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Case manager crackdowns continue

State court system working on new guidelines

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The head of the agency that oversees mediation and other alternative dispute resolution in the Kansas court system says it will seek public comment soon on new guidelines for child custody case managers, who are fast becoming one of the most scrutinized aspects of the judiciary.

Case managers, appointed by judges to minimize trauma to children of "high-conflict" divorces, have been a part of the state's family law since 1996. But the Legislature and the Kansas Court of Appeals have taken steps recently to rein in the "quasi-judicial" appointees and Art Thompson, the state's dispute resolution coordinator, said Monday that new guidelines are in the works.

"We're getting really close," Thompson said. "We are trying to find some way to make this process work."

Thompson said the public comments on case management could be solicited as soon as this summer and the comment period should last months.

He stressed that case managers are assigned to some of the messiest, most vitriolic divorces and that judges have struggled for years to find the best way to shield the children involved.

"These are tough cases," Thompson said. "There is data that shows that these are the cases in which children are affected the most."

But almost since case management was established by the Legislature, there have been parents and lawyers concerned that case managers are under-qualified and have too much authority. Both the Statehouse denizens and the appellate judges have taken steps to address those concerns in recent months.

Before they adjourned last session, legislators passed a bill requiring case managers to hold a professional license in a field like law, psychology or social work. It took effect July 1.

That was followed by appellate court decisions in back-to-back weeks that slapped the Douglas County district court for abdicating too much of its authority in custody cases to the case manager.

"I think the issue is that the judges or the process in Douglas County is basically to rubber-stamp case manager decisions without a hearing," Lenexa family law attorney Ron Nelson said. "Or allow a hearing only if the judge feels it's necessary for some reason."

Two weeks ago, the appellate court found that mother Karen Williams was entitled to a full evidentiary hearing on the district court's decision to reverse custody of her daughter — a decision that was made solely on the recommendation of case manager Cheryl Powers.

The latest appellate decision, released Friday, established that father Matthew Merrill had the right to object to all recommendations of his case manager, Patrick Nichols, and that the judge should review those objections before implementing the recommendations.

Nelson, who was involved in one of the first case management cases to come before the court of appeals in 2000, said both the recent decisions are good for the system, but the Merrill decision may be too broad. Nelson said that while case management recommendations should be subject to review in instances of core parental rights as outlined in Williams' case, sometimes case managers have to act quickly to stem the damage caused by parental disputes over smaller issues like babysitters, or pick-up times.

"What the court is now doing is something that many people have talked about as needed reforms for the last 13 years," Nelson said. "Up until these two decisions, the court basically ignored it."

Now it's gotten so bad, they may have overreacted in some ways."

Bud Dale, a Topeka-based lawyer and case manager, agreed, and said he also thought the appellate judges went too far in limiting case management fees.

Dale objected to the judges' ruling that Nichols should not have been able to bill Merrill for the time Nichols spent defending himself against motions to remove him as case manager. Instead, the court wrote that case managers are only authorized to assess fees to the parties for work related to "custody, residency or visitation or parenting time issues."

"(The court) muddied some waters here," Dale said. "I'm not in indentured service to the court. I'm not working for nothing."

In the Merrill case, the appellate court also found that Nichols was inappropriately influenced by the parties' unwillingness to pay him and that the district judge erred in accepting Nichols' request that his recommendations be immediately implemented as court orders.

"I have respect for the legal process and would feel bound by my ethics not to criticize the opinions of the courts of appeals," Nichols said Monday. "I would note that the (district) judge who heard the case and observed the witnesses concluded that my actions were appropriate and correct. The appeals court did not agree."

Two court of appeals decisions in two weeks regarding case management is unusual. Thompson said "there are probably hundreds" of cases each year in which a case manager is appointed and they ultimately save the state money by keeping families out of court.

Dale said he hoped the benefits of case management are not overlooked in the recent rush to reform it.

"I think what has been lost as people have grown frustrated with case managers is these people have the task of protecting children from conflict," Dale said. "The need to intervene immediately is pretty high sometimes."

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