

Pennsylvania victory: Settlement agreement protects choice; VOR as Amicus

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On September 25, attorneys for family intervenors secured a favorable settlement in *Benjamin v. Pa. Department of Public Welfare* (DPW).

The settlement requires the State to enable hundreds of Pennsylvania's intellectually disabled residents to remain in their current state facility ("ICF/IID") homes or transition into community-based care, according to individual choice.

"Finally after almost 5 1/2 frustrating years, efforts to construct an agreement culminated in a very good outcome," said Bert Springstead, lead intervenor and retired VOR Board Member and State Coordinator. "For example, it is expected that an unbiased implementation of the agreement's protocols will diminish the current mistrust of DPW by many family members and guardians."

The *Benjamin* lawsuit was first filed in **2009** by the Disability Rights Network of Pennsylvania (Protection & Advocacy) on behalf of four residents of state ICF/IID homes who sought transfer to community homes.

In **2010**, the families of 9 residents of state ICF/IID homes, represented by Michael Rato and Ben Hoffart (Sidley Austin, LLP), and Carl Solano (Schnader Attorneys at Law) on behalf of his sister, appealed a District Court order denying intervention in the pre-remedy/settlement stage of the litigation. VOR, represented by Lesli Esposito (DLA Piper, LLP) filed its first [Amicus brief](#) in support families bid for intervention.

The Third Circuit affirmed the District Court's denial of intervention.

In **2011**, the plaintiffs and the State (defendants) negotiated a settlement that created a risk that hundreds of other ICF/IID residents who did not wish to be transferred would be relocated even though they, their families, and their guardians opposed that result and believed it would deprive them of access to optimal care.

Families again appealed to the Third Circuit, this objecting to the denying the motions to intervene that they filed in connection with the remedy stage of the litigation as well as from the District Court's subsequent order granting final approval to the settlement agreement between Plaintiffs and Defendants. VOR again participated as [Amicus](#), represented by Nancy Rappaport and Lesli Esposito, filing a brief in support of family intervenes and joined by 92 supporting families. In response, the Court of Appeals for the Third Circuit [overturned](#) approval of the 2011 settlement agreement and order denying intervention.

Intervention set the stage for a negotiated a new settlement that protected the rights of all ICF/IID residents to choose to remain under ICF/IID care or to opt to relocate and that created substantial procedural safeguards governing both options. The agreement assures

that ICF/IID placement may be maintained for those needing a higher level of care than may be obtained outside the institutions.

VOR expresses sincere appreciation to the attorneys for intervention and VOR as Amicus. All worked pro bono; intervening attorneys did receive a deserving award of attorney fees as part of the order approving the new settlement.

Key Resource Links

VOR Amicus Briefs

[VOR Amicus Brief Opposing Settlement \(12/27/2011\)](#) (joined 92 families file Amicus Brief; ask court to overturn PA settlement)

[VOR Amicus Brief Supporting Intervention \(8/16/10\)](#)

Court Documents

Revised Settlement Agreement (Final) (6/11/14)

District Court Order and Decision Approving Settlement (6/11/14)

[Third Circuit Court of Appeal's Judgment granting intervention and reversing settlement approval \(12/12/2012\)](#)

[Third Circuit Court of Appeal's Opinion granting intervention and reversing settlement approval \(12/12/2012\)](#)

[District Court Order Approving Settlement \(9/2/11\)](#)

[District Court Memorandum Approving Settlement \(9/2/11\)](#)

Media

[“Carl Solano Assists More than 1,000 PA Institutionalized Mental Health Patients from Being Removed from Residential Programs,” Schnader Law Firm Press Release \(9/24/14\)](#)