

Considerations on the Interstate Compact of Placement for Children

Jill: Before we do just a couple of housekeeping announcements, welcome to the Considerations on the Interstate Compact of Placement for Children training. As I mentioned, just a few housekeeping items before we get started. Today's session is going to be recorded. This session has been approved for 1.5 CLE in Professional Practice through the Office of Justice Initiatives Division of Policy and Planning. Their policy is that for those who are seeking CLE, you must, must, must complete your Attorney Affirmation Form by close of business of that training date. So please be sure to submit your affirmations to the email address on the Attorney Affirmation Form. That email address is O-P-P-C-L-E@nycourts.gov. There will be two CLE codes stated throughout this presentation. So please listen carefully for those codes as I can not repeat them or take them into the chat. Lastly, we ask that you please mute your microphones and type any questions you have throughout this presentation into the chat, which will be monitored by myself and my colleague, Tracy Lyons. If you are running into any IT or technical issues, please contact Tracy at T. Lyons. That's spelled T-L-Y-O-N-S@nycourts.gov. I'd like to turn it over now to the Honorable Mary Tarantelli of Chemung County Family Court. She's also the Lead Judge for our Child Welfare Court Improvement Project to offer some opening remarks. Take it away, Judge. Judge Tarantelli, if you're there, we can not hear you. Judge Tarantelli, are you there? She might have lost service. So I'm going to go ahead and say, if she's not available at this point, then I'm going to go ahead and introduce our presenters for today. Miss Sonia Meyer, who is associate counsel within the Child Welfare Legal Services Bureau of the Legal Division of OCFS and Ms. Carol McCarthy, Director of the Bureau of Permanency Services within the Division of Child Welfare and Community Services of OCFS. Ladies, please go ahead and take it away. Thank you.

Carol McCarthy: Hello. Good afternoon. Hi, this is Carol McCarthy. How is everyone this afternoon? I'll get this ball rolling. We don't have a lot of time and there's a lot of information to cover. You had sent us some questions initially and so we're going to try, we're really not going to follow the PowerPoint page by page. We're going to pretty much jump around. Jill, if you would not mind jumping to slide 20 and we'll just leave that up while I do a little bit of chatting with everyone here. Thank you. That's it. So as you all know, the compact was enacted by New York Atate. We were the first state back in 1960, long time ago, but the framework of the compact is still very staunch. It is very strong. It was really built on reciprocity. And when you think about the ICPC compact, I hope you think about these three words: safety, suitability, and services, because the compact is designed for us to get information from the receiving state about the safety of the home or the facility, the suitability of the resource parent, or resource foster parent, adoptive parent, relative, whomever that may be, and then to allow while the child is placed in that home or facility, that all services are in place for the entirety of the placement. So as you know, the compact itself is built on 10 articles, regulations as well. You certainly can read through those. The

regulations talk specifically about the type of placements and the process related to each and the side that you see right now. This is an important one. And if there was any advice that I would give you first and foremost, this might be a great slide for you to keep handy because it speaks to the applicability of ICPC. When does it apply? And you see that it, of course it applies for all foster care placements, right? Whether it's to a foster home or a congregate care facility, the compact is applicable to public agency and private adoptions as well. And of course, for placements with parents or relatives, when a court holds jurisdiction of the...

Carol McCarthy:

...compact such as ICJ. It does not apply when a child is admitted to an institution, primarily educational, or a hospital or medical facility, and does not apply for a placement with a child from whom the parent was not removed, although there are some other conditions where it will apply, we will be talking about those, and it does not apply for visits. This is kind of a real important piece here. What is a visit? A visit is really defined under ICPC, as less than 30 days, or during a, no longer than a school break. So it would have a very distinctive start and end date if it extends beyond the 30 days. So let's talk a little bit about what all this means. I know a lot of people really have concerns about the length of time it takes to do an ICPC case. Remember, ICPC requires a full home study in almost all cases. And even if you think about the completion of a home study here in New York State, right, that can take anywhere from two to four months just to complete the home study piece. So let's go a little bit through the process. Back in 2018, New York State entered into the NEICE, the National Electronic Interstate Compact Enterprise. It's a national database that allows states who are operating ICPC cases to electronically submit those cases. There are currently only 38 states in NEICE, that's a lot, but we want all 50 and all 50 states must be in by 2027 per Family First. So as soon as all 50 states are in, that gives us, really will expedite the movement of the paperwork, at least across state lines. So as of August 2018, we've been operating a NEICE and that has really helped on moving cases quickly. Every local Department of Social Services here in New York State, and voluntary agency has established ICPC liaisons and those individuals really know the process. They understand the documentation that needs to be submitted. They start the process for any child who's going to be going, if we're going to consider a placement outside of New York State. So our local district or VA liaison will pull together the ICPC packet. And I do know you received a copy of the ICPC checklist, which is on our OCFS website and you can see just the depth of documentation that's required. There's at least 15 documents minimum that go with an ICPC request. So the liaison needs to pull that request together, upload all those documents with a click of a button submitted through NEICE to us. Now, we then have to prioritize based on, right, the placement type. If this is Regulation 7 expedited placement, we're pulling that ahead of the others immediately. We get notification, and our staff and we have four people who are looking at over 200 new requests every month. They're looking at over 100 placement notifications every month, requests for close to 50 to 60 residential placements every month. But they pull those through, they sort of triage them, as I say, and then move them on to the receiving state ICPC unit who then has to also review

