

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED

ADMINISTRATIVE ORDER NO. 276

DEC 09 2013

CAROL G. GREEN  
CLERK OF APPELLATE COURTS

Re: Domestic Case Management Guidelines by the Advisory Council on Dispute Resolution

The Supreme Court in Administrative Order 266 adopted Guidelines for Domestic Case Managers to comply with the requirements of K.S.A. 23-3508, and amendments thereto. In addition, the Supreme Court's Advisory Council on Dispute Resolution has proposed Domestic Case Management Guidelines that discuss the role of domestic case managers and presents recommendations regarding case management in relation to high conflict domestic cases.

The Domestic Case Management Guidelines of the Kansas Supreme Court's Advisory Council on Dispute Resolution were proposed to and approved by the Supreme Court.

IT IS THEREFORE ORDERED that the attached Domestic Case Management Guidelines of the Kansas Supreme Court Advisory Council on Dispute Resolution are hereby adopted and effective upon this date.

BY ORDER OF THE COURT this 5 day of December 2013.



Lawton R. Nuss  
Chief Justice

Attachment

**Domestic Case Management Guidelines  
of the Kansas Supreme Court's  
Advisory Council on Dispute  
Resolution  
March 2013**

## Foreword

The Guidelines for Case Managers (“Guidelines”) are the product of the Kansas Supreme Court’s Advisory Council on Dispute Resolution. These guidelines are modeled after the Association of Family and Conciliation Courts’ Parenting Coordinator Guidelines.<sup>1</sup>

The Kansas Supreme Court’s Advisory Council on Dispute Resolution (“Advisory Council”) appointed a Domestic High Conflict Committee in 2007, which recommended the development of guidelines for case managers. In the report to the Advisory Council, the Committee said,<sup>2</sup>

The most common form of dispute resolution in high conflict domestic cases is case management. Case management was initiated through statute, K.S.A. 23-1001 *et seq.* In recent years, Kansas courts have increasingly used case management to resolve high conflict domestic disputes. The judge in a high conflict domestic dispute appoints a case manager and the parties are required to meet with the case manager, who is given access to all information concerning the parties and the case. The case manager makes binding recommendations to resolve parenting time disputes, sometimes custody and relocation changes, and makes recommendations to the judge on all other issues in a dispute. Seven years ago, only three judicial districts used case management. By December 2004, at least 29 districts were using this process. A case manager may be appointed by the agreement of both parties if the court finds that it is a high conflict case or that the appointment is in the best interest of the minor child.

These requirements do not provide any details on what the case management training should entail, the length of the training, or who should teach the sessions. There is no clarity as to whether the case management trainees should be approved mediators or simply be individuals familiar with mediation. There is no definition of just what type of continuing education they should take each year and no administrative body to record that the requirement was completed.

The Kansas Coalition Against Sexual and Domestic Violence is concerned that the case management process may be inappropriate and potentially exploited by perpetrators of domestic violence who have exhibited patterns of violence, threat, intimidation and coercive control over their co-parent.

The Advisory Council on Dispute Resolution subsequently developed the following guidelines.

**The members of the Advisory Council on Dispute Resolution that developed these guidelines were:** Larry Rute (Chair), Bob Williams, Deb Dickerhoof, Hon. John Gariglietti, Hon. Gunnar Sundby, Barry L. Carroll, Jennifer England, Bill Ebert, Gary Flory, Ronnie Beach,

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<sup>1</sup> Guidelines for Parenting Coordination, Developed by the AFCC Task Force on Parenting Coordination, May 2005.

<sup>2</sup> Kansas Supreme Court’s Dispute Resolution Advisory Council, Domestic High-Conflict Committee Draft Recommendations, 2007.

Catherine Ehmke, Micki Armstrong, Cheryl Powers, Lisa Locke, Natalie Hogan, Scott Swanson, Terrie McCants, Shorey Berlin, and Hon. Thomas Kelly Ryan.

### **Case Management Process**

***K.S.A. 23-3507. Case management; process.***

*Case management under this act is the process by which a neutral case manager appointed by the court, or by a hearing officer in a proceeding pursuant to K.S.A. 23-701, and amendments thereto, or through agreement by the parties, assists the parties by providing a procedure, other than mediation, which facilitates negotiation of a plan for child custody or visitation. In the event that the parties are unable to reach an agreement, the case manager shall make recommendations to the court.*

**Definition:**

Case management is a child-focused alternative dispute resolution process in which a mental health professional, legal professional, or other qualified individual with mediation training and experience assists high conflict parents to implement their parenting plan by facilitating the resolution of their disputes in a timely manner, educating parents about children's needs, and, with prior approval of the parties and/or the court, making decisions within the scope of the court order or appointment contract. The overall objective of case management is to assist high conflict parents to implement their parenting plan, to monitor compliance with the details of the plan, to resolve conflicts regarding their children and the parenting plan in a timely manner, and to protect and sustain safe, healthy, and meaningful parent-child relationships.

Case management is a quasi-legal mental health, alternative dispute resolution process that combines assessment, education, conflict management, and sometimes decision-making functions. The case manager's role is reserved for those high conflict parents who have demonstrated their longer term inability or unwillingness to make parenting decisions on their own, to comply with parenting agreements and orders, to reduce their child-related conflicts, and to protect their children from the impact of that conflict.

