HAVING, RAISING AND KEEPING A CHILD: BASIC IDEAS, INCREASING COMPLEXITY – IT'S NOT AS EASY AS IT USED TO BE

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WILLIAM SINGER is a partner in Singer & Fedun, LLC, in Somerset County, New Jersey and concentrates his practice on the creation and protection of families of all configurations and as counselor to non-profit organizations. In addition, he is the Founder and Director of the LGBT Family Law Institute, an organization of networking attorneys who specialize in LGBT family law, both in the United States and internationally. Mr. Singer is General Counsel to the National LGBT Bar Association and the legal advisor to Family By Design, the community of parenting partnerships [http://www.familybydesign.com/](http://www.familybydesign.com/). He is a Fellow of the American Academy of Assisted Reproductive Technology Attorneys. Mr. Singer has been the inaugural winner of two awards. In 2012, the LGBT Section of the New Jersey State Bar Association presented him with the first Lifetime Achievement Award. In 2013 he was awarded the first "Leading Practitioner Award" by the National LGBT Bar for his legal work for the LGBT community. Mr. Singer has also received the Bill of Rights Award from the American Civil Liberties Union – New Jersey, was named an "Angel in Adoption" by the U.S. Congress and been named a SuperLawyer by New Jersey Superlawyers Magazine. He received his B.A., with distinction, from Rutgers College and his J.D. from the Columbia University School of Law.
INTRODUCTION

Where assisted reproductive technology (ART) was once in the realm of science fiction, it has become reality. Now, not unlike adventurers sent to explore a new territory without the help of maps or navigational instruments, New Jersey lawyers are asked to counsel clients about ART.

In 1980, the Baby M case riveted public attention to the concept of ART. Baby M was born after William and Elizabeth Stern, a New Jersey couple, contracted with Mary Beth Whitehead, a New Jersey woman, to have a child using Stern's sperm and Whitehead's egg with Whitehead carrying the resulting embryo full term. Whitehead agreed to surrender the child, Baby M, to the Sterns upon payment of a fee. After the birth of Baby M, Whitehead refused to surrender Baby M and abide by her contractual obligation.

As a result, what had previously been tempered curiosity about reproductive technology, overnight became charged with fear and speculation as the laws of nature seemed to be rewritten. This transformation has been analogized to a moral panic "in which the public, the media and political actors reinforce each other in an escalating pattern of intense and disproportionate concern in response to a perceived social threat."

In reaction, some states legislature acted swiftly to prohibit all types of surrogacy. In New Jersey, where the holding in Baby M is limited to one facet of ART, traditional

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1 William S. Singer, a partner in Singer & Fedun, LLC in Belle Mead, New Jersey, has been in the private practice of law for over forty years. His practice concentrates on the creation and protection of families. He is the founder and Chair of the LGBT Family Law Institute, an annual meeting of attorneys from the U.S. and abroad, who work on LGBT family law issues. He is a fellow of the American Academy of Assisted Reproductive Technology Attorneys and a member of the National Family Law Advisory Council of the National Center for Lesbian Rights. He received a degree in history with distinction from Rutgers College where he was a Henry Rutgers Scholar. He received his Juris Doctorate degree from the Columbia University School of Law.


surrogacy, state legislators considered more comprehensive legislation, but ultimately did not act. In contrast to the legislature’s inaction, New Jersey citizens are increasingly using ART techniques to create families. Likewise, brokers, agencies, and medical clinics all located in New Jersey hawk their ability to help individuals and couples use ART for the creation of human life.\(^6\)

Twenty years after Baby M, in a case involving a controversy between a divorcing couple about disposition of preembryos, New Jersey Chief Justice Poritz decried this lack of the legislative direction.\(^7\) The Chief Justice remarked

> Advances in medical technology have far outstripped the development of legal principles to resolve the inevitable disputes arising out of reproductive opportunities now available.... Without guidance from the legislature, we must consider a means by which courts can engage in a principled review of the issues presented in such cases in order to achieve a just result.\(^8\)

New Jersey lawyers confront unresolved ethical and legal issues when advising clients about ART. The purpose of this article is to examine some of these quandaries. Unfortunately, there are many more questions than available answers. This paper will first review the vocabulary of ART and then consider ethical issues that lawyers face, including multiple representation, representation of the unborn, jurisdictional issues and the extent of an attorney's duty of care.

I. DEFINITIONS

The growth of ART has spawned its own vocabulary. Before beginning this discussion, it is important to define terms. Following are some “terms of ART”:

1) **Sperm donation.** Donated sperm has been in use for over 150 years.\(^9\) Female same-sex couples, transgender people and heterosexual couples who are unable to conceive due to male infertility use this technique. The New Jersey legislature has enacted a statute about sperm donation.\(^10\) It provides that unless there is a written agreement to the contrary, if a wife, with the consent of her husband and under the supervision of a physician, is inseminated with sperm from a donor other than her husband, the husband’s name will be placed on the birth certificate when the child is born.

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\(^8\) *Id.* at 21-22.


\(^10\) N.J.S.A 9:17-44.
In 2005, a New Jersey trial judge gave this statute a gender neutral reading for a same-sex female couple thereby making the non-biological mother a co-equal parent.\(^\text{11}\)

2) **Egg donation.** Also known as "ova/oocyte donation," egg donation refers to the use of an egg from a donor for purposes of creating an embryo for a parent or parents who cannot use their own eggs or choose not to do so. There is no New Jersey case law or statutes which cover this practice.

3) **Traditional surrogacy.** This term refers to the use of an egg from a donor who also carries the resulting embryo to full term and gives birth to a child or children. This type of surrogacy for money was strictly prohibited by the Baby M case.\(^\text{12}\)

4) **Gestational surrogacy.** A woman is a gestational surrogate when she carries an embryo (or embryos) to full term and gives birth to one or more children, but she has no genetic connection to the child or children. In one reported New Jersey trial court decision, a judge approved the practice where the gestational carrier was not compensated.\(^\text{13}\)

5) **In vitro fertilization ("IVF").** IVF refers to the fertilization of an ovum (or ova) outside a woman's body with implantation of the resulting pre-embryo(s) in the uterus of a woman who carries the child to full term and gives birth.

6) **Pre-birth order.** A court may issue a pre-birth order when petitioners apply before the birth of a child to clarify who are the parents of the child about to be born.

7) **Co-maternity.** Co-maternity is possible when a same-sex female couple harvests an egg from one partner of the couple, the egg is fertilized using sperm from a known or unknown donor using IVF, and the resulting pre-embryo (or pre-embryos) is implanted in the uterus of the other partner of the couple who carries the child to full term and gives birth. There are several unreported trial court decisions where a judge entered pre-birth orders holding that both women were parents of the child. In other unreported cases, the parenthood of the genetic mother was confirmed through a second parent adoption.\(^\text{14}\)

8) **Intended parent.** The person(s) who initiates the ART process for purposes of creating a child or children is referred to as an intended parent.

