

January 28, 2015

HB 2039 Case Management
Letter in Opposition to Case management or Parent Coordinators

Mr. Chairman and Committee Members,

The KBA and the Kansas Supreme Court or the Judicial Branch in whole, do not represent the interests of Kansas citizens or any legislators constituents. They do however promote the legal industry itself. Some of the "modest reforms" they propose amount to little more than a stimulus package for the legal industry to perpetuate the problematic cases they complain about.

Case Management and Parenting Coordinators are inappropriate delegations of the judicial function. It is an impediment to court access and denies due process. The concept encroaches on the right of family liberty and brings the government behind the closed doors of private citizens; injecting a quasi-judicial third party who may or may not have a greater capacity than the parents to make day-to-day decisions about the values and goals of families.

The process provides an unnecessary forum for resolving petty issues or arguments over trivial matters - not just major issues. This procedure adds additional expense that few can afford while *being* tedious and time-consuming. Case Managers have the control to self-generate their work and churn fees. The process is *not confidential*, while *not being voluntary*. The process demands the parties to sign releases or sign consents that give up constitutional rights or privacy. There is no basis to presume their "good faith" or "neutrality". With that all said, there are no enforceable ethical guidelines or enforceable practice parameters, no surveying system or accountability to the parties.

These are informal proceedings conducted outside of court and not subject to effective oversight or laws. These individuals who conduct these processes can report conversations and events differently from how they really happened (HEARSAY) and gain shelter from their actions and recommendations blaming parents for the failure to resolve conflict and disputes. They are not required to have any personal parenting experience or experience being a primary caregiver.

There are No studies that exist that indicate that this procedure or process in any way shows these people make better decisions than parents or that justify their subjective problem solving methods or techniques, or, that they improve a families' well-being. Nothing qualifies a stranger to make family decisions for fit parents. Additionally, nothing qualifies a mental health professional to accurately interpret a court order or legal document or a lawyer to assume the role of a *therapist*.

There are no studies to show that these processes reduce court loads. In fact, caseloads in Kansas have increased substantially under Case Management since 1996. Against the facts of Divorce filings falling and the divorce rate dropping. These practices have been self-promoted as "cures" for ailing's of the court system and for the litigants subjected to it by self-serving "practitioners". The overall results of these judicial social experiments have been abysmal.

Case Management & Parenting Coordination is dangerous because it is founded on erroneous beliefs about "high conflict". Can "high conflict" even be defined? Do Case Managers make cases "high conflict? We have to understand the problems and they are vast when attempting this process.

Courts/Judges

- The courts delegate their authority to the Case Manager/Parent Coordinator who is an unaccountable 3rd party which the parties must submit to – directions or payments.
- Court oversight is deceptive because the process gives the practitioner more credibility than either parent particularly due to the relationships between judges, lawyers, therapist etc.
- Courts order participation in these processes under the threat of court sanctions or loss of custody is absolutely creating the opposite intent.
- Courts use these appointments ostensibly to lessen their discovery and time burden many cases require. (THIS IS WHY THEY WANT TO CONTINUE TO USE SOME VARIATION OF THESE PROCESSES!!!!!!!)

These questions must be answered:

- 1) What constitutes "success" of Case Management/Parenting Coordinator?
- 2) Why are these processes' so extremely expensive and allowed to create financial hardships for the parties?
- 3) Where is the incentive for them to resolve the issues?
- 4) Why are we using a process that violates the First Amendment with regard to freedom of speech and association, Fourth and Fifth Amendment right of privacy, and the fundamental parental rights of fit parents, as to whom the state would be unable to file a dependency action and place a child into foster care?
- 5) Why are the caseloads and problems getting worse or growing?
- 6) Why are we not using Mediation? A non-adversarial process with the sole objective of the mediator to focus on resolving the conflict or disagreements by getting the parties to agree?
- 7) Why are we allowing a process that violates the right to privacy?
- 8) Why are we allowing these people to work with no over sight, while parties have no recourse for malfeasance or malpractice let alone getting these people out of their life?

- 9) Why are we allowing these individuals given unwarranted authority to impose sanctions against parents?
- 10) Why are we allowing them latitude to undermine the credibility and competence of parents; they can divulge private family issues to third parties?
- 11) Are we going to work in the interest of the courts or expedite the process for the courts, or are we going to work in the interest of families and the children?
- 12) At what point does the "court of equity" become a "court of law" after the divorce is finalized?

Do we have an alternative? Absolutely – it is called Mediation

Mediation is substantially less expensive, even non for profit groups are in place to help the poor and financially challenged. The Courts would only need to provide and track a surveying system to ensure success of the process and the mediators' ability to work with the parties. These people have a record of success and are driven to get agreements not imposing their will on the participants.

The various forms of Alternative Dispute Resolution (ADR) are widely accepted and highly effective processes for resolving many types of conflict and disputes. Constructive communications and the latitude to be creative when developing solutions allows for compassion and understanding by the parties, rather than insuring continued animosities' and resentments that result in the "winner-take-all" environment of court."

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser – in fees, expenses and waste of time. Never stir up litigation. A worse man can scarcely be found than one who does this."

- Abraham Lincoln

Respectfully Submitted,

Kansans Against Judicial Social Experiments
316-644-8075

The information you requested comparing divorce statistics in 1996 and 2013 appears below.

Unfortunately, the information you requested concerning case management is not available. A representative of the Office of Judicial Administration explained: "I can tell you that case managers are required to be mediators, and we just completed the annual renewal process and we have 276 approved mediators. The number of case managers is believed to be a small subset of those approved mediators, and the number of cases assigned to case management is also believed to be a small fraction of the total number of domestic cases filed in the district courts." Additionally, I would note that I wasn't able to find the divorce rate for the two years you requested, so I used the years available in the attached document, which were also the most recent numbers I could find. I hope this information is useful, however, please feel free to contact me with additional questions.

In Kansas	FY 1996	FY 2013
Population	2,614,557	2,893,957
Divorce Rate	4.1 (1995)	3.9 (2011)
Divorces Filed	18,145 filings	13,149 filings
Total Domestic Relations Caseload	38,588 filings	40,192 filings
Total Civil Caseload (excludes domestic)	20,539 filings	21,957 filings
Attorneys Licensed	9,921 Total	14,055 Total
8,350 Active	11,024 Active – 8,231 (74.66%) reside in KS; 2,793 (25.34%) in other states	
1,571 Inactive	3,031 Inactive – 797 (26.29%) reside in KS; 2,234 (73.71%) in other states	

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