



# Department of the Public Advocate

A Voice for the People  
Annual Report 2009



Issued January 2010

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JON S. CORZINE

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Public Advocate

January 15, 2010

Dear Fellow New Jerseyans:

As New Jersey's Public Advocate, I have had the privilege to lead a department whose mission is to act as a voice for the people on a range of critical issues. This mission is accomplished through many avenues: policy research and recommended reform, investigation of abuse and neglect, community partnerships, legal advocacy, legislative and regulatory action, education, and outreach.

The following pages describe in detail the department's work in 2009. As I submit this final Annual Report as Public Advocate, I also want to reflect on the department's work since it was reinstated in 2006. Over the course of the last four years, the department has assisted countless thousands of New Jersey residents either through direct advocacy or representation or by advancing systemic changes through direct negotiations, legislation or through the court system.

Among the major accomplishments of the Department of the Public Advocate since it was reinstated in 2006:

#### **Eminent Domain Reform:**

The department helped to protect New Jersey families and businesses from losing their property to unjustified eminent domain actions through research, published reports and victories in the Supreme Court and the Appellate Division. The law governing use of eminent domain for redevelopment was fundamentally changed and strengthened. We protected families from eminent domain abuses by winning tougher standards for blight designations and clear rules requiring fair treatment of property owners.

#### **Lead Poisoning Response and Prevention:**

As a result of the department's 18-month investigation into inadequate lead remediation practices in New Jersey communities, Governor Corzine signed an executive order in April 2008 that resulted in improved statewide efforts to identify, treat, and prevent lead poisoning. The department is now working closely through its Model Lead-Safe Cities program with 14 communities throughout New Jersey to improve their response to the lead problem. From the inception of the program to September 30, 2009 (the latest date for which data are available), 31,531 children have been screened for lead in the Model Cities.

**Protecting Tenants from Unfair Evictions as a Result of Foreclosure.**

The department launched a major outreach campaign in late 2008 to inform tenants living in foreclosed properties that they do not have to move when the building in which they are living is in foreclosure. As a result of the department's efforts, hundreds, even perhaps thousands, of tenants have been able to stay in their homes. And in fall 2009, the NJ Supreme Court adopted a court rule requiring lenders to notify tenants of their rights at the front end of the foreclosure process. Most recently, in January 2010, the NJ legislature approved a bill that requires purchasers to notify tenants later in the foreclosure process. The bill was signed into law on January 18, 2010.

**Voting Rights and Election Reform.**

The department helped bring the state into greater compliance with federal voting laws, specifically the federal "Motor-Voter Law," by signing a memorandum of understanding with the Motor Vehicle Commission and the state's Chief State Election Official. This move more than doubled the rate of voter registrations at motor vehicle agencies. In addition, the department has represented hundreds of citizens in court seeking the right to vote in major elections in 2006, 2007, 2008, and 2009 with an overall success rate of more than 80%.

**Fighting for Citizens**

Tens of thousands of New Jersey residents have received help resolving their problems with governmental agencies through the assistance of the help lines run by the Public Advocate, Office of Citizen Relations, and the Office of the Child Advocate. The department's Office of Dispute Settlement assisted in designing a cutting-edge foreclosure mediation program which gave thousands of NJ residents the opportunity to sit down with their lenders and negotiate a loan modification so that they could keep their homes. Meanwhile, the department's Office of the Corrections Ombudsman has seen the number of requests for assistance it processes grow steadily.

**Protecting Ratepayers**

In 2007, the department scrutinized a planned merger between Exelon and PSE&G, with the result that PSE&G remained a New Jersey based company. Since that time, the department, through its Division of Rate Counsel, has also taken the lead in negotiating with the utilities for investments in infrastructure that will provide an economic stimulus. Rate Counsel has been at the forefront in promoting responsible investment in renewable energy, and is ever vigilant in monitoring the service received by New Jersey ratepayers and the rates they pay, and has saved ratepayers tens of millions of dollars in unwarranted rate increases.

**Protecting People with Developmental Disabilities and People with Mental Illness**

The department has provided direct advocacy for hundreds of individuals with developmental disabilities throughout New Jersey, both in the community and in developmental centers.

In addition, the department has provided legal representation in tens of thousands of involuntary commitment hearings and proceedings throughout the state. Department staff also investigated the qualifications required of entry level staff in state hospitals and found them inadequate. The project led to the state making significant improvements in hiring practices. In March 2008, we issued a report that examined the dwindling supply of community placements for people with mental illness and made recommendations for how to bolster the supply of Residential Health Care Facilities.

**Protecting the Elderly**

The department aggressively investigated tens of thousands of allegations of neglect or abuse of elderly residents in long-term health care facilities, in some cases resulting in criminal prosecutions. We stopped a major assisted living company, Assisted Living Concepts, Inc., from illegally discharging residents after they had spent all of their life savings at the facilities and needed to convert to Medicaid.

**Beach Access**

We continued to keep the public informed about access to the state's beaches by issuing our annual Guide to New Jersey Beaches which provides a comprehensive listing of beach fees and amenities.

**Insuring Children**

The Office of the Child Advocate pushed for aggressive strategies to reach uninsured children and get them insured. The office worked with the state Department of Human Services (DHS) and national advocacy organizations to make sure New Jersey became the first state in the nation to take advantage of dramatic changes in federal law that allow states to more effectively identify and insure children without health insurance. At OCA's urging, DHS established and distributed widely an easy-to-use "Express Lane" application that helped bolster enrollments in late 2009.

\* \* \*

Finally, I want to thank with appreciation my colleagues in the Department of the Public Advocate, which is staffed by some of the most talented, passionate and hardest working advocates for this state's citizens that you will find anywhere in state government. These people come to work every day committed to making government more accountable and responsive to the needs of New Jersey residents, especially our most vulnerable citizens.

It has been my pleasure and honor to serve as the Public Advocate for the past four years, and I hope our work has in some way enhanced the quality of life and prosperity of the great people of New Jersey.

**Very truly yours,**

A handwritten signature in blue ink, reading "Ronald K. Chen". The signature is fluid and cursive, with the first name "Ronald" and last name "Chen" clearly legible.

**Ronald K. Chen**  
**Public Advocate**

# Table of Contents

<b>1</b>	<i>Protecting the Rights of Tenants During Foreclosure</i>	<b>1</b>
<b>2</b>	<i>Preventing Childhood Lead Poisoning</i>	<b>5</b>
<b>3</b>	<i>Reforming Redevelopment</i>	<b>11</b>
<b>4</b>	<i>Assisting Our Most Vulnerable Citizens</i>	
	Defending the Rights of People with Developmental Disabilities . . . . .	15
	Defending the Rights of People with Mental Illness . . . . .	18
	Safeguarding the Elderly . . . . .	23
<b>5</b>	<i>Advancing Good Public Policy</i>	
	Safeguarding voting rights . . . . .	31
	Promoting affordable housing . . . . .	36
	Ensuring public access to public land . . . . .	37
	Cleaning Up Soil Contaminated with Hexavalent Chromium . . . . .	37
	Redressing Illegal Medical Balanced Billing . . . . .	38
<b>6</b>	<i>Fostering More Responsive Government</i>	
	Helping Citizens Navigate Government . . . . .	41
	Resolving Disputes Without Litigation . . . . .	43
	Humane Treatment for Inmates . . . . .	45
<b>7</b>	<i>Guarding the Interests of Ratepayers</i>	
	Advocating for Fair Prices . . . . .	47
	Championing Ratepayer Interests in Energy Policies . . . . .	48
	Encouraging Cleaner Energy . . . . .	49
	Challenging Deregulation of Telephone and Cable . . . . .	50
	Direct Assistance to the Consumer . . . . .	51
<b>8</b>	<i>Promoting Positive Change for Children</i>	
	The Child Advocate's Primary Goals . . . . .	53
	Child Safety/Welfare . . . . .	54
	The Child Advocate's Frontline . . . . .	55
	Healthy Children . . . . .	60
	Children with Mental Health Needs . . . . .	62
	Juvenile Justice . . . . .	63
	Department Overview	<b>69</b>
	Contact Us	<b>71</b>

# A Voice for the People

The Department of the Public Advocate is charged with making government more accountable and responsive to the needs of New Jersey residents, especially our most vulnerable citizens.

The Public Advocate's mission is to act as a voice for the people on a range of critical issues. This is accomplished through many avenues: policy research and reform, investigation of abuse and neglect, community partnerships, legal advocacy, legislative and regulatory action, education and outreach.

The Public Advocate works both inside and outside state government to protect the interests of the public, with a special focus on the elderly, people with mental illness or developmental disabilities, consumers and children.

Originally formed in 1974 under then Gov. Brendan T. Byrne, the Department was dissolved in 1994. After years of vigorous advocacy by a broad coalition of New Jersey citizens, the New Jersey Legislature adopted the Public Advocate Restoration Act in 2005 with the leadership of Senators Joseph F. Vitale and Robert J. Martin and Assemblymen Wilfredo Caraballo, John J. Burzichelli, Alfred E. Steele and Mims Hackett Jr. On July 12, 2005, Governor Richard Codey signed the bill into law.

In 2006, Governor Jon Corzine inaugurated the new Department with the appointment of Ronald K. Chen to serve as the first Public Advocate in New Jersey in nearly 12 years.





# 1 Protecting the Rights of Tenants During Foreclosure

Tenants are the invisible victims of the foreclosure crisis because they are often displaced when the property in which they live is foreclosed upon. In late 2008, the Public Advocate learned that tenants who live in foreclosed or foreclosing properties were routinely being evicted from their homes, despite the strong legal protections tenants have in such circumstances. The Department immediately addressed this problem, and in 2009 its tenants' rights program became a central part of the Public Advocate's agenda.



## Understanding the Problem

In New Jersey, lenders filed 60,706 residential foreclosure cases in the last year alone (Nov 1, 2008 - October 31, 2009), at an average rate of 5059 a month. These filings pertain to everything from single-family homes to multi-unit apartment buildings. Overall in New Jersey, a third of all occupied residential units are rentals. This wave of foreclosures has therefore engulfed tens of thousands of tenant households in the state.

Tenants face a host of problems when living in foreclosed properties. These may be the result of actions by the landlord before the landlord loses the property to foreclosure. Tenants also are vulnerable after the foreclosure when the new owner, such as the foreclosing lender, becomes the landlord. These new

landlords often hire representatives to work for them, such as real estate agents, property managers, and attorneys. During the course of Department's tenants' rights advocacy, we encountered cases in which landlords or their representatives took impermissible actions against tenants, often

wrongfully forcing them to leave their homes. These individuals have:

- Told tenants or sent notices, letters, or flyers that mislead tenants to believe that they have to leave their homes because of a foreclosure;
- Repeatedly called or showed up at tenants' homes in an effort to get them to leave;
- Told tenants they should leave because the new owner will not take care of the property;

- Refused or failed to maintain the property in a decent, safe, and habitable condition;
- Refused or failed to disclose where the rent should be paid, while sometimes also threatening eviction proceedings for nonpayment of rent;
- Attempted to collect rents they are not authorized or entitled to collect;
- Failed to pay the utility bills, putting tenants at risk of shut-offs of heat, electricity, and water;
- Filed eviction actions with no legal basis, sometimes misrepresenting both the facts and the law to the court.

## Assisting Tenants and Broadcasting Their Rights

Unlike other states, New Jersey protects most residential tenants from eviction except for “cause,” such as non-payment of rent or willful or grossly negligent damage to the property.

This applies throughout foreclosure proceedings and continues to have effect even after a new owner buys the property. Whether or not they have a written lease, tenants cannot be evicted solely because of a foreclosure. Further, landlords have only one legal means to evict tenants in New Jersey – by taking them to court. All forms of self-help eviction are banned, including lockouts, utility shutoffs and removing a tenant’s belongings from the premises. Only a court officer, acting under the authority of a valid court order, may remove tenants. And owners have a legal obligation to maintain in a habitable condition the properties they rent to tenants. Unfortunately, many tenants are unaware of their rights or come to doubt those rights in the face of repeated attempts by the new owners to remove them.

Whether or not they have a written lease, tenants cannot be evicted solely because of a foreclosure. Further, landlords have only one legal means to evict tenants in New Jersey – by taking them to court.

The Department has worked on a variety of fronts to address the problems tenants face. We have directly assisted nearly 200 tenant households to avoid illegal eviction and to achieve habitable living conditions. For example:

- In Wayne, a bank that foreclosed on a two-family home notified its elderly tenant that it intended to lock her out the next morning if she did not leave voluntarily. We got the Passaic County sheriff’s office to postpone the eviction so the court could hear the matter, worked with her to get a stay of the eviction from the court, and advised the bank’s attorney that she was a tenant and would be asserting her right to remain. She obtained the stay, remained in her home, and utilized landlord/tenant court to prove her tenancy so she can continue living in her home.



- The City of Newark shut off the water in an attempt to collect overdue municipal water payments from the owner of a foreclosed rental property. We persuaded the lender that owned the building to pay the water bill, sparing tenants – including a pregnant woman and elderly residents – from being forced out of their homes.
- When a West Orange tenant tried to pay her rent to the bank that bought the property at a foreclosure sale, the bank sent her to the realtor and the realtor refused the rent, exposing the tenant to the risk of eviction for nonpayment. We intervened with the bank’s attorney and the realtor to



develop a system for the tenant to pay the rent and remain in good standing.

We widely distributed more than 25,000 brochures designed to educate the public about the rights of tenants. We attended and presented at dozens of events where we discussed tenants' rights with municipal officials, housing and poverty advocates, public libraries, religious organizations, and an array of others that work with tenants.

At the same time, we reached out to many of those who are part of the problem. We sought to educate real estate licensees about the rights of tenants, working with the Real Estate Commission at DOBI on an educational bulletin as well as on the

Neither innocent tenants nor our towns and cities should bear the brunt of a foreclosure crisis they had no part in creating. This bill puts the onus for maintaining the premises where it belongs under the law: on those with an ownership interest in the property.

investigation and discipline of transgressors, and we reached out to the CEOs of New Jersey's largest real estate companies to enlist them in developing solutions. We worked with the state bar to educate attorneys representing foreclosing lenders about the rights of tenants and the responsibilities of

landlords. We collaborated with the Attorney General's Office on a guidance letter to sheriffs advising them to reflect the rights of tenants in all notices regarding foreclosure sales and in subsequent evictions. We worked with utility providers of all kinds to protect tenants

from unjustified shut-offs and to ensure that tenants receive notice and an opportunity to pay prospective bills in order to avoid the loss of heat, light, and water.

## Crafting Systemic Solutions

In search of systemic solutions that would extend protections to all tenants, we collaborated with the Administrative Office of the Courts to propose a court rule. The Supreme Court adopted the new rule on November 17, 2009, and under the change foreclosing lenders must now notify tenants of their rights before the entry of a foreclosure judgment. The rule also requires sheriffs to post notices of tenants' rights on residential buildings before the foreclosure sale. (The Rule is attached as Appendix A1.)

This rule would work in tandem with needed legislative reforms. Together with a group of housing advocates, we supported sponsors Senator Ronald Rice and Assembly Majority Leader Bonnie Watson Coleman in proposing S3059/A4063. The bill received final approval by the legislature on January 11, 2010 and was signed by Governor Corzine on January 18, 2010. (The bill is attached as Appendix A2.) First and foremost, the



"I received a letter from the bank telling me that I had to leave my apartment immediately," said Newark resident Laura Battles. "When the city turned off my water, the Public Advocate got the bank to pay the water bill. I didn't know where to turn but the Public Advocate was there to help me."

bill would require purchasers who acquire residential properties through a foreclosure sale to notify tenants of their rights by way of a prescribed notice and to inform tenants where to send their rent and direct their maintenance complaints.

Combined, the court rule and the legislative reforms offer comprehensive protection to

tenants. The notices under the court rule come at an earlier point in the foreclosure process, when the defaulting landlord is on



the brink of losing the property, but it has not yet been sold. This is the point when many landlords disappear, and tenants do not know to whom to pay the rent. The notice in the rule therefore advises tenants to continue to pay the landlord until otherwise notified or, if he cannot be found, to save the rent so that they will have it when a demand is made. The notice in the legislation, in contrast, comes after the sale and requires the new owner to tell the tenant where to pay the rent. These complementary notices will avoid confusion and protect tenants from paying rent to unscrupulous persons who demand money they are not owed.

In addition, the bill makes lenders responsible for maintaining properties between the time the lender files a foreclosure action and the foreclosure sale if the defaulting owner has abandoned the property. Now, there is often nowhere to turn – the defaulting landlord may disappear months before the lender or other buyer takes possession. When the heat goes off, the lights go out, the water tap is dry, or the ceiling falls in, the tenant must have someone to call. If the tenant turns, in desperation, to the municipality, it too must have some way to recover the costs of making the building habitable. Neither

innocent tenants nor our towns and cities should bear the brunt of a foreclosure crisis they had no part in creating. This bill puts the onus for maintaining the premises where it belongs under the law: on those with an ownership interest in the property. After a foreclosure sale, the purchaser is responsible for maintenance as the new owner/landlord.

### The Ongoing Agenda

These changes are essential parts of the solution. In addition, we continue to:

- assist individual tenants with problems that arise every day as they try to exercise their right to remain in their homes;
- negotiate with the City of Newark to develop a sound policy for collecting water debts without shutting off service to innocent tenants of properties owned by delinquent landlords, and share our policy recommendations with all municipalities that supply their own water.
- work with the AOC to address the inaccurate drafting of court orders that are intended to evict owners but lead to the improper removal of protected tenants;
- consult with sheriffs to ensure all notices regarding foreclosure sales and subsequent evictions reflect the rights of tenants;
- cooperate with the attorney ethics boards to address the unethical conduct of lenders' attorneys in regard to tenants; and
- reach out to state, municipal, and private agencies to educate them about the rights of tenants.

In New Jersey, approximately 170 towns have municipal water departments. The Department developed guidelines and model policies for these communities that will protect tenants from improper and unfair utility shutoffs when their landlord is delinquent. These guidelines are attached as A3.

## 2 Preventing Childhood Lead Poisoning

Lead poisoning can cause a variety of irreversible, lifelong effects in children, including a decrease in IQ, developmental disabilities, growth and behavioral problems, hearing loss and, in extreme cases, coma or even death. In April 2008, the Public Advocate unveiled the results of a year-long investigation that uncovered significant problems in the State's lead poisoning response and prevention systems. In answer to the Department's report, Governor Corzine issued Executive Order #100 in which he challenged State agencies that deal with lead to enhance their efforts and to work more collaboratively.

### Promoting Regulatory Change

In December 2009, the Departments of Community Affairs and Health and Senior Services proposed significant regulatory changes that grew out of recommendations the Department made during the course of its lead

work. DHSS proposed lowering the lead level that must be found in a child's blood before a child is considered poisoned and action is taken to abate the lead in the child's environ-

ment. This regulatory change would lower the action level for environmental intervention by the local health department from 20 micrograms per deciliter of whole blood to 15 micrograms or a persistent reading between 10 and 14 micrograms.

The DHSS regulatory reforms

also would include: more stringent and comprehensive nursing case management standards; more stringent and standardized documentation and reporting requirements; established time-limits for the local health department's intervention when a child is poisoned; a lead screening requirement for pregnant women living in the same household as a lead poisoned child; and additional language regarding penalties for entities or persons who fail to comply with the regulations.





DCA, for its part, proposed a comprehensive revision to the regulations governing the use of Lead Hazard Control Assistance funds. The changes would make more people and entities eligible to receive funds to make their homes lead-safe; permit a “hybrid treatment option” that would lower the cost of remediation; and provide comprehensive protection to families that need to be temporarily relocated while their home is being made lead-safe.

## Collaborating with Model Lead-Safe Cities

The Department of the Public Advocate also responded to the Governor’s Executive Order by creating the Model Lead-Safe City program. This program recognizes the innovative lead practices that municipalities are already undertaking and works with them to increase their efforts in several key areas: primary prevention, screening, inspections, relocation, abatement, and grants. To date, we have signed Model Lead-Safe City agreements with fourteen municipalities that together account for nearly half of all lead-poisoned children in the State. From the inception of the program to September 30, 2009 (the latest date for which data are available), 31,531 children have been screened for lead in the Model Cities.

