

2010

*Fortieth  
Annual Report  
of the  
Nebraska Public  
Counsel*

*The  
Ombudsman*

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of the  
Nebraska  
Public Counsel*

**THE  
OMBUDSMAN**

**2010**



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# NEBRASKA PUBLIC COUNSEL'S OFFICE

## MISSION STATEMENT

*TO PROMOTE ACCOUNTABILITY IN PUBLIC ADMINISTRATION AND PROVIDE CITIZENS WITH AN INFORMAL MEANS FOR THE INVESTIGATION AND RESOLUTION OF THEIR COMPLAINTS AGAINST THE ADMINISTRATIVE AGENCIES OF NEBRASKA STATE GOVERNMENT.*

## EXPOSITION

- The Public Counsel'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.
- The "administrative acts" that may be addressed by the Public Counsel's Office include any action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an agency of state government.
- 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 Public Counsel's Office takes on the appearance of being in the nature of mediation or conciliation. However, the Public Counsel'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 Public Counsel's Office has been given very real investigative powers, including the subpoena power.
- The approach to each citizen's complaint is tailored to its particular facts, but the Public Counsel'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 Public Counsel's Office precisely because the results of a neutral 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, it is the duty of the Public Counsel's Office to approach the relevant administrative agency with recommendations for corrective action. In pursuing these recommendations, the Public Counsel'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.

- Because of its interest in improving public administration, the Public Counsel's Office is not necessarily satisfied with the outcome of a case merely because the complainant may be satisfied. The Public Counsel'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 Public Counsel's Office also helps to promote public accountability of the agencies of state government and performs a legislative oversight function.

## **TRANSMITTAL**

Section 81-8,251, R.R.S. 1943, provides that the Public Counsel shall each year report to the Clerk of the Legislature and to the Governor concerning the exercise of the functions of the office during the preceding calendar year. Pursuant to Section 81-8,251, this Fortieth Annual Report of the Nebraska Public Counsel's Office has been prepared as the annual report for the calendar year 2010, and is hereby respectfully submitted.

## THE OMBUDSMAN CONCEPT

Throughout much of the last century, countries around the world, in general, and Americans, in particular, have witnessed a dramatic growth in the scope of government. The modern bureaucratic state, with its extended supervisory functions and its increased provision of services, has become an unavoidable reality. As a natural concomitant of that reality, the organization and operation of government has become more sophisticated, and more complex, as government has endeavored to perform its expanded role in an efficient, evenhanded, and procedurally reasonable manner. A common result of this increased complexity in government is the utter bewilderment that many citizens experience when confronted by the intricate, and seemingly infinite, array of rules, regulations, policies, and procedures that they encounter in their dealings with the bureaucracy of modern government. Thus, as government's involvement in the lives of its citizens has become more frequent, direct, and thorough, citizen interaction with that government has simultaneously become more complicated and, for many, far more frustrating.

As might be expected, these combined characteristics of modern government tend to generate a wide assortment of grievances in cases where citizens feel, rightly or wrongly, that their government has treated them in a manner that is unreasonable, unfair, or improper. While some of those grievances are ultimately resolved through the sole efforts of the complaining party, many grievances are left unresolved, either because there is no avenue for a ready solution, or because the grievant simply lacks the resources and sophistication necessary to utilize those avenues that do exist. When such grievances are left unresolved, citizens become more alienated from their government, and the errors of governmental operatives are left unaddressed and are, perhaps, even reinforced.

In order to help a bewildered public deal with the backlog of unresolved citizen grievances against governmental bureaucracy, numerous governments around the world have turned to the Swedish innovation of the ombudsman. Although the specific characteristics of the institution may differ in certain respects from one government to another, the basic concept of an ombudsman's office envisions an independent office that is designed to receive, investigate, and pursue informal resolution of miscellaneous citizen complaints relating to agencies of government. In carrying out this function, the ombudsman is not only expected to resolve the specific substantive complaints that come to the office, but the ombudsman is also

expected to promote improvements in the quality of government by advocating for changes in the ongoing management and operation of the agencies under the ombudsman's jurisdiction. It is also anticipated that the ombudsman, in performing these functions, will help to hold powerful governmental agencies publicly accountable for their actions.

In its classic form, an ombudsman, although an independent officer, is viewed as being an adjunct of the legislative branch of government. Indeed, one of the reasons that the ombudsman's office in its classic form is made a part of the legislative branch is to help insulate the ombudsman from pressures that the office might experience if it were placed within the executive branch of government. Because of its association with the legislative branch of government, the classic ombudsman is also able to perform a role as part of the apparatus for legislative oversight of governmental agencies and programs. In fact, the work of the ombudsman in resolving the problems that are experienced by ordinary citizens at the hands of governmental agencies gives the ombudsman a unique insight into the real world activities and consequences of those agencies and programs. That insight may then be used as a resource by the legislature in carrying out its oversight responsibilities with respect to the agencies within the ombudsman's jurisdiction.

Typically, the investigatory powers given to an ombudsman's office under the law are very real, and very meaningful. In arguing for the resolution of citizens' complaints, and in advocating for fundamental changes in the policies and procedures of administrative agencies, the "truth," as revealed to the ombudsman by a thorough investigation, is the most potent weapon that an ombudsman can wield. Indeed, without the power to thoroughly investigate the facts surrounding citizens' complaints, an ombudsman's office would be crippled in its efforts to understand and resolve those grievances. In addition to its investigatory authority, an ombudsman's office also has very broad power to make recommendations to the agencies under its jurisdiction, and to publish its findings and conclusions relative to the grievances that it investigates. However, the typical ombudsman's office does not have the authority to compel an administrative agency to accept and implement its conclusions and recommendations. Thus, in its formal relationship with the agencies under its jurisdiction, an ombudsman's office performs solely an advisory role. Nevertheless, it is widely recognized that an ombudsman's office, by providing a direct and informal avenue for the mediation of citizen grievances, is a valuable tool for enhancing the relationship between a government and its citizens and, ultimately, for improving the administration of government itself.



The ombudsman institution made its first appearance in North American government in the 1960's. In his ground breaking books *When Americans Complain* and *Ombudsmen and Others*, Professor Walter Gellhorn of Columbia University promoted the ombudsman concept as a means of providing an "external critic of administration" for American government. In 1967, Professor Gellhorn prepared a "Model Ombudsman Statute" and in 1969 the American Bar Association adopted a resolution which articulated the twelve essential characteristics of an ombudsman for government. The ABA followed this effort with the development of its own Model Ombudsman Act, which it adopted in 1971. From these beginnings, the ombudsman institution gradually spread to state and local governments across the United States.

## **INFORMATION AND REFERRAL**

In addition to performing its specific statutory mandate regarding the resolution of citizen complaints, the Office of the Public Counsel has assumed the additional function of responding to citizen requests for general information relative to government. In this day of complex bureaucratic structures and imponderable regulatory provisions, it is not unusual for citizens to be confused or simply "lost" in their dealings with government. The Office of the Public Counsel is frequently contacted by citizens with questions regarding the provision of governmental services, the content of specific laws and regulations and a variety of miscellaneous issues relating to government in general.

Historically, the Office of the Public Counsel has responded to such inquiries either by providing the information sought directly or by referring the citizens involved to the organizations or governmental entities that would be best equipped to provide the information sought. The Office of the Public Counsel, with its broad expertise in the organization and operation of government, particularly on the state level, has proven to be ideally suited to serve as a clearinghouse for citizen inquiries pertaining to government. Over the years, thousands of citizens have contacted the Office of the Public Counsel and have received the information necessary to enable them to better understand and interact with their government.

## HISTORY OF THE OFFICE

On July 22, 1969, the Nebraska Legislature passed LB 521, providing for the establishment of the Office of the Public Counsel. LB 521 was approved by Governor Norbert T. Tiemann, on July 29, 1969. (See Appendix.) The Office commenced actual operation on June 1, 1971, with the appointment of Mr. Murrell B. McNeil to the position of Public Counsel.

In creating the Office of the Public Counsel, the Nebraska Legislature established an office that was, in all significant respects, consistent with the classic model of an ombudsman's office as articulated in the American Bar Association's Resolution setting forth the twelve essential characteristics of an ombudsman for government. The new law contemplated that the Public Counsel would be an independent officer, appointed by the Legislature for a term of six years and subject to removal, for good cause, only by a vote of 2/3 of the members of the Legislature. In order to facilitate its efforts to resolve citizen complaints, the Office of the Public Counsel was endowed with very thorough investigatory powers, including the authority to address questions to officers and employees of state agencies, free access to agency records and facilities, and the subpoena power. The Office of the Public Counsel was further empowered to publish its findings and conclusions relative to citizen complaints and to make recommendations to the agencies under its jurisdiction. The Office was also authorized to participate, on its own motion, in general studies and inquiries not relating to specific citizen complaints. The jurisdiction of the Office of the Public Counsel was limited to scrutiny of the administrative agencies of the state government. The Office was not given jurisdiction over complaints relating to the courts, to the Legislature or to the Governor and her personal staff. Most significantly, the Office of the Public Counsel was not given jurisdiction over political subdivisions of the State.

