



# OFFICE OF THE CHILD ADVOCATE 1<sup>ST</sup> ANNUAL REPORT

DECEMBER 31, 2000

## **INTRODUCTION**

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

I am pleased to submit the Office of the Child Advocate's first Annual Report. In our inaugural year, we have worked diligently to meet all of our statutory mandates. This Annual Report will outline those areas and the progress we have made. However, I am most proud to report that we are well on our way to ensuring that every child involved in the child welfare system has representation of his or her best interests.

I cannot tell you how many times during this past year I have laughed, cried, been rejuvenated, or felt completely and utterly depleted regarding our most at-risk children. Each day I continue to be amazed and saddened by the horrors inflicted on our innocent children, and feel more determined than ever to make a difference for them. On a personal note, while I was somewhat apprehensive about accepting this position and leaving an agency to which I felt so committed, I now know I made the right decision. I am grateful to the Child Protection Accountability Commission ("CPAC") for giving me this opportunity and I look forward to an even better year in 2001.

During the past year, I have assembled a team of hardworking, committed individuals who feel empowered to make a difference in a complicated system comprised of numerous diverse agencies, policies and people. Although these all share the same goal, change is always difficult. We have already experienced less than a warm welcome from some in the child welfare arena. What most do not realize, however, is that other state child welfare agencies have been operating like this for decades. Advocates for children are not "the adversary." Instead, they are additional sets of eyes and ears to make sure that no child falls through the cracks. As adversaries, we will accomplish little. As a team, we can make powerful changes for Delaware's children.

On the other hand, where some components of the system have been less than thrilled about our arrival on the scene, the community has been relieved. Our community partners feel they have yet another outlet for the children on behalf of whom they care and advocate. We are truly grateful and appreciative to those agencies, especially Child Inc., Children and Families First, Tressler Center and Grassroots Citizens for Children. Thank you for your support.

Both the Office and I are grateful to the Honorable Peggy Ableman for her undying commitment to children and to our Office. She has been available from the beginning to provide guidance and support as a new state agency takes shape. In addition, we would like to acknowledge the efforts of Mathew P. Denn, the outgoing Chairperson of the Child Protection Accountability Commission. He has served Delaware's children well and managed a group of individuals from many different segments of the child welfare community to help effectuate change in the practices and laws involving child welfare.

## **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**

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

Tania became Delaware's first child advocate on February 7, 2000. Prior to her appointment, Tania was a Deputy Attorney General with the Department of Justice where she represented the Division of Family Services for three years and the Division of Child Support Enforcement for one year. She also participated in a one-year prosecutor's externship in Family Court in 1994-1995. From 1990 to 1996, she was employed in the private sector of the legal field as a secretary, paralegal, law clerk and attorney.

Tania is a 1990 graduate of the University of Delaware with a B.S. in Business Administration. She graduated from Widener University School of Law in 1995. She has recently been honored by Widener as the 2000 Recent Alumni of the Year, and has been recognized by Widener in their *Profiles in Success* bulletin. Tania has been a member of the Delaware bar since 1995, and is a member of the Family Law and Women and the Law sections of the Delaware State Bar Association. She also serves as Executive Director of the Child Protection Accountability Commission and is a member of the Abuse Intervention Committee. She has served on several legislative task forces, and is a member of various national children's organizations, including the National Association of Counsel for Children, the National Council of Juvenile and Family Court Judges, the North American Council on Adoptable Children, and the American Bar Association Center on Children and the Law. She is married to David Culley, Esquire, and is the proud mother of her three-year old daughter, Keira.

**Mary Catherine (“M.C.”) Landis, Esq. --  
Deputy Child Advocate**

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 which impact their lives. Prior to joining OCA, M.C. was in private practice where she concentrated in Social Security Disability for adults and SSI for children. She also litigated personal injury lawsuits and criminal defense.

M.C. graduated from the University of Delaware with a Bachelors degree *cum laude* in Political Science in 1989. After graduating, M.C. worked for the Honorable Thomas R. Carper as a Staff Assistant. She graduated from Widener University School of Law *cum laude* in 1994. She was a member of Law Review (the Delaware Journal of Corporate Law). After graduating, M.C. clerked for the late Honorable N. Maxson Terry of Superior Court in Dover. M.C. is a member of the Delaware and Pennsylvania bars as well as the Third Circuit Court of Appeals.

M.C. is married and has a 21-month-old son. She has a deep commitment to representing the children of Delaware and feels privileged and humbled to be in this position. M.C. hopes to draw on her prior litigation experience and her own experience as a mother to have a positive impact on both the children she represents and on the child welfare system as a whole.

