American Bar Association
Section of Family Law

Annual Meeting

Moscone Convention Center
Friday, August 9, 2013

<u>Presenters</u>:
Steven Snyder, Esq.
Kimberley Surratt, Esq.
Deborah Wald, Esq.

SPEAKER BIOS

STEVEN SNYDER, ESQ.
Steven H. Snyder, Esq., is the founding and principal partner of STEVEN H.SNYDER, ATTORNEY AT LAW, in Maple Grove, Minnesota. Mr. Snyder is a member of the American Bar Association, acting as Chair of the Assisted Reproductive Technology Committee of the Family Law Section and a member of the Minnesota State Bar Association, acting as Chair of the Family Law Section. Mr. Snyder is a frequent national and international speaker on assisted reproductive technology topics.

KIMBERLY SURRATT, ESQ.
Kimberly M. Surratt is principal of Surratt Law Practice, PC where she maintains an assisted reproductive and family law practice. She is a Fellow with the American Academy of Assisted Reproductive Technology Attorneys, a member of the National Family Law Advisory Council, the National LGBT Bar Association, the National Center for Lesbian Rights, the American Society of Reproductive Medicine, and the chair of the domestic lobbying committee for the Nevada Justice Association. She represents and consults with various ART medical clinics, surrogacy agencies and donor programs nationwide.

DEBORAH WALD, ESQ.
Deborah Wald is founder of Wald & Thorndal, where her primary practice areas include Parentage Litigation, Adoption and Assisted Reproduction Law. Wald also is an adjunct professor at USF law school, where she teaches "Topics in Contemporary Family Law." She is a fellow of the American Academy of Assisted Reproductive Technology Attorneys, is Chair of the National Family Law Advisory Council for the National Center for Lesbian Rights, and is a member of the Family Law Executive Committee of the State Bar of California and the Family Law Section of the American Bar Association.

IF YOU'RE GONNA DO IT, DO IT RIGHT:

ADVISING GAY AND LESBIAN CLIENTS ON BECOMING PARENTS THROUGH ASSISTED REPRODUCTION

BY

DEBORAH WALD

Wald & Thorndal
deborah@waldlaw.net
415-648-3097
www.waldlaw.net
88 Kearny Street, Suite 1475
San Francisco, CA 94108

AND

KIMBERLY SURRATT

Surratt Law Practice, PC
kim@surrattlaw.com
775-636-8200
www.LawyersForFamilies.com
3705 Lakeside Drive
Reno, NV 89509

IF YOU'RE GONNA DO IT, DO IT RIGHT: ADVISING GAY AND LESBIAN CLIENTS ON BECOMING PARENTS THROUGH ASSISTED REPRODUCTION

As the recent national attention on the Kansas sperm donor case (gone awry) has shown, LGBT efforts to build families through assisted reproductive technology (ART) come with unexpected pitfalls and outcomes due to outdated parentage laws. This article will review several important ART cases from around the country, in order to shed light on how LGBT (and heterosexual) families should (and should NOT) use third party reproduction to build their families within the context of existing laws.

Assisted reproduction cases involving lesbian and gay parents continued to make headlines in 2012. It's not unusual to pick up a paper or turn on the radio and hear news stories about lesbian/gay/transgender parentage issues. Sometimes the stories arise from litigation, sometimes from legislation. These materials will highlight some of the recent cases and legislation that raise critical issues for adoption, ART and/or family law practitioners in representing LGBT clients around the United States and abroad.

Lesbian and gay couples trying to become parents through assisted reproduction stand at a crossroads of rapidly changing and often hostile laws, and need to be familiar with both the laws that impact them as same-sex couples and the laws that impact conception through gamete donation and surrogacy. It is important to be sure information is current and accurate for the jurisdiction(s) involved, because the laws around BOTH same-sex relationship recognition and assisted reproduction are changing so rapidly. Many of the major LGBT rights organizations maintain useful websites, including but not limited to The National Center for Lesbian Rights, Lambda Legal Defense and Education Fund, The National Lesbian and Gay Task

Force, and Gay/Lesbian Advocates and Defenders. In addition, LESBIAN, GAY BISEXUAL AND TRANSGENDER FAMILY LAW by Courtney Joslin and Shannon Minter (Thomson Reuters 2012) and TRANSGENDER FAMILY LAW edited by Jennifer Levi and Elizabeth Monnin-Browder (AuthorHouse 2012) are invaluable resources.