Each Model City works with our Department to develop an individualized plan to address lead poisoning. For example, Newark held a lead screening and education event at the

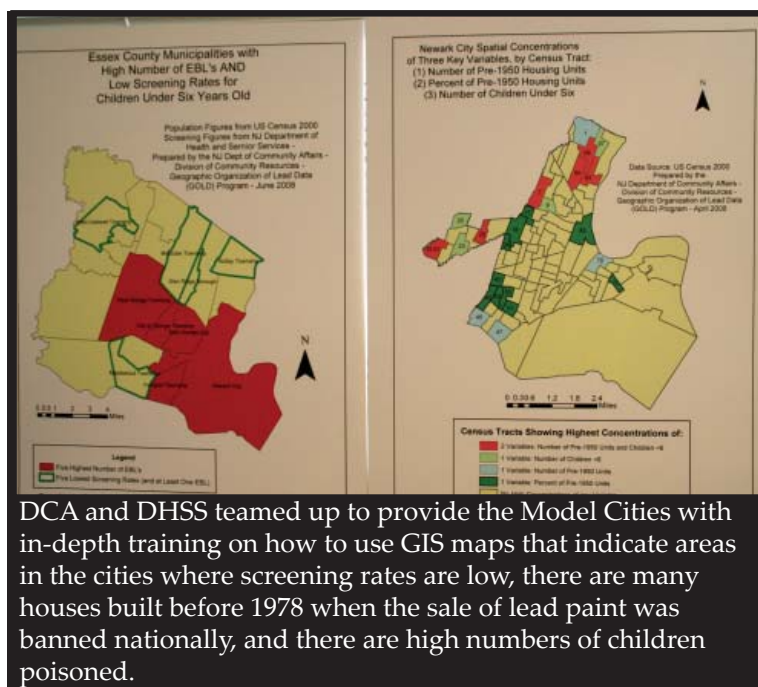
Newark Bears’ baseball game in September. Camden City and County have been working with us to relocate families with lead-poisoned children to lead-safe housing. At a health fair this past Spring, East Orange piloted the use of the LeadCare II screening device, which provides parents with blood lead results in three minutes.

Irvington is working with us on a lead ordinance that would require a lead evaluation and an abatement if necessary before a certificate of occupancy can be issued. The model lead ordinance developed by the Department is attached as Appendix B1, and in early January 2010 the Department transmitted it to

every municipality in New Jersey for consideration.

Elizabeth, which was one of our first Model Cities, has focused on educating the parents of children in day care centers and providing on-site testing. By reaching out to its Arab American community, Paterson increased its screening rate

nearly 6%. Our newest Model Cities are also making great strides. Bloomfield Mayor McCarthy and the Public Advocate have recorded a twelve-minute segment on the dangers of lead for that city’s local cable access station. Long Branch has taken two dilatory landlords to court to ensure that needed abatements are completed. Through a block party and school events, Asbury Park is reaching children directly. Vineland held a health fair to educate parents about where



lead is found and offered them home lead dust test kits. Jersey City hosted a health fair at the Liberty Science Center to educate families on a variety of health issues including lead poisoning.

Another factor in the success of the Model City program has been increased collaboration between

state and local government and community- and faith-based organizations. Morristown is working with community-based organizations to distribute lead education

materials; Hackensack has partnered with faith-based organizations to hold a series of health fairs; and the health department and board of education in Englewood will be working together closely to make parents aware of the dangers of lead poisoning.

Our sister agencies have also demonstrated

DHSS provided a grant for free lead inspector / risk assessor training to nearly 20 employees of Model Cities. Through DCA's LIFT grant program, Model Cities received nearly \$450,000 for XRF lead detection equipment and training.

great support of the Model City Program. For example, DHSS provided a grant for free lead inspector / risk assessor training to nearly 20 employees of Model Cities. Through DCA's LIFT grant program, Model Cities received nearly \$450,000 for XRF lead detection equipment and training. DCA and DHSS teamed up to provide the Model Cities with in-depth training on how to use GIS maps that indicate areas in the cities where screening rates are



low, there are many houses built before 1978 when the sale of lead paint was banned nationally, and there are high numbers of children poisoned. Finally, DHS has provided the Model Cities with many informational handouts and give-aways that they can distribute during lead events.

## Partnering with other Governmental and Private Agencies

In an effort to expand our lead poisoning prevention work, we have also collaborated with other government entities outside of the Model City framework. For example, the Department continues to work with DCA, the Board of Public Utilities and the Department of Labor on incorporating lead poisoning prevention efforts and lead-safe work practices into the State's weatherization programs that DCA oversees.



The Department urged the United States Environmental Protection Agency ("EPA") to list as a Superfund site a popular free beach on the Raritan Bay that contains lead slag and poses a threat to human health and the environment. The EPA agreed, and as a result of the November 2, 2009, Superfund designation, the EPA will continue its investigation into the extent of contamination and will take the proper measures to clean up the site.

The Department has also partnered with Sustainable Jersey, a program coordinated by Rutgers, to develop a lead poisoning prevention and response certification program. This collaboration will allow the Public Advocate's lead project to reach the more than 200 municipalities in the Sustainable Jersey program which, while not being Model Lead-Safe cities, still want to take steps to prevent lead poisoning. Finally, the Department filed an amicus brief to support DCA in assessing penalties against a landlord who failed to maintain an apartment building in a lead-safe



condition. The Administrative Law Judge adopted our recommended framework for assessing the appropriate penalty.

## Advocating for Individuals and Families

The Department has also advocated for many individual citizens. For example, we worked with DCA, the Camden County Health Department, and a local construction official to



relocate permanently a family whose child was lead poisoned. We also helped reunite and temporarily relocate a family that was separated after one child was lead poisoned. We have worked extensively to secure funds for lead-poisoned children from both the Lead Hazard Control Assistance fund and

the Catastrophic Illness Fund. And we have advocated on behalf of families who were having trouble with an abatement firm that was supposed to be ensuring that their home was made lead-safe.

## Getting the Word Out

The Department has augmented its other work by creating and publishing educational materials on lead poisoning. The Public Advocate recorded a PSA on the dangers of lead poisoning that has been translated into Spanish, Mandarin Chinese, and Portuguese. The Model Cities use the PSA at lead education events, and it is available on our website. The Lead Team also compiled and released a list of toys that the Consumer Products Safety Commission identified as having lead content in violation of federal standards. Parents can use this as a guide for shopping. We also developed a Home Remedies and Cultural

Practices flyer which lists common products that the Centers for Disease Control and Prevention have identified as containing lead. While our list is not exhaustive, it serves as a starting point for health educators to address this common non-paint source of lead poisoning.

The report, released on December 21, 2009, conservatively estimates that the New Jersey State budget would realize benefits of \$14,000 per student and \$9 billion across the entire cohort of children aged 0 to 6 if no child in this cohort had a blood lead level greater than one microgram per deciliter.

The Public Advocate published an article in the Spring 2009 issue of *MDAdvisor*, a peer-reviewed medical journal whose audience consists of physicians and nurses licensed to practice in New Jersey, as well as public health professionals and others who have an interest in New Jersey healthcare. The Public Advocate's submission deals with lead poisoning and the need for testing.

Finally, the Department retained a professor from Columbia University to assess the cost to New Jersey of having lead poisoned children. The report, released on December 21, 2009, conservatively estimates that the New Jersey State budget would realize benefits of \$14,000 per student and \$9 billion across the entire cohort of children aged 0 to 6 if no child in this cohort had a blood lead level greater than one microgram per deciliter. (The report is attached as Appendix B2.) These savings apply only to the present cohort of children aged 0 to 6. We would expect savings to increase as additional cohorts of children are born in New Jersey.

## The Ongoing Agenda

### *Model Cities*

The Department continues to work with our fourteen Model Cities: Camden; Elizabeth; East Orange; Irvington; Hackensack; Newark; Paterson; Long Branch; Asbury Park; Vineland; Englewood; Morristown; Bloomfield; and Jersey City.

As part of the Model City program, we provide the municipalities with ongoing support in conducting blood lead screenings, applying for grants, helping to relocate families while their home is being remediated, making sure dilatory landlords fulfill their obligation to make their rental properties lead-safe, disseminating lead education materials, reaching out to community- and faith-based organizations, using GIS mapping to determine areas where children's exposure to lead is greatest, and working with other State agencies.

### *Collaboration with other State Agencies and Individual Advocacy*

The Department also continues to be a resource for our sister agencies when they are confronted with individual cases that fall outside of their regulatory parameters or which they simply are unable to resolve. We continue to mediate disputes between contractors and homeowners, between contractors and State agencies, between State agencies and municipal grantees, and between governmental agencies and families of lead-burdened children. The Department's individual advocacy allows families to focus on finding help for their poisoned child instead of being distracted by these obstacles.

### *Primary Prevention*

Currently, the State's efforts focus on responding after a child has become poisoned instead of preventing the poisoning in the first instance. The Department continues to



take steps to shift this paradigm to one of primary prevention. To this end we are:

- working with municipalities on adopting and implementing a model ordinance we drafted that would require a lead evaluation and, if necessary, remediation of a dwelling unit upon turnover;
- disseminating information about lead poisoning prevention by working with Prevent Child Abuse NJ to record a podcast about the dangers of lead, reaching out to ethnic communities to alert them of the lead content of popular cultural products and home remedies, translating our prevention PSA into Creole, and following-up with the Jersey Access Network which will incorporate our PSAs into programming at no charge;
- coordinating with the YMCA to disseminate lead poisoning prevention information and to host screening events state-wide;
- working with Sustainable Jersey to promote and implement its new lead poisoning prevention and response certification program for municipalities.

### *Regulatory change*

The Department will submit comments on the regulatory changes proposed in December 2009 by DCA and DHSS. The Department also continues to work with DHSS to promote a rule change that would allow the LeadCare II blood lead screening device to be used in doctors' offices and at screening events. This device, which provides results in three minutes and does not require parents to make an extra trip to the lab for a blood draw, will increase screening rates and allow health care professionals to counsel parents immediately on the results.



# 3 Reforming Redevelopment

The Public Advocate began this project in 2006 in response to public concerns about how New Jersey towns were conducting redevelopment and using eminent domain to take property and transfer it from one private owner to another. From the outset, the Department identified three top priorities for reform:

- limiting eminent domain for private redevelopment to truly blighted areas, as the State Constitution requires;
- making the redevelopment process fair and transparent so people receive clear notice and have a meaningful chance to defend their rights in municipal hearings and in court; and
- providing adequate compensation and relocation assistance so families who lose their homes can rent or buy safe, sound, and comparable replacement housing in their own communities, and owners can relocate their businesses without suffering unsustainable losses.

The Department has made real progress on the first two of our stated goals through participation as amicus curiae in important appellate cases.



## Limiting Redevelopment to Blighted Areas

Echoing our research and arguments, the New Jersey Supreme Court held in a landmark 2007 decision in *Gallenthin Realty Development, Inc. v. Borough of Paulsboro* that under the State Constitution, the government may not designate pri-

ivate property for redevelopment unless it is “blighted,” that is, marked by “deterioration or stagnation that has a decadent effect on surrounding property.”

Relying heavily on the *Paulsboro* decision, courts have overturned inadequate blight designations in at least eight cases arising in six municipalities, including Belmar (two cases), Hackensack, Lodi, Long Branch, Maplewood, and Newark (two cases). We participated in two of these cases. In 2007, we helped to protect the residents of adjoining trailer parks in Lodi that provide scarce market-based affordable housing in Bergen County. Likewise in Long Branch, our amicus brief contributed



to the victory of longtime residents of a four-square-block seaside neighborhood. On August 7, 2008, the Appellate Division rejected the redevelopment designation, holding that “the record lacked substantial evidence that could have supported the New Jersey Constitution’s standard for finding blight.” After remand, the parties went into mediation, which reached a successful conclusion on September 15, 2009, when the City formally agreed to abandon its plan to use eminent domain in this area. The residents who long fought for their homes will be able to keep them.



## Ensuring a Fair Process

In 2008, the Appellate Division decided *Harrison Redevelopment Agency v. DeRose*, a case that has helped to ensure due process for property owners in redevelopment areas. Adopting arguments we advanced, the court held that business owners were entitled to clear notice and a fair hearing before the municipality could take their property for redevelopment. The court reinforced the constitutional principle that the “government has an overriding obligation to deal forthrightly and fairly with property owners.” The decision has effected a sea change in the kinds of notices the municipalities send to owners in redevelopment areas.

## The Ongoing Agenda

### *Advocating for Adequate Compensation and Relocation Assistance*

We continue to pursue our third goal: adequate compensation and relocation assistance. In 2008, we completed our investigation of the redevelopment of Mount Holly Gardens, a diverse and affordable residential neighborhood built in the 1950s that once included more than 350 attached, garden-style units.

This investigation culminated in a report, *Evicted from the American Dream: The Rede-*

*velopment of Mount Holly Gardens*, released, along with a companion video, on November 17, 2008. The report concludes that the redevelopment proceeded without adequate regard for the welfare of the families who lived in the area the Township had deemed blighted and who should by rights have been the first to



benefit from its planned revitalization. Instead, the residents tended to become collateral damage of the redevelopment process. The report shows significant gaps in the state laws governing financial compensation for people whose homes are taken to make room for private redevelopment. The municipality can offer homeowners far less money than it costs to replace the home they would lose to the redevelopment. The local government also can offer scant relocation assistance to low-income families who rent their homes in redevelopment areas, and can even deny relocation assistance altogether to residents it does not consider technically eligible.

In 2009, we wrote an article entitled *Compensation and Relocation Assistance for New Jersey Residents Displaced by Redevelopment: Reform Recommendations of the State Depart-*



ment of the Public Advocate for publication in the Rutgers Law Record, an online journal. The article outlines the Department's overall redevelopment reform agenda, with special emphasis on the need to ensure that those displaced from "blighted areas" receive enough money to relocate to safe, decent, and comparable homes.

The first duty of any local government is to its existing residents. Statutory reform is necessary to reconcile the laws governing compensation and relocation assistance with the overriding principle that the costs to redevelop a community should not be borne by those who can least afford it. The Department continues to press for legislative reform of New Jersey's redevelopment laws to better protect the rights of property owners and tenants. We have worked closely with legislative sponsors in both houses for more than three years. We have also met with representatives of the Department of Transportation, New Jersey Transit, the Department of Environmental Protection, and the City of Newark to learn about and respond to whatever concerns they might have about the reform proposals. In June 2009, Senators Stephen Sweeney and Ronald Rice and Assemblyman John Burzichelli announced a compromise bill (S559/A1492). We support this legislation and hope to see it passed.

#### ***Tightening Pay-to-Play Restrictions in the Redevelopment Context***

The Department has also endorsed the adoption of legislation forbidding "pay to play" practices in the context of redevelopment activities. Broadly defined, "pay to play" refers to the practice of awarding redevelopment and redevelopment-related work to people and companies that have made campaign contributions to officials involved in awarding the contracts. (Our proposed legislation is attached at Appendix C1.)

Existing laws either bar or restrict the amount of money that a redeveloper can directly contribute to a candidate responsible for awarding redevelopment work. However, the current laws, ordinances, executive orders, and much of the proposed legislation on "pay to play" fail to address ways in which these restrictions can be

circumvented. For example, a donor barred from contributing to a particular candidate may be able to make a donation to another candidate committee or political organization, which in turn uses those funds to finance or otherwise further the efforts of the candidate's campaign. Or people affiliated with the donor-contractor, such as family members or employees, may make these donations. Some of these practices are referred to as "wheeling."

To address this problem, the Department has drafted and supported the adoption of model legislation that would expand the kinds of contributions that are prohibited. In our model legislation, contributions exceeding \$300 cannot be made by the recipient of a redevelopment contract, or by persons who own, hold, or control more than 5% of the income or assets of a redeveloper, or its officers, partners, directors, or people earning more than \$100,000 per year from the redeveloper,

Broadly defined, "pay to play" refers to the practice of awarding redevelopment and redevelopment-related work to people and companies that have made campaign contributions to officials involved in awarding the contracts.

by their family members, by subsidiaries of the redeveloper, or by companies with a common owner as the redeveloper. And in the case of municipal redevelopment, the contributions cannot be made to any candidate or party organization of the municipality or to campaigns or political organizations that redirect contributions

to the candidate, or support the candidate through advertising, voter identification, or get-out-the-vote activities. Similar restrictions apply to county- and state-initiated redevelopment efforts.

The draft legislation includes effective penalties: not only could the redevelopment contract be terminated, but if the violation were knowing, purposeful, or reckless, the redeveloper and those involved in making or receiving illegal contributions could be prosecuted under the criminal laws and disqualified for up to four years from entering into other redevelopment contracts anywhere in the State. In addition, private citizens would be entitled to bring civil actions to enforce the proposed law.

By comprehensively addressing what kinds of contributions are prohibited, and by providing government and citizens with the tools to enforce these laws, the Public Advocate's draft legislation would meet the challenge of stopping the unseemly flow of political contributions that can taint redevelopment projects.



# 4

## Assisting Our Most Vulnerable Citizens

For many people with mental illness and developmental disabilities, children with learning disabilities and people who are elderly, obtaining the services they need to ensure a good quality of life and to be productive members of society can be a challenge. Despite the best efforts of government agencies and the non-profit provider community, there are vulnerable people who fall between the cracks.

The Public Advocate has made protecting and advocating for these most vulnerable citizens a top priority.



ing overturned a state regulation that denied disabilities services to people if they were unable to prove that at least three specific limitations, such as speech or mobility problems, had existed before a person turned 22. This was a significant win for New Jersey families.

### Protecting the rights of students with special needs

The Public Advocate also helped protect the rights of children to receive special education services when it released a report arguing that school districts must prove they are providing a student with an appropriate education, if parents challenge that plan. That report prompted legislators to sponsor a bill that would change the

### Defending the Rights of People with Developmental Disabilities

#### Protecting Individuals with Developmental Disabilities

The Public Advocate was also on the winning side of a state Supreme Court ruling that helped to guarantee adults with developmental disabilities a more secure future. That rul-

current law.

The Division of Advocacy for the Developmentally Disabled is authorized to promote, advocate, and ensure the adequacy of the care received, and the quality of the life experienced, by persons with developmental disabilities. The Division activities include:

- providing information and referral to individuals with developmental disabilities or their family members on a wide range

of issues, including questions regarding services available in the community, transitions from the state developmental centers, abuse/neglect/exploitation in state developmental centers or other licensed providers of housing and/or services, guardianship, housing, and consumer related issues;

- resolving problems raised to us by individuals with developmental disabilities or their family members;
- monitoring complaint trends in order to identify systemic issues affecting the individuals with developmental disabilities;
- advocacy on legislative and regulatory matters affecting individuals with developmental disabilities;
- consulting with sister agencies, including DDD, on issues where we have common concerns; and
- providing community education as well as education to the New Jersey Bar Association on issues affecting individuals with developmental disabilities.

### Providing Services in Light of Olmstead

New Jersey has recognized the need to depopulate its developmental centers and to provide services to more than 8,000 people with developmental disabilities living in the community who are waiting for services. A bill in the Legislature has proposed closing two of the state's developmental centers.

But the challenge before New Jersey lies in answering the questions concerning where residents of the developmental centers will go, how will the people on the waiting list – some of whom have been waiting for years – be served, what services are needed in the community, and how will New Jersey provide

the best possible conditions for some of New Jersey's most vulnerable citizens.

The Public Advocate's office is currently compiling information, interviewing stakeholders and working to clearly spell out what options are available and what possible consequences these actions may have. Various interest groups have made claims – some unsupported by the facts, some with merit. The bottom line, however, is that New Jersey must comply with the U.S. Supreme Court's Olmstead decision, which provides that those who have developmental disabilities are entitled to live

The bottom line... is that New Jersey must comply with the U.S. Supreme Court's Olmstead decision, which provides that those who have developmental disabilities are entitled to live in the least restrictive living environment possible.

in the least restrictive living environment possible. Our office is engaged in cross-referencing studies, statistics and personal case histories to provide the best advice possible on what the

state can do to efficiently and effectively serve people who need our help to live a safe and fully realized life.

### Self Advocacy Groups

More than 2,300 people with developmental disabilities are currently confined indefinitely to New Jersey's seven developmental centers, and some vocal advocates maintain that the majority of these vulnerable residents are happy living where they are.

When we began to examine this important public policy issue, we discovered that some residents have been isolated in the artificial environment of the developmental centers for more than 30 years. Large parts of their lives have passed without being able to go to the corner store and get a soda, eat the food they want, or engage in the routine recreational, vocational and social pursuits that those of us who live outside an institution take for granted.



Rather than accept the word of others, we began attending self advocacy group meetings in each of the developmental centers to hear what the residents had to say for themselves. After we first established relationships with some of the residents, we began videotaping them and letting them convey their feelings about where they are and where they would like to go in life. We are currently compiling these moving stories as a part of our "Voices" project. The thoughts and feelings of those who are living in well-intentioned confinement are, in some cases, deeply moving and disturbing. They represent the human side of public policy. As we debate what to do for the developmentally disabled, their own "Voices" must be heard.

### **Reporting of Abuse, Neglect and Exploitation of Individuals who are 60 and over, and who have developmental disabilities to the Ombudsman's Office where the individual is living in a community placement regulated by DDD**

The Department, through its Division of Advocacy for the Developmentally Disabled, was asked by DDD to review the statutory and regulatory laws governing mandatory reporting to the Office of the Ombudsman for the Institutionalized Elderly to resolve whether reports of abuse, neglect or exploitation of residents who live in community housing regulated or licensed by DDD must also be report to the Ombudsman. We are currently researching this issue and will write a report of our findings.