**Anne Pedrick -- Program Administrator**

Anne joined the Office of the Child Advocate on May 16, 2000. She earned her undergraduate degree in Behavioral Science from Wilmington College. She has eight years of child welfare experience while working for the Division of Family Services. She started with DFS as an investigator/hotline worker on the second shift where she learned to specialize in sexual abuse

and serious injury cases. She eventually transferred to the weekend/holiday shift of DFS’ investigation unit which enabled her to pursue a Masters degree in Community Counseling. Anne earned this degree from Wilmington College with honors in May of 1998. She was then promoted as the first statewide weekend/holiday unit supervisor. She was responsible for starting the Kent/Sussex 24-hour hotline which included developing policy and procedure, and hiring staff. During her tenure as supervisor, she supervised seven employees.

Anne then became a Family Crisis Therapist in the sexual abuse/serious injury unit. She was a DFS investigator of crimes against children, and collaborated significantly with the Attorney General’s Office, the medical community and law enforcement. Anne served in that capacity for approximately one year prior to her employment as Program Administrator of the Office of the Child Advocate. While at DFS, Anne served on the FACTS (the DFS computer system) redesign project, the Quality Journey Committee, and was a part of the mentoring program.

Anne has previous experience counseling adolescents, sexual abuse victims, domestic violence victims/batterers, and long-term mental health patients. While earning her graduate degree, she participated in an internship with Hospice of the Delaware Valley, where she served as a spiritual counselor for the dying and the bereaved. 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 Independent Living Council, the Kinship Care Task Force, and the Victims’ Rights Task Force.

**Cora Bechard – Office  
Manager/Administrative Assistant**

Cora joined the Office of the Child Advocate on May 16, 2000, as the Office’s

Administrative Assistant. She brings to the office twelve and one-half years of varied state office experience as well as strong organizational skills. As a member of the Office Support Staff Advisory Committee within the Department of Services for Children, Youth and their Families (“DSCYF”), she worked to produce two grants that provided educational funds for staff. She has worked in non-profit and corporate sector areas such as program planning, accounting and budget, inventory and service.

Cora’s first position with the State of Delaware was with the Office of Case Management within DSCYF in 1987. While in this position she assisted in the development of the records retention schedule for Delaware ICJ, ICPC and adoption cases. She also further developed the Delaware Interstate Compact dBASE Client Tickler System and completed written instructions for it. Those instructions were sought as a sample by other states.

In 1990, Cora became an Administrative Assistant with the Division of Child Mental Health. Her years of service within this Division developed experience in office operations, supervision of office staff, statistics, contracts, and budgets. Since May of 2000, Cora has been focused on developing office policy and procedure for the Office of the Child Advocate, as well as tracking volunteers, children, referrals and other necessary statistics for the Office. Cora is also responsible for the day-to-day operations of the Office, and for providing scheduling and support services to the Child Protection Accountability Commission.

### ***Deianna Tyree -- Intern -- University of Delaware***

Deianna is currently an intern at the Office of the Child Advocate. She expects to graduate from the University of Delaware in the fall of 2001. Deianna’s major is sociology with a concentration in social welfare. She has a minor

in psychology and is interested in a second minor in art history. She considers herself an advocate of women and children. Deianna has her sights set on a dual degree (M.S.W./J.D.) from the University of Maryland’s School of Social Work. Deianna finds it both challenging and rewarding to balance academia, work, the internship, and parenting her eighteen-month-old son.

### ***Danielle Gude – Intern – University of Delaware***

Danielle is a fifth year undergraduate student at the University of Delaware with a double major in Psychology and Criminal Justice. She also is minoring in History. Danielle is a McNair scholar and has conducted research on blood alcohol testing in Delaware criminal cases. She recently presented her work at two national conferences in Pennsylvania and Wisconsin. She is currently applying to graduate schools and plans to study Forensic Psychology and attain a Doctorate of Psychology (Psy.D.). Her future goals include private practice and working with underrepresented incarcerated populations in the criminal justice system.

### ***Donna Judd – Volunteer***

Donna comes to the Office as a retired DFS social worker who has graciously agreed to volunteer her time to assist the Office in various clerical duties, social work assistance, and child welfare support/mentoring. Donna earned her Bachelor’s Degree in Sociology from Westminster College in Utah.

Donna began her career in child welfare as a caseworker for the Children’s Home. In that capacity, she worked with children ages 4 to 18 who due to reasons of abuse, dependency or neglect, could not live with their biological family. She then served as a Family Court probation officer and as a mediator for support, custody and visitation. She left Family Court to raise her own children, while also working part-time for Big

Brothers/Big Sisters, where she helped match needy children to adult volunteers who served as mentors and role models.

