

Interstate Compact on the Placement of Children (ICPC): Assessment



Court Improvement Project
Administrative Office of the Courts
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A. Introduction

The Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239) requires that, as a condition of receiving Court Improvement Program (CIP) grant funds, state courts assess their role, responsibilities, and effectiveness in the interstate placement of foster children, and implement improvements to expedite these placements. Specifically, state courts must assess (a) the effectiveness of their laws pertaining to information sharing with out-of-state courts, (b) the methods available for obtaining information and testimony from agencies and parties in other states without requiring travel, and (c) the procedures to permit parents, children, attorneys, and others to participate in cases without requiring interstate travel. The assessment must also identify any legal barriers that prevent timely judicial decisions regarding interstate placement.

The Nevada Supreme Court through the Administrative Office of the Courts and the Court Improvement Program contracted with Joanne M. Brown, JD., MSW, an independent consultant, to conduct the assessment.

The assessment methodology included the following:

- (1) A random sample of active ICPC cases;
 - (2) A survey of judicial officers regarding their experience with the ICPC, information sharing and interstate hearings;
 - (3) Interviews with DCFS ICPC manager, Deputy Compact Administrator, staff, and regional DCFS administrators;
 - (4) Focus groups with Clark County Department of Family Services ICPC unit and licensing staff and the Washoe County Department of Social Services Director, ICPC coordinator and child welfare staff, composed of line social workers and supervisors;
 - (5) Interviews of five judicial officers;
 - (6) Interviews of subject matter experts and local counsel;
 - (7) A review of state laws, court rules, and practice in dependency proceedings;
- and, an
- (8) Analysis of the ICPC process (in draft) and issues relating to implementation.

Overall, Judges across the state expressed frustration with the ICPC and what they regard as the limited accountability it provides for out of state placements. Attorneys likewise were frustrated with inadequate provisions for continued contact with their clients, the absence of an appeal process for placement denials, and the unexplained delays in the

completion of home studies. The attention of the Compact Administrator to safe, timely and appropriate placements of children inside Nevada and in sister states precipitated a comprehensive reorganization and restructuring of the ICPC office beginning in mid-2007, which was in progress during the course of this assessment. Sarah Webster, from the National Child Welfare Resource Center on Organizational Improvement, has been consulting with DCFS on the process. The comments by the courts and lawyers largely reflect their experience with the previous system and their concerns about systemic weaknesses, many of which have been the focus of the reorganization. Although the courts have not yet seen the impact of the new system, over time these changes may resolve many concerns. The report contains some recommendations for improvement, which would require modifications to the ICPC and consideration of additions to Nevada's law and Rules of Court.

B. Nevada Statutory Authority and Rules of Court

Nevada's statutes, case authority, and Rules of Court allow the courts to adopt measures to ensure that out of state parties, attorneys, and caseworkers can participate in cases without requiring being physically present in a Nevada courtroom. Applications for such appearances require formal motion and specific findings by the court. A brief summary of the relevant laws follows.

1. Interstate Compact on Placement of Children (NRS127.330)

This Chapter enacted in 1985 incorporates the text of the ICPC in its entirety and authorized Nevada's enrollment in the Compact. The Compact is an agreement among all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands which is enforced by each signatory adopting the ICPC as statutory law. Adoption of the ICPC began in 1960. It establishes procedures for the placement of children and is designed to ensure that placed across state lines for foster care or adoption are safe and provided necessary services. The Compact regulates activities concerning the placement of Nevada children across state lines (e.g., seeking permission for the placement from the *receiving state*), and the acceptance of children from other states or *sending states* (e.g., conducting home assessments to determine the suitability of a placement). The Compact defines the types of placements covered by the law, the persons or agencies which must follow Compact procedures and detailed requirements. The Compact also establishes administrative

procedures and financial responsibilities for the states involved in the interstate placement.

The law identifies four specific circumstances in which children may be sent from one state to another through the provisions of the Compact: placement preliminary to adoption; foster care placements (including group homes, residential treatment centers, and institutions); placements with parents and relatives when a parent or relative is not making the placement; and, placements of adjudicated delinquents in institutions/programs in other states.

The Compact provides for specific procedures as well as checks and balances: (1) requires notices and evaluations of the suitability of each placement before it is made, (2) allocates the legal and administrative responsibilities during the time of the interstate placement, (3) provides a basis for enforcement of rights and responsibilities of the sending and receiving parties, and (4) authorizes joint actions of the state ICPC administrators to further the effective and efficient operations and services for children in interstate placements to ensure that their safety, well being and permanency needs are being met.

Nevada's ICPC Deputy Compact Administrator serves as the statewide point of contact and liaison with other states' Compact Administrators and federal and state agencies and national organizations. The Deputy Compact Administrator and ICPC staff provide information and consultation to other state and local adoption and child welfare agencies, lawyers, Judges, court staff and individuals interested in locating or providing a new home for a child inside Nevada or in a sister state.

2. Nevada Revised Statutes (432B.540; 432B.550; 432B. 553)

These statutes authorize the agency with legal custody of a child to adopt a plan for the permanent placement of the child and to effectuate that placement, with parents, relatives, third parties, group homes or institutions, located in Nevada and if necessary, outside of Nevada (NRS.127.330) District Court adoptions are authorized by statute (NRS 127), termination of parental rights (NRS 128), divorce and related custody jurisdiction (NRS 125). Independent adoptions must meet the requirements of NRS 127 (NRS 127.280) which mandates that the "medical, mental, financial, and moral backgrounds of the prospective

adoptive parents” be investigated. Criminal background checks are also required.

In 1987, through the enactment of NRS 127.400, Nevada joined the Interstate Compact on Adoption and Medical Assistance. This Compact reinforces the state’s fundamental interest in promoting the adoption of children with special needs and authorizes DCFS to enter into interstate compacts to provide adoption and medical assistance for such children. Each signatory state is required to establish procedures to support these adoptions and to protect the rights of children with special needs.