On December 2, 2009, the Public Advocate filed an amicus brief in the United States Supreme Court in support of a petition for certiorari in *Virginia Office for Protection and Advocacy v. Reinhard*. In the brief, the Department asked the Court to review a Fourth

Circuit decision that bars state agencies from suing state officials in federal court to ensure their prospective compliance with federal law.

In recent years, the Public Advocate also se-



cured legislative and court victories for individuals with disabilities and their families. The Department was on the winning side of a state Supreme Court ruling that helped to guarantee adults with developmental disabilities a more secure future. That ruling overturned a state regulation that denied disabilities services to people if they were unable to prove that at least three specific limitations, such as speech or mobility problems, had existed before a person turned 22. This was a significant win for New Jersey families.

The Public Advocate also helped protect the rights of children to receive special education services when it released a report arguing that school districts must prove they are providing a student with an appropriate education, if parents challenge that plan. That report prompted the passage of a statutory reform that protects families.

On January 13, 2008, Governor Corzine signed the reform legislation (P.L.2007, c.331.)



## Defending the Rights of People with Mental Illness

The Division of Mental Health Advocacy was created in 1974 with the primary mission of providing constitutional and statutorily mandated representations for individuals facing mental health commitment. The Division represents individuals in commitment hearing in 12 counties. The Division also represents individuals with developmental disabilities who are subject to guardianship proceedings, and indigent individuals facing commitment under the Sexually Violent Predator Act.

The Division provides mandated representation at more than 16,000 hearings each year. Staff investigators and attorneys have extensive mental health experience and spend much of their time on inpatient units in psychiatric institutions, meeting with clients to prepare for hearings, helping clients address problems and concerns on treatment wards, and investigating and addressing allegations of denial of patient rights pursuant to N.J.S.A. 30:4-24.2. The Division works toward achieving the expressed desires of its clients, including their wishes as to placement upon discharge.

The Division also evaluates and monitors post-hospital community programs. Staff field complaints from potential and former clients in the community and work with them to forestall readmissions. The Division also works with other state agencies and has undertaken a systematic review of both placement and programs that provide services to clients.

The Division is currently involved in a num-

ber of other initiatives. The Division is working with the courts to incorporate a number of federal and state court decisions into the New Jersey Rules of Court governing commitment proceedings. A representative of the Division was appointed to a subcommittee of the Rules Committee, which was established by the Supreme Court in response to our request. The Division is examining the treatment at



inpatient units to determine if proper staff is available, if treatment is sufficient to meet the needs of clients, and, ultimately, to determine if treatment for discharge readiness is being provided to meet the needs of individuals who are awaiting discharge. The Division also is exploring the equitable distribution of aftercare services among state, county and short-term care facility patients.

There remains a stigma against those with serious and persistent mental illnesses, and so mental health consumers experience discrimination and segregation both in our practices and our laws. The Public Advocate continues to work on changing state policies, practices, and procedures that unnecessarily burden these citizens. Our goal is to work for and with mental health consumers to make sure that they receive the services and benefits to which they are entitled, with those services provided in a humane, integrated environment by qualified service providers, in hospital and community settings.

In order for wellness and recovery to take place, people with mental illnesses must be offered appropriate care in the least restrictive setting, so that they can learn

the strategies required to live successfully in the community. For this to occur, psychiatric hospitals must offer active treatment, and not be overcrowded. There must be a range of supportive services and housing available to those in the community, and there must be intervention services to assist people in getting the treatment they need before hospitalization occurs.

In addition to its work representing thousands of individuals in commitment hearings, the Division does advocacy work at a systemic level. The following are several areas where the Division has undertaken efforts.

### **Undocumented Immigrants in State Psychiatric Hospitals**

Through our representation at state psychiatric hospitals, we have many clients who do did not meet the criteria for continued hospitalization, but are instead on a status known as “CEPP”, which stands for “conditional extension pending placement.” Consumers are typically placed on CEPP status because there are no appropriate housing and services available in the community. In investigating this, however, we found that about 55 of CEPP clients statewide were actually undocumented immigrants.

The Public Advocate’s report on undocumented immigrants in the state hospitals was released in February 2009. This report shed light on the plight of these consumers, some of whom wished to be repatriated but had been



trapped in a Catch 22, some for years. We also found that there were several consumers who were in fact not technically undocumented, but whose immigration status had changed while they were hospitalized, due to their inability to keep paperwork updated. We worked with the Division of Mental Health Services to implement policies which will, when possible, assist these consumers in working with Immigration & Customs Enforcement, receiving sponsorship from a relative who is a citizen, or allowing them to be repatriated to their country of origin, if that is their wish and it is appropriate. Throughout 2009, DMHS indicated a decline in the number of individuals on CEPP who are undocumented. The Department of the Public Advocate continues to monitor this issue.

### **College Suicide Prevention**

Also in 2009, the Public Advocate released a report entitled *College Students in Crisis: Preventing Suicide and Protecting Civil Rights*. This report included a sample policy that colleges and universities in New Jersey can use in setting up internal policies regarding how to work with students who attempt suicide, or with the student body and families of those who complete suicide. The Division examined statutes in other states, and compared them to statutes in New Jersey. For example, New Jersey’s Law Against Discrimination [LAD] is stronger than similar federal laws, and schools which do not abide by this state law may find themselves liable for their treatment of students who have mental illnesses.

The DPA did not conduct this work in a vacuum. We worked closely with the New Jersey Commission on Higher Education and the Association of College Presidents to refine the policy so that it would not create an undue burden on the schools, while ensuring that they were still offering appropriate care to their students. Our report and policy became much stronger as a result of these col-

laborations. Rutgers University is sponsoring a statewide conference on the issue of college suicide policies in February 2010.

### Appellate Work

The Division of Mental Health & Guardianship Advocacy maintains an active docket of appellate work.

Appellate briefs and arguments by mental health commitment attorneys have been used to request Appellate Court direction for the trial courts in areas where the procedural or substantive rights of our clients have not been

clearly established. In this area, we were generally successful in establishing rights for the mental health clients.

While several appeals await resolution and others were unpublished, in one matter the trial court commitment was reversed and an instructive appellate decision was published. In re T.J. instructs the trial court on the importance of liberty for individuals who are not committable under the New Jersey Statute and have a place to go. A patient's criminal history or a hospital's policies and procedures cannot affect discharge of a person who does not meet commitment standard and who can live with his family.

### **The Ongoing Agenda**

*Work is underway by the Division in a number of critical areas that impact the quality of treatment mental health consumers receive, the availability of treatment programs, the legal rights of consumers, and the availability of supportive housing in the community.*

#### ***Staffing at State Psychiatric Hospitals***

Patients at New Jersey's state and county psychiatric hospitals require a quality level of care in order to ensure that their hospitalizations will be as brief as possible. This is both a legal and clinical necessity, as well as a fiscal measure, to ensure that hospitals are not overcrowded and that staff work regular schedules, without requiring overtime.

Over the past year, DPA has examined the qualifications required for front line staff and has identified concerns that threaten to undermine patient care, safety, and wellness and recovery efforts.

In March, the Division issued a report, "Staffing at State Psychiatric Hospitals," which studied the qualifications of entry-

level custodial care employees, known as human services assistants [HSAs] and human services technicians [HSTs]. These staff members have the most contact with patients. Yet, there are no requirements for relevant education or experience prior to beginning their service. Staff members in these positions are nonetheless paid at far higher rates than staff who perform similar functions at DMHS licensed community agencies, for whom

DMHS typically requires a bachelor's degree and experience. That report can be obtained at <http://www.state.nj.us/publicadvocate/mental/pdf/HospitalStaffingPol-3-24-09-FINAL.pdf>.

Since issuing the report, and over the past four years, Public Advocate has worked





closely with legislators to improve the quality of care for mental health consumers in the New Jersey's state psychiatric institutions. Because the Department's attorneys and investigators are at these hospitals on a daily basis, we were in the position of being able to observe how policies and practices succeed. Recognizing that there were serious flaws in the way assaults and deaths were reported, we worked very closely with legislators to craft bills to remedy these flaws.

The DPA also initiated research into the qualifications of clinical professional staff, and the requirements that are imposed on staff social workers and psychologists. The DPA found that professional staff, including psychologists, social workers, and counselors, are not required to be licensed in their field in order to be employed in state psychiatric hospitals. If these professionals were to work in identical positions in the community, however, state law would require them to be licensed through the relevant professional boards within the Division of Consumer Affairs.

The research found that the majority of social workers in state hospitals are unlicensed and most of them are performing clinical work without holding a Licensed Clinical Social Worker accreditation. Likewise, the majority of psychologists performing clinical work in the four of the five state hospitals that provided this information were unlicensed as psychologists. This is a critical issue confronting New Jersey's public mental health system. Mental health consumers need high levels of care while they are in the acute phases of their illnesses, and would be better served by staff with greater training and skills, and who at least meet the minimum requirements to be licensed in their professional field. (See licensure paper Appendix H-1.)

We also worked with legislators in both the Assembly and the Senate to create standards to improve the educational and experiential requirements for direct care staff at psychiatric hospitals. This will lead to a more skilled workforce that is better able to assist the vulnerable patients who are committed to these institutions.

Mental health consumers need high levels of care while they are in the acute phases of their illnesses, and would be better served by staff with greater training and skills, and who at least meet the minimum requirements to be licensed in their professional field.

Additionally, the Public Advocate and Governor Codey's office collaborated on a bill to require drug testing for employees at psychiatric hospitals, developmental centers, and veterans' facilities.

The Legislature examined a three bill package to achieve improvements and reforms:

S2493: Provides for random drug testing and testing for cause of employees in state psychiatric hospitals, developmental centers and veterans homes and requires applicants for employment to undergo drug testing.

S2492/A2973: Requires DHS to establish training, educational assessment, and remedial instruction programs, and minimum education standards for staff at State psychiatric hospitals.

S2494/A12949: Requires DHS to report physical assaults and deaths at state psychiatric hospitals on its website and report deaths to the Public Advocate.

The Governor signed A2949 into law on November 20, 2009 (P.L. 2009, c161), significantly improving public transparency and accountability within the state psychiatric hospitals.

S 2493, which is an important reform to improve patient safety and care, was received final legislative approval on January 11, 2009 and was sent to Governor Corzine.

### Work still to be done:

A2973, imposing training and education requirements on direct care staff at state psychiatric facilities, was approved by the Assembly on January 7, 2010 but was not voted on by the Senate. The Department supports this initiative to enhance the qualifications of direct care staff in state psychiatric hospitals.

### ***Review of Mental Health Task Force Recommendations***

In 2005, then Governor Codey released a report of the recommendations made by the Mental Health Task Force which he convened. As a follow-up, the DPA has begun reviewing these recommendations to determine the status of implementing them, and to examine the State's mental health system as it exists today. Preliminary work completed to date indicates that while some steps have been taken, there is still much to do to improve the mental health system. An example of this is found in the Task Force's recommendations on housing.

The Task Force called for the Housing Trust Fund, which was established to create permanent, affordable housing. This recommendation was followed, although there have been only a small number of units of housing made available up to the present time. The Task Force report also called for improving residential health care facilities [RHCFs], by nominally increasing payments to RHCF operators. RHCF operators receive about \$550 per month per resident (including the resident's SSI and state supplement) to provide room and board, including three meals and two snacks per day, assistance with medical and mental health needs, activities and transportation. It is difficult to provide these services to adult residents for about \$18 per day, particularly when operators must also factor

in property taxes, heat and utility bills, and other rising costs. As a result, many of these facilities have closed, shrinking an important housing resource.

In 2008, the DPA visited all of the residential health care facilities in New Jersey, interviewed hundreds of residents and found that, while some of these facilities were substandard, many of them provided appropriate housing for older citizens and people with

mental illnesses. Yet, these facilities are closing because it is prohibitively expensive to run them when most of the residents are SSI recipients, which is the income source for many people who are elderly or who have serious mental illnesses.

The DPA also recognized that New Jersey state and county hospitals were overcrowded, mainly because of the number of people who remained hospitalized beyond the time it was necessary simply because they were in need of housing in the community. The Public Advocate called for releasing patients from the hospital if they did not need to be there, increasing the funding for RHCFs, and moving patients into RHCFs.

The final report will include this information, as well as information about many of the programs and services that were enhanced due to the recommendations of the Task Force.

### ***Litigation: Supportive Housing***

The Division is fighting for supportive housing rights on another front. The Division was asked to join as amicus in a case pending before the Appellate Division. The case, *Advance Housing Inc. and Advance Housing 2000 v. Township of Teaneck*, A-728-09T3, involves a supportive housing agency that was billed for property taxes although it is a tax exempt agency and provides housing in addition to services on-site at the consumer's home. The Division of



Mental Health Advocacy is working with the Bazelon Center for Mental Health Law, the Supportive Housing Association, and Disability Rights New Jersey. Currently, our brief is due at the end of January 2010.

### *Other Advocacy Work*

Some of the other issues that affect mental health consumers that we are currently working on and continue to monitor include:

**Hospital Monitoring** - Because DPA attorneys and investigators are at the hospitals on a daily basis, we have the ability to suggest and monitor improvements and to witness problems. The DPA has been a vocal advocate concerning problems identified at Ancora and the other psychiatric hospitals. We continue to monitor the hospitals, and meet with the CEO and others at Ancora on

an on-going basis. Recent meetings have centered on the improvements made following the Department of Justice report.

**Diversion and Mental Health Courts** – Given the success of drug courts, the DPA is exploring the prevalence and success of mental health courts.

**Involuntary Outpatient Commitment** – The DPA is working with the Division of Mental Health Services and other stakeholders regarding the implementation of New Jersey's new involuntary outpatient commitment [IOC] law. Under this law, those who are dangerous to themselves or others, but can be treated in the community rather than a hospital setting, may be committed to outpatient treatment. The DPA represents clients who will be directly impacted by this new statute, and will remain closely involved in its implementation.

## Safeguarding the Elderly

In 2009, the Department's Division of Elder Advocacy engaged in direct advocacy on behalf of senior citizens and also developed a wide range of recommendations for reforms to the systems that serve the state's elderly population.

In reconstituting the Public Advocate, the Legislature found that "[t]he elderly represent an ever-increasing portion of the population that requires special attention," and established a Division of Elder Advocacy within the Department. The Office of the Ombudsman for the Institutionalized Elderly ("OOIE"), a preexisting office, was placed within the Division. N.J.S.A. 52:27EE-2(h), N.J.S.A. 52:27EE-61 through 65.



The Division of Elder Advocacy represents the public interest in administrative and court proceedings on behalf of elderly adults, may intervene in or institute proceedings involving the interests of the elderly, and has access to the records and facilities of agencies that receive public funds and facilities or institutions that provide health-related services for the institutionalized elderly.

The Division of Elder Advocacy is responsible for:

- supervising the Office of the Ombudsman for the Institutionalized Elderly and reviewing complaint trends in order to identify systemic issues affecting the institutionalized elderly;

- providing information and referral to callers 60 and older or their family members on a wide range of issues affecting older New Jerseyans, including questions regarding health care, long term care, home and community based services, guardianship, housing, and consumer related issues;
- conducting investigations regarding systemic issues affecting older New Jerseys which come to the attention of the Division through the Ombudsman's office, callers, and other avenues;
- participating as amicus curiae in court matters before the New Jersey Appellate Division and Supreme Court which raise issues affecting older New Jerseyans;
- advocating on legislative and regulatory matters affecting older New Jerseyans;
- consulting with sister agencies, including the Department of Health and Senior Services and the Department of Human Services, on issues where we have common concerns; and
- providing community education as well as education to the New Jersey Bar Association on issues affecting older New Jerseyans.

In meeting its charge, the Division has provided aggressive advocacy on behalf of older New Jerseyans in a range of special projects and investigations.

### Assisted Living Concepts

The Division completed its 18-month investigation of Assisted Living Concepts, Inc. in early 2009, and released its report – “Aging in Place-Promises to Keep: An Investigation

into Assisted Living Concepts, Inc. and Lessons for Protecting Seniors in Assisted Living Facilities” – on April 16, 2009. The Department launched its investigation into Assisted Living Concepts, Inc., because the company began discharging Medicaid-eligible residents in 2007 contrary to the promises made to its clients. This agreement not to discharge Medicaid-eligible residents once they had spent down their private savings had also been included by the company in its original



certificate of need application to the state, which had been approved as a prerequisite to licensure. From this investigation, we found not only that the company had breached its promise to residents, but that the statutory and regulatory scheme protecting residents of New Jersey's assisted living facilities

needed to be strengthened to prevent similar wrong-doing by bad actors in the future.

Our investigation began after the Office of the Ombudsman for the Institutionalized Elderly learned that certain residents of assisted living facilities were being involuntarily discharged after they had spent all of their savings and needed to enroll in the Medicaid program.

The investigation found that Assisted Living Concepts had instituted a new national policy in late 2006 to significantly limit its participation in the Medicaid program, after the original company was purchased by a publicly traded corporation. We also found that, in New Jersey, this policy was implemented by refusing to accept the Medicaid reimbursement for residents who had spent down their life savings and had become Medicaid eligible. We found that prior to our involvement, the company had forced these residents to move out. Once we began the investigation, the Department worked closely with the Department of Health and Senior Services (DHSS) to protect the safety of individual

residents still living in the facilities as they became Medicaid-eligible.

As part of the investigation, the Division interviewed more than 110 residents, former residents and family members. Concurrent with our investigation and throughout 2009, the Department assisted residents as they spent-down and sought Medicaid eligibility. We continued to work with DHSS on behalf of Medicaid-eligible residents who wanted to remain in their ALC facility. This resulted in DHSS issuing penalty letters in several cases where the facility sought to involuntarily discharge a Medicaid-eligible resident. Presently, we are several residents of facilities owned by Assisted Living Concepts who have spent-down, are applying for Medicaid, and wish to remain in their homes. More cases of residents needing assistance arise on an on-going basis as individuals exhaust their personal savings and become eligible to apply for Medicaid.

In addition to on-going advocacy, we issued a public report which contained several recommendations to DHSS and the legislature to improve rights and protections for residents of assisted living facilities. Our recommendations included:

- Legislative reform that would require all assisted living facilities to make 10 percent of their licensed beds available for Medicaid-eligible residents and would prohibit discharge of those residents solely because of their Medicaid status;
- Legislative reform which would make third party guarantor agreements in assisted living facilities unenforceable as a matter of law;
- Requiring assisted living facilities to provide a uniform consumer disclosure to potential residents; and

- Expanded access to the Consumer Fraud Act to protect assisted living residents.

In October 2008, while our investigation was on-going, Assisted Living Concepts, Inc. filed an appeal against DHSS in which it asserted that DHSS could not legally bind the company to representations made in its certificate of need application. In the certificate of need, the company said it was committed to serving low and moderate income residents, and that it would never ask a resident to leave an

ALC facility because of a "spend-down situation." The Public Advocate appeared in this appeal as amicus curiae. The outcome of this appeal will determine whether or not Assisted Living Concepts is required under its license

and certificate of need to retain all Medicaid-eligible residents upon spend-down.

### **Assisted Living Bill of Rights, including a consumer-friendly Uniform Disclosure**

The Department, through its Division of Elder Advocacy, has recommended legislative and regulatory reforms that will better protect residents of assisted living facilities.

- Prohibit Third Party Guarantor Agreements.

The first prong of these protections would be to prohibit abusive financial practices, including third party guarantor agreements. Under current law, nursing homes are prohibited from requiring family or friends of a patient to sign a "third party guarantor agreement." State and federal law prohibit this practice, and the patient's family and friends cannot be made responsible for paying the nursing home bill. (NJSA 30:13-3.1). Such third party guarantees of payment cannot be imposed as a condition of admission or continued



residence in a nursing home.

Residents of assisted living facilities, and their family members, need this protection as well. In the case of ALC, for example, when the company changed its corporate policy to block people from converting to Medicaid, it also tried to force their grown children or other representatives to sign guarantor agreements in which they commit to paying the resident's bill.

These kinds of practices run counter to the basic principle that an assisted living facility must not force a resident's grown child or other representative into the untenable position of choosing between what is right for their parent and protecting their own financial security. Nothing stops an individual who has the money from helping their parent, but forcing them to do so discourages family members from being effective advocates for their parents. It also is fundamentally unfair to change the rules – sometimes years after an individual has signed a contract and moved in.

This practice has been prohibited for many years in nursing homes under a law authored by then-Assemblywoman Loretta Weinberg. With a growing reliance on assisted living facilities by New Jersey seniors who want to preserve their independence, it is time to prohibit this practice in the assisted living industry.

- Give Seniors and their Families the Consumer Information They Need To Find the Assisted Living Facility that is best for them.

When seniors and their loved ones shop for an assisted living facility, they need more than glossy brochures and high pressure sales pitches. They need clear and objective information about what services the facility offers, and what it doesn't provide. They need to know what the rules are, and whether the facility will be able to continue caring for them if their health

or mental acuity declines. They need to know what type of staff will be there to help them when they need it, and what the fees are for different services.