She returned to full-time employment in 1983, as a Master Family Services Specialist with the Division of Family Services. A large portion of her caseload focused on addicted mothers with infants, and her position was centered on providing protection and permanency for abused, neglected and dependent children. Donna retired from this position in 1999.

Donna also currently volunteers her time to serve as a case manager for New Ark United Housing Ministries, Inc. This is a transitional housing project for residents who have completed the YWCA's Home Life Management Program before securing their own housing. This program received funding by the Delaware State Housing Authority. Donna has been involved with this project since its inception five years ago.

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

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

One of the statutory mandates of the Office of the Child Advocate is to secure legal representation for Delaware's abused, neglected and dependent children. The OCA spent most of May and June of 2000 drafting legislation detailing the rights and responsibilities of attorneys and Court Appointed Special Advocates in their representation of children's best interests in Family Court proceedings. Although Delaware has received federal "CAPTA" funds for child abuse prevention and treatment since 1976, the State has not previously complied with the federal requirement that every abused or neglected child have a guardian *ad litem* represent his or her best interests in judicial proceedings. The legislation

that was drafted, and ultimately passed, attempts to bring Delaware into compliance with this federal requirement.

With the passage of Senate Bill 415 and the increased funding for a full-time Deputy Child Advocate, the OCA then set out to recruit *pro bono* legal representation of children, as well as to promote the expansion of the CASA program through citizen volunteers. In addition to appearances on radio, television and in the newspaper to address the need for volunteers to represent children, the OCA sent out a mailing to every attorney in the Delaware bar asking for help in representing children. The OCA, in conjunction with the Supreme Court of Delaware and the Abuse Intervention Committee, then sponsored a seminar to train attorneys on the legal representation of abused and neglected children. Out of the 142 attendees at the conference on October 6, 2000, 59 were attorneys eligible to represent children.

To date, the OCA has 28 attorneys who are willing to represent these children on a *pro bono* basis. The OCA has almost completed a training manual to guide these attorneys through Delaware's child welfare system and the complicated legal issues which arise in circumstances where attorneys represent children's best interests. In addition, the OCA's first Deputy Child Advocate, Mary Catherine Landis, began employment on October 16, 2000 and immediately began receiving cases for appointment.

Currently, the OCA has received referrals on **174** children. Of those children, the CASA program has agreed to represent 9 children. The OCA is currently representing 12 children, and *pro bono* attorneys are currently representing 14 children. Twenty-seven children are still waiting assignment of an attorney. The remaining referrals were directed to resources in the community, or advised that due to limited resources, legal representation could not be

provided. Approximately 85% of the referrals made to this Office involved legitimate concerns on behalf of children.

The Office is hopeful that as word spreads regarding the Child Advocate, and as feedback from the child welfare system shows improved outcomes for children, representation of all children by either the CASA program or the Office of the Child Advocate will be a reality. The OCA and CASA look forward to another year of collaborative efforts to ensure effective advocacy on behalf of our children. The OCA is also hopeful that its resources will be able to accommodate full implementation of 13 Del. C. § 701(c) as of January 1, 2001.

In just the few months that the Office has been able to provide legal representation for children, it has resolved two lengthy custody battles and provided stability to those children. It has also advocated for improved court deadlines for children, more rapid permanency determinations for children in DFS custody, and intensive services for families where children have been physically replaced back in the homes. The Office has also provided legal briefing on various issues before the Family Court. The OCA has interviewed children, and attempted to respond to their needs either by requesting legal counsel for them or by asking the responsible agency to provide the necessary resources.

The Office has partnered with numerous members of the community, most notably Child, Inc., to ensure children and their families are receiving the services they need. Through the efforts of OCA, the partners in the child welfare community are receiving the information they need to provide appropriate services and make appropriate decisions on behalf of children.

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

The months of May and June were quite hectic in the Office as the General Assembly was in full swing. The Office had the privilege and honor of having Kate Sullivan, from the DSCYF, as a Management Fellow for two months. There were approximately 10 bills in the General Assembly that focused on children's issues and were of importance to the OCA and CPAC. Kate and Tania spent part of May and most of June with legislators and their staff, as well as working with agency and community partners on the intricacies of the various bills. Tania testified concerning various bills before the House and Senate. Ultimately, all bills passed with the exception of the Abandoned Newborn legislation (SB 555) and the procedural changes to the adoption and termination of parental rights laws (SB 654).

