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House Judiciary

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Neutral Testimony on HB 2039

Mr. Chairman, members of the committee, thank you for the opportunity to provide neutral testimony on **HB 2039**. My name is Mark Gleeson and I am the Director of Trial Court Programs for the Kansas Supreme Court's Office of Judicial Administration. I am also the Director of Dispute Resolution for the State of Kansas.

Individuals ordered into case management, or domestic case management as this bill suggests, are parents who bring the most contentious and persistent conflict to the courts. Associated with each of these parents is at least one child in the middle of the conflict. Case management is one method used to alleviate these high conflict cases. In Kansas, case managers must be qualified before being appointed in a case. One of those qualifications includes training and qualifying as a mediator. As the Director of Dispute Resolution, I have the statutory duty to review and approve applications from persons seeking to be mediators and their continuing education. Currently, approved mediators are required to obtain six hours of continuing education in mediation.

I appreciate the effort that the drafters of the bill have invested into this bill. HB 2039 directly impacts my duties and many of the 350 people serving the people of Kansas as Supreme Court approved mediators. Thus, I am here to address several aspects of the bill that I believe need clarification.

Below is a table identifying the major issues with which I am most concerned. I request time to work with Dr. Bud Dale, Larry Rute, and others interested in improving the court's case management process in order to create balloon amendments for the committee's consideration when you work this bill.

Thank you for the opportunity to appear before you.

Section	K.S.A.	Issue	Recommendation
1	2014 Supp 23-3507(a)	Strikes “child custody, residency or visitation” and inserts “decision-making.”	Removing child custody may diminish the functionality of the domestic case manager resulting in increased litigation and aggravating already difficult circumstances. Consider including language giving the judge authority to include child custody in the DCM’s obligations if specifically authorized by the judge. The DCM would not function as the decision maker but could be permitted to facilitate a negotiated plan if so authorized by the judge.
1	2014 Supp 23-3507(b)	Allows for a party to “request at any time that a DCM provide information to the court for judicial review of the case.”	Add “child custody” to second sentence. Using existing court procedures provides a method for allowing a party to file a motion for modification of a judicial order. The current language suggests that the party may submit the request to the DCM who has no apparent obligation to comply with the request. Formal existing procedures should be employed.
2	2014 Supp 23-3507(a)	Removes “child custody” from this list of issue on which the DCM can facilitate negotiations.	See comments for Section 1 above.
2	2014 Supp 23-3507(b)	Strikes the circumstances where case management shall be appropriate and inserts a requirement that the court make a finding of fact necessary if any party objects.	This may result in additional litigation requiring professional testimony to assist the court in making a determination that the case is a high conflict cases. Striking (b)(1) and (4) while retaining (2) and (3) may be sufficient. The decision to order the parties into case management under (2) and (3) should be supported by a finding a fact. Item (4) is not necessary as it can be presumed under the “best interest of the child” test.
2	2014 Supp 23-3507(d)(1)(c)	Requires court services officers serving as case managers to be appointed by the district court prior to August 28, 2012.	The phrase “appointed by the district court” is not clear and can hold many meanings. This should be removed or clarified.
2	2014 Supp 23-3507(f)	Provides detailed information regarding	The last sentence should be removed. The prior language authorizes the director to

Section	K.S.A.	Issue	Recommendation
		the continuing education and specifically authorizes CLE credit to also be approved as continuing education for DCMs.	approve continuing education using the same criteria in the last sentence. This is the existing practice whether the continuing education is approved by the CLE commission, the Behavioral Science Regulatory Board, or other licensing bodies.
3	2014 Supp 23-3507(e)	Authorizes meetings between a DCM and the parties to be informal.	This is not necessary. The balance of this section is about confidentiality or the lack thereof and the permission to have informal meetings is not only unnecessary but out of place.
3	2014 Supp 23-3507(e)	This section requires the court to list matters over which the DCM will have authority.	Child-custody should be included in this list if it is permitted by statute.
3	2014 Supp 23-3507(i)	This subsection describes a process in which parties may object to a DCMs recommendations	We believe this subsection needs further clarification, as these cases involve issues that are difficult to resolve and need clear guidance.