the documentation and submit it down to their local Department of Social Services, or the contracted agency whomever in that state will be conducting the home study. So of course, that when you think about it, it's going through a couple levels of review. And if anything is missing, we've got to get back to our local district and saying you know what, we're going to need this, this and this before we can move it forward. But it is in most cases for 38 states at least, it's moved electronically. In the others paperwork needs to be mailed to them still so that can be a delay in the mailing. Then the home study process must begin and you have to recognize that in fact, the home study process in every state is somewhat different. And the home study requirements of every state vary to some degree. In fact, a couple examples that I'd really like to share with you, New Jersey, Connecticut, Massachusetts, New Hampshire, there may be a few, Vermont, a few others, they don't do relative placements. If we're asking to place a child into a home of a relative, they require everyone to be certified as a foster parent. They're going to put that individual through the rigor of right an entire foster care home study, all of the training, and then of course, if it's later upgraded to adoption, some states do, in fact, provide dual certification. Some do not and some will only wait until the child is completely freed before they'll consider an adoptive placement. So in regard to home study timeframes, I want to share with you under ICPC if this is a Reg. 7, we're supposed to receive that home study within 15 business days. Now, that's just the home study piece. Remember, you get the home study, you still have to wait for the receiving state to give us the final approval on placement. Generally, it all comes together. But sometimes you get the home study and then you get the approval. Foster and adoptive placements can take anywhere, well, we usually get the initial assessment within 60 days. But that generally does not include the training piece, it does not include the final approval and that usually takes a full four months. The Reg. 2 placements for relatives and parent, if it is a state that doesn't require full certification, those usually come back to us as soon as possible and in a relatively quickly manner. At any time, local district to local district can be speaking to each other to see where everything is at, at any time. Our local district folks can go into the electronic database and see the status of the ICPC case. They can communicate with us, we have a general mailbox, we believe our website is very helpful and that it has links to all the required forms, the checklist and everything that is needed. Probably, just to bring you probably a couple of the points that I think are most important, court orders they must be current within six months. If this is an expedited placement, then we're looking for an order within four business days. That's very limited, but we move those very, very quickly. I will say this on delay, because that is right a lot of people really are concerned about the length of time. Probably the greatest reason for a delay in an ICPC case, is that the resource either has been unable or unwilling to fully cooperate in the home study process. That is probably the biggest obstacle that we see sometimes on getting the ICPC approval. It's very important that our local districts have a lot of conversation with a potential resource in regard to their willingness and ability to participate in the full home study process. So once the approval comes back to us and gets right back to the local district, it's good for six months. The local district or voluntary agency has six months to make a decision as to whether or not the child will actually be

placed into that ICPC placement. Violations of the ICPC are detrimental in multiple ways. They're detrimental because... Sorry, we're getting a little bit of feedback. They're detrimental, because it can be a safety issue, and we're very concerned if another state tells us that the child must be returned to our state we notify our local district or voluntary agency, and per the compact, that child should be returned within five business days. And I know that's a very short period of time, but this is what we've all agreed to. When we violate the compact, it really impacts our relationships with other states. Sometimes they start to get a little bit hesitant when we ask for sort of special favors, when things need to be pushed along, so to speak. We do everything we can when other states ask us to assist them on cases to respond immediately or as quickly as possible. It is a very, very busy unit. But they do a great job of moving the cases along. So I hope that gives you some concept of timeframes. I'm going to stop here. And I'll let Sonia take it from here and we can always come back if there are other things that you would like covered. Thank you.

Sonia: Sure. Thanks, Carol. I hope everyone can hear me and Jill, it's fine to keep the slides up. Hello everybody, I see that we have quite a few participants. Thank you so much for joining us this afternoon and for inviting us to come speak to about the ICPC. Carol is really our OCFS resident expert, she is the director and the compact administrator so I often defer to Carol for all things ICPC as well as everyone else in our agency. Part of your CLE materials that we provided for you today, I don't know where everyone is in their knowledge of ICPC and where all of the materials can be found, et cetera, but Carol and I have done this presentation a couple of times, not this particular one obviously, but the ICPC presentation and we included a pretty big PowerPoint, along with all of the regulations and all of the articles. There's some guidance material that OCFS has put out in the form of policy documents, those are also in your materials. There's also the forms, copy of all the forms that are necessary and Carol's department within OCFS has done a pretty good job of making sure that all the materials are accessible. They are on the ICPC website of OCFS and I think the website and all that information is provided for and the material as well. And we also really appreciate the CIP coming together and targeting the types of areas that they really wanted to have covered. That was very helpful. And I just wanted to, I know Carol and I kind of divided up giving up the questions a little bit as far as some of your points, and I was going to take a lot of the Article 6 and obviously the case law.

Can't thank Judge Tarentelli's court attorney enough for all of the cases that were identified, that you actually wanted to talk about. That was very, very helpful. I know Emmanuel B. is the case that a lot of folks are extremely interested in discussing. I just wanted to take a really quick step back and reference some of the real key definitions of ICPC, which I think really frame the law. The 10 articles of ICPC are codified in Social Services Law 374-a. The 12 regulations, and although I say 12 regulations as if there is not that many, they are long and they have been promulgated by the delegating authority by the federal government who administers ICPC on behalf of all of the states which is the American Public Human Services Association. All the regulations are included in your material. They're actually a very great resource. They do expand on and clarify the 10 articles that are codified in the Social Services Law,