## **III. Training and Education**

**Oct. 6, 2000:** The OCA, in conjunction with the Supreme Court of Delaware and the Abuse Intervention Committee, sponsored the first Child Advocacy Conference entitled *Legal Representation of Children: What Delaware Judges and Lawyers Need to Know*. The keynote speaker was Ann Haralambie, J.D., a nationally renowned child advocacy expert. 142 people from the child welfare community attended the conference. The audience included 29 members of the judiciary, 11 Deputy Attorneys General, 10 employees of the Division of Family Services, 8 members of the CASA program, as well as public defenders, police, schools, and community advocates. The conference was well received and the OCA received extremely positive feedback from the attendees.

**Abuse Intervention Committee:** The OCA is a member of the training subcommittee of the Abuse Intervention Committee. The subcommittee is co-chaired by the Honorable Mark Buckworth and CASA Statewide

Coordinator, Lynn Shreve. The focus of the subcommittee is to “bring all components of the child welfare community together to provide basic education and training across disciplines regarding child abuse and neglect and multi-disciplinary team building.” The community has agreed to pool monies to provide collaborative training, and the subcommittee has developed guiding principles and objectives towards this goal.

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

**May 1, 2000:** The Office of the Child Advocate made its community debut at the celebration of Child Abuse Prevention Month at a Blue Rocks game sponsored DSCYF and its community partners. The OCA, assisted by DFS, sponsored a contest for foster children to design the logo for this new state agency. Kristen C., an eleven-year old who had been recently adopted with her siblings after numerous years of DFS involvement, won the contest. Her logo is on this annual report as well as on the brochures for the OCA and its letterhead. The OCA was both proud and honored to have the children we serve participate in this event. OCA, DFS and the community partners honored Kristen C. and the DFS outstanding social workers at this well-attended event.

**Sept. 15, 2000:** The calendar of community events filled quickly for the OCA with the successful *Open House* held on September 15, 2000. Approximately 200 people, including a few of our children, enjoyed an afternoon of refreshments while meeting staff and seeing the office. Tania M. Culley, Esq. launched the event with a greeting to all with Janice Mink and Catherine Hamill providing supporting comments. Senator Myrna L. Bair gave a brief overview of the events that lead to the creation of OCA. The Office specifically recognized Senator Bair for her dedication to this Office and her unrelenting commitment to Delaware’s

children over the last 20 years. Many helped to make this a successful event, and the OCA staff is appreciative of the effort given.

**Oct. 25, 2000:** The OCA staff attended *The Foster Care Reform Forum* held at the Delaware Art Museum. This milestone event for foster children was a call to the community to unite to provide support for the development of an improved foster care system. The first part of the program included testimonials about the issues that Delaware’s foster care system faces. Isaac Palmer, Director, Division of Family Services, presented the “Protecting our Children” section followed by a question and possible solutions session by the audience. A downstate forum is planned for January 19, 2001 at the Del Tech – Terry Campus.

**Nov. 18, 2000:** OCA had an informational booth at *The 9<sup>th</sup> Annual Adoption Fair & Culture Day*. The day was one for prospective, new and seasoned adoptive families to gather and exchange information. The children enjoyed many activities of games, face painting, dressing up, and a multi-cultural sharing of arts and dance exhibitions.

**Tools to Spread the Word:** The creation of the OCA Logo led to the development of the recurring message of “Lend a Helping Hand” to our children. The OCA used various tools to carry our message to the public. First, we designed magnets and pencils that portrayed the OCA Logo, and included the address, phone and fax numbers. We developed a brochure to provide a look at the Office’s intent and purpose, goals, duties, titles of the staff with phone numbers, and e-mail addresses. We distributed pencils, brochures and magnets at the Open House, the conference of October 6, 2000, and at community events and training sessions. The first issue of the OCA Newsletter will be released by February 1, 2001. The newsletter was developed as a voice of the Office to share past, current and future events regarding child welfare, and as an

informational pipeline for those agencies and individuals committed to Delaware's children.

**Publicity/Media:** This past year was an opportunity for extensive interactions with various aspects of the media. Newspapers gave much needed support through articles about the office and child welfare events. Radio provided an avenue for public interviews, and Channel 12 television station requested several appearances by the Office. The media's willingness to obtain first hand information from Tania gave the Office the opportunity to reach the public with accurate and factual information.

## **V. Grants and Bequests**

**Training:** The Program Administrator attended the Grantsmanship Training Program in Philadelphia, PA, from September 18, 2000 through September 22, 2000. This training gave assistance in locating grant support from foundations, corporations, and government funding sources. The workshop provided information on planning programs and writing grant proposals. Grant proposals will be reviewed and assisted by the program for up to one year.

