

WIPO



WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

General distribution

OFFICE INSTRUCTION

No. 32/2009

THE OFFICE OF THE OMBUDSMAN

1. This Office Instruction amends with immediate effect Office Instruction No. 18/2006 of March 29, 2006, entitled, “The Office of the Ombudsman”, which established the terms of reference of the Office of the Ombudsman of the International Bureau of WIPO. The amendments mainly consist of references to new Office Instructions and terminology linked to WIPO’s new Performance Management and Development System (PMSDS). As compared to Office Instruction No. 18/2006, small changes have been made to paragraphs 1, 2, 13 and 21. All other paragraphs remain the same. None of these changes affect the substance of the terms of reference of the Office of the Ombudsman as established pursuant to Office Instruction No. 18/2006.

2. The Office of the Ombudsman was established in 2006 to make available an impartial, independent and confidential service to staff members and temporary employees to address employment-related conflicts and grievances of individuals. The aim was, and still is, to provide assistance in resolving these problems in an informal manner and thereby to contribute to an improvement in the overall working environment of the Organization, promoting better relations between staff members/temporary employees and management, and greater organizational and operational efficiency.

Selection, Designation and Tenure of the Ombudsman

3. The Director General, in consultation with the Staff Council, will appoint a person to act as the Ombudsman for an agreed duration. In case of incapacity or resignation, a replacement will be appointed by the Director General in consultation with the Staff Council, for the remaining term of the mandate. The duration of his or her appointment may be extended by the Director General after consultation with the Staff Council.

Jurisdiction

4. The Ombudsman is based at WIPO headquarters in Geneva. Current or former members of staff and temporary employees may use the services of the Ombudsman.

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Service provided to staff members and temporary employees

5. The Ombudsman shall advise staff members and temporary employees on the resolution of conflicts or grievances. He or she shall act as a neutral interlocutor, who advises management and staff or temporary employees on amicable solutions to difficulties faced by individual staff members or temporary employees in the workplace. In all of his or her actions, the Ombudsman shall act in an independent and impartial manner and shall in all instances uphold confidentiality in his or her dealings. All communications with the Ombudsman are considered privileged.

6. The Ombudsman shall have authority to consider conflicts or grievances of a professional nature brought to his or her attention by a staff member or temporary employee as well as general matters concerning staff members or temporary employee relations, including problems between colleagues.

7. The Ombudsman shall assist all parties equally in reaching a fair solution through fact-finding, mediation, discussions and through the involvement of all parties and third parties where appropriate; bearing in mind that the Ombudsman will not have any decision-making authority but may advise, make suggestions and recommendations, as appropriate, on actions needed to settle the conflict or grievance.

8. An initial discussion with the staff member or temporary employee may take place either in person or by prearranged telephone appointment. Staff members or temporary employees may choose thereafter, or after further meetings or exchanges, to pursue resolution of the issue on their own while maintaining contact with the Ombudsman. In such an event, the Ombudsman does not consult with a third party.

9. In other cases, it may be agreed with the staff member or temporary employee that the Ombudsman will assist in the resolution of the conflict through contact with a third party. This may require several consultations with the staff member or temporary employee and the office or colleague(s) concerned, to clarify and analyze a particular problem and develop a mutually satisfactory process for resolution. He or she will examine with the parties the root causes of the dispute, facilitate negotiations and pursue possible options to resolve such disputes.

10. The Ombudsman shall also offer advice to staff members or temporary employees who believe they are aggrieved or that they have not been justly treated with regard to benefits, conditions of employment, or as a consequence of less favorable managerial practices. He or she will advise staff members or temporary employees of their options, and assist staff members or temporary employees in interpreting the Organization's policies and procedures.

11. The Ombudsman's review of a problem and contacts with persons concerned may take place at any stage in the process through which that problem is being addressed.

12. With the consent of the parties the Ombudsman may make recommendations to the Director General on specific employment cases. When making such recommendations, the Ombudsman shall have the responsibility to propose actions or policies that will be fair to all parties.

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Declining a Grievance

13. The Ombudsman may, at his or her discretion, decline to consider conflicts that can be remedied only by actions affecting staff members and temporary employees at large or all the members of a category of staff members or temporary employees, or that the Ombudsman considers not to have been brought to the Ombudsman's attention in a timely manner, or that appear to be frivolous, or for any other reason considered appropriate by the Ombudsman. The Ombudsman may, if appropriate, recommend that the staff member or temporary employee submit his or her case to the relevant WIPO body, such as the WIPO Joint Grievance Panel, the WIPO Appeal Board or the WIPO Rebuttal Panel.

14. In all such cases, he or she shall report to the Director General, orally or in writing, as he or she feels appropriate, the reasons for the decision to decline a grievance, while not identifying the individuals concerned without the consent of the parties and persons who have provided information to the Ombudsman.

Reprisals

15. No person who brings a matter to the attention of the Ombudsman or provides information to the Ombudsman shall be subject to reprisals by the Organization or by any individual because of such action.

Confidentiality and Impartiality

16. Notwithstanding any other provision of this Office Instruction, the Office of the Ombudsman will keep all dealings with persons who seek its services strictly confidential, except to the extent that the person seeking assistance consents to disclosure in the interest of reaching a resolution. The only exceptions, at the sole discretion of the Ombudsman, are when there is imminent threat of serious harm.

17. The Office of the Ombudsman shall take the necessary steps to protect any confidential records and files from inspection by others, including management.

18. The Ombudsman is an advocate for fairness, does not take the side of any party in a conflict but reviews and assesses each situation objectively and treats all parties equally.