Uniform Child Custody Jurisdiction and Enforcement Act

This Act governs proceedings in which legal custody, physical custody, or parenting time for a child is an issue. Child custody proceedings typically refer to domestic relations cases (i.e. divorce), but the law also applies to custody proceedings in abuse/neglect, dependency, guardianship, and termination of parental rights cases. UCCJEA does not govern adoption proceedings. The law essentially grants full faith and credit to out of state custody orders, and allows individuals not residing in Nevada to participate in court proceedings by electronic means. It also clarifies jurisdictional issues when custody issues cross state lines and is a primary vehicle for judicial communication and problem solving across state borders. The authority for using UCCJEA to advance out of state placement of children in foster care is clear but the logistics of reaching a judicial officer who has jurisdiction makes the situation much more complicated and consequently, less utilized for these children.
(NRS 125 A)

3. Nevada Court Rules:

a. Discovery

In practice, rather than by specific rule, Dependency proceedings are governed by the Rules of Civil Procedure. Nevada statutes provide for broad discovery and standard protections for common law privileges and confidentiality.

b. Technology: Telephone or interactive video technology etc.

Nevada enacted Electronic Filing Rules, effective March 1, 2007, by which specific documents may be filed electronically in all municipal, justice and district courts and in the Supreme Court. Facsimile copies may be considered as original documents. A Commission appointed

by the Supreme Court is currently studying what Rules of Court might be enacted to specifically authorize use of alternative means of appearance and will report back to the Supreme Court at the forthcoming legislative session.

c. Out of State Attorney Rule (Pro Hac Vicea)

Supreme Court Rule 42 provides an exception to the unauthorized practice of law by allowing a person who is licensed and duly authorized to practice law in another state, territory, or the District of Columbia, to engage in the trial of a specific case in a court or before an administrative tribunal in this state when associated with, and on motion of, an active member of the State Bar of Nevada who appears of record in the case.

4. Implementation of ICPC in Nevada’s blended state-county system

Nevada does not have a unified state system of social services. Three primary jurisdictions, Clark County, Washoe County and the State of Nevada share responsibilities for protecting children and providing social services to families in need. As a result, the processing of ICPC applications depends on the efficient coordination between more than just rural and urban counties or offices but different jurisdictions. The Compact Administrator and the ICPC state office is located inside the Department of Health and Human Services, Division of Child and Family Services. The ICPC office has the responsibility for communicating with other states in the case of receiving or sending ICPC requests for placement. The Compact Administrator is the DCFS Administrator. The individual applications for out of state placement and the home studies and supervision required for instate placement are processed through Washoe County DCFS, Clark County DFS, or the state DCFS rural regional supervisors. The Compact Administrator has the responsibility for insuring that Nevada practice complies with the ICPC, federal law, and rules and regulations issued by the Administration of Children and Families (DHHS)

a. Interstate Adoption Procedures

At the time of this assessment, a draft ICPC policy was being circulated to the jurisdictions for discussion. This draft policy provides a comprehensive set of procedures for DCFS staff to follow when

completing an interstate adoption as well as clear guidance to other jurisdictions inside the state and to other states regarding what is required to successfully complete an interstate adoption.

b. Interstate Foster Care Procedures

This draft policy describes procedures for DCFS staff to follow when placing a child out of state for foster care or relative placement. The policy outlines the requests for services that may be referred to Washoe County or Clark County ICPC units including the contents of home studies, placement supervision in state and continuing supervision when the child is in another state; the process to follow upon receipt of a referral from another state; and the use of ICPC Regulation 7.

c. Border Agreements

As of the time of this assessment, Nevada has not entered into any border agreements with neighboring state(s). Some experienced staff in the ICPC units interviewed in Washoe and Clark County expressed the opinion that although they might benefit from a border agreement with Arizona or California, they exchanged information as appropriate through personal professional relationships.

d. Regulation 7 (Priority Placement)

Regulation 7 of the ICPC was added to allow courts to order that a sister state give priority to an application for interstate placement under certain circumstances. The regulation requires explicit court findings that specific circumstances have been established that qualify this case for priority processing and specifies timeframes for the receiving state to make a determination if placement will be accepted and notify the sending state. The use of this regulation in Nevada is difficult to assess because many judicial officers reported that they were not familiar with the regulation and/or had not been requested to make the necessary court orders. A few judicial officers were very knowledgeable about Regulation 7 and reported that they were asked to make Regulation 7 orders on multiple occasions each year.

e. Regulation 9 (Visitation)

Regulation 9 distinguishes a **visit** with a friend or relative in another state from a **placement**. The regulation allows a child to visit a friend or relative in another state for up to 30 days, if the purpose is to

provide the child with a social or cultural experience. The visitation must have a beginning date and an end date, and should be limited to close friends or relatives who are well-known to the child. Regulation 9 visitations are not subject to ICPC requirements. The regulation clearly states that a visit that lasts longer than 30 days, or in which a request for a home study or supervision is made, is a placement subject to ICPC requirements. During the focus groups, ICPC staff and social workers expressed different views regarding the impact of a Regulation 9 visit on the likelihood that a subsequent out of state placement would be approved. Many were concerned that many states saw visits as an attempt to circumvent the ICPC and as a result Nevada social workers were reluctant to use this resource except under special circumstances.

C. Summary of Interstate Placement Process

The ICPC unit is located in the DCFS Family Program Office, Central Office, Carson City. It consists of the Deputy Compact Administrator and two staff. This assessment was conducted in the midst of a comprehensive reorganization of the ICPC unit which included replacing staffing, designing new filing and accountability systems, and for the first time, written policies and procedures. In the intervening months, some procedures had been instituted to allow more systematic assignment of duties and improve accountability e.g., all telephone inquiries were directed to a voice mail system which is checked every couple of hours. Calls for information which could be answered with specific information or a limited response were answered as soon as possible and those requiring research, within 48 hours. This replaces a system where the ICPC manager personally answered all calls and case files were divided among the ICPC staff. These are intended as interim measures to be replaced when the reorganization is completed.

A policy requiring a five day "turn around" on incomplete files has been implemented so that the social workers in the field are quickly informed that the record submitted is incomplete and will not be processed without additional specific information or documents. If not completed within the deadline, the file is returned. This procedure is intended to put the responsibility for a complete application on the local jurisdiction or the sending state.

A major goal of the reorganization is to convert the entire system for processing applications and all files into an electronic or paperless system. Nevada's statewide automated child welfare information system (UNITY) in addition to providing case management, generates reports to the ICPC unit allowing tracking of requests internal and external and cumulative reports showing the number of applications, decisions, and finalizations, in Nevada and by sister state.

