



## OFFICE OF THE CHILD ADVOCATE ANNUAL REPORT

DECEMBER 31, 2001

### **INTRODUCTION**

***By Tania Culley, Child Advocate***

Once again I have the privilege of submitting the Annual Report of the Office of the Child Advocate to the citizens of the State of Delaware who created this Office in the belief that safeguarding the welfare of Delaware's children is a responsibility that cannot be ignored. This second annual report outlines our progress in meeting our statutory responsibilities, and describes the triumphs and tragedies experienced by the people who make this Office operate. Last year, I indicated that we were well on our way to ensuring that all children in the child welfare system have a voice. Delaware should be both proud and appreciative of the work of this Office and the *pro bono* attorneys who have made this dream a reality.

Last year, I described the enormous difficulties inherent in this job. It has not become easier, but I can tell you that our staff is in it for the long haul. Each time a child describes the circumstances of his or her life, or each time a child discloses abuse, we learn more about the world in which we live. Children continue to tell us that their most important need is to have

someone to love them, who will not hurt them, and who will protect them.

Of all the hopes and desires I have for Delaware's children, the one request that I want most to emphasize is our critical need for more foster and adoptive parents. Please consider opening your hearts and homes to Delaware's most vulnerable children. If you are not willing or able, consider becoming an attorney for a child or a Court Appointed Special Advocate volunteer – speak for our children. If you are uncomfortable with Court involvement, become a mentor in the schools, at Ferris, or through Big Brothers/Big Sisters. Making a difference for tomorrow's children is about teaching children that adults respect them, love them, care about them, and believe in them. Please consider meeting our children – you will fall in love with them as we have.

Which brings me to an inspiration that came to me in March as I watched Diane Sawyer interview Rosie O'Donnell. At the heart of the interview was the Florida statute that prohibits gay individuals from adopting children. There are 3,412 children in Florida who are currently free for adoption but without permanent families. I

immediately reflected back to Delaware, and felt so proud to live here. Delaware currently has only 42 children who though legally free for adoption, have not yet been placed with permanent families. Delaware has no law dictating who is an able parent based on sexual orientation. I know numerous families who have adopted our abused and/or neglected children. Some are traditional heterosexual couples, others are single males or females, others are gay individuals, and still others are gay couples where one individual in the couple adopts the children. Most recently, the Delaware Family Court allowed both partners in a gay relationship to adopt children. Regardless of the mechanical makeup of these families, Delaware's abused and/or neglected children are finding love, stability and permanency.

I believe that Delawareans have made it clear that what they want most is to have our children's hopes and dreams fulfilled by a family, regardless of the sexual orientation of the parents. As many of you know, I have a four-year-old daughter. I thoroughly involve her in my work because I think it is important that she understand and appreciate the great diversity of individuals in our society. One day, about a year ago, she asked me a question about a child with whom she attended daycare. She said "Mommy, why does Susie have two mommies?" I have to admit I had a moment of panic before responding to my most perceptive daughter, but here was my response. "Keira, families come in all shapes and sizes. A family means being with people who love you and take care of you. Some families have a mommy and a daddy, some families have two mommies or two daddies, some families have one mommy or daddy, and some families have grandparents, aunts, uncles and cousins who are their family. Whoever their family is, the most important thing is that they are loved and taken care of."

Yet even as progressive as Delaware is in the child welfare area, there are still 42 children in need of a family – yesterday. There are also approximately 100 children who are the subject of

termination of parental rights petitions in Delaware. Many of them need homes too. Please consider helping. If you are hesitant to help, please consider meeting our children. They will warm your heart and probably convince you to help.

With all that said, I am humbled to have the opportunity to run Delaware's Office of the Child Advocate and to interact regularly with the people who believe in our children and our future. I hope to continue to expand the horizons for Delaware's children, increase their sense of hope, and make all of you proud of the work we do.

## **OUR MISSION FOR DELAWARE'S CHILDREN**

The mission of the Office of the Child Advocate is to safeguard the welfare of Delaware's children through educational advocacy, system reform, public awareness, training, and legal representation of children as set forth in 29 Del. C., Ch. 90A.

## **OUR GOALS FOR DELAWARE'S CHILDREN**

The Goals of the Office of the Child Advocate are to: (1) ensure that every child's voice is heard in every court proceeding which affects their life; (2) ensure that every component of the child protection system has the necessary education and training to put a child's safety and well-being above all else; and (3) ensure that Delaware's child welfare laws reflect the needs of our children and are a model for the nation.

## **WHO WE ARE AND WHY WE ARE MAKING A DIFFERENCE**

In our 2001 Annual Report, we provided the public with the background on each of our committed staff. This year, we would like to share a more personal side of our undying commitment to Delaware's children.

### ***Tania M. Culley, Esq. -- Child Advocate***

Tania has served as Delaware's first Child Advocate for almost two years. In that time, she has had the opportunity to represent 6 children. Their circumstances range from custody battles to serious injuries resulting in placement in foster care. Each case brings its own uniqueness and valuable life lessons. She truly enjoys the people she meets and the wisdom they impart.

Tania has also spent much time recruiting and supporting *pro bono* attorneys. No joy is greater than listening to colleagues speak so highly of the children whom they represent. Recruiting, training and supporting *pro bono* attorneys is a full-time job – but well worth the results. Tania also spends much time in the General Assembly advocating for and against laws that impact children. Recently, Tania has been asked to speak before numerous groups regarding the OCA program and what the community can do to help. She has also provided training on recently enacted laws which impact children.

Tania also serves on several task forces and committees that are addressing children's issues. She spends most of her spare time enjoying life with her family, especially her daughter, Keira.