The Kansas Supreme Court previously adopted Administrative Order No. 266, Re: Guidelines for Domestic Case Managers, to comply with the requirements of K.S.A. 23-3508, and amendments thereto, concerning the education requirements. These Guidelines are to be read in a manner consistent with the requirements set forth in Administrative Order 266.

### **Appropriate Cases for Case Management**

***K.S.A. 23-3508. (b) Cases in which case management is appropriate shall include one or more of the following circumstances:***

- (1) Private or public neutral dispute resolution services have been tried and failed to resolve the disputes;*
- (2) other neutral services have been determined to be inappropriate for the family;*
- (3) repetitive conflict occurs within the family, as evidenced by the parties filing at least two motions in a six-month period for enforcement, modification or change of visitation or custody which are denied by the court; or*

*(4) a parent exhibits diminished capacity to parent.*

Case Management can be recommended as an intervention in high conflict cases to monitor parental cooperation with court orders, to enforce compliance with court orders, or to report to the court quickly when one parent is out of compliance. A case manager (CM) can serve as a “neutral decision maker” to assist parents with their day-to-day disputes and can educate parents in creating a child focused parenting plan.

In cases involving domestic violence (DV) in which one parent seeks to obtain and maintain power and control over the other, the role of the CM changes to an enforcement function. Here, the CM is likely to deal with a court order, the more detailed the better, rather than a mutually agreed upon parenting plan. The role is to ensure compliance with the details of the order and to test each request for variance from its terms to protect the custodial parent’s autonomy in making decisions based on the children’s best interests and guard against manipulation by the abusing parent.

CMs should routinely screen prospective cases for DV and decline to accept such cases if they do not have specialized expertise to effectively manage DV cases involving an imbalance of power, control, and coercion. Each jurisdiction should have a process in place to screen out and/or develop specialized CM protocols and procedures in this type of DV case.

### **Qualifications of Domestic Case Managers**

#### **Guideline I**

A CM shall be qualified by education and training to undertake case management and shall continue to develop professionally in the role.

**K.S.A. 23-3508. (d)** *To qualify as an appointed case manager, an individual shall:*

- (1) (A) Be currently licensed in Kansas as a licensed psychologist, licensed masters level psychologist, licensed clinical psychotherapist, licensed professional counselor, licensed clinical professional counselor, licensed marriage and family therapist, licensed clinical marriage and family therapist, licensed master social worker or licensed specialist social worker;*
- (B) be currently licensed to practice law in Kansas and have at least five years of experience in the field of domestic relations law or family law; or*
- (C) be a court services officer and have training in domestic relations cases as prescribed by the district court in which the case is filed;*
- (2) be qualified to conduct mediation;*
- (3) have experience as a mediator;*
- (4) attend one or more workshops, approved and as ordered by the district court in which the case is filed, on case management; and*
- (5) complete a minimum number of continuing education hours regarding case management issues or abuse and control dynamics issues as established and approved by the supreme court.*
- (e) On and after September 1, 2012, any case manager appointed by the court prior to, on or after July 1, 2012, shall meet the requirements of subsection (d).*

- A. The CM shall be required to complete the Kansas domestic mediator approval process.
- B. The CM shall be encouraged to be a licensed mental health or legal professional in an area relating to families, or a certified family mediator under the rules or laws of the jurisdiction with a master's degree in a mental health field.
- C. The CM should have extensive practical experience with high conflict or litigating parents.
- D. The CM shall have training in the case management process, family dynamics in separation and divorce, case management techniques, domestic violence and child maltreatment, and court specific case management procedures. The training should be conducted by trainers who meet the attached training requirements. As required by Supreme Court Administrative Order No. 266, a CM shall receive a minimum of six hours of case management training annually. The Advisory Council recommends that case management training be a minimum of six hours annually for professionals who have a background in working with high conflict families and twelve hours for professions who do not have these extensive backgrounds.

**Guideline II**

A CM shall serve by parent stipulation and/or formal order of the court, which shall clearly and specifically define the CM's scope of authority and responsibilities.

***K.S.A. 23-3508 [Case management]; when ordered; appointment of case manager;***

***qualifications.*** (a) *The court may order case management, when appropriate, of any contested issue of child custody or visitation at any time, upon the motion of a party or on the court's own motion. A hearing officer in a proceeding pursuant to K.S.A. 2012 Supp. 23-3401, and amendments thereto, may order case management, if appropriate, of a contested issue of child visitation or parenting time in such a proceeding.*

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(c) *If the court or hearing officer orders case management under subsection (a), the court or hearing officer shall appoint a case manager, taking into consideration the following:*

- (1) *An agreement by the parties to have a specific case manager appointed by the court or hearing officer;*
- (2) *the financial circumstances of the parties and the costs assessed by the case manager;*
- (3) *the case manager's knowledge of (A) the Kansas judicial system and the procedure used in domestic relations cases, (B) other resources in the community to which parties can be referred for assistance, (C) child development, (D) clinical issues relating to children, (E) the effects of divorce on children and (F) the psychology of families; and*
- (4) *the case manager's training and experience in the process and techniques of alternative dispute resolution and case management.*

- A. A court order is necessary to provide the CM authority to work with the parents outside of the adversarial process. A court order is necessary to obtain information and to make recommendations and decisions as specified in the order.

