

# **Office of the Public Counsel Policies and Procedures**

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# Office of the Public Counsel

## Policies and Procedures

### CHAPTER 1 MISSION AND DEFINITIONS

#### I. Mission Statement

The Ombudsman's Office is created pursuant to the Public Counsel Act of 1969. (See **Neb. Rev. Stat.** §§81-8,240 through 81-8,254.) The mission of the Ombudsman's Office is: To promote accountability in public administration and to provide citizens with an informal means for the investigation and resolution of their complaints against administrative agencies of Nebraska state government (and other entities as provided by law). This mission entails, but is not limited to, the following propositions:

- A. The Ombudsman's Office is a public accountability and problem-solving agency. Its fundamental purposes are to promote accountability by state agencies and to investigate, address and resolve, through informal means, citizens' complaints relating to the administrative acts of state agencies and other entities within its jurisdiction.
- B. The "administrative acts" that may be addressed by the Ombudsman's Office include any action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an agency of state government.
- C. In addressing citizen complaints, the emphasis is always on the need for informality in resolving the disputes between citizens and agencies. Because of this emphasis on informality, some of the work of the Ombudsman's Office takes on the appearance of being in the nature of mediation or conciliation. However, the Ombudsman's Office is interested in more than simply resolving disputes and must, particularly in its public accountability role, carry out serious fact-finding. In order to perform this fact-finding, the Ombudsman's Office has been given very real investigative powers, including the subpoena power.
- D. The approach to each citizen's complaint is tailored to its particular facts, but the Ombudsman's Office always addresses complaints impartially, and does not approach cases from an initial perspective of acting as an advocate for the complainant. In fact, many complaints are found to be unjustified by the Ombudsman's Office precisely because the results of an objective investigation show that the complaint is not sustained by the facts. On the other hand, once it has been determined from an investigation that a complaint is justified, then it is the duty of the Ombudsman's Office to approach the relevant administrative agency with recommendations for possible corrective action. In pursuing these recommendations, the

Ombudsman's Office takes on the role of an advocate, not for the complainant, but for the corrective action and, in a very real sense, for the general improvement of public administration.

- E. Because of its interest in improving public administration, the Ombudsman's Office is not necessarily satisfied with the outcome of a case merely because the complainant may be satisfied. The Ombudsman's Office also has to consider the broader implications of a case for the administrative system and, where appropriate, make recommendations for changes that will strengthen agency policies and procedures. By performing this function, and by publishing occasional reports of its findings and recommendations, the Ombudsman's Office also helps to promote public accountability of the agencies of state government and performs a legislative oversight function.

## II. Definitions

As used in these Policies and Procedures:

- A. **Administrative agency** shall mean any department, board, commission, or other governmental unit, any official, or any employee of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska, or any corporation, partnership, business, firm, governmental entity, or person who is providing health and human services to individuals under contract with the State of Nebraska and who is subject to the jurisdiction of the Ombudsman's Office as required by section 73-401, any regional behavioral health authority, any community-based behavioral health services provider that contracts with a regional behavioral health authority, and any county or municipal correctional or jail facility and employee thereof acting or purporting to act by reason of connection with the county or municipal correctional or jail facility; but shall not include (a) any court, (b) any member or employee of the Legislature or the Legislative Council, (c) the Governor or his personal staff, (d) any political subdivision or entity thereof, (e) any instrumentality formed pursuant to an interstate compact and answerable to more than one state, or (f) any entity of the federal government.
- B. **Administrative act** shall mean and include every action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an administrative agency.
- C. **Anonymous complaint** shall mean any complaint where the identity of the complainant is unknown to the staff of the Ombudsman's Office.
- D. **Case management** shall mean the routine work of an Ombudsman's Office case manager who has been assigned to manage an Ombudsman's Office complaint/inquiry/contact, including all case analysis and planning, all related communication with the complainant and the administrative agency involved,

all investigative actions and research related to the case, the proper management of information related to the case, and all efforts by the Ombudsman's Office directed at resolving the complaint/inquiry/contact.

- E. Case manager** shall mean any employee of the Ombudsman's Office who is assigned to manage/handle any complaints, inquiries, and contacts received by the Ombudsman's Office.
- F. Complainant** shall mean any person who submits a complaint, inquiry, or contact to the Ombudsman's Office, and who is the real party in interest in the subject matter of the complaint, inquiry, or contact.
- G. Custodian** shall mean the person directly responsible for maintaining and managing any records. The Public Counsel is the custodian of all records of the Ombudsman's Office.
- H. Decline a case** shall mean a decision not to take action on a case or complaint where the subject matter is within the jurisdiction of the Ombudsman's Office, but where a determination has been made not to carry out an investigation of the case or complaint pursuant to the Ombudsman's authority under the provisions of **Neb. Rev. Stat. §81-8,247(1)** and/or (3) through (7).
- I. Employee** shall mean any employee of any administrative agency.
- J. Facilitator** shall mean any individual who is not the complainant, or the complainant's legal counsel, but who purports to speak as an advocate, enabler, or mediator for the complainant. (As used in this definition, an attorney-in-fact does not qualify as a complainant's legal counsel.)
- K. Jurisdiction of the Ombudsman's Office** shall mean the official scope of the authority of the Ombudsman's Office to investigate and address complaints and issues, as that scope is defined by **Neb. Rev. Stat. §81-8,240(1)**, and as that scope is modified by **Neb. Rev. Stat. §73-401**.
- L. Office** shall mean the Public Counsel of the State of Nebraska.
- M. Ombudsman** shall mean the Public Counsel of the State of Nebraska as created by, authorized, and empowered pursuant to the Public Counsel Act of 1969, **Neb. Rev. Stat. §§81-8,240 through 81-8,254**.
- N. Person** shall mean and include any individual, aggregation of individuals, partnership, corporation, or unincorporated association.
- O. Provisional confidentiality** shall mean a promise made by a case manager to treat certain information obtained from a complainant or witness as confidential subject to limitations on that promise of confidentiality, as specified by the case manager in direct communication with that complainant or witness.