After serving for over nine years as Nebraska's Public Counsel, Murrell McNeil retired from office, effective July 31, 1980. Upon Mr. McNeil's retirement, Mr. Marshall Lux, then the Deputy Public Counsel, became the Acting Public Counsel, by operation of law. On February 19, 1981, the Executive Board of the Legislative Council nominated Mr. Lux for appointment to the position of Public Counsel, pursuant to Section 81-8,241, R.R.S. 1943. That nomination was approved by the Nebraska Legislature on February 20, 1981. The Legislature reappointed Mr. Lux to successive terms in 1987, 1993, 1999, and 2005.

Throughout its history, the Public Counsel's Office has been the subject of legislative initiatives that have refined and extended the scope of the office's role in Nebraska government. The first of these developments was seen in 1976, as policy-makers around the country were searching for new ways to reform the corrections system in the wake of the Attica riots. The Nebraska Legislature responded to that situation in part by amending the Public Counsel Act to create the new position of the Deputy Public Counsel (Ombudsman) for Corrections. In creating this new position, the Legislature was, in effect, saying that it wanted to give special emphasis to resolving prison complaints and to have someone on the Legislature's staff who could act as an expert in that area. It was anticipated that this new position would not only offer inmates an effective avenue for obtaining administrative justice and the redress of grievances, but that it would also serve the interests of the state by helping to reduce sources of anger and frustration that led to inmate violence, and by decreasing the number of inmate lawsuits relating to prison conditions and operation. The Deputy Public Counsel for Corrections is Mr. James Davis III.

A significant issue before the Nebraska Legislature in 1989 was concerned with demands by Native Americans, particularly the Pawnee Tribe, that the Nebraska State Historical Society repatriate to the tribes those human remains and artifacts that archaeologists had recovered over the decades from Native American burial sites. The Legislature met these demands by adopting the Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act, which established procedures that allowed the tribes to seek the repatriation of human remains and burial goods that were being held in the collections of the Historical Society and other museums across the state. The Ombudsman's Office was given an important role in this procedure by being designated by the Legislature as the body responsible to arbitrate any dispute that arose between the tribes and the museums in the repatriation process. The Ombudsman's Office was actually called upon to perform this arbitration role on two occasions in disputes between the Pawnee Tribe and the Historical Society.

In 1993, in an effort to find new ways to encourage efficiency and discourage misconduct in state government, the Nebraska Legislature passed the State Government Effectiveness Act. Among other things, the Act contemplated that the Ombudsman's Office would become a focal point for the investigation of allegations of significant wrongdoing in state agencies. The Act also provided for a new procedure designed to protect state employees who acted as whistleblowers

to disclose wrongdoing in state government from being retaliated against by their supervisors. The Ombudsman's Office was given the key role in investigating and responding to these retaliation complaints and has, over the years, addressed many such cases. Early in 1997, the Nebraska Supreme Court found one important provision of the Act to be unconstitutional under the theory that it was a violation of the principle of separation of powers. *State ex rel. Shepherd v. Nebraska Equal Opportunity Commission*, 251 Neb. 517, 557 N.W.2d 684 (1997). However, those constitutional objections, as well as several other perceived difficulties with the functioning of the Act, were addressed by the Nebraska Legislature in LB 15 of 1997, which was signed by the Governor on March 10, 1997.

One of the most important issues before the Nebraska Legislature in 1994 was an initiative to restructure the state's system for the delivery of welfare services. In the process of changing this system, it was recognized that the recipients of welfare services would need to have a special problem-solver to help in dealing with the redesigned welfare system. It was also recognized that the Legislature itself would benefit from having the input and expertise of a staff person who was directly involved in addressing the day-to-day problems that arose in the implementation of the new welfare system. Responding to these needs in much the same way that it had in 1976, the Legislature created the new position of Deputy Public Counsel for Welfare Services as a part of the legislation that ultimately enacted the changes to the state's welfare system. The Deputy Public Counsel for Welfare Services is Ms. Marilyn McNabb.

In 2008, the Nebraska Legislature passed LB 467, which had been introduced by Senator Ernie Chambers. LB 467 made two significant changes to the Public Counsel's authority and focus. One part of LB 467 extended the Public Counsel's jurisdiction to include complaints that come from Nebraska's county and city jails. Since its inception, the authority of the Public Counsel's Office has been limited to addressing complaints that involve administrative agencies of State government. However, LB 467 changed that for the first time, and carved out a small segment of local governmental authority to place under the Public Counsel's jurisdiction. The State of Nebraska currently has over seventy active jail facilities that now fall under the Public Counsel's jurisdiction. The second element of LB 467 created a new position in the office for a Deputy Public Counsel for Institutions. This new position was created to provide for a person in the Public Counsel's Office who will have primary responsibility to examine complaints received from the state's non-correctional institutions, which includes the regional centers (mental health facilities), the state's veterans homes, and the Beatrice Developmental Center, the

State's only residential facility designed to treat, rehabilitate, and train the developmentally disabled. LB 467 also contemplated that the Public Counsel's jurisdiction and services would "follow" individuals involved in the State's system for behavioral health and developmental disability services who were transitioned out of State-run facilities to receive care in the community. Mr. Oscar Harriott, who has been on the Public Counsel's staff for many years, was designated to serve as the Deputy Public Counsel for Institutions, and is being assisted in that capacity by Assistant Public Counsel Gary Weiss.

## STAFF

The chief asset of the Public Counsel's Office is not its statutory powers or mandate. It is not even the high level of support that the Office receives from the public and the Legislature, although those factors are certainly important to the Public Counsel's success. The chief asset of the Public Counsel's Office is its staff, the men and women who carry out the routine duties of the Office.

The staff of the Office of the Public Counsel consists of eleven full-time and two part-time employees. Ten of the full-time staff members (Public Counsel Marshall Lux, Deputy Public Counsel Carl Eskridge, Deputy Public Counsel for Corrections James Davis III, Deputy Public Counsel for Institutions Oscar Harriott, Deputy Public Counsel for Welfare Services Marilyn McNabb, and Assistant Public Counsels Barb Brunkow, Anna Hopkins, Jerall Moreland, Hong Pham, and Gary Weiss) are actively involved in casework. The other employees (Rebecca Dean, Marge Green, Carla Jones, and Kris Stevenson) serve as mostly as case-intake personnel, and have significant contact with the public in fielding telephone calls, emails, etc., and providing immediate responses to questions from citizens.

It is, of course, always difficult to conveniently describe or characterize any group of people, even a group as small as the staff of the Nebraska Public Counsel's Office. The people who make up that staff are, after all, individuals, who bring diverse backgrounds and a wide range of unique talents to their jobs. Many of the professional employees of the Public Counsel's Office came to the office with previous experience in state government. Some had worked first in the office as volunteers before becoming permanent professional employees of the office. Four of the professionals in the office have law degrees, and some on the professional staff have advanced degrees in other areas as well. All of these backgrounds and associated talents contribute in many important ways to the success of the Public Counsel's Office. Viewed collectively, however, the most important characteristic of the staff of the Public Counsel's Office is its experience.

While the details of their backgrounds are remarkably diverse, one characteristic that many of the Public Counsel's Office staff have in common is their experience in working for other agencies of Nebraska state government. Nearly every member of the Public Counsel's Office professional staff had prior experience working in Nebraska state government before joining the Public Counsel's Office. In some cases, that prior experience was extensive. The professional staff of the

Public Counsel's Office has an average of nearly eighteen years of service with the State of Nebraska. This wide range of experience both in and out of the Public Counsel's Office has given the staff a meaningful exposure to the day-to-day functioning of state government and the issues that are common to its operation and have made the staff a true collection of professionals in the handling of complaints against state administrative agencies.

Beyond its experience in state government generally, the staff of the Public Counsel's Office has the additional advantage of continuity. The rate of turnover of the Public Counsel's staff is very low, even for such a relatively small office. The average Public Counsel's Office employee has been with the office for more than twelve years, an average which would be higher but for the addition of three new employees in 2008. This means that the employees of the Public Counsel's Office are not only experienced in the minutia of state government, but that they are also highly experienced in the fine art of complaint-handling. They have refined the needed human skills for dealing with people under stress. They have developed the analytical skills for untangling complicated issues presented in complaints. They have acquired the negotiation skills necessary for bringing citizens and bureaucrats together for the resolution of difficult problems.

