

MONTHLY MEMO #5– ADVOCACY TIPS FOR AN ICPCⁱ WITH RELATIVES

November 2024

Scenario:

You represent a parent who wants their child placed with an out-of-state relative.ⁱⁱ

The Problem:

ICPC placement approvals take a long time, with many layers of bureaucratic communication and room for delays. Successfully navigating an ICPC requires front-end communication with your client’s relatives and advocacy with the various agencies and decision-makers.

Before you request an ICPC:

Ask your client for a list of possible relative placements. Go through this list with your client to understand their relationship and caregiving ability. With your client’s permission, contact each relative to explain the ICPC process. Ask if they are willing to be a placement resource.

Only pass on to the social worker the names of relatives who are still willing to serve as a placement resource once they understand what it entails. Ensure the relatives know about any behavioral needs of the child and have assessed their own caretaking ability. They may have been uncomfortable saying “no” to your client but may be more candid with you. It delays the process and casts your client in a bad light to recommend relatives who say “no” or never respond to the social worker.

Once relatives understand and agree to be considered as a resource, talk them through the home study process. Familiarize yourself with their state’s requirementsⁱⁱⁱ—for example, Virginia requires that relatives become licensed foster parents. Go through the [home study form](#)^{iv} together to flag any issues that may cause denial, and discuss ways to resolve those issues. Ask the relative to send you photos of their home. Review them for safety hazards that would be a quick fix before the social worker arrives.

Help the relative prepare for the visit from their local social worker by developing a **plan of care** together. This includes where the child will go to **school** or daycare, **after-school care**, and what **medical** and dental providers they plan to use. Ask the relative to find a copy of their **lease** to have ready for the social worker. Explain that the social worker will be asking about their income and talk through any **financial concerns** that caring for the child may raise. Explain that they may be able to apply for TANF once the child is placed. Depending on the state, they may also receive funds as a licensed foster home.

Your Initial Request to DSS:

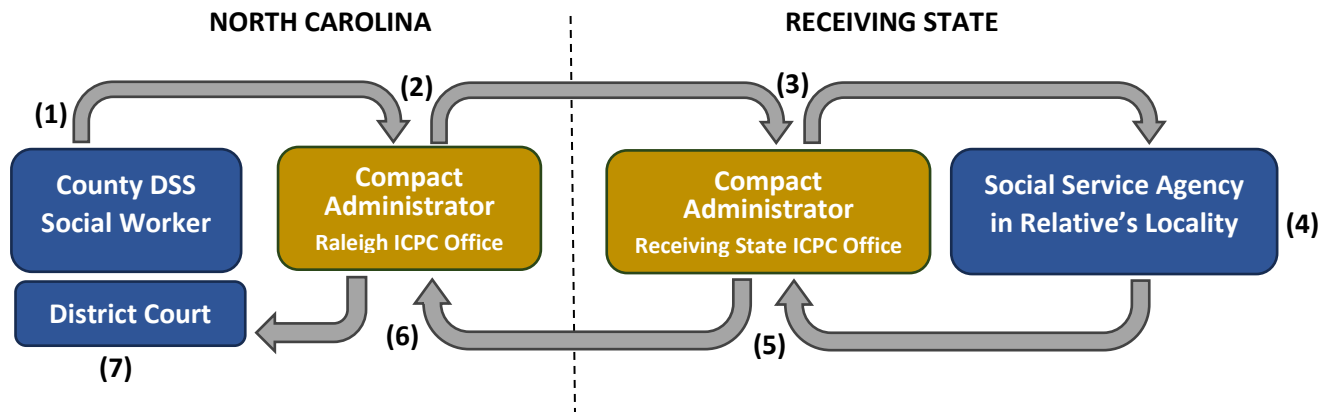
Once you have determined with your client that you are ready to request an ICPC for their relative, contact DSS as soon as possible, as they must formally initiate the process. If your client’s case is in a lull, such as following a nonsecure hearing, do not wait until the next court date to bring up the ICPC. Instead, **email the DSS social worker** and cc the DSS attorney to document that your client is proposing placement with an out-of-state relative pursuant to the ICPC. Include the relative’s **name, address**, and whether you are requesting an **expedited** home study. In this email, request that by the next court date, they either start or complete the packet, depending on how far out court is. As the date nears, email the DSS social worker to ask if they sent the packet to Raleigh and, if known, when Raleigh sent it on to the receiving state.