- B. In addition to the court order for the CM, the parties may enter into a written agreement to detail specific issues not contained in the court order, such as fee payments, billing practices, and retainers.
- C. The court order or consent order should specify a term of service for the CM, including starting and ending dates and should be reviewed every three years. Parents can request that a CM continue for additional terms of service following the expiration of each term or can decline to renew the CM's services. Similarly the CM can give notice prior to the end of the term of service that the CM will not continue to serve as CM.
- D. A CM should not initiate providing services until the CM has received the fully executed and filed court order appointing the CM, or that the parents, their counsel (if any), and the CM have signed a consent agreement, if any. A draft court order is attached.
- E. A CM shall acquire and maintain professional competence in the case management process. A CM shall regularly participate in educational activities promoting professional growth. It is recommended that a CM participate in peer consultation or mentoring to receive feedback and support on cases. CM orders and/or private agreements should specify that such professional consultation is permitted.
- F. A CM shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the CM's skill or expertise.
- G. A jurisdiction should consider "grandfathering" existing professionals with appropriate experience.

### **Role of Domestic Case Manager**

#### **Guideline III**

A CM shall maintain impartiality, although a CM is not neutral regarding the outcome of particular decisions. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

- A. A CM shall withdraw if the CM determines he or she cannot act in an impartial or objective manner.
- B. A CM shall neither give nor accept a gift, favor, loan, or other item of value from any party having an interest in the case management process. During the case management process, a CM shall not solicit or otherwise attempt to procure future professional services or positions from which the CM may profit.
- C. A CM shall not coerce or improperly influence any party to make a decision.
- D. A CM shall not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the case management process.

- E. A CM shall not accept any engagement, provide any service, or perform any act outside the role of CM that would compromise the CM's integrity or impartiality in the case management process.

#### **Guideline IV**

A CM shall not serve in a matter that presents a clear conflict of interest.

- A. A conflict of interest arises when any relationship between the CM and the participants or the subject matter of the dispute compromises or appears to compromise a CM's impartiality.
- B. A CM shall disclose potential conflicts of interest to the court as soon as practical after a CM becomes aware of the interest or relationship giving rise to the potential conflict.
- C. After appropriate disclosure, the CM may serve with the written agreement of all parties. However, if a conflict of interest clearly impairs a CM's impartiality, the CM shall withdraw regardless of the express agreement of the parties.
- D. A CM shall not create a conflict of interest by providing any services to interested parties that are not directly related.
- E. A CM may make referrals to other professionals to work with the family, but shall avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration shall be given or received by a CM for case management or other professional referrals.

#### **Guideline V**

A CM shall not serve in dual sequential roles.

- A. A CM shall not serve in multiple roles in cases that create a professional conflict.
  - 1. A child's attorney or child advocate shall not become a CM in the same case.
  - 2. A mediator or custody evaluator shall be cautious about becoming a CM in the same case, even with the consent of the parties, because of the differences in the role and potential impact of the role change.
  - 3. A CM shall not become a custody evaluator either during or after the term of a CM's involvement with the family.
  - 4. A CM shall not be appointed after serving as a therapist, consultant, coach, or any other mental health role to any family member.
  - 5. A CM shall not become a therapist, consultant, or coach, or any other mental health role to any family member, either during or after the term of the CM's involvement.
  - 6. A CM shall not become one client's lawyer, either during or after the term of the CM's involvement, nor shall one client's lawyer become the CM in that client's case.
- B. A CM should attempt to facilitate resolution of issues by agreement of the parties; however, the CM is not acting in a formal mediation role. An effort towards resolving an issue (which



may include therapeutic, mediation, educational, and negotiation skills) does not disqualify a CM from deciding an issue that remains unresolved after efforts of facilitation.

#### **Guideline VI**

A CM shall inform the parties of the limitations on confidentiality in the case management process. Information shall not be shared outside of the case management process except for legitimate and allowed professional purposes. A CM shall maintain confidentiality regarding the sharing of information outside of the scope of the case management process except as provided by court order or by written agreement of the parties.

- A. Case management is not a confidential process, either for communications between the parties and their children and the CM, or for communications between the CM and other relevant parties to the case management process, or for communications with the court.
- B. A CM shall inform the parties of the following limitations of confidentiality:
  - 1. The CM shall report suspected child abuse or neglect to child protective services whether or not a mandatory or voluntary reporter under state, provincial, or federal law;
  - 2. The CM shall report to law enforcement or other authorities if the CM has reason to believe that any family member appears to be at serious risk to harm himself or herself, another family member, or a third party; and
  - 3. The CM can directly contact the court with any other information the CM determines that the court should know per K.S.A. 23-3509, and amendments thereto.