Dealing effectively with citizen complaints requires an uncommon combination of talents and expertise. The professional training and background of the Public Counsel's staff is both diverse and extensive. That background together with the uncommon continuity of the staff has enabled the Public Counsel's Office to develop and maintain a strong foundation in what can truly be described as the profession of complaint handling.

**A Special Note** – In June of 2010, the Public Counsel's Office had two retirements and thus lost the experience and able help of two individuals who had over sixteen collective years of working for the office. One of these, Carla Jones, had served the Public Counsel's Office as an Administrative Assistant since 2004. Carla gave the office excellent service as a case-intake specialist, and was particularly good at handling calls from inmates who were complaining about their treatment in the State's correctional system. Assistant Public Council Anna Hopkins had worked for the Public Counsel's Office since 2000, and spent those years working mostly on inmate complaints and correctional issues. Anna came to the office with a particularly strong background in mental health counseling, and we found that this



experience was extremely valuable in helping to deal with angry, and frequently distraught, inmates who were often simply looking for a sympathetic “listener” to their grievances. Anna’s compassion and gentle good humor not only helped these inmates, but she also helped to improve the perspective and humanity of the people who she worked with for over ten years. All of us in the Public Counsel’s Office who worked with Carla and Anna these many years wish them well as they move on into retirement, and face new challenges and opportunities in their lives.

## COMPLAINT SUMMARIES

The following summaries are offered as thumbnail descriptions of the kind, source, and variety of a few of the routine complaints presented to Public Counsel's Office in 2010.

### **Department of Health and Human Services**

#### **Case # 100**

The complainant said that her husband is disabled, and that she is a student, and works part-time. The complainant said that her husband needs heart surgery and is currently on Medicaid. The complainant is particularly concerned about her husband's continued eligibility for Medicaid coverage, and has questions about the system that she needs to have answered. However, she says that her current caseworker simply tells her that "it is your problem, and you have to figure it out," when she has asked for an explanation of eligibility features that she did not understand. She said that she has placed three calls this week to the supervisor of her caseworker, but she has not heard back, and she only gets voice mail.

#### **Case #356**

The complainants are supposed to be adopting a three year old child who is a State ward. This is to be a subsidized adoption. The complainants are in the process of looking for a new home to purchase, and since the child being adopted is confined to a wheelchair, the family needs to have handicapped-accessible modifications to their new home, in order to accommodate this situation. Since this is a subsidized adoption, the Department of Health and Human Services caseworker has put in for approval for funding for modifications to be made to the complainants' new home, when they purchase one. However, Health and Human Services has denied the request for funding because an exact dollar amount cannot be listed at this time, and HHS will not allow the plan to provide for the modifications to be based on a contingency, which is what the HHS caseworker had suggested. Instead, the complainants have been given two choices. They can either postpone the adoption until they purchase a new home, or they can find another funding source for the modifications. The complainants feel that this is unfair.

### **Case #501**

The complainants have a 21 year old son who is autistic and mute. They can no longer care for him in the home because he requires 24 hour per-day care. He has been on the waiting list for residential care since he was seven years old. Their son's Service Coordinator held a meeting to discuss residential care, and the family was given priority funding for care. However, this was all subject to approval, and the Health and Human Services Central Office has denied this funding because they have concluded that the son is "no danger to himself or to the family." The complainants feel that, due to their son's behaviors at this point, they cannot care for him. He must be supervised at all times, and also now has panic attacks. The main care giver is the mother, who is not doing well physically herself.

### **Case #776**

The complainant says that her children were recently removed from the home due to alleged physical abuse by their father. Since the removal, the complainant has been charged with "failure to protect," but she has been given the right to have supervised visits with the children. However, her husband will not be allowed to have visitation with the children until he goes through a pre-treatment assessment. According to the Department of Health and Human Services scheduling for these assessments is very backed up and there will be a delay before the assessment can take place. The complainant understands the need for the assessment, however, she feels that her children have been traumatized enough because things are not normal. The complainant would like to find a way in which to expedite the needed visitation and treatment, so that the children can be returned as soon as possible.

### **Case #998**

The complainant is a quadriplegic who is able to remain in his home with the assistance of nurses and nurse aides paid for through Medicaid. The complainant currently receives three hours care in the morning, one hour for Range of Motion, one for feeding, and one for bathing. At night, he receives two hours, one for Range of Motion and one for feeding. Once a month a nurse comes in to change his catheter. The Department of Health and Human Services sent the complainant a letter dated May 29, 2010, notifying him that his case had been reviewed by

Qualis, a company hired by the Department to review cases of this kind, and that his care was being cut to one hour per month. Henceforth, his services will be only for the changing of the catheter. He was told that if he wants more care, then he will have to pay for it himself.

### **Case #1480**

The complainant said that he and his wife had adopted a four year old son who was in the State's foster care system. He said that their son has Asperser's syndrome, a form of autism. The complainant said that Magellan, which is the State's Medicaid gate-keeper, is refusing to approve their receiving any help from the State to deal with their son's condition. He said that the person in the Department of Health and Human Services who can usually find help for other children in this situation has been unable to find any help for their son.

### **Case #1711**

The complainant's son has ADHD. She said that her son has a medication paid for through Medicare that he uses for this condition, however, he only needs to use the medication when he is actually in school, and not during the summer months. However, the complainant said that the Department of Health and Human Services is now denying further Medicare coverage for her son's prescription. She said that Medicare is claiming that because her son is not using the medication or getting refills consistently, he must not need the medication that badly.

### **Case #1999**

The complainant has a two year old son who was a premature baby. He is doing well in some respects, but not so well in others. He gets seizures, has metabolic issues, and is the size of a one year old. The family's problem is that they do not have any insurance to cover their son's needs. The father works as a mechanic, but his work is not steady. As a result, some months the family is over the limit to qualify for Medicaid, and other months they are not. After the family's most recent report of income, they were over the Medicaid limit by \$140. As a result, the son

has no insurance coverage whatsoever. The son had seizures a few days ago, but they could not take him to the hospital because they could not afford to pay a \$7,000 hospital bill. The son's doctor wants him to be examined by specialists, but they cannot do that because of having no insurance. The family needs help in finding a way that their son can be consistently covered by Medicaid.

### **Case #2076**

The complainant said that in 2005 their family adopted a State ward who was a premature baby who had been born with methamphetamine in her system. The biological mother left the hospital after giving birth to the little girl, and she never saw the child again. However, now the biological mother has had another baby, and the complainant said that their family has offered to adopt this child too. At the time, the new child was 20 months old and living in a foster home, having been removed from her mother's custody approximately two weeks earlier after the mother had tested positive for methamphetamine use again. Eventually, however, the complainants were informed that KVC, one of the lead contractors for the management of the State's foster care system, had decided to have the new child remain in her current foster home because they felt that she was attached to that family. The complainant believes that these cases should have been handled in a way so that the siblings could grow up together in the same family. She blames the "carelessness" of the State and KVC for the fact that these siblings are living in different homes.

### **Case #2175**

The complainant is a single mother with two daughters, ages 14 and 12. She said the daughters were removed from her custody by Child Protective Services in early May of 2009. This apparently had happened because the older daughter had reported at school that the heat was shut off and they had no food in the house. The complainant said that their original caseworker had said back in November of 2009 that she was going to support dismissing the case and returning the daughters to their home. However, that caseworker has left the Department of Health and Human Services and taken another job. Now, they are having to start all over with a new caseworker. The complainant said that the new caseworker will not even let her daughters talk to her on the telephone.

## **Department of Motor Vehicles**

### **Case #546**

The complainant, who is handicapped, feels that he has been charged twice for his handicapped license plates, and he believes that this is not right. The complainant said that he went to the licensing office in February to license a new car. He had to pay for the plates, and then they ordered the handicapped license plates. He then had to go back in three weeks to get the handicapped plates, and pay more fees for the new plates. He believes that this system punishes him for being handicapped, and that he is being "charged double" for his plates. He feels the county office could have some of the handicapped plates on hand. The complainant said that he had been told that a handicapped license plate is a "prestige plate," but the complainant does not feel it is a matter of "prestige" to be handicapped.

### **Case #576**

The complainant said that he had recently purchased a motorcycle. However, he "totaled" the motorcycle in an accident only about ten days later. At the time of the accident, the complainant had not paid the sales tax on the purchase of the motorcycle. Now, he needs to know whether he still has to pay a sales tax on the purchase, since the motorcycle was totaled. The insurance company did pay him for the totaled motorcycle. The complainant has contacted the Department of Motor Vehicles about this, but the agency has given him two different answers on this issue.

### **Case #1167**

The complainant's said that he has been trying to get his Iowa driver's license, but there is a "hold" in Nebraska that prevents him from doing so. The complainant explained that he is ready to pay his reinstatement fee in Iowa, and he could get his license, if it were not for this problem with his record in Nebraska. He said that he was sent paperwork from the Nebraska Department of Motor Vehicles, but thinks it was thrown away. The complainant said that he is ill, and needs to be able to drive to Omaha to visit his doctor. He said that he has recently found out that he has cancer, and he has several other medical concerns.

