.

VI. Procedures for Revision and Amendment of this Document

This document reflects current best practices in the ombuds profession. It may be revised as needed by the College of William & Mary Ombuds Office, in consultation with the Office of the Provost and others as deemed necessary.

Document Effective October 2009



INTERNATIONAL OMBUDSMAN ASSOCIATION

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.



INTERNATIONAL OMBUDSMAN ASSOCIATION

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 disclose confidential communications unless given permission to do so in the course of informal discussions with the Ombudsman, and even then at the sole discretion of the Ombudsman; 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; the Ombudsman 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 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, even if given permission or requested to do so.
- 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.