

MEDIATION SCENARIO: LGBTQ+ FAMILY LAW

Counsel For Dr. Sarah Chen

Background: You are representing a party in a mediation concerning parental rights and property division for a same-gender couple who lived together for 12 years but were never legally married or in a registered domestic partnership. The relationship has ended, and both parties seek resolution regarding their two teenage children (ages 14 and 16) and substantial jointly-acquired assets, including a family home, medical practice, and investment accounts.

Your Client: Dr. Sarah Chen is a physician who uses she/her pronouns and has a traditionally masculine gender presentation. She is neither the adoptive nor biological mother of the children, but has functioned as their parent since birth—financially supporting the family, making parental decisions, and being recognized by the children as one of their two mothers. Her brother served as the sperm donor for both children's conception and has never claimed or sought parental rights.

Opposing Counsel's Conduct: Opposing counsel has made several inappropriate comments about your client, including: "Well, she's not really a mother, is she?" and "Maybe if she dressed more like a woman, the children would be less confused." These remarks visibly upset your client and disrupted the mediation process.

COUNSEL FOR LISA MARTINEZ

Background: You are representing a party in a mediation concerning parental rights and property division for a same-gender couple who lived together for 12 years but were never legally married or in a registered domestic partnership. The relationship has ended, and both parties seek resolution regarding their two teenage children (ages 14 and 16) and substantial jointly-acquired assets, including a family home, medical practice, and investment accounts.

Your Client: Lisa Martinez is a stay-at-home parent and the children's primary caretaker. She is their biological mother, having conceived both children through IVF using sperm donated by Dr. Chen's brother. She seeks primary custody and a substantial portion of the jointly acquired assets.

Mediator Conduct: The mediator appears genuinely confused by the family structure, repeatedly asking questions like "But how could you accumulate all these assets *together* without being married?" and "I don't understand—who is the real parent here?" He seems unfamiliar with LGBTQ+ family formations and keeps referring to the ex as "the other woman" rather than as a parent.

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DISCUSSION QUESTIONS:

Educating the Mediator:

- How do you respectfully educate the mediator about LGBTQ+ family structures?
- What resources or analogies might help him understand non-traditional family formation?
- How do you address his language choices without derailing the process?

Addressing Opposing Counsel:

- What is your immediate response to discriminatory comments?
- How do you protect your client while maintaining professional decorum?
- When might you consider involving the mediator or seeking other remedies?

Supporting Your Client:

- How do you prepare your client for potential discrimination in the process?
- What strategies help maintain focus on legal issues rather than identity attacks?
- How do you balance zealous advocacy with your client's emotional well-being?

Ethical and Practical Considerations:

- What ethical rules govern your responses to discriminatory behavior?
- How do you document inappropriate conduct for potential future proceedings?
- What are the risks and benefits of different response strategies?
- How might these dynamics affect settlement negotiations and outcomes?