Surrogacy Basics:
What Every Family Law Attorney Should Know

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The Law Center for Children & Families

The Surrogacy Center

Madison, Wisconsin

We have a great story to tell you!

Participants in the Surrogacy Journey

Intended Parents ("IPs")

- Straight and gay couples/single persons/ international clients
- Seek to become parents to a child
- Neither, one, or both spouses/partners contribute genetic material
  - Use IVF; sperm quarantine
  - May create two sets of embryos

Gestational Carrier ("GC")
vs
Traditional Surrogate ("TS")

Legal Issues

7

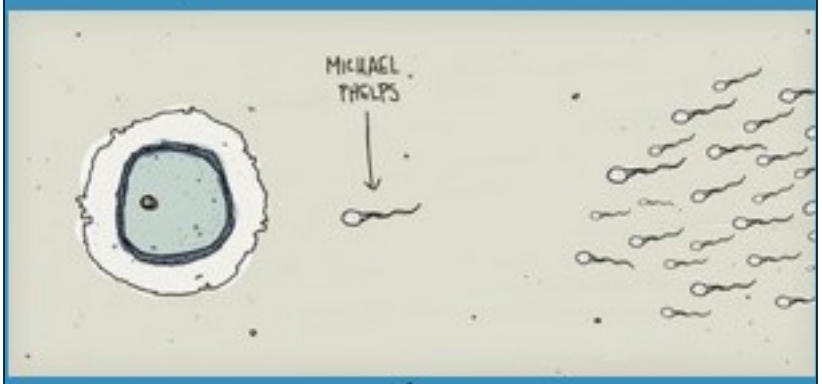
Recommended GC Qualifications

- Over age 21
- Non-smoker, no abuse of alcohol or other drugs
- Financially secure
- Prior healthy pregnancy
- Has delivered and is caring for at least one child
- Wants to help IPs have a child
- No risky behavior
- Good mental and physical health
- Supportive husband, partner, friend, or family member

8

Donors

- Sperm
- Egg
- Embryo



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Surrogacy Programs

What To Expect From a Surrogacy Program

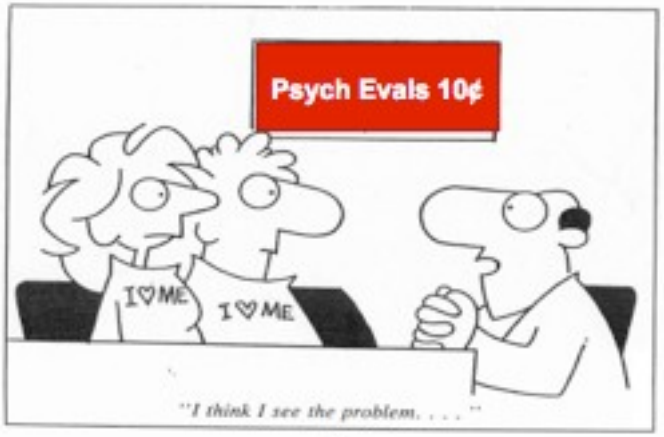
General Guidelines

- Follows American Society of Reproductive Medicine ("ASRM"), Society of Assisted Reproductive Technology ("SART"), Health Insurance Portability and Accountability Act ("HIPAA"), and Federal Drug Administration ("FDA") guidelines, and is registered with FDA and SART
- Adheres to a non-discrimination policy
- Hires professional staff

Matching & Referral Services

- Provides referrals to appropriate medical and other service providers
- Coordinates egg, sperm, and embryo donor referrals
- Conducts criminal record checks
- Assists in obtaining and reviewing GCs' medical records
- Screens and requires psychological evaluations of GCs and IPs

The Importance of Professional Evaluations



Ongoing Services

- Makes sure the rights of all parties are protected:
  - Referrals to independent legal counsel
  - No change in financial arrangements after the match
  - No cap on GC's attorneys fees
- Maintains close relationships with clinics and assists in scheduling
- Provides support to IPs and GCs throughout the pregnancy and after the birth
- Coordinates with attorneys to ensure a smooth transition after birth, including parentage orders and birth certificates