#### ***K.S.A. 23-3509 Case manager; duties; withdrawal; reassignment; recommendations.***

- (d) (1) If parties have been ordered by the court to attempt to settle the party's disputes with the assistance of a case manager, and are unable to settle such disputes, the parties are to follow the recommendation or recommendations of the case manager as ordered by the court.*
- (2) When a case manager is forced to make recommendations for the parties, such recommendations shall be noted in writing as soon as possible and may be accompanied by supporting information. Such recommendation shall be reported to the court with copies to the attorneys of record for each party within 10 working days.*
- (3) Agreements of the parties and recommendations of the case manager which may concern temporary arrangements need not be entered into the court record by the attorneys of record.*
- (4) Case managers shall be furnished a form for orders to recommend such agreements to the court for the court's final order.*
- (5) Permanent issues such as designation of custody, primary residence or child support which are recommended by the case manager shall be entered into the court record within 10 working days of receipt of the recommendation. Should there be differing opinions as to the language of the journal entry, the case manager shall review the proposed journal entry and may recommend appropriate language to the court.*
- (6) If a disputant party disagrees with a recommendation such party may file a motion before the court for a review at which time an order shall be made by the court. The case*

*manager shall explain to the court either by report or testimony the reasons for such recommendation or recommendations.*

*(7) Costs of the procedure and professional time may be assessed to the party who objected to the recommendations in the journal entry or may be otherwise assessed by the court.*

### **Guideline VII**

A CM shall assist the parties in reducing harmful conflict and in promoting the best interests of the children consistent with the roles and functions of a CM.

- A. A CM serves an assessment function. The CM should review the custody evaluation, other relevant records, interim or final court orders, information from interviews with parents and children and other collateral sources, domestic violence protection orders, and any other applicable cases involving criminal assault, domestic violence or child abuse, and educational records, and analyze the impasses and issues as brought forth by the parties.
- B. A CM serves an educational function. The CM should educate the parties about child development, divorce research, the impact of their behavior on the children, parenting skills, and communication and conflict resolution skills.
- C. A CM serves a coordination/case management function. The CM should work with the professionals and systems involved with the family (*e.g.* mental health, health care, social services, education, legal) as well as with extended family, stepparents, and significant others.
- D. A CM serves a conflict management function. The CM's primary role is to assist the parties in working out disagreements regarding the children to minimize conflict. The CM may utilize dispute resolution skills from principles and practices of negotiation, mediation, and arbitration. To assist the parents in reducing conflict, the CM may monitor the faxed, e-mailed, or written exchanges of parent communications and suggest more productive forms of communication that limit conflict between the parents. In order to protect the parties and children in domestic violence cases involving power, control, and coercion, a CM should tailor the techniques used so as to avoid offering the opportunity for further coercion.
- E. A CM serves a decision-making function. When parents are not able to decide or resolve disputes on their own, the CM shall be empowered to make decisions to the extent described in the court order, or to make reports or recommendations to the court for further consideration. CMs should communicate their decisions in a timely manner in person or by fax, e-mail, or telephone. In the event decisions are provided orally, a written version shall follow in a timely manner.
- F. A CM shall not offer legal advice.

**Guideline VIII**

A CM shall facilitate the participants' understanding of the case management process so that they can give informed consent to the process.

- A. In the first session, a CM should carefully review the nature of the CM's role with the parents to ensure that they understand what the case management process involves.
- B. The position of the CM is one of considerable authority and power. It is important that parents fully understand the extent of the parental rights and power they are assigning to the CM in the form of decision-making, the limited nature of the confidentiality of the process, the professional persons with whom the CM will be authorized to consult or obtain information, and what the parents' rights are in seeking redress with the court.

**Guideline IX**

A CM shall fully disclose and explain the basis of any fees and charges to the participants.

- A. All charges for case management services shall be based upon the actual time expended by the CM or as directed by the local jurisdiction's case management program. All fees and costs shall be appropriately divided between the parties as directed by the court order of appointment or, with the approval of the court, as agreed upon in the CM's written fee agreement with the parties.

***K.S.A. 23-3509 Case manager; duties; withdrawal; reassignment; recommendations. (a) A case manager . . . shall:***

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*(5) notify the court when a party fails to meet the financial obligations of the case management process; [and]*

*(6) file for collection of costs as necessary. The court shall assist in such filing or collection efforts, or both[.]*

- B. Prior to beginning the case management process, a CM shall explain, in writing, to the parties and counsel the basis of fees and costs and the method of payment and any fees associated with postponement, cancellation, and/or nonappearance, as well as any other items along with the parties' *pro rata* share of the fees and costs as determined by the court order or agreed to by the parties with approval of the court. In cases of domestic violence involving power, control, and coercion, the CM shall hold individual sessions with the parties to convey this information. The CM should comply with any local statute, constitutional rulings, or rules regarding fees. A CM may request a retainer or advance deposit prior to starting a case.
- C. Activities for which a CM may charge typically include:
  - (1) time spent interviewing parents, children, and collateral sources of information;
  - (2) preparation of agreements;
  - (3) correspondence, decisions, and reports;
  - (4) review of records and correspondence;
  - (5) telephone and electronic conversation;

- (6) travel;
- (7) court preparation; and
- (8) appearances at hearings, depositions, and meetings.

- D. The parties should be billed on a regular basis and notified when the retainer or advance deposit, if any, is to be replenished.
- E. A CM shall maintain the records necessary to support charges for services and expenses and should make a detailed accounting of those charges to the parties, their counsel, or the court on a regular basis, if requested to do so.

**Guideline X**

A CM will communicate with all parties, counsel, children, and the court in a manner which preserves the integrity of the case management process and considers the safety of the parents and children. The CM will have access to documentary information necessary to fulfill the responsibilities of the CM and to persons involved with family members.