- P. Real party in interest** shall mean the person or persons whose legal rights or personal interests are specifically and directly affected by an administrative act.
- Q. Records** mean all records and documents, regardless of physical form, of or belonging to any person or administrative agency, including all writings, memoranda, drawings, books, indices, directories, graphs, maps, charts, plats, photographs, microfilms, audio and/or video recordings, and any other data or information stored or preserved in any medium whatsoever. Data which is a record in its original form shall remain a record when maintained in or transferred to digital/computer files.
- R. Whistleblower** shall mean any person employed by an administrative agency who makes a disclosure to the Ombudsman, the Ombudsman's staff, or any elected State official of information or allegations which the person reasonably believes to be evidence of wrongdoing in an administrative agency. [See **Neb. Rev. Stat.** §81-2705]
- S. Wrongdoing** shall mean any action by an administrative agency or employee which: (1) is a violation of any law; (2) results in gross mismanagement or gross waste of funds; or (3) creates a substantial and specific danger to public health or safety. [See **Neb. Rev. Stat.** §81-2703(5)]

**CHAPTER 2**  
**MANAGEMENT OF**  
**COMPLAINTS AND INQUIRIES**

**I. Receipt of Complaints, Inquiries, and Contacts**

Ease of accessibility of an ombudsman's office's services is an essential element of any ombudsman program, and it is the policy of the Nebraska Ombudsman's Office that any person may contact the Ombudsman's Office concerning any administrative act of any administrative agency. The Ombudsman's Office will accept complaints, inquiries, and contacts whether via mail, email, office visit, or telephone contact, subject however to the following limitations:

- A.** Generally, complaints from inmates in correctional facilities and jails must be submitted in writing via a letter. Inmate complaints involving emergency or time-sensitive matters will be accepted via telephone call or email at the discretion of the Ombudsman or his/her designee. The Ombudsman's Office may also accept complaints via telephone from inmates who have a language barrier, who have literacy issues, and/or who are developmentally disabled. In some instances spontaneous cases involving inmate complaints may be opened and acted upon when a staff person from the Ombudsman's Office is informally contacted by an inmate during a personal visit to a correctional facility. It will be the responsibility of the staff person so contacted to see that a related case file is opened, and that the case is properly memorialized.
- B.** The Ombudsman's Office may accept and act upon an anonymous complaint. However, if the Ombudsman's Office determines the complainant's identity is needed to pursue an investigation of the anonymous complaint, then the Ombudsman's may close the case unless and until the complainant's identity is disclosed to the Ombudsman's Office. The Ombudsman's Office may also decline or discontinue any anonymous complaint pursuant to the standards set forth in **Neb. Rev. Stat.** §81-8,247, or if, in the judgment of the Ombudsman, it would be unfair to any person who is the subject of the anonymous complaint to carry out an investigation of the complaint.
- C.** The Ombudsman's Office may accept a complaint from a surrogate or proxy of the real party in interest in a complaint, including complaints from family members, guardians, agents, attorneys, and attorneys-in-fact of the real party in interest. If a surrogate or a proxy contacts the Ombudsman's Office on behalf of a real party in interest, the case manager assigned to the case may, at his or her discretion, request that the real party in interest: (1) provide a statement in writing signed by the real party in interest validating the complaint; or (2) otherwise contact the Ombudsman's Office in order to verify that the real party in interest does consent to the Ombudsman's Office acting on the complaint.

- D.** The Ombudsman's Office may accept a complaint in the form of a petition that has been signed by multiple inmates/patients/residents of institutions under the jurisdiction of the Ombudsman's Office. In cases of complaints submitted in the form of petitions, it shall be the responsibility of Ombudsman's Office case manager to identify/determine a signatory to the petition who will be used as the party to be contacted by the Ombudsman's Office in regard to the progress of the case, including the conclusion and closing of the case.
- E.** In any case where a complaint, inquiry, or contact has been submitted to the Ombudsman's Office not in a written form, the Ombudsman's Office case manager assigned to manage/handle that complaint, inquiry, or contact may require the complainant to submit the complaint, inquiry, or contact in written form at the sole discretion of the case manager.
- F.** As a matter of sound public policy, it is desirable that the Ombudsman's Office generally respond substantively to as many of the complaints, inquiries, or contacts received by the Office as possible. However, the Ombudsman's Office has the discretion to decline to act on some complaints that are received by the Ombudsman's Office, pursuant to the standards provided for in **Neb. Rev. Stat. §81-8,247**. The Ombudsman's Office has the discretion to decline to act on any complaint received by the office for any of the following reasons:
- (1) The complainant has available another remedy which the complainant could reasonably be expected to use;
  - (2) The complaint pertains to a matter outside of the Ombudsman's jurisdiction;
  - (3) The complainant's interest is insufficiently related to the subject matter of the complaint;
  - (4) The complaint is trivial, frivolous, vexatious, or not made in good faith;
  - (5) Other complaints received by the Ombudsman's Office are deemed more worthy of attention;
  - (6) The Ombudsman's resources are insufficient for adequate intervention by the Ombudsman's Office; or
  - (7) The subject matter of the complaint has been too long delayed to justify present intervention by the Ombudsman's Office.
- G.** The Ombudsman's Office may also initiate a suitable investigation into an agency's administrative action on its own motion, as provided for in **Neb. Rev. Stat. §81-8,247**, and may undertake, participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he or she believes that they may enhance knowledge about or lead to improvements in the functioning of



administrative agencies as provided for in **Neb. Rev. Stat.** §81-8,245(6). (See also Chapter 2, III, B of these Policies and Procedures)

## **II. Scope of Investigation/Action on Cases**

In selecting matters for attention, the Ombudsman's Office has the authority to investigate and/or act on any issue involving an administrative act of an administrative agency. As is provided for in **Neb. Rev. Stat.** §81-8,246, it shall be the general policy and practice of the Ombudsman's Office to particularly address those administrative acts which are or may be:

- (1) Contrary to law or regulation;
- (2) Unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's judgments;
- (3) Mistaken in law or arbitrary in ascertainment of fact;
- (4) Improper in motivation or based on irrelevant considerations;
- (5) Unclear or inadequately explained when reasons should have been revealed; or
- (6) Inefficiently performed.

The Ombudsman's Office will also concentrate on identifying issues and concerns that relate to strengthening administrative procedures and practices in such a way as to lessen the risk that objectionable administrative acts will occur in the future. Because of the Ombudsman's general oversight responsibilities and duty to hold administrative agencies accountable for their actions, the Ombudsman's Office has the authority to act on all complaints and issues that qualify as an administrative act of an administrative agency, without regard to whether the act involves a matter that is provisional, pending, or not final, and/or without regard to whether the act remains subject to being addressed by or through a grievance procedure, or other administrative review process that is as yet incomplete.

