

HOME > Attorneys

Ombudsperson Program

The Northern District of California (NDCA) now offers an Ombudsperson Program through which members of the NDCA Bar may confidentially communicate feedback and concerns regarding the Court or individual judges. Retired Judges Fern M. Smith and James Kleinberg have volunteered to serve as the Court's Ombudspersons.

Purpose

The Ombudsperson Program provides an informal and confidential process for addressing concerns members of the NDCA Bar may have regarding the judges of the Court. The Ombudsperson Program does not substitute for any other established forum for submitting formal or informal complaints. Attorneys are still welcome to present their concerns to their own legal counsel, to the judge involved, to the Chief Judge, to the Judicial Council of the Ninth Circuit, or to any other person or entity.

The Ombudsperson Program is best suited to address those issues that can be handled informally and are not likely to produce a formal misconduct complaint. Examples of such issues are temperament, aging and disability, and delay. The Ombudsperson Program does not provide a mechanism for challenging or addressing concerns with a ruling in a case. The Ombudsperson does not supplant the appellate process, and the behavior complained about must be unrelated to the substance of rulings.

Procedure

Attorneys may raise their concerns by writing, emailing or telephoning either Ombudsperson. Letters and emails should contain the name of the judicial officer who is the subject of the concern and a description of the feedback or concern. In general, letters and emails to the Ombudsperson should be signed and include contact information for the attorney submitting the concern. This will allow the Ombudsperson to follow up with the complaining attorney for any necessary information and, if appropriate, to notify him or her that the issue has been addressed. The Ombudsperson will accept anonymous submissions. However, anonymous complaints are necessarily afforded less credibility than signed complaints.

All information provided to the Ombudsperson shall be maintained in confidence between the Ombudsperson and the submitting attorney. Such information will not be communicated to any other person without the consent of the submitting attorney.

After considering the submission, the Ombudsperson will decide whether he or she believes that any action is warranted. This decision is not a legal opinion or determination as to the merits of the attorney's concern and is within the sole discretion of the Ombudsperson. The Ombudsperson will communicate his or her decision to the submitting attorney and no action will be taken by the Ombudsperson without the submitting attorney's consent. The Ombudsperson is not obliged to take action on any complaint.

Possible actions by the Ombudsperson include:

1. providing counseling and/or mentoring to the submitting attorney regarding how to address the concerns without contacting the Chief Judge or the involved judge;
2. discussing the matter with the Chief Judge, with the consent of the submitting attorney, but without the Chief Judge discussing the matter with the involved judge;
3. discussing the matter with the Chief Judge with the consent of the submitting attorney and the understanding that the Chief Judge may discuss the matter with the involved judge; or
4. discussing the matter with the involved judge with the consent of the submitting attorney.



The San Francisco Daily Journal recently covered the Court's ombudsperson program.

Actions (2), (3) and (4) may be taken with or without disclosure of the identity of the submitting attorney or other identifying details. If the complaint at issue concerns the Chief Judge, the chief judge's role will be filled by the district judge in active service who is next in precedence to become chief judge. See 28 U.S.C. § 136(e).

Contact Information

By mail or email:

Hon. Fern Smith (ret.) – JAMS
Two Embarcadero Center, Suite 1500
San Francisco, CA 94111
fsmith@jamsadr.com

Hon. James Kleinberg (ret.) – JAMS
160 West Santa Clara St., Suite 1600
San Jose, CA 95113
jkleinberg@jamsadr.com

By telephone:

Judge Smith: 415-982-5267
Judge Kleinberg: 408-288-2240

Reporting & Program Review

Each Ombudsperson shall prepare a report in September of each year. The report shall include the number of communications received by the Ombudsperson and, if appropriate, a general description of each of the complaints and the Ombudsperson's response thereto. The report shall not include any personal or identifying information pertaining to any attorney or judge.

The Ombudsperson Program shall be reviewed no later than two years after implementation to determine whether it should be continued, changed or abandoned.

Note: The Ombudsperson Program is reserved solely for members of the NDCA Bar. All other individuals, including litigants, are directed to follow the procedures outlined on the Judicial Misconduct or Disability Section of the Court's website, cand.uscourts.gov/misconduct, to submit a formal complaint.