## **Department of Correctional Services**

### **Case #93**

The complainant, who is an inmate at the Nebraska Correctional Center for Women, was injured while she was working on her job at the facility. During trash recycling, the staff person who was in charge went to help other inmates, and left two inmates to finish the recycling. They loaded the trailer, but in trying to close the trailer door, the wind caught the door, and the complainant was thrown against the building. She was sent to the hospital for stitches, but since that time she has developed a problem with blurry vision. She would like help in getting medical attention for the vision issue.

### **Case #289**

The complainant is an inmate at the Penitentiary. The complainant was placed on Administrative Confinement approximately one year ago. At the time, he was not given an explanation for the reason why he was placed on AC, and was only told that it involved an altercation with another inmate. The decision to place him on AC was based on information received from a confidential informant, according to the complainant. The complainant admitted that there was a fight, but when he was treated by medical staff, he was the one who had to have seven staples in his skull. The complainant has filed grievances, but not in a timely fashion. He feels he will be kept in AC indefinitely, while the other inmate who was involved in the fight has already been discharge from the facility. The complainant would like to have assistance in getting off of AC.

### **Case #640**

The complainant had been placed at the Nebraska Work Ethic Camp, but he was recently removed from the Camp and sent back to prison. He does not understand why he has been kicked out of WEC. He said he only had five weeks left in the program and now he is at the Diagnostic and Evaluation Center with an uncertain future. When the complainant asked why he was being kicked out of WEC, he was told that it had something he said over the phone. He said he has not received a write-up, or anything else to explain what he had done wrong, and he does not

remember saying anything over the telephone that would be so bad that he would need to be terminated from WEC.

### **Case #1242**

The complainant is the mother of an inmate at the Penitentiary. She said that the family had tried to send money to be deposited in their son's institutional account. However, she has learned from her son that the check was confiscated by the institution. Apparently, there is an issue as to whether such a bank check is to be being honored as it has been in the past. The complainant would like this situation to be straightened out, so that the family can get the needed money into their son's institutional account.

### **Case #1410**

The complainant is an inmate at the Tecumseh State Correctional Institution. In September of 2009 the complainant was booked into a county jail, and his personal property was taken, inventoried, and placed in storage. In June of 2010, the complainant was transferred over to the custody of the Department of Correctional Services. When he checked on his property, he was told that the items could no longer be located. The items included a state I.D., a Social Security card, a cell phone, six photos of his children, a watch, and a leather belt. The complainant would like to have assistance in tracking his property, and discovering how it was misplaced.

## **Department of Revenue**

### **Case #957**

The complainant has an administrative hearing scheduled before the Department of Revenue to determine the extent of his tax liability. He wants the Department of Revenue give him a continuance on this tax hearing. The complainant said that he already got a continuance earlier this week, because he was sick with allergies.



Now, he wants another continuance because he is having problems locating an attorney who will to represent him in the matter.

### **Case #2205**

The complainant said that his ex-wife had filed a 2009 tax return using his Social Security number and W-2 form. After consulting with his attorney about this, the complainant filed his own taxes. In May of 2010, the complainant reported the facts concerning his ex-wife's filing a false tax return to the Department of Revenue. The complainant said that he has also sent relevant documentation to the Department. The complainant would like the Nebraska Department of Revenue to help resolve this matter, but thus far there has been no discernable progress.

### **Game and Parks Commission**

#### **Case #1342**

The complainant said that in February of 2010 he attended a hunter safety class in Lincoln that was presented by the Game and Parks Commission. He said that the attendees were told to park in a nearby parking lot, however, this parking lot was covered in ice, and the complainant slipped on the ice, fell, and badly injured his knee. The complainant said that he then filed a tort claim with the Game and Parks Commission, and sent in the relevant documentation. He said that about two or three months ago, he had received a letter from the Game and Parks Commission informing him that they were looking at his claim. He has since tried to call the Commission to find out what progress has been made on this, however, he said that no one returns his telephone calls.

### **Department of Roads**

#### **Case #491**

The complainant said that she has a big four foot hole in her back yard that was excavated there the day before by a construction crew. The complainant thinks

that this must be connected with the construction on Highway 75, which is located to the east of her property. She said that the crew left the equipment in her yard, and that they took down the permanent fence, and put up orange plastic fence in its place. The complainant said that she has children and dogs, and this situation creates problems for her. The complainant thinks that this excavation must be somehow connected with the Department of Roads, and she would like to have the situation corrected as quickly as possible.

### **Case #1663**

The complainant said that he had received a traffic citation recently for speeding on Highway 63 near his home. He said that he drives that road up to four times a week, and the speed limit has always been posted 55 MPH. Lately, however, the speed limit has been changing on almost a daily basis. He said that on the night he was caught speeding the posted limit was 35 MPH, but he had not noticed the change. The complainant wants to know if it is appropriate for the Department of Roads to change the highway speed limit signs on a daily bases.

## **Department of Insurance**

### **Case #804**

The complainant is connected with an insurance company doing business in Nebraska. In 2009, a individual who was insured by the complainant's company complained to the Nebraska Department of Insurance in regard to the handling of a claim on a health insurance issue. Since then, the complainant's company has received several letters of inquiry from an Insurance Investigator for Consumer Affairs with the Department of Insurance. The complainant says that they have answered all of the Investigator's questions, and that he is now getting questions from the Investigator that are basically repeats of questions that had been asked and answered earlier. The complainant feels that they are being harassed by the Department of Insurance. He believes that he has answered all of their questions over and over again. The complainant wants to know if he must keep answering the same questions and what his rights are in this situation.

### **Case #1359**

The complainants' family had a house fire and filed an insurance claim with their insurance carrier. The insurance company paid for a contractor to do the repairs on the home, but the contractor did not complete the work as promised. Later, the family filed a complaint about this with the Department of Insurance, alleging that there had been improper conduct in the case by the insurance company. Now, the family has received a letter from the Department informing them that the case relating to their complaint has been closed. The complainants are upset that "nothing has been done" by the Department of Insurance about their complaint against the insurer.

### **State Patrol**

#### **Case #1435**

The complainant was discharged from the Omaha Corrections Center in July of 2010. He said that he needs help in getting some property returned to him that had been seized by law enforcement. The complainant said that three books and a spiral address book were seized by an investigator for the Nebraska State Patrol. He says that he was told if there was no prosecution in connection with this seizure, then this property would be returned in six months. However, it has now been a year, and the property has not been returned.

#### **Case #1914**

The complainant said that in October she was leaving the State Capitol building when she fell on the Capitol's west steps. She said that she spent more than three hours at an emergency room, having bruised her sternum and cut her chin in the fall. The complainant said that she has contacted the Capitol Security office twice and that they are not interested in what happened to her. She said that the first time she called them she was promised a call back. However, no one returned her call, so she had to contact them again. The complainant feels that Capitol Security is not taking proper action to prevent such a fall from occurring again. She recommended adding a reflective edge stripping to the steps. She also said she has

suffered pain and mental anguish from this accident, and feels that she should be compensated.

## **Department of Labor**

### **Case #44**

The complainant reopened an existing Unemployment Compensation claim six or seven weeks ago. Since that time, she has had no response from the Department of Labor, not even a letter. She has no idea what the status of the case is, or what the problem is with payment. The complainant has been trying for six weeks to get in contact with the Unemployment Office. She says that they do not answer the telephone, and do not return her email messages. Now, she says that there is no email available on the Department of Labor web site.

### **Case #332**

In 2009, the complainant was receiving Unemployment Compensation benefits. During part of that time, the complainant was also receiving short-term disability benefits. She says that she called the Workforce Office to find out whether these disability payments would affect her Unemployment Compensation benefits, and that she was told her that since the short-term disability was private, those benefits would not have any impact on her Unemployment Compensation benefits. The complainant says that she also rechecked this with several other people in the Workforce Office, and was told by all of them that she should not report the short-term disability payments, because they would not affect her Unemployment Compensation benefits. Now, the complainant has received a letter stating she had been overpaid in Unemployment Compensation benefits, and that she would need to pay some money back to the State. The complainant believes that since she had double-checked the agency's original instructions not to claim the short-term disability payments several times, the requirement that she should pay back the Unemployment Compensation benefits is inappropriate.

### **Case #653**

The complainant had been unemployed since September of 2009, and had been receiving Unemployment Compensation benefits through the Department of Labor. In early April of 2010, the complainant attempted to apply for an extension of her Unemployment Compensation benefits, but she was told that she could not do so because she had missed a deadline. She said that she was not informed that there was a requirement to file for the extension of the benefits by April 3. However, the complainant said that she did not find out about this requirement until after the April 3 deadline had passed. The complainant said that she talked to someone at the Workforce Office, but they told her that she had to wait until September to reapply for benefits.