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\(^\text{14}\) The author has obtained a pre-birth order for a couple in a co-maternity as well as second parent adoptions for other couples in a co-maternity.
parent. Intended parents do not necessarily either contribute genetic material or gestate the child. They can use both gamete donors and carriers for the process. Some courts have held that the rights of the intended parents trump the rights of parties with a genetic connection to the child. In New Jersey, the sperm donor statute respects the intention of the parties over genetics in determining parentage.

9) **Medical tourism.** Medical tourism is when individuals travel to a foreign country to take advantage of ART techniques either at less cost or not available in their home country. Medical tourism has become a growth industry.

10) **Donor sibling registry.** Children who were conceived using the same "anonymous" donor have developed donor sibling registries to locate other issue of the same donor. Donors can be identified by the name of the sperm bank and other identifying information. Occasionally, donors use the same website to locate their offspring. Similar websites for egg donors could be developed.

11) **AAARTA.** In 2009, the American Academy of Adoption Attorneys (AAAA) formed a specialty division known as the American Academy of Assisted Reproductive Technology Attorneys (AAARTA). AAARTA is a credentialed, professional organization dedicated to the advancement of best legal practices in the area of assisted reproduction and to protect the interests of all parties. In order to be accepted to AAARTA, an attorney

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19 See [http://www.adoptionattorneys.org/aaarta/htm](http://www.adoptionattorneys.org/aaarta/htm).
must have advised clients in more than fifty ART-related matters as well as obtaining judicial and other professional references.

In 2010, AAARTA developed the first Code of Ethics to guide practitioners through the maze of issues confronting clients and professionals in any ART transaction.20

II. REPRESENTATION OF CLIENT

When entering these uncharted waters, the first issue that a lawyer confronts is ascertaining who to represent. There are a plethora of possible parties, including the intended parents, a sperm donor, an egg donor, a gestational carrier, and a traditional surrogate, as well as medical facilities and agencies or brokers representing these parties.

During the debate before adoption of AAARTA Code of Ethics, some attorneys took the position that they can fulfill their roles and represent more than one party in the same transaction.

It is hard to understand how an attorney can fulfill her or his duty of care to a client if the lawyer is representing multiple parties with distinct, varying interests.

The New Jersey Rules of Professional Conduct specifically prohibit representation of a client if the representation involves a concurrent conflict of interest.21 A concurrent conflict of interest exists if the representation of one client is adverse to another client or if there is a significant risk that representation of one client could materially affect the lawyer's responsibility to another client.

In promulgating its Code of Ethics, AAARTA takes the position that an attorney can not[ sic] represent more than one party in an ART matter.22 Each party deserves separate counsel advocating only for that client. To do otherwise skirts a lawyer's ethical responsibility to keep the client's individual interests paramount.

Of course, some parties can choose to not be represented. But they need to be aware of their choices, including the option to waive counsel, after a full discussion of the risks.

III. REPRESENTATION OF THE UNBORN

As the children born through ART mature, they yearn for identity disclosure, to learn about their forbearers and the details of their conception and gestation.23

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21 New Jersey Rules of Professional Conduct 1.7.

22 AAARTA Code of Ethics, Section 3.

23 "Informing offspring of their conception by gamete donation," Fertility and Sterility, Vol. 81, No. 3, (March 2004); Robert Klitzman, M.D., "Who Made Me? The Ethical Issues that IVF Families
This curiosity in one’s biological genealogy is hardly strange. Children who were adopted have asked the same questions. In the age of the internet, children born through ART have created donor sibling registries.

During the negotiation of ART transaction[sic], it is rare that the interests of the unborn child are discussed. Even raising this issue is fraught with concerns how it could be applied in the debate about a woman’s right to reproductive autonomy. Yet, in an estate or trust matter, consideration can be given to appointment of a guardian to represent the unborn. Does that child have a significant interest in the decisions being made about her or his creation? How should it be decided what, whether or when the child will be told the details of that process? Certainly, a child could have a range of emotions and reactions when learning that her or his parent bought gametes from a stranger or hired a woman to incubate an embryo for nine months.

IV. MULTIPLE JURISDICTIONS

In an ART transaction, it is not unusual for the intended parents to be domiciled in one state and to be acquiring either sperm or an egg or both from donors in other states and using a gestational carrier in a third state. These multi-jurisdictional issues obviously complicate matters.

Usually by the time an attorney gets involved, the prospective parties have already pieced together an ART transaction across state and national boundaries. Given the tremendous costs and complexity of ART, many clients just want to ignore the ramifications of which state law will apply.

There is no easy answer how to determine which state’s laws will control the agreements between the individuals. If an attorney is not licensed in one of the foreign states, she or he should consult with co-counsel in the foreign jurisdiction. The AAARTA Code of Ethics requires that an attorney inform the client that the lawyer is not licensed in one of the jurisdictions involved and to ensure that any agreement shall be reviewed in each jurisdiction where it may be interpreted.

With the increasing popularity of medical tourism, complications increase. Immigration laws are now involved. For example, some parents have been stranded abroad with their children when their home country refused to admit the children as citizens. Foreigners coming to the United States confront these issues as do U.S. citizens going abroad to obtain ART services.

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26 AAARTA Code of Ethics, supra, Rules 2(c) and (d).

27 See e.g., "Spain Reverses Course & Will Allow Registration of Children Born to International Surrogate," http://eggdonor.com/blog/2010/10/06/spain-reverses-course-will-allow-registration-of-
V. NECESSITY FOR WRITTEN AGREEMENTS

Lawyers have an ethical duty to guarantee that the client has considered all of the implications of the proposed course of action.\(^{28}\) Lawyers need to help the client consider all possible outcomes.\(^{29}\) Given the cross-jurisdictional issues involved as well as the paucity of statutes and case law, it is not always easy to predict an outcome.

What theory of law can lawyers expect a judge to use when confronted with a conflict among the parties? Will the judge be guided by the intention of the parties and enforce the contract\(^{30}\) or will the judge decide the matter based on a state's parentage act\(^{31}\) or will the best interest of the child prevail?

As a best practice suggestion, even if the enforceability of a contract among the parties is questionable, it makes sense to have written agreements in order to have an understanding of issues that could arise. For example, after an IVF procedure during which several embryos are implanted, it is not uncommon to perform a "selective reduction" if there are too many fetuses. But who is to decide? The intended parents? The gestational carrier?

Recently, a couple in British Columbia using a surrogate learned that the fetus had Down syndrome. They wanted the surrogate to undergo an abortion.\(^{32}\) If she did not, who would be responsible for raising the child? These ethical and legal issues need airing. In this particular case, the carrier did agree to terminate the pregnancy.