AT HOME INSEMINATION

An at home insemination case is being litigated in Kansas. (For details and analysis of the case, see Professor Julie Shapiro's blog at http://julieshapiro.wordpress.com/2013/01/04/kansas-sperm-donor-ii-different-ways-through-the-maze/, Deborah Wald's blog at http://debwald.blogspot.com/2013/01/why-kansas-sperm-donor-case-isnt-news.html, and a legal overview at http://cjonline.com/news/2013-01-24/women-give-depositions-sperm-donor-case.) To briefly describe the case: Angela Bauer and Jennifer Schreiner are a lesbian couple who wished to have a child. They placed an ad seeking a sperm donor on Craig's List. William Marotta responded to the advertisement. Bauer, Schreiner and Marotta signed a contract specifying that Marotta would be a sperm donor and not a legal parent, and would have no obligations to the child. Marotta dropped his sperm off to the women in a container. The women then used Marotta's sperm to inseminate Shreiner at home and, roughly three years ago, Shreiner gave birth to a girl. The key element in this case is that a physician was not utilized in the insemination process.

The parties to the agreement all have consistently complied with its terms, but some time ago Shreiner and Bauer separated. Because Kansas does not permit second-parent adoptions, only Shreiner is a legal parent. Bauer cannot be a legal parent. Shreiner became ill and sought state support for herself and the child. Once Shreiner received public assistance,

the state began looking for reimbursement. The state claimed that it was routine to determine "paternity" when a single mother seeks public assistance for a child. The state argued that because the parties did not utilize a physician, the donor could be held responsible for child support. Thus, the state is now seeking support from Marotta – who, according to the State of Kansas, is the legal father of the child.

Kansas has a very typical statute that provides that a donor does not have parental rights or responsibilities if a licensed physician is utilized for artificial insemination of a woman who isn't the donor's wife. While some states make the donor/father distinction contingent on the sperm being used to inseminate a married woman, Kansas does not.

When we look at the intention behind donor insemination statutes like the one in Kansas, the goal appears to be twofold: (1) to allow infertile women (and couples) to gain access to sperm without creating legal rights and responsibilities in the sperm source; and (2) to encourage men to donate sperm without fearing financial and legal responsibilities. If all sperm donors were subject to child support lawsuits such as that now being brought against Mr. Marotta, few men would be willing to donate sperm. Having a clear legal distinction between fathers and sperm donors serves the purpose of providing both donor and recipient with peace of mind, as well as concrete legal protections. Whether a particular state has adopted written contracts, physician involvement, or some other method for distinguishing between fathers and donors, having clear statutory distinctions is extremely helpful to all concerned.

Assisted reproduction attorneys have long advised same sex couples living in states with donor insemination laws similar to Kansas' against bypassing physician involvement in their inseminations. However, the method used by Shreiner and Bauer is a far cheaper method of

becoming a parent, and a significant number of lesbian couples continue to use at home insemination. Further, for lesbian couples living in more conservative states, they may encounter discrimination from fertility clinics and physicians who do not want to assist them in conceiving a child together. It appears that this may well have been the situation for Shreiner and Bauer – at least some news reports indicate that they tried to conceive with physician assistance and were denied fertility services.

While this case has been pending, the Kansas Supreme Court has issued an opinion in a different case that could have been a sperm donor case. In *Goudschaal vs. Frazier*[1] the court recognized both members of a lesbian couple as legal parents of two children born during their relationship. One woman, Kelly Goudschaal, gave birth to the two children and thus had an apparent basis on which to claim legal parentage. Her former partner, Marci Frazier, asserted parentage based on signed parentage agreements the women executed on the birth of each child, as well as on her assumption of extensive parenting responsibilities during the early years of the children's lives.[2] (Frazier had not adopted or attempted to adopt the children, since second parent adoptions were not possible in Kansas.)

The Kansas Court recognized Frazier as a legal parent. It considered and rejected Goudschaal's argument that recognition of Frazier infringed on Goudschaal's constitutionally protected parentage rights, reasoning that Goudschaal had exercised her constitutional rights when she agreed (in writing and in fact) to share parentage with Frazier. Also notable is the Court's recognition of the interest that the children had in their relationship with Frazier. It will

[1]Kansas Supreme Court (2/22/2013). Available at http://caselaw.findlaw.com/ks-supreme-court/1624346.html.