but all states have to adopt actually those articles. So I'm just going to go over a couple of the key definitions, right? Child, what is a child? A lot of this is in the big fat PowerPoint, so you can always look to that. It's also in the law as well, but I'm using many, many more words. A child means a person who by reason of minority is legally subject to parental guardianship or similar control. That's an important, right, concept. The sending agency means a party, state officer or employee thereof; a subdivision of a party, state or officer or employee thereof; a court of a party state, a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state. Oh, thank you Jill. You found the definition. Couple that I think that resound in some of these court cases and also get reiterated a lot. A receiving state, means the state to which a child is sent, brought or cause to be sent or brought. Whether the public authorities or private persons or agency and whether for placement with state or local public authority, or for placement with private agencies for persons. Private persons being the big one that a lot of these cases are really about, where there's an intersection with a petition for an Article 6. And then placement. This is a real important, right, term that you utilize throughout, it's referenced a lot in the case law. And some cases don't really stress I think enough about the applicability of ICPC and the definition of placement. Which is the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution. But does not include any institution caring for the mentally ill, defective or epileptic or any institution primarily educational in character or any hospital or other medical facility. So it's the arrangement for the care of a child, right? That's really something that's important to know, as well. So just wanted to touch upon some of the really key definitions that are themes throughout all of the ICPC. One of the topics that was raised by your CIP and brought to our attention is the benefits of using ICPC versus a temporary or permanent Article 6. So I think the great benefit to ICPC with all the exception of the Second Department, I think is that when you're disposing of an Article 10, you have an Article 10 before you, sometimes the petitions come in simultaneously or pretty contemporaneous to each other, is really about safety. So when you're transferring custody to a parent or relative in another state, and the local district has already been given care and custody, really you need to make sure that the placement of the child by the LDSS going to the other home in the other state or to the other parent who doesn't currently have custody of the child, is safe. One of the other things that's really important to know in an Article 6 where you have a temporary order, is the ICPC is requirement of a retention of jurisdiction. So New York State's jurisdiction stops at the state's border. So if a court issues a temporary Six, where they haven't finally disposed of the matter, and you do send the child to the other state, how are you going to get that family to come back? The other relative and the child to come back into, have the final disposition of this particular case. The court still retains the jurisdiction and going through ICPC allows you... You have to agree to the retention of jurisdiction. So the court retains jurisdiction over the child, but it extends that authority over that particular or write to the other state. So if you need them to come back, you still have some mechanism to be able to extend that authority with your retention of jurisdiction. So if that's the question, I

wasn't entirely clear about temporaries versus the final dispositions, but either way, the retention of jurisdiction issue is there. And it is codified in the Social Services Law under Article 5, right? So if you're giving a temporary order or you have an order where it hasn't been finally disposed of, that retention of jurisdiction over the child is sufficient to determine all matters in relation to the custody supervision, care, treatment and disposition of the child. Which it would have had if the child remained in the sending state until the child is adopted, reaches majority, becomes self-supporting or is discharged. And there's some other factors that go along in here. So that's really, I think the benefit of ICPC and the temporary orders, right? Or the orders where the Article 6 isn't fully disposed of, is that you're retaining jurisdiction actually over that child. Alright. Seeing my notes here-

Jill: Sonia, can I stop you for a second for our first CLE code.

Sonia: Oh, yeah, sure.

Jill: Thank you. Alright. First, CLE code is going to be three. G as in girl. Three. H as in Henry. That code again is three. G as in girl. Three. H as in Henry. Thank you, Sonia.

Sonia: Yeah, sure, no problem. Okay. So I know, it also comes up in the context of 1017s as well, I think the ICPC and whether there's applicability or not, which is that handy dandy little chart that Carol had put up in the first instance on slide 20, which helps you kind of frame out if ICPC applies, doesn't apply. And I think perhaps we're going to be talking a little bit more, I don't know Carol, about the courtesy checks, which is also a really neat safety feature, when there is no applicability of ICPC. And you really want to mitigate your risk factors when you're placing a child in another state. And that's something that's allowed under Regulation No. 2 of the 12 regulations that there are which really allows you to fully vet that family or that resource for which the child is going to the other state. And I, yeah, there you go. So all the regulations that are referenced in this PowerPoint as well, we didn't want to go through the PowerPoint and read it to you because it's so boring. Not that this isn't boring, anyway. Hopefully, we're making it a little bit not boring. I skipped down to in your list of topics that you're very interested in talking about, which was ensuring the safety process through the ICPC process. Ensuring safety to the extent that safety can be ensured, right? So we keep a couple of factors in mind, who's doing the placing out? And who are you placing with? That's why placement is so important, right? Who is doing the placing out? Usually it's either the court or it's the local district who has care and custody of the child already, right? So the necessity of the ICPC or when you're invoking the ICPC process, is to ensure that children are placed with caregivers who are safe, suitable and can meet the needs of the child. Right? And we talked already about that the whole point of this process is so jurisdiction can extend beyond the state's border. So when DSS is involved, we already talked about the liability in discharging to an out-of-state parent or out-of-state relative or resource. You have to really take into consideration, right, that you have a parent before you, a non-responded parent, no custodial rights. Oftentimes DSS, when we are talking to folks who

call about ICPC is, that that's your liability. The child is in your care and custody and ICPC allows for all kinds of safety features that go on in the other state.

But it's also, you know, I guess, a mitigation of risk on the part of DSS. And I know Carol's talked a lot about already in the home study, which is very beneficial in ICPC and what is allowed to happen in the other state, which includes background checks and various other home studying related issues that go on. And underneath, it's pretty standardized. Right, so ICPC, and the primary purpose of ICPC, which is something that the APHSA has put out, is the primary purpose is to ensure that children are placed out of state; when they are placed out of state they're placed out of state with caregivers who are safe and suitable. That's really the major key point. Another critical function of the ICPC is to ensure that the person or entity that places out the child retains the legal and financial responsibility should that be occurring in situations of foster care for the child when that placement occurs. This step directly benefits children by eliminating any question as to who is ultimately responsible for the child well being, in meeting the child's needs following the placement. ICPC also protects the interests of states by ensuring that individual states are not put in the position of having to take on the legal and financial burden of caring for the child when they're placed within their borders coming from other states.