Despite the demands on such an effort, staff continued to respond to and process applications for interstate placement and patiently cooperated with this assessment. As a consequence of the ongoing reorganization, some of the information provided in this assessment reflects new procedures and some procedures which are in transition and are in process of being implemented and may be revised before the final structure is established. With this admonition, the following reflects the state of the interstate placement process in Nevada as of the assessment (June, 2008).

The draft policy, distributed on June 6, 2008, has the stated purpose of facilitating a "timely and efficient means of completing the process of interstate placement of children." The policy includes definitions of terms, statutory authorities, and essential components of a home study, timelines for completion of home study, requirements of a Regulation 7 home study, and waiver requirements.

1. Placing a child out of state (Nevada as sending state)

- a. A prospective caregiver is identified as a potential out of state placement option.
- b. The caseworker initiates interstate placement request, or court orders interstate placement initiation. The caseworker sends the DCFS ICPC office the initial referral packet which must include all of the following information.
 - i. Form ICPC100 A (The Uniform Interstate Compact Placement Request) and a cover letter summarizing the child's current situation and permanency plan, indicating why out of state placement is sought, citing specific concerns to be evaluated by the receiving state, and details of the prospective caregiver's

- ii. The social history, including any special concerns about the child or the prospective caregiver, how the costs of the child's daily care, medical care, and travel to the receiving state will be covered.
 - iii. A copy of the original and most recent court order indicating the child's legal status in Nevada and the agency having legal custody.
 - iv. Information about the child "ordinarily provided to a caregiver", including the worker's contact information, an assessment of the child, reasons that lead to the child's removal from his/her family, family network information, the child's current service plan and case plan and the most recent court report filed with the court.
 - v. Other pertinent information Title IV-e eligibility, birth certificate (or other birth verification that would verify age/citizenship), social security number, and immunization records.
Supervisory sign off on the ICPC checklist is also required, confirming that the supervisor is in agreement with the decision to apply for out of state placement and that all required information is included and if not attached, that it does not apply or is not available to the jurisdiction.
- c. The ICPC unit responsibilities specified in the draft policy are as follows: to review the ICPC packet to ensure that the supervisor has signed the 100A form, sign the 100A form indicating that the packet is ready for forwarding to the receiving state, and to enter into a tracking system the date the request was received in the ICPC unit and forwarded. The unit will also notify the jurisdiction of any communication received from the receiving state, including the receipt of approval or disapproval for placement from the receiving state.
- d. The receiving state local office conducts the assessment according to its state laws. States take different amounts of time to conduct the assessment and return the results. The federal Safe & Timely Interstate Placement Act should help expedite assessments.

- e. The receiving state local office sends the assessment results to their state ICPC office. The receiving state decides if the placement is permitted.
- f. If approved, 100B will be signed and forwarded to the receiving state indicating that the placement will be made and requesting that a specific supervising case worker be assigned in the receiving state. The child's Nevada worker will then work directly with the placement resource and receiving agency's caseworker to arrange the placement.
- g. ICPC unit will log in supervisory reports issued by the receiving state and will forward the report to the child's case worker. ICPC unit will also monitor delinquent reports and follow-up with receiving state agency.

The total recommended timeframe from referral to receipt of approval is about 30 business days for non-priority (non-Regulation 7) placement. The majority of documentation in interstate cases flows from the sending state ICPC office to the receiving state ICPC office, and then forwarded to the appropriate county and judge. The protocol for transporting information between most states is regular mail service. A few states will accept electronic transmission.

2. Placing a child out of Nevada (Nevada as receiving state)

All requests from sending states must be routed through the ICPC unit. ICPC staff will review the request for compliance with appropriate compact requirements and Nevada law, log the request for tracking into UNITY, and forward it to the appropriate jurisdiction. Upon receiving a request for the placement of a child in Nevada, the ICPC unit logs the information into the computer system, and sends a brief email to notify the local contact person of the assessment request. The ICPC unit mails the complete request to the local office. HHS Administration for Children and Families policies require that the home study be completed within 60 days from the date the request is received in the ICPC unit and the date it is returned to the ICPC unit. Requests can be made for an extension of an additional 15 days for specified reasons. The vast majority of home studies are completed in Nevada within the 60 day timeframe, and many are

completed earlier where full cooperation was received and needed documentation was accessible.

The procedural steps involved in the process are as follows.

- b. ICPC unit receives the placement request from sending state.
- c. The ICPC unit date stamps the request, logs the case information into the data system, emails an alert to the local jurisdiction contact with a brief summary of the request, sends a hard copy of the request to local jurisdiction via regular mail or intra-agency mail, as appropriate.
- d. The local office conducts the home evaluation, following specified procedures depending on the type of evaluation requested (e.g., relative/unrelated caregiver/guardianship home study; foster family or adoptive home study). The draft policy specifies the necessary elements of the home study (e.g., identifying information, contact dates, motivation, disciplinary practices, needs of the child to be placed, physical environment, others residing in the home, prior adoption or foster care history, criminal background and CANS check, financial resources, emergency care plan, social & family network supports, references, and evaluative conclusions.
- e. All decisions regarding the appropriateness of the placement are the responsibility of the local jurisdiction. The ICPC unit will not alter the local agency's recommendation.
- f. The local jurisdiction office faxes the home study results to the DCFS ICPC unit. The ICPC unit reviews the evaluation for completeness; logs the status into the database; completes form 100A and faxes it to the sending state.

These procedures apply also to Regulation 7 cases which require that the home study be completed within 30 calendar days from the receipt of the referral from the ICPC unit. The policy restates the requirements for a valid Regulation 7 court order for an expedited placement. It may be applied when the court has made specific findings that the placement is in the best interests of the child and that the proposed recipient is a relative of the child and belongs to the class of persons described in the Compact, parent, stepparent, grandparent, adult sibling, adult aunt or uncle, or non-agency guardian. The court must also find in its order either that the child is under two years of age, or the child is in an emergency shelter or the child has previously spent substantial time in the home of the proposed caregiver. The policy also reaffirms ICPC policy that Regulation 7 may be used in those cases where

after 30 days of the receiving state having received a complete referral and supporting documentation, Nevada ICPC has not received a determination

The receiving state sends all written reports to the DCFS ICPC office, which forwards the report to the assigned child welfare worker, the District Court, and the child's lawyer or GAL.

