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Custody evaluations criticized

Hennepin County's new fast-track version of child custody evaluations — a common tool in shaping living and parenting arrangements after a divorce — comes at a time when the traditional approach is meeting criticism in some areas of the country.

A series of articles in law journals in the past year, particularly in New York, call the traditional evaluations pseudoscience that judges accept and appeals courts uphold too quickly.

Disapproving family lawyers and forensic psychologists complain that the science of child development isn't exact enough to equip even mental health professionals to predict what's best for each child. They have called specific custody and visitation recommendations "overreaching" and "egregious."

New York attorney Barbara Handshu said she be-

lieves the reports are an important collection of information on the child, the parents and their relationships. "But I don't think they should recommend a schedule or who should be making decisions or who should be primary parent," she said.

In Hennepin County, in cases that still use the traditional custody evaluations, several judges said they want the evaluators to make recommendations. Presiding Family Court Judge James Swenson said the courts accept recommendations from court-services evaluators 70 to 90 percent of the time.

Twin Cities psychologist Mindy Mitnick said she and other evaluators acknowledge the limitations in their science. For example, there's hot debate among child psychologists about whether a young child should ever sleep at the

home of a noncustodial parent, weighing the benefit of time with the parent vs. a child's normal craving for regularity.

"But locally, judges have said they want a recommendation, that it's at least a place to start," Mitnick said.

Edina family attorney Ron Ousky, who applies a low-conflict approach to divorces called collaborative law, said he worries that couples feel compelled to say bad things about one another in custody evaluations just to protect themselves.

Still, Ousky said, "The best evaluators will tell people, 'No matter how smart we are, we don't know what's best for your children. Only you do.' But they will come much closer [to it] than a judge can in a three-week trial."

H.J. Cummins

He had three different lawyers and now represents himself.

The decree gave Lee Sutton sole custody of the couple's teenage children, and about \$4,500 a month.

David Sutton said one reason that he keeps fighting is to try to persuade the court that he can't afford the payments. He describes his experience as being "accused of being a deadbeat dad, and then being turned into one."

The decree's calculations of his earnings and assets con-

clude that he can make those payments. As for the custody, it notes that all four experts consulted, including one hired by David Sutton, recommended custody go to the mother.

The process, the cost

Minneapolis family law attorney Steven Schmidt said there is a lot of money to be saved for couples who keep personal acrimony out of their divorce.

Schmidt said a couple in one of his current cases, in-

volving children and earnings in the millions of dollars, will probably spend only about \$10,000 each on their divorce because their relations are amicable. If accusations start, that figure would quickly jump to \$50,000, he said.

One growing cost is custody evaluations. Most start at \$2,000 to \$5,000, but some have run as high as \$30,000, attorneys said.

Several Minnesota judges and lawyers also said there are some lawyers and litigants who stoke conflict in cases. All the due-process protections in the law — the right to develop evidence, to employ experts and to argue their perspectives — make it hard to enforce restraint, these experts said.

The new programs in Hennepin County are an attempt to

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