**Current projects:** During the Grantsmanship Training Program, the Program Administrator had preliminary discussions with a consultant from Louisiana regarding a computer tracking system for children entering foster care. This proposed system would provide the Courts, the Department of Justice, OCA, CASA, the Child Placement Review Board, and DSCYF with instant access to a child's status in foster care, as well as provide the status of court proceedings regarding every child in care. Several options exist for possible grants to help expedite this project, including federal SANCA funds. Ongoing dialogue with this consultant continues on a weekly basis as we are hoping to develop and implement a program with our partners by the Fall of 2002. Other grant requests will seek funding for additional legal representation of children, a volunteer community

liaison position, and multidisciplinary training for those working with abused and neglected children.

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

The Office is mandated pursuant to 29 Del.C. § 9005A 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. Within the next year, we plan to evaluate, assist, and make recommendations to the Division, and other partners in the child welfare arena, with respect to outdated policies and procedures that no longer support the DFS mission of safety and permanency. The first step in developing this partnership was undertaken by Tania and Anne by meeting with the Cabinet Secretary to discuss the Department's Quality Journey and Vision. The Office will also be meeting with the Department's Office of Case Management in January 2001. In addition, Tania reviewed child welfare issues with Governor Minner's transition team.

In the last several weeks, our Office has met with Dr. Richard Gelles from the University of Pennsylvania's School of Social Work. It has been discussed that our current child welfare system lacks a "tangible vision task" and a concrete goal that all facets of the system can agree upon. With our community partners and CPAC, we will continue to explore avenues to make Delaware a leader in child welfare, and are hopeful to use the expertise and experience that the University of Pennsylvania can provide.

Other issues that have received much attention during the past year are the foster care crisis and the number of adolescents growing up in the foster care system. The Office has been extremely concerned regarding the services provided to adolescents who are involved with

DSCYF. Many of the adolescents that have “grown up” in the foster care system have multiple emotional and behavioral issues that are not being met, and there are few resources to appropriately address them. The Office participates on the Independent Living Council within DFS, and has also had many discussions with adolescent community partners. All agree that more placement resources are needed for adolescents, with the possibility of small group homes as an additional alternative. These resources would need to have built-in safeguards to prevent adolescents from disrupting the placement. Specialized homes for children who are victims of sexual abuse, and those with mental health issues and/or behavioral challenges also need to be explored.

Support for foster families is another critical issue facing DFS and their community partners. Over the next year, the Office looks forward to continued exploration, review and implementation of changes in this most necessary area of child welfare.

Finally, over the next year, the Office will continue to review the Independent Review Panel recommendations of Bryan Martin and Tytyana Kennedy to ensure implementation by DFS, and to provide a further framework for improvement. The Office will be focusing on the review of case histories when making safety and permanency decisions, and the multi-generational dysfunction in families that adversely impacts children.

## **YEAR 2000: SIGNIFICANT COURT DECISIONS FOR DELAWARE’S CHILDREN**

The Family Court has undergone dramatic changes during the past year in the child welfare area, with the implementation of the Court Improvement Project (CIP). It is our hope that this initiative will mean closer scrutiny for each child engaged in the child welfare system.

Through the CIP, one Family Court Judge will have a child’s case from the moment *ex parte* custody is awarded to the Division of Family Services. We hope this continuity will positively impact children because Judges will get to know the children and families involved in each case. Sussex County has already seen improvements for our children, as they become the CIP model for our State. The CIP, combined with the efforts of CASA and our Office to see that every child is represented in these proceedings, will hopefully decrease the period of time DFS has custody of the children that have come into care, thereby bringing permanency as quickly as possible to these children.

Unfortunately, New Castle County Family Court has a judicial vacancy in the at-risk division, that seriously effects our ability to achieve our goals. We are hopeful that the new Governor will quickly address this most dire need.

In the last year, the Delaware Family Court and the Delaware Supreme Court have issued several decisions that profoundly impact Delaware’s children. We believe that these cases are noteworthy and directly affect the legal aspects of our job to safeguard the welfare of Delaware’s children. We intend to share recent case summaries in our future newsletters and website, as well as include the most significant decisions each year in our annual report. We hope the summaries are helpful as we consider each case from the child’s point of view.

**Shepherd v. Clemens**, Del. Supr., 752 A.2d 533 (May 11, 2000)

***The Decision:*** On May 11, 2000, a landmark decision from Delaware’s Supreme Court was handed down in a 4-1 decision. The case is significant to Delaware’s children because the Supreme Court prioritized a child’s need for permanency over a parent’s biological link to a child. The facts indicate that the child was conceived as a result of statutory rape, and that

ultimately the maternal grandparents of the child, who had been raising him since his birth 4.5 years ago, had proved by clear and convincing evidence that the parents' rights should be terminated so that they could adopt Christopher. While the biological mother voluntarily relinquished her rights, the grandparents established that father had abandoned this child.