[2] Not all states will enforce agreements (whether written or oral) as to parentage. See, e. g. TF v. BL, MA 2004. Available at http://masscases.com/cases/sjc/442/442mass522.html.

be interesting to see whether the Frazier-Goudschaal decision has an impact on the child support action in the Marotta matter, since under the Kansas Supreme Court's analysis in the Frazier-Goudschaal case Ms. Bauer might be a legal parent.

Parentage disputes are ugly, emotionally and financially draining cases, and it generally is difficult to predict a "winner." In sperm donation cases, and in states with donor insemination statutes, the only way to assure a predictable outcome is to FOLLOW THE STATUTE. The approach where clients have NOT followed the statute is much more complex and nuanced. How does one defend the sperm donor in Kansas who delivered a container of sperm to a doorstep? The approach you take will depend on your statutory framework. You may want to immediately seek a termination of the donor's parental rights and a subsequent adoption if you are in a state that allows same sex second parent adoptions. If you are in a state that does not allow an adoption either for same sex couples and/or when the parents are separated or divorced, then look for a mere termination of the donor without the adoption. That will not cure your problem of dealing with the child support arrears but will perhaps stop the bleeding for the future support. However, that solution also is problematic in many states that do not allow a termination of parental rights without a subsequent adoption, as a matter of public policy, to assure that the child will continue to have two parents. Some states are increasingly looking to written documentation of the parties' intentions at conception or at birth as guide lights for resolving these cases. It always will serve your clients well to create contemporaneous written documentation of their intentions when they are becoming parents through third party assisted reproduction, whether your state law currently takes written agreements between prospective parents and gamete donors seriously or not. California did

not take written agreements seriously until a few years ago, but now they do. Nobody knew that a written co-parenting agreement could be determinative of parentage in Kansas until this summer – but now, it appears it may be. When advocating for LGBT parents, you cannot be too careful to cross every "I" and dot every "t." Encouraging everyone to put everything in writing is consistent with best practices, wherever your law office is.

As you can see, the solutions – if there are solutions – are wide ranging and varied based on jurisdiction. What does this leave us with? It leaves us with telling our LGBT clients that **IF YOU'RE GONNA DO IT, DO IT RIGHT**. At home insemination in a state requiring physician involvement is a bad idea. We understand that it is cheaper. We understand that finding a culturally competent physician to assist with the insemination may be a challenge. However, the ramifications for not following your state's laws on donor insemination are far too risky. Just ask Mr. Marotta.

BATTLE OF THE JURISDICTIONS

A second case that has garnered a good deal of attention in the press over the last several years is sometimes called "Miller-Jenkins" or "the Vermont/Virginia custody case."[3] This is a long-running legal dispute between former lesbian partners (Lisa Miller and Janet Jenkins) who had a child together, Isabella Miller-Jenkins. Miller and Jenkins entered into a civil union in Vermont. When the couple split up, proceedings were commenced in both Vermont and Virginia. Vermont recognized Jenkins as a legal parent. Miller, who challenged

[3] A recent account of the proceedings can be found at http://www.nytimes.com/2012/07/29/us/a-civil-union-ends-in-an-abduction-and-questions.html?pagewanted=1&hp

Jenkins' status as a legal parent, preferred litigation in Virginia, a forum that would not recognize the civil union between Miller and Jenkins.

After years of litigation generating a series of opinions from courts in both states, Jenkins' status as a legal parent was clearly affirmed and visitation was ordered. Rather than comply, Miller fled the country. Most recently a pastor who assisted Miller in her flight has been convicted and sentenced to 27 months in prison.[4] It is believed that Miller and the couples' daughter (now roughly 11) are in hiding in Nicaragua. In the meantime, Jenkins has begun civil litigation against others who allegedly aided Miller in her unlawful flight.

This case demonstrates the problems presented when different jurisdictions have radically different bodies of law. In representing these clients, it isn't as simple as assuming that your clients are protected because they complied with the laws of the state that you are practicing in. We are seeing a great number of conflicts of law issues and even a great amount of unlawful practice of law by attorneys dealing with multi-state ART matters. Your clients will once again want to save money and take short cuts. They will want to not hire attorneys in each state that is relevant to the case. You must advise them that **IF YOU'RE GONNA DO IT, DO IT RIGHT.** It may be challenging and expensive to carefully follow the parentage and assisted reproduction laws of all states that touch their family, but NOT following these laws can be exponentially more challenging and expensive when things go wrong.