## **III. Case Management - General**

The Ombudsman's Office has the sole discretion to: (1) prescribe the methods by which complaints are to be made, received, and acted upon; (2) determine the scope and manner of investigations to be made; and (3) subject to the requirements stated in **Neb. Rev. Stat.** §§81-8,240 through 81-8,254, determine the form, the frequency, and the distribution of the Office's conclusions, recommendations, and proposals. The case manager assigned to analyze, investigate, and resolve a case opened/accepted by the Ombudsman's Office will be primarily responsible for completing all work on the case, subject to the supervision of the Ombudsman, and/or his or her designee. In managing these cases, the authority and responsibilities of the case manager shall be controlled by the following policies:

- A. In all cases assigned to a case manager it will be the primary responsibility of the case manager to determine whether and/or to what extent the substance of the complaint is within the jurisdiction of the Ombudsman's Office, as defined by **Neb. Rev. Stat.** §81-8,240(1), and as modified by **Neb. Rev. Stat.** §73-401. [Please note that according to §73-401 the jurisdiction of the Ombudsman's Office over a "contracting agency" does not apply to "long-term care facilities subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act." For the purposes of 73-401 "long-term care facilities" include: (1) nursing facilities; (2) assisted-living facilities; (3) other adult care homes; (4) continuing care communities; (5) a swing bed in an acute care facility or extended care facility; and (6) any adult day service. It should be additionally noted, however, that "long-term care facilities" could be indirectly involved in an Ombudsman's Office investigation or inquiry where the subject matter of the case was the quality of the services provided by such a long-term care facility to a client of the state, or the quality of the regulatory oversight of such long-term care facilities by some agency otherwise under the jurisdiction of the Ombudsman's Office.] If the substance of a complaint is not within the jurisdiction of the Ombudsman's Office, then the case manager shall suitably inform the complainant of that fact and, if feasible, will recommend alternatives or refer the complainant to any other resource that might be able to assist the complainant.
- B. The case manager may recommend that a case assigned to that case manager be declined, pursuant to **Neb. Rev. Stat.** §81-8,247 (as provided for in Chapter II, 1, F of these Policies and Procedures). The final decision on whether to decline a case resides within the sole discretion of the Ombudsman. The fact that the Ombudsman's Office has declined to investigate/address a complaint pursuant to **Neb. Rev. Stat.** §81-8,247 does not preclude the Ombudsman's Office from conducting an investigation into the background or general subject matter of the complaint.
- C. In a case where the complainant has available to him/her an administrative remedy which he/she could reasonably be expected to use, such as access to existing internal appeals processes, grievance procedures, or administrative hearing procedures, the case manager may, in his/her discretion, direct the complainant to pursue that administrative remedy as a preliminary step to the Ombudsman's Office conducting an investigation of the case. In exercising this discretion the designated case manager will need to be mindful that: (1) the Ombudsman's Office represents an alternative form of dispute resolution that is designed to expedite the informal resolution of concerns, complaints, and/or grievances, thereby avoiding the necessity of employing an administrative remedy; and (2) that even if the complainant has an available administrative remedy, directing the complainant to utilize that remedy does not necessarily satisfy the oversight responsibilities of the Office, in terms of its duty to identify those areas where an administrative agency's policies and procedures need to be addressed or improved.

- D.** In cases where the complainant requests anonymity, the case manager will have the discretion to determine whether it is practicable for the case to be properly investigated and resolved without disclosing the identity of the complainant. If it is determined that it would not be practicable to proceed with the case without disclosing the identity of the complainant, then the case manager will suitably inform the complainant of that determination. If the complainant remains unwilling to have his/her identity disclosed in connection with the investigation, then the case manager may decline to pursue an investigation of the complaint under those circumstances, and discontinue the case.
- E.** State law requires any person who suspects that a child has been physically or sexually abused or neglected to report those suspicions promptly to the Nebraska Department of Health and Human Services. In addition, state law requires the prompt reporting to the Nebraska Department of Health and Human Services of any situation where there is reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation. To facilitate reporting of this information, the Nebraska Department of Health and Human Services maintains an **Adult and Child Abuse and Neglect Hotline at 800-652-1999**. In any case or situation where the receipt and/or investigation of a complaint, or of any other matter, by an Ombudsman's Office case manager finds, discloses, or uncovers any facts and/or any reasonable allegations, or suspicions of abuse or neglect that is required under law to be reported to the Nebraska Department of Health and Human Services Hotline, it shall be the responsibility of the Ombudsman's Office case manager to immediately make that report by contacting the Hotline.
- F.** In any circumstance where it will be necessary to have a release signed by the complainant or a guardian of a complainant in order to conduct an investigation of a complaint, it shall be the responsibility of the case manager to see that the release is signed and placed in the appropriate Ombudsman's Office file.
- G.** In any situation where a case manager is managing a case that was received from a surrogate or proxy of the real party in interest in a complaint, it shall be the primary responsibility of the case manager to make certain that confidential information that should only be shared with the real party in interest in the case is not inadvertently disclosed to the surrogate or proxy.
- H.** As a matter of general practice, the case manager will limit communication with the complainant to direct questioning of, and/or communication of information to the complainant himself or herself, and/or to the complainant's legal counsel. Generally, the case manager should not permit a facilitator, or any other intermediary, to participate in any of the case-related communications by the Ombudsman's Office with the complainant. However, the case manager may, at his or her discretion, permit a facilitator to participate in the case manager's communications with the complainant when it is deemed desirable to do so in circumstances where, for example, there is a language barrier that interferes

with such communication, or where the complainant has a disability that would significantly diminish the complainant's ability to understand and communicate with the case manager.

#### IV. Case Management - Confidentiality

- A. In general terms (except for cases involving “whistleblowers” as defined in Chapter I, Section I, P) the Ombudsman’s Office is *not* legally obligated to treat as confidential information that has been received by the Office, whether from a complainant, or witness, or an administrative agency. Therefore, maintaining confidentiality of most information received by the Ombudsman’s Office is a decision that rests in the discretion of the Ombudsman and/or the case manager assigned to manage the case to which the information relates. However, there are exceptions to this general rule in cases where there are controlling statutory provisions that state that information of a specific nature is required to be treated as being confidential (for example, any medical information subject to the provisions of the Health Insurance Portability and Accountability Act of 1996; or the identity of an employee presenting an allegation of “wrongdoing” subject to **Neb. Rev. Stat.** §81-2704). Also, in any situation where the case manager has reason to believe that release of certain information by the Ombudsman’s Office, although not specifically prohibited by law, would nevertheless result in unnecessary harm to one or more persons, the case manager shall protect that information, and/or the sources of that information, unless the case manager is expressly directed to do otherwise by the Ombudsman.
- B. The case manager who is assigned to a case will be immediately responsible to use his or her independent judgment to determine how information will be shared/used for the purposes of case management, to include those instances where it is necessary to obtain a signed release from a complainant or other party authorizing the release of information to or by the Ombudsman’s Office. In deciding what information received from a complainant or witness should be treated as confidential, the case manager should balance the need to protect sensitive information received from the complainant, an agency, or a witness against the value of disclosing that information in order to fulfill the duties of the office. In a communication with a complainant or a witness, the case manager is not obligated to raise the issue of confidentiality, but if the complainant or witness raises the issue of confidentiality, then the case manager has the duty to advise the complainant or witness that there may be some practical situations where the expectation of confidentiality might not be honored by the case manager in the management of information relating to the case.
- C. In the interest of encouraging a complainant or witness to feel free to disclose information which the complainant or witness might otherwise be reluctant to disclose, the case manager who is assigned to any case is authorized to offer provisional confidentiality to the complainant, and/or to any witness, with

