

# **American Bar Association – Dispute Resolution Conference**

## **Mediating Same-Sex Dissolution Conflicts:**

### **Legal, Social, and Psychological Dynamics of the Gay Divorce**

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#### **Hypothetical Cases**

##### **1. Money/property dispute between unregistered/unmarried couple (DW)**

Kate and Lisa are a lesbian couple who have been together for 12 years. Kate is a corporate executive in a high profile company, where she has never been comfortable being “out.” Kate and Lisa have worked out an “arrangement” (but no written agreement) whereby Kate supports the household with the money she earns, while Lisa acts as homemaker (furnishing their home, shopping, cooking, cleaning) while she writes her first novel. Kate and Lisa agree that this division of labor is fair, providing each of them with a level of personal and professional comfort.

Now, Kate and Lisa are breaking up.

Kate believes that she does not owe Lisa any additional support beyond that necessary to enable her to move out and set up her own apartment. Kate supported Lisa for the years they were together, allowing Lisa to stop working outside the home and work on her book. This was of clear benefit to Lisa. Now that they are no longer together, Kate feels that Lisa should go back to work and support herself, as she clearly is capable of doing.

Lisa believes that it is in part her “behind the scenes” contribution – making sure Kate was happy and healthy, and that her non-professional needs were taken care of – that allowed Kate to become the successful executive she is. She believes she is entitled to a share in Kate’s financial success. She also believes that Kate – having encouraged her to leave work and stay home to write her novel – owes it to her to support her for the time it takes to finish writing, estimated at 2 more years.

## 2. Money/property dispute between CA DPs (“the outraged registrant”) (FH)

Alan and Bill began dating in 1997, and have been living together in San Francisco since 1998. In early 2003 they registered as domestic partners, mostly so Alan could get health insurance through Bill’s employer. They heard that a law passed in late 2003 extended marriage rights and obligations to domestic partners, but they didn’t pay much attention to the new law.

Alan has just told Bill that he is leaving the relationship. Alan is a graduate student, with no prospect of earning any income for another two years. Bill has enjoyed significant promotions in the past five years, and is currently an executive with a salary of \$200,000 and about \$400,000 in retirement savings, mostly accrued in the past five years.

Under the statutory provisions of the California domestic partnership law, all savings from income earned post-registration is community property and split equally between the partners, and Bill could be ordered to pay spousal support for two or three years. Bill is outraged: this was never their intent, this wasn’t what the law provided when they registered as domestic partners, and Alan is the one who dumped him. Applying marital law feels unfair and just wrong to Bill, especially where he has supported Alan for so many years.

Alan acknowledges that he never expected Bill to support him or share “his” savings and he admits that they never intended to sign up for marital rules when they registered -- but now that the law provides protections to gay couples, and sets a threshold for support, he believes that Bill should live up to his legal partnership obligations. In fact, he thinks that spousal support should be based upon their ten-year relationship, rather than just their five-years of registration.

### 3. Parentage conflict (non-bio mom, known donor, no adoption) (DW)

Mary and Nancy have been together for 8 years. They decided together that they wanted to have children, and arranged for their friend Oscar to be a sperm donor. Although they live in a state with a donor insemination statute that establishes that a donor is not a legal parent if certain requirements are met, they did not speak with lawyers before the insemination and did not meet the requirements of the statute. Nevertheless, all three adults agreed that Mary and Nancy would be the parents of any children conceived through the insemination process, and Oscar would be a friend/uncle to the children.

Mary became pregnant, and their son Paul was born in 2004. In 2006, Mary again gave birth to their daughter Quincey. Nancy actively participated in the conceptions of both children; went to prenatal appointments; and was present for the birth of each child, cutting the cord following each birth. The two women have lived together with the children from birth, and have both acted as parents to them. Paul calls Mary “mommy” and Nancy “mama.” Mary works part-time so she can be home with the children as much as possible; Nancy works full-time and largely supports the family.

Oscar has visited the family fairly often, having dinner with them or going on outings to the park or the zoo. The kids know him and are comfortable with him; however, he has never taken them places without at least one mother present, and they have never spent the night at his house.

Now, Mary and Nancy are breaking up. Mary is moving out, and taking the children with her. She agrees that Nancy should get to see the children, but only in Mary’s home and with Mary present. While she acknowledges that Nancy is an important person in the children’s lives, she denies that Nancy is a parent with any legal rights or responsibilities. When pressed, she says the children have two legal parents already: herself and Oscar.