An attorney should raise these issues and help the client determine a resolution. The act of setting down the intentions, expectations and goals of the parties will diminish the chance of later conflict or disappointment.

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\(^{28}\) Rules of Professional Conduct 1.4.

\(^{29}\) Rules of Professional Conduct 1.4.

\(^{30}\) See Buzzanca, supra; J.B. v. M.B., supra.


VI. SCREENING OF PARTICIPANTS

Adoption agencies in New Jersey are strictly regulated by state law. In contrast, there is no New Jersey statutory or regulatory supervision of agencies and brokers negotiating ART transactions. Where an adoption agency is required to undertake background checks and home studies of potential parents, agencies and brokers involved in ART have no similar statutory requirement to screen the participants to any degree other than the ability of the intended parents to satisfy their financial obligations.

Failure to regulate these agencies and brokers or to require them to investigate the participants in the ART process can have consequences. Absent a statutory framework, case law as developed in other jurisdictions has begun to create a common law duty of care to screen possible participants, both medically and psychologically.

Some State legislatures have also enacted legislation outlining the permitted uses of ART techniques.

As a result of this unregulated environment some responsible ART agencies have developed guidelines. For example, in locating a gestational carrier, an agency may require that the woman (1) be over the age of twenty-one and under the age of forty, (2) have no sexually transmitted diseases, cancer, substance abuse and other disqualifying medical conditions, (3) be financially secure, (4) have a supportive environment and (5) be capable of handling the physical and emotional issues that come with pregnancy.

Failure to follow these guidelines resulted in unhappiness and trouble in one New Jersey case. In that matter, a New Jersey same-sex male couple, married in California, contracted with the sister of one of the men to be their gestational carrier. The sister, who was forty-two years old, had never been married nor ever had any children. After giving birth to twin girls, the sister stated that she had bonded with the children during her pregnancy and asserted her rights of parentage.

33 N.J.S.A. 9:3-40
34 N.J.S.A. 9:3-48
36 See for example, Illinois Gestational Surrogacy Act (750 ILCS 47/1); New Hampshire Chapter 168-B Surrogacy; Utah Section 78B Judicial Code; and Washington RCW 26.26.210-270.
38 A.G.R. supra.
Following the New Jersey Parentage Act, the trial judge held that the statute creates a presumption of maternity to a birth mother. Therefore, the gestational carrier was a legal parent because she had given birth to the girls. The judge found the lack of genetic connection between the gestational carrier and the children to be of no moment. The judge ruled that argument about intention; estoppel and detrimental reliance were irrelevant.

While some agencies screen potential gestational carriers, both medically and psychologically, there is no similar requirement to screen the intended parents. In surfing the internet, one finds advertisements for agencies working in this field which appear to provide services to anyone.

Although the Federal Drug Administration requires testing of potential donors of human cell and tissue products, including semen, oocytes and embryos, there is no required screening for intended parents who are not donating genetic material. What is the role of the attorney in this fact situation?

One case which predated the FDA required testing set forth an attorney's duty of care. There, a traditional surrogate sued after she was inseminated with the sperm of an intended father without proper medical screening. After the child was born with severe birth defects as a result of being infected with cytomegalovirus (CMV), it was determined that both the father and the surrogate had pre-existing CMV which had been undiagnosed.

The court ruled that the broker, physician and the attorneys involved all owed an affirmative duty of protection to the parties. In this particular case the broker, an attorney, recruited the surrogate, negotiated the contract and acted as lawyer for the contracting father.

The court held that "[t]his ... affirmative duty of protection, marked by heightened diligence, arises out of a special relationship because the defendants engaged in the surrogacy business and expected to profit thereby." The court ruled that the defendants owed a duty to their clients to design and administer a program,

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39 N.J.S.A. 9:17-41


41 21 CFR, Parts 1270 and 1271 regulations.

42 Striver v. Parker, 975 F.2d 268 (6th Cir. 1992).

43 Id. at 285.
including medical testing, to protect the parents and the child from any foreseeable harm.

Several years later, a Pennsylvania court held that a broker also had an affirmative obligation to investigate and counsel an intended parent.\(^44\) In this case, the broker-attorney was found to have violated its duty when it assisted a single father without screening. The twenty-six year old intended parent/father killed the five week old baby by shaking the infant to death. An autopsy also showed that the child had other preexisting injuries. The surrogate mother sued.

The court stated that we conclude that a business operating for the sole purpose of organizing and supervising the very delicate process of creating a child, which reaps handsome profits from such an endeavor, must be held accountable for the foreseeable risks of the surrogacy undertaking because a 'special relationship' exists between the surrogacy business, its client-participants, and most especially, the child...\(^45\)

Those two cases involved brokers who were also attorneys. Even if the attorney's role is limited to legal advice, that attorney still should confirm that psychological and medical screenings have been conducted of all parties.

**VII. FINANCIAL ISSUES**

ART transactions entail the expenditure of thousands, if not hundred[sic] of thousands of dollars. People involved are often driven by conflicting purposes – from the human desire to have a child, to the altruistic urge to help a childless person or couple or to the ability to make a profit.

This mix of the emotions and goals, brewed in a world with little or no legal scrutiny or regulation, can detonate. There are opportunities for people to use lack of oversight to their advantage to defraud participants or to ignore the few laws that do exist.\(^46\)

Reports of surrogacy agencies absconding with escrowed funds intended for surrogates led the California legislature to pass a law requiring the use of bonded agencies to handle the funds in a surrogacy.\(^47\) New Jersey has no similar protective laws for surrogates.


\(^45\) *Id.* at 460.


In the gray areas of transactions conducted over the internet by parties in different states or countries, there is also the opportunity for unknowing or desperate parties to pay exorbitant fees. Lawyers guiding clients through this process need to protect their clients from being gouged and paying inflated fees for services. In its Code of Ethics, AAARTA provides that no member shall charge or collect an illegal or unconscionable fee.\textsuperscript{48}

**IX. CONCLUSION**

In conclusion, there are few conclusions – only questions and differing responses depending on the intent of the parties, the judge asked to make a decision and the jurisdiction where the case is brought. Because New Jersey legislators have avoided entering this legal thicket, New Jersey lawyers have few tools at hand in helping to counsel clients.

Until a body of statutes or case law is developed, attorneys advising clients about ART practices must be cautious, proceed slowly and focus their clients on pitfalls that they could encounter.

\textsuperscript{48} AAARTA Code of Ethics, \textit{supra}, Rule 6

The ruling represents the second step in a process started in 2009 when Hudson County Superior Court Judge Francis Schultz ruled that a gestational carrier is the legal mother of twins although she has no genetic link with them. Schultz found that the gestational contract was unenforceable and that the gestational carrier had a legal right to assert her maternity.

That decision left the parents to resolve custody and visitation issues. After a lengthy trial, Schultz gave sole legal custody of the children to their genetic father, S.H., who is married to his male partner. Schultz awarded the gestational carrier limited visitation rights.