The Public Advocate engaged in extended discussions with DHSS and the assisted living industry on a comprehensive disclosure form each facility would be required to provide to prospective residents or their family members when the prospective tenant first visits the facility, when the facility makes its first mailing to the prospective tenant, and at the time of admission. Armed with this information, which would be presented in a uniform way, families would be able to compare facilities and determine which one best meets the needs of the elderly person. While we ultimately were not able to reach agreement on the final version of the uniform disclosure, we have developed recommended language, which is contained in Appendix D1.

In addition, through our discussion with DHSS, we learned that facilities currently are required to provide the Department with comprehensive and detailed disclosures about the facility's Medicaid policies. DHSS treats these Medicaid plans as binding on the facilities. Unfortunately, these Medicaid disclosures are not provided to consumers.

- Enact an Assisted Living Bill of Rights

In New Jersey, residents of nursing homes are protected by a Nursing Home Bill of Rights. Through regulations, these rights have been extended to residents of assisted living facilities, and through amendments in 2006 those regulatory protections even exceed the Nursing Home Bill of Rights. We propose codifying these protections for assisted living residents in statute, as they are for nursing home residents, and including some expanded protections.

The legislative proposal is contained in



## Appendix D1.

- Increase procedural protections for involuntary discharges.

In the course of our ALC investigation, we encountered a number of cases in which the facility did not provide the written 30-day notice that is required before involuntarily discharging or transferring a resident (N.J.A.C. 8:36-4.1(a)37).

In one case, the facility initially refused to issue the discharge letter, which impeded the ability of DHSS to take enforcement action. The facility subsequently issued the discharge, and DHSS is pursuing an enforcement action against the facility for taking an impermissible discharge action.

DHSS and DPA agreed to convene a work group of consumer advocates and industry representatives to propose increased protections for residents from involuntary discharges. The current regulatory scheme provides residents only with the right to adequate notice and to appeal to the facility administrator. If the parties cannot come to consensus, it is unclear what legal path a facility must pursue to have a resident legally removed from the facility, including an ejectment action in the Law Division or summary eviction in landlord tenant court).

Likewise, residents do not have easy access to the courts to prevent what they view as unlawful discharge. No fair hearing rights exist. This poses the risk that where facilities and residents disagree, the facility can engage in "self-help" removal of the resident from the facility.

- Review of Nursing Home Admission Agreements

The Department of the Public Advocate, through its Division of Elder Advocacy, has sought copies of admission agreements currently in use by every nursing facility in the state. We are reviewing each admis-

sion agreement to ensure compliance with federal and state laws that prohibit third party guarantor agreements as a condition of admission or continued stay.

We undertook this investigation after being asked by the New Jersey Supreme Court to participate as amicus curiae in a matter that was before it in early 2009. The case,

Llanfair House Nursing Home v. Estate of Ethel Litchult, involved a nursing home that was personally suing the daughter of a resident to collect the debt owed. The nursing home claimed that the daughter had signed the admission agreement and had agreed to successfully pursue Medicaid on behalf of her mother. The issue before the court was whether the admission agreement contained a third party guarantor of payment as a condition of resident's admission or continued stay, which would violate federal and state law. After filing our amicus brief with the Supreme Court, the case settled and the nursing home dismissed its claims against the daughter, and the matter was rendered moot.

Subsequently, the Division of Elder Advocacy undertook a statewide review of all nursing home admission agreements as a result of this case.

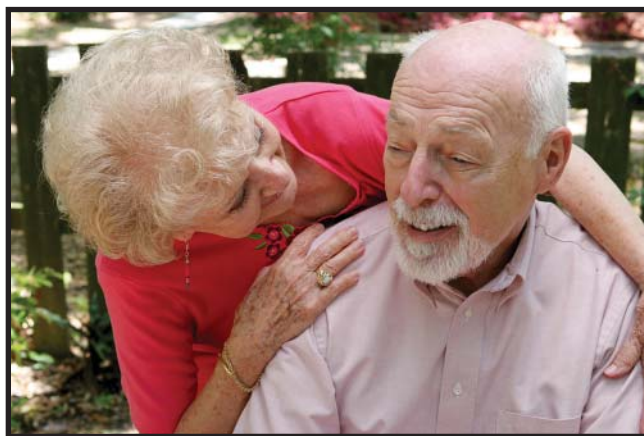
In August 2009, The Ombudsman's office requested all facilities to provide copies of the admission agreements currently in use. While most facilities responded in a timely manner, approximately 50 facilities did not provide us with copies of their admission agreements. By Administrative Subpoena issued December 1, 2009, the Public Advocate demanded copies of the admission agreements from facilities that did not voluntarily provide their agreements.

To date, all admission agreements returned in response to our August request have been reviewed, and information is being compiled regarding compliance

with the federal and state laws. We plan to review those agreements that were returned in response to the Subpoena by the end of the year, and to issue a report on our findings (Appendix D2).

## Protecting the Elderly in Institutional Settings

In 1977, the New Jersey Legislature created the Office of the Ombudsman for the Institutionalized Elderly to investigate and resolve complaints concerning long term health care facilities serving the elderly, and to investigate allegations of abuse or exploitation. A year later, Congress mandated that each state have an Ombudsman to receive, investigate, and act on complaints by older individuals who are residents of Long-Term Care facilities.



### Range of activities and responsibilities

- The office investigated 7,658 complaints in FFY 2008, a 14 percent increase over the prior year. In recent years, the office has seen a significant increase in financial exploitation cases.
- In addition, under both the New Jersey statute and the Federal Older Americans Act, the Ombudsman's Office undertakes the following responsibilities:
- Coordination of the Volunteer Ombudsman's Program, which currently trains, supervises and coordinates the work of over 240 volunteer advocates who provided approximately 12,000 hours of unpaid service in state's nursing homes;

- Coordination of the state's Regional Ethics Committees for end-of-life decision making pursuant to N.J.A.C. 15A:3-2.1, as well as provide of end-of-life consultations for residents of long term care facilities;
- Training and educational programming for long term care facilities, residents and families, and community groups concerned with elder issues, such as recent trainings conducted throughout the state on the proper use and scope of Durable Financial Powers of Attorney);
- Advocacy on behalf of residents and the institutionalized elderly in general with social service agencies, sister state agencies, law enforcement agencies, and the long term care industry;
  - Performing enhanced duties that fall within the purview of Title 19 Medicaid funding, which results in increased federal funding. For example, in recent years the Ombudsman has:
    - Investigated a certified nurse aide who abused residents in at least three Medicaid facilities over a two year period leading to her arrest and more than 35 criminal charges;
- Investigated and referred more than 50 cases of alleged financial exploitation to the Attorney General's Medicaid Fraud unit;
- Investigated the deaths of two residents of a residential health care facility who were killed when they attempted to cross a highway the facility was located on, and successfully advocated that corrective transportation safety measure be installed at the site; and
- Investigated a complaint that an attorney and accountant were exploiting low in-

come residents by charging them \$100 to file and prepare the forms to claim the IRS Economic Stimulus Payment of \$300 and resolved the complaint by assuring that all residents received the full stimulus payment of \$300 and referring to the Medicaid

Fraud Unit for further investigation.

In addition, the Ombudsman's office advocates for residents of long term care facilities who are facing involuntary transfer and/or discharge.

### Ombudsman Volunteer Advocacy Program

The Office's Volunteer Advocacy Program, first piloted in 1993, continues to thrive.

The important work of the Elder Ombudsman is greatly augmented by teams of highly motivated and de-



voted volunteers throughout the state who visit nursing facilities near their homes a minimum of four hours each week. These dedicated volunteers visit their facilities during different shifts and also make unannounced visits. They speak to the staff and observe how residents are treated. They observe the quality of services provided by the nursing home staff, such as how well residents are groomed and if their personal needs are being met. They address such issues as living conditions, daily activities, and quality of care.

The Office has trained more than 905 volunteers, of whom 166 are currently active, and placed in 159 facilities throughout the State. New Jersey has a very dedicated and caring corps of volunteers. Far too often, these volunteers are the only visitors a resident may have. Good quality care should not depend upon whether the resident has a family member who advocates effectively on their behalf. Having an advocate to speak for all the residents, regardless of whether their families are nearby or whether they have any family at all, is the

best way to ensure residents receive good care.

#### Meet Our Elder Volunteer Advocates

**"It's the friendships"**

**Phil Zipser**

**Pine Brook Care Center, Englishtown, NJ**



Monroe Township resident Phil Zipser has been a volunteer advocate for 13 years, bringing comfort and empowerment to nursing home residents.

Zipser says it's the friendships that keep him there. He spends several hours every week at the Pine Brook Care Center in Englishtown and tries to reach as many residents as he can in whatever way he can.

Zipser likes to make people comfortable with jokes and over time, he gets to know the residents well. He hears their life stories, talks with the family, and looks in on activities held by the nursing homes. He also works closely with the facility's staff



and makes certain they know how much their work is appreciated.

One of Zipser's duties as a volunteer is to empower the residents to speak up when problems arise. No matter what the problem, whether it is a pair of broken glasses or issues about their quality of life, he encourages the resident to speak up first, and gives them confidence, knowing he will step in if they request help.

**"It's time that they really appreciate"**  
**Marian Will**  
**Buttonwood Hospital, New Lisbon**

For Southampton resident Marian Will, being a Volunteer Advocate is a way to give thanks for the life she's had.

"I feel as though I need to give back. I've had a really wonderful life and I need to give back to others," she said.

She visits Buttonwood Hospital in New Lisbon several hours a week and serves as an extra pair of eyes and ears, interacting with residents and responding to any issues related to quality of care and quality of life. Any cases of suspected abuse and neglect would be reported to the Elder Ombudsman.

For Will, protecting residents' rights are her main focus. She lets the residents know what they need to know and what they are entitled to. In fact, the residents' rights posters are displayed throughout the halls of the facility.

Will says she always starts off a conversation with small talk to build a rapport with the resident. She'll make the rounds; asking casual questions like how their lunch was. "I want to get their opinion on things," she said. She says that if she sees someone alone, she'll go talk to them and say "And what's your story today?"

According to Will it is important to establish trust. The complaints from the residents are confidential unless they say otherwise, and she always asks for permission before reporting an issue.

She says the hardest thing for residents when they first move in is to get used to a routine that is different from their previous way of life. She tries to make the process easier for residents and their families. She helps families with the grieving process, as well as how to cope with a family member who has Alzheimer's or dementia. "I tell [the family] to bring photo albums to help the residents remember," she noted.

Will volunteered for the Florida Ombudsman for four years before volunteering in New Jersey where she has been a volunteer advocate for about two years. She used to work as a Geriatric Nurse and also worked in Nursing Home Administration. These professional experiences have given her multiple perspectives to view nursing home life.

For Will, what is so rewarding about volunteering is how much it means to the residents. "It's time that they really appreciate," she said.

*The success of the Volunteer Advocate Program is predicated on the dedication and devotion of citizens in New Jersey who willingly give back to their communities, and their ability to effectively resolve issues on behalf of the population we serve. Volunteers must complete a 32 hour training program to become a certified Ombudsman Advocate.*

*If you are interested in becoming a volunteer advocate, please contact the Division of Elder Advocacy at 609-826-5053 or via email at [PublicAdvocate@advocate.state.nj.us](mailto:PublicAdvocate@advocate.state.nj.us).*



# 5 Advancing Good Public Policy

## Safeguarding Voting Rights

The Public Advocate's Voting Rights Project seeks to protect the fundamental right to vote belonging to every U.S. citizen.

Our project has three overarching goals. We aim to ensure: first, that every eligible person is registered to vote; second, that every registered voter can cast a ballot; and third, that all ballots cast are accurately and fairly counted.

As the turnout in both the 2008 and 2009 elections demonstrated, much work remains to be done to meet these goals: in the 2008 presidential election, nearly one-third of New Jersey's eligible voters did not cast a ballot that was counted, and in the 2009 general election, approximately fifty-eight percent of eligible voters did not participate.

The consequences of such low voter turnout are real. In our 2009 report, *Every Vote Counts*, we attempted to demonstrate empirically for voters the folly of opt-

ing out of the political process. The report identifies sixty-six New Jersey elections in the past year that were decided by less than a one percent margin, including four that were tied and four more that were decided by a single vote. The findings illustrate that

individual citizens' decisions not to go to the polls can change and have changed election outcomes. But the wide prevalence of close elections teaches another lesson as well: election officials need to comply with legal mandates and best practices designed to register voters, remove impediments to participation at the polls, and count ballots as accurately and completely as possible, because

failures in these areas can also alter election results.

## Ensuring the Registration of Eligible Voters

In 2009, we continued our efforts to ensure compliance with laws aimed at easing voter registration. The National Voter Registration Act (NVRA) is a 1995 federal law that requires motor vehicle agencies to offer



customers a meaningful opportunity to register to vote when they go to a motor vehicle agency to obtain or renew a driver's license or nondriver ID card, or when they apply or re-apply for benefits at most social service agencies. The NVRA also requires that all address changes submitted to and accepted by the Motor Vehicle Commission (MVC) for driving purposes be forwarded to election officials for a change of address in the statewide voter registration system.

In March 2008, the Public Advocate, the MVC, and the Attorney General signed a memorandum of understanding to bring the State into compliance with the motor vehicle component of the NVRA. Reports from MVC are favorable, showing that between April 2009 and September 2009, MVC registered 78,735 voters. This represents more than a threefold increase in the pace of MVC voter registrations from the 2004-06 reporting cycle and a sixty percent increase in the pace of MVC voter registrations from the 2006-08 reporting cycle. In addition, MVC reports on its dedicated voting rights web page that it transmitted 140,219 address changes to election officials in the April 2009 to September 2009 time period, giving all those licensees the benefit of updating both their driver's license and voting addresses in a single transaction.

This progress, however, cannot be taken for granted. The Department continues regularly to learn about individuals who are not extended their voter registration rights during MVC transactions or during transactions with social service agencies. In July 2009, we learned of some new protocols that MVC is proposing for its agencies, and in September 2009, we received reports of a compliance plan that the Department of Human Services is implementing for the offices under its regulatory control. How these protocols will work

– and whether they are faithfully implemented according to their terms – remains an open question. In sum, continued monitoring is essential to ensure that the State comes into full compliance with the NVRA's requirements.

We have also encouraged compliance with our State's 1985 law mandating the distribution of voter registration materials to public and private high school students who are eligible to vote, along with instructional material about citizenship and the importance of



voting. Working with the Department of Education, educators, and advocacy groups, we researched, prepared and disseminated to public school superintendents and other interested groups a fact sheet about the law and our recommendations for its implementation. In March 2009, we also

issued a letter setting forth why we support legislation (A2752/S2541) that fine-tunes this legal requirement. In October 2009, we issued comments on a commendable administrative rulemaking proposal that aims to hold public school districts accountable for complying with the high school voter registration law. In addition, in January 2010, we filed a rule-making petition with the state Department of Education that proposes comprehensive regulations to ensure both public and private schools conduct the legally required voter registration efforts.

Next, we have partnered with other agencies to help ex-offenders who have completed a sentence restore their right to vote and re-enter society as full citizens. According to state law, an individual may not vote in New Jersey while serving a sentence (prison, probation, and parole) as a result of a conviction for an indictable offense. However, when a person completes a criminal sentence and is otherwise qualified to vote, he or she regains the right to register and vote. With the assistance of the Administrative Office of the Courts (AOC), we developed and circulated informa-

tional material about how such individuals can restore their right to vote. Thousands of people re-entering society as they complete their sentences have received these flyers, and thousands more who come off probation or parole every year will continue to receive these flyers through the Department's efforts.

### Ensuring Eligible Voters Can Cast Ballots

Continuing the Election Day voter assistance project that we began in 2006, the Department activated all available attorneys for Election Day duty during the November 2009 general election. After widely publicizing our plans to appear in the courts on behalf of voters, we sent fifty-five attorneys and other staff to thirteen county courthouses, and twelve attorneys and staff

were on hand at DPA headquarters.

We began by vetting a thorough set of legal principles for which we would advocate and devel-

oping materials that reflected these principles. Relying on these materials, we trained our staff to represent voters, and we participated in the AOC's training program for dozens of judges throughout the State who had drawn assignments to hear Election Day petitions from voters. We also made our materials available on request to individuals and campaigns, and have posted them on our website.

During Election Day, our attorneys appeared in approximately 84 cases, either directly on behalf of a prospective voter or as an amicus curiae (friend of the court) supporting the right to vote. Prospective voters prevailed in 64 of those cases (a 76 percent success rate). In addition, voters whose claims were supported by Department lawyers prevailed in four out of the five cases we brought to the Appellate Division on an emergent basis.

During Election Day, our attorneys appeared in approximately 84 cases, either directly on behalf of a prospective voter or as an amicus curiae (friend of the court) supporting the right to vote.

The Public Advocate also appeared in court in support of civil rights groups who assist voters at the polls on Election Day. A 2007 directive by the Attorney General barred nonpartisan civil rights groups from assisting prospective voters within 100 feet of the entrance to the polls on Election Day. The directive allowed "exit polling" by both civil rights workers and members of the media within the 100-foot zone, but required them to register at least two weeks in advance with the appropriate county election board. As a friend of the court, the Public Advocate argued that the directive was an unconstitutional restriction of free speech. In addition, the Department argued that such a directive, which affects a broad swath of people in their exercise of a fundamental constitutional right, must be

publicized and vetted through the formal rulemaking process.

In September 2009, the New Jersey Supreme Court ruled that state law forbids all speech (other than by passersby, voters on line, and election officials)

within the 100-foot zone around the polls, effectively barring

both exit pollsters and civil rights workers helping voters. Within weeks of that decision, a consortium of media groups obtained a federal injunction that restored the right of members of the media – but not others – to engage in exit polling. That litigation is ongoing.

The Department continues to educate voters about their rights. As Election Day approached, we participated in various events with the Secretary of State to promote awareness of the State's recently adopted vote by mail law, which reformed the state's absentee ballot law. We also circulated our annual letter to senior citizens and voters with disabilities, reminding them of their rights and responsibilities in casting a ballot. The letter was widely distributed to advocacy organizations, nursing homes, and assisted living facilities, where administrators and advocates



used the information to promote the voting rights of people under their care.

We have also completed and posted answers to citizens' frequently asked questions about voting. (Our FAQs are attached as Appendix E1.)

In 2009, the Department also began a study of voter purging practices in New Jersey. About 200,000 people are stricken from the voter rolls in the State every year, and the vast majority of these purges are for legitimate reasons, such as a voter's death, moving out of State, or involvement with the criminal justice system that disenfranchises them. Nevertheless, some voters are purged unlawfully, resulting in their disenfranchisement. Federal law requires each State to have clear and uniform safeguards that protect voters from the wrongful purges. The Constitution requires giving voters a notice and opportunity to be heard in connection with a proposal to purge them from the rolls.

As such, the Department undertook an examination of whether the State's practices comply with these requirements. The current working draft of the study is attached as Appendix E2. To make sure that no person is improperly purged, and to ensure uniform treatment of all voters, it recommends that the Department of State adopt regulations setting forth standards and procedures for all election officials to follow, and the notices they must give to voters, when they are considering purging a voter for any reason.

### **Reforming Contracts with Voting System Vendors**

In November 2009, the Department released its review of the contracts between Sequoia, New Jersey's primary supplier of voting

systems, and the counties that purchase its equipment and services. The report found that multiple counties in New Jersey had agreed to unfavorable terms in their voting system contracts, including warranty periods as short as 30 days; disclaimers of liability by Sequoia for "data loss," even though the express purpose of voting machines is to store and count votes; disclaimers of liability by Sequoia for "consequential damages" in the event its machines fail (e.g., legal fees, overtime, costs of new elections, etc.); and limitations on total damages that border on the unconscionable (one contract capped damages at \$100,000 even though it was a \$5.8 million contract).

Other identified flaws included provisions that allow unlimited increases in the annual license fees counties must pay in order to continue operating these machines; to prevent counties from meaningfully testing equipment to determine the causes of machine malfunctions or anomalies; and to require litigation over contract disputes to be brought in California or Colorado. We prepared and distributed a model contract for future use that would control costs, enhance counties' warranty rights if machines malfunction, increase transparency, and do a fairer job of balancing the rights and responsibilities of voting system manufacturers and government officials. In an effort to promote dialogue and transparency in government affairs and to increase the general accuracy of its reporting, the Department shared drafts of the report with state and local government officials, and with New Jersey's primary voting system vendor, before its release. All involved provided valuable feedback on the report before its final publication. Continued monitoring of contracts between Sequoia and the counties remains appropriate.

We prepared and distributed a model contract for future use that would control costs, enhance counties' warranty rights if (voting) machines malfunction, increase transparency, and do a fairer job of balancing the rights and responsibilities of voting system manufacturers and government officials.



## The Ongoing Agenda

tion, we are involved in ongoing discussions with the Motor Vehicle Commission about how best to address some agencies' continuing failure to offer mandatory voter registration opportunities.