respect to any or all information received from that complainant or witness. In those instances where the case manager offers provisional confidentiality to a complainant or witness, it will be the responsibility of the case manager to adequately explain the limits of that promise of provisional confidentiality. Once the complainant or witness has been promised provisional confidentiality by the case manager, the case manager will honor that promise within the specified limits. However, if the case manager, after having given a promise of provisional confidentiality, comes into possession of information from a complainant or witness which involves knowledge of possible criminal activity, and/or knowledge of threats to public health or safety, and/or a matter which should be reported to the Adult and Child Abuse and Neglect Hotline, then the case manager will consult immediately with the Ombudsman with regard to whether that information will need to be disclosed to the appropriate authorities. The case manager is also authorized to share any information that is obtained from a complainant or witness who is promised provisional confidentiality with other staff working in the Ombudsman's Office. The case manager may also share such information with an agency or party outside of the Ombudsman's Office, on a strictly limited basis, and provided that the case manager exercises due care in the selection of the agency or party, and warns the agency or party that the information in question should be kept confidential.

- D.** In any case where the complainant is an employee of any agency, department, board, commission, or other governmental unit of the State of Nebraska, it is possible that the complainant might have access to legal protections as a whistleblower, pursuant to the Nebraska State Government Effectiveness Act, **Neb. Rev Stat.** §§81-2701 through 81-2711. It shall be the responsibility of all case managers to immediately inform the Ombudsman of any case or situation where such an employee might have access to the legal protections under the Act. In order to qualify for protection pursuant to the Act, an employee must first establish his/her status as a whistleblower under the Act by raising an issue or concern that constitutes "wrongdoing" as defined in the Act. "Wrongdoing" is defined as an allegation which includes any action by an agency or employee which: (1) is a violation of any law; (2) results in gross mismanagement or gross waste of funds; or (3) creates a substantial and specific danger to public health or safety. In order to qualify for protection under the Act, it is also necessary that the whistleblower has presented the allegation of wrongdoing either to the Ombudsman's Office, or to an elected state official.
- E.** The case managers and other employees of the Ombudsman's Office are obligated: (1) to honor a promise of provisional confidentiality to a complainant or witness; (2) to honor the requirements of confidentiality pursuant to the State Government Effectiveness Act; or (3) to prevent the disclosure of information that is made confidential pursuant to the provisions of Nebraska law and/or the Health Insurance Portability and Accountability Act of 1996. These obligations of the case managers and the other employees of the Ombudsman's Office continue after the case has been closed.

- F. All Ombudsman Office new-hires and all volunteers should be informed that care should be exercised by to prevent the disclosure of confidential information in possession of the Office, and all new-hires and volunteers will be required to sign a document which acknowledges that they have read these standards, and that they fully understand the need to hold information relating to any case in confidence, unless directed otherwise: (1) by the case manager who is assigned to the case; or (2) by the Ombudsman.

## **V. Case Management - Informality**

- A. The Ombudsman’s Office is intended to be an informal complaint-handling mechanism. However, even cases/complaints handled through an informal complaint-handling mechanism are likely to require an “investigation” on some level, even if that “investigation” consists of merely making informal requests for information or for clarification from the agency that is involved in the case; researching statutes and/or regulations; or reviewing information available in an agency’s digital files. Because it is an informal mechanism, action by the Ombudsman’s Office can typically involve the engagement of many different strategies, including recommending remedial action by the agency, mediation, coaching the citizen on how to better act on their own behalf, expediting agency actions, and/or facilitating improved communication between the complainant and the agency. All of these strategies are appropriate forms of action by the Ombudsman’s Office, and the decisions regarding the optimal approach to take in any case will usually be left to the discretion of the case manager who has been assigned to handle the case, subject, when necessary, to the direction of the Ombudsman.
- B. In some cases, particularly those that are unusually complex, or where factual detail is critical, the case manager may be required to resort to the submission of written questions (interrogatories), and/or extensive records requests to the administrative agency involved. Because these instances are unusual, the case manager should consult with the Ombudsman before making submissions of this nature to the administrative agency in question. It is usually good practice to give the agency involved a specific suspense date for submitting its response to the request. If the agency asks for an extension of the suspense date, then it is usually desirable to accommodate the agency and set a new suspense date, unless there is good cause to do otherwise (i.e., where there is an “emergency,” and/or where there are concerns that are otherwise time-sensitive). In some of these instances it will be desirable protocol to inform someone in the agency’s upper management of the request for information submitted to the agency.
- C. As a general matter, it is desirable to treat most cases as informally as possible, particularly if that strategy will help to expedite a resolution of the case that is acceptable to the complainant. In many instances, the principle of “informality” legitimizes an approach which tries to resolve the issues involved in a complaint at a level that is as low as possible in the administrative hierarchy of the agency.

However, it is also expected that each case manager will have his or her own preferred strategy for the managing of certain cases and issues, and if the case manager believes that an expedited resolution of a case will be more likely to occur by contacting an agency's leadership team, then the case manager should do so.

- D. When it comes to promoting solutions of complaint cases, the authority of the Ombudsman's Office is strictly limited by law to making recommendations to the agency involved. Because of this, the most important element in promoting the resolution of cases is the ability of the Ombudsman's Office to have a complete command of the relevant facts of the case, as the product of a thorough investigation. This means that the Ombudsman's Office needs to be zealous in defending its one actual power vis-à-vis the agencies, that is, its investigative powers. Any event or indication that an administrative agency under the jurisdiction of the Ombudsman's Office is unwilling or reluctant to cooperate with the investigation of a case by the Ombudsman's Office should be treated by the case manager as a serious matter, and should be reported to the Ombudsman as soon as reasonably possible.
- E. There will be some instances where the complainant who originally contacted the Ombudsman's Office seeking an informal resolution of his or her complaint will decide to pursue a resolution of the issues through litigation in the civil courts. It is certainly the privilege of the complainant to choose this option, but in most such instances it will be desirable for the Ombudsman's Office to discontinue the case, once it becomes clear that the complainant has decided to pursue the matter through litigation. It is highly unlikely that the Ombudsman's Office will be able to successfully resolve a case through informal means once the complainant has opted to take the matter to court, and if the Ombudsman's Office continues to investigate a case in such a circumstance it runs the risk that the complainant's attorney will try to use the Ombudsman's investigation as a means of discovery.
- F. In some cases the Ombudsman's Office will be asked to conduct investigations and/or to make inquiries with administrative agencies in conjunction with a study being conducted by a special or standing committee of the Legislature. [See **Neb. Rev Stat.** §81-8,245(6)] In these cases the staff of the Ombudsman's Office who have been assigned to manage the work in support of or on the behalf of the committee will coordinate their efforts with the committee's chairperson and/or staff, and will consult closely with the Ombudsman when submitting questions in writing to the administrative agency involved, and/or when making extensive records requests to the administrative agency.