Although the fight over custody and visitation was contentious, there is nothing revolutionary in the judge's decision. For more than thirty-five years, New Jersey courts have been deciding cases involving custody and visitation without regard to sexual orientation. Yet, while the victory by S.H. was not exceptional, other aspects of the case are more remarkable and worth considering before the headlines fade.

The facts in this case demonstrate why the practical choice of a gestational carrier is so crucial. In preparing to create their family, the biological father S.H. and his spouse A.D.R., the intended father, ignored all of the generally recognized guidelines in picking a gestational carrier. Responsible agencies and skilled attorneys know that there is a greater likelihood of a successful gestational surrogacy agreement if the carrier:

- has already had one full-term pregnancy resulting in a live birth;
- is married or in a stable relationship and has a supportive environment;
- is under forty years old; and
- shares the intended parents' values and understands their goals.

In this matter, A.G.R., the sister of D.R.H., was not married or in a stable relationship, had never had a child and was older than forty. To accommodate her brother's desire to create a family, she agreed to uproot herself from Texas, where she had lived all her life, to migrate to New Jersey, where she lacked a support system. The court's opinion makes it obvious that A.G.R. was both emotionally vulnerable and physically overwhelmed at the time of the pregnancy. If the two men had a more considered choice of a gestational surrogate, the distress of the parties and their offspring could have been avoided.
Equally troubling are some of the assumptions expressed by Schultz in his opinion. While the factually detailed decision shows that the judge gave careful, painstaking consideration to the testimony and that he recognizes the difficulty of deciding child custody cases and acknowledged the need for delicacy, discretion and sensitivity, some of his assumptions are disconcerting.

The court found that the twins are "special needs children" because they are biracial, have a gay parent and "were uniquely conceived through in vitro fertilization." While recognizing that the twins have no physical or learning disability, he held that "they are indeed special needs children," a finding that should not go unchallenged. Having a gay parent hardly qualifies a child as having special needs, as no creditable study has shown that children born to gay or lesbian parents are at a disadvantage and certainly does not put them in the category of having "special needs."

Further, there is no support for the court's claim that these children suffer some disability because they were conceived in vitro. The twins' conception is hardly unique; hundreds of thousands of children have been conceived through assisted reproductive technology in the past thirty years. It would be unfortunate if this opinion is remembered for stigmatizing children with a gay parent or born through the use of assisted reproductive techniques.

There is one possible avenue the three adults could follow that would actually make this case a watershed event. Right now, A.G.R., the gestational carrier mother, and S.H., the biological father, are the twins' two legal parents. D.R.H., S.H.'s same-sex spouse, who was labeled as the intended father in the parties' original agreement, has been left without any legally defined role. Yet, the twins live with him and S.H.

Since the late 1990s, courts in several states, as well as Canada and Australia, have recognized that children in these situations are at risk. If all of the adults who are acting as parental figures do not have legally protection of their parental rights, the children could lose that connection. To protect children in these circumstances, courts have recognized the concept of three-parent legal families.

If these parties really want to make New Jersey legal history and provide a proper resolution to this unfortunate saga, they should jointly ask a court to recognize the parentage rights of D.R.H.

Singer is with Singer & Fedun in Belle Mead, where he represents nontraditional families.
It is obvious that members of the LGBT community do not have children by accident. For the LGBT community, family building is a well-thought-out decision, sure to impose considerable costs and legal hurdles on the couple or individual. As the number of children available for adoption diminishes and the uncertainty of proceeding from foster care to adoption pushes viable foster parents away, assisted reproductive technology (ART) becomes a more certain avenue for creating a family for members of non-traditional families.

ART allows at least one member of the couple to have a genetic connection with the child, and in some cases, both "intended parents" may be recognized as legal parents from the birth of the child. Where immediate recognition of parentage is not available, post-birth adoptions are available to complete the process.

Complications arise from state laws that conflict with each other or do not contemplate the science and medicine of the 21st century. Participants in the use of ART also must deal with insurance coverage regulations and the potential for disputes between known donors and recipients when unregulated donations are utilized. These thorny legal issues make the practice of ART law exciting, as lawyers work to stay current with the rapidly changing environment.

Assisted reproductive technology covers a range of medical, social and legal processes that assist infertile individuals or couples, or those who cannot procreate by sexual intercourse because of the gender of their spouse or partner. Discussing the interaction between current intricacies of ART and the legal landscape first requires a review of the ART methods available to LGBT individuals and couples, and the current New Jersey law governing these processes. The definitions set forth below will focus on the meanings of the processes in the context of their use by gay, lesbian and transgender individuals. A discussion of the legal issues arising from the utilization of these procedures will follow.

Given the complexity of the legal issues involved, all participants to an ART arrangement need legal representation. Legal research alone cannot build the requisite body of knowledge in this emerging area of the law because science and society are far ahead of legislation and courts in this area.

In New Jersey, there are few statutes regulating ART. In the rare New Jersey ART cases, judges have agreed on one common theme – the Legislature has done little to help bring the state's laws into the 21st century of family building.

\[\text{I n re T.J.S., 212 N.J. 334 (2012). (While this case makes it clear that gestational carrier agreements are not against New Jersey's public policy and are legal, without statutory amendment, the Court would not refashion the Parentage Act to accommodate a wife seeking to be placed on the birth certificate of a child carrier by a gestational surrogate where wife's husband was the genetic father).}\]
ART Procedures

Artificial Insemination

Sometimes referred to as alternative insemination or AI, artificial insemination is a procedure used by lesbian women as a means of procreating. The woman (and a partner) may select a known donor or an anonymous donor through the services of a cryobank. Insurance coverage is generally not available to lesbians to cover AI procedures, as state insurance regulations allow insurers to provide coverage only in the case of medical infertility by using standards only applicable to heterosexual women. This allows the insurer to deny coverage where the woman seeking to become pregnant has not become pregnant after engaging in unprotected intercourse for a period of time. Therefore, while AI is the least costly of the ways a lesbian can "get pregnant," the procedure still has significant costs.

Egg Retrieval and Use

Physicians can prescribe fertility drug treatment for women patients in order to produce one or more eggs ready for fertilization. These eggs may also be made available to others for use. The cost of an egg will depend on many features, including ethnicity and religion of the donor, as purchasers seek to match their own religious or ethnic background (or that of their partner's) to that of the donor's.

These eggs can then be used in a variety of ways.

1. Lesbians often use this process to retrieve viable eggs for use in in vitro fertilization when needed to become pregnant themselves or to use their own genetic material to create embryos for implantation into their female spouse/partner as the carrying or gestational mother, known as co-maternity.

2. Intended parents can acquire this genetic material by purchase or donation from a known "compassionate" donor to help build a family.