UNMARRIED INTENDED PARENTS

In Tennessee, a Court of Appeals in Nashville has upheld a juvenile court decision that validated a surrogacy arrangement with unmarried Intended Parents. The case has just, as of

[4] http://www.nytimes.com/2013/03/05/us/kenneth-miller-convicted-of-aiding-in-parental-kidnapping.html

May 2013 when this article was written, been accepted by the Tennessee Supreme Court. This case involved heterosexual Intended Parents who were not married. The Surrogate is a traditional surrogate, meaning she utilized her own eggs with intra-uterine insemination. Unlike the Kansas case, they utilized a physician but this time they weren't in compliance with their state law because the Intended Parents weren't married. After the birth of the child, the Surrogate decided she wanted to keep the child. She filed suit to find that the surrogacy contract was unenforceable because the court lacked jurisdiction, the Intended Parents were not married, and she did not have her own attorney. In the Court of Appeals, she also argued that the trial court erred in failing to perform a best interest analysis.

Of importance to LGBT parents, the Appeals court found the unmarried Intended Parents to both be parents despite the Tennessee statute defining a surrogate birth as: "The insemination of a woman by the sperm of a man under a contract by which the parties state their intent that a woman who carries the fetus shall relinquish the child to the biological father and the biological father's wife to parent." The Appeals Court found that it was obvious that the intent was for the child to be raised in a stable, loving home by committed parents and that their legislature did not intend absurd or manifestly unjust results. There is some reliance in the case on the fact that the parents were married 20 days after the birth of the child. However, that was not the exclusive analysis. The court also discussed the Surrogate's knowledge of the marital status of the Intended Parents upon signing the contract, the reliance of all parties on the agreement for over a year, and the Surrogate's acceptance of money from the intended parents.

As for the Surrogate's argument that she was not represented in the parentage finding, the court determined that because this was a surrogacy contract that no surrender of parental rights by the Surrogate was required, and therefore no representation was required. Rather, they analyzed that the surrendering of any rights was done at the time when she entered into the surrogacy agreement and that she had representation at that time. Nevertheless, this case illustrates how critically important it is for surrogates to have the benefit of independent legal representation in all surrogacy matters.

Although this case deals with heterosexual intended parents, the fact that the court was unconcerned about their marital status should benefit lesbian and gay couples, since the majority of lesbian and gay couples are not married and this often has been an excuse for discrimination. One lesson to be learned from this case is that despite statutes that seem to include marriage as a requirement, there are ways to fight for our unmarried clients to uphold their assisted reproduction arrangements. However, to the extent they have options, lesbian and gay clients should be encouraged to pursue assisted reproduction – and especially surrogacy – in states that provide avenues to legal parentage for people in non-marital family configurations. Advise your clients to be cautious. Use a state that does not have marriage requirements for surrogacy, and ideally a state that has a history of treating LGBT people with respect. In surrogacy matters, always obtain independent legal representation for the surrogate. Clients may try to talk you out of it, often because they want to save money. Do things wrong, and then ending up in litigation, is far more costly than doing things right. Remember the mantra: **IF YOU'RE GONNA DO IT, DO IT RIGHT.**

TRANSGENDER INTENDED PARENTS

More and more states are allowing legal changes of gender. However, with or without formal legal recognition, transgender people are forming intimate unions – both same sex and different sex – and are having children. As with lesbian and gay couples, this often means turning to third party assisted reproduction.

The legal system frequently is far more hostile to transgender parents than to lesbian and gay parents. While sexual orientation is only a basis for denying custody in a very small minority of states, transgender status still is frequently used against an otherwise fit parent. For this reason, it is important to be particularly protective of transgender clients who are forming families.