Risks of out-of-state placements

It might not be in your client’s interest to advocate for an out-of-state placement. While relative placements are often more aligned with the child’s best interest than stranger foster care, **it can greatly reduce your client’s chance of successful reunification.**

Especially if your client lacks reliable transportation, regular in-person visitation may no longer be a possibility, hindering the reunification process. Make sure your client is properly advised of the risks before requesting an ICPC.

The ICPC Path:



- (1) Once the Interstate Placement Packet is completed by the county DSS social worker, it is sent to the North Carolina Compact Administrator in Raleigh.
- (2) The Raleigh Compact Administrator makes sure the packet is complete, approves it for sending out, and transmits it to the Compact Administrator in the receiving state.^v
- (3) Once the packet arrives in the central office of the receiving state, the clock starts. That office looks at the packet for completeness and then forwards the packet to the social services agency office in the local community where the prospective placement lives.
- (4) The social services agency will then go out to the home, meet with everyone in the home, conduct background screening, and complete a report within 60 days.^{vi}
- (5) The completed home study report is then sent from the local agency to the central ICPC office in the receiving state, which either **approves or denies** the placement request based on the recommendation of the home study report. This final approval should be made within 180 days from the clock starting.^{vii} The approval is then sent from the receiving state to the central office in Raleigh.
- (6) Finally, Raleigh sends the county a copy of the completed home study along with documentation of the receiving state’s decision to either approve or deny the placement request. The North Carolina Compact Administrator retains authority regarding whether to use the approved placement resource.^{viii}
- (7) The district court retains decision-making power over whether to change the child’s placement. Note that ICPC approvals are **valid for 6 months**.^{ix}

See Appendix 1 for a **Task Tracker** to apply the ICPC Regulation timeline^x to your client’s case.

COURT ADVOCACY



As your court date is approaching, follow up with the local DSS social worker.

- If it appears that DSS has not sent the ICPC packet to Raleigh, **draft an order** for the judge, using the attached template “ICPC Order”, to order that DSS complete and send it in by an established deadline.
- If DSS fails to comply with this court order, move for **contempt** or for an **Order to Show Cause**.
- If DSS has sent the packet on to Raleigh but it is stuck there, **subpoena** the [compact administrator assigned to your county](#) to testify as to the reason for the delay.
- While it is possible to subpoena the receiving state’s compact administrator pursuant to the [North Carolina Uniform Interstate Depositions and Discovery Act](#), this may be a difficult process. Continued phone calls and emails to the receiving state’s [compact administrator](#) may be more effective.

EXPEDITED PLACEMENTS

Is it Appropriate to Request an Expedited Placement?

In certain cases, you may request an expedited placement decision under [Regulation 7](#). Children are eligible for expedited placement for any of four reasons:

- a. **Unexpected dependency** due to a sudden or recent incarceration, incapacitation (due to a medical, mental, or physical condition), or death of a parent or guardian.
- b. The child is **four years old or younger**, including older siblings sought to be placed with them.
- c. The court finds that any child in the sibling group sought to be placed has a **substantial relationship** with the proposed placement resource. (Familial or mentoring role, has spent more than cursory time with the child, has established more than a minimum bond with the child).
- d. The child is currently in an **emergency placement**.

Expedited placements are only available for parents, stepparents, grandparents, adult siblings, adult aunts or uncles, or legal guardians. [Regulation 7-5](#).

Expedited placements are designed to render a placement determination within 27 days. [Regulation 7-9](#). Regulation 7-9 establishes timeline requirements for all parties and serves as the basis for the timeline established in the Form Order for Expedited Placement. A **provisional placement**—which is determined on an even shorter timeframe—can be requested within the expedited placement request, but the receiving state is not required to comply with such request. [Regulation 7-6](#).

How to Request an Expedited Placement:

Request DSS to move for an expedited placement using the linked [Form Order for Expedited Placement Decision](#). This Order of Compliance, established consistent to [Regulation 7-8](#),^{xi} orders the local DSS office to transmit the packet to the Raleigh ICPC office within 3 business days, and orders that Raleigh send the request to the receiving state by 2 days later. It further designates a person to maintain communication with the Raleigh Compact Administrator and update the court and all parties prior to each hearing.