## **VI. Case Management - Impartiality and Objectivity**

- A. At the outset of his/her work on a complaint case, the case manager is expected to address the complaint impartially, and conduct an objective investigation of

the complaint and its allegations. The principle of impartiality means that the role of the Ombudsman's Office does not involve acting as an advocate for the complainant in the manner in which the complainant's own attorney might in an adversarial setting. Like a judge in a judicial setting, the case manager may have personal views and opinions on the issues/personalities involved in a case, but he or she must set those views and opinions aside in the management of the case. Accordingly, the case manager's approach to a case should be objective and impartial, to the extent that fact-finding is involved. However, under the principle of informality the Ombudsman's Office is expected to be an advocate for the prompt, amicable, and informal resolution of complaints, which is an outcome that can frequently be best accomplished through "advocating" for a settlement/resolution of the issues in a case, without the necessity of carrying out a complete investigation with a finding by the Ombudsman's Office on the ultimate merits of the complaint. This means that, as an alternative form of dispute resolution, the Ombudsman's Office is legitimately expected to be an "advocate," not for one side in the dispute involved in the complaint, but for the amicable and peaceful resolution of all disputes.

- B.** In those instances where the complaint has been thoroughly and objectively investigated, and where it has been determined that the complaint is justified in whole or in part, and where it is of the opinion of the Ombudsman's Office that an administrative agency should: (1) consider the matter further; (2) modify or cancel an administrative act; (3) alter a regulation, decision, or ruling; (4) explain more fully the administrative act in question; or (5) take any other step to address the complaint, it will be the duty of the Ombudsman's Office to approach the relevant administrative agency with its recommendations for the appropriate corrective action in the case. In pursuing these recommendations, the Ombudsman's Office necessarily takes on the role of an "advocate," but technically the Office is acting as an advocate for the corrective action itself, and not as an advocate for the complainant. This distinction can be seen, for example, in a case where there is a disagreement between the complainant and the Ombudsman's Office on what the nature of the corrective action should be; in which case the Ombudsman's Office should continue to advocate for its own version of a proper outcome, even though the complainant wants something different.
- C.** Pursuant to its duties under **Neb Rev. Stat.** §81-8,246, the Ombudsman's Office must be concerned "with strengthening procedures and practices which lessen the risk that objectionable administrative acts will occur," and therefore it is expected and appropriate that the Office will also act as an "advocate" for improved performance in the administration of government generally. In some instances this responsibility will mean actively advocating with policy-makers for changes/reforms in administrative systems.



## VII. Case Management - Credibility

Credibility for an ombudsman's office is not a matter of rules or processes. It is a status won over many years of consistent performance, and is based upon a mixture of diligence, hard work, expertise, and the fair treatment of all interested parties, particularly through maintaining a welcoming, open-minded, even-handed, compassionate attitude toward the ordinary citizens who come to the ombudsman's office with their problems. One concern that all ombudsman's offices must have is to win, retain, and deserve the confidence of the complainants who are its true clientele. In fact, this imperative is institutionalized in the structure of the classic ombudsman's office – specifically in the arrangement that makes the ombudsman a part of the legislative branch of government as a means of separating it from the agencies under its jurisdiction. It is not the mission of an ombudsman's office to be an apologist for administrative agencies, or to make excuses for the inadequacies, mistakes, and misdeeds of administrative officers and managers. Typically, there is an enormous differential between the power of the agents of government and the citizen, and the ombudsman's office does not exist in order to comfort the powerful. On the contrary, the ombudsman's office exists to help protect the powerless from being victimized by the errors, omissions, offenses, and lapses in judgment that can too easily happen in the complex, rule-bound, and often under-resourced, administrative agencies of modern government. At the very least the ordinary citizens who come to the ombudsman's office for help, whether they are right or wrong insofar as the merits of their complaints are concerned, deserve to be fully heard, and to be treated as though their complaints, opinions, and concerns matter...because they do matter. With all of this in mind, there are several finer points that can be added on the subject of credibility.

- A. The most significant source of credibility for the Ombudsman's Office is found in the quality of its investigations, that is, from conducting an investigation that is well-planned, thoroughly documented, and scrupulous in its attention to detail. When the Ombudsman's Office approaches an administrative agency for the purpose of resolving a case, the Ombudsman does so without any legal authority to compel the agency to take remedial or corrective action. The only real force that the Ombudsman's Office can bring to a discussion of that nature is in its ability to make sound and convincing legal and/or moral arguments on the behalf of the complainant. The quality of these arguments will substantially depend upon the overall quality of the Ombudsman's fact-finding in the case. Similarly, whenever the Ombudsman's Office is presenting its findings to the complainant, the strength of its argument will largely depend upon the quality of its fact-finding. This necessarily means that the strongest rhetorical weapon that the Ombudsman possesses is his or her: (1) command of the facts of the case; and (2) understanding of how those facts are applicable to the laws, and/or to the administrative rules, regulations, criteria, and processes involved. Any deficiency in regard to its knowledge of, or grasp of, the essential facts of the case will seriously diminish the credibility of the Ombudsman's Office in its negotiation with the interested parties. For these reasons, the case managers in their work on complaint cases need to be particularly aware of the importance of the quality of their investigations as it relates to the strength and credibility of their findings and conclusions.

- B.** A second source of credibility for the Ombudsman’s Office comes from having a solid grasp of the laws, rules, regulations, processes, standards, and/or criteria applicable to the case at hand. In most cases, knowledge of the facts will be of little use without a comprehensive understanding of principles to which those facts should be applied. This does not necessarily mean that the case managers in the Ombudsman’s Office will need to have an all-inclusive knowledge of the subject area involved in a case that they are addressing, but it does mean that the case managers will need to have a strong, if narrow, understanding of the laws, rules, regulations, processes, standards, and/or criteria that are specifically applicable to the case in question. It is also usually advisable for case managers to conduct any research that is necessary to identify the applicable laws, rules, regulations, processes, standards, and/or criteria as a preliminary or early step in the investigative process, since that will assist the case managers in isolating all of the factual issues that will need to be answered as an ultimate result of the investigation to be conducted by the Ombudsman’s Office.
- C.** Unlike lawyers, who represent specific clients, and must act in a professional capacity solely on behalf of and in the interests of their clients, without any compromising influences and loyalties, the Ombudsman does not have a client as such, and owes his or her loyalty to the State, and to the mission of the office. Nevertheless, it is generally desirable, from a perspective of credibility, for the Ombudsman and the Office staff to avoid any conflict of interests or appearance of such conflict. It should be understood, however, that a “conflict of interests” as referenced herein has nothing whatsoever to do with a staff member’s past affiliations, or employments, or with any previous professional or personal relationships of a staff member. Staff members of the Ombudsman’s Office are counseled to avoid any involvement as an individual in any case where the investigation or outcome of the matter might have a bearing or effect upon a personal or professional relationship or interest of the staff person in question. Staff of the Ombudsman’s Office should also avoid involvement in any case where the staff member is in a position to derive personal benefit from actions or decisions made in his or her official capacity. (Note: The employees of the Ombudsman’s Office are subject to the conflict of interests provisions of **Neb. Rev. Stat. §49-14,101.01.**) In addition, as a general matter the Ombudsman’s Office will try to avoid involvement in any situation in which the concerns or interests of two or more complainants are, or might be, incompatible.
- D.** It is likely that, from time to time, there will be complainants who disagree with the proceedings of, or the conclusions arrived at by, the Ombudsman’s Office in connection with their individual complaint cases. The sheer volume of the Ombudsman’s caseload means that most of the complaints that come to the office will be handled by case management staff, without the direct involvement of the Ombudsman him/herself in the handling of the case. When a complainant expresses dissatisfaction with the outcome of such a case, it is in the interests of justice, and the credibility of the Ombudsman’s Office generally, that there be a review of the case by the Ombudsman personally, or by senior staff. In