In order to protect your transgender clients, you need to make sure you understand their legal status. Have they actually completed a legal transition from one gender to another? If so, there should be a court order. Ask to see it. Are they legally married? If their marriage was valid when entered into, and it has not been dissolved by a court, they still are married. In other words, a man who marries a woman, and then transitions, becomes a woman married to a woman. The marriage remains a legal, recognized marriage, whether or not they reside in a state that would have allowed them to marry as two women. Now, assume that the transgender spouse had her sperm cryopreserved prior to her transition. Her wife can use that sperm to conceive a child, and she will be the child's biological father even though she now is legally a woman. How will this be reflected in court papers and on the child's birth certificate? These are issues to be discussed candidly with your clients and, once a strategy is worked out, it is your job as legal counsel to assure that your clients are treated with respect by the courts,

the Department of Vital Records, and anyone else who may be involved in the legal aspects of the assisted reproduction process. Excellent resources exist, including the Transgender Law Center in San Francisco, California and the recently published TRANSGENDER FAMILY LAW edited by Jennifer Levi and Elizabeth Monnin-Browder (AuthorHouse 2012). You do not have to figure this out on your own. But **IF YOU'RE GONNA DO IT, DO IT RIGHT.**

MARITAL PRESUMPTIONS AND FULL FAITH AND CREDIT

As of the date on which this article is being submitted, more than ten states plus the District of Columbia now allow same sex couples to marry. Much of Europe has embraced marriage equality, as well as parts of Latin America. At the rate things are changing, it is likely that more states and countries will have embraced marriage equality by the time the ABA meets in August. Given the rapid changes, it is hard to keep up.

In most states that have enacted marriage equality, members of same sex unions benefit from marital presumptions the same way that members of different sex unions do. When a lesbian couple in New Jersey, in a Civil Union, has a baby, both women can go on the original birth certificate as parents based on New Jersey's marital presumption. The same is true for married lesbian couples in Massachusetts, and for lesbian couples in registered Domestic Partnerships in California, just to name a few examples. This is a wonderful sign of progress for lesbian parents, and should be celebrated. BUT. Being a "parent," like being a "spouse," is a *status.* The Full Faith and Credit Clause of the United States Constitution does NOT require one state to adopt the status recognition of a different state. As we know, Missouri does not have to accept Iowa's definition of "married" – and, in fact, when it comes to same sex couples, Missouri does not. In the same way, Missouri does not have to accept Iowa's

definition of "parent." What this means, for a lesbian or gay couple having children within their legal union, in a state that recognizes their legal union, is that both of their names will likely go on the child's original birth certificate based on application of the marital/civil union/domestic partnership presumption, but the parent-child relationship will only be entitled to legal recognition in states that legally recognize the adult union. This is an untenable situation for parents, and an unsafe one for children. Therefore, lesbian, gay and transgender parents should NEVER rely on marital presumptions as the exclusive basis for establishing their rights as parents. Instead, and depending on their home states, they should ALWAYS be encouraged to pursue a parentage action and/or an adoption to assure that they end up with a court judgment establishing their parent-child relationships. The court judgment will be entitled to Full Faith and Credit, as well as to comity for international purposes, and will protect them from potential heartbreak down the road.

CO-MATERNITY

Many lesbian couples across the United States are forming families through a process we call "co-maternity" – where one member of the couple provides the eggs, which are fertilized *in vitro* with donor sperm and then implanted in the uterus of the other member of the couple who carries and delivers the child. There are published cases addressing the legal issues raised by this scenario out of both California (*K.M. v. E.G.* (2005) 37 Cal.4th 130) and Florida (*T.M.H. v. D.M.T*, 79 So. 3d 787 (Fla. 5th D.C.A., December 23, 2011).

The California case is particularly instructive for practitioners. In that case, the genetic mother (KM) provided her eggs to a fertility clinic with the intention of being a mother to any resulting children. However, in order to perform the IVF and embryo transfer procedures, the

fertility clinic required KM to sign egg donor consent forms. Six years later, after raising her genetic twin children along with her partner the gestational mother (EG) for five years, the women broke up and EG denied that KM was a parent. The clinic consent forms were used to show that KM was an egg donor and not a parent, and almost cost KM her legal relationship with her children.