- A. Because case management is a non-adversarial process designed to reduce acrimony and settle disputes efficiently, a CM may engage in *ex parte* (individual) communications with each of the parties and/or their attorneys, if specified in writing in the order of appointment, the case management agreement, or stipulation. The CM may initiate or receive *ex parte* oral or written communications with the parties and their attorneys, legal representatives of the children, and other parties relevant to understanding the issues. The CM should do so in an objective, balanced manner that takes into consideration the possibility or perception of bias. The CM should communicate agreements, recommendations, or decisions to all parties and counsel at the same time.
- B. If reports are written, the CM should follow the court's rules or instructions regarding whether the court should receive a copy.

***K.S.A. 23-3509 Case manager; duties; withdrawal; reassignment; recommendations. (a) A case manager . . . shall:***

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*(8) directly contact the court with any other information the case manager determines that the court should know.*

- C. The CM typically should have access to any persons involved with family members including, but not limited to, the custody evaluator, lawyers, school officials, and physical and mental health care providers. The CM shall have the authority to meet with the children, any stepparent or person acting in that role, or anyone else the CM determines to have a significant role in contributing to or resolving the conflict. The CM should notify any such collateral sources that information obtained from them is not confidential and that it may be used in making decisions in the case, or in any reports, recommendations, or testimony for the court.

- D. The CM should have access to all orders and pleadings filed in the case, as well as the custody evaluation report, school and medical records of the children, and reports of psychological testing that were generated prior to, during, or after the pendency of the case. The court order should require that the parties execute releases and consents to permit access to such data and other relevant information.
- E. The CM should have initial individual and/or joint interviews with the parties and may want to interview the children if the CM has the appropriate training and skills. CMs may interview any individuals who provide services to the children as needed to assess the children's needs and wishes. The communication between the parties may be by joint face-to-face meetings, telephone conference calls, individual face-to-face or telephone meetings, e-mail, or fax. The CM should determine whether separate or joint sessions are most appropriate at any particular time. In cases of domestic violence involving power, control, and coercion, the CM shall conduct interviews and sessions with the parties individually.
- F. The CM shall be alert to the reasonable suspicion of any acts of domestic violence directed at the other parent, a current partner, or the children. The CM should adhere to any protection orders, and take whatever measures may be necessary to ensure the safety of the parties, their children, and the CM.
- G. The CM should be alert to the reasonable suspicion of any substance abuse by either parent or child, as well as any psychological or psychiatric impairment of any parent or child.
- H. The CM should keep notes regarding all communications with the parties, the children, and other persons with whom the CM speaks to about the case.
- I. A CM shall document in writing all resolutions agreed upon by the parties or determined by CM recommendations.
- J. The CM shall maintain records in a manner that is professional, comprehensive, and inclusive of information and documents that relate to the case management process and that support decisions and recommendations by the CM.

#### **Guideline XI**

A CM should attempt to facilitate agreement between the parties in a timely manner on all disputes regarding their children as they arise. When parents are unable to reach agreement, and if it has been ordered by the court, or authorized by consent, the CM shall decide the disputed issues.

***K.S.A. 23-3509 Case manager; duties; withdrawal; reassignment; recommendations. (a) A case manager appointed under K.S.A. 2012 Supp. 23-3508, and amendments thereto, shall:***

- (1) Meet with the parties, and other individuals deemed appropriate;*
- (2) gather information necessary to assist the parties in reaching an agreement or making recommendations, including medical, psychological, education and court records, including child custody investigations and child custody psychological evaluations, of the parties and children;*

*(3) report to the court as directed by court order; [and]*

*(4) keep a record by date and topic of all contacts with the parties in the case. When requested, this record shall be made available to the court in total or summary form without the express consent of the parties and shall not be considered a medical or psychological record for purposes of confidentiality[.]*

- A. A CM may be granted the authority to make decisions for the parties when they cannot agree, or the CM may be allowed to only make recommendations to the parties or the court. A CM should be knowledgeable about governing law and procedure in the CM's jurisdiction regarding decision-making or arbitration by the CM.
  
- B. A CM shall have only the authority that is delegated in the court order or the written consent provided by the parties. Issues may include, but are not limited to, the following:
  - 1. Minor changes or clarification of parenting time or access schedules or conditions including vacation, holidays, and temporary variation from the existing parenting plan;
  - 2. Transitions or exchanges of the children including date, time, place, and means of transportation and transporter;
  - 3. Health care management including medical, dental, orthodontic, and vision care;
  - 4. Child-rearing issues;
  - 5. Psychotherapy or other mental health care including substance abuse assessment or counseling for the children;
  - 6. Psychological testing or other assessment of the children and parents;
  - 7. Education or daycare including school choice, tutoring, summer school, participation in special education testing and programs, or other major educational decisions;
  - 8. Enrichment and extracurricular activities including camps and jobs;
  - 9. Religious observances and education;
  - 10. Children's travel and passport arrangements;
  - 11. Clothing, equipment, and personal possessions of the children;
  - 12. Communication between the parents about the children including telephone, fax, e-mail, notes in backpacks, etc.;
  - 13. Communication by a parent with the children including telephone, cell phone, pager, fax, and e-mail when they are not in that parent's care;
  - 14. Alteration of appearance of the children including haircuts, tattoos, ear and body piercing;
  - 15. Role of and contact with significant others and extended families;
  - 16. Substance abuse assessment or testing for either or both parents or a child, including access to results; and
  - 17. Parenting classes for either or both parents.
  