The home study feature of the ICPC when you're placing out, when a person or entity seeks to place a child at a state for the ICPC process, how is the perspective placement evaluated for safety and suitability? Because the whole point of the ICPC is to make sure that you're sending that child or that child, when it's the other way coming to New York State is safe, a safe placement. Most children placed out of state are placed with families, often they are placed with relatives or noncustodial parents, but they may also be placed with non-relative, foster families or non-relatives who do plan to adopt. Regardless of the type of family, their suitability as caregivers for a child or a group of children are assessed on what's generally referred to as we all know, the home study. An approval or denial of a request to place a child or children with a specific family located out of state is based almost wholly on that recommendation of the completed home study report. And we're going to see that theme throughout some of the cases that we're going to talk about. If the child is placed in the care and custody of the sending state's public child welfare agency LDSS for the New York State, the home study will typically be conducted by LDSS here, or the child welfare agency in the state where you're attempting to send a child. And the home study typically includes background checks of all the family members, face to face interviews with the family members, a completion of a written questionnaire, physical inspection of the home to ensure it meets applicable safety requirements. A written home study report is prepared based on the information that is gathered. And sometimes the children who are in the care and custody of a public child welfare agency are adopted out of state families that have been working with a private adoption agency and in those instances, the private agency and the family is working typically together, they've already arranged for a home study at the time, it becomes necessary to elevate that to ICPC. So that's kind of a little bit of a different process, but nonetheless still applicable to ICPC. So That is how ICPC to the extent that anything can ensure, right, the safety of the child going into the other state. So I

think I want to take a quick pause and I know that folks can enter information into the chat to see. Carol, did you have anything to add? Did you want to add anything about the courtesy checks? I think that's probably a good place to talk about courtesy checks and explain how those work. If you're-

Carol: Sure, absolutely. The courtesy check is outside of ICPC and if the local district or an entity is looking for a courtesy check, and you don't know who to contact in the other state, you can reach out to us. And we can help you with whom to reach out to for a courtesy check in that state. Like I said, courtesy checks are just outside of ICPC. That's generally a very perfunctory kind of safety check. It is not your full home study, the individual is not certified or approved, but there are opportunities to use it. I wonder if we could jump to slide 39 Jill, if you wouldn't mind? Thank you. And this is, Sonia was saying, we're talking about retention of jurisdiction. Actually could you do 38 maybe? What I'm looking for is our, there we go: Retention of jurisdiction. Once a child is placed, it isn't as if we should be releasing jurisdiction of that case. You really want to see that the placement is going well, that the family is settling in, that the child has everything they need in regard to services in place before we really release or close that ICPC case. And per the compact, we are to retain jurisdiction until the child's adopted or reaches the age of majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. So we should be communicating with that state before we say we're done, the case can be closed, everything is going well. But we should be having that communication before we make that decision. It's very important. Usually, the minimum we see, the minimum time period for retention is probably six months after the child is placed. That's kind of a very good rule of thumb. And the beauty of ICPC too is the receiving state is going to be going in doing the case for contacts. They're going to be providing reports. Now, they only provide our office with quarterly supervisory reports. But local to local, they do monthly reports and generally send them local to local every single month. That communication is key, to be sure that the placement is going well. When we say reciprocity, understand in most cases, we're saying free. We are getting all of these services, we are getting home study, we are getting whatever services the child needs arranged for by the other state, were free. And they too alright, if they're sending a child to us, it's the same thing. We are doing this work on behalf, all of us are doing the work on behalf of the children. And in most cases there are absolutely no fees being charged. I also want to touch real quickly on the private adoption cases, something that you might also see.

In private adoption cases, if in fact, if the child is been placed into New York, and the family comes into the state of New York or returns home before they have ICPC approval, then we may not provide approval. But what we do provide is a letter indicating that while we are unable to approve the ICPC, because the child was placed into our state without the formal ICPC approval. It does still allow for the court to make a decision on going forward on that finalization. So I want you to be sure about that. And the other key piece too is, we really cannot be asking for presenting a placement request if the child is already in the home, that's a violation. The child should not be in the home until right we received the approval. I think I hopefully I've touched on some of the

high points there for you. But certainly send us questions in the chat if there's something else that I haven't sort of touched upon.

Sonia: Oh, Carol, Judge Pirro Bailey asks, "Are the monthly reports forwarded to the local agency as well?"

Carol: The monthly reports should be going from the local to the local. We only receive quarterly through ICPC. In other words, they send us like three monthly reports and then we forward that on. But local to local, they should be sharing reports monthly, right? Because our local district is responsible for maintaining the casework contact information monthly. And again-

Sonya: I wanted-

Carol: Oh, go ahead. I'm Sorry. So I just wanted to say at any time, if there's ever a question and... You'll see, I think it's screen 72 at the end, you'll see our contact information. We have a general email box that people can email us... there we go. Thank you. And our phone number here, that's the main phone number of our bureau. There's always somebody overseeing ICPC, you can email us or call if there's a question. Please know that our local districts and VAs all have individuals, who have access to NEICE, and could look at the status and see the status of that case at any time. It is a web-based application, you can get to it. There's a lot of security pieces, but it is easy for anyone who is a user with access to get to NEICE at any time, day or night.

Sonia: Carol, there's another question. And this may be for you or me, I'm sure from Mindy B. Is the discharge with the concurrence required to be in a specific format, is it verbal? Or is there a specific form or other?

Carol: It should be a formal written email, seeking concurrence on the closure, and then we will forward that to the state where the child is. They will speak to their local, they'll get back to us and then we will email our local district saying, "Yep, this can be closed." And then there is that form, the 100B the official form saying that the case is closed.

Sonya: And do we send the 100B or does the 100B get filled out by our local district?

Carol: If it is our child, we are closing the case.

Sonya: Okay. And then that goes back to that. Well, that's fair. Thank you. The point of the courtesy check question, Carol was to go back to one of the questions that came up, that was forwarded to us about relationships with other states. We want to have good relationships with other states, because they do the courtesy checks for us. And in light of some of the case law, like Emmanuel B. maybe courtesy checks are something that a local district is really going to want, especially in the First Department, right? When you have a non-respondent parent comes out of the woodwork and says, "I want to take my child." And you don't really know

anything about that home. The parents didn't have custody prior. And you don't know the suitability of that home. And in the First Department, if they're saying, "Oh, well, you have no evidence of any kind of unfitness or anything like that."