Almost 10 years later, it still is not uncommon for fertility clinics to want genetic mothers engaging in co-maternity to sign egg donor consent forms, or to want gestational mothers engaging in co-maternity to sign surrogate consent forms. *Attorneys should always caution clients against signing consent forms that do not accurately reflect their intentions regarding parentage of the children.* Fertility clinics do not require infertile heterosexual wives to sign egg donor consent forms when they provide eggs for IVF with their husband's sperm and implantation into a gestational surrogate. Fertility clinics do not require infertile heterosexual wives to sign surrogate consent forms when embryos are implanted in their wombs that were created using donor eggs. Attorneys need to be prepared to advocate for their lesbian clients engaging in co-maternity to assure that clinic forms are accurate and show respect for the families the clients are striving to create. When it comes to co-maternity, as with the other areas of law discussed above, **IF YOU'RE GONNA DO IT, DO IT RIGHT.**

IMPORTANCE OF WRITTEN AGREEMENTS

Because the laws continue to change so rapidly, and because of the potential for future misunderstandings and disputes, the importance of detailed and accurate written agreements between parties engaging in assisted reproduction cannot be overstated. Courts, when faced with novel questions regarding parentage of ART children, often will defer to written

documentation of the parties' intentions, whether or not these written contracts are technically enforceable. Attached to this article are sample agreements for use in transgender parenting and co-maternity situations. In addition, lesbian couples using known sperm donors; gay male couples using egg donors and surrogates; non-intimate co-parenting pairs – all should have written agreements that clearly state the intentions of the parties with regard to parentage, custody and support prior to a child being conceived. When we, as attorneys, participate in assisted reproduction arrangements, we owe it to our clients and – most especially – to their future children to use our training and experience and all resources available to us to assure that each intended parent has a valid, enforceable relationship with the child. Times are changing, and more and more courts around the country are concluding that a child can have two mothers, or two fathers, or a transgender parent, as long as the documentation fully supports those conclusions. When it comes to assisted reproduction for LGBT families, as for all families, **IF YOU'RE GONNA DO IT, DO IT RIGHT.**

In conclusion, lesbian, gay and transgender parents are raising children in every state of the Union, and in every country around the globe. It is essential that attorneys providing family law services – and especially attorneys providing assisted reproduction services – take the time to understand the legal complexity facing their LGBT clients, and to determine best practices for protecting these clients in the states in which the attorneys are licensed to practice law. Don't be intimidated – there is no reason not to undertake representation of LGBT clients in your jurisdiction. Just please remember: **IF YOU'RE GONNA DO IT, DO IT RIGHT.**

APPENDIX

1. SAMPLE ASSISTED REPRODUCTION AND CO-PARENTING AGREEMENT WHERE THE HUSBAND IS TRANSGENDER

2. SAMPLE CO-MATERNITY AGREEMENT

IF YOU'RE GONNA DO IT, DO IT RIGHT
APPENDIX 1

SAMPLE ASSISTED REPRODUCTION & CO-PARENTING AGREEMENT

This Agreement is made on [DATE], between [NAME 1] [hereafter referred to as "FIRST NAME 1"] and [NAME 2] [hereafter referred to as "FIRST NAME 2"], and is made with reference to the following facts:

A. FIRST NAME 1 and FIRST NAME 2 are a married couple, who have been together for approximately XX years. They were married in CITY, STATE, as husband and wife, on DATE.

B. FIRST NAME 2 is a transgender man. FIRST NAME 2 underwent irreversible gender reassignment surgery on DATE, and legally changed his name and sex in [NAME OF COUNTY] County Superior Court on DATE, prior to the marriage.

C. For as long as they have been together, FIRST NAME 2 and FIRST NAME 1 have known they wanted to have children together. Because FIRST NAME 2 is transgender, they are biologically unable to conceive a child together. They therefore have obtained donor sperm from [SPERM BANK NAME AND LOCATION], and will be pursuing conception through artificial insemination at [CLINIC] in CITY, assisted by [REPRODUCTIVE ENDOCRINOLOGIST] and his staff.

D. FIRST NAME 2 and FIRST NAME 1 chose the sperm donor together, with a primary consideration being finding a donor whose physical characteristics most closely resemble FIRST NAME 2's physical characteristics. The donor they chose has similar eye color, hair color, skin tone and facial bone structure to FIRST NAME 2, as well as sharing common interests and tastes in books and music with FIRST NAME 2. FIRST NAME 2 is consenting to FIRST NAME 1's insemination with the sperm of their chosen donor, with the understanding that FIRST NAME 2 will be the legal parent of any child conceived through the insemination process. FIRST NAME 1 also intends that FIRST NAME 2 will be the other legal parent of any child she conceives through the assisted inseminations. FIRST NAME 1 is voluntarily and knowingly agreeing to give up

any exclusive constitutional parental rights to the child that she otherwise might have, by sharing those rights with FIRST NAME 2.