### ***NVRA – Social Service Agencies***

In September 2009, the Department was advised of ongoing negotiations between voting rights advocates and the Department of Human Services to reform voter registration at social services agencies,

which is another requirement of the NVRA. We continue to monitor these discussions, and we remain available to assist as needed in achieving an equitable solution to the State's noncompliance with its federal obligations to offer voter registration services at these offices.

### ***High School Voter Registration***

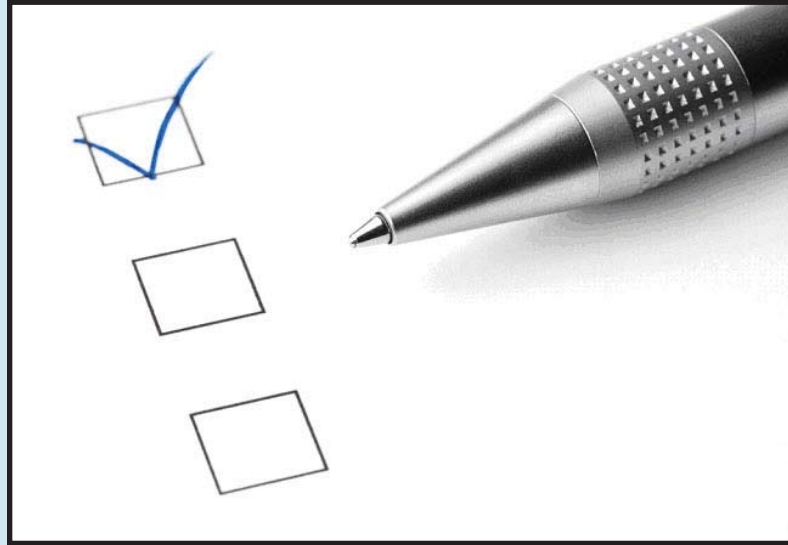
As noted above, some twenty-four years after the Legislature adopted a law requiring public and private high schools to conduct voter registration efforts for eligible students, and requiring the department of education to issue implementing regulations, there is still substantial noncompliance with this law, and no regulations have been issued. On October 8, the Department submitted comments on a pending regulatory proposal that would affect compliance

with the voter registration laws. In addition, on January 8, 2010, we joined several other voting rights advocates in filing a petition with the Department of Education asking for comprehensive rules to ensure voter registration and education in both public and private high schools. (This petition is attached as Appendix E4.)

These regulatory initiatives will require continued attention as they move through the process.

### ***Assistance at the Polls***

Because of the pending litigation described above, there has yet to be a conclusion to the controversy over how voters can receive nonpartisan voting assistance in the immediate vicinity of the polls, and which groups can exit-poll voters, either about their voting preferences or their experience in voting. (See New Jersey Supreme Court opinion in *In re Attorney General's Directive on Exit Polling*, 200 N.J. 283 (2009); *American Broadcasting Corp., Inc. v. Wells*, No. 09-5275 (D.N.J. Oct. 23, 2009)).



## Promoting Positive Legislation

Early in 2009, we cooperated with the governor's office to formulate a responsible legislative response to the problem of elections scheduled on important religious holidays. Governor Corzine signed the bill (A3186/S2199) on January 12, 2009. We also support a variety of legislative reforms that have yet to be enacted, including: (1) A1930/S2214, sponsored by Assemblyman Gusciora and Senator Turner, which requires educating poll workers about the rights of people with disabilities; (2) proposed legislation to codify the amendment that voters approved in 2007 removing offensive language from the Constitution about voters with disabilities, which was included within a legislative proposal that did not achieve passage (A3198); and (3) a proposed bill containing a variety of amendments to the state election law to improve how citizens with disabilities are treated during the voting process (which is attached as Appendix E-3).

## Advancing the Voting Rights of People with Disabilities

Following up on earlier work in 2007 to promote the voting rights of people with disabilities, the Department presented the Secretary of State in early 2008 with a sixteen-point plan to improve compliance with federal and state laws requiring that all polling places and voting systems be accessible to voters with disabilities. One of those sixteen points was implemented in part, when the State published a manual for poll workers at the district level that includes our recommendations about how they can play an effective role in detecting and eliminating barriers to accessibility at the polls. As this manual is not mandatory material for the poll worker training classes operated by county officials, it does not, standing alone, bring about the necessary changes to promote accessibility on Election Day, but it is a helpful first step.

In light of the Motor Vehicle Commission's plans to implement some new protocols at its agencies, these changes must be monitored to ensure compliance with the memorandum of understanding and the National Voter Registration Act. In addition,

the Legislature has not yet amended N.J.S.A. 19:4-1, which provides that a person who is "an idiot or insane" cannot vote. This outdated and offensive language mirrors provisions in the State Constitution that the voters repealed in the 2007 general election. It is time to remove the offensive – and now unconstitutional – language from the statute books.

## Promoting Affordable Housing

The Department has worked to promote and preserve affordable housing throughout its tenure. In 2007, we published a report, *Affordable Housing: Reviving the Promise*, whose purpose was to influence COAH's then ongoing development of the Third Round Rules.



Our overarching aim was to ensure a full accounting of the need for affordable housing and a fair response to that need. In particular, we focused on the importance of a set-aside for housing that is affordable to very low income families, those earning 30% of the median income or less (roughly \$19,000 annually). Our research showed that, in the absence of a set-aside for these families, af-

fordable housing tends to cluster around the moderate income range and not to reach those who most need help.

In 2008, the Department supported landmark legislation (A500) sponsored by Assembly Speaker Joseph Roberts and Majority Leader Bonnie Watson Coleman. This legislation amended the Fair Housing Act, among other laws, to eliminate constitutionally suspect mechanisms for creating affordable housing and to devise new and better ones. The Public Advocate testified in support of the bill and worked with legislative leadership, the Governor's Office, and DCA to ensure vital reforms. As enacted, A500 includes a provision ensuring that thirteen percent of affordable housing will be priced to make it accessible to very low income families.

We advocated as well for a provision to require the replacement of affordable housing that would otherwise be lost to redevelopment. For the first time, A500 imposes on municipalities the obligation to incorporate into their redevelopment plans a provision for the one-for-one replacement of housing that is "subject to affordability controls."

Having supported A500 and applauded the more robust requirements of the rewritten Third Round COAH Rules, we proceeded in 2009 to help defend these advances from attack. Medford officials filed a complaint before the Council on Local Mandates arguing that the affordable housing guarantees of the new law and rules impermissibly impose unfunded state mandates on the municipalities. The Public Advocate participated in the case as a friend of the tribunal. Our brief, filed in February 2009, argued that neither the COAH rules nor A500 imposed a "mandate," unfunded or otherwise, because participation in the COAH process is voluntary on the part of a municipality. We argued further that the rules and statute at issue were exempt from Council action because they implement provisions of the New Jersey Constitution. On March 18, 2009, the Council expressed its

agreement on the latter point, declining to rule on the petition and deferring to the New Jersey courts' exclusive jurisdiction to decide constitutional issues.

On August 7, 2009, the Department filed an amicus brief in the Appellate Division in another important affordable housing case, *Bell v. Tower*. The case involves a landlord's refusal to rent an apartment to Ms. Denise Bell under a policy of excluding potential tenants with annual incomes of less than \$28,000. The State pays most of Ms. Bell's rent through the State Rental Assistance Program, which is designed to help low-income people rent in the private market. The brief argues that a blanket income disqualification is irrational as applied to recipients of rental assistance: it excludes them for having too little income to pay rents they do not in fact owe because the State covers most of the monthly bill. Moreover, the New Jersey Law Against Discrimination forbids landlords from discriminating against tenants who receive such assistance. The case is pending in the Appellate Division; we expect argument to be scheduled in late winter or early spring, 2010.

## **Ensuring Public Access to Public Land**

To help educate the public about beach access, the Department published its fourth guide to New Jersey's beaches in the summer of 2009, providing information on public and private beaches and their fees, restrooms, parking, access for persons with disabilities, and more.

## **Cleaning Up Soil Contaminated with Hexavalent Chromium**

In the spring of 2009, in response to inquiries from the community, the



Department looked into how the State can best address hexavalent chromium contamination in Hudson County. Hexavalent chromium, or Chrome6 as it is called, is a toxic, caustic, and carcinogenic form of chromium found in the soil at defunct industrial sites. Dozens of sites contaminated with Chrome6 have sat unremediated for many years, near busy residential, industrial, and commercial neighborhoods in Jersey City and nearby towns. We conferred with community representatives and the NJ DEP and decided that the most productive approach would be to encourage NJ DEP to issue a regulation setting clean-up standards for soil contaminated with Chrome6. We are pleased to report that NJ DEP has expressed its intention to complete the necessary scientific studies and plans to issue standards in 2010 that are protective of both human health and the environment.

## Redressing Illegal Medical Balance Billing

The Department became interested in exploring the problem of medical balance-billing in late 2008 when an organization representing employers brought it to our attention. From December 2008 to the present, the Division of Public Interest Advocacy has researched the problem of medical balance-billing, brainstormed possible legal and policy solutions to better address this phenomenon, and drafted an outline for a report that would memorialize our research and recommendations. We have not completed this project; we

memorialize our work here so that others may move the issue forward.

The term “medical balance-billing” is used to describe many kinds of medical billing and reimbursement problems. The Public Advocate has focused exclusively on situations where the law states that a patient should not be billed for medical services, but the patient receives a bill anyway.

Medical balance-billing is a result of the ongoing battle between medical insurance companies and medical service providers over healthcare costs. The insurance industry claims that provider fees are too high. Providers argue that health insurance companies do not pay them enough for the services they offer. When a medical provider is dissatisfied with the amount of reimbursement from the patient’s insurer, the provider sometimes bills the patient for the difference between the total charge and what the insurance company is willing to pay.

In some circumstances, balance-billing is legal. But when state or federal law protects an insured patient from financial responsibility for the cost of a medical service and places that responsibility exclusively on the insurer,

providers should not bill patients for any portion of the cost of the service.

While there is little data about the extent of balance-billing in New Jersey, news articles, studies, and lawsuits suggest that patients across the country are paying millions of dollars for medical

bills that they do not owe.

Because of the complex nature of our healthcare system, medical balance-billing is difficult to identify and address. A balance-bill





may be proper or improper depending on the kind of insurance coverage a person has. Patients often do not know what type of health insurance plan they have or what laws apply. And in certain circumstances, including emergencies and hospitalizations, patients have little or no knowledge of or ability to control whether the providers who treat them – including ER doctors, anesthesiologists, radiologists, and pathologists – are in or outside of their insurance networks. Finally, the forms providers and insurance companies send to patients to explain charges and coverage may not accurately inform the patient about what s/he actually owes.

The Public Advocate's work on this issue during the past year has focused on fully understanding how and why medical balance-billing occurs and identifying practical and effective solutions.

### **Researching the Law and Meeting with Stakeholders**

We began with research on the scope and severity of balance-billing and relevant New Jersey and federal law, which we memorialized in an initial Scoping Memorandum in January 2009 (Appendix F1).

This initial memorandum revealed the complex nature of the balance-billing problem and suggested that more in-depth research, including conversations with stakeholder groups, would be necessary to understand and adequately address it. From March to September 2009 we met with the following groups to clarify our understanding of relevant state and federal law and to brainstorm possible solutions:

- New Jersey Department of Banking and Insurance (DOBI), 3/4/2009
- Private attorneys representing providers and patients, 3/10/09
- Attorneys from the New York At-

torney General's Health Care Bureau, 4/13/09

- New Jersey Hospital Association (NJHA), 4/16/09
- New Jersey Association of Health Plans (NJAFP), 4/21/09
- Medical Society of New Jersey (MSNJ), 4/22/09
- Mark Hartman, CEO of Ethicare Advisors, 4/23/09
- New Jersey Department of Health and Senior Services (DHSS), 7/23/09
- New Jersey Department of Human Services (DHS), 9/14/09
- New Jersey Attorney General's Division of Consumer Affairs (DCA) and Board of Medical Examiners (BME), 9/16/09

See Appendix F 2-10 for memoranda of questions posed to each group.

These meetings generated legal questions requiring additional research, including the effect of balance-billing proscriptions in the Medicaid and Medicare programs (Appendix F11-12), ERISA requirements regarding Explanation of Benefits (EOB) forms (Appendix F13), and the scope of ERISA preemption generally (this research was not completed).

In early May, after meeting with several of the aforementioned groups, PIA created a Project Plan Memo (Appendix F14) summarizing our research and preliminary recommendations. Based on this memo and internal discussions, the Department decided to produce a policy report to educate the public and to serve as a template for legislative and regulatory reform to curb medical balance-billing. The latest Medical Balance-billing Report Outline draft is included as Appendix F15.

## PIA Recommendations and Report

Our research and discussions with stakeholders groups and other state agencies make clear that any solution to the balance-billing problem must address the legitimate concerns of the health insurance industry and medical providers as well as the underlying dispute over reimbursement rates for provider services.

Our recommendations (see Appendix F15) include:

- A statute and/or regulations that would prohibit medical providers from balance-billing in circumstances where state or federal law already requires that patients be held harmless for the cost of medical services;
- Remedies for patients who receive balance-bills;
- A rebuttable presumption in favor of providers that all claims submitted to insurers for services provided under balance-billing proscriptions are valid and must be paid at a specified rate within a specified time;
- Remedies for providers who do not receive such timely payment from insurers;
- Remedies for insurers who have grounds to recoup payments they have made (e.g., fraud);
- Legislation/regulations requiring information to patients and providers to clarify when balance-billing prohibitions apply; and
- Recommendations regarding which state agency/agencies should regulate this problem and how regulation should be coordinated.

In addition to being a catalyst for policy reform, the report as we envision it would also serve a public education function. It would define medical balance-billing in a straightforward way, lay out the maze of applicable laws and regulations, provide an overview

of the underlying **struggle** between providers and insurers over medical costs, and describe the information void patients currently face when trying to understand their financial responsibility for medical charges. (See Appendix F15.) It is our hope that this information will make it easier for patients caught in these situations to advocate for themselves and for advocacy groups to push for meaningful systemic reform.

# 6 Fostering More Responsive Government

The Public Advocate's Division of Citizen Relations consists of three distinct offices that each serve the public in a unique way.

- The Office of Citizen Relations (OCR) serves as the state's ombudsman in resolving problems citizens have when interacting with state government agencies.
- The Office of Dispute Settlement (ODS) provides a broad range of neutral dispute resolution services to the courts, public and private sectors to minimize and resolve conflict.
- The Corrections Ombudsman addresses the issues and concerns of the state's inmate population.

Each of these offices is dedicated to solving problems and resolving conflict whenever possible.

## Helping Citizens Navigate Government Agencies

Since opening its doors in late 2006, the Public Advocate Office of Citizens Relations

has fielded nearly 10,000 calls from citizens who needed help resolving problems with government agencies. In 2009 alone, the office saw a 40 percent increase in calls to its helpline in 2009 -- from 3124 in 2008 to 4434 in 2009.



The Office of Citizen Relations is mandated by statute (N.J.S.A. 52:27EE-16) to investigate and respond to citizen complaints regarding the administrative action or inaction of state and local government agencies. The mission of the office is to ensure government is responsive to the needs of its citizens, especially those who are unable to represent themselves, and to help those who are having trouble dealing with a government agency or believe they have been treated unfairly.

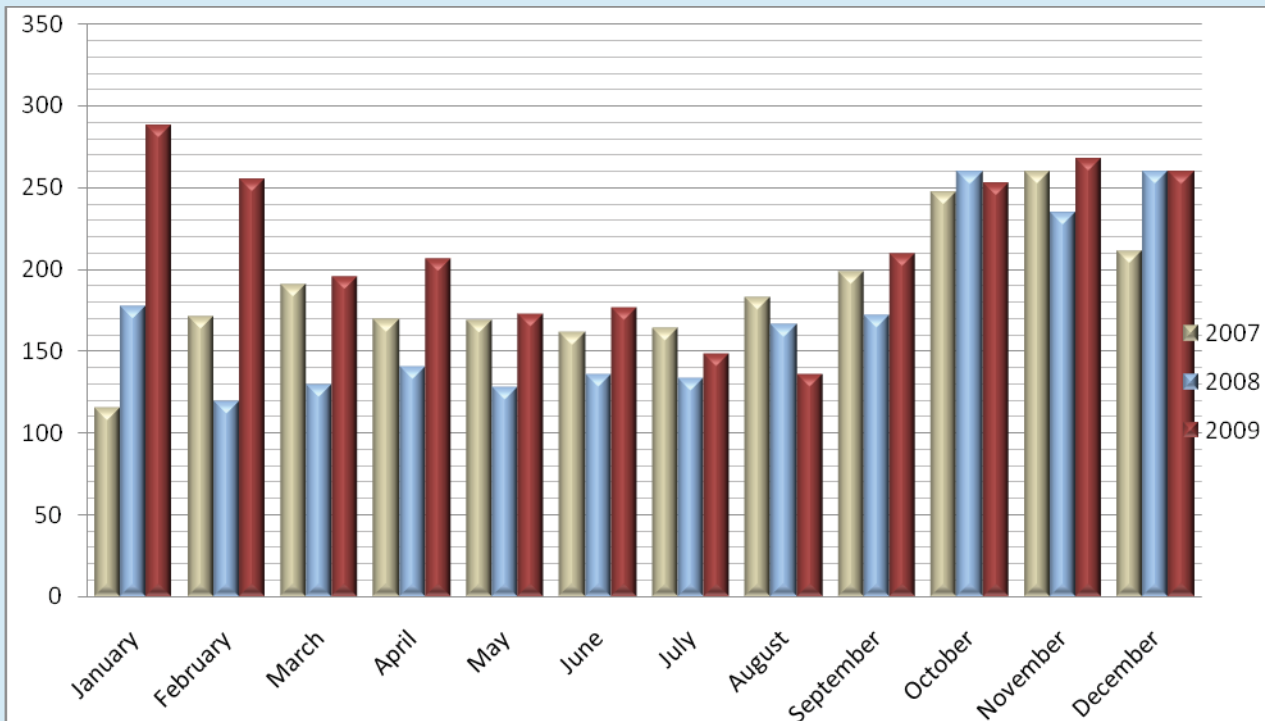
OCR routinely helps individuals force a nonresponsive government agency to be responsive and gives members of the public a vehicle through which they can express their dissatisfaction with a decision, action or policy of a government agency. OCR also help citizens obtain information they need about government agencies and programs,



acts as a watchdog that reports bureaucratic delays and inadequate or confusing responses to citizen inquiries, and elevates concerns about the manner in which an agency addresses a problem or treats a citizen. Some complaints are best handled by a simple telephone call to the appropriate agency. Other complaints are serious enough to warrant a full investigation. In either case, OCR's objective is to make sure government renders prompt justice against itself when government has failed to do its job properly or is treating a member of the public unfairly. Most of OCR's calls come directly from citizens, but OCR also receives quite a few referrals from members of the Legislature, the Governor's office, state agencies, and various community organizations. OCR takes inquiries or complaints over the phone, in person, by telefax, mail, e-mail or online, and labors to make the interaction with citizens as simple, straightforward and helpful as possible.

OCR also serves as a type of early warning system to identify areas in government where improvements are needed. By reaching out to key communities and receiving citizen complaints directly from the public, the Office of Citizen Relations is able to identify areas where there is a need for systemic reform in government and make proposals regarding what remedial action should be taken. If necessary, the Office of Citizen Relations is also empowered to hold public hearings and to refer matters to the Public Advocate for further action. During 2009, the Office of Citizen Relations was able to fulfill its mandate and provide an efficient means for citizens to obtain vital information and referral services, as well as assist citizens with resolving a wide range of problems with state and local government agencies. The Office staff conducted an extensive outreach program aimed at meeting with every member of the Legislature or their staff to advise them of our office's mandate and how we can effectively assist them in helping

**Office of Citizen Relations Complaint Totals 2007 - 2009**



their constituents. This outreach has proven very positive.

Also, the Office of Citizen Relations continues to establish policies and procedures for processing complaints and updating a database that allows staff to track complaints based on trends, patterns and geographical regions. Finally, the Office of Citizen Relations maintains regular lines of communications with agency officials. In order to facilitate a prompt and efficient response to citizens regarding their complaints or concerns, OCR has worked to establish a liaison with every state agency. This allows staff to contact one individual in each agency and eliminates the need for numerous, unnecessary telephone calls and/or e-mails to individuals in each agency seeking our reply to resolve the complaint.

On a daily basis, the OCR staff interact with dozens of frustrated citizens, bureaucratic obstacles, and challenging problems. Most complaints that reach OCR are difficult ones that others have failed to resolve. The staff members bring strong interpersonal and investigative skills to the work, and have been trained and certified in Alternate Dispute Resolution by the well recognized NJ

State Office of Dispute Settlement.