### **Case #792**

The complainant said that he has been receiving Unemployment Compensation benefits through the State of Nebraska. He was receiving \$298 per week, with a maximum of \$4172. The complainant said that he had filed an application for an extension of benefits. Two weeks ago this application was approved, and he was supposed to start receiving the extended benefits. However, no Unemployment Compensation benefits had been received, and so the complainant decided to do some checking on it. After making lots of telephone calls, he found out that he needed to file for the extension through the State of Iowa, and that the mistake was made by the Nebraska Department of Labor. As a result of this mistake, the complainant has lost some benefits.

### **Case #1121**

The complainant was discharged from the Navy on May 10, 2010, and returned to his home in Nebraska. The complainant said that before leaving Virginia he had contacted the Department of Labor office in Omaha, and was told there would be a four week waiting period before he could actually begin to collect Unemployment Compensation benefits. The complainant completed his application for benefits, but he is now being told there is a twelve week waiting period because he "quit his job." The complainant said that he had fulfilled his tour of duty with the military, and that he did not "quit" his job.

### **Case #1481**

The complainant is the manager of a motel in a small Nebraska city. He said that he had received a notification letter yesterday relating to a hearing scheduled to be held before the Department of Labor Appeals Tribunal on an Unemployment Compensation claim by a former employee. He said that the hearing is scheduled for tomorrow at 8:30 a.m. Central Daylight time, but since he lives in the Mountain Time Zone, the hearing will actually be at 7:30 in the morning the complainant's time. The complainant said that he is supposed to get copies of documents to the former employee and to the Appeals Tribunal Judge before 7:30 tomorrow. The complainant said that he has made a request for continuances of this hearing twice, but that his requests were denied.

## **Department of Environmental Quality**

### **Case #1037**

The complainant said that he is a member of the village board of a village that is in the process of completing a sewer project. The Department of Environmental Quality is telling the municipality that it will need to build a new sewage lagoon. Presently, the village does not have water meters, and so too much water goes into the sewers, exceeding what is allowed to the existing lagoons. Apparently, the resolution is to have water meters installed, but that will be costly for such a small town. The village officials want to know if they really have to do this, or if DEQ might be able to offer them some other alternative.

### **Case #1423**

The complainant said that he has recently been contacted by the Department of Environmental Quality regarding concerns about a landfill located on a site near to property that he owns. The complainant said that he had started to build a house on his land one year ago, and that the people who are responsible for the landfill told him at the time that everything was safe. Now, however, the Department of Environmental Quality wants to test his water supply for contaminants from the landfill. Thus far, the complainant has refused to allow the testing to be done. The complainant said that the people who are responsible for the landfill are trying to

buy the property located next door to his. He said that he believes that they have concluded that it is actually cheaper for them to buy the property that has been contaminated than it is to clean up the property. He wonders where this leaves the property values of those who own property nearby, like his own. The complainant is particularly concerned that the results of the DEQ tests might make it impossible to use his land as collateral for a loan to help pay for the completion of his new home.

## **Department of Education**

### **Case #574**

The complainants got into a prolonged dispute with local school officials over a statement reportedly made by a school employee in an article that ran in their local newspaper. The statement related to the supposed “aggressive” characteristics of students with behavioral and mental challenges. The complainants challenged the accuracy of this statement, but the school employee was backed in this situation by the Superintendent of the school district. Eventually, the complainants filed a formal complaint against both the school employee and the Superintendent with the Nebraska Department of Education, alleging that there had been professional misconduct in how the school officials had responded to their concerns. After an investigation of the merits of their complaint by the Department of Education, the complainants were informed by the Department that their complaint was being dismissed. The complainants disagree with this decision by the Department of Education, and take issue with how the investigation by the Department was conducted.

### **Case #1434**

In Nebraska, the Department of Education is responsible for carrying out disability determinations in cases where people apply for Social Security Disability benefits. The complainant is a subcontractor that performs mental status exams for a private organization that contracts with the Nebraska Department of Education to do the disability evaluations for Social Security Disability determinations in Nebraska. The complainant said that she had recently been informed by the contractor that they had received a voice mail from the Disability Determinations office indicating

that the mental status exams performed by the complainant were not acceptable, and that they were no longer going to allow the complainant to perform those evaluations. The complainant does not understand this situation, and wants a clearer explanation from the agency as to what has caused this.

## **Liquor Control Commission**

### **Case #310**

The complainant purchased a restaurant in a small Nebraska city, and is fixing it up to be opened in the near future. The complainant said that he has applied for a liquor license for the restaurant with the Liquor Control Commission. However, he said that they have run into some problems in trying to get this license. First, they applied in the name of one of their family members who was denied because of his background. A subsequent application was denied because the same family member was going to work at the restaurant. The complainant said that he does not understand why they are not allowed to have a liquor license just because this family member will be working in the restaurant.

## **Regional Centers**

### **Case #232**

The complainant's son is a patient at the Lincoln Regional Center. The father believes that his son "is better now," and that the Regional Center has "done all they can do" to help his son manage his illness. The complainant would like to have his son released from LRC. He said that his son's caseworker at the Regional Center believes that the son should "move on," but the son's treatment team does not agree.

### **Case #375**

The complainant is a patient at the Lincoln Regional Center. He said that the condition of the mattress he is currently sleeping on worsens his chronic back



problems, and that he is trying to obtain a suitable mattress for his back from the LRC staff. The complainant was recently moved to a different unit, and he wants a mattress similar to the one he had in the other unit. He said that a peer was able to obtain a mattress similar to what he would need for his back, but only after he wrote a grievance. The complainant said that he has now exhausted the internal grievance process in his efforts to get a better mattress, but has made no progress. He said that he has documentation of his back problems from a specialist.

### **Case #402**

The complainant is the wife of a patient at the Lincoln Regional Center. She said that LRC wants to release her husband, however, the LRC staff has told her that he must first have a legal guardian appointed. The complainant believes she should be the legal guardian for her husband. She said that she already has his general Power of Attorney, and also has his Power of Attorney over medical matters. The complainant said that the LRC staff wants her husband to either go to a group home, or to a nursing home. She, however, wants him come home and live with her. She said that they have been married for 18 years, and she believes that she would be able to care for him in their home.

### **Case #734**

The complainant is a patient at the Norfolk Regional Center. The complainant said that he has been denied visitation with his family, after it had been approved by NRC staff. He believes that reasonable times for visitation are not being provided to meet the needs of NRC patients and their visitors. He said that patient visitation rights are being treated by the hospital staff as if they are a privilege that can be denied at the discretion of staff. The complainant said that the published hospital policy indicates that visits are regarded as being secondary to considerations of treatment and staff availability. He believes that more should be done to facilitate their visits.

### **Case #1641**

The complainant is a patient at the Lincoln Regional Center. She complained that in the middle of the summer the air conditioning in her building has not been

working for many weeks. She said that it has now been ten weeks with no air conditioning in their building. The complainant believes these are horrible living conditions for the people who reside in the building, and that even inmates have better living conditions than the LRC patients. She feels that the air conditioning should be fixed immediately.

### **Case #1679**

The complainant is a patient at the Norfolk Regional Center. He said that he should be moving up in the facility's Levels Program, but for some reason he is not progressing in the Levels Program. He said that he was previously a Level 2, but he has been demoted, and now he is a Level 1, although he feels that he should be a Level 3. The complainant said that he feels the only patients who move up in the Levels Program are the ones who cause trouble, and then they are moved up in the Program, and are transferred to the Lincoln Regional Center.

### **Case #1741**

The complainant is a patient at the Norfolk Regional Center. He said that he needs a knee brace for his left knee. The complainant was told that a brace was being ordered, but then two weeks later he was told that he would have to pay for the brace himself. He said that as long as he is a ward of the State, he believes that he should not have to pay for his medical needs.

### **Case #1872**

The complainant is a patient at the Lincoln Regional Center. He said that he was assaulted by another patient, and that, as a result, his jaw was broken. He said he had surgery in June for his broken jaw, and he is still in a great deal of pain, and is having problems eating. The complainant said that he is only getting Ibuprofen for the pain, which is not enough. He also believes he should have his jaw X-rayed again to make sure it is healing properly.

## **County Jails**

### **Case #3**

The complainant is an inmate in a small county jail. He has requested the use of the law library so that he can work on his criminal case. However, the county jail does not have a law library, and they also will not provided him with the law books that he has requested. The complainant is also upset that the jail does not make cleaning supplies available to inmates on a daily basis.

### **Case #173**

The complainant is an inmate in the Douglas County Jail. He said that he had approval to possess a prayer rug and Koran, and has a document showing that he was allowed to have these items in his possession while in the jail. However, these items were taken away during a shake down. The complainant needs these items for his religious worship, and has not been able to get these articles back.