E. The purpose of this Agreement is to settle the rights and obligations of FIRST NAME 1 and FIRST NAME 2 with regard to the parties' children, including paternity, custody, visitation, and child support, consistent with the children's best interests. The Parties intend by this Agreement to guide a Court, should it become involved, in determining the best interests of the children. However, it is the Parties' further intent by way of this Agreement to facilitate the resolution of disputes without the involvement of courts.

THEREFORE, for good and valuable consideration including, without limitation, the mutual promises, conditions and agreements set forth herein, the parties agree as follows:

1. PATERNITY: FIRST NAME 2 shall be the father of the parties' children. FIRST NAME 1 will not challenge FIRST NAME 2'S parental status based on the lack of a biological to the child. If, for any reason, FIRST NAME 2's paternity is ever challenged on the ground that he is not legally a man, then it is the intention of both parties that he nevertheless be recognized as the second legal parent of any children born to FIRST NAME 1 as a result of the artificial insemination process.

2. CUSTODY: FIRST NAME 2 and FIRST NAME 1 will share joint legal and physical custody of their children. Each of the parties acknowledges and agrees that all major decisions regarding the children's residence, support, education, medical care, religious training, etc. shall be made jointly by the parties.

4. GUARDIANSHIP: The parties agree that in the case of either of their deaths, the children shall live with the other party. The surviving party agrees that s/he will allow liberal visitation between the children and the other parents' family, to the extent that the children have developed actual relationships with the family while the deceased parent was still alive. Both parties agree to prepare estate planning documents including, at minimum, a nomination of guardian, whereby they will both

appoint [CHOSEN GUARDIAN] as guardian of the minor children in the case of the death or incapacity of both parents.

5. DIVORCE OR DISSOLUTION OF THE PARTIES: Both parties agree that they will honor the other party's parental relationship with the children, regardless of any break-up of their marriage. Further, both parties agree that any new intimate relationships – including new marriages – into which either party may enter will not alter the fundamental terms of this Agreement. Any new partner of either party will be a step-parent to the children, and will not replace either party as a parent absent the full consent of that party to adoption of the children by the new partner.

6. APPLICABLE LAW: This Agreement is executed in STATE and shall be subject to and interpreted under the laws of STATE. Subsequent changes in STATE law or federal law through legislation or judicial interpretation that creates or finds additional or different rights and obligations of the parties shall not affect this Agreement.

7. ENTIRE AGREEMENT: This Agreement contains the entire understanding and agreement of the parties, and there have been no promises, representations, warranties, or undertakings by either party to the other, oral or written, of any character or nature, except as set forth herein.

8. DECLARATION OF UNDERSTANDING: Each party hereby acknowledges that, prior to the execution of this Agreement, he or she has read this Agreement and has had the opportunity to have it fully explained by his or her own counsel and is fully aware of its contents and of its legal effect. Each of the parties has given full and mature thought to the making of this Agreement and to each and all of the obligations contained herein, and each party understands and agrees that the covenants and obligations assumed herein may be enforced in a court of law.

9. SEVERABILITY: If any term, provision or condition of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in force and effect and shall in no way be affected, impaired or invalid.

10. CONFLICT RESOLUTION: It is possible that in the future the parties may have disagreements with one another concerning the interpretation of this Agreement, or concerning modification of provisions of this Agreement. Notwithstanding any such disagreements, the parties wish to avoid going to court before reasonable non-court alternatives have first been attempted. The parties agree, therefore, that it is in their best interests – and in the best interests of their children – to try to resolve informally any disputes that may arise in the future as set forth below, except in the case of urgent or emergency situations which would reasonably prevent such resolutions or make them impracticable:

A. As a first step in resolving future differences, if any, the parties will attempt in good faith to confer with one another orally.

B. If speaking with one another is unsuccessful, then as the second step the parties will try to achieve resolution in writing, with each of them presenting to the other a proposed modification to and/or implementation of this Agreement.

C. If there is no resolution at the end of the second step, as a third step the parties agree to hire a Mediator, or to each retain Collaborative Attorneys and convene a collaborative process to resolve the dispute. Both parties agree to participate in the mediation or collaborative process in good faith and to attend at least three mediation sessions and/or collaborative negotiation sessions prior to resorting to litigation.