Financial & Insurance-Related Services

- Gives clear information as to fees, expenses, and services
- Maintains professional liability insurance
- Reviews health insurance policies to determine coverage
- Offers and manages escrow account services

Legal Services

What To Expect From an ART Attorney

- Basic Requirements:
  - Knowledge of and experience with all aspects of assisted reproduction law
  - Highest ethical standards
  - Good listening skills, patience, and compassion
  - Practice law only in state/s where licensed
- Only one client per attorney:
  - Surrogacy program
  - Intended parents
  - Donor/s
    - Donor program
  - Gestational carrier

Parentage Agreement

Drafting Process

- Counsel for one party drafts Parentage Agreement ("Agreement")
- Agreement is circulated to other parties' counsel for review and revision
- Agreement may also be reviewed by medical clinic counsel

Agreement Provisions: Donation, IVF, and Pregnancy

- Medical and psychological testing of participants
- Creation of embryos (*e.g.*, how many, by which method, using whose genetic material)
- Transfer of embryos (*e.g.*, number of attempts, fresh or frozen)
- Conduct of GC both prior to and during pregnancy
  - Requiring specific prenatal care
  - Prohibiting certain risky behaviors
  - GC's partner's responsibilities
- Abortion and selective reduction
  - Can involve emotional conflicts
  - Resolve prior to matching
  - GC has the final power to decide
- Parentage testing
- Life support

Agreement Provisions: Financial Arrangements

- Basic fees
- Special fees for unexpected or unusual costs
- Compensation payments to GC
- Method of payment
- Insurance

What about insurance?

- Coverage for IVF
  - Massachusetts, Illinois
- Coverage for TC/GC pregnancy/delivery care
  - Wisconsin

Mercycare Insurance Company v. Wisconsin Commissioner of Insurance,

So what to do if you want identical twins?

There's the old fashioned way...just leave it to Mother Nature

Or the Newest Technology

How reproductive physicians can now guarantee identical multiples to their patients

Disclosed for the first time at PLI!

Determination of Parentage/ Paternity/Maternity

Who's your mama?

Mom One and Mom Two

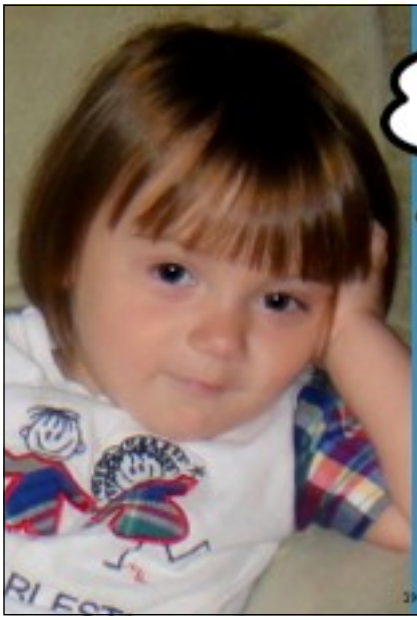
One partner donates the egg
One partner carries the fetus

Birth mom
DNA mom

Who's your daddy?

How do we do it?

- **Authority:**
  - State Law
  - Uniform Parentage Act (UPA)
  - Statutes based on UPA
  - Related case law
- **Arguments:**
  - Public policy: In the child's best interest because it allows the child to enjoy all the financial, legal, emotional, and psychological benefits of being raised in a secure family unit with legally recognized parents
  - Intended or *de facto* parentage
  - Constitutional law



I wonder how much all of this costs?!?

So, this was pretty good for the basics, but there's a lot more to learn about ART!

Do you want to learn more about ART?

American Academy of Assisted Reproductive Technology Attorneys (AAARTA)

Join us for our upcoming ART Conference

- Sponsored by AAAA/AAARTA
- Basic - Advanced Sessions on New Medical and Legal Developments in the Field of ART
- Interdisciplinary Program
  Open to Attorneys, Judges, Therapists, Social Workers, Medical Care Providers, and Other Professionals
- Networking Opportunities
- San Francisco November 3 and 4, 2011
- www.aaarta.org director@aaarta.org

Questions?

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Thank you!