### **Case #239**

The complainant is an inmate in a medium sized jail. He said that he was recently assaulted by another inmate while sitting in the jail's library. However, after being assaulted, the other inmate told the jail staff that he was the one who was beaten up by the complainant. The jail staff said that they would look at the videotape of the incident, but later they told the complainant that the tape was erased, and now he has been charged with assault of the other inmate. The complainant also said that his knee was injured during the assault, but nothing has been done about the pain.

### **Case #333**

The complainant is an inmate in the Lancaster County Jail. The complainant said that her tonsils are badly swollen, and that she has much pain and is running a high fever. She said she has only been seen by the jail's LPN, and she feels that she

needs to be examined by a physician who will be able to determine the severity of her condition.

### **Case #819**

The complainant was an inmate in the Lancaster County Jail, but she has been transferred to a jail in a different county due to overcrowding at Lancaster County Jail. The complainant said that she is having blood pressure problems, and that the jail she is in now has taken her off of all of her medications, including her blood pressure medications. She feels that it is possible she has had a stroke because the right side of her body is numb. The complainant said that she was fine when she was receiving her medications, but now she is fearful that she is not getting the correct medical treatment.

### **Case #1625**

The complainant said that the women inmates in the Lancaster County Jail are not given any time and space for exercise. She said that the jail is so overcrowded that the women are not able to exercise as they should. The complainant said that she would like to be able to walk daily for her hypertension. However, the jail's "yard" is so small that it is used for the men, and cannot hold more than five people at a time. This means that there is really no time for the women, due to the male inmates taking up all the time in the yard. Twenty-two other women have joined the complainant in signing her letter.

### **Case #2068**

The complainant is an inmate in a medium sized county jail. The complainant said that he has had multiple seizures since being incarcerated at the jail. He said that if he was allowed to take the medication that he was receiving when he arrived at the jail, then he knows that the problem would improve greatly. However, the jail's nurse will not let him have those medications, and they will not let him see a doctor to get a new prescription for the needed medication.

It is emphasized that the complaints that have been described in this section can be appropriately characterized as being routine cases of the Office of the Public Counsel. Many of the complaint cases worked on by the Public Counsel's Office in 2010 were similar, in many respects, to those which are described here. On the other hand, many other complaint cases that were handled by the Office of the Public Counsel in the last year were substantially different in subject matter, and some presented issues that were more complex, requiring elaborate investigative efforts.

## STATISTICAL ANALYSIS

The following tables illustrate the size, nature, and distribution of the caseload of the Nebraska Public Counsel's Office for 2010. In 2010, the Public Counsel's total caseload was 2,346 cases. This year's caseload total is almost identical to the caseload that the office had in 2009 (2,328 cases), and represents an increase of slightly less than 1% over the caseload of 2009. It must be emphasized, however, that the 2009 caseload was actually the second highest caseload total in the history of the Public Counsel's Office (our highest annual caseload was 2,482 cases, recorded in 2002). Our experience before has been that when the Public Counsel has a year where the annual caseload increases significantly, as it did in 2010, it is not unusual for the office to experience a brief "plateau" of a year or so, when the caseload remains stable at the new level.

One area that showed significant, if unsurprising, growth in 2010 was in regard to complaints that are involved with the Nebraska Department of Labor. Typically, the Department of Labor has not been a significant source of complaints to the Public Counsel's Office, but there has certainly been a notable increase in the rate of Department of Labor complaint cases over the last two years. To illustrate, the Office received only 20 Department of Labor cases in 2006, 24 such cases in 2007, and merely 17 Department of Labor cases in 2008. In contrast, in 2009 the Public Counsel's Office received 37 Department of Labor complaint cases (an increase of some 85% over the average for the three previous years). And in 2010, the Public Counsel's Office received 51 cases relating to the Department of Labor, a number which is some two and one-half times as large as the average for cases involving the Department of Labor over the period from 2006 through 2008. It is clear, of course, that this increase is almost entirely related to the particularly deep recession that has been experienced in the nation's economy over the last few years, a situation which has left many more Nebraskans unemployed and in need of Unemployment Compensation benefits. Although the number of Department of Labor cases that are being received by the Public Counsel's Office in the early months of 2011 is still unusually high, our expectation is that this phenomenon will abate as the 2011 progresses, and as the economy continues to recover.

It should be noted that in 2008 the jurisdiction of the Public Counsel's Office was extended to cover local jails. In 2009, the first full year that the office had this new jurisdiction over jails, the Office received nearly 200 jail-complaint cases. This number of cases has basically remained steady in 2010, when the Office received a total of 204 jail-related complaints. Our expectation continues to be that the

number of these cases will grow at a gradual rate, as more jail inmates and their families hear about our role in addressing issues of this nature.

**TABLE 1**  
**SUMMARY OF CONTACTS 2010**

Month	Total Inquiries	Complaint	Information
January	192	169	23
February	171	154	17
March	247	232	15
April	202	193	9
May	160	153	7
June	247	233	14
July	209	183	26
August	213	205	8
September	148	140	8
October	170	165	5
November	211	199	12
December	176	165	11
<b>TOTAL</b>	<b>2346</b>	<b>2191</b>	<b>155</b>

<b>% of Total</b>	<b>100%</b>	<b>93%</b>	<b>7%</b>
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**TABLE 2  
OMBUDSMAN CONTACTS 2010**

	<b>Total Logged Inquiries</b>	<b>Total Logged Complaint</b>	<b>Pending Complaint</b>	<b>Justified</b>	<b>Unjustified</b>	<b>Partially Justified</b>	<b>Discontinued</b>	<b>No Jurisdiction</b>	<b>No Jurisdiction But Assisted</b>	<b>Total Logged Information</b>	<b>Info Cases Pending</b>
January	192	169	3	35	50	45	17	6	13	23	0
February	171	154	2	36	36	49	20	6	5	17	0
March	247	232	6	35	62	79	20	12	18	15	0
April	202	193	9	33	62	49	19	5	16	9	0
May	160	153	8	34	48	32	17	3	11	7	0
June	247	233	26	39	49	70	30	9	10	14	1
July	209	183	19	25	43	45	32	7	12	26	0
August	213	205	24	35	50	46	25	9	16	8	0
September	148	140	18	21	32	38	14	6	11	8	0
October	170	165	10	26	42	45	21	10	11	5	0
November	211	199	25	26	48	56	23	10	11	12	0
December	176	165	37	24	36	38	13	7	11	11	0
<b>TOTAL</b>	<b>2346</b>	<b>2191</b>	<b>187</b>	<b>369</b>	<b>558</b>	<b>592</b>	<b>251</b>	<b>90</b>	<b>145</b>	<b>155</b>	<b>1</b>

<b>% of TOTAL</b>	<b>100%</b>	<b>93%</b>	<b>8%</b>	<b>16%</b>	<b>24%</b>	<b>25%</b>	<b>11%</b>	<b>4%</b>	<b>6%</b>	<b>7%</b>	<b>0%</b>
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**TABLE 3  
ANALYSIS OF NO-JURISDICTION CASES - 2010**

	Total No Jurisdiction Cases	Federal Jurisdiction	County Jurisdiction	Municipal Jurisdiction	Other Subdivisions of Government	Legislative or Policy Issues	Issues Before Courts	Private Matters Between Individuals	Issues Involving Governor or Staff
January	19	1	1	2	0	1	9	5	0
February	11	0	3	2	0	1	4	1	0
March	30	5	1	1	3	0	10	10	0
April	21	0	4	1	0	0	9	7	0
May	14	1	1	1	0	1	6	4	0
June	19	2	3	1	0	1	8	4	0
July	19	0	5	2	1	0	6	5	0
August	25	0	8	0	1	0	11	5	0
September	17	1	6	1	1	1	2	5	0
October	21	1	7	3	0	0	6	4	0
November	21	2	5	1	1	1	4	7	0
December	18	3	1	1	0	0	6	7	0
<b>TOTAL</b>	<b>235</b>	<b>16</b>	<b>45</b>	<b>16</b>	<b>7</b>	<b>6</b>	<b>81</b>	<b>64</b>	<b>0</b>

<b>PERCENT</b>	<b>100%</b>	<b>7%</b>	<b>19%</b>	<b>7%</b>	<b>3%</b>	<b>3%</b>	<b>34%</b>	<b>27%</b>	<b>0%</b>
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**TABLE 4  
MEANS OF RECEIPT AND LOCATION 2010**