You may want to ask for a courtesy, right? You may want to ask for some background check information if you are going to be placing that child with that non-responded parent in the other home. So we want to have good relationships. But in addition to that, I think some of the things that we are seeing, is the retention of the jurisdiction. If you do send a child to another state, and we do invoke the ICPC, and that placement disrupts in the other state, just like it happens in New York and we tell the other state, you have jurisdiction over this child, you have to come and get the child, right? This placement has disrupted, the responsibility is on the other state and so that's what we want to stress too, is that you have to honor the agreement that you have entered into with regard to making the decision to place in the other state and to return the child back to New York State and find suitable placement for that child. Which all of these things are sort of interconnected with relationships with other states. We can get courtesy check, so we can get the other state to move quickly for us to the extent that that's possible. Because we know that a home study takes time, right? And to make sure they check all the boxes, just as we would in this state for me. We do have to honor all those things and I don't know if you have anything you'd like to remark on that Carol, but I know that's something that we often see from other states, you know, New York, this is disrupted, come get them...

Carol: Right. I remember when we were seeking some kind of mediation and there are times too, and we also say there are times where we have heard or been told the child or children must be returned to New York. If we delve a little bit further, in certain cases, sometimes we delve a little bit further and saw exactly what is going on, tell us what is going on. We have in some cases been able to work with that state to put, if the family needs more services, our local district will then make sure they're willing to pay for and provide those services. But if we have been hesitant to go and work with another state about the return of a child, if there is, there can be a lot of hesitancy on some of the states where we have had, New York has violated the compact, they are often very hesitant to work with us to try to mitigate what's going on in some cases saying no, because we know even if we do this for your family, you will not at the end of the day, really pay attention to the fact that this is just not working. The relationship building is key for us and violations really damage that relationship.

Speaker 1: Oh, am I answering the phone for her.

Sonia: Was that a question? I'm sorry, I missed it, if there was a question.

Jill: I don't think that was a question.

Sonia: Oh, somebody was unmuted. Sounded like a question. Okay, does anyone have any questions before we kind of get into a little bit of an overview of case law? Any questions on process? Any questions on definitions? Because we have to save time at the

end. Oh, we have a question here from Patricia. Under what circumstances can a state refuse to do a courtesy check? Oh, that's a good one.

Carol: That is a good question. Actually, my guess would be and honestly I don't know the answer to that. but that would be state specific. They might refuse to do so. Now, what if they do refuse to do so? What happens? That might require the local district or whomever to actually contract with somebody. So you're going to have to pay someone, now contracting takes a while too, in order to do your courtesy check.

Are there particular states that we have a bad rapport with that, building relations is essential? We have a couple of states that we have had some difficulty with. I'll tell you Georgia it's not that we have a bad rapport, but they are adamant. They won't even review one of our cases, unless every single document is there, is current, every T is crossed, every I is dotted. They are very, very cautious of any requests that we send to them. They will require a lot of documentation from us on their cases. They are very, very cautious of cases from us. Probably based on some history. Then we have, I let me tell you a nice story, because we always talk about how terrible things can happen. But this is a great one. The state of Florida, when we first got into NEICE group, we were about, I don't know, maybe six months into using the electronic database. And we had a grandmother who was down in Florida, child is here, of course. And just so happened, she already had her home study done. So we sent the request down to Florida electronically and we literally got the approval back within hours because they had the home study done, they were ready, grandma was prepared and they sent us everything, including the approval for the child to go live with Grandma and he was there the next day. I mean that was like before NEICE, that was like unheard of. There has been just great leaps and advances in timeframes just by the fact that we can submit electronically to many states.

Sonia: Peggy says, "No longer access to the chat."

Jill: Oh, Sonia that's just something, if someone leaves the chat, they just wouldn't no longer have access.

Sonia: I was going to say Peggy can't ask questions anyway.

Carol: There's one other thing that I wanted to raise, because we've seen this happen quite a bit. This really upsets other states, let me just say that. We have seen cases where our voluntary agencies send their own staff into another state to conduct a home study. Now, unless that individual is licensed to provide that service in that state, that is inappropriate. That's why we have ICPC, right? Because those individuals are licensed to provide that service and conduct those studies.

We should not be sending our staff into other states to conduct home studies. Certainly, certainly, certainly, certainly, our local district, voluntary agency staff can go visit the home or the child in that state at any time, right? They have responsibility for this child, they certainly could go visit to see what's, just to check in. That is not considered a casework contact, though. They can write it down, but the casework contact must be conducted by those licensed in

that state to provide that service. So when we're in an ICPC case, we're relying on that state to provide these services. I just want to make that clear.

Sonia: Thank you, Carol. Okay, so I guess we'll dive right into some of these cases. I don't think that I uploaded the cases and in their entirety from Westlaw and put them into the material that Jill had provided. But Judge Tarantelli's clerk surely did a nice job with many synopsis and all of the citations that are very comprehensive in the citation, blue book worthy for sure. And so I can share that as well should we need that out. And see, Meryl is asking, was there recent legislation about ICPC within the tri-state area? Oh, Carol, I think-

Carol: That's a border agreement. I'm guessing Meryl that's what you're referring to. We recently initiated a border agreement between ACS, Administration for Children's Services in New York City and New Jersey. But it is only in regard to five counties in New Jersey, because border agreements really are about the geographic location. So it really only references placements with relatives and someone who has a very positive relationship with the child already. It allows for the child to be moved like within 24 or 48 hours into that home under the border agreement. Like I say it's very limited, we really just started it in April and it's really just getting underway now.

