



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

November 25, 2009

INSPECTOR GENERAL INSTRUCTION 5100.1

OFFICE OF THE OMBUDS

FOREWORD

This Instruction establishes the Office of the Ombuds. The Ombuds is an independent, informal, and impartial resource for confidential dispute resolution of workplace related concerns. The Office of the Ombuds was established to foster an atmosphere of trust and positive communication. It is a resource for alternative dispute resolution, which is available to civilian employees and active duty service members within the Office of Inspector General.

The office of primary responsibility for this Instruction is the Office of the Ombuds. This Instruction is effective immediately.

FOR THE INSPECTOR GENERAL:

A handwritten signature in black ink, appearing to read "SD Wilson".

Stephen D. Wilson
Assistant Inspector General
for Administration and Management

Appendix

OFFICE OF THE OMBUDS

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CHAPTER 1 GENERAL

A. Purpose. This Instruction establishes the Department of Defense Office of Inspector General (DoD OIG), Office of the Ombuds, and employee alternative dispute resolution (ADR) policy.

B. Applicability. This Instruction applies to the Office of Inspector General and the Department of Defense Inspector General Components, hereafter referred to collectively as the OIG Components. This Instruction does not apply to contractors.

C. References. See Appendix.

D. Scope

1. The Ombuds serves as Director, Office of the Ombuds, and functions as an independent, impartial, and confidential resource for employees seeking early resolution of workplace related concerns.

2. Ombuds services authorized under this instruction are voluntary procedures which supplement rather than limit other grievance or complaint processes.

3. The Ombuds does not accept communications from employees as notice to the agency. The Ombuds neither acts as an agent for, nor accepts notice on behalf of, the DoD or OIG and shall not serve in a position or role that is designated by the agency as a place to receive notice on behalf of the agency. However, the Ombuds may refer employees to the appropriate office or Component where formal notice can be made.

E. Policy. It is the OIG policy to:

1. Provide a professional working environment that fosters commitment, excellence, and teamwork;

2. Encourage recommendations and suggestions that may improve the general administration and operation of the OIG;

3. Promote the amicable and conciliatory resolution of internal conflicts, disputes, and workplace concerns through the Office of the Ombuds;

4. Provide the Ombuds as the principal advisor and designated neutral for alternative dispute resolution and conflict management within the OIG in accordance with (IAW) references (a) through (f); and

5. Not tolerate any form of retaliation against an employee for contacting the Office of the Ombuds for assistance.

F. Responsibilities

1. The **Inspector General** shall:

- a. Appoint a person of recognized knowledge, judgment, objectivity, and integrity to serve as Ombuds.
- b. Provide relevant education and training to the Ombuds and sufficient resources for the Ombuds to fulfill the responsibilities enumerated herein.
- c. Support the independence of the Office of the Ombuds and its operations.
- d. Promote the neutrality and impartiality of the Ombuds.
- e. Where appropriate, protect the confidentiality of the Ombuds' communications with employees.
- f. Make efforts to protect the confidentiality provided the ombuds when acting as a neutral in a dispute resolution proceeding. (See reference (a), Alternate Dispute Resolution Act, 5 U.S.C. § 574, Confidentiality)
- g. Encourage full employee and supervisory cooperation with the Office of the Ombuds.

2. The **Ombuds** shall:

- a. Receive complaints, concerns, and questions about alleged acts, omissions, improprieties, and systemic problems within the OIG.
- b. Address employee complaints, concerns, or questions in a fair and timely manner.
- c. Gather relevant information from the Components as needed.
- d. Address employee complaints, concerns, and questions at the most appropriate supervisory level.
- e. Refer allegations of discrimination to the Director, Equal Employment Opportunity (EEO) for processing IAW reference (e).
- f. Refer allegations of misconduct to the Office of Professional Responsibility IAW reference (g).
- g. Use a variety of methods to pursue resolution of employee complainants and concerns, such as, but not limited to:

- (1) Conducting informal inquiries.
 - (2) Developing, evaluating, and discussing options to resolve problems, address concerns, and facilitate communication amongst employees.
 - (3) Performing climate assessments, facilitating, negotiation, mediation, shuttle diplomacy, and conciliatory discussions.
 - (4) Making recommendations for the resolution of employee or systemic problems.
 - (5) Identifying complaint patterns and trends.
- h. Educate and train employees in proactive conflict resolution techniques and to amicably resolve issues.
 - i. Identify complaint patterns and trends.
 - j. Issue and publicize mid-year and annual reports to the Inspector General.
 - k. Issue the OIG ADR Annual Report to the Office of General Counsel.
 - l. Observe the limitations of the Ombuds authority, namely the Ombuds does not:
 - (1) Make, change or set aside a law, policy, or administrative decision.
 - (2) Make binding decisions or determine employee rights.
 - (3) Compel the Components or employees to implement his/her recommendations.
 - (4) Conduct investigations that substitute for administrative or judicial proceedings.
 - (5) Accept jurisdiction over an issue that is currently pending in a legal forum unless all parties and the presiding officer in that action explicitly consent.
 - (6) Act on matters outside the scope of the Ombuds' responsibilities.
 - m. Serve as the OIG representative on the DoD ADR Coordinating Committee.
3. All **Component Heads** shall:
- a. Cooperate and share information with the Ombuds IAW law and security requirements.
 - b. Encourage a positive dispute resolution climate through appropriate conflict management practices consistent with DoD and OIG policies.

