

	Interstate Commission for Juveniles	Opinion Number: 03-2021	Page Number: 1
ICJ Advisory Opinion Issued by: Executive Director: MaryLee Underwood Chief Legal Counsel: Richard L. Masters			
Description: Does the prohibition against communication between ICJ member states as provided in ICJ Rule 2-104 forbid all communication between a supervised juvenile and prior case workers in the sending state once supervision is accepted?		Dated: August 19, 2021 Revised: March 1, 2022 ¹	

Background:

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

Issues:

The Commonwealth of Kentucky ICJ Office has asked whether the prohibition against communication between ICJ member states as provided in ICJ Rule 2-104 forbids all communication between a supervised juvenile and prior case workers in the sending state once supervision is accepted.

As described by Kentucky’s ICJ Commissioner, “Once a transfer of supervision is accepted (home evaluation approved) by the Receiving State, Kentucky locals are not permitted to communicate with the youth/family directly and/or provide supervision. The receiving state assumes the duties of supervision over the juvenile and the youth is governed by the same standards of supervision that prevails for its own juveniles per Rule 5-101-1.”

Kentucky also contends, “this is not the standard practice for all ICJ offices/states. There are locals of sending states that continue to communicate with youth/families and/or supervise.” Kentucky further states that “when this occurs it is difficult for all parties involved and that many times wrong information is . . . given, workers are played against each other from both states and supervision can fail.” Kentucky interprets the rule to mean that all communication needs to go through the ICJ offices and that no local to family/youth communication should occur from the sending state once transfer of supervision is accepted.

Applicable Compact Provisions and Rules:

Article I. A. of the Interstate Compact for Juveniles (“ICJ”) provides:

“It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

¹ This Advisory Opinion has been revised to reflect ICJ Rules in effect March 1, 2022.

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(A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state.”

ICJ Rule 2-104: *Communication Requirements Between States* provides:

1. All communications between states, whether verbal or written, on ICJ issues shall be transmitted between the respective ICJ Offices.
2. Communication may occur between local jurisdictions with the prior approval of the ICJ Offices in both states. A summary of communication shall be provided to the ICJ Office and documented in the electronic data system.
3. Communication regarding ICJ business shall respect the confidentiality rules of sending and receiving states.

ICJ Rule 5-101(3) - (5) provide:

3. Both the sending and receiving states shall have the authority to enforce terms of probation/parole, which may include the imposition of sanctions. Any costs incurred from any enforcement sanctions shall be the responsibility of the state seeking to impose such sanctions.
4. The receiving state shall furnish written progress reports to the sending state on no less than a quarterly basis. Additional reports shall be sent in cases where there are concerns regarding the juvenile or there has been a change in residence or in the person with whom the juvenile resides.
5. When the change of residence includes a change in the person with whom the juvenile resides, the sending state may request additional information regarding the new residence. If the sending state does not support this change, they shall notify the receiving state and propose an alternative living arrangement or affect the return of the juvenile.

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Analysis and Conclusions:

The literal language of Rule 2-104 1 requires that “**all communications between states, whether verbal or written, on ICJ issues shall be transmitted between the respective ICJ Offices**” (**emphasis supplied**). While this language does not specifically refer to local case workers nor does it mention the family or the supervised juvenile whom is the subject of supervision, this provision broadly refers to “**all communications between states whether verbal or written**” and clearly identifies “ICJ issues” as the subject matter of such communications between respective ICJ offices.

The interpretation of statutes or administrative rules in “a holistic endeavor.” A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory (or regulatory) scheme because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.” *United Savings Ass’n v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 371 (1988) (citations omitted).

Reading the above subsections of the ICJ Rules together suggests that the intent of ICJ Rule 2-104, as a whole, is to prevent ICJ administrative personnel in sending states from interfering with the supervision of the juvenile who is transferred to a receiving state. However, it is equally clear from the remaining provisions of ICJ Rule 2-104 that it is not the purpose of the rule to prevent any communications whatsoever from occurring concerning the juvenile but simply to ensure that both states are aware of and approve of communications related to supervision. See ICJ Rule 2-104(2).

While the receiving state is clearly responsible for supervision of a juvenile once the transfer process is complete, the ICJ Rules also contemplate that continued supervision under the ICJ is anticipated to be a cooperative process in which both the sending and receiving states continue to both communicate and work together in the supervision process. For example, under ICJ Rule 5-101(3), “both the sending and receiving states shall have the authority to enforce terms of probation/parole, which may include the imposition of sanctions.” Moreover, under Rule 5-101(4), the receiving state is responsible for furnishing “written progress reports to the sending state on no less than a quarterly basis” and additional reports “shall be sent in cases where there

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are concerns regarding the juvenile or there has been a change in residence or in the person with whom the juvenile resides.”

A supervised juvenile’s caseworker, whether in the sending or receiving state, is likely to be one of the most stable and knowledgeable individuals in the life of a delinquent juvenile, who needs emotional support affirmation and encouragement which should be appropriately communicated to the supervised juvenile and can be a powerful motivating tool. When properly managed, such communications support one of the primary purposes of ICJ as expressed in Art. I, A. “It is the purpose of this compact, **through means of joint and cooperative action among the compacting states to: (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state.**”

Summary

Based upon a consideration of the context of the above ICJ Rules, the purpose of ICJ Rule 2-104 is not to prevent communication between sending and receiving states after the transfer of supervision occurs, but only to require that such communications be managed in an orderly manner with the knowledge and consent of both states involved in the supervision process.

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