D. Case Review

Nevada began to experience a significant increase in ICPC activity in 2001, with steady annual growth of 5-8%, with the exception of 2005 when there was a slight (1%) decrease. From 2004 – 2007(FY) approximately 2200 requests for instate and out of state placement were received and processed by the ICPC unit annually. The number of requests for instate placement has been approximately the same as for out of state placement. For FY 2006 and FY 2007, the home study was completed and the decision made to accept or decline placement in Nevada within ninety (90) days of receipt of the executed request for placement (100A) in approximately two-thirds of the cases. California is the state with which Nevada has most interaction and the next most active states are Arizona, Oregon, Idaho, and Utah.

During the assessment 24 open ICPC cases were randomly selected and reviewed: twelve cases in which Nevada was the sending state, and twelve cases in which Nevada was the receiving state. Overall, both receiving and sending files included fully executed 100A and 100B forms as required by the ICPC. For those incoming cases, Nevada jurisdictions completed the required home studies at least within 60 days of the date that the request was received by the ICPC office and generally earlier. The files included copies of timely and regular progress reports mailed to the sending states. Files showed good communication between the ICPC office and the jurisdictions in those cases in which additional information was required. In the one instance in which a Texas judge placed a teenage mother in Nevada directly rather than through the Compact, the response from the social worker to the judge was timely and cited appropriate authority. The placement was formally rejected and subsequently withdrawn; another placement was made upon the filing of a waiver of the home study.

In those cases in which an out of state placement for a Nevada child was sought, in twenty-five percent of the cases, the court issued a Regulation 7 order. In each of these cases, the order was honored and the home study was completed timely. In

four cases, files were incomplete e.g., missing evidence of follow-up on outstanding reports or pending adoption finalizations or requests for resources to avoid disruption of a placement. Although the social worker assigned to the case may have responded directly to the sending state, copies of such response were not included in the ICPC file.

A brief summary of the cases reviewed is attached as Appendix B.

E. Summary: Judges and Masters surveys and interviews

The ICPC assessment survey was accompanied by a letter from The Hon. Mark Gibbons, Chief Justice of the Nevada Supreme Court, explaining the purpose of the assessment and requesting that all Judges and Masters (32) participate by completing the survey. (See Appendix A)

Survey results:

Twenty-one (21) responses were received (12 Judges and 9 Masters). The vast majority of the Judges and Masters had been in their current position for at least six years and 10, for ten years or more. Only 7 indicated that they had received specific training on the ICPC. Three Judges reported that their training had come from the AOC or the Judicial College, NCJFCJ. One Judge had taught ICPC as part of the NCJFCJ curriculum. Only four Judges or Masters believed that attorneys were generally knowledgeable about ICPC law and procedure. Nine Judges had presided over more than 15 cases involving ICPC placement in the past three years. Four had less than five cases involving out of state placement of children in the past three years. Five Judges/Masters had a positive experience with the ICPC and agreed that it was timely and/or was an effective mechanism for placing children out of state. The remaining responses characterized the ICPC process as "time consuming", frustrating for all involved" and having weak or non-existent accountability after the placement is made in a sister state. Only one reported that during the past three year, he or she had seen improvement in the timeliness in which ICPC cases are processed. The only judge who had the opinion that there had been improvement in the ICPC process referred to the enactment of Regulation 7.

When asked to select the top five most common reasons for delay in the ICPC process from a list of ten choices, the majority of the respondents identified the delay

in the Receiving state or delay at the local agency in the Receiving state in completing the home study. A third and closely related cause of delay was attributed to delay in obtaining criminal background checks. In only a very few instances (3) was delay on the part of Nevada cited as among the top five reasons for delay in the ICPC process. Judges and Masters believed that most of the time the possibility of an out of state placement was brought to their attention and that possibility was raised most often by the caseworker at the following court hearing and rarely by the children's or parent's attorney. One judge reported that he/she would raise the possibility of out of state placement. Special hearings were set as needed to review progress on the application, but seldom, unless upon special request. Calendar congestion was cited as a reason for not being able to put much direct attention on case progress by one Judge. Hearings were consistently set within three months to check on the progress of the ICPC application and frequently within 1-2 months. When the Judge or Master was informed of delay, most Judges and Masters ordered that a report be prepared for the next hearing. Four of those responding generally deferred until a hearing was set by counsel and three took direct action, i.e., called a judicial officer in the receiving state.

Judges and Masters used a variety of means to insure that interested persons were kept informed about the progress of the ICPC application, including allowing counsel to be present during any telephone calls to obtain information, written reports, directing the caseworker to supply information to appropriate parties, notifying the parties in court, and, forwarding email information received to all parties. The Judges and Masters were in agreement that they would order the social worker to look into possible out of state placements if the worker had not already done so (16/20) Most Judges responding (8/17) did not require the social services to notify the court and counsel as soon as the results were known.

Judges generally do not feel that they are in a position to contact Judges in sister states to obtain information about the progress in an ICPC matter. Only four Judges/Masters did not allow foster parents or caregivers in other states to participate in court proceedings, if they requested to do so, via speaker phone or videoconference. Communication by letter from persons who could not appear in court such as foster parents was encouraged in some courts. Judges and Masters have taken various steps to advance an ICPC application including cooperating with a judicial officer in another state to hold hearings where testimony under oath was required through a video or telephone hookup, or at the request of a sister state judge conducting a hearing on a specific issue, and, admitting properly authenticated evidence from another state.

Judges and Masters have different opinions regarding whether there has been an increase in efforts to locate out of state placements (8/20) are in agreement. The remaining eight who responded had no opinion or had not seen an increase. Use of Regulation 7 varied. Some Judges and Masters (9/20) answered that they were unclear about when or how it applied. Two had never used the expedited procedure while one judge had used it multiple times. Among those who had issued a Regulation 7 order, there was frustration expressed with the response from sister states. "I use it a lot but most of the time our kids (Nevada) weren't qualified according to the other state."