### ***Mary Catherine ("M.C.") Landis, Esq. -- Deputy Child Advocate - New Castle County***

Mary Catherine Landis, or M.C. as she likes to be called, joined the Office of the Child

Advocate in October of 2000. Her primary responsibility as Deputy Child Advocate is to give children in the child welfare system a voice in decisions that impact their lives. Admitted to the bar in 1994, M.C. has found her work with OCA to be the most fulfilling of her career. Over the last year, M.C.'s caseload has grown from about 10 children to 27 as of December 31, 2001. She has seen four of her kids adopted into wonderful homes with several more awaiting finalization of their adoption. She has seen families work through their differences, and rejoiced in seeing families reunified and children stabilized. She has watched her kids succeed in school as well as at home, and has been there when they have faltered. Her children have taught her so much, not the least of which is the "pinky promise".

Also this year, M.C. became Chair of the Independent Living Advisory Board within the Children's Department. *See article, Pg16.* M.C. feels a deep commitment to the youth in our system who will be exiting foster care at age 18. Traditionally, these children have received the least amount of focus. Due to advances in the law at the Federal level, however, Delaware has begun to make adolescents in foster care a priority. M.C. looks forward to the challenges over the next year in her role as Chair.

M.C. also began to participate in the Family Law Section of the Bar Association, agreeing to co-chair the Family Law Fundamentals CLE program scheduled in the spring of 2002.

M.C. is married and has a three-year-old son. Her son often accompanies her in the evenings to visit the children she represents. The commitment M.C. felt when she started this job a year ago has deepened with experience. Despite spending five years in private practice, she cannot imagine doing anything but representing children at OCA. She hopes that her work with children and her involvement in policy issues has had a

positive impact on both the children she represents and on the child welfare system as a whole.

**Angela Fowler, Esq. -- Deputy Child Advocate - Kent & Sussex Counties**

Angela Fowler joined the Office of the Child Advocate on September 24, 2001, as the Deputy Child Advocate for Kent and Sussex Counties. Much like her counterpart M.C., Angela's primary duties are to ensure that the children in Kent and Sussex Counties are provided meaningful representation of their best interests, and a voice in those proceedings, which so dramatically affect their lives. Prior to coming to OCA, Angela worked as a Deputy Attorney General for the Department of Justice and as a law clerk for Judges Kenneth Millman and Peter Jones in Sussex County Family Court.

Angela is a native Delawarean who graduated with honors from Dover High School in 1992. She then went on to graduate *cum laude* in 1995 from the University of Delaware with a Bachelors Degree in Criminal Justice and a Minor in Sociology. In 1999, she graduated from Widener University School of Law and was admitted to the Delaware Bar.

In just three months as the downstate Deputy Child Advocate, Angela has already developed a great appreciation for the overwhelming needs of Delaware's children. Angela's initial caseload was 12 kids as of December 31, 2001, with new cases arising daily. With three full custody cases already decided, Angela is well on her way to making a difference for Delaware's children.

In addition to providing representation to children, Angela has become active with the Terry Carey Inns of Court, the Kent and Sussex Bar Associations and is now Vice President of the Kent County Teen Court Program.

Angela is also a devoted wife and the mother of a wonderful seven-year-old. While Angela admits that juggling family and career can be a challenge, she would have it no other way. In the first few months of working at OCA, her life has been a whirlwind. Working out of her home, traveling between counties and representing 10 children in numerous court hearings, Angela has "hit the ground running" and loves it.

**Anne Pedrick -- Program Administrator**

Anne joined the Office of the Child Advocate on May 16, 2000. Anne is the Program Administrator but often wears many "hats". She oversees OCA's intake and review process, having anywhere from 25-30 cases pending at any given time. Fran Pulella and Nancy Brown assist Anne in case preparation and social work for many of the cases. However, Anne often travels to Kent/Sussex wearing her "social work hat" to do case processing. She provides on-going *pro bono* support for volunteer attorneys and makes sure they have the information they need to effectively advocate for the children. This also includes accompanying M.C. and Tania on home visits and to court hearings. Anne still enjoys the direct client contact and being able to observe the advocacy in action.

Anne has had the wonderful opportunity to attend the following meetings on behalf of the office or in Tania's absence: Foster Care Reform Forum in Dover/Del. Tech., Three Year Rule Committee, Extended Forensic Protocol Committee for the Child Advocacy Center, and the Child Protection Registry Workshop. She serves on and/or represents the Office of the Child Advocate at the Abuse Intervention Committee, the Domestic Violence Task Force, the DFS Advisory Council, the Kinship Care Task Force, Grassroots Citizens For Children Board (as a non-voting member), Children and Domestic Violence Workgroup, Children and Domestic Violence Witnessing subcommittee, Children and Domestic Violence Policy subcommittee, Victims' Rights Task Force, and the Child Death Review New

Castle Panel. Anne has also participated with the Federal government as an external reviewer for the Federal Child Welfare Review of Delaware and South Dakota. (See article, Pg 13).

Anne supervises two casual/seasonal employees, Fran Pullella and Nancy Brown in their roles as Family Crisis Therapists. In addition, OCA has had the benefit of two undergraduate interns, Donna Lanier and Sarah Marshall which Anne provided supervision and guidance. Anne has grown and developed into her role as administrator and is excited about the difference that OCA is making within the child welfare community. At this time, she still maintains most of the oversight (statewide) of case management within the office but is invigorated by her expanding role and contribution as an administrator. Anne's position has empowered her to advocate for positive changes within the child welfare system. This past year has been very exciting and challenging and there is much work to be done for Delaware's children.

In her personal life, Anne is married and has a 21-month-old son and a 12-year-old stepson. Her family helps keep her balanced and re-energized.

### **Cora Bechard -- Office Manager/Administrative Assistant**

Cora joined the Office of the Child Advocate on May 15, 2000, as Administrative Assistant. Her supportive functions to the office staff have extended from routine office operations to the guardian *ad litem* training seminars for attorneys. She has also provided support and assisted with community events. The opportunity to be a part of this young state agency has called upon her organizational skills. With a preference for being behind the scenes, you may not see or hear Cora, but the support in the office is not unnoticed. Besides her indirect support to children and her marriage of 19 years, her other passion is writing Haiku.

