

ICPC – PARENT ATTORNEY PERSPECTIVE: SOME USEFUL CASE LAW

- 1) New York cases holding that the ICPS **does** apply to out-of-state non-custodial parents and non-parent relatives:

Matter of Shaida W., 85 NY2d 453 (1995) – children improperly placed with California grandmother in violation of ICPC

Faison v. Capozollo, 50 A.D.3d 797 (2nd Dept. 2008) – affirmed use of ICPC home study report to deny father’s custody petition

Matter of Keanu Blue R., 292 A.D.2d 614 (2nd Dept. 2002)

In Re Tumari, 65 A.D.3d 1357 (2nd Dept. 2009) – 3-2 split in favor of ICPC application to out-of-state father, but very good discussion in dissent as to why ICPC should not apply to parents

In Re Crystal A., 13 Misc.3d 235 (Clinton Co. Sup. Ct. 2006) – good discussion of judicial frustration with the ICPC process

- 2) Recent cases from other states holding that ICPC **does not** apply to non-custodial Parents – both cases give good surveys of current status of law nationwide

Matter of F-M v. State of Washington, 236 P.3d 961 (Washington 2010)

In Re C.B., 116 Cal.Rptr.3d 294 (California 2010)

- 3) Issues for parents’ attorneys:
 - a) Whether ICPC should apply to parents and non-parent relatives at all
 - b) If it applies, the length of time the process takes to complete – consequences
 - c) If it applies, the lack of standards in decision that placement with parent is or is not “in the child’s interest”
 - d) The fact that there is no remedy to contest an adverse ICPC home study report

ICPC - parent attorney perspective

- Parental Right, Sun News.com published September 26, 2010.
- ★ • A Father's Fight / Social Services Breakdown, Sun News.com published September 12, 2010.
- ICPC Resource List
- Waits Plague Transfers of Children to Relatives' Care, NY Times article by Erik Eckholm, published June 27, 2008.
- John C. Lore, III, Protecting Abused, Neglected and Abandoned Children: A Proposal for Provisional Out-of-State Kinship Placements Pursuant to the Interstate Compact on the Placement of Children, 40 U. Mich. J.L. REFORM 57 (2006)
- Judge Stephen W. Rideout, The Promise of the New Interstate Compact on the Placement of Children, 25 ABA CHILD LAW PRACTICE 165 (2007) available at http://icpc.aphsa.org/Home/Doc/Rideout_on_new_ICPC.pdf
- Vivek S. Sankaran, Navigating the Interstate Compact on the Placement of Children: Advocacy Tips for Child Welfare Attorneys, 27 ABA CHILD LAW PRACTICE 33 (2008)
- ★ • Vivek S. Sankaran, Out of State and Out of Luck: The Treatment of Non-Custodial Parents Under the Interstate Compact on the Placement of Children, 25 YALE L. AND POL. REV. 63 (2006)
- Vivek S. Sankaran, Perpetuating the Impermanence of Foster Children: A Critical Analysis of Efforts to Reform the Interstate Compact on the Placement of Children, 40 FAM. L. QUARTERLY 435 (2006)
- Vivek S. Sankaran, Reform state compact to reunite families, Detroit News Op-Ed, November 5, 2008
- Couple Fights For Abused Grandson, Columbus Times Dispatch Article by Rita Price, published August 17, 2009

Presentations:

Above links found at:

http://www.law.umich.edu/centersandprograms/ccj/special_projects/Pages/ICPCAdvocacy.aspx

ICPC - parent attorney
perspective

Regulation No. 3

Placements with Parents, Relatives,

Non-agency Guardians, and Non-family Settings

The following regulation, adopted by the Association of Administrators of the Interstate Compact on the Placement of Children, is declared to be in effect on and after July 2, 2001.

1. "Placement" as defined in Article II (d) includes the arrangement for the care of a child in the home of his parent, other relative, or non-agency guardian in a receiving state when the sending agency is any entity other than a parent, relative, guardian or non-agency guardian making the arrangement for care as a plan exempt under Article VIII (a) of the Compact.

2. "Conditions for Placement" as established by Article III apply to any placement as defined in Article II (d) and Regulations adopted by action of the Association of Administrators of the Interstate Compact on the Placement of Children.

3. The terms "guardian" and "non-agency guardian" have the same meanings as set forth in Regulation No. 10 of the Regulations for the Interstate Compact on the Placement of Children (ICPC).

4. The term "family free or boarding home" as used in Article II (d) of ICPC means the home of a relative or unrelated individual whether or not the placement recipient receives compensation for care or maintenance of the child, foster care payments, or any other payments or reimbursements on account of the child's being in the home of the placement recipient.

5. The term "foster care" as used in Article III of ICPC, except as modified in this paragraph, means care of a child on a 24-hour a day basis away from the home of the child's parent(s). Such care may be by a relative of the child, by a non-related individual, by a group home, or by a residential facility or any other entity. In addition, if 24-hour a day care is provided by

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the child's parent(s) by reason of a court-ordered placement (and not by virtue of the parent-child relationship), the care is foster care.

6. (a) Pursuant to Article VIII (a), this Compact does not apply to the sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian and leaving the child with any such relative or non-agency guardian in the receiving state, provided that such person who brings, sends, or causes a child to be sent or brought to a receiving state is a person whose full legal right to plan for the child: (1) has been established by law at a time prior to initiation of the placement arrangement, and (2) has not been voluntarily terminated, or diminished or severed by the action or order of any court.

(b) The Compact does not apply whenever a court transfers the child to a non-custodial parent with respect to whom the court does not have evidence before it that such parent is unfit, does not seek such evidence, and does not retain jurisdiction over the child after the court transfers the child.

7. Placement of a child requires compliance with the Compact if such placement is with either of the following:

(a) any relative, person, or entity not identified in Article VIII of the Compact; or

(b) any entity not included in the definition of placement as specified in Article II (d) of the Compact.

8. If a court or other competent authority invokes the Compact, the court or

other competent authority is obligated to comply with Article V (Retention of Jurisdiction) of the Compact.

9. Words and phrases used in this regulation have the same meanings as in

the Compact, unless the context clearly requires another meaning.

10. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001; the regulation, as amended, was approved on May 2, 2001 and is effective as of July 2, 2001.