The form order was designed for DSS use and thus includes a finding that the agency has completed necessary steps (paragraphs J and K). **If DSS is not willing to tender the Form Order for Expedited Placement Decision**, submit to the court the Form Order for Expedited ICPC Home Study template which instead of including findings of DSS's efforts, compels them to complete those steps.

To Enforce Expedited Placement Timeline:

- If DSS does not follow either the time or notice requirements of the court Order of Compliance, file a Motion for Contempt or Order to Show Cause.
- If the Raleigh Compact Administrator does not follow these requirements, **subpoena** them.
- You can also subpoena the **receiving state's** Compact Administrator (find their contact information here: icpcstatepages.org) to testify as to their delay and noncompliance with the ICPC regulations.
- While a North Carolina juvenile court does not have jurisdiction over the receiving state agency's actions, [Regulation 7-11](#) instructs that the sending state court may inform the appropriate court in the receiving state of the non-compliance, and that court may hold hearings or issue orders to promote compliance.
- Use page 2 of the Task Tracker to apply the expedited timelines to your case. Appendix 1.



Reconsideration of an ICPC Denial:

If the **receiving state social worker rejects** the relative at the home study stage for something minor and fixable, like lacking a window guard or an insufficient number of beds, the relative may be able to ask them to come back in a few days and re-evaluate, but many social workers may be unwilling due to their busy schedule. Encourage the relative to reach out to you quickly for advocacy help in this circumstance.

If the **receiving state ICPC office denies** the placement, the Raleigh office can request a reconsideration within 90 days. [Regulation 2-9](#). The reconsideration can be requested with or without a new home study. The receiving state ICPC office has 60 days from receiving the request to change the decision. 2-9(b).

If the relative was denied for a discrete, fixable reason, and has fixed the issue (for example, purchased another bed), ask the DSS social worker to ask the Raleigh ICPC office to submit a **reconsideration request with a new home study** under Regulation **2-9(a)(2)**. If the DSS social worker does not comply, obtain a court order. However, the receiving state is not obligated to activate the new home study request. *Id.*

If you believe the receiving state is unlikely to agree to a new home study, such as if it took an exceptionally long time for the local social worker to make it out to the relative's house in the first place, it may be best to go through Regulation **2-9(a)(1)**, which **does not involve a new home study and permits the sending state to attach their own evidence**. Request the DSS social worker, either voluntarily or through court order, to ask the Raleigh ICPC office to request a reconsideration under 2-9(a)(1). While communication with Raleigh is the DSS social worker's role, you should work with the relative to collect and organize evidence, like a photo of a new bed or an exterminator receipt, to assist DSS and Raleigh in their request.

After 90 days, nothing precludes Raleigh from requesting a new home study and starting the ICPC process over. Regulation 2-9(a). A separate appeal process may also be available in the receiving state. *Id.*

Court Advocacy After Placement—Visitation:

Once a child is placed with an out-of-state relative pursuant to the ICPC, your advocacy is not over. A clear visitation plan can help keep everyone on the same page towards reunification or set up a strong TPR defense. Advocate for a **court-ordered visitation plan** that establishes your client's right to visit their child, as well as clear rules around what is and is not allowed.



Ask your client what they can commit to, given logistical considerations such as work schedules and transportation. Ask what they need from DSS to be successful, such as virtual visits. **The order should:**

- Ensure that the "minimum" frequency and length of visits is realistic to avoid a future finding that your client failed to "take advantage of" court-ordered visits.
- Allow for liberal visitation on top of the court-ordered minimum.
- Specify what responsibilities DSS has, if any, to assist the client with transportation costs.

Share this order, and any updates, with the relative. Knowing the rules helps the relative feel comfortable allowing visits. It also helps avoid DSS pulling the child because the relative allowed *too many* visits.

At **permanency planning hearings**, continue asking DSS what **reasonable efforts** they have provided to maintain the parent-child relationship. Ensure the judge's findings reflect the established visitation plan.

