	Interstate Commission for Juveniles	Opinion Number: 02-2015	Page Number: 1
<p align="center"> ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters </p>			
Description: Signatures on the IA/VI Form		Dated: August 24, 2015 Revised: March 1, 2018 ¹	

Background:

Pursuant to Commission Rule 9-101(3), the state of Minnesota has requested an advisory opinion regarding the requirements of the Compact and ICJ Rules on the following issue:

Issues:


Minnesota is requesting a formal advisory opinion regarding the signatures required on the Form IA/VI Application for Services and Waiver. Frequently Minnesota receives a transfer request where the Form IA/VI is not signed by the Judge, or in the case of parole, the compact official. In these cases, states refuse to provide the signed document until the transfer is approved. It is Minnesota's position the judge or compact official should be signing the document before the request is accepted. In fact, the way the form is written, an investigation should not be submitted prior to the judge or compact official signing the form.

Minnesota's practice has been to conduct the investigation, but not approve the transfer until after the judge signs the document. There have been times the sending state will take several months to get the judge's signature and cases where they refuse to get the signature at all until the case is accepted. In Minnesota's experience, the juvenile is already in our state and when we deny the transfer, they leave the juvenile in Minnesota anyway.

In a recent case, the sending state refused to provide the signed Form IA/VI so when the reply was due Minnesota denied the request because the Form IA/VI was not signed by the judge. The sending state allowed the denial to sit in JIDS without being processed for over a month. Eventually, the sending state did put the Form IA/VI with the judge's signature in JIDS and sent a Form V activating the case even though Minnesota had denied the request. As a result, the juvenile was in Minnesota for several months while waiting for the judge's signature and during that time was not being supervised.

The following are the issues Minnesota is asking be addressed:

1. Based on the language on the Form, should the request even be sent without the required signature of the judge or compact official allowing the juvenile to make the request?
2. If the investigation can be sent, should it be investigated without the judges or compact official's signature?
3. Should it be accepted without the signature of the judge or compact official?

	Interstate Commission for Juveniles	Opinion Number: 02-2015	Page Number: 2
<p align="center">ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters</p>			
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4. What happens if the case is accepted and the signature is never obtained?
5. If the signature is not necessary for the transfer to be investigated or approved, why is the signature required on the form, could that create a legal challenge?

Applicable Compact Provisions and Rules:


ICJ Rule 4-101(2) provides:

“No state shall permit a juvenile who is eligible for transfer under this Compact to relocate to another state except as provided by the Compact and these rules.”

ICJ Rule 4-102¹ provides:


1. Each ICJ Office shall develop policies/procedures on how to handle ICJ matters within their state.
2. The sending state shall maintain responsibility until supervision is accepted by, and the juvenile has arrived in, the receiving state.
 - a. State Committed (Parole) Cases – When transferring a juvenile parolee, the sending state shall not allow the juvenile to transfer to the receiving state until the sending state’s request for transfer of supervision has been approved, except as described in 4-102(2)(a)(ii).
 - i. The sending state shall ensure the following referral is complete and forwarded to the receiving state forty-five (45) calendar days prior to the juvenile’s anticipated arrival: Form IV Parole or Probation Investigation Request, Form IA/VI Application for Services and Waiver, and Order of Commitment. The sending state shall also provide copies (if available) of the Petition and/or Arrest Report(s), Legal and Social History, and any other pertinent information deemed to be of benefit to the receiving state. Parole conditions, if not already included, shall be forwarded to the receiving state upon the juvenile’s

¹ This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2018. The previously published opinion is available upon request from ICJadmin@juvenilecompact.org.

	Interstate Commission for Juveniles	Opinion Number: 02-2015	Page Number: 3
<p align="center">ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters</p>			
Description: Signatures on the IA/VI Form		Dated: August 24, 2015 Revised: March 1, 2018 ¹	

release from an institution. Form V Report of Sending State Upon Parolee or Probationer Being Sent to the Receiving State shall be forwarded prior to the juvenile relocating to the receiving state.