Judges and Masters had a wide range of experience and recommendations. Some Judges specifically identified problems with specific states. "Judges can't do anything...states must agree on the changes. Judicial involvement is a part of the answer." "We don't have any law authorizing us or requiring us to hold a hearing on the progress of an out of state placement." "Create more uniformity in forms including the home study and establish a process for the resolution of interstate discrepancies... currently there is no vehicle for an objective third party review." One judge recommended a "national ombudsman" to resolve disputes timely between states regarding placement decisions and interpretation of the Compact and a mechanism for receiving states to report on the status of pending matters within specific timelines

Interviews with experienced judicial officers from the 1st, 2nd, and 8th Judicial Districts raised important issues regarding the utility of the ICPC from the perspective of the bench. Regarding issues relating to a potential or actual ICPC placement, the UCCJEA was not recognized by as a vehicle for communicating with Judges in sister states due to the complexities of reaching a judge with jurisdiction unlike in a domestic relations case where jurisdiction had already been established. None of the Judges had been contacted by Judges in other states to take evidence or conduct hearings regarding out of state placements. Some Judges expressed concern about the ethical implications of ex parte communication in these circumstances. All the Judges shared the same frustration with unexplained delays in the completion of the home study and the sparse information provided regarding the progress on the home study. Although there is willingness under appropriate circumstances, including upon motion and stipulation of the parties, to accept evidence through videoconference, video deposition or teleconference, few requests have been made by counsel for these alternative means of producing evidence. They are aware of and have used Regulation 7 but were not satisfied with the results of their orders and the lack means to enforce their orders regarding children in out of state placements. Judges identified areas where the greater clarity was needed regarding the application of

ICPC, specifically, whether an out of state placement with a non-offending, noncustodial parent requires approval through the ICPC.

One judge uses 90 day review hearings and other methods to actively monitor the progress of out of state placements. Due to the nature of dependency proceedings, he will be flexible in using a variety of methods to help parties participate and provide needed information. Where there is a delay in receiving a determination from another state, he will appoint counsel for the child and use Regulation 7 if appropriate. He uses telephonic hearings if parties stipulate and encourages such arrangements for parties who are incarcerated or living outside of Nevada.

F. Practice Interviews: Attorneys, Social Workers, Administrators

Attorneys representing children identified three concerns about how the ICPC affects their clients: (1) delays in the home study have a negative impact on their client's stability; (2) there is no procedural support for maintaining the attorney-client relationship in the new placement; and, (3) the absence of a mechanism for appealing a denial of placement. It was agreed that private agencies could perform a much more expedited home study and should be available to social services. Attorneys are frustrated with barriers to their communication with their client after out of state placement e.g., they don't receive regular reports, access to their client is often denied, and these attorneys sometimes have to use attorneys in other states to reach their clients. They do not have an independent basis to assess their client's wellbeing without the intervention of the court. Perceived arbitrariness in denials out of state placements without specifying grounds for denial makes it difficult for counsel to work with families seeking alternative placements. Attorneys share the view that Regulation 7 is underused because it is not well understood by social workers. Concern about the lack of consistency among states in interpreting the application of ICPC to non-custodial, non-offending parents was identified by attorneys who represent parents as a major impediment to obtaining the cooperation of their clients in agreeing to placement with the noncustodial parent. They recommended that the California Supreme Court decision excluding noncustodial and non-offending parents from the ICPC be adopted nationally. Regulation 9 visits which can be very useful to assess the appropriateness of a home and caregiver for long term placement, are generally refused by other states and not used by social workers. All attorneys agreed that better communication between the social workers in the field, their supervisors, and ICPC unit would be beneficial to the court and their clients. Further, these attorneys would like to have more access to the ICPC unit and request that current and accurate contact information with names and telephone

numbers be provided to the courts which can then distribute the information to counsel.

In Washoe County and Clark County, Directors Mike Capello and Tom Morton arranged for their ICPC staff, licensing staff and line social workers to participate in focus groups. Both the Washoe County and Clark County ICPC staff were in agreement that they would benefit from the operation of the DCFS ICPC unit being formalized into written policy and procedure. Both Departments stressed that they had a good working relationship with the ICPC unit at DCFS which they perceived as chronically understaffed. Both County Departments have established internal tracking systems for home study requests with checks and balances and a strong supervisory role which allow them to supervise their caseloads and respond efficiently and timely to requests to conduct home studies. The possible use of a decision making matrix that would identify and weigh factors to be considered in each home study would encourage more uniformity in recommendations. In addition, the staff agreed that the home study should focus more on the needs of the child than the flaws of the prospective caretakers. "Parents and caretakers should be provided with more information about the ICPC process so that they can make better decisions and be more prepared for the home study process" Both ICPC units would like to be involved, as much as possible, in the reorganization of the DCFS ICPC unit. To improve intra-state communication, staff recommended that email should be directed to the social worker assigned to the case not the unit supervisor, that social workers should be kept current on the progress of the out of state home study and that all files should be complete when they reach the County including contact information for the out of state social worker. Regarding revisions to the ICPC regulations, the focus groups agreed that the ICPC should adopt a standardized home study which all states would be required to use; all documents should be accepted electronically, hard copy or via fax, in the absence of a material dispute about authentication; and, the ICPC should be modified to specify what constitutes an "equivalency" letter for licensing purposes. Reciprocity on interstate foster care requirements was recommended as a means of facilitating interstate moves of foster parents, pending case resolution.

Counties outside of Washoe and Clark Counties are served by DCFS. These fifteen rural counties are administratively divided into four districts. Only the Carson district has a dedicated ICPC staff person. In other districts, a supervisor assigns the ICPC placement request to a specific social worker. The timely assignment of cases to social workers in rural counties is hindered by a number of factors including offices located away from official postal or FED EX delivery routes, workers having to drive long distances to conduct home studies and inadequate or unreliable internet

service. Consequently, any delay in getting the request out to the field results in the worker having in some cases as few as 20-30 days after receipt to complete the home study. Policies and procedures for monitoring cases at the regional offices were recommended as one means of compensating for the heavy caseloads and regular vacancies in the rural counties. An electronic alert system or tickler system using the UNITY system alerting the worker and regional supervisor of the request for a home study would improve tracking of case status. One experienced social worker supervisor described the dilemma as follows:

"We are a transient state, lots of movement of people and families into and out of Nevada. . . . There are pivotal times in a child's life, e.g. start of school, summer vacation when Regulation 7 would be useful. Unfortunately, we rarely see the courts get involved except when a parent objects to the out of state placement."