### **Fran Pullella -- Family Crisis Therapist - New Castle County**

Fran joined the Office of the Child Advocate in April of 2001, as a casual/seasonal Family Crisis Therapist. Fran retired from the Division of Family Services in January of 2000, after 21 years of service. During those 21 years, Fran worked in all program areas, but mostly in investigation. In August of 1995, she developed plans for the first Permanency Unit in Delaware and soon thereafter became the first Permanency Supervisor at DFS. This program area now includes four units statewide. Fran's postgraduate work includes over 100 hours of structural family therapy.

Since joining OCA, Fran takes referrals from the community, reviews DFS and Family Court records, and provides assessments on a child's need for an attorney guardian *ad litem*. Fran gathers all necessary records from the Children's Department for OCA's more than 100 *pro bono* attorneys, and accompanies *pro bono* and OCA attorneys on home visits, child interviews and family interviews. Fran is also the OCA representative to the Interagency Committee on Adoption, allowing her to continue her lifelong goal of finding a permanent family for every child. Fran enjoys her work at OCA and OCA treasures her wisdom and guidance.

Fran was married for 41 years to Lee Pullella, who lost an eight-month battle with cancer in April of 2001. They have three adopted adult children and one granddaughter. Fran's favorite pastime is exploring new activities, especially theater and music, with her granddaughter.

### **Nancy Brown -- Family Crisis Therapist - Kent & Sussex Counties**

Nancy Brown retired in September of 2001 after serving 19 years with the Dept. of Services for Children, Youth and Their Families. She started in Georgetown as a DFS treatment worker and then transferred to Kent County as an adoption/TPR worker. She held the position of department liaison to the Family Court in Sussex for nine years and then assumed a supervisory role with a treatment unit in Dover. She was a 1986-87 Management Fellow and served her rotation at the Delaware Psychiatric Center working on their accreditation.

Nancy has enjoyed her brief stint with the Office of the Child Advocate. Nancy is active in church work at St. Peter's Episcopal Church in Lewes and enjoys spending time with her four grandchildren.

***Kristen Rea -- Law Clerk/Intern - Widener University School of Law***

Kristen M. Rea joined OCA in June of 2001 through the externship program at Widener University School of Law. At the time she gained her position with OCA, Kristen had just completed her second year of law school at Widener. Prior to working for OCA, she held various positions with other types of law firms; but, since her volunteer days at Family Court, her heart has always remained in the area of child advocacy.

Kristen's responsibilities at OCA include participation in adoption proceedings, custody hearings, file reviews, fielding intake calls, interviews of children, home visits and interviews of all relevant parties. She has spent a large portion of her time researching various aspects of the child welfare system. Most notably, Kristen researched a provision of Megan's Law, the findings of which were incorporated into an amendment to House Bill 247. Consequently, she was appointed by OCA to the committee established by HB247 to create guidelines for sex offender notification in schools. She also assisted in research for the Amicus Curiae Brief filed by

OCA with the Delaware Supreme Court. Recently, at a Judicial Foster Care Review hearing at Family Court, Kristen appeared for limited practice under Delaware Supreme Court Rule 56.

Kristen decided to stay on with OCA during her last year at Widener. Upon graduation from law school and completion of the Delaware bar exam, Kristen will begin a clerkship with the Sussex County Family Court. Kristen is honored and excited to have yet another opportunity to contribute to the welfare of children.

Kristen has thoroughly enjoyed her time with OCA, and has learned a great deal here that will carry her throughout her career. Kristen has had numerous opportunities at OCA, ranging from court appearances to networking with community partners to sitting on the Senate floor during legislative debate on bills. But perhaps the best experience Kristen has had at OCA is attending client and parent interviews. What Kristen learned is that when determining what is in the best interest of a child, it is essential to meet with each person involved in that child's life and to really listen to what they have to say. Eventually, Kristen would like to return to OCA to join the ranks of the other Deputy Child Advocates.

***Nicole Tomlin -- Clerical/Intern - Wilmington College***

Nicole started with OCA in October 2001. As a casual/seasonal employee she is everyone's "right hand woman" and is an integral part of the daily operations of the office. She feels that it is the smaller jobs -- copying Family Court records or helping with office organization -- which assists in getting the larger jobs in our goal of helping children. She receives satisfaction knowing that OCA appreciates all that she does. OCA has also encouraged Nicole to attend court hearings and trainings, to enable her to become further involved and inspired by OCA's work.

Nicole is currently attending Wilmington College. She expects to graduate in December 2002 with a BS in Criminal Justice. Her academic background and job experience, specifically at OCA, have shaped her interests and prepared her for her future. Her career interests include possibly attending law school, working in a social service organization, or teaching. She hopes to be able to participate in the Teach for America program next year. This program will place Nicole in an inner city school district in the United States to facilitate education for underprivileged children.

In her spare time, Nicole enjoys working on her memory books and pursuing a part time business with *Creative Memories*, a home based scrapbook company. When not in the library, in class, or at work, you can find Nicole diligently training at the gym or making phone calls to raise money for AIDS. This June she is participating in an AIDS bike ride to assist in the research for the disease.

### ***Donna Lumpkin -- Summer Law Clerk - Widener University School of Law***

Donna received her B.A. from the Johns Hopkins University in May of 1998. She then worked for a year as a Youth Care Specialist at a 24-hour shelter for at-risk teens. While in this position, Donna experienced troubled teens and their families. She also gained insight into how the partners in the child welfare system interface to do what is in the best interests of a child. This position cemented Donna's decision to pursue a career in the field of law, where she could play an integral role in resolving children and family issues.