### **Resolving Disputes Without Litigation**

The nationally recognized Office of Dispute Settlement (ODS) provides mediation and other neutral dispute resolution services in the public interest. Since its inception, ODS has resolved litigation involving claims in excess of \$1 billion and saved the state, businesses and private parties millions of dollars in litigation costs. Because it generates revenues for the services it provides, ODS is almost fully self-supporting. ODS is a recipient of the CPR Legal Program National Award for "Outstanding Practical Achievement in Dispute Resolution" for its mediation of high-profile court cases.

Specific services ODS provides include: 1) serving as a court-appointed mediator for the state and federal courts; 2) training judges, attorneys and state agency personnel in negotiation, mediation and settlement techniques; and 3) designing and administering dispute resolution programs. In 2009 ODS handled 585 cases and trained 250 people. Significant

#### **OCR CASE FILE:**

##### **Birth Certificate Trouble**

##### **Hudson County**

Over a period of several months, the Office of Citizen Relations received numerous calls from constituents, mainly senior citizens, who needed a copy of their birth certificate in order to meet the six-point identification check necessary to obtain a driver's license or to get a passport.



When we looked into it, we learned that because of the closure of the Hudson County Office of Vital Statistics, these individuals were being required to travel to Trenton in order to obtain certified copies of their birth certificates.

OCR was able to establish an agreement with the State Bureau of Vital Statistics under which senior citizens would not be required to travel to certificates.

OCR was able to establish an agreement with the State Bureau of Vital Statistics under which senior citizens would not be required to travel to Trenton, but instead could expedite their application for the certified birth certificate over the phone.

OCR also worked with the Motor Vehicle Commission and was able to reach a resolution that permitted individuals to use alternative forms of identification.

accomplishments for the year include:

### **Statewide Foreclosure Mediation Program**

In 2009 ODS assisted in designing a cutting-edge foreclosure mediation program which gave thousands of NJ residents the opportunity to sit down with their lenders and negotiate a loan modification so that they could keep their homes. This program is helping to address the economic crisis facing the state and is also helping to prevent tax increases by limiting the number of vacant homes around the state.

### **Shared Services Mediation**

In 2009 ODS worked with the Department of Community Affairs "Local Unit Alignment, Reorganization and Consolidation Commission" (LUARC) to offer mediation services to municipalities in order to promote the use of shared service agreements and reduce the cost of government. In the future ODS will be working with the Shared Services Association to offer its services to every municipality in the state.

### **Medical Malpractice Dispute Resolution**

In 2009 ODS worked with hospitals around the state to implement medical malpractice dispute resolution pilot programs which are designed to reduce the cost of practicing medicine in the state and to also improve patient care. ODS made a presentation to members of the state hospital association and met with a number of hospitals individually in preparing to implement this cutting-edge program.

### **Court Mediation and Pre-litigation Mediation**

In 2009, the office mediated 43 cases that were pending in the state and federal courts in New Jersey. These cases involved subjects such as: contract, employment, construction, environmental clean-up, insurance coverage and personal injury.

One significant pre-litigation mediation conducted by the office,

#### **Horizon v. Capital Health Systems,**

involved a contract dispute between Hori-

zon and Capital Health Systems regarding reimbursement rates paid by Horizon for medical procedures conducted at both Helene Fuld and Mercer Medical Center hospitals in Trenton. The mediated settlement preserved health care coverage for thousands of people in the area and saved the parties over \$100,000 in potential litigation costs.

### **Dispute Resolution Programs**

The Office of Dispute Settlement also manages two New Home Warranty arbitration programs which involve arbitrating disagreements between homeowners and builders. Under this program, a panel of neutral construction experts resolves disputes between homeowners and builders regarding defects in new home construction. In 2009 ODS handled 211 New Home Warranty cases and 147 Residential Warranty disputes.

Under an inter-agency agreement with the Government Records Council, the Office of Dispute Settlement mediates disputes arising under the NJ Open Public Records Act (OPRA). ODS staff mediate between the person who is denied access to a government record and the custodian who is responsible for providing such access. Last year, ODS mediated 70 of these cases.

Under state law, all disputes between excavators and underground facilities operators involving amounts less than \$25,000 must be submitted to ODS for resolution through alternative dispute resolution procedures. The purpose of the law is to provide a fast, efficient and cost-effective way to resolve disputes where utility lines are damaged during digging. ODS arbitrated 104 of these cases this year.

### **Dispute Resolution Training**

Because of the proven track record of dispute resolution and clear benefits to all parties, the Public Advocate continues to expand the reach of the Office of Dispute Settlement by training increased numbers of legal, law enforcement, and government officials.

Last year, ODS trained 250 judges, attorneys and state agency personnel. This included training over 100 state police and state attorneys as part of continuing education training seminars.



Through the Office of Dispute Settlement, the Public Advocate has created and hosts an inter-agency working group to expand the use of dispute resolution in state government. In addition, ODS staff serve as members of the Supreme Court Committee on Complimentary Dispute Resolution and chair the Subcommittee on Education.

## Humane Treatment for Inmates

The Office of the Corrections Ombudsman has a long and honorable tradition as a means of protecting against abuse, bias and other improper treatment or unfairness. The Ombudsman office was created by Governor William T. Cahill in 1972 as part of significant penal reforms that followed the riots at Rahway State Prison (now known as East Jersey State Prison).

The Office of the Corrections Ombudsman provides a concerned medium within which state sentenced inmates can seek redress for issues and concerns encountered while incarcerated. The office investigates complaints where the inmate has failed to get satisfactory results through available institutional channels.

Serving as a designated neutral, the office:

- Advocates for Fairness
- Serves as a source of information and referral
- Aids in the resolution of disputes
- Makes viable recommendations as needed
- Observes critical situations

This office had an extremely busy year in 2009 handling the large volume of contacts received and addressing the issues and concerns of the incarcerated, their families and other interested parties. The office processed 11,573 cases during this year. This figure represents a twenty-five percent increase from 9,235 cases processed during CY-2008. The office covers 13 State correctional facilities and approximately 23

community release centers.

The Corrections Ombudsman's mission includes providing a viable, responsible, trusted and concerned medium by which the needs and problems of the inmate population may be addressed, and maintaining a sound, working relationship with DOC Prison Administrators, and ensuring appropriate accountability exists.

To fulfill this mission, the Corrections Ombudsman informally investigates complaints, concerns or inquiries about alleged acts, omissions, improprieties and/or broader systemic problems in an independent, confidential and impartial manner. The Ombudsman works with administrators and inmates to offer options and facilitate resolutions, and to supplement, but not replace, the Department of Corrections' existing resources for conflict resolution between staff, institutions, DOC and inmates.

The Ombudsman strives to respond promptly, obtain and provide accurate information, and deal honestly and effectively with all inmates seeking assistance, maintain objectivity in all situations so that proper decisions can be made, and maintain a courteous, non-judgmental approach to the inmate. The Ombudsman also maintains high visibility within the institutions and department in order to afford inmates an opportunity for necessary interviews, develop and maintain professional working relationships with both staff and inmates, and keep a finger on the pulse of the institutions. Through its efforts, the Ombudsman seeks to relieve the pressures, tensions, and hostilities that abound within the prisons by means of more open communication, and provide a "release valve."

The Ombudsman is on-call twenty-four hours a day, seven days a week. The inmate population has access to our office by way of a toll free number, "Request for Assistance" Forms that are available at the facilities, and correspondence through the mail. Referrals

from inmate's family, friends, and outside agencies are welcomed. Inmate concerns are addressed by conducting interviews, telephone contact, correspondence, and/or referrals.

Ombudsman staff also visit community-based programs and assessment centers on an as needed basis to ensure the living conditions are adequate and to allow the residents the opportunity to be heard.

# 7 Guarding the Interests of Ratepayers

## Advocating for Fair Prices

The Public Advocate, through its Division of Rate Counsel, ensures that utility consumers receive safe, adequate and proper service at affordable rates. One of the Rate Counsel's major functions is to examine all requests for rate hikes and protect consumers from

unfair or unjustified increases in their electric, gas, cable TV, telecommunications or water bills.

In the execution of its duties, the Division of Rate Counsel has saved

the state's ratepayers more than \$300 million in the last two years alone.

Throughout the last 35 years, Rate Counsel has maintained a consistent mission: to make sure that all classes of utility consumers receive safe, adequate and proper utility service at affordable rates that are just and

nondiscriminatory.

To achieve its mission, Rate Counsel participates as a statutory party in all matters before the Board of Public Utilities (BPU). Utilizing expert witnesses, Rate Counsel reviews petitions filed by utilities to create programs and change rates, and presents testimony in response to that filed by the

utility. In this manner, a full record is created that allows the BPU to act on the utility's petition.

In addition, the Rate Counsel participates in developing state policy and regulations relating to utilities, by participating on behalf of

consumers in working groups and state taskforces created to shape policy. Rate Counsel advocates before the Legislature, articulating the interests and concerns of ratepayers regarding the many bills introduced each year on the issues affecting Rate Counsel's statutory mandate. Rate





Counsel also works to educate consumers about their rates and service and emerging state and federal utility policy. While Rate Counsel focuses on the needs of all utility customers, particular attention is paid to those who are not otherwise represented – particularly residential and small business ratepayers.

Rate Counsel's focus has been on advocating for fairness to New Jersey ratepayers in the processes and programs that form the components of utility rates. Rate Counsel took the lead in opposing a proposal in the Legislature that would have allowed electric and gas utilities to institute "formula rates," which would have permitted utilities to get categories of capital costs approved in advance. Those costs could then be put into rates automatically once the money was spent, without any prior review of the reasonableness and prudence of the expenditures. Rate Counsel argued that abandoning the traditional review of utility expenditures was not necessary to allow for timely capital spending, and proved its point by then processing the economic stimulus infrastructure proposals with record speed.

Rate Counsel also took the lead in litigating a request by a large water company to institute its version of formula rates, a "distribution system improvement charge," noting that the company was already coming in every two years for rate increases and that continuous increases were neither necessary nor fair to ratepayers. That matter is still pending

before the BPU, but Rate Counsel is confident that the impact to ratepayers has been fully established in the record.

## Championing Ratepayer Interests in Energy Policies

### Long-term Energy Planning

The last several years have brought an increased awareness of the need to conserve energy and utilize renewable resources.

These goals formed the core of the Energy Master Plan (EMP) issued by the State in 2009. Rate Counsel has been a pivotal player in developing policy and designing cost-effective programs to meet these goals, and played a significant role in the development of the EMP. Rate Counsel is a strong supporter of energy efficiency, and worked closely with the BPU and the utilities to develop effective programs to educate and encourage consumers to conserve. Because these programs will be paid for by ratepayers as a whole, Rate Counsel held firm in insisting that only cost-effective programs should



be implemented. Rate Counsel's experts assisted in developing program parameters and in ensuring that the cost-benefit analyses for these programs were valid and showed an overall benefit. Rate Counsel negotiated and ultimately agreed to more efficient energy efficiency programs targeting urban customers in the PSE&G service territory, and residential and commercial customers in the service territories of six of the state's electric and gas utilities. Through Rate Counsel's

participation, we are confident those programs will be cost-effective and will provide an overall benefit to New Jersey's ratepayers.

### Fostering Competitive Energy Policies

After electricity generation was deregulated in 1999, and price caps came off in 2003, electricity prices in this state have increased steadily. Some of that is due to commodity prices that are passed through and not controlled on the state level. However, Rate Counsel has participated in proceedings every year regarding the auction through which Basic Generation Service for residential and small business customers is purchased, suggesting ways of improving the system to hopefully lower costs. For example, Rate Counsel has advocated for a portfolio approach that would not rely solely on an auction for three-year contracts. Rate Counsel has argued that allowing longer term, negotiated contracts for part of the State's Basic Generation Service may lead to lower prices for a portion of our electricity and may provide the security some companies need to finance the construction of new generation. The BPU recently decided to explore the issue of long-term contracts as a possible way to rein in energy prices, as advocated by Rate Counsel. Rate Counsel has also worked with the State's natural gas utilities to improve their hedging practices, so that they optimize their purchases and storage to help reduce the costs to ratepayers.



Rate Counsel's participation in rate cases has brought substantial savings to New Jersey's ratepayers. In water cases, Rate Counsel was faced with total requests for rate increases of over \$155 million in 2008, and \$67 million in 2009. Rate Counsel negotiated settlements that resulted in almost \$65 million in savings to ratepayers in 2008 and \$28 million in 2009. Rate Counsel saved ratepayers \$26 million by negotiating a settlement in a rate case filed by the New Jersey Natural Gas Company in 2008, and brought a requested increase by Elizabethtown Gas down from \$24.8 million to \$2.9 million. In all of these cases, Rate Counsel also negotiated significant protections for customers and service quality improvements.

### Encouraging Cleaner Energy

#### Promoting the Transition to Renewable Energy

On the renewable energy front, Rate Counsel has played a major role in negotiating the parameters of programs designed to foster the solar industry in the state and encourage the development of off-shore wind. Rate Counsel has long advocated for a market-based approach to solar development, as opposed to an approach based on providing ratepayer-funded rebates. In the last two years the BPU has moved toward the market-based approach advocated by Rate Counsel and our office actively negotiated the parameters of the programs instituted as part of that transition. Rate Counsel negotiated with two of the electric utilities to set up programs to enter into long-term contracts to buy solar energy

credits, which facilitates project financing. Rate Counsel also negotiated with the State's largest utility regarding programs to provide loans to homeowners and business seeking to install solar energy, and to install solar panels on utility-owned property, including panels designed by a New Jersey company that will be placed on 200,000 utility poles throughout the state.

In each case, Rate Counsel focused on minimizing the impact on ratepayers and maximizing the cost-effectiveness of the programs. Rate Counsel has also been an active participant in the discussions on finding a means to ensure adequate financing for off-shore wind projects, attempting to ensure that ratepayers will reap the benefits of programs they are asked to fund.

### **Promoting Energy Efficiency and Job Creation**

Rate Counsel took the lead this year in negotiating with the utilities for investments in infrastructure to provide an economic stimulus. Over a span of 4 months, Rate Counsel negotiated stipulations with three electric utilities and four gas companies for projects worth \$970 million that were estimated to create over 1300 direct jobs and many more indirect jobs through re-spending.

For each petition, Rate Counsel and its experts verified that the programs (1) would contribute to system reliability, (2) were incremental to improvements already planned for this year and next and were not aimed at new business, (3) that the costs appeared to be reasonable and prudent, and (4) that the projects would create jobs. For the energy efficiency stimulus programs, Rate Counsel also verified that only programs that were cost-effective were approved. Rate Counsel also insisted that utilities be required to file rate cases within a reasonable period of time so that the

prudence of the projects and costs would be fully vetted and we could be assured that the utilities were not over-earning. Those rate cases, for the most part, have been filed and are currently pending.

### **Advocating for the Fair Allocation of Transmission Costs**

Fairness is a theme that pervades Rate Counsel's work regarding transmission facilities before the Federal Energy Regulatory Commission (FERC). Rate Counsel took the lead in opposing the potential transfer of PSE&G's Bergen II facility to serve New York City customers, a project that was abandoned by the utility after its proposal was not accepted by New York. Rate Counsel has also participated in several other proceedings regarding merchant transmission lines and lines that could carry power through New Jersey to its neighbors in New York. Rate Counsel has argued throughout that each jurisdiction should pay its fair share and that New Jersey ratepayers should not be asked to subsidize other jurisdictions through their already high rates.

Rate Counsel has also called for sanity and restraint in the implementation of "smart grid" and advanced meters, calling for investment on the utility side of the meter, where improvements are cost-effective, rather than installing expensive new meters in every home, where the benefits are not likely to pay for the cost of the meter. Rate Counsel has been successful in advocating that the BPU and the State's utilities explore more cost-effective options rather than saddling New Jersey ratepayers with unnecessary costs during these difficult economic times.

### **Challenging Deregulation of Telephone and Cable**

In the telecommunications and cable industries, Rate Counsel has argued for



policies that will foster competition while protecting the segment of the population whose business is not lucrative enough to garner the interest of the phone and cable companies. Last year Rate Counsel negotiated a settlement with Verizon and Embarq, the state's incumbent telephone providers, that permitted deregulation of certain portions of their business while retaining regulation, with modest increases, for basic residential and single-line business service. Rate Counsel is involved in all of the petitions filed by cable companies in New Jersey that argue they should be deregulated because "effective competition" exists in a particular municipal franchise. Unless the competition is real, Rate Counsel has opposed those petitions, as a lack of competition combined with a lack of regulation will surely raise prices for ratepayers.

### **Saving Ratepayers from Water and Sewer Increases**

Rate Counsel is involved in the many water and sewer rate cases that have been filed in that industry over the last several years. Rate Counsel's efforts have saved ratepayers almost \$100 million in the last two years alone. In one case, Rate Counsel's expert testimony led to a \$25 million reduction in the cost to New Jersey American Water's ratepayers for the acquisition of Trenton's outside water system. Rate Counsel has also advocated for ratepayers in efforts to establish submetering by landlords for water and electricity in apartment buildings. Rate Counsel's efforts have led to changes in proposed legislation that would ensure that ratepayers are not charged more because of submetering and that would require landlords to install conservation measures prior to charging tenants for their usage.

### **Insurance unit**

Rate Counsel's insurance unit reviewed and filed comments on 35 petitions last year with the Department of Banking and Insurance. In one case, Rate Counsel's comments opposing a

requested 12% increase by Liberty Mutual Fire Insurance led the Commissioner of Insurance to deny the request and grant only a 6.5% increase, saving ratepayers \$6.9 million.

### **Direct Assistance to the Consumer**

Rate Counsel is in the process of revising its Consumer Assistance handbook, a resource for ratepayers with questions or concerns about their service or bills. Rate Counsel fields requests for information from individual consumers, and seeks out opportunities to provide additional education for consumers. Rate Counsel's legislative agenda is always busy, as the contours of the regulation of energy efficiency, and renewable energy are being refined. Submetering is likely to continue to be an issue on the legislative agenda in the coming year as well.





# 8

## Promoting Positive Change for Children

The New Jersey Office of the Child Advocate is an independent state agency dedicated to promoting positive change in public policy and practice to improve the safety, health and well-being of New Jersey children, especially those with the greatest need.

To achieve this goal, the Child Advocate identifies important issues that require systemic change. The Child Advocate works closely with Legislators, government officials, community stakeholders and other advocates to craft innovative solutions to identified problems. The Child Advocate then monitors implementation of these reforms to make a real difference in the lives of New Jersey's children and their families.

The Child Advocate has broad statutory authority to protect children's rights and to ensure they receive the care, supervision and safety to which they are entitled. This authority is used to monitor systems that serve children and families, including the child welfare, juvenile justice and child behavioral health systems.

### Educating and Supporting Parents and Caregivers

In addition to advancing positive public policy change, the Office of the Child Advocate also responds to more than 1,000 calls each year from people concerned about the health, safety, education or welfare of a particular child they know.

Through our Helpline, trained Child Advocate staff educates caregivers about systems, available services and how to access assistance. In some instances,

Child Advocate staff intervenes to resolve problems and ensure a positive outcome for the children involved.



### The Child Advocate's Primary Goals

The Office's primary goals are:

- Improve child safety by advocating for and monitoring reforms of the child protection system.
- Ensure that all children have safe, perma-

nent homes.

- Enhance healthcare for children and youth.
- Improve the care of children with mental health needs.
- Help juveniles involved with the legal system to forge productive lives.
- Strengthen children's legal rights.

The Office engaged in many projects in 2009 to advance our efforts to achieve these broad goals. Following is a summary of the Office's activities.

## Child Welfare/Safety

A primary focus of the Office is to ensure that children who have been abused or neglected – or are at risk of abuse or neglect – receive the needed protections and services from relevant state agencies. This is accomplished through consistent monitoring of ongoing reforms of New Jersey's child welfare system and through close collaboration with the many advocates and stakeholders who work each day to safeguard New Jersey's children.

## Child Welfare Monitoring

New Jersey is in the midst of a multi-year effort to reform its child protection system to better protect children and strengthen families. This reform effort grew out of the state's settlement of a class action lawsuit filed in 1999 on behalf of children in foster care.

The settlement calls for a comprehensive overhaul of the state's child protection system. In

the first two years, efforts focused on reducing workers' caseloads, increasing the number of available resource homes and boosting adoptions. The state has posted some significant gains in these areas, however, much more work remains to be done.

Currently, child welfare reform efforts are focused on changing and improving the way the system interacts with families, the way services are provided to keep families safely together and meeting the needs of children in out-of-home placement. These include a broad range of benchmarks related to the provision of services to children and families and assessing the outcomes of children and families involved with the state child protection system. To meet the mandates of the settlement agreement, the state must demonstrate the ability to sustain efforts and maintain a system that appropriately and consistently protects children and serves families.

The Child Advocate takes an active role in evaluating the progress of the reform efforts, partnering with the federal monitor and Department of Children and Families (DCF) when appropriate, and independently addressing child

welfare issues outside the scope of the Settlement Agreement and the monitor's role.