Independence of the Ombudsman

19. The Office of the Ombudsman is functionally independent of any official, department, office, bureau or other organizational entity of or outside the International Bureau. The Office of the Ombudsman is, therefore, also independent of and separate from the Human Resources Management Department and the Office of the Legal Counsel. The Ombudsman will report directly to the Director General. In the performance of his or her duties, the Ombudsman shall be free from interference, control, limitation or consequences arising from the execution of his or her duties.

Limitations on the Ombudsman's Authority

20. The Ombudsman shall not:

- (i) make, change or set aside a policy or administrative decision;

- (ii) make binding decisions or determine rights;
- (iii) compel any individual to implement the Ombudsman's recommendations;
- (iv) conduct an investigation that substitutes for judicial proceedings or administrative proceedings under Chapters X ("Disciplinary Measures") or XI ("Appeals") of the WIPO Staff Regulations and Staff Rules;
- (v) represent the staff member or temporary employee in any formal process.

Formal Process

21. Staff members and temporary employees pursuing an informal resolution to grievances are not precluded from recourse in parallel to formal and other processes, where applicable, such as under Office Instruction No. 31/2009 entitled "The WIPO Joint Grievance Panel", Office Instruction No. 19/2009 entitled "Launch of the new Performance Management and Staff Development System (PMSDS) in WIPO" or Office Instruction No. 22/2009 entitled "Procedures for Rebuttal of Performance Evaluations for Temporary Employees", or any subsequent Office Instruction governing formal grievance procedures.

22. Recourse to the Ombudsman does not prejudice the right of the staff member, under the provisions of Chapter XI of the WIPO Staff Regulations and Staff Rules, to recourse to the WIPO Appeal Board, or to the Administrative Tribunal at the International Labour Organization (ILOAT), in accordance with the Statute and Rules of the ILOAT. Recourse to the Ombudsman does not constitute grounds for delaying the administrative action that is the subject of the recourse.

23. The submission of any matter to the Ombudsman does not change the time limits for the implementation of an administrative action or the submission of any appeal under the WIPO Staff Regulations and Staff Rules and the Statute and Rules of the ILOAT.

24. The Ombudsman may not represent the appellant in any formal grievance, complaint or appeal procedure, nor may he or she appear as a witness in any such formal process or in any investigation. However, nothing prevents the staff members who have filed an appeal under WIPO Staff Regulation 11.1 or a complaint before the ILO Administrative Tribunal from continuing with the process with the Ombudsman with the possibility of reaching an informal resolution prior to the formal outcome.

Access to Services and Records

25. The Ombudsman shall have direct access to any staff member or temporary employee and to the Director General on any matter pertaining to the exercise of his or her duties. All staff members and temporary employees shall cooperate with the Ombudsman and shall make available all information pertinent to matters he or she is reviewing. The Ombudsman shall liaise closely and consult with, as required, the administrative units (e.g., Human Resources Management Department, Administrative Support Services, Office of the Legal Counsel, Staff Council and supervisors concerned).

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26. Likewise, the Ombudsman shall have access to all relevant records, files and documentation relating to the exercise of his or her duties. The exceptions to this are medical records, which are not available without the express request or permission of the person concerned, documents subject to solicitor-client privilege or records of an ongoing investigation until the completion of all formal proceedings. In the event of a dispute regarding access to records, the matter will be referred to the Director General.

27. The Ombudsman, prior to the expiry of his or her tenure, shall contact those staff members and temporary employees who have provided information or records to the Ombudsman, to receive their respective instructions on what they wish done with such information or records. In the absence of instructions, the Ombudsman shall return the information or records to the staff members or temporary employees concerned; or, if they have left the Organization, the Ombudsman shall destroy the information or records.

Reports

28. All information and records compiled by the Ombudsman shall be for the use of the Ombudsman and for no other purpose than the functions of the Office of the Ombudsman. Any report of the Ombudsman shall be prepared in a manner that will preserve the right to confidentiality of the persons who have brought matters to the attention of, or provided information to, the Ombudsman. Details of specific cases may be disclosed only with the concurrence of such persons.

29. The Ombudsman may prepare periodical reports, either orally or in writing, on organizational trends and activities. Such reports shall be communicated to the Director General.

30. The Ombudsman shall issue an annual report to the Director General specifying the number and general nature of all problems brought to his or her attention. He or she will describe in general terms the extent to which the problems were or were not resolved and, in the latter case, his or her assessment of the reasons for the lack of resolution. If, in the view of the Ombudsman, certain cases have revealed broad issues of human resources management or administration, the report may discuss the issues involved.

Feedback, Policy Analysis and Recommendations

31. The Ombudsman may provide an early warning of new areas of organizational concern, upward feedback, critical analysis of aspects of employment and working conditions and may recommend effective ways in which to eliminate or reduce recurring concerns. Based on anonymous aggregate data, the Ombudsman may submit reports which identify patterns or problem areas in the Organization's policies and practices, and may recommend:

(i) improvements on those policies and practices which may be conducive to more harmonious working conditions;

(ii) ways and means to improve structural and managerial problems identified as impediments to smoother relations between management and staff members and temporary employees.

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32. The Ombudsman may monitor the continuous efforts for increased communication within the Organization and the training of its staff members and temporary employees in this regard. The Ombudsman may make proposals to HRMD on issues concerning the prevention and resolution of disputes and conflicts, skills and theory of negotiation, civility and related topics.

33. The Ombudsman shall also liaise with counterparts in other international organizations in order to compare trends and patterns, and to develop jointly, such as under an inter-agency approach, new approaches and initiatives on issues related to mediation, conflict prevention and resolution of relevance to the UN systemwide.

[signed by Francis Gurry
Director General]

June 23, 2009