those situations where such a review determines that the Ombudsman's Office needs to do more, or needs to modify its handling of the case in any respect, there should be no barrier or reluctance to taking corrective action on the case. Just as the Ombudsman's Office would expect of any other administrative agency under its jurisdiction, having corrective action be taken after the fact is preferable to an attitude that stubbornly perpetuates mistakes.

**CHAPTER 3**  
**INVESTIGATIONS, REPORTS**  
**AND THE**  
**DISSEMINATION OF INFORMATION / RECORDS**

**I. INVESTIGATIONS**

As indicated in the previous chapter, the quality of the Ombudsman’s investigation is a critical factor, not only in the resolution of the particular case at hand, but also in regard to the long term credibility of the Ombudsman’s Office. In other words, there is a direct correlation between the quality of the Ombudsman’s investigations, and the value of the work of the Office, in terms of bringing administrative justice to the complainants, holding the agencies of government accountable, and improving the operation of government generally. It should not be necessary to emphasize that insofar as Ombudsman’s Office investigations are concerned our ultimate responsibility is to the truth. When it comes to conducting their investigations Case Managers should avoid any impulse to prejudge the parties or the issues, and all forms of “tunnel vision” that might result in findings that are not supported by the evidence when viewed objectively. Because of this commitment to the truth, and because reliable findings by the Ombudsman’s Office will depend upon securing all information that is relevant, as well as related documentation that is detailed and fully accurate, the staff of the Ombudsman’s Office should have a very low level of tolerance for agencies and or state employees who demonstrate a reluctance to cooperate with the Ombudsman’s Office in its investigation of cases/complaints.

**A. Investigative Methodology** - Pursuant to **Neb. Rev. Stat.** §81-8,245(2) the Ombudsman’s Office has the authority to “determine the scope and manner of investigations to be made” by the Ombudsman’s Office. Further, **Neb. Rev. Stat.** §81-8,245(4) empowers the Ombudsman to “request and receive from each administrative agency, and such agency shall provide,” the assistance and information that the Ombudsman deems “necessary for the discharge of his or her responsibilities.” Investigations by the Ombudsman’s Office may employ a number of investigative methods. Those investigative methods may include, but are not limited to:

1. A request (whether verbally or in writing) directed to the complainant seeking clarification of the nature of the complaint, preferably in writing;
2. A request (whether verbally or in writing) directed to the seeking copies of relevant documents in the possession of the complainant;
3. A request (whether verbally or in writing) directed to the administrative agency involved seeking copies of relevant documents in the possession of the agency [See **Neb. Rev. Stat.** §81-8,245(3)];
4. A request (whether verbally or in writing) directed to the administrative agency involved in a complaint or inquiry seeking a summary of the

agency's response to the complaint or inquiry, and/or the agency's explanation of the administrative action involved;

5. The preparation and submission to the administrative agency involved of written questions/interrogatories addressing the complaint or inquiry, and seeking the agency's written response to those questions/interrogatories;
6. The conducting of inspections of the premises, or any parts thereof, of any administrative agency, or of any property owned, leased, or operated by any administrative agency, as frequently as is necessary to carry out duties of the Ombudsman's Office [See **Neb. Rev. Stat.** §81-8,245(4)];
7. The interview of witnesses who have information relative to the substance of the complaint or inquiry, including interview of witnesses who are employees of the administrative agency involved;
8. The onsite inspection and examination of the records and documents of any administrative agencies, notwithstanding any other provision of law [See **Neb. Rev. Stat.** §81-8,245(4)]; and
9. Attendance of any administrative hearings or proceedings held or conducted by an administrative agency.

**B. Making a Verbatim Record of the Investigation** - In the course of conducting its investigations, the Ombudsman's Office may use electronic audio and/or video recording devices to make a verbatim record the statements and testimony of complainants and/or witnesses, including those witnesses who are employees of the administrative agency involved in the case. The Ombudsman's Office case manager may also make a verbatim record the statements/testimony of witnesses through the use of a certified court reporter.

**C. Access to Confidential Medical Records** - The investigative authority of the Ombudsman's Office includes the power to inspect and examine the medical and mental health records of inmates in the custody of those prisons, jails, and other facilities that are under the jurisdiction of the Ombudsman's Office, subject to the inmate's permission, in writing, authorizing the Ombudsman's Office to have access to those records. [See **Neb. Rev. Stat.** §83-178(6)]

**D. Legal Representation for Witnesses** - According to **Neb. Rev. Stat.** §81-8,245(5) a witness who is being compelled to give evidence to the Ombudsman's Office under subpoena is entitled to have his or her legal counsel present while he or she is being questioned pursuant to a subpoena. Neither the Ombudsman's Office nor the employing agency of a state employee can force an employee/witness to provide evidence without the requested presence of his or her attorney. (See Nebraska Attorney General's

Opinion #102; May 14, 1981) It is emphasized that this right to have an attorney present belongs solely to the witness, and not to the agency involved. Furthermore, the right of the witness in this regard to have his or her own personal legal counsel be present while he or she is being questioned does not authorize either the witness or the agency to insist on the presence of the agency's legal counsel during any interview of the witness. The presence of an agency attorney, or of any agency supervisory personnel, at such an interview of an agency employee by the Ombudsman's Office is not desirable because: (1) the presence of an agency attorney or agency supervisory personnel may intimidate the witness, and have a chilling effect on the willingness of the witness to volunteer information to the Ombudsman's Office; and (2) the agency's attorney or agency supervisory personnel may use information that is obtained from being present at the interview to prepare other agency witnesses in ways that might frustrate the progress of the investigation and the Ombudsman's efforts to get the facts. Additionally, an agency attorney's professional responsibility is to protect the interests of the agency, not the interests of the employee, and any agency attorney who would attend such an interview under the pretext that he or she was there to represent the interests of the agency employee would arguably be placing himself or herself in an unprofessional conflict of interests situation, since it is entirely possible that the interests of the agency and the interests of the employee might diverge in such a setting.

