

with the agency involved. Persuasion is the chief instrument in gaining administrative agencies' favorable response to suggestions. Only when persuasion fails will the Ombudsman begin to think about mobilizing the force of public opinion. To guard against one-sidedness, the Ombudsman is required to disclose the criticized agency's or official's view of the matter along with his own, when the two views differ.

SEC. 15. REPORTS.—In addition to whatever reports he may make from time to time, the Ombudsman shall on or about February 15 of each year report to the _____ [name of legislative body] and to the _____ [title of the chief executive] concerning the exercise of his functions during the preceding calendar year. In discussing matters with which he has dealt, the Ombudsman 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 also include the substance of their replies to the criticism.

SEC. 16. DISCIPLINARY ACTION AGAINST PUBLIC PERSONNEL.—If the Ombudsman has reason to believe that any public official, employee, or other person has acted in a manner warranting criminal or disciplinary proceedings, he shall refer the matter to the appropriate authorities.

SEC. 17. OMBUDSMAN'S IMMUNITIES.—(a) No proceeding, opinion, or expression of the Ombudsman shall be reviewable in any court;

(b) No civil action shall lie against the Ombudsman or any member of his staff for anything done or said or omitted, in discharging the responsibilities contemplated by this Act;

(c) Neither the Ombudsman 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 this Act.

Comment: Subsection (a) precludes judicial review of the Ombudsman's work. This preclusion simply recognizes that the Ombudsman issues no orders and takes no steps that bar anyone from pursuing preexisting remedies.

Subsection (b) extends to the Ombudsman's office the immunity from harassment by lawsuit that is shared by judges and many other officials. It does not preclude criminal prosecution were serious misconduct ever to be brought to light; moreover, Section 6 provides for removal from office were the Ombudsman to be found miscreant.

Subsection (c) saves the Ombudsman's office from the awkwardness of interrupting its ongoing work in order to testify about matters concerning which it may have received information (often given in confidence). The subsection does not, however, preclude the Ombudsman's testifying in proceedings needed to enforce the Act, such as an action to compel compliance with a subpoena or a prosecution against a violator under Section 19, below. The subsection does prevent his being used as an adjunct to private litigation.

SEC. 18. RIGHTS AND DUTIES OF WITNESSES.—(a) A person required by the Ombudsman to provide information shall be paid the same fees and travel allowances as are extended to witnesses whose attendance has been required in the courts of this state;

(b) A person who, with or without service of compulsory process, provides oral or documentary information requested by the Ombudsman shall be accorded the same privileges and immunities as are extended to witnesses in the courts of this state, and shall also be entitled to be accompanied and advised by counsel while being questioned.

(c) If a person refuses to respond to the Ombudsman's subpoena, refuses to be examined, or engages in obstructive misconduct, the Ombudsman shall certify the facts to the _____ [insert name of suitable court]. The Court shall thereupon issue an order directing the person to appear before the court to show cause why he should not be punished as for contempt. The order and a copy of the Ombudsman's certified statement shall be served on the person. Thereafter the court shall have jurisdiction of the matter. The same proceedings shall be had, the same penalties may be imposed, and the person charged may purge himself of the contempt in the same way as in the case of a person who has committed a contempt in the trial of a civil action before the court.