While attending Widener, Donna has served as Vice-President of the Juvenile Justice Society, President of the Christian Legal Society, and a member of both the Moot Court Honor Society and the Moe Levine Trial Advocacy Society. Donna has also been an active member

of the Public Interest Law Alliance. This Alliance enabled Donna to work full-time at OCA last summer, where she participated in client interviews and document discovery, observation of court hearings, and legal research on a multitude of issues pending before Delaware's General Assembly. Donna also completed an externship with the Delaware Family Court following her summer with OCA. Upon graduation in May, Donna hopes to pursue a career in Public Interest Law.

## **WHERE WE ARE MAKING A DIFFERENCE FOR DELAWARE'S CHILDREN**

### ***I. Legal Representation for Our Children***

OCA considers the legal representation of Delaware's abused and neglected children to be its highest priority. Our success in 2001 proves this to be true. OCA held two training classes in 2001, in June and December. Through recruitment and training efforts, OCA's roster of attorneys has increased from 28 at the end of 2000, to **101** attorneys as of December 31, 2001. These attorneys have represented a total of **127** children. OCA has represented 47 children statewide, increasing OCA's numbers from 26 children receiving legal representation in 2000 to **174** children in 2001.

In OCA's tireless efforts to recruit more attorneys, OCA sent out two mass mailings to the Delaware bar seeking volunteers, and advertised training and recruitment efforts in *In RE:*, the Delaware State Bar Association's publication to Delaware lawyers. Prior to the December training, Tania and M.C. wrote personal notes on over 200 of the letters asking their friends and colleagues to volunteer. This effort was quite successful as OCA trained 46 attorneys in December, and another 30 await training on April 5, 2002. In addition to direct mail, Tania serves as

a member of the DSBA LIP Committee, and has worked diligently with that group to increase *pro bono* participation within the legal community. Tania and M.C. attended a DSBA New Lawyer Happy Hour in an effort to recruit new members of the bar. In addition, OCA regularly asks personal friends within the legal community to help.

As more and more attorneys are signing up, the word is spreading throughout the legal community about this worthwhile endeavor. At the Family Law Section Annual Dinner last year, Tania and M.C. circulated the room to hear practitioners share sentiments about how incredible the children they represent are, and how rewarding the representation is.

But our attorneys do not just come from the Family Law section – they come from every sector of the bar. One partner from the largely corporate law firm of Reed Smith, Thomas Preston, Esquire, recently called OCA to let us know he was done with his case and needed a new one. Tom found the work to be “incredibly rewarding”. Larry Rufo, Esquire, and Kathryn Laffey, Esquire, have risen to the difficult challenge of advocating for the removal of life support for their severely abused clients, while attorneys such as Michael Teichman, Esquire, and Kent Jordan, Esquire, accepted “routine” appointments only to have cases “explode” before them. Attorneys such as Warren Burt, Esquire, have emerged from “semi-retirement” to help the cause, and attorneys such as Ann Marie Johnson, Esquire and Eileen Anderson, Esquire have spent time away from their own young children (with whom they have chosen to stay home) to give something back to the community.

As always, the Family Law section of the bar who never fail to give endlessly to *pro bono* efforts, routinely assist us in crisis or when our resources are low. Attorneys like Timothy Hitchings, Esquire, Jennifer Barber, Esquire and Tom Shellenberger, Esquire, have agreed to pick

up cases on short notice. Others like Suzanne Seubert, Esquire, have used their child welfare and Family Court knowledge to “think outside the box” on behalf of a child. Suzanne traveled four hours one-way to visit her client, who was placed out of state. David Gagne, Esquire and Vivian Medinilla, Esquire, have also made the treks across states to visit their clients and to observe the environment in which the children reside. While Suzanne Seubert notes that it is “not all fun”, she also remarked, “that if anyone ever wants to make a difference in someone’s life, they should represent a child through OCA.” Shawn Dougherty, Esquire and Alan Cooper, Esquire have echoed that sentiment indicating there is no *pro bono* work one could do that makes one feel more worthwhile than representing a child. While we have not mentioned each and every *pro bono* attorney, OCA is deeply appreciative of every attorney’s hard work on behalf of these kids.

What is also remarkable is the amount of money the generosity of the Bar has saved the taxpayers of Delaware, while also providing such a crucial service to Delaware’s voiceless population. As of September 30, 2001, Delaware attorneys had donated over **\$120,000.00** in free legal services to Delaware’s children. OCA is truly grateful for the time, energy and commitment the *pro bono* attorneys have given, and hope that these precious children have enriched their lives as well.

Back within the confines of OCA, **1,026 hours** were spent in 2001 providing *pro bono* support to this pool of attorneys. This support includes help with case direction, trial preparation, legal and social work questions, record gathering, subpoenas and attendance at trial. Tania also represented 6 children in 2001, and M.C. represented 29. Our newest recruit, Angela, hit the ground running in October, and as of December 31, 2001, represented 12 children. Tania, M.C. and Angela spent **2,223 hours** on their 47 cases with Fran, Nancy, Anne and Kristen contributing an additional **589 hours**. From these

numbers it is quite obvious OCA's number one priority is advocating for children in Court proceedings.

## **II. Legislative Advocacy on behalf of Delaware's Children**

OCA worked tirelessly on legislation in the year 2001, spending **495 hours** on legislative activities. In conjunction with the Family Court and the Governor's Office, OCA drafted legislation to statutorily define guardianship in Family Court. The legislation also created a new permanency option for children termed permanent guardianship. HB269, sponsored by Rep. Maier and Sen. Blevins, is now codified in law at 13 Del. C., Ch. 23, provides a framework for filing, granting and modifying guardianships in Family Court. It also creates a new legal status of permanent guardian, assuring permanency for older foster children and/or children living with relatives for whom adoption is not possible or appropriate. Governor Minner signed the bill into law on July 11, 2001.