- ii. When it is necessary for a State Committed (parole) juvenile to relocate prior to the acceptance of supervision, under the provision of Rule 4-104(4), the sending state shall determine if the circumstances of the juvenile’s immediate relocation justifies the use of a Form VII Out-of-State Travel Permit and Agreement to Return, including consideration of the appropriateness of the residence. If approved by the sending state, it shall provide the receiving state with the approved Form VII Out-of-State Travel Permit and Agreement to Return along with a written explanation as to why ICJ procedures for submitting the referral could not be followed.
 - iii. If not already submitted, the sending state shall provide the complete referral to the receiving state within ten (10) business days of the Form VII Out-of-State Travel Permit and Agreement to Return being issued. The receiving state shall make the decision whether or not it will expedite the referral.
- b. Probation Cases – The sending state shall ensure the following referral is complete and forwarded to the receiving state. Form IV Parole or Probation Investigation Request, Form IA/VI Application for Services and Waiver, Order of Adjudication and Disposition, Conditions of Probation and Petition and/or Arrest Report(s). The sending state should also provide Legal and Social History, and any other pertinent information (if available). Form V Report of Sending State Upon Parolee or Probationer Being Sent to the Receiving State shall be forwarded prior to relocating if the juvenile is not already residing in the receiving state.
3. The sending state shall forward additional documentation, if available, at the request of the receiving state. The receiving state shall not delay the investigation pending receipt of the additional documentation. If the juvenile is already residing in the receiving state, the

	Interstate Commission for Juveniles	Opinion Number: 02-2015	Page Number: 4
<p align="center"> ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters </p>			
Description: Signatures on the IA/VI Form		Dated: August 24, 2015 Revised: March 1, 2018 ¹	


receiving state shall obtain the juvenile’s signature on the Form IA/VI Application for Service and Waiver.

Analysis and Conclusions:

Minnesota asks several questions which all ultimately can be reduced to a central issue, namely whether a request for transfer of supervision of an eligible juvenile under the compact can permissibly be processed without the signature of the ‘sentencing’ judge or compact official? An examination of the ICJ rules reveals that the unambiguous language of ICJ Rule 4-102 (2)(a)(i) and (2)(b) leave no question that in both parole and probation cases, the ICJ Office in the sending state **shall ensure that referral documents, including the Form IA/VI, are “complete and forwarded to the receiving state”** (emphasis supplied). However, Rule 4-102(3), states that “. . . The receiving state shall not delay the investigation pending receipt of the additional documentation, If the juvenile is already residing in the receiving state, the receiving state shall obtain the juvenile’s signature on the Form IA/VI Application for Services and Waiver.”

Since the term “complete” is not defined in either the provisions of the Compact or ICJ rules, recourse to the dictionary is all that is necessary in order to determine the plain meaning of the word, which is, “having all the necessary or appropriate parts, elements, or steps.” (Webster’s Dictionary 2015). Without question, Form IA/VI requires the signature of a judge or compact official in order to be “complete,” but the provisions of Rule 4-102(3) create an exception which allows Form IA/VI to be processed with the judge’s signature alone if the juvenile is already residing in the receiving state. While the better practice might be to eliminate the need for the judges’ signature, the current language of the applicable rules can only be interpreted in harmony with each other if Rule 4-102(3) is treated as an exception.

The above language of ICJ Rule 4-102(2) is “plain and unambiguous” in its mandatory obligation placed upon the sending state to “ensure” that Form IA/VI is “complete and forwarded to the receiving state.” As the U.S. Supreme Court has made clear, “Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning ... [o]ur inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent.” See *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). It is also necessary to interpret these provisions in harmony with each other if possible. As pointed out in *FDA v. Brown & Williamson Tobacco Corporation* 529 U.S. 120, 121 (2000), “. . . the court

	Interstate Commission for Juveniles	Opinion Number: 02-2015	Page Number: 5
ICJ Advisory Opinion Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters			
Description: Signatures on the IA/VI Form		Dated: August 24, 2015 Revised: March 1, 2018 ¹	

should not confine itself to examining a particular statutory provision in isolation. Rather, it must place the provision in context, interpreting the statute to create a symmetrical and coherent regulatory scheme. *Id.* at 121. Thus, based on the above language of ICJ Rules 4-101 and 4-102, the sending state is required to obtain the signature of the judge or Compact official in order to comply with this rule subject to the limited exception described.

Summary:

Though Minnesota asks several questions, the ultimate issue whether a request for transfer of supervision of an eligible juvenile under the compact can permissibly be processed without the signature of the ‘sentencing’ judge or compact official. ICJ Rule 4-102(2)(a)(i) and (2)(b) leave no question that in both parole and probation cases, the ICJ Office in the sending state **shall ensure that referral documents, including the Form IA/VI, are “complete and forwarded to the receiving state.”** (emphasis supplied). However, Rule 4-102(3) states “. . . The receiving state shall not delay the investigation pending receipt of the additional documentation. If the juvenile is already residing in the receiving state, the receiving state shall obtain the juvenile’s signature on the Form IA/VI Application for Services and Waiver.” Based on the literal language of ICJ Rule 4-102, the sending state is required to obtain the signature of the judge or Compact official in order to comply with this rule, subject to the limited exception noted in Rule 4-102(3).