G. Recommendations to Eliminate Barriers to Safe and Timely Placement.

1. The ICPC exemption for non-custodial parents should not require the court to close its child abuse/neglect case. The ICPC does not apply to cases in which the child is placed with a non-custodial parent and the court dismisses jurisdiction over the case. This narrow exception may not be in the child's best interests. Due to the geographical location of Nevada, it is not uncommon for a parent residing in a Arizona or California to be geographically closer to the child than a potential foster care placement within Nevada. More importantly, the court and DCFS may agree that dismissing the case is not in the child's best interests because services could rectify the conditions that led to adjudication. Allowing the non-custodial parent to assume immediate custody without closing the court case would eliminate the need for non-relative foster care placement, which creates instability for the child and unnecessary expense to the state. Further, absent a finding that the parent is unfit, unwilling, or unable to care for the child, the presumption should be that a parent with legal custody of the child is entitled to assume physical custody without applying ICPC requirements.

2. There should be a national, standard home study or home assessment form. Allowing states to create their own standards for the home study process creates distrust in the reliability of the other state's home study process and results. A standardized mandatory

3. **The ICPC should allow county to county border agreements.** Currently, only states can enter into border agreements. Border counties should have the same ability, which could expedite the home study review process and subsequent permanency for the child.
4. **The timeliness of other state's home study results is not dependable.** Although there are financial incentives for completing the home study within 60 days, there are no provisions other than Regulation 7 which recognize the trauma suffered by children without permanency and the thousands of dollars to the states. Without an explicit and enforceable deadline for completion of the approval process, states have little meaningful incentive to improved systems that often suffer from insufficient resources and inadequately trained staff.
5. **There is a lack of coordination between the sending and receiving states regarding payment of services that may be provided for the child.** Although this a complex problem involving state and federal law and regulations, the lack of coordination and uniformity of requirements and process can undermine placements and disrupt the critical continuity in the delivery of needed services, especially to children with special needs.

H. Suggested Practice Reforms for Nevada

1. **Judges in the sending state should take an active role to periodically inquire about the status of a home study being conducted by another state. Judges in receiving states should be made aware of interstate placements.**
2. **More training should be provided to judicial officers, court staff and social workers on interstate placement issues.** Statewide, the interstate placement caseload is relatively small. Consequently, not all court staff or judicial officers are familiar with the ICPC process and the

use of the priority placement option (Regulation 7). With the significant turnover among social work staff, ongoing training (possibly web based) should be priority.

3. At both the state and County level, the ICPC unit should commit to regular communication with the courts and counsel regarding ICPC policy and procedure, including roles and responsibilities and current contact information

4. Training on ICCPC and UCCJEA for all Judges and Masters, as well as temporary judges should be offered.

5. Private adoptions should not be given priority in the processing of ICPC applications by the ICPC unit.

6. The definition of "relative" by Nevada statute is operationally narrow and excludes for example, "ex" grandmothers, cousins.

In cases where placement with extended family is sometimes the most stable and the placement where the child has his/her strongest connections, a more relevant definition of "relative" would offer more alternative placements.

Conclusion

The State of Nevada shares the national frustration with the operation of the ICPC and has recently taken steps to reorganize how it receives and sends interstate placement applications so as to better serve children and families in Nevada. Nevada does not limit interstate communication and sharing of information by statute or by Rule of Court. Recent initiatives by the Supreme Court to identify areas where new Rules of Court might be appropriate to encourage use of technology in fact finding are important steps towards facilitating the participation of parents and others without requiring interstate travel. Jointly, these efforts will facilitate timely judicial decisions regarding interstate placement throughout the state.

Acknowledgements: The following persons and those who participated in focus groups graciously volunteered their time and ideas to this study. Their participation made this report much more valuable to our shared goals of serving Nevada’s children and families.

Sharon Benson, Assistant Attorney General
Patricia J. Hedgecoth, HHS, Rural Regional Manager DCFS
Dr. Cynthia Freeman, HHS, Division of Child and Family Services
Amber Vesbie, HHS, Division of Child and Family Services
Sue Palmer, ICPC unit, HHS, Division of Child and Family Services
Dianne Comeaux, HHS, Compact Administrator
Shannon Foster, HHS, Deputy Compact Administrator
Dorothy Singleton, Clark County Department of Family Services
Hon. David Nelson, District Court, Master
Joan Neuffer, Staff Counsel, Administrative Office of the Courts
Jane D. Femiano, Office of the Special Public Defender
Janice Wolf, Clark County Legal Services Program
Gia McGillivray, Clark Court Legal Services Program
Tom Morton, Director, Clark County Department of Family Services
Yvette Chevalier, Clark County Department of Family Services
ICPC unit—Clark County Department of Family Services
Licensing Unit – Clark County Department of Family Services
Hon. Dianne Steele, District Court Judge
Hon. Steven Jones, District Court Judge
Hon. David Gibson, Hearing Master
Hon. Deborah Shumaker, District Court Judge
Hon. Gerald Hardcastle, District Court Judge

Tom Bolan, Washoe County Public Defender
Page Dollinger, Washoe County Public Defender
Carol Camp, Washoe County Public Defender
Veronica Chavez, Washoe County Public Defender
Kathy O’Leary, Washoe County Public Defender
Natalie Choi, Washoe County Public Defender
Jennifer Rains, Washoe County Public Defender
Mike Capello, Director, Washoe County Department of Social Services
Alice Ledesma, Washoe County Department of Social Services
Gretta Brown, Washoe County Department of Social Services
Sarah Webster, NRC on Organizational Improvement

Appendix A: Survey – Judges and Masters

Appendix B: Case review summaries

Nevada as sending state

Placement sought in Illinois foster home (3.5 years old. Current quarterly report in file Home study was approved within months of the application; placement is with relative who had adopted a sibling. Original request from Nevada was denied because of absence of a court order establishing that the court had taken jurisdiction over the child and had authority to approve out of state placement. (-9 months)

Placement sought in North Carolina (3 years old). Home study of adoptive home took nine months, although there had been a TPR and relinquishment. Delay in placement was caused by home study changing from adoption to foster care. The placement had been the child's foster parents in Nevada. (17 months)

Placement sought in Utah (7years old). Child lived with grandmother. Foster care payments had been delayed in transfer, problems with coverage for child's medical care, child was not IV-E eligible. Kinship assessment was conducted by Utah and denied because proposed placement had enlisted in the military. (12 months)

Placement sought in California (15 year old boy) Intact foster family moves across state lines (Regulation 1 case). Note in file from California social worker to "Please expedite this license." Plan is TPR. (3 months in progress)

Placement sought in Oregon (16 year old girl) placement with biological father; Father had not been involved in child's life; home study initiated. (3 months in progress)

Placement sought in Wyoming (2 year old boy) Placement was denied because the non-offending parent did not contact the social worker for the home study. Second

placement with biological mother was denied ---Wyoming denied placement because of missing court order. Case closed. (5 months)

Placement sought in Louisiana (2 year old boy). Placement with grandmother, Regulation 7 order filed but missing 100B form, birth certificate and SSN for child. delayed placement and social workers communicated via email to obtain necessary documents. Placement approved; progress report filed on March, 2008. Earlier ICPC denied by Texas due to lack of information from placement.