D. If there is no resolution at the third step, either party may commence contested court proceedings.

IN WITNESS WHEREOF, the parties have executed this Assisted Reproduction & Co-Parenting Agreement on the date set forth on the first page of this Agreement.

_____ _____

NAME 1 NAME 2

IF YOU'RE GONNA DO IT, DO IT RIGHT
APPENDIX 2

CO-MATERNITY AGREEMENT

This agreement is made this ___ day of December, 2012, by and between MM, hereafter EGG PROVIDER, and MC, hereafter RECIPIENT, who may also be referred to herein as "the parties."

EGG PROVIDER and RECIPIENT are two women who live together in an intimate partnership. They registered as Domestic Partners with the State of California on September 7, 2010. They have made the decision to bear a child together, with MM providing the eggs and MC providing the womb. NOW, THEREFORE, in consideration of the promises made by each to the other, EGG PROVIDER and RECIPIENT agree as follows:

1. EGG PROVIDER and RECIPIENT are attempting to conceive a child together by the following method: EGG PROVIDER's eggs will be harvested by [DOCTOR] of Pacific Fertility Center in San Francisco, California, or by another Reproductive Endocrinologist of the parties' choosing, and then *in vitro* fertilized with anonymous donor sperm obtained from Pacific Reproductive Services in San Francisco, California. One or more of the resulting embryos will be implanted into the womb of RECIPIENT, who will carry any child or children so conceived to term; the rest of the embryos will be cryopreserved in accordance with instructions provided to Pacific Fertility Center.

2. EGG PROVIDER and RECIPIENT are entering into this Agreement to clarify and memorialize their intentions that each of them shall be the natural and legal mother of any child conceived through the above-described embryo transfer procedure, with all of the rights and responsibilities that a natural mother bears towards her child.

3. EGG PROVIDER declares that she is an unmarried woman, of legal age and not acting under any duress, fraud or coercion. It is EGG PROVIDER's express desire and intention that her provision of embryos to MC (RECIPIENT) is for the sole and exclusive purpose of conceiving a child whom she and RECIPIENT will parent together.

4. RECIPIENT declares that she is an unmarried woman, of legal age and not acting under any duress, fraud or coercion. It is RECIPIENT's express desire and intention to carry a baby conceived from the embryos created using the eggs of EGG PROVIDER MM fertilized with anonymous donor sperm, with the intent to parent this child together with EGG PROVIDER.

5. EGG PROVIDER and RECIPIENT are engaging in the medical procedures described above for the sole and exclusive purpose of procreating together – i.e. of conceiving a child that they both will parent. EGG PROVIDER and RECIPIENT agree to engage in all necessary legal procedures to ensure that both EGG PROVIDER and RECIPIENT will have full and equal legal rights and responsibilities towards any child so conceived.

6. EGG PROVIDER and RECIPIENT have sought the advice of legal counsel before entering into this Agreement. Both are aware that there is authority from the California Supreme Court affirming the principle that both gestation and genetics are equally valid methods of establishing maternity under the Uniform Parentage Act. (See *Johnson v. Calvert* (1993) 5 Cal.4th 84.) Further, the California Supreme Court has ruled that when a lesbian couple combines their reproductive capacities in the manner described in this Agreement, both women are natural and legal parents of any children thereby conceived. (See *K.M. v. E.G.* (2005) 37 Cal.4th 130.) EGG PROVIDER and RECIPIENT are relying on this authority in proceeding with the method of procreation described in this Agreement as a way of creating a child to whom they each will be the legal and biological mother.

7. EGG PROVIDER and RECIPIENT hereby agree that any disputes that may arise in the future regarding parentage, custody, visitation and/or support of any child conceived and born through the above-described medical procedures will be subject to the jurisdiction of the Superior Court of California pursuant to the California Family Code and the Uniform Parentage Act. EGG PROVIDER and RECIPIENT agree that, even should they have strong disagreements at some point in the future about the custody of their child or children, neither of them will ever deny the legal and natural parentage of the other.

IF YOU'RE GONNA DO IT, DO IT RIGHT
APPENDIX 2

IN WITNESS WHEREOF, the parties hereunto have executed this AGREEMENT, consisting of 3 pages, in the City of San Francisco, State of California, on the date and year first written above.

_____
MM, EGG PROVIDER

_____
MC, RECIPIENT