OCA also participated in re-vitalizing a bill from the prior legislative session making procedural changes to Delaware's termination of parental rights and adoption laws. HB154, sponsored by Rep. Buckworth and Sen. Blevins, updated and strengthened Delaware law for TPR and adoption by giving additional protections to birth parents, adoptive parents and children, including shortening of time frames for voluntary TPR. This bill passed both chambers.

OCA assisted in drafting HB287, which expanded the mission and composition of the Child Protection Accountability Commission (CPAC.) The expanded Commission includes professionals from child mental health, education, adoption and the Child Placement Review Board. CPAC's mandate has also expanded by now requiring it to examine policies on child well-being and permanency as well as safety. This bill

was sponsored by Rep. Maier and Sen. Blevins, and passed both chambers.

OCA participated in the drafting of HB120, Safe Arms for Babies, which passed both chambers and was signed into law on July 18, 2001. OCA also helped to amend HB247, which originally required the posting of pictures of sex offenders in our schools. The amended bill, which ultimately passed both houses, eliminated the posting but required schools to receive training regarding this issue and to mail notices to parents of children in their district. OCA participated in the development of guidelines for schools and school personnel. As schools began to follow this law and the accompanying guidelines, prohibitive costs and questions as to whether the schools were the proper vehicle to disseminate this information have led to further discussion. This matter will likely be revisited in full in 2002. OCA thanks our law clerk, Kristen Rea, for her hard work on both the amendments to HB247 and drafting of the guidelines for schools and school personnel.

OCA has been a strong advocate against HB198, the re-definition of child abuse. HB198 proposes many changes to Delaware's definition of child abuse. Of greatest concern is the proposal that parents should be able to commit Assault 3<sup>rd</sup> against their children. Current law allows parents to spank their children; however, it does not allow them to cause physical injury (i.e., bruising). OCA worked tirelessly last year to inform the community about this bill and its implications, as well as to communicate OCA's serious reservations about the bill to members of the House. OCA, its community partners and members of the General Assembly succeeded in having the bill tabled in committee in 2001. OCA will continue to voice its strong opposition to this bill in 2002.

OCA was also part of numerous dialogues regarding the Child Abuse Registry. As a result of concerns from the community, as well as the state agencies involved in child welfare, HCR 15 was

passed, establishing a Child Abuse Substantiation Workgroup. Since September of 2000, OCA has fully participated in that workgroup, in addition to performing legal research on the status of registries nationwide. The Workgroup has conducted two public hearings, and has drafted some recommendations for improvements to the Child Abuse Registry. OCA's participation in this workgroup will continue well into 2002.

### **III. Training and Education**

Pursuant to 29 Del. C. § 9005A(9), OCA is mandated to provide and participate in training of the child welfare community. In furtherance of our mandate, we have spent 465 hours participating in and/or conducting the following training and/or educational forums.

#### **Child Protection Accountability**

**Commission Training Subcommittee:** The grant that was requested from the *Pro Hac Vice* fund for a two day training entitled "The Impact of Child Abuse/Neglect on Delaware's Legal System" was denied. The subcommittee has taken a back seat until funds can be generated from other funding sources. (*See also Grants and Bequests Pg13.*)

**Abuse Intervention Committee:** This committee, on which OCA serves, has submitted a proposal for a Child Welfare Training Consortium. The proposal was accepted by the Criminal Justice Act, and has been approved by Division of Family Services. The Project Coordinator of the Consortium will be employed through Prevent Child Abuse Delaware and will develop a system-wide training committee. OCA has already volunteered to be a member of this committee. One of the primary objectives of this Consortium will be to have an annual conference on Child Welfare. The Consortium will also establish/coordinate on-going training in all three counties on a monthly basis. It is expected that the Coordinator will be hired within the next two months.

#### **Training the Community and Partners on OCA:**

- 1/31/01 OCA meeting with Kent County Family Court Judges.
- 2/22/01 OCA meeting with Seaford Division of Family Services unit.
- 4/5/01 OCA meeting with Polytech High School Guidance Counselors
- 4/25/01 OCA spoke at the Development Disabilities Council at Delaware Technical Institute at Stanton.
- 5/7/01 OCA meeting with Sussex County judges to educate them regarding our office.
- 5/16/01 OCA spoke at the Family Law Commission educating them about OCA's roles/responsibilities.
- 12/4/01 OCA spoke at Wilmington College for education about our statutes and recruitment of interns.
- OCA participated in Court Improvement lunches to provide feedback regarding the Court Improvement Project
- OCA participated in Melson/Arsht Inns of Court events.

#### **Ongoing training of Pro Bono Attorneys to represent children: See Legal Representation of Children Section**

**13<sup>th</sup> National Conference on Child Abuse and Neglect:** The Office of the Child Advocate attended this conference from April 23-April 28, 2001. Our goal was to learn more about the legal representation of children in the court room, national trends in child protection and foster care reform, court improvement initiatives around the country and what funds might be available to assist OCA in its statutory mandates. It was exciting to see the progress Delaware has made regarding child welfare and an opportunity for us to bring back new ideas and thoughts for improving the current system. Upon return, OCA

prepared a conference summary of all helpful workshops attended and circulated that summary to all of our *pro bono* attorneys, members of the Family Court Judiciary, the General Assembly and CPAC. If you would like a copy of the summary, please contact OCA.

**18<sup>th</sup> Annual National Forensic Social Worker Conference:** Anne Pedrick was able to attend this conference from April 29, 2001, until May 2, 2001. The focus of the conference was “Social Work and the Law” and was presented to participants with a “hands on” approach. Connecticut Superior Court Judge Charles D. Gill gave the keynote address. He presented on “Children’s Rights in the New Millennium”. Judge Gill is willing to come to Delaware and speak at the conference proposed through CPAC. It is our hope that he will be able to come educate our child welfare community sometime in the near future.