3. Transgender men (assigned female at birth and transitioning to male gender) may seek to retrieve and store eggs prior to commencing male hormone therapy in order to have genetically related children by a spouse or carrier in the future.

Sperm Retrieval and Use

Cryobanks are highly regulated by federal laws that require testing and quarantine of all sperm donations. These requirements substantially increase the cost of sperm. As a result, intended parents can seek to acquire this genetic material by purchase or donation from a known compassionate donor. Transgender women (assigned male at birth and transitioning to female gender) may also store sperm prior to female hormone therapy in order to have genetically related children. Often, gay male couples will mix their sperm together for use in in vitro fertilization, so they will not know who the genetic father will be.
In Vitro Fertilization

The process by which an egg (either from the woman who will carry the child, from a donor or from the carrier's female spouse/partner) is fertilized in a laboratory by sperm from a known or anonymous donor is in vitro fertilization. The resulting embryos are screened, and those found viable are transferred to the woman who will carry them in hopes of implantation and resultant pregnancy. Other embryos created at this time will be stored for future use, donation or destruction.

Traditional Surrogacy

In traditional surrogacy, the surrogate becomes pregnant as a result of artificial insemination by introducing either donor sperm or sperm from the intended father for fertilization with the carrier's own egg(s).

Gestational Surgery

In gestational surgery, the surrogate becomes pregnant through the transfer of embryo(s) created with either third-party donor genetic material, genetic material from intended parents, or a mix of each. Most states with surrogacy statutes envision gestational surrogacy only.

Legal Issues

Once a gay or lesbian couple or individual decides how they want to build their family, the legal issues and complications begin to become apparent.

Sperm Donor Issues

Only one New Jersey statute covers the donation of male gametes.² For those intended parents able to purchase sperm from a cryobank and utilize the services of a licensed physician to complete the insemination, they can, by law, terminate the sperm donor's parental rights to any child so conceived. This statute was originally contemplated by the Legislature to protect the interests of married, heterosexual couples, but New Jersey courts have given it a gender-neutral reading, allowing the termination of parental rights of the sperm donor, where the recipient of the sperm was a woman in a registered domestic partnership.³ The biological mother's partner was determined to stand in the shoes of a husband for the purposes of the termination of parental rights of the donor.

There is no case law, however, on whether this expansion of the AI statute would be appropriate for a single woman. It is unknown whether a judge would determine that a child has a right to two parents, even though the parties contemplated the donor being only a donor and not a father.

² N.J.S.A. 9:17-44.
The statute would also apply to a known donor and the use of a licensed physician. However, medical malpractice issues and federal or state law governing the quarantine and testing of sperm donations make the use of a known donor difficult, if not impossible.4

Totally outside the ambit of the statute is the common situation of a known donor and a do-it-yourself insemination. Use of this path to parenthood can leave the gestational mother’s spouse/partner without legal ties to the child, as the child will already have two legal parents (gestational mother and donor father). Lesbian women and couples who ignore the law may find themselves with few choices when a known donor asserts his right as a parent.5 Similarly, a known donor may find himself responsible for child support, as his parental rights have not been terminated.6

After the birth of a child conceived by AI, current practice and legal realities across the country mandate obtaining a judgment from a New Jersey court finding the second mother to be a legal parent. The parents can institute pre-birth proceedings or a confirmatory adoption after the birth of the child (see discussion below). There are plenty of families across the country where two women are the primary parents of a child and the donor does indeed act as a father. Some courts have recognized families with more than two parents.7

Unfortunately, there are also a significantly increasing number of families where one or more parties to an ART birth abandon the original intent of the arrangement, causing confusion regarding legal parentage, giving courts Solomonic conundrums to resolve and leaving devastate families in their wake.

Egg Donor Issues

Unlike the sperm donation statute, there is no similar law in New Jersey governing the termination of maternal rights of an egg donor. At present, the only assurances a purchaser of ovum has is the contract for donation and purchase executed by the donor and purchaser. In some of these contracts, donors sell their ovum to the medical practice, which in turn sells the material to the recipient, and in doing so the donor agrees to relinquish any maternal rights to any child conceived or to any embryos

4 Title 21, Chapter I, Subchapter I, Part 1271 et seq. FDA’s Code of Federal Regulations.


6 Donor is on notice per N.J.S.A. 9:17-44 that his semen must be provided to a licensed physician and the insemination performed by the licensed physician for his parental rights to be terminated by operation of law.

created. In other contracts, the arrangement is made directly between the donor and donee.

Unfortunately, there is neither case law in New Jersey nor any statutory authority that states with certainty that an egg donor can legitimately end her parental rights by contract. One could assert that the New Jersey Parentage Act can be applied to resolve this ambiguity. Under that statute, the gestating female is designated the "mother" of the child.8

In Vitro Fertilization Issues

When a woman utilizes in vitro fertilization, numerous issues may arise. First, if the intended parents are undertaking a co-maternity, and the eggs used to create the embryo are those of the non-gestational spouse/partner, who is the mother? Can both women's rights be protected?

Most generic reproductive medical practice contracts require the egg donor to relinquish by contract all parental rights she may have to any child conceived of an embryo created from her egg, or to any unused embryos. However, if clients engage counsel before creating the embryos, the medical practice contracts can be altered to refer to the woman giving eggs not as a donor, but as a co-mother or co-parent, eliminating the relinquishment language and leaving the uncertainty of possible dispute between the couple to the future, rather than possible depriving one woman of parenting rights to her genetic child.

And, what if there are embryos created but not used, and the couple breaks up? Who owns the embryos? There is case law around the country dealing with the "property" rights and procreative rights a straight married couple have in their embryos,9 but none appear to deal specifically with a lesbian couple. Who "owns" the material – the woman contracting with the reproductive medical practice for purchase of the embryos for transfer to her, or the genetic mother of the embryos? Absent any case law or statute, only a well-thought-out contract prepared in advance can provide a possible road map.

Male same-sex couples using embryos to create a family also face significant quandaries. One can find a surrogate by engaging an agency in a state where compensated or reimbursed surrogacy is legal and available to gay men. Another alternative is to embark on a compassionate surrogate agreement with a friend or relative willing to carry a child without reimbursement or compensation. The most difficult option is for the couple to try to locate a surrogate on their own.