- E. **Subpoenas** - The Ombudsman's Office may issue a subpoena, enforceable by an action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence that is deemed relevant to a matter under investigation by the Ombudsman. [See **Neb. Rev. Stat.** §81-8,245(5)] Any person who is required to provide information shall be paid the same fees and travel allowances, and shall be accorded the same privileges and immunities, as are extended to witnesses in the district courts of this state, and shall also be entitled to have their legal counsel present while he or she is being questioned pursuant to a subpoena.

## II. REPORTS

- A. **Status Reports** - The Ombudsman's Office shall make a report on the status of an investigation into a complainant or inquiry upon request of the complainant, or whenever the case manager deems it appropriate to do so.
- B. **Special Reports** - If, after having considered a complaint or inquiry, and after reviewing whatever evidence or material the Ombudsman deems pertinent, the Ombudsman is of the opinion that an administrative agency should: (1) consider the matter further (2) modify or cancel an administrative act, (3) alter a regulation or ruling, (4) explain more fully the administrative act in question, or (5) take any other corrective step, the

Ombudsman's Office may create and disseminate its conclusions, recommendations, and proposals in the form of a special report addressed to the administrative agency. In addition to submitting the special report to the administrative agency involved, the Ombudsman's Office may also publish/disseminate its special report reflecting its conclusions, recommendations, and proposals by communicating the report to the Governor, the Legislature or any of its committees, the news media, and/or any other parties who may be concerned. However, before publishing/disseminating any report that contains a narrative, conclusion, and/or recommendation that expressly or impliedly criticizes an administrative agency, or any person, the Ombudsman's Office shall consult with that agency or person. Before the general release of any special report that is critical, the Ombudsman shall transmit a copy of the special report to the administrative agency, and to each officer or employee of the agency who is a subject of the criticism, and shall allow the agency, officer, and/or employee a reasonable opportunity to reply to the report in a written format to be submitted to the Ombudsman's Office by a date certain set by the Ombudsman. Whenever publishing/disseminating a special report adverse to an administrative agency the Ombudsman's Office shall include as an attachment thereto any statement in writing that the administrative agency may have made to the Ombudsman's Office by way of explaining its past difficulties or the reasons for the agency's present rejection of the Ombudsman's conclusions, recommendations, and/or proposals. (See **Neb. Rev. Stat.** §§81-8,248 through 81-8,250)

- C. **Exception** - The provisions of Chapter 3, Section II, of these Policies and Procedures relating to the publishing/disseminating of a special report by the Ombudsman's Office do not apply to any letters, memoranda, emails, or other informal documents or forms of communication by the Ombudsman's Office, but are applicable solely to the formal special reports of the Office.

### III. DISSEMINATION OF INFORMATION / RECORDS

The Ombudsman is the custodian of the files of the Ombudsman's Office with the legal responsibility and authority to make the decisions on how documents from those files will be managed, to include those situations where parties outside of the office will be allowed to see or obtain copies of records and documents in those files. All documents in the investigation-related files of the Ombudsman's Office may be withheld from disclosure under Nebraska's Public Records Law, pursuant to **Neb. Rev. Stat.** §84-712.05(5). This does not mean, however, that the Ombudsman is generally prohibited from disclosing those documents and records. As the custodian of the records and files of the Ombudsman's Office, it is entirely within the Ombudsman's legal authority to disclose those records at the Ombudsman's sole discretion. (See Nebraska Attorney General's Opinion #94080; Oct. 14, 1994) The only statutory exceptions to this are with respect to: (1) medical and mental health records of Department of Correctional Services inmates covered by **Neb.**

**Rev. Stat.** §83-178(6); (2) any disclosure that would identify of a State employee who is a “whistleblower” covered by **Neb. Rev. Stat.** §81-2704(2), and who has not given prior written consent to the disclosure of his or her identity; and (3) any disclosure of medical records that is prohibited by the federal Health Insurance Portability and Accountability Act of 1996, unless the party covered by the records has given the Ombudsman’s Office a signed release authorizing the disclosure. The exercise of the authority to disclose or disseminate documents and related information in the possession of the Ombudsman’s Office is otherwise subject to the following considerations:

- A.** Generally speaking, under the provisions of the Health Insurance Portability and Accountability Act of 1996 the Ombudsman’s Office is not allowed to disclose the medical or mental health records of any party. This prohibition would include the disclosure of a Department of Correctional Services inmate’s medical or mental health records to any other person committed to the Department, except as authorized by law [see **Neb. Rev. Stat.** §83-178(6)]. However:
1. The disclosure by Ombudsman’s Office of the *medical records* of a specific complainant to the complainant himself/herself, when done in the interest of the investigation or the resolution of a case, is authorized by law. The Ombudsman’s Office shall not, however, disclose *mental health records* of any complainant to the complainant. (See **Neb. Rev. Stat.** §71-84003)
  2. The disclosure of a complainant’s medical or mental health records in the form of a public report of the Ombudsman’s Office, when such use of the records is authorized by a release signed by the complainant, is a disclosure that is authorized by law. This would include cases where reports disclose a Department of Correctional Services inmate’s medical or mental health records. (See **Neb. Rev. Stat.** §81-8,250)
- B.** Ombudsman’s Office case managers are generally authorized to disclose those documents (and the information related in documents) that are in the possession of the Ombudsman’s Office, so long as such disclosure is: (1) part of the routine investigation and/or resolution of a case; (2) within the limits provided by the laws relating to maintaining the confidentiality of records/information; and (3) authorized (whenever necessary) by a release that is signed by the complainant, or by the affected or responsible party. Assuring that the Ombudsman’s Office has secured those signed releases will be the immediate responsibility of the case manager assigned to the case. If a case manager has any doubts concerning whether it would be appropriate to disclose any documents or information, then the case manager should consult with the Ombudsman prior to making the disclosure.
- C.** **Neb. Rev. Stat.** §81-8,253 provides that: “Neither the Public Counsel nor any member of his staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his official cognizance.” The effect of this statute is to create a “shield” or evidentiary