Placement sought in West Virginia and Texas (10 year old girl) Successfully placed six years ago with maternal aunt in West Virginia, placement took 7 months; minor is now 16; many comprehensive progress reports in file, most recent February, 2008

Placement sought in Maryland (3 year old girl) Case opened November, 2007, relative foster home, no follow-up in file on request for out of state placement.

Placement sought in CA (16month old girl). Successfully placed with grandmother 90 days after application, after earlier referral failed. Regulation 7 was ordered.

Placement sought in CA (6 children). Application was filed in February, 2008. Criminal history requested for all adults in home, no return as of date of review. No follow-up in file.

Placement sought in Oregon (2 boys): Parental rights terminated (5/23/06), placed with maternal uncle; finalization was anticipated by December, 2007. No progress report on finalization. January, 2008 letter received from Oregon social worker requesting money for counseling to avoid placement failure and respite care. No response in file.

Nevada as receiving state

From Massachusetts: Home study completed in 90 days.

From California: Request denied due to negative background check then reinstated; sending jurisdiction received reminder that home study was due, not timely received.

From Arkansas: Placement with parent, home study approved. More information requested of sending state; Arkansas social worker hadn't responded to Nevada request for additional background information on the child, including medical and school records. Application renewed due to second request by parent.

From California : Application received 10 months ago and forwarded to jurisdiction—no response or other records in the file from the jurisdiction.

From California: Children were placed prior to ICPC approval in Nevada. Plan changed from adoption to foster care. Relative had adopted two siblings and had raised all children since birth.

From Wisconsin: Child specific home study requested; adoption from foster placement with relative; TPR had occurred prior to request for ICPC. Home study was completed and approved in five months.

From California: Four children under 16 to be placed; social worker was reminded of due date for home study; none in file. No further communication in the ICPC file.

From Iowa: Two children were placed with relatives three years ago; progress report filed in March, 2008; children are well adjusted in stable APPLA home.

From California: Progress report filed April, 2008. Home study was completed timely with recommendation that grandmother be considered as potential adoptive home for child due to mother's apparent inability to reunify.

From Colorado: Adoptive home study requested February, 2008; progress report filed May, 2008. However, child has serious emotional problems, family would need additional financial support to adopt; waiting for foster home licensure to be completed..

From Florida: Foster home placement approved ten months after referral (June, 2006) delays from caretaker in submitting necessary paperwork. In December, 2006, home study completed for possible adoption. April, 2008 progress report filed.

From Texas: Teenage mother was placed in Nevada by Texas judge without complying with ICPC. Letters exchanged between Nevada ICPC and Texas court. 100B signed directing Texas to retrieve the mother and child and return them to Texas, then withdrawn. October, 2007, Texas court approved waiver of home study.

APPENDIX A

SUPREME COURT OF NEVADA

MARK GIBBONS, CHIEF JUSTICE

201 SOUTH CARSON STREET

CARSON CITY, NEVADA 89701-4702

(775) 684-1500

Fax (775) 684-1505



May 28, 2008

Dear Colleague:

RE: Interstate Compact on the Placement of Children (ICPC) Assessment Survey

The Supreme Court through the Court Improvement Program (CIP) is conducting an assessment of how the Interstate Compact on the Placement of Children (ICPC) has worked for Nevada courts and families, and how Nevada courts have attempted to expedite the interstate placement of children. The CIP has contracted with Joanne M. Brown, a consultant with the NRC on Legal and Judicial Issues of the ABA Center for Children and the Law, to prepare the assessment. Your responses to an attached brief survey are an important component of the report, which is to be submitted to the Children's Bureau of the Department of Health and Human Services. When all states have completed their assessments, the information and recommendations will be used to improve the ICPC process and better serve all children and families.

You are receiving this survey because you are a judicial officer who has jurisdiction in abuse and neglect proceedings and/or has had experience with such cases.

The survey must be completed and returned no later than June 6, 2008. The survey should take about 10 minutes to answer. If you have any questions, you may contact the consultant, Joanne M. Brown, directly at jbrownconsulting@aol.com or (301) 512-9427 or Sheryl Overstreet at soverstreet@nvcourts.nv.gov

Your participation is very much appreciated. This assessment is a requirement of the Court Improvement Program.

Sincerely,


MARK GIBBONS
Chief Justice

/s/

Enclosure

cc: Justice A. William Maupin
Justice Nancy M. Saitta
Ron Titus
Sheryl A. Overstreet
Joanne Brown

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Interstate Compact for the Placement of Children (ICPC) Survey Nevada Judges and Masters

1. I am currently **(Select one answer)**
 - a. A Judge
 - b. A Master

2. I have been in my current position/assignment **(Select one answer)**
 - a. Less than a year
 - b. 1-5 years
 - c. 6-10 years
 - d. More than 10 years

3. I have received training regarding the Interstate Compact for the Placement of Children.
 - a. Yes
 - b. No
 - c. Can't recall or not specificallyIf Yes, from what source: _____

4. In my experience, attorneys are generally knowledgeable about ICPC law and procedure.
 - a. Yes
 - b. No
 - c. I do not have an opinion

Please answer the following questions based on your experience of Nevada as a "sending state" over the past three (3) years:

5. I have presided over the following number of cases in which the ICPC was involved: **(Select one answer)**
 - a. 1-5
 - b. 6-10
 - c. 11-15
 - d. More than 15

6. In my experience with the ICPC, the process has been best described below as: **(Select all that apply)**
 - a. timely
 - b. frustrating for all involved.
 - c. time consuming
 - d. an effective mechanism for placing children out of state
 - e. accountability after placement is weak or absent.