- c. Make Ombuds policies, procedures, and related materials available to employees upon request of the Ombuds.
- d. Promote voluntary use of the Office of the Ombuds.
- e. Encourage employees to address conflicts early and at the lowest possible level.
- f. Not retaliate against employees for using the services of the Ombuds.

CHAPTER 2
OMBUDS STANDARDS OF PRACTICE

A. Independence. The Ombuds shall:

1. Be independent from other Components and report to the Inspector General to ensure his/her independence.
2. Hold no other position within the OIG, which might compromise independence.
3. Exercise discretion to accept or decline to act on employee complaints, concerns or questions.
4. Address issues on his/her own initiative or issues identified through means other than employee notification.
5. Have access to OIG records required for the legitimate performance of his/her duties, except classified records and those records protected by law or regulation.

B. Impartiality. The Ombuds:

1. Is neutral, impartial, and unaligned.
2. Strives for impartiality, fairness and objectivity in the treatment of employees and the consideration of issues. Advocates for fair, equitably administered processes and does not advocate on behalf of any employee within the OIG. Neutrality does not preclude the Ombuds from advocating for changes deemed necessary to improve working environments or conditions.
3. Is a designated agency neutral reporting to the Inspector General, operating independent of the organizational structure of the OIG and is authorized by the Inspector General to address issues at all levels of the OIG community.
4. Is not aligned or affiliated with compliance or oversight functions within the OIG.
5. Serves in no additional role within the OIG that would compromise neutrality.
6. Shall have no official, financial, or personal conflict of interest with respect to any issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the Ombuds may serve.
7. Has a responsibility to consider the legitimate concerns and interests of all employees affected by a matter under consideration or review.

C. Confidentiality. The Ombuds:

1. Holds all communications with those seeking assistance in strict confidence and takes all reasonable steps to safeguard both anonymity and confidentiality.
2. Shall not disclose the identity of any employee contacting the Office of the Ombuds, nor does the Ombuds reveal information provided in confidence that could lead to the identification of any employee contacting the Office of the Ombuds, without that employee's explicit permission.
3. Takes specific action related to an employee's issue only with the employee's explicit permission and only to the extent permitted, unless such action can be taken in a way that safeguards the identity of the employee contacting the Ombuds.
4. The confidentiality of communications between the Ombuds and others made while the Ombuds is serving as a neutral in a dispute resolution proceeding is protected by the Administrative Dispute Resolution Act of 1996. The only exceptions to confidentiality are where there appears to be imminent risk of serious harm and there is a full admission or direct evidence, rather than a general allegation, of fraud, waste, abuse, or illegality which shall be reported to the appropriate authority.
5. When acting as a neutral in a dispute resolution proceeding, shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to him/her, unless:
 - a. All parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing;
 - b. The dispute resolution communication has already been made public;
 - c. The dispute resolution communication is required by statute to be made public, but a neutral should make such communication public only if no other person is reasonably available to disclose the communication; or
 - d. A court determines that such testimony or disclosure is necessary to: (1) prevent a manifest injustice; (2) help establish a violation of law; or (3) prevent harm to the public health or safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.
6. Does not testify in any formal process within the OIG and resists testifying in any formal process outside of the agency, even if given permission or requested to do so.
7. Pursues systemic issues in a way that safeguards the identity of employees.

8. Keeps no records containing identifying information on behalf of the OIG.

9. 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.

10. Prepares any data and/or reports in a manner that protects anonymity.

D. Informality and Other Standards. The Ombuds:

1. 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 the Ombuds discretion, engaging in informal third-party intervention. When possible, the Ombuds helps employees develop new and proactive ways to solve problems themselves.

2. Pursues resolution of concerns as an informal and off-the-record resource and looks into procedural irregularities and/or broader systemic problems when appropriate.

3. Does not make binding decisions, mandate policies, or formally adjudicate issues.

4. Supplements, but does not replace, any formal avenues of redress. Use of the Ombuds office is voluntary, and is not a required step in any grievance, complaint, or investigatory process. Allegations involving discrimination shall be referred to the Director, EEO.

5. Does not participate in or conduct any formal investigative or adjudicative procedures. Formal investigations shall be conducted by the appropriate Component. When a formal investigation is requested, the Ombuds refers employees to the appropriate offices or individual.

6. 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.

7. Acts in accordance with the code of ethics and standards of practice of the International Ombudsman Association.

8. Uses the guidance provided by the American Bar Association, the Coalition of Federal Ombudsman, and the Interagency Alternative Dispute Resolution Working Group.

9. The Ombuds keeps professionally current by pursuing continuing education and provides opportunities for staff to pursue professional training.

10. Endeavors to be worthy of the trust placed in the Office of the Ombuds.

**APPENDIX
REFERENCES**

- a. Part I, Chapter 5, Section 571-584 of title 5, United States Code
- b. Executive Order 12988, *Civil Justice Reform*, February 5, 1996
- c. Presidential Memorandum, *Designation of Interagency Committees to Facilitate and Encourage Agency use of Alternative Means of Dispute Resolution and Negotiated Rulemaking*, May 1, 1998
- d. DoD Directive 5145.5, *Alternative Dispute Resolution*, April 22, 1996
- e. IGDINST 1020.1, *Processing Complaints of Discrimination*, May 21, 2009.
- f. Title 5 Code of Federal Regulations § 9901.413(d), *National Security Personnel System*, September 26, 2008
- g. IGDPM 2009-1, *Referral of Misconduct Allegations to the Office of Professional Responsibility*, February 2, 2009.