Conclusion:

Navigating an ICPC delay may feel like a hopeless task. By communicating proactively with your client's relative and the DSS social worker, obtaining necessary court orders—and enforcing them—you can protect your client's interest and their child's ability to remain with family and out of stranger foster care.

Refer to the advocacy task tracker when you are at a standstill and need to figure out the next step!

ⁱ The Interstate Compact on the Placement of Children (ICPC) governs the placement of children in foster care, adoptive homes, and institutions across state lines. The ICPC is a binding statutory agreement that has been adopted in all fifty states, the District of Columbia, and the U.S. Virgin Islands. It consists of ten different articles, and in North Carolina, it is codified at Article 38 of the Juvenile Code, [G.S. 7B-3800](#) et seq. The district court has exclusive original jurisdiction over ICPC proceedings. G.S.7B-200(a)(1). [A/N/D and TPR Manual, Chapter 7](#)

ⁱⁱ If you represent an out-of-state, non-removal parent for whom DSS is requesting an ICPC, refer to our [August 2024 ICPC Monthly Memo](#).

ⁱⁱⁱ See Appendix 2 for a comparison of requirements from common receiving states; or see the [ICPC State Pages](#).

^{iv} Form ICPC-102, "Receiving State's Priority Home Study Request," published by North Carolina as DSS-5253. Available at: policies.ncdhhs.gov/wp-content/uploads/dss-5253-ia.pdf

^v Neither North Carolina policy nor the ICPC Regulations establish a timeline for the Compact Administrator to forward the packet to the receiving state in non-expedited cases. See [North Carolina Dept. of Health and Human Services, Interstate/Intercountry Services for Children \(December 2021\) at 62](#) (instructing Interstate Services staff to evaluate the packet for "completeness and compliance" and then forward it on); [Regulation 2-5](#); [Regulation 2-7](#).

^{vi} "As quickly as possible, but not more than sixty (60) calendar days after receiving a home study request, the receiving state shall ... complete a study of the home environment. ... The receiving state shall return to the sending state a report on the results [which] ... may or may not include a decision approving or denying permission to place the child. In the event the parts of the home study involving the education and training of the placement remain incomplete, the report shall ... includ[e] an anticipated date of completion." [Regulation 2-7\(a\)](#).

"If the receiving state cannot provide a decision regarding approval or denial ... at the time of the ... home study report, the receiving state should provide the reason for delay and an anticipated date for a decision regarding the request." [Regulation 2-7\(b\)](#). If the delay is due to factors such as licensing requirements, "a reasonable date for compliance shall be set forth in the receiving state transmittal accompanying the initial home study, if possible." *Id.*

^{vii} "Final approval or denial of the placement resource request shall be provided by receiving state Compact Administrator in the form of a signed ICPC-100A, as soon as practical but no later than one hundred and eighty (180) calendar days from receipt of the initial home study request. This six (6)-month window is to accommodate licensure and/or other receiving state requirements applicable to foster or adoption home study requests." [Regulation 2-8\(a\)](#).

^{viii} [North Carolina Dept. of Health and Human Services, Interstate/Intercountry Services for Children \(December 2021\) at 58](#).

^{ix} ICPC approvals are valid for six months from the date on which the receiving state signed Form 100A. [Regulation 2-8\(d\)](#).

^x The Association of Administrators of the ICPC promulgates these Regulations. The Regulations were briefly enacted into North Carolina law in 2019 but were repealed in 2021. [A/N/D and TPR Manual, Chapter 7](#) at 48. The School of Government cautions that some of the amended regulations conflict with earlier North Carolina appellate court decisions interpreting the ICPC statute. *Id.* The current regulations are housed online in a pdf document at this link: aphsa.org/wp-content/uploads/2024/10/ICPC-Regulations_TOC.pdf. The North Carolina DHHS policies and procedures, available here: policies.ncdhhs.gov/wp-content/uploads/cws-cn-05-2021a1.pdf, also provide a framework for compliance with the ICPC.

^{xi} Compare NC form order [DSS-1839](#) to the form order published by the Association of Administrators of the ICPC: aphsa.org/wp-content/uploads/2024/09/FormOrderforExpeditedPlacementDecision2011Revised.pdf.

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