MONTH	Location					Means of Receipt				
	Metropolian Lincoln	Metropolitan Omaha	Non Metropolitan	Out Of State	State Instiution	Letter	Visit	Telephone	Email	Fax
	C I	C I	C I	C I	C I	C I	C I	C I	C I	C I
January	28 2	15 3	47 8	1 1	78 9	80 8	1 0	62 14	25 1	1 0
February	27 5	13 1	26 8	3 0	85 3	82 4	6 0	57 9	8 4	1 0
March	41 2	25 0	40 8	7 2	119 3	121 6	5 0	71 7	34 2	1 0
April	27 2	13 1	56 4	5 0	92 2	107 2	3 2	62 3	20 1	1 1
May	33 0	15 2	38 3	3 0	64 2	79 3	4 1	52 3	16 0	2 0
June	33 4	18 1	50 5	7 2	125 2	129 3	5 1	80 8	16 1	3 1
July	33 2	18 6	40 5	3 3	89 10	90 6	5 0	75 18	13 0	0 2
August	39 4	16 1	47 3	5 0	98 0	98 1	8 0	85 4	11 3	3 0
September	19 4	14 0	32 2	3 1	72 1	70 2	6 0	51 6	12 0	1 0
October	26 0	16 3	45 1	2 0	76 1	86 1	4 0	69 1	6 3	0 0
November	44 4	18 0	42 5	6 2	89 1	98 3	3 0	81 8	17 1	0 0
December	33 1	11 1	32 4	4 1	85 4	94 2	4 0	54 5	12 4	1 0
<b>TOTAL</b>	<b>383 30</b>	<b>192 19</b>	<b>495 56</b>	<b>49 12</b>	<b>1072 38</b>	<b>1134 41</b>	<b>54 4</b>	<b>799 86</b>	<b>190 20</b>	<b>14 4</b>

\* C = Complaints, I = Information

**TABLE 5**  
**OFFICE OF THE OMBUDSMAN - 2010 AGENCY CONTACTS**

AGENCY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
Accountability & Disclosure	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Services	1	2	2	0	1	6	3	0	2	1	0	0	18
Aging	0	0	0	0	0	0	0	0	0	0	0	0	0
Agriculture	0	0	0	0	0	0	0	0	0	1	1	0	2
Arts Council	0	0	0	0	0	0	0	0	0	0	0	0	0
Attorney General	1	2	0	0	1	0	1	0	0	0	1	0	6
Auditor	0	1	0	0	0	0	0	0	0	0	0	0	1
Banking	0	0	0	0	0	0	1	0	1	0	0	1	3
Brand Committee	0	0	0	0	0	0	0	0	0	0	0	0	0
Claims Board	0	0	0	0	0	0	0	0	0	1	0	0	1
Corrections	84	83	110	91	61	124	87	84	63	74	89	89	1039
County	1	1	1	4	1	1	4	4	3	3	2	0	25
Courts	5	3	6	9	5	5	10	13	1	6	4	7	74
Crime Commission	0	0	0	0	0	0	0	1	0	0	0	0	1
Economic Development	0	0	0	0	0	0	0	0	0	0	0	0	0
Ed. Lands & Funds	0	0	0	0	0	0	0	0	0	0	0	0	0
Education	1	0	0	1	0	1	1	1	0	0	0	0	5
Environmental Quality	0	1	0	0	2	1	1	0	0	0	0	0	5
Equal Opportunity	1	0	0	0	1	0	0	1	0	0	0	1	4
Ethanol Authority	0	0	0	0	0	0	0	0	0	0	0	0	0
Educational Television	0	0	0	0	0	0	0	0	0	0	0	0	0
Fair Board	0	0	0	0	0	0	0	0	0	0	0	0	0
Federal	3	2	3	1	1	1	1	1	4	1	2	0	20
Fire Marshal	0	1	0	0	0	0	0	0	0	0	0	0	1
Foster Care Rev Bd	0	0	0	0	0	0	0	0	0	0	1	0	1
Game and Parks	0	0	0	0	0	0	2	2	0	0	0	0	4

Governmental Subdivision	1	0	1	1	2	1	1	2	0	0	3	0	12
Governor	0	0	0	0	0	0	0	0	0	0	0	0	0
Nebraska Commission for the Deaf and Hard of Hearing	0	0	0	0	0	0	0	0	0	0	0	0	0
Hearing Impaired	0	0	0	0	0	0	0	0	0	0	0	0	0
HHS Benefits	6	10	13	8	13	15	13	12	7	10	21	12	140
HHS BSDC	1	1	1	1	1	0	1	1	0	0	1	0	8
HHS Child Welfare	23	16	22	14	13	19	18	23	14	17	24	17	220
HHS Misc	13	4	16	9	10	8	9	9	13	9	5	11	116
HHS Regional Centers	3	7	6	4	2	4	6	14	6	6	4	5	67
HHS Regulation	1	0	0	1	4	2	0	3	1	0	1	1	14
HHS Vets Homes	1	1	2	2	0	0	1	0	0	2	0	0	9
HHS Visually Impaired	0	0	0	0	0	0	0	0	0	0	0	0	0
Historical Society	0	0	0	0	0	1	0	0	0	0	1	0	2
Indian Comm	0	0	0	0	0	0	0	0	0	0	0	0	0
Institutions	0	0	0	0	0	0	0	0	0	0	0	0	0
Insurance	1	0	0	1	0	0	2	0	1	0	0	0	5
Investment Council	0	0	0	0	0	0	0	0	0	0	0	0	0
Labor	10	5	8	7	3	5	6	2	0	2	3	0	51
Legislative	4	6	8	1	2	6	6	1	3	0	4	4	45
Library Comm	0	0	0	0	0	0	0	1	0	0	0	0	1
Liquor Control	0	1	0	0	0	1	0	1	0	0	0	0	3
Mexican Amer Comm	1	0	0	0	0	0	0	1	0	0	0	0	2
Motor Vehicles	1	3	2	2	1	3	0	2	1	2	3	1	21
Mtr Veh Dealers Lic Bd	0	0	0	0	0	0	0	0	0	0	0	0	0
Municipal	3	3	4	0	0	3	0	0	1	3	1	0	18
National Guard	0	0	0	0	0	0	0	0	0	1	0	0	1
Natural Resources	0	0	0	0	0	0	0	0	0	1	0	0	1
Pardons Board	0	0	1	1	0	0	0	0	0	0	1	0	3

Parole Board	2	1	3	1	0	1	2	0	2	0	2	0	14
Patrol	2	0	1	2	2	0	0	4	3	2	1	1	18
Personnel	1	0	1	1	0	0	0	0	0	0	0	0	3
Private Matter	6	1	8	7	5	7	6	4	3	4	5	4	60
Probation Adm	0	1	0	0	0	0	0	2	0	0	0	1	4
Public Service Comm	0	0	0	0	0	0	0	1	1	0	0	0	2
Real Estate Comm	0	0	0	0	0	0	0	0	0	0	0	0	0
Retirement Systems	0	0	0	0	0	0	1	0	1	2	1	0	5
Revenue	0	2	0	0	1	0	2	1	0	1	0	2	9
Risk Management	0	2	1	0	0	0	1	0	0	0	0	0	4
Roads	1	0	1	2	0	4	0	0	2	1	2	0	13
Secretary of State	0	0	0	0	0	1	0	0	0	0	0	1	2
St. Board of Equalization	0	0	0	0	0	0	0	0	0	0	0	0	0
St. Surveyor	0	0	0	0	0	0	0	0	0	0	0	0	0
State Colleges	0	0	0	0	0	0	0	0	0	0	1	0	1
Status of Women	0	0	0	0	0	0	0	0	0	0	0	0	0
Electrical Division	0	0	0	0	0	0	0	0	0	0	0	0	0
Treasurer	2	1	5	6	5	2	1	4	0	3	2	4	35
University	0	0	3	0	1	1	0	0	1	0	0	0	6
Veterans Affairs	0	0	0	1	1	1	1	0	0	0	0	0	4
Commission for the Blind	0	0	0	0	0	1	0	0	0	0	0	1	2
Racing Commission	0	0	0	0	0	0	0	0	0	0	0	0	0
Capitol Commission	0	0	0	0	0	0	0	0	0	0	0	0	0
HHS-Juv Justice	0	0	0	1	2	0	0	0	0	0	0	0	3
HHS-Juv Justice - Geneva	0	0	1	0	0	2	0	2	1	0	1	0	7
HHS Juv Justice-Kearney	0	0	0	0	0	0	0	0	0	0	1	0	1
County Jail	15	11	16	23	20	20	21	14	12	17	23	12	204
Athletic Commission	0	0	0	0	0	0	0	1	0	0	0	0	1
Board of Public Accountancy	0	0	0	0	0	0	0	0	0	0	0	0	0

Energy Office, Nebraska - Agency 71	0	0	0	0	0	1	0	0	0	0	0	0	1
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<b>TOTALS CASES</b>	195	172	246	202	162	248	209	212	147	170	211	175	2349
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*(NOTE: Case totals in this table are greater than the sum of all cases because a single case may involve in multiple agencies.)*

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**TABLE 6**  
**CASE DURATION REPORT 2010**

<b>Days Open</b>	<b>Record Count</b>	<b>% of Total</b>
1	227	11%
2	69	3%
3	61	3%
4	53	2%
5	77	4%
6	70	3%
7	85	4%
8	56	3%
9	35	2%
10	57	3%
11	32	1%
12	29	1%
13	28	1%
14	41	2%
15	43	2%
16	33	2%
17	27	1%
18	19	1%
19	31	1%
20	26	1%
21 to 30	208	10%



# APPENDIX A

## PUBLIC COUNSEL ACT

**81-8,240.** As used in sections 81-8,240 to 81-8,254, unless the context otherwise requires:

- (1) 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 office of the Public Counsel 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; and
- (2) Administrative act shall include every action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an administrative agency.