If a surrogate is found and a child is to be born in New Jersey, the intended parents need to hire counsel to terminate the parentage rights of the surrogate and, if married,

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9 See J.B. v. M.B., 170 N.J. 9 (2001) (court ordered the destruction of embryos when divorcing couple fought over potential future use. The court reasoned that if the husband prevailed in preserving the embryos for him to use or to donate, the wife's constitutional right not to be forced to procreate would have been violated). See also, Davis v. Davis, 842 S.W.2d 588 (Tenn. 1992), on reh'g in part, 34, 1992 WL 341632 (Tenn. Nov. 23, 1992); Reber v. Reiss, 42 A.3d 1131, 2012 PA Super. 86 (2012), appeal denied, 2012 WL 6734325 (Pa. Dec. 27, 2012).
her husband. Fortunately, in this one instance, New Jersey case law has crafted procedures when one or both of the intended parents are genetically linked to the child.\textsuperscript{10} But where there is no genetic connection, such as the spouse/partner of a gay male father, a second parent's adoption is mandated.\textsuperscript{11}

Due to the significant financial costs of using ART to create a family, some gay men elect to use "medical tourism" to reduce the expenses. These men contract with an overseas agency to undertake a surrogacy in a foreign country, where surrogacy is a legally recognized, binding contractual relationship. In these contracts, one member of the couple \textit{must} be the genetic parent; otherwise, the child will not be allowed entry into the United States as a child of an American born overseas.

Medical tourism agreements impose significant risks and burdens. For example, once the child is born, the genetic father must prove through DNA testing that he is the father before the local U.S. consulate will issue a consular certificate of birth abroad and a passport for the child.

Further, after the child returns to the U.S. with the couple, the non-genetic father must undertake a second-parent adoption to gain his parentage rights. The implications of medical tourism then become intertwined with the adoption. It is only a matter of time before the courts will start to grapple with conflicts between New Jersey law and the law of the jurisdiction where the surrogacy took place.\textsuperscript{12}

Attorneys need to help clients develop plans to meet these challenges. New Jersey's prohibition of pre-birth consents to adoption, or to the termination of one's parental rights, do create issues.\textsuperscript{13} In addition, the foreign surrogate usually cannot be made available to sign a 72-hour consent, or to otherwise participate in the adoption process. Lawyers need to recognize that some courts may require service of a notice of hearing on the surrogate or her agency. While the surrogate's nation may not consider her a mother, New Jersey case law and laws do.

\textit{Traditional Surrogacy}

In traditional surrogacy there are significant risks of custody disputes between intended parents and carrier. If the carrier changes her mind post-birth and wishes to parent the child, she is the genetic mother and her maternity will be respected.\textsuperscript{14}


\textsuperscript{11} See \textit{T.J.S., supra}, note 1 (wife of genetic father was required to adopt a child delivered by a gestational carrier, rejecting a gender-neutral application of artificial insemination statutes).


\textsuperscript{14} \textit{Id.}
Despite it being the least expensive type of surrogacy by cutting out *in vitro* and egg purchase costs, most ART lawyers strongly counsel against the use of a traditional carrier. Thirty years ago, the *Baby M* case memorably demonstrated the pitfalls of this type of surrogacy.

Traditional surrogacy often occurs within families. Family members should undergo counseling to make sure the process will not disrupt a cohesive family.

**Gestational Surrogate Agreements**

Gestational carrier contracts are multi-page, complicated documents. They outline the rights of parties in areas of law that are not covered by statute or case law. For example, the parties to these agreements usually live in different states. The lawyer for the intended parents must make a careful review of the home state law of the carrier to assure that no parental rights will accrue to the surrogate or her husband.

With differing state laws at play, there are choice of law issues. It is necessary to determine what standard of review will be used by a court in the jurisdiction elected under the agreement's choice of law provisions.

For example, in one New Jersey case the gestational carrier for a New Jersey same-sex male couple changed her mind after the birth of twins. Although she lacked any genetic relationship to the children, she exercised her right to be deemed a mother under the New Jersey Parentage Act. As a result, given New Jersey's lack of any statute or case law other than the Parentage Act, the couple and the gestational carrier mother share visitation.\(^{15}\)

States that do not enforce or make surrogate agreements illegal rely on biology/DNA to determine who is a father, and who carried and delivered the child to determine who is the mother.\(^{16}\)

**Inter-State Issues – The Portability of ART**

For lesbian, gay, and transgender families, inherent in all ART procedures is the likelihood that inter-state legal and social differences may interfere with the successful outcome, either short-term or long-term. While not exhaustive, the following issues make it clear that representation of clients in ART matters should often, if not always, involve counsel from sister states with which the New Jersey client may have contact.

**Interstate recognition of relationship status:** The United States has a patchwork of laws about legal recognition for same-sex couples. Recognition of coupled status is decidedly lopsided against recognition. When a couple seeks to use donors, cryobanks, medical practices and surrogates in other states, they may find local barriers to access and, in fact, legality, of what they seek to accomplish. In many states that have statutory

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\(^{16}\) See N.J. Uniform Parentage Act, N.J.S.A. 9:1/7-38, *et seq*. (example of statute governing parentage in state where there is no enforcement of surrogacy agreements).
surrogate procedures, those procedures are limited to married, heterosexual couples, thus making surrogacy outside of traditional marriage either illegal or unregulated and unenforceable contracts. 17

Choice of laws agreements may not even survive scrutiny if a dispute arises and a state chooses to "protect" its citizen donor or surrogate over the agreements that favor New Jersey intended parents.

**Lack of statutory law and case law:** In many states, the lack of legal or common law authority make impossible for a lawyer to formulate a reasonable expectation of the outcome. Given the time, cost and emotional investment being made by the intended parents, these uncertainties may drive them away from otherwise workable solutions to their family-building goals.

**Conclusion**

With any use of ART, it is imperative that the intended parent(s) have all of the relationships judicially determined. On an almost daily basis cases arise where the legal relationships between parent and child have never been confirmed by a court. Then, when the relationship of the intended parents ends, the child becomes the center of a battle where the parent with the established legal rights tries to freeze out the non-biological parent from any further continuing relationship with the child.

The failure of gay and lesbian couples to confirm their rights before a court, therefore, creates an injury to the non-biological parent. More importantly, this failure injures the child, who does not have two legal parents on whom to rely for support and nurture. Those LGBT families living in states hostile to gay and lesbian parents are at special risk. Many of those states also do not recognize the *in loco parentis* status, such as New Jersey's psychological parent status, putting the non-biological parent at a distinct disadvantage in any dispute.

*William Singer* practices family creation and protection law at Singer & Fedun, LLC in Belle Mead. He specializes in counseling non-traditional families, including multiple-parent families and co-parenting partnerships. *Debra E. Guston* is a partner in Guston & Guston LLP in Glen Rock. She is a fellow of the American Academy of Adoption Attorneys and the American Academy of Assisted Reproductive Technology Attorneys.

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The term "modern family" has become part of the vernacular. It encompasses the many permutations of the American family as it evolves beyond the traditional dad and mom to include blended families with stepparents, families headed by same-sex couples and single parent families. Now it's time to include parenting partnerships to that catch-all term.

What is a parenting partnership? Also known as co-parenting, it describes a relationship where two people, not in a romantic relationship and not necessarily living together, agree to raise a family.