- C. The CM should use or gather written or verbal statements of the dispute from each party, as well as other relevant sources of information. The methodology used by the CM shall be fair to both parties, and be transparent to both the court and the parties. Each party shall be given an opportunity to be heard in the process. Notice shall be given as to what is expected from the participation of the parties and the consequences of nonparticipation. If one party refuses to cooperate after notice, then the CM may continue to resolve the dispute.

- D. The CM shall issue a written resolution of the dispute or a verbal decision in time sensitive matters to be followed by a written decision with copies to all parties.

***K.S.A. 23-3509 Case manager; duties; withdrawal; reassignment; recommendations.***

*(a) A case manager . . . shall:*

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*(7) be authorized by the court to report threats, imminent danger, suspected child abuse, fear of abduction and suspected or actual harm to any party or child involved in case management either directly to the court and to other authorities, or both. Such action shall be followed by a written summary within five business days of the initial filing of such report which shall be sent to the judge or the judge's designee and included in the court file[.]*

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*(b) A case manager appointed under K.S.A. 2012 Supp. 23-3508, and amendments thereto, may withdraw at any time following the initial order. Sufficient reasons for withdrawal may include, but not be limited to, the following:*

*(1) Loss of neutrality which prevents objectivity;*

*(2) nonpayment by a party;*

*(3) lack of cooperation by a party;*

*(4) threat to a party;*

*(5) retirement or case load reduction by a case manager; or*

*(6) any other reason which shall be stated to the court in writing and considered adequate and sufficient reason by the court.*

*(c) A disputant party may request reassignment of a case manager by filing a motion with the court. The court shall consider such requests upon review. Repeated requests may raise a presumption of lack of parental cooperation and the court may consider sanctions against the uncooperative parent or parents.*

- E. The court will hold a *de novo* hearing when the case manager makes a recommendation to the court on custody or residency issues.

## Training

The Supreme Court in Administrative Order 266 requires a domestic case manager to participate annually in not less than six hours of continuing education. The Advisory Council recommends that initially case managers participate in a minimum of twelve hours continuing education training that consists of the following modules and is conducted by trainers who meet training guidelines established by the advisory council.

***K.S.A. 23-3508 Same; when ordered; appointment of case manager; qualifications. (c) If the court or hearing officer orders case management under subsection (a), the court or hearing officer shall appoint a case manager, taking into consideration the following:***

***\* \* \****

- (3) the case manager's knowledge of***
  - (A) the Kansas judicial system and the procedure used in domestic relations cases,***
  - (B) other resources in the community to which parties can be referred for assistance,***
  - (C) child development,***
  - (D) clinical issues relating to children,***
  - (E) the effects of divorce on children and***
  - (F) the psychology of families; and***
- (4) the case manager's training and experience in the process and techniques of alternative dispute resolution and case management.***



## Case Management Training Modules

### **Module 1: Case Management Process**

- A. The various functions of the CM.
- B. Limitations of the case management process, including the difference between case management and parent education, therapy, custody evaluation, and dispute resolution processes.
- C. Professional guidelines of practice for CMs.
  - 1. The interplay between other professional guidelines and professional practice guidelines and local or state guidelines for court appointed CMs.
  - 2. The potential for conflict of interest of the CM and the people to whom case management services are offered.
- D. Issues appropriate and not appropriate for case management.
- E. Characteristics of individuals who are appropriate and not appropriate to participate in the case management process.
  - 1. Appropriate courses of action when confronted with substance abuse during the case management process.
  - 2. Screening for domestic violence and appropriate courses of action when confronted with domestic violence during the case management process.
  - 3. The effect of domestic violence on parents involved in the case management process.
  - 4. Situations in which the CM should suggest that the parties contact the supervising judicial officer, independent legal counsel, postpone or cancel the case management session, suspend the case management process, or refer the parties to other resources.
- F. When to refer parties to services for child protection or elder abuse, and the issue of confidentiality as it applies to each.
- G. Special needs of the self representing party.

### **Module 2: Family Dynamics in Separation and Divorce**

- A. Psychological Issues in Separation and Divorce and Family Dynamics.
  - 1. The impact divorce has on individuals and on family dynamics and the implications for the case management process.
  - 2. Useful psychological research and theories applicable to the intervention for high conflict families.
  - 3. How emotions impact on divorce issues and on a party's ability to participate effectively in the case management process.
  - 4. Sources of divorce or separation impasses, including parental behaviors associated with personality disorders, and the related implications.

5. How to promote awareness by the parties of the interests of persons affected by actual or potential agreements, who are not represented during the case management process.
  - a. The impact of grandparents, step-parents, and significant others on family systems and the case management process.
  - b. Situations in which participation of non-parties (e.g., grandparents, children, new spouses) may be necessary in the case management process.
- B. Issues concerning the needs of children in the context of divorce.
  1. The needs and adjustment of children and the effect of divorce on their relationships with their mother, father, step-families, siblings, and others in the family relationship.
  2. Children's developmental stages and how they relate to divorce and parenting arrangements.
  3. The impact the case management process can have on the children's well-being and behavior.
  4. When and how to involve children in the case management process.
  5. Indicators of child abuse and/or neglect and the process and duty to report allegations of child abuse and/or neglect.
- C. Dealing with high conflict parents.
  1. The impact of parental conflict and appropriate parenting on children's well-being.
  2. The dynamics of child alignments, estrangements, and alienation.
  3. Various parenting arrangements that consider the needs of the child and each parent's capacity to parent, including modifications for high conflict situations.
- D. Dealing with domestic violence issues.
  1. The different research-based types of domestic violence, including conflict-instigated violence, violence involving power, control, and coercion (often referred to as male battering), female violence, and separation engendered violence.
  2. The unique problems and inherent dangers presented by domestic violence of all types in terms of parental contacts, and the need for safe CM procedures and child exchanges.
  3. The importance of monitoring compliance with the parenting plan and reporting to a judicial officer any infractions of the court order, including the parenting plan.
  4. The psychological impact of domestic violence on child and adolescent development.
- E. The different co-parenting relationships of cooperative, parallel, and conflicted parenting.