Sonia: Thank you, Carol. Okay, so we'll dive into Emmanuel B. which has a First Department case that came down in 2019. So in this particular case, we have mom, she's the subject of an abuse neglect, petition by ACS and child is removed from mom. And we have dad who is over in New Jersey, who comes forward. He does not have custody or joint custody or any kind of custody from what I can tell from the case from New Jersey. But he comes forward and he makes the petition for an Article 6 custody to have the child placed with him. The child is in fact in foster care with ACS. So a couple of interesting things that was in this particular decision, the court indicates ACS has no concerns or reason to believe that that is unfit in New Jersey. So there must have been some probing. And so while the application for the Six was being appealed on the applicability of the ICPC issue, does ICPC apply or not. the court gets additional information that ACS has now asked New Jersey, to do a background check and to do a home study. And New Jersey had decided that the home was a safe setting. So I thought that was really interesting, because that wasn't information that was in the lower court, but the appellate court is talking about the additional information on safety in their decision. And this particular decision ultimately focuses its attention on the out-of-state parent rather than who in New York State is actually doing the placing, which in this case, care and custody was transferred of this child to ACS. And I think it was an easy decision for the court to make, I think, on the applicability of ICPC because the court, in fact had information in favor of the out-of-state father and that the placement was safe, right? Because ultimately, in this particular case, ICPC wasn't applicable as far as the court found. And that is very different from the law in the Second Department and in the rest of the state when a child is in the care and custody of a local district, there's an Article 10 that is still pending with regard to that child. And the dictate in the court really goes to parental rights and deniable rights of parents,

et cetera, and it talks about some of the long standing case law in New York State, and about the applicability of the regulations of ICPC and whether they go farther than what the statute allows. But I believe in this particular case, there was a request for appeal to the Court of Appeals and I believe that the Court of Appeals denied to take it up, that's my understanding. I don't see that obviously in the documentation, but the First Department and so sad for ACS because they have two competing decisions and the First Department and the Second Department but all within their jurisdiction. Leland is one of the cases that we're going to talk about. In the First Department, you have a situation where a non-respondent parent comes forward from another state and raises their hand and says, "I'm petitioning for custody of my child, there is no reason for you to think that I'm unfit in any way." And the First Department says, ICPC doesn't apply when everywhere else in the state, it says that it does. And we think that the APHSA supports that the applicability of ICPC is there. When you don't have information about that other parent, are you in fact, sure that it is a safe placement, et cetera. So how I distinguish this case respectfully that the court had gone through and made it a point to say that they in fact, knew that the placement was safe. They in fact knew that the father was fit, and that New Jersey had made some representations that a home study had been done and the suitability of the placement of the child was there, yet at the end of the day the decision is that there was no applicability of the ICPC. So this is the case, I can still remember when Margaret brought this to the attention of everyone. We were actually at NYPWA attorney meeting, and right when the decision I think came out or got publicized and we hadn't even had a chance to read it yet. And it was very interesting, because we were just kind of caught off guard because it's so inconsistent with all of the other cases. So it'll be interesting to see if there's some sighting of this particular case moving forward and how other jurisdictions within New York State may see the holding that was in the case. So far, to my knowledge, and from what I can see that there isn't any reversals in other areas of the state with regard to this particular holding. So Emmanuel B. is sort of kind of famous, right? Everybody's talking about in the First Department. And for ACS, they have the Second Department which where they have the Laland versus Bookhart case. We have a seven-month-old removed from mom, Suffolk County, in this case. The ICPC isn't involved, the father is from North Carolina, and he comes up and petitions for an Article 6 for custody of the child and the court dismisses his Article 6 application and says you need to wait until the ICPC report is pending. And the court cites a number of cases in this particular opinion that the child protective agency is involved, and was given care and custody as the placing entity and therefore dismisses the Article 6 and upholds that particular decision to dismiss that Article 6. And again, that's consistent with the ICPC Regulation No. 2 which is not the regulation that was actually discussed in Emmanuel B. saying that the APHSA regulations go too far. They talk about Regulation No. 3 in the Emmanuel B. But in the Second Department case, they look to Regulation No. 2. And this is true everywhere else, where it's placement that was originally given over to DSS, right, so I have some notes here for myself, should they have probed further? Is the dad named in the report? Any info as to the fitness, et cetera? That was something that this court really didn't talk anything about because

they dismissed their Six. There wasn't additional information about the parent, they just dismissed the Six. Said it's pending ICPC and waiting for that process to move forward. And that is the 2020 case, that came after Emmanuel B. In 2017 in the Third Department, this is the Dawn M. case that came out of Schenectady County and the 2017 case was actually cited and referenced in the Second Department, Leland/Bookhart case. And in this particular case, we have a mom, it's kind of a little bit of a long story. I think the mom and the child we're living with grandma in North Carolina. And the grandma alleges that the mom absconded with her child to New York State, but the case doesn't make clear if grandma had custody in North Carolina; I don't think she did. But at any rate, mom comes with the child to Schenectady and there are some commercial sexual exploitation allegations that are... Oh, thank you so much for pulling that up. Comes to Schenectady County and there are some, what's referred to as C-Sex allegations that are going on with a child, and the child gets removed and placed into foster care with Schenectady County. And maternal grandma, who is from North Carolina comes up and commences an Article 6 proceeding against DSS and mom and is petitioning for custody. DSS asks North Carolina for a home study under the ICPC, and North Carolina does the home study and advises New York State, do not recommend her placement. There's not a favorable home study as a result of that request for the grandmother, and for the children to be put or the child be placed in North Carolina and so the court dismisses grandma's petition for the Article 6, and makes a decision and finds placement with the grandmother is not in the child's best interest and therefore grandma appealed. And the Appellate Court says the fact that, at the time of grandma's Article 6, DSS has custody of the child in the context of the pending Article 10, which is what we talked about before. Sometimes there's concurrent Article 10s and Article 6s. But when there is an Article 10, usually of the child welfare agency involved into that end where the custody of the child was under supervision of the DSS and is transferred to the DSS custody, ICPC applies. And the current court further states in this case that the primary and stated goal of the ICPC, which I read to you earlier that came right out of the APHSA is, to ensure that each child requiring a placement shall receive the maximum opportunity to be placed in a suitable environment. And this particular decision goes further, I think to talk about some of the intended goals of ICPC. And this is Dawn M. is what was reinforced in the Second Department with regard to the nexus with DSS and Article 10s. and dispositions by Ssixes that I think the rest of the state has that same understanding and has been following those particular rules and Emmanuel B. sort of being the outlier there with regard that particular case. Oh, Jill says that the case citations are not included. Thank you, Jill for sending those out. I think you're right, that particular sheet and Judge Tarantelli's clerk surely did a nice job in summarizing some of those cases to be expanded upon a little bit further. So another case, hard for me to see there but I have my own notes, is in the Third Department in this case is the Hope J. case from 2021. So pretty new decision. We have two children in foster care. This one is, it appears this one is a little bit of a strange case because it's an authorized agency bringing a motion for a termination of parental rights of mom and grandma who lives in Florida filed at the time of the termination by the authorized agency under the Social Services Law who makes the petition for