**24<sup>th</sup> National Children’s Law Conference sponsored by the National Association of Counsel for Children:** The attorneys from the Office of the Child Advocate were able to attend this conference from September 29, 2001 until October 2, 2001. The title of the Conference was “Advocacy for Children and Families: Moving from Sympathy to Empathy”. This provided a powerful topic, which caused us to consider our frame of reference and belief system when thinking about children in our legal system. Again, OCA provided a comprehensive summary of all relevant workshops attended at the conference and circulated it throughout the child welfare community. If you would like a copy of the summary, please contact OCA.

**Various Trainings OCA staff has participated in throughout the year:**

- January 31, 2001 Workshop on Kinship Care at Buena Vista sponsored by the Division of Services for Aging and Adults with Physical Disabilities' Joining Generations program
- January 31, 2001 Microsoft Excel training from Judicial Information Center
- March 22, 2001 National Conference on Animal Cruelty and Interpersonal Violence
- April 4-5, 2001 APRI Training on Investigation and Prosecution of Child Abuse Cases
- April 9, 2001 Delaware’s Court Improvement Project -Training sponsored by Family Court
- May 10, 2001 Website design training from Judicial Information Center
- November 2, 2001 Children and Fire Arms, Victims at Risk sponsored by U.S. Attorney’s Office.
- November 2, 2001 Delaware Bar Association’s Family Law Update Seminar
- November 7, 2001 Attachment/Bonding Training at Clayton Hall
- November 14-15, 2001 Law Enforcement Domestic Violence/Sexual Assault Training

**IV. Community Involvement, Outreach and Publicity**

In 2001 OCA Staff spent **299 hours** increasing public awareness of OCA in the following forums.

**Blue Rocks Game:** The Criminal Justice Council in conjunction with the Office of the Child Advocate sponsored the “Keep Kids Safe-Prevent Child Abuse” night on April 18, 2001, at Frawley Stadium. Other participants in this wonderful event included: the Department of Children, Youth, and Their Families, Children and Families First, Prevent Child Abuse of Delaware, Grassroots Citizens for Children, Children’s Trust Fund, Child Inc., Office of the Attorney General, and WJBR. It was an exciting, fun filled night for many children and their foster and biological parents. Free face painting was available to the children along with Blue Rocks baseballs with the message “Keep Kids Safe”. Many of the agencies listed above provided informational tables. Tania gave a few opening remarks and then Trine Bech (Acting Director for DFS) said a few words and asked that all of the children stand up to celebrate them. All had a wonderful time.

**Child Abuse Prevention Calendar:** OCA developed the April Prevent Child Abuse Calendar with input from the following agencies: The Department of Children, Youth, and Their Families, Children and Families First, Prevent Child Abuse of Delaware, Grassroots Citizens for Children, Children’s Trust Fund, and Child Inc. This calendar was distributed to foster parents, DFS workers, child welfare agencies, and any organization that could benefit from the activities conducted during the month.

**YWCA Week Without Violence Day:** OCA was proud to be a participant at this one-day event on October 19, 2001. Governor Ruth Ann Minner spoke of resiliency and asked those in attendance to read a pledge of non-violence. Attorney General M. Jane Brady sent a letter stating that prevention of violence is just as important to her as the prosecution of violent cases. She commended the day’s efforts to promote non-

violence and peace. The Cab Calloway School of the Arts sang many patriotic songs that were quite moving. It is estimated that over 29,000 individuals came to the mall on this event day.

**10<sup>th</sup> Annual Adoption Fair and Culture Day:** For the second year in a row, OCA has participated and set up an exhibit table at this wonderful event. Mary Catherine Landis, Deputy Child Advocate and Fran Pullella represented OCA on November 3, 2001, at the New Castle County Adoption Fair. It was exciting for M.C. and Fran since they know many of the adoptive parents, foster parents, DFS workers, and children who attended this event. On November 10, 2001, Angela and Nancy were able to introduce themselves to the Kent/Sussex community at the Milford Adoption Fair. Most importantly, the days were filled with fun for the children including balloons, face painting and dressing up.

**In Support of the Community:**

- March 31, 2001 -- Foster Parents Appreciation Day to recognize all of the foster parents!
- November 13, 2001 -- The Department for Children, Youth, and Their Families “The Big Picture: The State of the State’s Children”. Tania Culley was a guest panelist at this multi-disciplinary event.
- December 17, 2001 -- OCA was invited to participate in the National Association of Attorneys General Violence Against Women Project. This project plans to present Delaware’s model of response to Domestic Violence at a multi-disciplinary meeting in February of 2002.

**The Child’s Voice:** In 2002, OCA released three newsletters to the community. The newsletters are mailed to over 1,500 persons, and cover such topics as Update on the Child Protection Accountability Commission, Foster Parent

Spotlight, *Pro Bono* Spotlight, Social Worker Spotlight, Case Law Update, Legislation, Children who Need Families, and information on national and local training. The feedback on the newsletters has been extremely positive, and it is OCA's intention to provide newsletters three to four times per year. OCA also hopes to have a website by the end of 2002.

**Publicity and Media:** Throughout 2002, OCA was repeatedly called upon to comment on newsworthy issues involving children. OCA has had regular contact with The News Journal, Delaware State News and WILM radio. Tania has also appeared on WHYY TV on several occasions.

## **V. Grants and Bequests**

OCA is mandated pursuant to 29 Del. C. §9005A(6) to apply for grants to accomplish its mission. In 2001, OCA spent **35 hours** researching, preparing and submitting grant applications. OCA applied for two grants both of which were denied. However, OCA does anticipate receiving a small grant in 2002 from the Children's Justice Act Grant managed by the Abuse Intervention Committee. This grant will partially fund a family crisis therapist position to service child victims of crime who are also embroiled in civil child welfare proceedings. OCA will continue to apply for applicable grants as they become available.