7. During the past 3 years, I have seen improvement in the timeliness in which ICPC cases are processed. **(Select one answer)**
 - a. Yes
 - b. No
 - c. I do not know – have not had enough cases to compare

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8. Based on your experience, please identify the top five most common reasons for delay in the ICPC process. **(Select up to five)**
- Delay in entry of the court order placing the child in custody.
 - Delay in the social worker preparing the ICPC referral paperwork to send to the Nevada DCFS ICPC office.
 - Delay in Nevada's ICPC office reviewing the package and forwarding it to the Receiving State's ICPC Office.
 - The Nevada ICPC office (as Sending State) needing to return the ICPC package to the DCFS district office for some reason, for example the paperwork was incomplete.
 - Delay by the Receiving State's ICPC office processing the case and sending it to the local agency in that state for the Home Study to be done.
 - The Receiving State's ICPC office needing to return the ICPC package to the Nevada ICPC office (Sending State) for some reason, such as the package was incomplete.
 - Delay by the local agency in the Receiving State doing the Home Study.
 - Negotiations between the two ICPC offices regarding issues of concern found by the Home Study.
 - Delay in obtaining required fingerprint and background checks.
 - Other: Describe briefly _____
9. When possible, placements for a child were identified as requiring ICPC approval, how often was the possible out of state placement brought to the court's attention?
(Select one answer)
- Most of the time
 - Half of the time
 - Almost half of the time
 - Less than 25% of the time
 - I do not know
10. If the possible out of state placement were brought to your attention, who typically raised the issue of needing to follow the ICPC process? **(Select all that apply)**
- The caseworker/social worker
 - The lawyer for the Department (AAG)
 - The district attorney
 - The parent's attorney
 - The children's attorney
 - CASA volunteer
 - I do not recall
 - Other: (Please specify) _____

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11. In those cases where you were made aware of the possible out of state placement, when was it brought to the court's attention? **(Select one answer)**
- At the next court hearing
 - Within a week's discovery that an ICPC was needed
 - Between one week and 30 days of discovery that an ICPC was needed
 - One to three months of the discovery that an ICPC was needed
 - More than 3 months from discovery that an ICPC was needed
 - I do not recall
 - Other: (Please specify) _____
12. How often do you set a special hearing to check on the progress of a request for an ICPC home study? **(Select one answer)**
- Always
 - Most of the time
 - Seldom
 - If requested by the social worker
 - If requested by a lawyer
 - Never
13. In those cases where you set a hearing to check on the progress of the ICPC request for home study and placement decision, how far into the future on average do you set the hearing? **(Select one answer)**
- A hearing was scheduled within a month for an update on progress
 - A hearing was scheduled within two months for an update on progress
 - A hearing was scheduled within three months for an update on progress
 - I do not recall.
14. What is your practice regarding delays in the ICPC process?
(Select all that apply or write "I do not know" next to the "Other" option)
- I do not take any action unless a hearing is requested
 - I ordered a report on ICPC progress for the next hearing
 - I scheduled a hearing within 30 days for an update on progress
 - I scheduled a hearing within 30-60 days for an update
 - Took direct action (for example, called the DCFS ICPC office)
 - Took direct action (for example, called a judicial officer in the receiving state)
 - Other: (Please specify)
-
15. What is your practice to ensure that all counsel, parties, and interested persons are kept informed about the progress of the ICPC application (e.g., that "due process" requirements were met)?
(Select all that apply)
- Allow counsel to be present during any phone call to obtain information on ICPC progress.
 - Provide a written report to the parties and/or counsel of the results of the phone call and what was discussed.

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- c. Send an email inquiry with a "cc" or copy to the parties and/or counsel
 - d. Forward any email that the court received in response to his or her inquiry to the parties and/or counsel.
 - e. No particular practice
 - f. Other: (Please specify) _____
16. Do you sometimes order the social worker to look into possible out-of-state placements if they have not already done so?
- Yes
 - No
17. How often do you ask the social worker to request a home study for a potential out-of-state placement? (Select one answer)
- a. 76% - 100% of the time
 - b. 51%- 75% of the time
 - c. 26% - 50% of the time
 - d. Less than 25% of the time
 - e. I do not do this
18. Do you typically require the Department to notify the court and attorneys as soon as the result of the ICPC application is known?
- Yes
 - No
19. Have you contacted the ICPC administrator in Nevada or in a receiving state to obtain information about the progress of an ICPC matter?
- Yes
 - No
20. If a Nevada child is placed out of state, do you allow the foster parent(s) or caregivers in that state to participate in Permanency Hearings by speakerphone or videoconference?
- Yes
 - No
 - If no, why not? (Please specify) _____
21. Please indicate what you do, or have done, to move an ICPC matter forward, whether Nevada is the sending or receiving state. **(Select all that apply)**
- a. Hold a hearing with someone in another state who participates by phone or video.
 - b. At request of a judge from another state, conduct a hearing in your state to gather specific information for the judge in the other state.
 - c. Cooperate with a judicial officer in another state to hold hearings where witnesses must be sworn in order to testify through a video or telephone hookup.
 - d. Contact by phone, letter, or email a judicial officer in another state in the locality where the child may be going to discuss the progress of an ICPC matter.

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- e. Admit properly authenticated evidence offered from another state in a hearing in your court.
 - f. Allow parties living in other states to participate as parties in interstate litigation without having to travel to the Nevada family court hearing the case.
 - g. Enable parties living in other states to arrange on their own initiative to testify and present evidence in your court without traveling to Nevada to testify or present evidence.
 - h. When Nevada is the sending state, allow out-of-state attorney involvement in Nevada cases without the lawyer being a member of the Nevada bar.
 - i. If Nevada is the sending state, allow attorneys located in another state to file motions in your court as well as to question and cross examine witnesses in teleconferences and video conferences that are convened by you with local counsel.
 - j. When Nevada is the sending state, allow attorneys located in another state to file motions in your court as well as to question and cross examine witnesses in teleconferences and video conferences that are convened by you without local counsel.
22. Have you seen an increase in searching for out-of-state placements?
- a. Yes
 - b. No
 - c. No opinion
23. How often have you used Regulation VII?
- a. Never
 - b. Less than once a year
 - c. Unclear on when or how it applies
24. Please provide any suggestions you have for improving the ICPC process, e.g., new or amended Rules of Court, state law, or administrative code.

THANK YOU! Your participation in this survey is very much appreciated. If you have any questions contact Joanne M. Brown, jbrownconsulting@aol.com or Sheryl Overstreet, CIP coordinator, soverstreet@nvcourts.nv.gov