The Child Advocate regularly meets with the federal Monitor to identify issues of concern and opportunities for collaboration. Child Advocate staff also assisted the monitor and DCF in developing significant data points, baselines, targets and methodologies now used to measure the ongoing progress of child welfare reform in the current phase of implementing the settlement agreement.



## The Child Advocate's Frontline

### *Helpline Responds to Calls of Concern for New Jersey Children*

The Child Advocate's Helpline responds to hundreds of calls each year from people who are concerned about the health, safety, education or welfare of a child they know. Many of the calls involve problems with various state agencies charged with the responsibility of safeguarding, educating and tending to the healthcare needs of our most vulnerable citizens.



Through Helpline, trained Child Advocate staff educates caregivers about state systems, available services and their rights to receive those services. In many instances, Child Advocate staff intervenes to resolve problems and ensure a positive outcome for the children involved.

#### Who Calls Helpline?

In 2009, Helpline responded to more than 1,000 requests for assistance. Helpline receives calls from people all over the State of New Jersey. Birth parents whose families are involved with the Division of Youth and Family Services comprise the majority of referents. Helpline also receives requests from community professionals, foster and adoptive parents and children.

#### What Type of Cases Does Helpline Handle?

Helpline primarily responds to concerns about state agencies that provide children's services. Typically, this involves the Departments of:

- Children and Families, including the Division of Youth and Family Services and the Division of Child Behavioral Health Services,
- Human Services, including the Division of Developmental Disabilities,
- Health and Senior Services,
- Education, and
- The Juvenile Justice Commission

In general, we are unable to help with private custody or visitation matters that do not involve a child involved with the Division of Youth and Family Services, requests for private legal representation and out-of-state concerns that do not have a New Jersey connection. In these cases, we may be able to suggest other resources or agencies that can help.

#### How Does Helpline Respond?

Helpline often educates referents about the best way to navigate a particular system, advising them on the appropriate people to contact, specific questions to ask and other advice that can help them become more effective advocates for the child in question.

In some instances, we will intervene directly and help a child or family access the assistance they require. Helpline identifies staff at the state level who have the ability to address a particular concern and works with them to resolve the problem.

In some instances, calls to Helpline result in the Child Advocate undertaking broader policy initiatives. For example, when the Helpline began receiving multiple complaints about a South Jersey residential



program for youth, the Child Advocate brought these concerns to the attention of the Department of Children and Families. Those initial concerns grew into a full investigation of the program. Thanks to the Child Advocate's intervention, conditions at the facility are greatly improved and children there are receiving improved care.

### What Type of Issues Does Helpline Address?

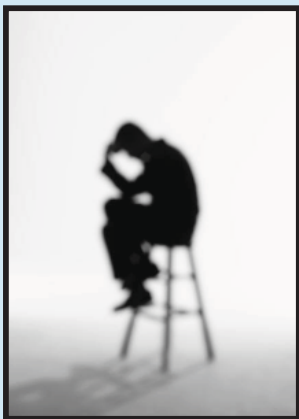
Since the Helpline was established in October 2003, issues relating to the Division of Youth and Family Services have topped the list of concerns brought to the attention of the Child Advocate. That trend continued in 2009.

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## Examples of How Helpline Helps

### Avoiding a Lapse in Treatment

A parent contacted Helpline because her son's therapist had threatened to stop providing treatment to her son. Apparently, the HMO and provider were in a dispute over payment and the parent had been unable to resolve the issue. Helpline staff contacted liaisons in the state Medicaid office, who were able to quickly resolve the issue. As a result, the youth experienced no lapse in treatment.



### Successful Intervention

A relative contacted the Helpline, concerned for the safety of her kin who was living at a substance treatment facility. She had previously brought her concerns to the appropriate entity, but was unsure of the outcome. Helpline contacted the state division handling this type of inquiry and gained information about the investigation. Although specifics of the investigation could not be shared, the person who contacted Helpline was assured that her concerns were adequately investigated and that her intervention really did make a difference.

### Case Open

A school counselor contacted the Helpline with concerns about a particular youth in his school. The counselor was worried that the State agency involved with this youth was not responding to the youth's needs. This agency was reportedly planning to close the case and the counselor was frustrated that his calls to the agency were not being returned.

Helpline staff contacted the agency, discussed the youth's situation and inquired about the planning for the youth. As a result, the case was not closed, the referent was able to have contact with the agency and planning for the youth did occur.



## Health Services for Children in Foster Care

Child Advocate staff recently partnered with the monitor and DCF on a comprehensive case review that examined the implementation of the DCF's health services to children in out-of-home placement and the department's performance on a range of visitation requirements outlined in the settlement agreement. The report, released in January 2010, documented that New Jersey has made progress in providing health services to children in foster care. Most children now receive pre-placement exams and comprehensive health exams after being placed into foster care, the investigation found.

However, many children in care still go without adequate dental care, with just 64 percent of children in the sample receiving a semi-annual dental exam. In addition, it is unclear, based on available data, whether children with suspected mental health needs are receiving assessments, and whether children are receiving needed follow-up health care. Improvements are also needed in providing the child's health information to caregivers and health professionals through required "health passports." This report provides valuable information to help target resources to improve the health and well-being of children in the foster care system.

## Family Visitation

Child Advocate staff also assisted the court monitor in gathering baseline data about the consistency of visits between parents and children in the foster care system, as well as caseworker visits to parents. Consistent, quality family visitation is a primary factor in determining whether children will be safely reunited with their parents.

The study uncovered areas of significant concern. It found that just 17 percent of children

had weekly visits with parents, an unacceptably low number.

In 2009, in addition to participating in the monitor's quantitative audit of visitation, Child Advocate staff engaged in significant research into the importance of family visits, the best way to conduct those visits and examining stakeholders' perspectives on visitation practices in New Jersey. This included studying

It is unclear, based on available data, whether children with suspected mental health needs are receiving assessments, and whether children are receiving needed follow-up health care.

best practices in states around the nation, as well as inside New Jersey, and visiting quality visitation programs. It also included holding more than 20 focus groups with resource parents, law guardians, birth parents, court-appointed

special advocates (CASA) and others to learn more about current visitation practices.

Initial findings of this research were released in January 2010 in a policy brief that sought to expand understanding of the importance of quality family time for children in care, while offering strategies to improve practices in New Jersey. Additional findings and recommendations are expected to be issued this spring.

## Child Fatality Reviews

The Child Advocate is a member of the New Jersey Child Fatality and Near Fatality Review Board (Board). Established by the New Jersey Comprehensive Child Abuse Prevention and Treatment Act (CCAPTA), the purpose of the Board is to review fatalities and near fatalities of children in order to identify their causes, relationship to governmental support systems and methods of prevention.

The Board is multi-disciplinary and includes members with expertise or experience in child abuse who are appointed by the Governor. Four regional community-based review teams operate under the aegis of the Board and their composition mirrors that of the Board. The Board also functions as a citizen review panel and conducts monthly meetings.

Although a member of the Board for several years, the Child Advocate began working closely with the Board in 2009 to strengthen the process of fatality and near fatality reviews, while using the expertise of the Board to advance meaningful child welfare reform and improve child safety.

One important step the Child Advocate took to strengthen this process was creating a structured, detailed tool for reviewing cases. The Child Advocate researched how other states conducted fatality reviews and consulted with several national experts to develop this tool. The Board is now using the tool to conduct reviews.

The template reflects key check-point areas related to the systems that serve children and families. The purpose is to promote greater uniformity and accountability in how these cases are reviewed, while fostering meaningful discussion and creating a record of the identified concerns and recommendations. It is anticipated that the recommendations and documentation in the templates will form the basis for future review board reports and will help ensure that meaningful recommendations stem from this process.

Additionally, through its work in investigating child fatalities and near fatalities, the Child Advocate found that some cases appear to have significant systemic concerns that warrant the Board's immediate attention. Traditionally, the Board reviews would be conducted as late as two or more years after the child death or near fatality. Largely through the Child Advocate's efforts, the Board implemented a process for making its reviews more timely in general and conducting expedited reviews of cases that warrant immediate attention.

Expedited cases are typically those in which the child's death or serious injury is extremely violent, the direct result of abuse or neglect,

The Child Advocate requested expedited reviews of four child deaths in 2009.

and occurs while the child is involved in one or more state systems. While any member of the Fatality Board can request an expedited review of a case, the Child Advocate, in partnership with the Board, has conducted preliminary reviews of the available facts in all cases that fall under the Comprehensive Child

Abuse Prevention and Treatment Act, which mandates that certain information about child fatalities due to abuse and neglect be publicly disclosed.

Based on this preliminary review, the Child Advocate has made recommendations to the Board for an expedited, or "sentinel," review of some cases. If the Board agrees, all available records are gathered and the case is heard at the next scheduled meeting. For the 2009 calendar year, the Child Advocate requested sentinel review of four cases. In a fifth case, DCF requested the sentinel review.

### **Institutional Abuse Monitoring**

Children placed in out-of-home settings are among the most vulnerable children in the state. The Child Advocate is statutorily charged with monitoring state responses to allegations of child abuse and neglect in out-of-home settings, such as foster and group homes, child care centers and youth institutions. This includes oversight of the Institutional Abuse Investigation Unit (IAIU), the office within the Department of Children and Families responsible for investigating these types of allegations.

Since 2005, the Child Advocate met this obligation through case reviews of a representative sample of IAIU investigations. These reviews generally focused on the timeliness and quality of institutional abuse investigations.

In our most recent report, issued in December 2008, the Child Advocate made recommendations to the Department of Children and Families (DCF) for ongoing improvement of the functioning of the Institutional Abuse Investigative Unit.



One area cited in our report was the need for DCF to improve the development and monitoring of Corrective Action Plans (CAPs). These plans are issued when investigators uncover concerns that must be addressed to ensure child safety, even though, in many cases, investigators did not turn up enough evidence to substantiate abuse or neglect. How these plans are implemented and communicated to other regulatory arms within DCF is critical to ensuring that children are safe in state-approved, out-of-home settings.

In response to OCA's recommendations, DCF in 2009 implemented a new process for tracking these plans to ensure that they adequately address any issues that may compromise child health and safety, according to the federal court monitor's most recent report. They also implemented procedures to ensure that relevant results of these investigations are communicated to DCF's Continuous Quality Improvement team.

This is positive progress. However, the Office of the Child Advocate believes that a more in-depth look at the health and safety of children in state facilities is a critical ongoing role for the office. Consequently, we have initiated a review of all allegations received in New Jersey's 31 residential treatment facilities over a 6-month period, including examination of allegations, corrective action plans and reports on licensing inspections and violations. This will be used to assess how well the regulatory arms of the Department, including IAIU and the Office of Licensing, are working together to safeguard children at these facilities.

We believe this will lead to improved safety for children living in state facilities. We anticipate that a public report detailing the findings of our investigation will be issued by the Summer of 2010.

### School Stability

Federal law now requires states to provide children in foster care with the ability to stay in their home school when they enter the

foster care system, even if they are placed outside their parents' district, if doing so is in the child's best interest. The goal is to provide educational stability that minimizes further disruptions in the lives of these fragile children and can help them succeed in school.

Under current New Jersey law, when children are placed in foster homes, the foster parent's home district becomes responsible for the education of that child. This typically means that children change schools when they enter any foster placement that is outside their original school district -- a likely occurrence with New Jersey's 611 school districts. The state's current school residency law is therefore at odds with the new federal law.

New Jersey has until March 2010 to meet the mandates of the federal Fostering Connections to Success and Increasing Adoptions Act (H.R. 6893), which became law in October 2008. If the state fails to do so, it risks losing up to \$123 million dollars in federal funds. Legislative change is needed for the state to be in compliance.

The Office of the Child Advocate has engaged in extensive research on this issue, including reviewing and reporting on the many studies that show that school stability can improve foster children's chances of succeeding in school. The Office also undertook a survey that found widespread support for a legislative change to improve school stability for foster children. In addition, the





Office has been working closely with the Departments of Children and Families and Education to craft legislation that would accomplish this important goal, while ensuring that New Jersey continues to receive critical federal dollars.

### Child Abuse Registry

The Child Advocate's report: *Protecting Children, A Review of Investigations of Institutional Child Abuse and Neglect*, issued in December 2008, called for an examination of the structure of the New Jersey Child Abuse Registry. Substanti-

ated perpetrators of child abuse or neglect are listed in this statewide registry. While access to the registry is strictly limited by state law, inclusion in the registry effectively prevents substantiated perpetrators from becoming licensed child care workers, foster parents and working in residential treatment centers for children.

These severe consequences last a lifetime. This is appropriate in some cases, but under current practice the severity of the consequences are the same regardless of the severity of the offense. In focus groups, institutional abuse investigators expressed concerns over these serious consequences, and said this sometimes becomes a factor in their decision-making process as to whether to substantiate an allegation of abuse or neglect.

Following the release of this report, the Child Advocate conducted initial research on the structure of registries in other states. DCF then convened a group of stakeholders to address a number of issues, including:

- Whether greater fairness should be brought to the system by considering a classification of substantiations that would more closely align the gravity of the consequences with the severity of the substantiated abuse or neglect.

While access to the (child abuse) registry is strictly limited by state law, inclusion in the registry effectively prevents substantiated perpetrators from becoming licensed child care workers, foster parents and working in residential treatment centers for children.

- Whether all substantiated offenses, regardless of the behavior involved, should remain on the registry permanently with no opportunity for expunction or whether procedures should be put in place to permit removal from the registry for certain types of substantiated abuse or neglect

that may not warrant lifetime listing on the registry.

The Office is sharing its research and analysis of registry issues in other states with the work group. There appears to be broad consensus in the

workgroup that the New Jersey registry, as it currently operates, needs reform.

### Healthy Children

A healthy start leads to a healthier, more productive life. Child health is a primary policy area for the Child Advocate. The Child Advocate has been involved in numerous projects related to ensuring children have access to and receive appropriate health care. In addition to our work with the federal monitor in addressing the health needs of children in out-of-home placement, our child health projects are highlighted below.

### NJ FamilyCare

According to recent data, between 300,000 and 400,000 New Jersey children lack health insurance. This decreases their ability to receive quality medical and preventive care that contributes to lifelong health and increases the chances that children will suffer from more serious and more expensive medical problems. The Child Advocate worked with the Department of Human Services and other state departments and stakeholders to address these significant issues.

The Child Advocate vice-chairs a legislatively-created committee working to expand insurance coverage to New Jersey children. The Child Advocate conducted extensive research and policy analysis and held focus group discussions with national experts to help guide the work of the committee. In May 2009, the committee released recommendations for increasing enrollment and retention in NJ FamilyCare and carrying out the state's mandate that all New Jersey children have health insurance. The Child Advocate is working with the committee chair and the Department of Human Services to ensure needed follow-up on the implementation of these important recommendations.

The Child Advocate was also instrumental in identifying opportunities within recently enacted federal Child Health Insurance Program Re-Authorization (CHIPRA) legislation. Specifically, we helped to develop the Express Lane Eligibility option, which allowed taxpayers who indicated that their children were uninsured to express-enroll into FamilyCare. New Jersey became the first state in the nation to use this strategy and has enrolled more than 12,000 children as a result of this effort.



### Youth in Detention

While youth reside in county detention, they temporarily lose any Medicaid or FamilyCare coverage they may have had. However, some county officials are unaware that federal Medic-

aid rules allow for two circumstances in which Medicaid can be used to cover an otherwise eligible youth's health-related needs.

Additionally, no clear protocols are in place to ensure that youth are enrolled in health insurance programs when they leave the detention facility nor are there consistent efforts to ensure siblings and parents have coverage.

The Child Advocate worked with state Medicaid officials and juvenile justice stakeholders to launch a pilot program aimed at identifying a youth's health insurance status and enrolling detained youth and any eligible family members in public health insurance programs.

As a result of our pilot project, the Child Advocate discovered that many youth entering county detention currently have private health insurance. However, there is significant variation among counties in using this insurance and some cannot or do not access private insurance to cover medical expenses. The Child Advocate is currently drafting a policy bulletin outlining the ways counties can save money on health care costs by recouping expenses through both Medicaid and private insurance companies.

Additionally, the Child Advocate maintains communication with national experts and the Department of Human Services on the issue of Medicaid coverage for juveniles. We are monitoring the progress of the federal government's look at this issue and we anticipate that there may be a federal policy reversal allowing youth to use their Medicaid coverage while detained in a county facility, again saving counties considerable dollars while still meeting the healthcare needs of these youth.

### Childhood Lead Poisoning

The Office of the Child Advocate, in a joint

project with the Department of the Public Advocate, worked with a Columbia University researcher to produce a report that found New Jersey could save as much as \$27 billion in future societal costs by preventing New Jersey's youngest residents -- infants to children 6 years of age - from becoming lead poisoned.

The report, released in December 2009, estimated the savings to the state budget alone could amount to \$9 billion over the lifetime of children who are currently zero to six years old. The total future savings would be far more, if other cohorts of children grow up in an environment free of preventable sources of lead exposure.

According to the report, *The Social Costs of Childhood Lead Exposure in New Jersey*, high school graduation rates would increase, while medical costs and the rates of incarceration associated with childhood lead exposure would decrease if fewer New Jersey children are exposed to lead hazards.

The report cites studies that have found even low levels of childhood lead exposure can cause lasting neurological damage.

In order to calculate the cost to taxpayers for childhood lead exposure, the report predicted the future yearly earnings of children alive today who are zero to six years old. The estimates also factored in the cost to the state of special education, medical treatment, criminal activity, incarceration, reliance on public assistance and premature death.

The New Jersey Department of Health and Senior Services recently published proposed regulations that would carry out these and

other steps to achieve the goal of preventing childhood lead poisoning.

## Children with Mental Health Needs

Children who have mental and behavioral health needs require appropriate services and interventions to grow into stable, productive adults. The Child Advocate works to improve the systems that serve these vulnerable children and their families.

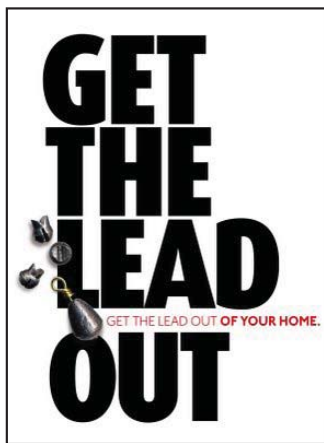
## Healing Homes

As the Department of Children and Families strives to build a broad spectrum of treatment options that provide the appropriate services to each child, it often faces local opposition to the siting of group homes, or "healing homes." The Child Advocate created a public education campaign designed to debunk the myths of youth group homes, highlight the laws protecting these homes and, in the process, help to build community support for this critical service.

The campaign consists of written materials and a video, which were widely distributed, with copies sent to local officials and municipal attorneys in every municipality in the state, group home providers, legislators and other advocates. The Office regularly receives requests for additional materials. We continue outreach efforts to further disseminate this important information.

## Vision Quest

The Office in 2009 continued to monitor the implementation of reforms at VisionQuest, a Southern Jersey residential program serving children with significant behavioral and emotional needs. In a 2007 investigation, the Child Advocate uncovered serious concerns about child safety at this facility. The Child Advocate's investigation led to a collaboration among the Department of Children and Families and facility administrators to improve the quality of care and supervision





of children at VisionQuest. VisionQuest is now meeting or exceeding most of the benchmarks and primary oversight of the facility has shifted back to DCF.

## Juvenile Justice

When youth become involved with the legal system, it adversely affects their chances of building productive lives. The Child Advocate has targeted several initiatives aimed at improving outcomes for youth involved with the juvenile justice system.

### Juvenile Re-Entry Educational Issues

When youth committed to the Juvenile Justice Commission return to their communities, it is critical that they have the opportunity to earn a high school diploma and/or enter another appropriate educational setting that can equip them with the skills and knowledge they need to forge a path to productive adulthood.

The Child Advocate learned that significant challenges may exist to successful educational re-entry for these youth. Unfortunately, little research is available that could illuminate the nature of those challenges and identify potential solutions.

The Child Advocate's re-entry project, currently underway, is aimed at identifying those challenges and potential solutions. The project is using a combination of data, interviews with key stakeholders and interviews with youth to create a report that:

- Identifies key barriers to successful re-entry into appropriate educational settings that can lead to academic success for these youth.
- Makes concrete recommendation to address those barriers.
- Draws a human portrait of youth in secure care to help build support to assist these youth.

This project will lead to a significant collaborative effort between the juvenile justice and education communities to improve academic success for youth who become involved with the juvenile justice system, increasing the chances that they will become productive, contributing citizens. Interviews and data collection are underway.

### Reinvesting in Youth

Sharp declines in the number of youth being held in county detention has led some cen-

ters to close units and redeploy resources to community services that can prevent youth from re-offending. The Child Advocate investigated this issue and found that counties could reap long-term savings by reinvesting some of these dollars into programs that can prevent juvenile crime and help youth successfully reintegrate into their communities.