privilege with regard to documents and information in the Ombudsman's files which may be invoked by the office when the Ombudsman determines not to testify or to provide documents in response to a subpoena from a litigant in a judicial or administrative proceeding. Section 81-8,253 does not *require* the Ombudsman to refuse to testify or disclose records in response to a subpoena, and the responsibility to make that decision resides in the sole discretion of the Ombudsman as the custodian of the records. However, §81-8,253 should be interpreted as an expression of a "generalized policy" of protecting documents and information in the Ombudsman's files from being "discovered" by litigants involved in judicial or administrative proceedings, including by attorneys who are representing the State of Nebraska. The practical considerations behind this policy are threefold: (1) the administrative agencies under the jurisdiction of the Ombudsman's Office would be more reluctant to provide documentation and information in response to an Ombudsman's Office investigation, if they were concerned that the documents and information provided might be discovered from the Ombudsman's Office by a litigant suing the agency or the State; (2) if documents and information in the possession of the Ombudsman's Office could be obtained by attorneys for the State in the context of litigation, then that would have a chilling effect on the willingness of complainants and/or witnesses (including whistleblowers and confidential informants) to complain or provide information to the Ombudsman's Office; and (3) if documents and information in the possession of the Ombudsman's Office could be obtained by litigants, then that might make it more difficult for the Ombudsman's Office to obtain documents and information from other sources that is "confidential," and that the Ombudsman's Office would be required to refrain from disclosing under State or Federal law.

- D.** There have been a number of instances over the years when the Ombudsman's Office was contacted by or on behalf of a party who had previously complained to the Office asking that the Office return materials that the complainant had provided to the Ombudsman's Office in the past. In those instances it has been the consistent practice of the Ombudsman's Office to return to the former complainant the original documents (or copies of the original documents) that the complainant had previously provided to the office, including the original, or a copy of the original, of any letter of complaint or complaint-form that the complainant had submitted to the Ombudsman's Office. This practice is based on the idea that these requests are simply asking the Ombudsman's Office to give back to the complainant what the complainant had given to the office in the first place. The documents that would be provided under this policy/practice would include only: (1) the letter of complaint or complaint-form that the complainant had submitted directly to the Ombudsman's Office; and (2) the other related documents that the complainant had obtained from another source, and submitted to the Ombudsman's Office. The Ombudsman's Office may also provide copies of documents of this nature to the attorney representing the former complainant, but only where the attorney has provided a release signed by the former complainant authorizing the Ombudsman's Office to give the documents in question (or copies) to the complainant's attorney. Although this

policy/practice would not include giving a complainant or former complainant (or the complainant's attorney) copies of documents that had been obtained by the Ombudsman's Office from any source other than the complainant, including from the agency's digital files, there is nothing in this policy/practice that would prohibit a case manager from sharing such documents or information with the complainant when done in the interest of furthering the investigation or the resolution of a case.

## CHAPTER 4 ADVOCACY

**Neb. Rev. Stat.** §81-8,246 provides that the Ombudsman “may concern himself...with strengthening procedures and practices which lessen the risk that objectionable administrative acts will occur,” and **Neb. Rev. Stat.** §81-8,249(2) provides that if the Ombudsman “believes that an administrative action has been dictated by a statute whose results are unfair or otherwise objectionable,” then the Ombudsman “shall bring to the Legislature's notice his views concerning desirable statutory change.” This language supports the idea that there will be circumstances where the Ombudsman should be expected to act in the capacity of an advocate for systemic change, including both statutory and regulatory change, as well as changes in the administration and management of those administrative agencies and programs under the Ombudsman’s jurisdiction. In addition **Neb. Rev. Stat.** §81-8,245(6) provides that the Ombudsman may “participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he or she believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies.” This language, read together with §81-8,249(2), acknowledges the role of the Ombudsman’s Office in helping to provide legislative oversight of administrative agencies and programs. Because of its advocacy responsibilities, the Ombudsman’s Office, in conducting its ordinary casework, needs to be watchful for significant administrative issues, and patterns of mistakes that need the attention of the public and policy-makers.

## CHAPTER 5 POLITICAL ACTIVITIES

Because the Ombudsman's Office is not subsidized by federal funds, the Hatch Act of 1939 relating to political activities engaged in by public officials and employees does not apply to Ombudsman's Office staff. Political activities by the Ombudsman and Ombudsman's Office staff are, however, subject to the limits imposed by State law and by the policies of the Nebraska Legislature.

- A.** Pursuant to **Neb. Rev Stat.** §81-8,242, the Ombudsman, during his or her term of office, shall not be actively involved in partisan affairs. Pursuant to the policies of the Nebraska Legislature the staff of the Ombudsman's Office may not: (1) use, or authorize the use of, government resources, personnel, computers, emails, property, or funds for campaign purposes; or (2) engage in any political or campaign activity during office hours, or while otherwise engaged in Ombudsman's Office duties, including the wearing of partisan or nonpartisan political buttons or stickers while on duty. If an Ombudsman's Office staff person wishes to engage in any political activity during what would be normal working hours, then he or she may only do so while using vacation leave, compensatory time, or leave of absence time.
- B.** Although the Ombudsman may not be actively involved in partisan affairs, the Public Counsel Act does not place a similar restraint on the other employees of the Ombudsman's Office. The staff of the Ombudsman's Office are entitled to: (1) vote; (2) be registered as having a partisan affiliation; (3) help to register voters; (4) serve at the polls as election officials, clerks, checkers, watchers, or challengers for any candidate; (5) contribute money or goods or services in-kind to partisan political organizations; (6) openly express their opinions concerning candidates and/or issues; (7) attend partisan political rallies, meetings, conventions, and fundraising functions, except during office hours or while otherwise engaged in Ombudsman's Office duties; (8) originate, circulate, and sign nominating petitions and petitions calling for a referendum; (9) be an active member of, and hold office in, a political party or club; (10) openly campaign for or against candidates in partisan and nonpartisan elections, except during office hours or while otherwise engaged in Ombudsman's Office duties; (11) openly campaign for or against constitutional amendments, and other referendum issues, except during office hours or while otherwise engaged in Ombudsman's Office duties; (12) make campaign speeches for candidates in partisan and nonpartisan elections, except during office hours or while otherwise engaged in Ombudsman's Office duties; and (13) file and run for public office in partisan or nonpartisan elections. (In those cases where an Ombudsman's Office staff person has won a partisan or nonpartisan elective office the Executive Board, pursuant to the Legislature's Personnel Policies, shall have final

authority to determine whether that staff person may continue employment with the Ombudsman's Office while holding that office.)

## CHAPTER 6

### APPLICABILITY

These Policies and Procedures relate solely to the operation of the Ombudsman's Office, and the management of its cases. These Policies and Procedures are not applicable to the business of or the activities of the Office of Inspector General of Nebraska Child Welfare, or the Office of the Inspector General of the Nebraska Correctional System. The activities of those Offices are controlled by **Neb. Rev. Stat.** §§43-4301 through 43-4332, and by **Neb. Rev. Stat.** §§47-901 through 47-918, respectively.