the termination. Grandma comes from Florida and makes an Article 6 for custody of the children. The court ends up consolidating the two hearings, and moves for termination and grants a termination of parental rights as against the mom, and dismisses grandma's Article 6 and then gives custody of these children to ACF. So there must have been a nexus with ACF, since this is a Third Department case and not down there. Besides, some of the other issues that are going on in this particular case, the court finds that the grandmother's petition was properly dismissed since the court could not have awarded her custody anyway without the ICPC approval. And in this particular case, Florida did not recommend that the grandmother receive placement via ICPC. That's an interesting case. Also in line with the Second Department Leland case, and the 2017 Dawn M. case, and this is a 2021 decision. So thank you for pointing that out, I did not receive a copy of that case. I'm so glad that Judge Tarantelli had mentioned this particular case to us, so we could read that. And it's also I think, it's not something that we see all that often where there's a termination that's moved forward from under the Social Services Law authority. And so haven't read many cases about that, so that was very interesting.

Another case being from Kings County, and this is the matter of Solai J. from 2019. In this particular case, ACS removes a child, I think it was an emergency removal, but not really removed, because ACS did not receive care and custody by the court of the child and the non-responded father took physical custody of the child. There was no remand, ACS did not have care and custody and the court releases the child to the out-of-state. And the court says there's no ICPC here because there's no placement, the father gets rights to the child. And I would say that, although some of the facts in this particular case are a little bit odd, because there was an actual removal, but not removal to ACS. And they didn't indicate in here that it was a safety plan to non-responded dad or anything like that. There's not a whole lot of information in this particular case, but this child was not in the care and custody of ACS, in this particular case, and the court found no ICPC and went on further to talk about the placement issue. Like who's placing the child, ACS was not placing the child, the dad came forward and was taking the child. So that's very interesting. It was not appealed, to my knowledge, from what I can see. Thank you for that particular case and bringing that for our attention as well. And then, the last case that was referenced here as a Second Department case, the matter of Tumari. In this particular case, a child is removed and placed with ACS and the child is then placed in a kinship foster care placement and during this time the court directs ACS to investigate dad, right? Dad is actually here in New York State, it's not entirely clear if the dad actually lives in New York State. Because there's some information that his home is in the US Virgin Islands. But be that as it may, the court directs ACS investigate dad, dad's coming to court, dad wants the child, see what's going on with dad? Dad even says, "Listen, I'm here, but I intend to return to my home in the US Virgin Islands." ACS investigates dad, recommends to the court should child could be released to dad. So there's a neglect going on at the same time with mom, and mom says, "I don't want the chuck children to go with dad. He's going to end up taking them, back with him to the US Virgin Islands." And the court says, "Okay. While you're pending this particular appeal, because our decision is to release with dad and you want to appeal, we're going

to allow for that and we're going to stay the order so dad can't take them down." So mom's after getting stay, she gets it granted. And the court in this particular case, cites the matter of Alfredo West, which is, throughout a lot of these cases, it's kind of long-standing. That there's no placement in another state here. That the father is not the sending agency and dad can relocate if he wants to. Although it seems to contradictory conclusion in this case, dad can relocate if he wants to and can have the child. but when in other parts of this particular decision, it's clear that dad's home is in the US Virgin Islands, but they find no placement. So we go back to that whole definitional section about how placement is really important. And I'll tie that placement issue back to the Emmanuel B. case, where they were really more focused on in the Emmanuel B. about the out-of-state father and the sending issue, right? They were really looking in that particular case and indicated in that case, not focusing on who's doing the placing, but where they're placing to and who they're placing to. Not so much focusing on, who is the placing authority? And that placing authority, and how does ICPC apply and doesn't apply goes back to that chart, that we opened this particular training with and what applies and what doesn't apply and who's doing the placement? Who has the ties in these scenarios? DSS has the tie, DSS has care and custody or the current court has retained jurisdiction where they're either in the middle of trying to decide a Six, they're going to give a temporary order under a Six. They have 1017, there's a 10 pending. Usually in these cases, there's a 10 pending and they're looking to see if they're going to do a dispo on the Six, but still the child protective agency is involved. And that ties nicely into, right, safety. So that's why I think Regulation 2 does have that mechanism of a courtesy check so when you're in doubt, I think, I mean, our best recommendation would be that you really want to the best of your ability to ensure safety and suitability when a child is going to another state. There's CPS involvement, there's DSS involvement that's going on and you really want to make sure that where it is that your disposing of this case, ultimately, there's going to be a disposition and there's going to be a placement in another state that it's safe, it's suitable, the child is receiving the services that they need. They've already been traumatized by being introduced into the child welfare world and I'm sure that there are services that are necessary to provide continuity and placement, ultimately permanency for that particular child. When in doubt, I mean, once you do start the ICPC process, I don't know if we talked about that, Carol, though. But what that means is that there is a whole agreement. And that agreement is retaining jurisdiction until there is a full disposition, and that case is terminated on the New York and that form that Carol had referenced is fully filed, sent back to you and the ICPC being closed, that we have all the protections in place to ensure suitability. So I think that is it for the cases. I'm wondering if there are any questions on process, on the cases? I don't know if I can answer those particular questions on the cases. Oh, Judge Bailey, would it be your opinion that ICPC applies when there is an emergency removal free petition? For example, Carol can you see the whole question from Judge Pirro Bailey? You're on mute Carol, I can't hear you.