In a report issued in March 2009, the Child Advocate also highlight-

ed the fact that as juvenile justice reforms take hold, youth entering county detention facilities generally have more serious offenses and thus more complex needs that must be addressed. To meet these needs, counties must reinvest





fiscal resources to build quality prevention and treatment programs, as well as detention alternatives.

These investments will keep our children out of jail, in school and on the path to becoming productive residents of this state. Much of this can be done through creative, cost-neutral strategies and by streamlining and redirecting existing resources. The Office continues to disseminate this information to county officials and advocates for smart use of these dollars.

### **Detention Center Monitoring**

The Office regularly reviews reports of unusual incidents at New Jersey's county-based youth detention centers. In some cases, Child Advocate staff identifies a recurring pattern that requires heightened attention. For example, in the spring 2009, OCA staff identified an unusual number of suicide attempts at one county detention center. Upon further investigation, it was determined that a construction feature of the center (an open upper balcony) combined with staffing practices was contributing to these concerning incidents. Child Advocate staff worked with the Juvenile Justice Commission and detention center administrators to improve supervision at this center, thus improving the safety of the youth there.

### **Children's Rights**

Protecting the legal rights of vulnerable children is a primary goal of the Office. This is accomplished in a variety of ways, including participation in legal cases that have the potential to influence broader public policy questions.

#### **Summary of Litigation**

##### **Preserving Kinship Families**

The Child Advocate filed an amicus brief in the case, *DYFS v. L.L.* in which the Court will address the issue of who bears the burden

of proof when parents seek to vacate an order establishing a kinship legal guardianship (KLG), which is considered a permanent living arrangement for children in foster care that carries nearly all the protections of adoption, but does not terminate a parent's legal rights to a child. Under these arrangements, children are typically living with a relative.

To ensure that more children grow up in safe, permanent homes, the Child Advocate urged the state's highest court to set standards that make it more difficult to disrupt families that have been created through kinship legal guardianship. The Child Advocate argued that the courts should accord broader rights to children who are placed with kin, as well as their caregivers, in order to safeguard the permanency of those placements and provide certainty to those children.

The Child Advocate argued that even if parents rehabilitate themselves, parents should be required to prove, with clear and convincing evidence, that the child would suffer actual harm unless returned to the birth parent, and that this harm must clearly outweigh the countervailing harm that will inevitably be caused by removing a child from a stable relative home.

##### **Protecting a Juvenile's Miranda Rights**

The Child Advocate filed an amicus brief at the invitation of the appellate court, arguing that a 14-year-old girl's constitutional rights to remain silent and to have an attorney represent her were not protected during an interrogation in which she eventually made a confession. In the case, known as *State in the Interest of A.S.*, the Court ruled that the juvenile's confession should have been suppressed, noting the fact that the juvenile's adoptive mother was also the grandmother of the alleged victim and thus operated under an inherent conflict of interest. A lawyer should therefore have been provided for the child to give her impartial advice.

The Court ruled that when a juvenile is being interrogated and the adult present has a close

relationship with both the alleged victim and the alleged perpetrator, it would be prudent for the child to be provided with an attorney. Despite this ruling, the court upheld the determination of delinquency, finding that the record adequately supported that finding despite the many improprieties the court found with the interrogation and the resulting confession.

The New Jersey Supreme Court has granted certification and will consider the matter in 2010.

### **Maintaining Sibling Bonds**

The Child Advocate filed an amicus brief in support of the authority of the Family Part trial judges to order continued sibling visitation, after adoption, in cases in which the relationships of the siblings have a strong attachment. At present, the authority of judges to order post-adoption sibling visitation is not clear and no New Jersey court has ruled on the issue.

The case, *DYFS v. NJ, KDR, and SW, i/m/o Guardianship of DR, NDR, and NR*, involves sibling rights to continued contact, post-adoption, for three siblings, one of whom has significant disabilities and remains in residential placement. The Child Advocate's brief relied heavily on a previous Supreme Court decision, which suggested that sibling rights are different than the rights of biological grandparents post adoption.

The Child Advocate argued that an exception exists to the normal deference to family autonomy when harm will arguably result from lack of contact among siblings whose parents' rights have been terminated. In addition, the Child Advocate argued that the situation involving post-adoption visitation for children was compelling because public policy in New Jersey strongly supports visitation at every point in the child welfare system and to summarily cut off such visits at the point of adoption would be against the children's best interests. Instead, the Child Advocate urged

that such decisions be made on a case-by-case basis by the trial judge. A memorandum of law discussing the OCA's position on this issue is attached as appendix G-1.

### **Shackling Juveniles for Court Proceedings**

In early October 2009, a draft policy brief on shackling of juveniles in court, *Shackling of Juveniles During Courtroom Proceedings in New Jersey*, was sent under the dual signatures of Acting Child Advocate Ronald Chen and Public Defender Yvonne Segars to Judge Glenn Grant, J.A.D., acting director, Administrative Office of the Courts. The brief provides data that illustrates the indiscriminate shackling of juveniles in delinquency proceedings and argues that constitutional rights, statutory and decisional law and public policy all support the conclusion that the routine shackling of juveniles in courtrooms delinquency hearings constitutes a violation of their rights.

A meeting has been requested with the Acting Administrative Director to discuss the indiscriminate shackling of juveniles in court and to request that the issue be addressed by an administrative remedy through the AOC.

### **New Jersey Commission on Bullying in Schools**

When a child is bullied at school it can harm their development, lessen their chances of school success and make it more difficult for them to develop healthy friendships. Left unaddressed, these problems can have long-lasting and devastating effects on a child.

In 2009, the New Jersey Office of the Child Advocate staffed the New Jersey Commission on Bullying in Schools, which the Legislature created to investigate this issue and recommend ways to ensure that New Jersey children are protected from bullying.

Bullying is only effectively addressed when it is seen as part of the overall school climate, the commission said. The report highlights the

necessity to provide schools with the training, tools and resources they need to create positive learning environments for both students and adults.

The 14-member commission, created by the Legislature and appointed by Governor Jon Corzine, was directed to study and recommend ways to strengthen New Jersey's approach to the problem of bullying in schools. Its members include people with backgrounds in civil rights, education, administration, health services, law, community relations and public policy.

Key recommendations include:

- Amend New Jersey's anti-bullying law to strengthen the anti-retaliation provisions and provide legal representation to educators who properly report incidents of bullying;
- Protect students from "cyber" and other bullying that occurs off school grounds by changing state law to give school officials the authority to act when they know such bullying is occurring;
- Equip each school with a "school climate team" to be trained on best practices in dealing with bullying, with the goal of creating school environments that discourage this behavior;
- Establish regional technical assistance centers to provide cutting-edge training, technical assistance and resources to schools, educators and parents;
- Increase training on bullying to educators, administrators, public safety personnel, health professionals and others, and develop an on-line tutorial on addressing school bullying;
- Publish written guidance to parents and

students about the processes and procedures available to investigate and prosecute violations of the Anti-Bullying Law and enhance the administrative procedures available under the law; and

- Create a school bullying fund to allow the Department of Education to seek public and private funds and grants to address school bullying.

## Outreach/Collaboration

OCA staff regularly participate on several panels that work in various areas to improve the health, safety and well-being of New Jersey children. The Office is legislatively mandated to serve on some of these bodies.

### New Jersey Council on Juvenile Justice System Improvement

At the request of the Director of the Juvenile Justice Commission, OCA staff serves on this panel, which advocates for the expansion statewide of successful strategies to reduce the number of youth in detention and promotes policies and practices that improve outcomes for youth throughout the juvenile justice system – from arrest to disposition. OCA assists with legislative tracking and other information gathering.



### Children in Court Improvement Committee

This statewide committee serves as an advisory committee to the Judiciary and is run through the auspices of the Administrative Office of the Courts. The committee considers matters broadly related to children in court cases, with an emphasis on child welfare matters. It sponsors and organizes trainings for all stakeholders, including

judges, court personnel, DCF, the Attorney General, Public Defender, Legal Services of New Jersey, Court Appointed Special Advocates (CASA) and many others. It also serves as a forum to address the details of court policy and practice in the child welfare area.

### **The Bar Association's Children's Rights Committee**

The committee primarily addresses child welfare matters and has broad representation among lawyers who provide representation to litigants involved in these matters, including the children who lie at the center of such litigation. A major role of the committee is to provide training.

### **Essex Model Court**

This collaborative project of the National Council of Juvenile and Family Court Judges and the NJ Administrative Office of the Courts is a multidisciplinary committee addressing practice issues in child welfare in the Essex vicinage. The committee has pioneered important innovations in case practice and policy, perhaps most notably the practice of a court review of cases in which parental rights have been terminated but the children have not yet been adopted (legal orphans). A standard court review of these cases has now been instituted in every venue in the state, with the goal of ensuring children are provided with the stability of a permanent home. OCA currently serves on three subcommittees: the Disproportionality Subcommittee, the Education Subcommittee and the Goals Subcommittee.

### **New Jersey Task Force on Child Abuse and Neglect**

The Child Advocate is a member of the New Jersey Task Force on Child Abuse and Neglect. Legislatively created, the purpose of the task force is to study and develop recommendations regarding the most effective means of improving the quality and scope of child protective and preventative services provided or supported by State government, including a review of the practices and policies of the Divisions of Youth and Family Services and Prevention and Community Partnerships in the Department of Children and

Families.

The Task Force works to maximize coordination of child abuse-related services and investigations. This includes ensuring timely reporting and determination of reports of alleged child abuse, educating the public about the problems of, and coordinating activities relating to, child abuse and neglect, developing a statewide plan to prevent child abuse and creating ways to facilitate child abuse and neglect prevention strategies in coordination with the Division of Prevention and Community Partnerships.

### **Citizen Review Panel**

The Child Advocate is a member of the New Jersey Child Welfare Citizen Review Panel (CWCPRP), one of three citizen review panels established under the New Jersey Comprehensive Child Abuse Prevention and Treatment Act (CCAPTA).

The panel is charged with examining the policies and procedures of state and local agencies and, where appropriate, specific cases, to determine the extent to which agencies are effectively meeting their child protection responsibilities. The panel has chosen to examine specific areas within the child protection system and includes members of the child welfare community and consumers.

### **Staffing Outcomes and Review Subcommittee**

This panel is legislatively charged with monitoring issues related to the child protection system. The panel gathers and analyzes data to identify areas that need improvement and attempts to assist the state in meeting the mandates of the federal court settlement agreement.

### **Office of the Child Advocate**

The New Jersey Office of the Child Ad-



## THE CHILD ADVOCATE'S HELPLINE

*A Resource for Children, Families and Advocates*

**1-877-543-7864**



**THE CHILD ADVOCATE IS NOT A FIRST RESPONDER.  
TO REPORT SUSPECTED CHILD ABUSE OR NEGLECT,  
CALL THE STATE'S CHILD ABUSE HOTLINE AT**

**1-877-NJ ABUSE (652-2873)**

### **FOR NON-EMERGENT ISSUES, PLEASE CONTACT HELPLINE**

Callers will receive a follow-up call from Helpline staff within one business day. The Helpline operates Monday through Friday from 9 a.m. to 5 p.m. Messages can be left after-hours but a daytime contact must be provided.

Callers will receive appropriate support services, including an initial assessment of the situation, advocacy and recommendations of available resources.

**Complaints can also be filed online at  
[childadvocate.nj.gov](http://childadvocate.nj.gov) or you can email us at  
[info@childadvocate.state.nj.us](mailto:info@childadvocate.state.nj.us)**

vocate is an independent state agency dedicated to promoting positive change in public policy and practice to improve the safety, health and well-being of New Jersey children, especially those with the greatest need.

To achieve this goal, the Child Advocate identifies important issues that require systemic change. The Child Advocate works closely with Legislators, government officials, community stakeholders and other advocates to craft innovative solutions to identified problems. The Child Advocate then monitors implementation of these reforms to make a real difference in the lives of New Jersey's children and their families.

Joseph F. Suozzo, First Assistant Child Advocate

Maria McGowan, Director, Project Management

Marianne Aiello, Helpline Coordinator and Planning

Catherine Ashman, Helpline, Assistant Child Advocate

Adam DiBella, Senior Child Advocate

Denise Palermo, Assistant Child Advocate

Tasya Gonzalez-Beck, Helpline, Assistant Child Advocate

Alison Hanna, Assistant Child Advocate

Nicole Hellriegel, Assistant Child Advocate

Christopher Jackson, Assistant Child Advocate

Rachel Klein, Assistant Child Advocate

Audrey Nicastro, Executive Sec. Assistant

Nancy Parelo, Director Policy and Communications

Joseph Pargola, Policy Advisor

Lisette Villegas, Receptionist

Elizabeth Wood, Assistant Child Advocate

# Department Overview

## Protecting the Public Interest

One of the core functions of the department is to protect the public interest. The Division of Public Interest Advocacy examines public policy and uses research, advocacy and legal intervention to advance reforms that will benefit New Jersey citizens. Key areas include reforming the use of eminent domain for private redevelopment, reducing childhood lead poisoning, protecting tenants rights during foreclosure, and securing the right to vote for all New Jersey citizens.

**Catherine Weiss, Division Director**

## Protecting Individuals With Mental Illness

The Division of Mental Health Advocacy protects and advocates for people who have mental illness. The attorneys and staff in this division ensure that people within the mental health system receive the care and assistance they need to live the fullest lives possible. The division includes the Mental Health and Guardianship unit, which represents individuals who are facing commitment to psychiatric facilities.

**Patrick Reilly, Division Director**

**Ann Portas, Deputy Director**

## Advocating for the Elderly

In 2008, the Department consolidated its Division of Elder Advocacy and its Division of Developmental Disability Advocacy into one smaller division operating under the supervision of one Director and with staff assigned to project work in both areas.

The Division of Elder Advocacy works to secure, preserve and promote the health, safety and welfare of New Jersey's elderly population. Through legislative and policy work, education and outreach, this division advances reforms to improve the quality of life for New Jersey's older residents.

This division is also charged with protecting the rights of residents of long-term health-

care facilities who are age 60 or older. The Office of the Ombudsman for the Institutionalized Elderly is staffed with investigators and nurses who investigate reports of abuse or neglect of people living in nursing homes and other long-term care facilities and take action to protect them from harm.

## Improving Life for People with Developmental Disabilities

Protecting the safety and legal rights of New Jersey citizens with developmental disabilities is the central charge of the Division of Developmental Disability Advocacy. The division works to promote policies and practices that ensure people with developmental disabilities have safe and effective supports and services and opportunities to participate fully in all aspects of their communities.

**Gwen Orlowski, Division Director**

## Helping Citizens Navigate Government Agencies

The department keeps an open line of communication with New Jersey citizens through its Division of Citizen Relations. The division investigators respond to complaints about state agencies and local governments. They educate citizens on the most effective government service for a particular problem. If a state agency fails to respond, Citizen Relations staff advocate on behalf of citizens to resolve disputes.

The Office of Dispute Settlement and the Corrections Ombudsman are also located in this division. The Office of Dispute Settlement provides neutral mediation services to resolve a wide variety of disputes, including those brought by individuals seeking access

to government records under the Open Public Records Act and claims under the New Home Warranty Act. This office also serves as court-appointed mediator and provides dispute resolution training.

The Office of the Corrections Ombudsman addresses issues, problems or complaints of those confined to the New Jersey state correctional system.

**Eric Max, Director, Division of Citizen Relations and Office of Dispute Settlement**

**Donna Jago, Director, Office of Citizen Relations**

**Dan DiBenedetti, Corrections Ombudsman**

Fighting For Consumers

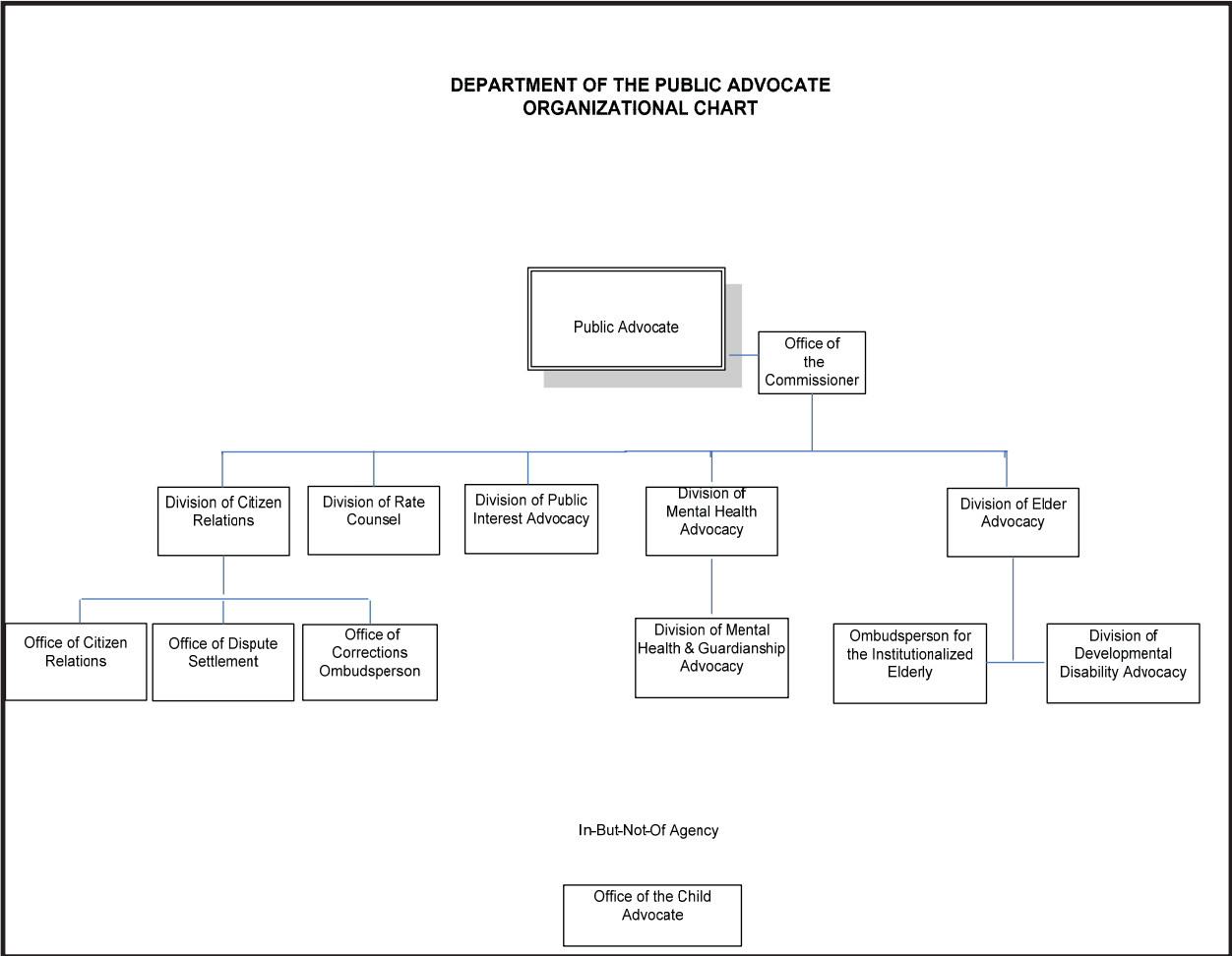
The Division of Rate Counsel ensures that utility consumers receive safe, adequate and proper service at affordable rates. The division examines each request by a public

utility for a change in rates or service terms, with the goal of protecting ratepayers from unfair or unjustified increases in their electric, gas, cable TV, telecommunications or water bills. This division has the legal right to challenge proposed increases and represents the ratepayer on any changes to utility service. The division also represents consumers in a limited number of health and auto insurance matters.

**Stefanie Brand, Division Director**

Safeguarding Children

The Office of the Child Advocate, an independent agency within the Department of the Public Advocate, works to protect the interests of children who are at risk of abuse or neglect. The Child Advocate seeks to improve the safety and well-being of New Jersey’s children through investigation, policy and practice reform, public reporting, hearings, litigation and other strategies.



# Contact Us

In addition to advocating for broad public policy change, the Department of Public Advocate helps individuals with specific concerns related to the care of the institutionalized elderly, interaction with local and state governmental agencies and inmates confined to state prisons.

Email: [PublicAdvocate@advocate.state.nj.us](mailto:PublicAdvocate@advocate.state.nj.us)

## Department of the Public Advocate

240 West State Street, 16th Floor

P.O. Box 851

Trenton, NJ 08625-0851

Phone: (609) 826-5090

Fax: (609) 984-4747 (fax)

## Division of Citizen Relations

Phone: (609) 826-5070

Fax: (609) 984-4770

## Office of the Ombudsman for the Institutionalized Elderly

Phone: (877) 582-6995

Fax: (609) 943-3479

## Office of Dispute Settlement

Phone: (609) 292-1773

Fax: (609) 292-6292

## Office of the Corrections Ombudsman

Phone: (609) 292-8020 or (609) 633-2596

Fax: (609) 633-8644

## Office of the Child Advocate

Phone: (609) 984-1188

Hotline: 1-877-543-7864

Fax: (609) 292-1433