**81-8,241.** The office of Public Counsel is hereby established to exercise the authority and perform the duties provided by sections 81-8,240 to 81-8,254. The Public Counsel shall be appointed by the Legislature, with the vote of two-thirds of the members required for approval of such appointment from nominations submitted by the Executive Board of the Legislative Council.

**81-8,242.** The Public Counsel shall be a person well equipped to analyze problems of law, administration, and public policy, and during his term of office shall not be actively involved in partisan affairs. No person may serve as Public Counsel within two years of the last day on which he served as a member of the Legislature, or while he is a candidate for or holds any other state office, or while he is engaged in any other occupation for reward or profit.

**81-8,243.** The Public Counsel shall serve for a term of six years, unless removed by vote of two-thirds of the members of the Legislature upon their determining that he has become incapacitated or has been guilty of neglect of duty or misconduct. If the office of Public Counsel becomes vacant for any cause, the deputy public counsel shall serve as acting public counsel until a Public Counsel has been appointed for a full term. The Public Counsel shall receive such salary as is set by the Executive Board of the Legislative Council.

**81-8,244.** The Public Counsel may select, appoint, and compensate as he or she sees fit, within the amount available by appropriation, such assistants and employees as he or she deems necessary to discharge the responsibilities under sections 81-8,240 to 81-8,254. He or she shall appoint and designate one assistant to be a deputy public counsel, one assistant to be a deputy public counsel for corrections, one assistant to be a deputy public counsel for institutions, and one assistant to be a deputy public counsel for welfare services.

Such deputy public counsels shall be subject to the control and supervision of the Public Counsel.

The authority of the deputy public counsel for corrections shall extend to all facilities and parts of facilities, offices, houses of confinement, and institutions which are operated by the Department of Correctional Services and all county or municipal correctional or jail facilities.

The authority of the deputy public counsel for institutions shall extend to all mental health and veterans institutions and facilities operated by the Department of Health and Human Services and to all regional behavioral health authorities that provide services and all community-based behavioral health services providers that contract with a regional behavioral health authority to provide services, for any individual who was a patient within the prior twelve months of a state-owned and state-operated regional center, and to all complaints pertaining to administrative acts of the department, authority, or provider when those acts are concerned with the rights and interests of individuals placed within those institutions and facilities or receiving community-based behavioral health services.

The authority of the deputy public counsel for welfare services shall extend to all complaints pertaining to administrative acts of administrative agencies when those acts are concerned with the rights and interests of individuals involved in the welfare services system of the State of Nebraska.

The Public Counsel may delegate to members of the staff any authority or duty under sections 81-8,240 to 81-8,254 except the power of delegation and the duty of formally making recommendations to administrative agencies or reports to the Governor or the Legislature.

**81-8,245.** The Public Counsel shall have power to:

- (1) Investigate, on complaint or on his or her own motion, any administrative act of any administrative agency;
- (2) Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of sections 81-8,240 to 81-8,254, determine the form, frequency, and distribution of his or her conclusions, recommendations, and proposals.
- (3) Conduct inspections of the premises, or any parts thereof, of any administrative agency or any property owned, leased, or operated by any administrative agency as frequently as is necessary, in his or her opinion, to carry out duties prescribed under sections 81-8,240 to 81-8,254;
- (4) Request and receive from each administrative agency, and such agency shall provide, the assistance and information the public counsel deems necessary for the discharge of his or her responsibilities; inspect and examine the records and documents of all administrative agencies notwithstanding any other provision of law; and enter and inspect premises within any administrative agency's control;
- (5) Issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus 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 counsel present while being questioned;
- (6) 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; and
- (7) Make investigations, reports, and recommendations necessary to carry out his or her duties under the State Government Effectiveness Act.

**81-8,246.** In selecting matters for his attention, the Public Counsel shall address himself particularly to an administrative act that might 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 Public Counsel may concern himself also with strengthening procedures and practices which lessen the risk that objectionable administrative acts will occur.

**81-8,247.** The Public Counsel may receive a complaint from any person concerning an administrative act. He shall conduct a suitable investigation into the things complained of unless he believes that:

- (1) The complainant has available to him another remedy which he could reasonably be expected to use;
- (2) The grievance pertains to a matter outside his power;
- (3) The complainant's interest is insufficiently related to the subject matter;
- (4) The complaint is trivial, frivolous, vexatious, or not made in good faith;
- (5) Other complaints are more worthy of attention;
- (6) His resources are insufficient for adequate investigation; or
- (7) The complaint has been too long delayed to justify present examination of its merit.

The Public Counsel's declining to investigate a complaint shall not bar him from proceeding on his own motion to inquire into related problems. After completing his consideration of a complaint, whether or not it has been investigated, the Public Counsel shall suitably inform the complainant and the administrative agency involved.

**81-8,248.** Before announcing a conclusion or recommendation that expressly or impliedly criticizes an administrative agency or any person, the Public Counsel shall consult with that agency or person.

**81-8,249.**

- (1) If, having considered a complaint and whatever material he deems pertinent, the Public Counsel is of the opinion that an administrative agency should (a) consider the matter further (b) modify or cancel an administrative act, (c) alter a regulation or ruling, (d) explain more fully the administrative act in question, or (e) take any other step, he shall state his recommendations to the administrative agency. If the Public Counsel so requests, the agency shall, within the time he has specified, inform him about the action taken on his recommendations or the reasons for not complying with them.
- (2) If the Public Counsel believes that an administrative action has been dictated by a statute whose results are unfair or otherwise objectionable, he shall bring to the Legislature's notice his views concerning desirable statutory change.

**81-8,250.** The Public Counsel may publish his conclusions and suggestions by transmitting them to the Governor, the Legislature or any of its committees, the press, and others who may be concerned. When publishing an opinion adverse to an administrative agency he shall include any statement the administrative agency may have made to him by way of explaining its past difficulties or its present rejection of the Public Counsel's proposals.

**81-8,251.** In addition to whatever reports he may make from time to time, the Public Counsel shall on or about February 15 of each year report to the Clerk of the Legislature and to the Governor concerning the exercise of his functions during the preceding calendar year. In discussing matters with which he or she has dealt, the Public Counsel need not identify those immediately concerned if to do so would cause needless hardship. So far as the annual report may criticize named agencies or officials, it must include also their replies to the criticism. Each member of the Legislature shall receive a copy of such report by making a request for it to the Public Counsel.

**81-8,252.** If the Public Counsel has reason to believe that any public officer or employee has acted in a manner warranting criminal or disciplinary proceedings, he shall refer the matter to the appropriate authorities.

**81-8,253.** No proceeding, opinion, or expression of the Public Counsel shall be reviewable in any court. 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, except in a proceeding brought to enforce sections 81-8,240 to 81-8,254.

**81-8,254.** A person who willfully obstructs or hinders the proper exercise of the Public Counsel's functions, or who willfully misleads or attempts to mislead the Public Counsel in his inquiries, shall be guilty of a Class II misdemeanor. No employee of the State of Nebraska, who files a complaint pursuant to sections 81-82,40 to 81-8,254, shall be subject to any penalties, sanctions, or restrictions in connection with his employment because of such complaint.

## Bibliography

Anyone interested in learning more about the ombudsman concept as that concept has been implemented through the Nebraska Office of the Public Counsel is invited to read the following materials:

Frank, *The Nebraska Public Counsel - The Ombudsman*, 5 Cumberland - Samford L. Rev. 30 (1974).

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Miewald and Comer, "The Nebraska Ombudsman: An American Pioneer." *International Handbook of the Ombudsman - Country Surveys*, edited by Gerald E. Caiden, Connecticut; Greenwood Press, 1983.

Wyner, *Complaint Resolution in Nebraska: Citizens, Bureaucrats and the Ombudsman*, 54 Neb. L. Rev. 1 (1975).

Wyner, *The Nebraska Ombudsman: Innovation in State Government*. Berkeley: Institute of Government Studies, University of California, 1974.