The trial court denied the termination by finding the father had not failed to manifest the ability and willingness to exercise parental responsibilities, the third prong of Delaware's abandonment statute. The Supreme Court reversed saying that there was substantial evidence that father did in fact fail on this ground. Justice Berger, in her dissent, strongly articulated that the first two factors of the abandonment statute should not be considered in the third prong of the test – parental responsibilities. Parental responsibilities are defined in 13 Del. C. § 1101(10) as the “care, support and control of the child in a manner that provides for the child's necessary physical needs, including adequate food, clothing and shelter, and that also provides for the mental and emotional health and development of the child.” The majority concluded that child support and contact with the child were encompassed in parental responsibilities.

Most importantly, the Supreme Court for the first time explicitly recognized a child's need for permanency, defining it as “the safe, stable, custodial environment in which a child is raised, and the life-long relationship that child establishes with a nurturing caregiver.” It recognized that permanent placement “is intended to last throughout the child's minority . . . [and] is designed to establish life-long family relationships . . . [by] vest[ing] the permanent caregiver with the same legal responsibility for the child as a birth parent.” The Court recognized that both parents desired Christopher to remain with his grandparents, and that he was happy and well adjusted there. The Court took issue with the trial court's denial of best interests on the grounds that

“it was in Christopher's best interests to have an opportunity to know his biological father”. Justice Berger, in her dissent, held that “there is absolutely no need to terminate father's parental rights in order to provide comfort, security, or legal status for Christopher”. The Supreme Court reversed the trial court, with a remand directing the trial judge to sign the order terminating parental rights.

***From the Child's Perspective:*** In a perfect world, all children would have a healthy loving relationship with their biological parents. However, as the United States Supreme Court noted, “It is not the biological fact of parentage alone, however, but the existence of an actual or potential relationship that society recognizes as worthy of respect and protection, that activates the constitutional claim.” Lehr v. Robertson, 463 U.S. 248, 259-62 (1983). A biological link alone cannot overcome the well-established “best interests” standard.

Unfortunately, for this familial situation and for Christopher, no lesser legal alternative exists in Delaware which would enable Christopher to remain permanently with his “mom and dad” (maternal grandparents). While the maternal grandparents had custody, and both parents indicated that they wanted Christopher to remain there, if either changed his or her mind tomorrow, Christopher's safe, secure and stable world would be disrupted.

Why, you ask? Because in Delaware, if a parent can show by a preponderance of the evidence that he or she is able to provide “adequate care” for the child, the court must return the child to the parent, regardless of what is best for the child. So, if mother or father filed at any time for Christopher's return, and were able to meet this minimal standard, Christopher would be removed from his grandparents. In essence, no action short of termination of parental rights in Delaware would ensure that Christopher could always remain with his grandparents.

Justice Berger is correct in her concern that Christopher must know his heritage and his paternal family. We are hopeful that the people who love Christopher and who are now charged with looking out for his best interests, will understand and appreciate that. There is nothing which prohibits them from allowing Christopher to have contact with his paternal family, and to deny it forever, will only work to his detriment. However, from a child's perspective, we are proud that the Supreme Court recognized that children most importantly need to know that they have a permanent, loving, safe home, with a "forever family" – regardless of any biological link.

**Casner v. DFS**, 760 A.2d 162 (Table), 2000 WL 1508794 (Del. Supr 2000).

***The Decision:*** This case involves two small children who were 20 months and 7 months old at the time of the termination of parental rights trial. At trial on November 10, 1999, the mother voluntarily relinquished her rights to these two children. Approximately 45 days later, mother appealed, arguing that her consent was not knowing and voluntary. Mother argued that since she did not want to physically sign the papers to give up her rights, forcing the court to do the voluntary relinquishment colloquy under oath and on the record, her relinquishment was not voluntary.

The Delaware Supreme Court accepted the untimely appeal, and subsequently held that when mother agreed to terminate her rights to her children, it was not knowingly, voluntarily and intelligently done. The Court first focused on the voluntariness aspect finding that her unwillingness to sign the papers raised serious questions as to the voluntariness of the waiver. The Supreme Court also expressed concern about the information Ms. Casner received during the colloquy with the court. Ms. Casner received information from the judge explaining that if her rights were terminated, she and her children would exist as if they were

strangers, without the right to know anything about their lives. The Supreme Court found that mother's counsel attempted to minimize these statements. Finally, the Court was concerned that Ms. Casner was pressured to make this decision too quickly. The Court held, "Considering the totality of the circumstances, the record does not support a finding that Casner knowingly, voluntarily and intelligently consented to the termination of her parental rights." On September 14, 2000, The Delaware Supreme Court reversed and remanded the case for a new hearing. On November 8, 2000, the Family Court involuntarily terminated Ms. Casner's rights.