### **Module 3: Case Management Techniques and Issues**

- A. Structuring the case management process.
  1. The initial session and preparing the parties for the process.
  2. Scheduling the time and location and establishing the format of each conference and focusing discussion.
  3. Structuring and managing the discussion, maintaining control of the sessions, and utilizing appropriate case management skills.
  4. Managing separate sessions, telephonic, and e-mail communication.
  5. Maintaining appropriate records and documentation as a CM.

- B. The CM's informed consent, including limits on confidentiality.
- C. The CM's service contract and fee allocation.
- D. The role of the parenting plan in the case management process, including how to develop, monitor, and modify a parenting plan.
- E. The characteristics that enhance or undermine the effectiveness of the CM including, but not limited to, demonstrating empathy, building rapport, establishing trust, setting a cooperative tone, sympathetic listening and questioning, empowering the parties, remaining non-judgmental, language use, and non-verbal communication skills.
- F. Awareness of personal biases, prejudices, and styles that are the product of one's background and personal experiences that may affect the case management process.
- G. Socio-economic, cultural, racial, ethnic, language, age, gender, religious, sexual orientation, and disability issues, which may arise and/or affect the parties' negotiation styles, ability, or willingness to engage in the case management process.
- H. Building on partial agreements including when and how to switch between dispute resolution processes.
- I. Arbitration procedures, appropriate arbitration decisions, and writing and filing arbitration decisions or awards.
- J. Appropriate techniques for handling difficult situations.
- K. Appropriate boundaries of a CM.
  - 1. Safety procedures for those participating in the case management process.
  - 2. Office safety policies and working with clients having current restraining and protective orders.
  - 3. Establishing appropriate limits for client demands.
- L. When and how to use outside experts effectively.
  - 1. How to assist the parties in deciding on appropriate community resources.
  - 2. Developing a list of social service resources, including those for domestic violence situations.
- M. The impact of high conflict client behavior on the case management process and the CM and avoiding professional burn-out.
- N. Reasons for a CM to decline an appointment, withdraw or request appropriate assistance including, but not limited to, when the facts and circumstances of the case are beyond the CM's skill or experience.

- O. The Americans with Disabilities Act (ADA) requirements and strategies for handling situations when faced with disability issues or special needs.

#### **Module 4: Court Specific Case Management Procedures**

- A. The CM's responsibility to the court.
- B. Knowledge of and adherence to jurisdiction-specific qualifications for a CM.
- C. Mentorship and certification requirements, if applicable.
- D. Local or state family law as it may pertain to the case management process.
  - 1. The state statute and/or rule governing family parenting coordination.
  - 2. The difference between neutrality and impartiality as it applies to case management and the ability to demonstrate each appropriately.
  - 3. Legal concepts as they relate to the case management process including, but not limited to, geographic relocation, equitable distribution, child support, law of modification, parenting time adjustment, law of relocation, law of due process law of *ex parte* communication, and law of privilege.
  - 4. The statutory constraints of case management where domestic violence exists and/or protective orders are in place.
- E. How and when the CM should interface with the court system.
  - 1. The appointment and discharge processes of the CM.
  - 2. The importance of a court designation to the case management process.
  - 3. The ethical constraints of confidentiality in relation to the entire case management process and separate sessions within the process.
- F. Forms utilized in local courts pertaining to case management and local court procedures.
- G. How to work with legal, mental health, and other professional disciplines, and promote cooperation among those dealing with the family.
- H. When and how to utilize a qualified expert and/or a team approach to best serve the parties in the case management process.
- I. The grievance procedure contained in the local or state rules for CMs, if any.
- J. Possible ethical dilemmas that may confront a CM and how to avoid them.

**Domestic Violence Training:** Continuing training on domestic violence should be encouraged utilizing the Kansas Coalition Against Sexual and Domestic Violence or other similar organizations to assist in providing training.

IN THE \_\_\_\_\_ JUDICIAL DISTRICT  
DISTRICT COURT, \_\_\_\_\_, KANSAS

\_\_\_\_ IN THE MATTER OF THE MARRIAGE OF )  
\_\_\_\_ IN THE MATTER OF THE PARENTAGE OF )  
\_\_\_\_ )  
\_\_\_\_ )  
\_\_\_\_, Petitioner )  
\_\_\_\_, Respondent ) Case # \_\_\_\_\_  
\_\_\_\_ )  
\_\_\_\_ )

**ORDER FOR CASE MANAGEMENT**

NOW, on this \_\_\_\_\_ day of \_\_\_\_\_ 20, \_\_\_\_, the above-captioned matter comes for hearing for assignment of the case to Case Management.

