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January 26, 2024

TO: American Public Human Services Association
Association of Administrators of the Interstate Compact on the Placement of Children
1300 17th Street North
Suite 340
Arlington, VA 222209

Attn: Carla Fults, Esq.
Director, Interstate Affairs and Compact Operations
Via Electronic Mail: cfults@aphsa.org

Re: NY ICPC Memo

Dear Ms. Fults:

We, the undersigned, are a group of adoption and assisted reproduction attorneys from across New York State, who work with families, children, child welfare agencies and the court system to protect and advocate for children and families formed through adoption and assisted reproduction. We are writing to request your assistance in connection with the recent memo from New York Office of Children and Family Services ("OCFS") which addresses the expectant parent living expenses adoptive parents are permitted to pay in connection with an adoption to be finalized outside of New York State.

On January 5, 2024, Shelly Fiebich, Director of OCFS in New York, sent the attached email ("ICPC Memo") to approximately 100 professionals addressing OCFS policy with respect

to the payment of living expenses in an interstate adoption. In the memo, Ms. Fiebich states that "…the NYS OCFS ICPC office will *only* (emphasis added) apply New York law when reviewing fees paid or to be paid in the context of an adoptive placement and an application for NYS OCFS ICPC approval of an adoptive placement into New York. The NY OCFS ICPC office will not accept an out of state court order that addresses the subject of fees as controlling compliance with Social Services Law (SSL) §§374(6) and 374-a."

Since the receipt of the ICPC Memo, numerous New York attorneys have reached out to James M. Keeler, Jr., NY ICPC specialist, and Ms. Fiebich in the hope of engaging in a dialogue to help us understand the catalyst for this new interpretation of the ICPC regulations and approval process. We were hoping to discuss this issue directly with New York OCFS before taking further action but unfortunately, to date, we have not received a response to our inquiries.

Based on the years of experience among members of the New York adoption community, the position expressed in the ICPC Memo is a reversal of policy. NY ICPC has historically permitted expectant parents to make a choice of law which would allow their home state's law to govern all aspects of the adoption process including: birth father's rights, applicable consent/surrender revocation periods, finalization requirements ***and the permissible living expenses to be paid to the expectant parent.*** This is the choice of law that the Parties make, and rely on, as part of their adoption process.

Moreover, New York ICPC's current position also undermines the goal of ICPC which is to create legal certainty and permanency for adoptive children. The ICPC Memo requires adoptive parents and expectant parents to adhere to the laws of two different states. This will certainly cause confusion among the parties, and increase the potential for litigation as the court sifts through which aspects of the adoption proceeding will be governed by which state's laws. This lack of clarity fails to provide a clear path to permanency for children. As we all agree, adoption is intended to bring security for the child, the birth family and the adoptive parents. We owe all of the parties, especially the child, a clear understanding of the law governing the adoption. The new ICPC position interferes with achieving that goal.

NY ICPC's effort to apply NY law to the financial aspect of an out of state adoption exceeds the scope of ICPC's authority. In effect, NY ICPC is attempting to exercise

extraterritorial jurisdiction over a legal matter in the birth mother's state of residence. The United States Supreme Court has rejected such tactics in the context of cases outside of the adoption realm. See the United States Supreme Court decision of Bigelow v. Virginia, 421 U.S. 809 (1975) (a state does not have power to prevent their residents from traveling to other states to obtain services legally available there; a state does not acquire power or supervision over the internal affairs of another state merely because the welfare and health of its own citizens may be affected when they travel to that state).

While many New York families will be disadvantaged by ICPC's new position, adoptive parents who are currently providing living assistance to out of state expectant mothers, in conformity with the law of the state where the adoption is to be finalized, are particularly disadvantaged. These adoptive families confront the likelihood that they will not be allowed to bring their children home if the living expenses they paid do not conform to New York's more restrictive time frame.[1] This is particularly unfair and inappropriate given that these payments were made in reliance on longstanding ICPC policies which have permitted such payments. It is also incomprehensible and distressing that NY ICPC would disregard an out of state court order, allowing the adoptive parents to pay exceptional expenses based on the birth mother's unique circumstances, since New York also authorizes such additional support when there is a demonstrated need.

We recognize the important role that ICPC carries out in each and every state to ensure that children brought across state lines for the purpose of adoption are being placed into safe homes. However, it is unacceptable and overreaching for NY OCFS to take this position that fails to further ICPC's mission and also disadvantages many New York families who have made adoption plans with out of state expectant mothers. NY ICPC's position will further limit the already small number of out of state expectant parents willing and able to place children for adoption with New York families. We respectfully request that this matter be evaluated by AAICPC as we believe

[1] Social Services law Section 374(6) allows payment by adoptive parents for reasonable and actual living expenses for a birth mother for housing, maternity clothing, clothing for the child and transportation for a reasonable period not to exceed sixty days prior to the birth and the later of thirty days after the birth or thirty days after the parental consent to the adoption, unless a court determines, in writing, that exceptional circumstances exist which require the payment of the birth mother's expenses beyond the time periods stated int his sentence.

that the position being taken by OCFS and NY ICPC disregards the important goals and purpose of the Interstate Compact. We are asking for your assistance to immediately remedy this change in policy so it is in line with all Interstate Compact offices.

Please contact our Legislative Committee Co-Chair, Rebecca Mendel, Esq., at 212-972-5430 or rmendel@lawrsm.com, or Director Laurie Goldheim, Esq., at 845-624-2727 or lgoldheim@adoptionrights.com, to discuss this issue further. We appreciate your time and attention to this matter.

Kathleen ("Casey") Copps DiPaola

New York Attorneys for Adoption and Family Formation
By: Kathleen ("Casey") Copps DiPaola, Esq.
President
1 Marcus Blvd., Suite 200
Albany, New York 12205
518-436-4170
Fax: 518-436-1456
kdipaola@theCDSLawFirm.com