We all know young people who concentrate on their careers and then reach their late 30s and have not found a romantic partner. The recent recession has added to this phenomenon. Unable to find jobs and saddled with student debt, graduates delay courtship and marriage.

All of a sudden, faced with biological clocks and other practical realities, people are looking for alternative ways to have children. Finding a suitable co-parent is a challenge of course, but it is the best option for an increasing number of individuals who want the joy and sense of fulfillment that comes with raising a family.

Lawyers who practice family law will be consulted to help these couples craft an agreement for their joint venture. One can only speculate how a court will view these agreements. They are too new and untested. Generally, it is expected that courts will look for what is in the best interest of the child.

The first issue is helping the couple determine what roles they expect to play. Will the male partner simply be a sperm donor or will he be a full-fledged father? A father cannot contractually surrender his rights and responsibilities as a father. Those rights belong to the child. But, if the male half of the equation only expects to be a sperm donor, most states have statutes which describe what the donor must do in order to protect himself and to restrict his role as only a donor.

Even if the enforceability of the agreements is unclear, the process of developing the agreement can benefit the parents-to-be. It gives the couple an opportunity to explore issues that they may have not yet confronted or even considered. They are not required to make final decisions on every issue; they can just set goals.

Here is a list of some possible topics:

- How will the child be conceived;
- Who will have the right to name the child. Whose last name will be used;
• Whose names will appear on the birth certificate;

• If legal proceedings will be required to fix a parent's legal status, who will bring the action, who will pay for it and which parties will agree to sign any necessary consents;

• Where will the child live;

• How will child rearing responsibilities be divided;

• If one person shoulders most of the child rearing responsibilities, will that person be compensated in some other way;

• Who will get to declare the child as a dependent on the income tax return;

• Will the partners purchase life insurance and long term disability coverage to protect the family;

• How will college expenses be paid; Will the parents open a 529 account;

• How much will each party be involved in decision making about the child's education, health and choice of religion;

• Which parent will provide health insurance;

• How will be each co-parent's financial responsibility be determined and as circumstances change how will that formula be altered;

• Will the parents execute wills to memorialize and enforce their understandings, including who will be guardian of the child if both of them fail to survive;

• If one co-parent develops a new, long lasting romantic relationship, how will the co-parents deal with the introduction of another significant adult figure in the child's life; and,

• Develop a process for conflict resolution which emphasizes that the child's interest is paramount. They should agree to maintain a continuity of the parental relationships on which the child has grown to rely.

Making the agreement flexible to inevitable changes should be a paramount concern. Anyone who has raised a child knows that there will be unexpected events and that unanticipated emotions may surface. At a minimum, the co-parents must understand and agree that changes to the agreement can only be made in writing, signed by all parties.

It is beneficial for the partners to agree to sit down and review the agreement at least every three years. That reevaluation will ensure that the agreement continues to reflect their goals and commitments.
William S. Singer, Esq. is a partner at Singer & Fedun, UC in Belle Mead, New Jersey. He is Director and Founder of the LGBT Family Law Institute and legal advisor to FamilyByDesign, [http://www.familybydesign.com/](http://www.familybydesign.com/).

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• A birth certificate is a document issued through an administrative process and is not a court order.

• A birth certificate is based on the relationship between spouses only and not the relationship between parent and child.

• Parentage solely dependent on a birth certificate can be challenged in a divorce, and there are several cases out there where that has happened.

• Parentage based solely on a birth certificate might not be recognized by all judges/courts/statutes.

• The birth certificate administrative process does not ensure that sperm donor or other possible parent rights are terminated by court order.

• Parentage based solely on a birth certificate may not be sufficient to adequately provide basis for passing an inheritance by interstate laws, for the child to qualify for social security benefits, or for claiming the child as a dependent under pertinent tax codes.
Thanks to advances in reproductive medicine, some female same-sex couples who are creating a family choose to undertake what is known as a co-maternity, or ovuum sharing. Co-maternity enables both women in the relationship to participate in the creation and gestation of their child.

Under this procedure, a reproductive medical doctor harvests a viable egg from mother #1. Then, using sperm from a known or unknown donor, a reproductive medical physician creates pre-embryos. One or more of these pre-embryos is implanted in the uterus of mother #2, who carries the child full term and gives birth.

If your clients are considering undertaking a co-maternity, there are some issues they should consider.

Clinic documents. Normally, reproductive medical clinics deal with women who are donating their ova. Donors want to surrender all of their rights to any children born from the donated eggs. As a result, clinics produce documents written to meet the needs of these donors.

Unlike most egg donors, in a co-maternity the intended mother from whom the eggs are harvested does not want to surrender her parental rights. Unfortunately, clinics and patients do not carefully review the documents. Often unwittingly, intended mothers sign legal paperwork that contradicts their intent.

Later, if a controversy arises between the two mothers, problems can ensue. In a Florida case, the gestational mother asserted the genetic mother had no rights, using the executed clinic documents surrendering the mother's rights as evidence that the genetic mother never intended to be a parent. After years of court battles, the Florida Supreme Court found that despite the clinic documents, the genetic mother was a legal parent.¹

To prevent a fight over parental rights in the future, if clients are considering a co-maternity, make sure they carefully read the clinic documents. Make sure that anything they are asked to sign accurately reflects their intentions. They should refuse to sign any clinic documents until they properly reflect the intentions of the parties. As a best practice, have the clinic documents reviewed by an experienced assisted-reproductive technology attorney.

Disposition of unused genetic material and embryos. After completion of the co-maternity process, the mothers may have leftover and unused genetic material, such as sperm from a donor, or unused embryos. What happens to this genetic material? Use it, donate it or destroy it are the three options. They are considered property, and subject to property division in case of divorce or dissolution of a civil union.

¹ D.M.T. v. T.M.H., 129 So.3d 320 (Fl. 2013).
It is crucial the mothers discuss these issues and sign a written agreement between
themselves regarding ownership and disposition of this material. They need to resolve
who will have ownership if the relationship of the mothers ends, or if one or both of the
mothers dies.

Most states do not have laws covering the disposition of these genetic assets. Thus, if
there is a disagreement, the parties may have to resort to asking a judge to make a
determination. To avoid the expense and stress of litigation, it is best for the parties to
determine these issues before a crisis develops.

**Issues resolving legal parentage.** Despite the marriage equality decision in *Obergefell
v. Hodges*, it is still advised that the non-biological parent of a child in a same-sex
couple obtain a court order confirming the non-biological parent's legal status. Marriage
equality does not equal parentage equality.

In New Jersey, there is a rebuttable presumption that the spouse of a married woman
who gives birth is the second parent of that child. Using that presumption, the non-
gestational mother's name is put on the birth certificate. But, that presumption can be
rebutted if it can be proved that the spouse is not genetically related to that child.