## **VI. DFS Policy and Procedure/ Multi-disciplinary Collaboration**

OCA is mandated, pursuant to 29 Del.C. §9005A(2), to periodically review and revise all relevant child welfare policies and procedures with a view toward expanding the rights of children. The Office of the Child Advocate is also to recommend changes in procedures for investigating and overseeing the welfare of our children. 29 Del. C. §9005A(4). In 2001, OCA

spent **568 hours** on multi-disciplinary collaboration.

**Partnership Meetings:** Quarterly, DFS and OCA meet to discuss issues concerning policy, collaboration, procedural and policy issues between agencies, specific case concerns, and partnerships on legislative issues. These meetings have really opened up the doors for a consistent dialogue and open communication between the Children's Department and OCA.

**Root Cause Analysis:** On June 1, 2001, OCA joined the Office of Case Management (from DSCYF) to participate in a Root Cause Analysis Panel (RCA) of a child that had recently died. The contribution from OCA was approximately 45 hours of time, and resulted in a collaborative effort between agencies. On December 12, 2001, OCA participated in a second RCA, which is scheduled to conclude on January 15, 2002.

The Root Cause Analysis process begins with reviewing DFS history, preparing a timeline and conducting interviews regarding the events, which led up to a child's death. The real issues and discussions surface when examining the causal factors evidenced by the timeline. From those discussions, root cause tiers are developed. The development of tiers is the most productive part of the analysis because it is not blame-oriented on a particular individual or event, but instead focuses on why the system/culture may have allowed this tragedy to occur. It discovers system flaws, underlying beliefs, and current practice versus best practice. It focuses on system failure not policy or employee negligence. It is a very thorough, comprehensive review of a case.

OCA wholeheartedly supports the RCA process and OCA has been invited by the Cabinet Secretary to be a part of any RCA in cases where a child has died as a result of abuse/neglect, there has been prior activity with OCA, or where a life-threatening serious injury of a child has occurred.

The only flaw with the current RCA process is that it does not incorporate the entire child welfare system (the medical community, attorney general's office, family court, police agencies, etc.) and therefore is limited in scope.

**Federal Reviews:** On January 25, 2000, the U.S. Department of Health and Human Services published a final rule in the *Federal Register* to establish a new approach to monitoring State child welfare programs. Under the rule, which became effective March 25, 2000, States will be assessed for substantial conformity with certain Federal requirements for child protective, foster care, adoption, family preservation and family support, and independent living services. The Children's Bureau, under the Administration for Children and Families (ACF) within U.S. Department of Health and Human Services, is administering the new review system. The system comprises two review components: (1) child and family services and (2) title IV-E foster care eligibility reviews.

Delaware was the first state to participate in the Federal review. The Division of Family Services asked OCA to participate in this review as an external partner. Delaware's review took place March 12, 2001 through March 16, 2001. Anne Pedrick, the OCA Program Administrator, was paired with an employee of the Children's Bureau. It was a rewarding experience and highlighted some of the strengths that the Division of Family Services has as well as where there could be improvement.

Following Delaware's review, Anne was asked by the Children's Bureau to be a consultant reviewer. Anne participated in the South Dakota Children and Families Review October 22, 2001 through October 26, 2001. OCA was honored to have one of its employees chosen by the Federal government to participate in other State reviews. Anne's experience will strengthen OCA's partnership on the federal level, as well as enrich Delaware through Anne's further education on current, federal standards as well as what is

happening in individual states. Once South Dakota's report is released in 2002, Anne will be able to share the details of that review with our community partners and the Child Protection Accountability Commission.

**Program Improvement Plan:** As a result of the Federal Review in Delaware, OCA volunteered to participate with the Division of Family Services to draft a Program Improvement Plan that would be submitted to the Children's Bureau. OCA participated in several meetings contributing our input, suggestions, and future assistance. OCA is wholly committed to assisting DFS in meeting their goals for Delaware's children.

**History Trainings:** Currently, OCA is developing a state-wide training on the use of history reviews when making safety and permanency decisions, and the multi-generational dysfunction in families that adversely impact children. OCA, in conjunction with the DFS training team, has conducted focus groups in all three counties with social workers and supervisors. The next step will be to include regional administrators and DFS lawyers in the discussion. It is hopeful that by spring of 2002, this training will take place. The training is actually part of the DFS' Program Improvement Plan with the federal government.

## **MISCELLANEOUS ACTIVITIES**

### **OCA WRITES AMICUS BRIEF FOR DELAWARE SUPREME COURT**

The Office of the Child Advocate was honored to participate in a Delaware Supreme Court appeal last fall as *amicus curiae*. *Amicus curiae* literally means "friend of the court." Often, when faced with a novel issue or an issue likely to have significant precedential value, the Court may ask someone not involved in the case to supply additional information. OCA was asked to submit a brief on the issue of a parent's right to counsel in a termination of parental rights case. We filed our

brief on September 7, 2001. In it, OCA argued that, under the Delaware Constitution, a parent should have the right to counsel, not only in TPR cases, but at all stages of a child welfare proceeding. We suggested that the Court overturn its prior 1984 ruling that there is no absolute constitutional right to counsel in a TPR proceeding. OCA based this position on recent case law as well as the evolving nature of the federal laws and public policy initiatives driven by the unfortunate 21<sup>st</sup> century realities of child welfare.

OCA was asked to review what other states have done in this area and we were able to review every state and provide the most current state of the law. OCA did argue, however, that in order to assert a right to counsel, the parent must appear and demonstrate that they are unable to afford counsel. In the case before the Court, the parents failed to appear in spite of receiving notice from both the Family Court and the CASA assigned to the case. When the parents did not appear, the Family Court held a hearing and terminated their parental rights. The parents appealed.

On January 29, 2002, the Delaware Supreme Court reversed the Family Court's order terminating parental rights and remanded the case back to Family Court for a new trial. In this case, the children are 6 and 4 years of age, and have been in foster care since August 26, 1999. In its decision, the Delaware Supreme Court agreed that "there have been substantial dynamic statutory and procedural developments since the United States Supreme Court and this Court last addressed the right to counsel in termination of parental rights proceedings."