WHEREUPON, the matter proceeds to hearing and the court, having heard the evidence, arguments of counsel and being fully advised in the premises, makes the following findings, orders, and decrees:

1. That the court has jurisdiction over the parties and the subject matter.
2. Case management is appropriate as neutral dispute resolution services have been tried and failed or other neutral services are inappropriate.
3. This case is assigned to case management and \_\_\_\_\_ is appointed to act as case manager pursuant to K.S.A. 23-1001, *et seq.*
4. The case manager is assigned to resolve or make recommendations on the following issues:
  - All of the following issues set out below:
  - Modification of child custody;
  - Child residency;
  - Minor changes or clarification of parenting time or access schedules or conditions including vacation, holidays, and temporary variation from the existing parenting plan;

- Transitions or exchanges of the children including date, time, place, and means of transportation and transporter;
- Health care management including medical, dental, orthodontic, and vision care;
- Child-rearing issues;
- Psychotherapy or other mental health care including substance abuse assessment or counseling for the children;
- Psychological testing or other assessment of the children and parents;
- Education or daycare including school choice, tutoring, summer school, participation in special education testing and programs, or other major educational decisions;
- Enrichment and extracurricular activities including camps and jobs;
- Religious observances and education;
- Children's travel and passport arrangements;
- Clothing, equipment, and personal possessions of the children;
- Communication between the parents about the children including telephone, fax, e-mail, notes in backpacks, etc.;
- Communication by a parent with the children including telephone, cell phone, pager, fax, and e-mail when they are not in that parent's care;
- Alteration of appearance of the children including haircuts, tattoos, ear and body piercing;
- Role of and contact with significant others and extended families;
- Substance abuse assessment or testing for either or both parents or a child, including access to results; and
- Parenting classes for either or both parents.
- Other:

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5. The parties shall each pay in a timely manner a retainer of \_\_\_\_\_ to the Case Manager until further Order of the court, provided that the Case

Manager may assess fees unequally due to unequal workload requested by one of the parties.

6. The parties, their counsel, and the case manager shall comply with the terms of the Case Management Policy of the \_\_\_\_\_ Judicial District.
7. The parties shall comply with the recommendations of the case manager, when issued, until changed by a subsequent recommendation or order of the court.
8. The case manager is prohibited from addressing spousal maintenance or division of property issues, unless agreed to by the parties.
9. The Court shall review the necessity of the referral to case management on an annual basis. If the case manager has had no substantive contact with the parties for the preceding twenty-four (24) months and/or no motions have been filed in the case for the same period of time to enforce, modify, or change parenting time or residency, the case manager referral shall terminate. A notice of termination shall be sent to parties and counsel of record and filed in the court file.
10. The case manager is authorized to issue temporary recommendations to be effective immediately pending further order of the court. Any temporary recommendation may be included within a permanent recommendation and the case manager will designate within the permanent recommendation which recommendations are to become effective immediately. All temporary recommendations shall be in writing and a copy of each recommendation shall be sent to the parties.
11. All permanent recommendations of the case manager shall be delivered to the court, parties and counsel. The recommendation, with the exception of the temporary recommendations, shall not be effective until the objection period has expired, unless one of the parties files a motion for immediate implementation. If a report or recommendation is submitted, the parties, or their attorneys, shall have 10 working days to object to the same or the report or recommendation shall become an order of the court.
12. All CM recommendations approved and signed by the Court will be sent to all parties, counsel and the CM.

13. In the event the case manager seeks to assess charges to a party which deviates from the current order, the case manager shall submit a recommendation to the court.
14. In the event of nonpayment of fees, lack of cooperation, or noncompliance in the case management process or with the case manager's recommendations, the case manager, subject to the court's review, may suspend case management services to any noncompliant party without a court order, but only after notifying the noncomplying party in writing.
15. The case manager shall advise the court of any suspension of case management services due to noncompliance by one or both of the parties. As a result, the court may assess additional fees, including attorney fees.
16. If case management services have been suspended as to one party, the case manager may continue to communicate with the other party, and may issue temporary or permanent recommendations.
17. A case manager appointed under K.S.A. 23-1002, may withdraw at any time following the initial order. Sufficient reasons for withdrawal may include, but not be limited to, the following:
  - (1) Loss of neutrality which prevents objectivity;
  - (2) nonpayment by a party;
  - (3) lack of cooperation by a party;
  - (4) threat to a party;
  - (5) retirement or caseload reduction by a case manager; or
  - (6) any other reason which shall be stated to the court in writing and considered adequate and sufficient reasons by the court.
18. A disputant party may request reassignment of a case manager by filing a motion with the court. The court shall consider such requests upon review. Repeated requests may raise a presumption of lack of parental cooperation and the court may consider sanctions against the uncooperative parent or parents.
19. If parties have been ordered by the court to attempt to settle the party's disputes with the assistance of a case manager and are unable to settle such disputes, the parties are to follow the recommendation or recommendations of the case manager as ordered by the court.



20. The parties and their attorneys shall have the right to initiate or receive ex parte communications with the CM. Any party may initiate contact in writing with the CM, provided that copies are distributed to the other parties.

Case management fees are considered court costs and, therefore, can be collected by the court, the court trustee or the CM, including but not limited to, garnishments, attachments, or liens.

IT IS SO ORDERED.

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JUDGE OF THE DISTRICT COURT