Carol: ICPC applies when there is an emergency removal. Pre-petition for example, that the court has not been involved yet, and the agency wants to have a safety plan of placement with a parent in another state.

Sonia: I would say yes.

Carol: Because it is a placement, correct?

Sonia: Yeah. It's a placement, DSS is involved. When there is an emergency removal pre-petition, there is an emergency basis placement into a foster home whether they are certified yet or not. But for the DSS to have full force and confidence of that child being placed in another state to a non-respondent parent, for whom New York Court did not give custody. They don't have shared custody. You don't really know too much about what that placement is, just from a practical standpoint and for everyone's cover. Whether it be the court, whether it be the DSS. I think the DSS would want to be pushing for ICPC to be involved at that particular point, but there's still court involvement. There's still agency involvement, there's ties there. So we would say yes, I think some of the case law that we talked about would support that position. Because once they're removed, there is a petition moving forward. I would imagine to get care and custody, but they've placed them already in New York State on an emergency basis into foster care. Any other questions? It's okay, if you don't, because Carol put her personal phone number.

Carol: Call anytime.

Sonia: Absolutely. Call anytime. Carol has a great team to that, there's an entire team. Not of a lot of people, but there is an entire team who works on ICPC diligently.

Carol: And exclusively.

Sonia: And they do a wonderful job. But to the extent there are additional information that we can provide, or if there's other questions that come up, the PowerPoint goes through kind of the 101 basics. So, please refer to the PowerPoint and then all the backup materials are in there. It's confusing, obviously even for the courts, right? We have a difference between the First Department, Second Department and rest of state. It was not an easy concept for me to learn when I was down at ICPC, is a programmatic area, right?

Carol: I also wanted the variation among states and there is really no way for all of you to know that. Until an ICPC request comes to us or until someone asks about a particular case based on case specifics, depending on the state, the answer might vary.

Sonia: Meryl has a question, Carol. You mentioned that there are states that will not do an ICPC for custody only for foster care. What can be done in those cases where the receiving family wants custody and not to be a foster parent?

Carol: If you are granting direct custody to an individual, you should not be coming through ICPC, right? You're going to get direct custody and they're not going to be a foster parent. I wouldn't advise that. I just think that needs to come through ICPC. You have a foster child here.

Sonia: Right. That's what these cases are talking about, where there's the nexus with child welfare. Let's see, it looks like Judge Reed is a best practice for Article 6 in the context of an Article can be dismissed if the ICPC is in progress or has not yet begun. Well, that's what these other cases are talking about. That it seems like it's upheld in the dictate in these cases, where multiple courts are dismissing the Article 6 petition because there they don't have the ICPC and it seems like, I don't know if that's best practice. I can't really opine on that, but I can see that it's supported in this case law. I see Richard wrote the Court of Appeals granted leave Leland on May 27, 2021. Hopefully there'll be some... That's so interesting. I hope that you share that with us, if it doesn't come to our attention right away. That's so interesting that the Court of Appeals took leave on that case concerning the ICPC applicability to parents. Maybe we'll get some resolution with regard to Emmanuel B. as a result.

Jill: I'm sorry Carol, if I can chime in just for a second. CLE code and our final CLE code. That code is four. N as in Nancy. Four. C as in Carol. That code again is four. N as Nancy. Four. C as in Carol. Thank you.

Sonia: Thank you so much Jill, and to everybody who participated today, and gave us your time, and really were thoughtful and the questions that you had asked beforehand, that was really very helpful. Probably the most important thing that you can take away from today is 518-474-9406. Please feel free and I'm more than happy to help support Carol's to the extent there are questions.

Carol: And then I do want to say, we are not attorneys in the ICPC unit. We rely heavily on our counsel's office in some of these cases. We might not always have the answer for you immediately, because we do need to consult at times.

Sonia: Thank you-

Carol: Thank you very much.

Sonia: for setting this up. And thank you everybody, for your time and your patience with the technology. And it was wonderful to see some faces, thank you.

Jill: Thank you all and on behalf of Chemung County's Child Welfare Court Improvement Project and Judge Tarantelli, who was having technical difficulties. They wanted to say thanks as well. Sonia and Carol, if you are on, there was one last question. How do you get a border agreement with another state? I don't know if you've already answered that.

Carol: Border agreements, let me just say it took quite a long time for us to develop the border agreement with New Jersey. The party states need to consult, they would need to bring our office in, to the conversation. Like I say it really needs to be adjacent. Border agreements are intended for adjacent geographic areas. It's not as if we could do an entire border agreement with the entire state of New Jersey, that's not the intent.

Tracy Lyons: Hi, Carol. It's Tracy Lyons. I know a lot of people in my counties are attending today because they had particular interest in the border agreements, specifically Orange County, because it borders New Jersey and Pennsylvania. So I know Judge Currier Woods was able to attend, I'm not sure if she's still on, but maybe she'll reach out to you to see if they can start work on that. And also on the Putnam side, there's Danbury, Connecticut and of course, lower Westchester borders Connecticut and New Jersey. So there's a lot-

Carol: Right, so we've had conversations I can't remember, I forget now, which county it was. And honestly, what we did before the conversation is we did review the number of cases that move between those counties, and it was, and I'm not saying it's the counties that you're speaking about, but the first thing you want to do is really determine the number of cases you have moving between the counties that you're suggesting for the border agreement. A lot of work goes into a border agreement and if it's only for two cases a year, you know, what is the value there?

Jill: Ladies, thank you again, so much. Appreciate your time. And for everyone who's still left on this call, thank you so much.

Sonia: Thanks, Carol. Thank you, everybody-

Jill: Thank you.

Sonia: I can't reach everybody in the chat because it won't let me type, but thank you so much for the kind words and have a wonderful day. Thank you. Thank you Carol. Thank you Jill. Bye