***From the Child's Perspective:*** As advocates for children, our primary focus is considering the effect of this decision on the children involved in the particular case. We advocate with the child's sense of time in mind. In this case, the petition to terminate Ms. Casner's rights was filed in June of 1999 and rights were terminated in November of 1999. The final brief in this case was submitted to the Delaware Supreme Court in August of 2000 and a decision rendered five weeks later. In the lives of these children, this is an eternity. In fact, during the pendency of this case, the young girl doubled in age from 16 months in June of 1999 to 31 months in September 2000. The young boy was four months old when he was added to the TPR petition and was 17 months old when the Supreme Court reversed. During this time, secure attachments are being formed, developmental milestones are being achieved and innocent lives are progressing without any idea of the potential legal devastation that is lurking.

While parental rights deserve protection, children's lives are paramount and these cases deserve prompt attention. The Office is encouraged that the Supreme Court has asked for proposed rule changes to expedite these cases, and is hopeful that all parties will begin to view these cases from the perspective of a child's sense of time. Even where a child has lived for several

years with a family who wishes to adopt him or her, neither the family, the agency or the attorneys can assure that little child that he or she can always remain there, until the court process is finalized. Children who experience foster care always fear removal, replacement and lack of certainty as to where they will sleep the following night. The Casner children, have never had the security of knowing they will always have a “forever family”.

This case is also significant because of the uncertainty that any voluntary termination of parental rights may bring in the future. If parents are allowed to withdraw their consent, agencies may be hesitant to allow parents to make decisions that are in the best interests of their children when that decision is termination of parental rights. Instead, to protect the children and ensure permanency more quickly, agencies may be forced to take an adversarial role against a parent who wants to do the right thing for his or her child by voluntarily relinquishing his or her parental rights.

**In the Interest of Nicholas Truselo**, Fam. Ct., No. CN00-09299, Ableman, J. (Sept. 18, 2000)

***The Decision:*** This decision involves the tragic case of a child, born June 1, 2000 who was severely shaken and dropped while in foster care in mid-August 2000. The baby suffered severe brain injuries as a result of shaken baby impact syndrome. Under the new OCA statute, an Attorney Guardian *Ad Litem* (GAL) was appointed to represent the best interests of the infant. On September 6, 2000, the GAL filed a motion to de-escalate medical intervention and institute a Do Not Resuscitate (DNR) Order for the baby. The Court held a hearing on the motion and heard evidence from numerous physicians concerning the baby’s condition as well as testimony from the GAL. The Court wrestled with many procedural and emotional issues, many of which were issues of first impression to the Court. Tania Culley, Esq., filed an amicus brief laying out the

procedural and jurisdictional case law from around the country which has addressed these most sensitive issues.

The Court concluded that it had jurisdiction over Nicholas by virtue of his dependent and neglected status. The Court also found that it had the authority to enter a DNR order on behalf of him. The Court acknowledged a parents’ right to make decisions on behalf of their child, but noted that it is well established that the State can intervene where a child’s health or safety are jeopardized. The Court felt obligated to be available to protect the rights of Nicholas. The Court next concluded that it must utilize the “best interests” standard in making its determination rather than substituted judgment since Nicholas is an infant who cannot express his wishes. Finally, the Court concluded by clear and convincing evidence that it was in Nicholas’ best interests to direct the hospital to forego the use of heroic medical efforts to resuscitate him, that the ventilator should be removed, and that Nicholas should receive comfort measures only. The Court based its determination on the uncontroverted medical evidence that Nicholas would never be able to perform even the most basic functions of life. The Court also gave significant weight to the unanimous view of the GAL, the doctors and parents that this is in the best interests of Nicholas.

***From the Child’s Perspective:*** As difficult as this decision was, the Court rose to its obligation, as it must when a child is in the custody of the State. This was a tragic, heartbreaking case, but the Court thoughtfully and rationally applied the law, and did what was best for Nicholas. We hope that the precedent established by this case never needs to be utilized, but are grateful that Delaware has such a well-reasoned decision as precedent.

