Committee Newsletter | Fall 2015

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Introduction and Notes from the Committee
By Jacqueline Epstein
Chair, ABA YLD Family Law Committee

The ABA YLD Family Law Committee is looking forward to a great bar year. First, I would like to introduce the American Bar Association Young Lawyer’s Division Family Law Committee Leadership. Serving as Liaison to the Committee is Brian Karpf. Brian will assist the Committee by bringing together the Family Law Committee of the Young Lawyers Division and the main ABA Committee on Family Law. Young Lawyer’s Divisions Family Law Committee Leaders are Jacqueline Epstein, serving as Committee Chair; Ashlei Scott, serving as Vice-Chair and Content Editor; and Cindy Pham, also serving as Vice-Chair. Please feel free to reach out to any of the committee leaders to discuss your ideas and feedback.

Please also visit us at upcoming ABA conferences. The ABA Young Lawyers Division Fall Conference will be held in Little Rock, Arkansas, this October. The YLD Family Law Committee and the YLD General, Solo and Small Firm Committee will be hosting a jointly sponsored CLE
Tips for Operating a LGBT Friendly Family Law Practice

By Jacqueline Epstein
Chair, Family Law Committee for the ABA YLD

Here are five tips for operating a LGBT Friendly Family Law Practice:

1) Update intake forms to reflect a gender neutral inquiry procedure.
2) Educate staff on general neutrality in the office.
3) Update websites and social media pages to reflect an inclusive approach to your practice.
4) Be sensitive to your clients' individual and family needs.
5) Stay abreast of current laws and rulings in your state to provide the best representation to your client.

About the Author: Jacqueline Epstein is a Partner at Epstein Law Firm in New Orleans, Louisiana. She currently serves as Chair of the ABA YLD Family Law Committee and is a member of the 2015–2016 Louisiana State Bar Association Leadership Class.

Forging New Territory In An Old Market: Representing Same-Sex Couples In Family Law Matters, Post Obergefell v. Hodges

By Sharry I. Sandler

On June 26, 2015, in ruling that the United States Constitution guarantees a right to same-sex marriage, the United States Supreme Court also opened the floodgates of domestic litigation to a new demographic in many parts of the country. Many family practitioners, however, are unfamiliar with the issues faced by same-sex couples, and this unfamiliarity can create practical problems for attorneys. Just as it is important to be cognizant of a client’s religious or cultural background in considering what is appropriate in terms of divorce or custody proceedings, so too must an attorney consider their client’s sexuality and be mindful of the differences that

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impact their family dynamic. While this list does not purport to be a complete listing of all the potential issues one faces in representing same-sex couples, family practitioners should be mindful when encountering these specific issues:

1. **Establishing Parental Rights, Custody and Adoption.**

While same-sex couples can marry prior to having children, many courts and states have not determined whether there will be an automatic presumption of paternity or co-maternity for the spouse of the parent having a child. This means that spouses will still have to sue for joint custody and eventually move for adoption to establish filiation with a child. While some states are more progressive than others, it is important to determine what, if anything, has been done in the state where you reside. From there, you should work forward with the presumption that you will have to establish your client’s parental rights, until such time as the states make laws acknowledging them for same-sex couples. As an example of this process, in Louisiana this author has been successful in establishing parental rights by first filing a joint petition to establish custody, followed by a Consent Judgment concerning custody, and several months thereafter, an adoption. It is also crucial that you manage your client’s expectations and get them to understand that establishing parental rights is paramount to ensuring continuity of care for the child(ren).

2. **Partitioning Property.**

Because many states did not allow same-sex marriage until Obergefell v. Hodges was decided, there are many instances wherein same-sex couples owned property prior to being married. The timing of acquisition of the property may or may not be considered differently should they later divorce and need to partition their property. In community property jurisdictions, while a couple could have been together for many years prior to their marriage, and perhaps only a few after their marriage before an ultimate divorce, any property acquired before they were married may be considered co-owned, but property acquired thereafter will be considered community property. While in many jurisdictions the ultimate partition of this property will break down to a difference in vocabulary, it is very important that the attorneys handling the separation of property post-divorce know the differences in the distinction of the property, because that may cost their clients reimbursement claims.

3. **Common Law Marriage.**

Additionally, as many states recognize common law marriage, when partitioning property it is important to consider whether same-sex couples held themselves out to be spouses and should have been considered married in that state, and whether Obergefell (Id.) ratified their relationship as a common law marriage. Common law marriage also becomes a consideration in determining whether a former partner in a same sex relationship is entitled to domestic support or alimony because if these individuals can show their contribution to a long-term relationship, perhaps predating their marriage in a jurisdiction where they could not marry, those claims for contribution or spousal support should not go without recognition.

As a prudent practitioner, it is obviously important to know your clients, but it is even more so important to know their differences, and to consider whether you must pay special attention to
the differences that create their family dynamic when navigating them through family law matters.

About the Author: Sharry I. Sandler has practiced in the areas of family law and bankruptcy over the past decade. In 2009, she opened the Law Office of Sharry I. Sandler, L.L.C., in New Orleans, Louisiana. Over the years, Ms. Sandler has represented many same-sex couples.

News and Announcements

Our committee leaders will be attending the Young Lawyer’s Division Fall conference in Little Rock, Arkansas in October and the Family Law Committee will be co-sponsoring a CLE at the conference entitled, “Innovative Fee Agreements”. We would love to hear from you if you plan to attend. Please reach out to us by email at jacqueline@epsteinattorney.com if you will be there.

Also, if you have any ideas on content or programming you would like to learn about. Please let us know. We are currently seeking short articles under 600 words related to trending family law topics for publication by the committee.

If you have a submission you would like to have reviewed by our content editor, please visit our website at http://www.americanbar.org/groups/young_lawyers/committees/family_law.html.