The Court began by addressing the right to counsel in the dependency and neglect phase of child welfare proceedings. The Court noted that children are afforded legal representation at State expense through the Office of the Child Advocate and DFS provided legal representation by the

Attorney General's Office leaving only parents without the right to representation by legal counsel. The Court noted that, while not mandated by the United States Constitution, over half of all states have established a right for indigent parents to be represented by counsel either by statute or as a matter of state constitutional law. The Court ultimately refused to rule on the issue of an indigent parent's right to counsel in dependency/neglect proceedings because the issue was not before the Court in that these particular parents had retained private counsel to represent them in the dependency/neglect proceedings.

The Court then went on to address the right to counsel in termination of parental rights proceedings. The Court reiterated the holding of the United States Supreme Court in *Lassiter v. Department of Social Services* which required that counsel should be appointed to parents on a case-by-case approach, weighing several factors including the private interests at stake, the government's interest and the risk that the procedures used will lead to an erroneous decision. Delaware has utilized this approach since that decision was rendered in 1981. Today, Delaware remains one of only five states employing this method. Although OCA argued that the changes in the law since *Lassiter* favor a holding that the Delaware Constitution requires appointment of counsel in all cases, the Court again refused to rule on that issue holding it was not squarely before the Court.

Finally, the Court addressed procedural issues in the case, which ultimately caused the Court to reverse the Family Court decision and remand for further proceedings. The Court concluded that the notice to parents of the termination of parental rights proceedings is deficient because it does not alert them to their *potential* right to counsel, which is contrary to the due process requirements of the Delaware Constitution and the United States Constitution under *Lassiter*. (The notice does indicate that if

they fail to appear, a default judgment may be entered in their absence.) The Court held that the notice to parents must contain language advising them of their right to counsel and must also contain information on how to effectively and timely assert their right to counsel. Since the parents in this case were not apprised of their potential right to counsel in the notice, their due process rights were violated. The Court therefore instructed the Family Court to hold both a *Lassiter* hearing and a termination hearing on a priority, expedited basis.

**Our View:**

OCA was disappointed that the Supreme Court refused to rule on the constitutional questions pertaining to the right to representation at the dependency/neglect phase and whether Delaware's Constitution should afford the right to counsel at the TPR phase. However, OCA's job was to assist the Court and it is obvious from the Court's decision that our brief was helpful. Although it is unfortunate that this case must go back for more proceedings and then, depending on the outcome, possible further proceedings before the Supreme Court, this holding may actually speed up the TPR process. In the future, parents will be advised that they may have a right to counsel, and the onus will be on them to take an affirmative step to secure that right. OCA believes that if parents wish to fight for their children, they should be responsible enough to appear to defend the case. We hope that, in the future, if a parent fails to exercise his or her potential right to counsel in advance of the hearing, the hearing will proceed as scheduled and be affirmed on appeal.

**INDEPENDENT LIVING  
ADVISORY BOARD**

OCA's Deputy Child Advocate in New Castle County, M.C. Landis, was named Chair of the Independent Living Advisory Board in 2001.

When M.C. started with the Board in early 2001, it lacked focus and direction, but had several energetic and enthusiastic members. Now the Board has nearly 20 members, a Charter and mission statement, subcommittees and a purpose. The Board's mission is to assess and advocate for resources to ensure the most advantageous implementation of Delaware's Independent Living Plan under the Chaffee grant on behalf of youth making the transition from foster care to independence. Delaware receives \$500,000 per year from the federal government under the John H. Chaffee Foster Care Independence Program. The Board was created as a requirement of that program which mandates community input.

As part of its advisory capacity, the Board recommended against legislation that would have provided tuition waivers to foster care recipients who go on to college. It was determined that this need is already being met by the Ivy Davis scholarships administered by the Child Placement Review Board. The Board felt that legislative energies could be better spent elsewhere. The Board is currently exploring whether Delaware needs changes to its Medicaid system to implement an option under the Chaffee legislation that permits states to extend Medicaid to youth who have exited foster care. M.C. has consulted with national experts on this issue and it remains a focus in 2002. In addition, the Board has consulted with other experts in the field of independent living to assist it with determining priorities. The Board's broad based and energetic membership has laid the groundwork for effective advocacy on behalf of Delaware's youth in 2002.

**CONCLUSION**

We thank all of those who have supported us as we embarked on this journey. We believe we have made you proud, and look forward to continued success in 2002 as we continue to make Delaware's children our number one priority.

## HOW TO REACH US

### New Castle County

913 Market Street, Suite 900  
Wilmington, DE 19801  
Phone (302) 577-6830  
Fax (302) 577-6831

### Kent/Sussex County

P. O. Box 1723  
Dover, DE 19903-1723  
Phone (302) 382-3397  
Fax (302) 697-8080

Tania M. Culley, Esquire  
Child Advocate  
(302) 577-6830, Extension 13  
e-mail: [tculley@state.de.us](mailto:tculley@state.de.us)

Mary Catherine Landis, Esquire  
Deputy Child Advocate – New Castle County  
(302) 577-6830, Extension 12  
e-mail: [mlandis@state.de.us](mailto:mlandis@state.de.us)

Angela M. Fowler, Esquire  
Deputy Child Advocate – Kent/Sussex Counties  
(302) 382-3397  
e-mail: [afowler@state.de.us](mailto:afowler@state.de.us)

Anne Pedrick, MSCC  
Program Administrator  
(302) 577-6830, Extension 14  
e-mail: [apedrick@state.de.us](mailto:apedrick@state.de.us)

Cora Bechard  
Office Manager  
(302) 577-6830, Extension 11  
e-mail: [cbechard@state.de.us](mailto:cbechard@state.de.us)