**Farley v. DSCYF**, Del. Supr., No. 368, 2000, en banc (Dec. 15, 2000)

***The Decision:*** This case involves an appeal from a Family Court decision in June of 2000, terminating the parental right of Ms. Farley in her three children. In March of 1998, all three of Ms. Farley's children entered care. On February 4, 2000, DFS filed a petition to terminate her parental rights. A hearing on the petition was held in Family Court on June 22, 2000. The Family Court ruled from the bench that day that the grounds for termination had been met, and that it was in the best interests of the children for rights to be terminated. The Court signed the order effective that date. On July 27, 2000, Farley filed a notice of appeal. The Supreme Court accepted the appeal on August 15, 2000. On August 25, 2000, DFS filed a motion to dismiss the appeal as untimely. On September 6, 2000, the Office of the Child Advocate filed a motion for leave to file an *amicus curiae* brief. That request was denied, and the case was remanded to the Family Court for a determination as to whether the late filing was the result of Court error. The Family Court determined the late filing was not Court error.

On December 15, 2000, the Supreme Court held that the remedy available to clients in criminal appeals, where there is ineffective assistance of counsel, was equally applicable in termination proceedings. In short, it determined that if the delay in filing has not prejudiced the appellees or the children involved, the matter can be remanded for the entry of a new order. The entry of a new order would allow the 30-day appeal period to once again run. In this case, the Supreme Court, *en banc*, determined that there was not any prejudice to the children since "the untimely appeal was filed only five days after the expiration of the 30 day appeal period and it does not appear that there has been any substantial change in the children's circumstances, such as adoption." The Supreme Court did not retain jurisdiction of this matter.

***From the Child's Perspective:*** The holding in this case is devastating for our children. The Farley children came into the care and custody of DFS in March of 1998. At the time, the children were 10, 7, and 5 years of age. They are now 13, 9, and 7 years of age. The Court correctly concluded that there had been no substantial change in these children's circumstances. In fact, they have been unable to be adopted because of the ongoing Court proceedings in this matter. Had the Supreme Court dismissed this appeal as untimely, these three children would be legally free for adoption. However, due to the remand, these children will likely be caught up in the legal system and unable to achieve permanency for at least another year. At that point, they will be 14, 10, and 8 years of age. While Ms. Farley certainly has due process rights which merit protection, these children have been prejudiced by the Supreme Court's decision.

More globally, this case symbolizes that there is still a lack of certainty and/or finality for children whose very futures are decided by these cases as to when the decisions are really final, and gives the parents, who are competent adults with voices, the impression that they will be given priority above the rights of their children. Children, families (adoptive and biological), and the child welfare community need to be able to rely on the Court system and know that statutes and rules mean what they say.

## **MISCELLANEOUS ACTIVITIES**

***Interns:*** The Program Administrator has been working with two undergraduates from University of Delaware who have an interest in child welfare and the criminal justice system. The interns have been involved in court proceedings, Division of Family Services case reviews, case summaries, intake phone calls, and developing an extensive community Resource List. They will continue working with the Office of the Child Advocate until February. There is also a future law student

who plans to intern with this agency in the summer.

*Chafee Foster Care Independence Program Focus Group:* The Program Administrator was able to participate in a focus group on December 8, 2000 in Philadelphia, Pennsylvania. This focus group was held to help develop a performance assessment system for independent living programs receiving flexible funding from the John H. Chafee Foster Care Independence Program. This program provides States with flexible funding to (1) help children in foster care to make the transition to successful self-sufficiency at age 18; and (2) help those who were in foster care but are now between the ages of 18 and 21 with their goal of self-sufficiency. This funding will increase from \$70 million to \$140 million over the next few years.

It was a difficult task to have 25 people from states which encompass Region III decide what criteria or benchmark should be used to measure self-sufficiency of children. Most other states brought foster children with them to the meeting. These children made statements to the group such as: “Most people try to find love on the street, but a mentor would take care of that”; “Group homes don’t feel like a sense of family”; “Kids are not ready for adulthood. We need your help to start the moment we come into care”; “Why don’t you talk to us about what we need and not just to all these adults”; “Love and stability are the main thing – stability overall will increase the likelihood of success”; “Treat us like you would your own child and not kick us out if we make a mistake, or trust us to stay home at 17 alone while you go to the grocery store”. These statements are from the children who know what it is like to grow up in foster care without a “forever family”. The Office is hopeful that the community at large will hear more of these realities, and help us shape better programs for our future. The Program Administrator will be working with the Independent Living Program Coordinator at DFS

to provide foster children’s names and support for a proposed Youth Advisory Council in Delaware.

## **CONCLUSION**

We look forward to a productive year in 2001, and hope to increase collaboration between the Courts, the Attorney General’s Office, the Department of Services for Children, Youth and their Families, law enforcement, the medical community, schools, day care providers, mental health professionals, community advocates and legislators as we strive to make Delaware’s children our number one priority.

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