In the scenario of a co-maternity where the non-gestational parent is biologically related
to the child, one could argue that no court order is necessary as the presumption cannot
be overcome. That being true, it may still be advisable for the non-gestational mother to
obtain a confirmatory adoption or parentage order. A birth certificate is only a record of
what was told to the registrar of births. Facts on a birth certificate, unlike a court order,
can be examined and discounted.

In a hostile state or a foreign country where same-sex parents are uncommon or refused
recognition, families with two parents of the same sex can be questioned on the legal
parentage of the woman who did not give birth. Having a court order to demonstrate the
parentage of both parents should quell any inquiry.

When confronted with an adoption petition where one parent is the genetic parent and
the other the gestational parent, judges have asked who should be the adopting parent.
After all, the woman whose egg was used is a biological parent to the child.

However, in New Jersey a woman who gives birth is considered the mother. State
regulations governing the creation of birth records require that the woman who gives
birth must be recorded as a parent on the birth certificate. Thus, the gestational mother
is on the birth certificate by virtue of that regulation.

In these cases, the biological mother would be the adopting parent or the parent proving
parentage. As a best practice, the other, whether an adoption order or parentage order,

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4 N.J.A.C. 8:2-1.4(a).
should list both women’s names as the legal parents, making it clear they are equal parents.

Bill Singer, a partner in Singer & Fedun, LLC, in Belle Mead, concentrates his practice on the creation and protection of families of all configurations and as counselor to nonprofit organizations.
Many LGBT family law practitioners struggle with "bad parent" cases. They occur when a same-sex couple splits up and a biological parent denies that the non-biological parent has any right to custody or visitation with a child they mutually planned for and raised. They are heart-wrenching, devastating cases for everyone involved.

More than a decade ago, I represented A.B. in one of these cases. We ultimately lost in the New Jersey Supreme Court by a unanimous decision.\(^1\)

Two women, A.B. and S.E.W., were in a committed relationship. They had both borne children conceived using sperm from the same anonymous donor. The women parted ways, and although A.B. had helped raise K.W., S.E.W.'s biological child, S.E.W. refused A.B. any visitation. Cards and presents were returned; all contact was denied.

S.E.W. also refused to allow K.W. to have any contact with A.B.'s child, although the two children shared a common sperm donor, making them genetic siblings.

The procedural history is tortuous. If you are interested, you can read the New Jersey Supreme Court decision.

Although the trial judge found that A.B. did stand \textit{in loco parentis} to K.W., he still held against A.B. The judge found that it would not be in the best interest of K.W. to have continuing contact with A.B. or her son, because of the hostility between the mothers.

In the interim, the legal landscape for same-sex couples in New Jersey has changed dramatically. When A.B. first consulted me, there were no domestic partnerships, no civil unions and no same-sex marriages in New Jersey or anywhere in the United States. New Jersey courts had just started to grant second parent adoptions for the same-sex partner of a legal parent.

Four years after A.B.'s trial, the New Jersey Supreme Court issued a landmark decision recognizing the concept of psychological parenthood.\(^2\) That decision gives non-biological parents a clearly defined four-prong test to prove they have established rights as a parent for continued contact with a child.

Unfortunately, all of that came too late for A.B. As a lawyer, I was distressed by my inability to stop the destruction of my client's relationship with her daughter.

Courts throughout the United States continue to adjudicate similar parentage disputes between same-sex couples. Since the law is unsettled, groups hostile to LGBT families


exploit these cases to create laws harmful to the LGBT community. Unfortunate results take years to overturn.

At the end of 2010, the North Carolina Supreme Court heard an appeal where a biological mother attacked the validity of the adoption of her son by her same-sex partner.\(^3\) The North Carolina Supreme Court ruled that the adoption by the same-sex partner was invalid because the trial court lacked subject matter jurisdiction of her child by her lesbian partner.

In that one holding, all same-sex adoptions in North Carolina were invalidated. As a result of one biological parent's zeal to keep her former spouse from seeing their child, all same-sex couples in North Carolina lost protection for their families.

Children being raised by same-sex couples in North Carolina are now at risk. A child's right to continuing contact with a non-biological parent is no longer secure. A child's right to inherit from a deceased non-biological parent is compromised, as well as the ability of that child to collect Social Security benefits.

That case exemplifies a national epidemic. There are too many cases where a biological parent, mostly biological mothers, willfully destroys a family when splitting with a partner. They inflict an incalculable toll on the children. Adult survivors of these battles attest to serious medical repercussions, as well as financial devastation, including bankruptcy. Last year at Christmas, one Texas non-biological parent committed suicide after suffering loss of contact with her child.

Why are these cases so prevalent? Is it because the relationships of LGBT couples have yet to gain widespread acceptance? If other people do not recognize and respect LGBT families, some people in the LGBT community start to take the same attitude. For whatever reason, we, as lawyers, need to take action.

In 1999, the Gay and Lesbian Advocates and Defenders (GLAD) developed a document titled "Protecting Families: Standards for Child Custody in Same-Sex Relationships" to create sensible standards for families in the LGBT community.

This year, under the aegis of GLAD and the National Center for Lesbian Rights (NCLR), I helped revise and update that document. It has been endorsed by all of the major LGBT national organizations, and can be found at [http://www.glad.org/protection-families/](http://www.glad.org/protection-families/).\(^\ast\)

The document calls for respect for LGBT families despite what legal protections exist or what steps the adults took to protect their family. Most importantly, the standards seek to ensure continuity of a child's parental relationships.

\(^3\) Boseman v. Jarrell, 704 S.E.2d 494 (N.C. 2010).

The 10 standards are:

1) Support the rights of LGBT families.
2) Honor existing relationships, regardless of legal labels.
3) Honor the children's existing parental relationships after a breakup.
4) Maintain continuity for the children.
5) Seek a voluntary resolution.
6) Remember that breaking up is hard to do.
7) Investigate allegations of abuse.
8) The absence of agreements or legal relationships should not determine outcome.
9) Treat litigation as a last resort.
10) Refuse to resort to homophobic/transphobic law and settlements.

In addition to publishing the document, GLAD and NCLR are asking individual attorneys to endorse the document. By their endorsement, lawyers agree to discuss these principles with their clients. I strongly urge you to go to the website and consider becoming an endorser.

The document and standards can be a powerful tool with clients. Try discussing it with all families, not just families in crisis. Reviewing it with a couple considering creating a family or doing estate and other life planning can bring up subjects that need to be resolved. Consider sharing it with opposing counsel in contested matters concerning children raised by a same-sex couple.

Although New Jersey law is generally favorable in recognizing LGBT families no matter how they are constructed, we as lawyers need to dissuade our clients from the use of destructive tactics that harm the children raised by the couple.

William S. Singer is a partner in Singer & Fedun, LLC in Montgomery Township. His practice concentrates on the creation and protection of both traditional and nontraditional families and he serves as counselor to numerous, varied nonprofit organizations.