

Having My Baby: Surrogacy in Colorado

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This article serves as a guide for the Colorado practitioner on some of the legal issues involved when representing a party to a surrogacy situation.

Surrogacy is playing an increasingly large role in how Americans achieve the age-old dream of creating families. Surrogacy describes the situation in which a woman gestates a child for another and turns over the baby to the intended parent or parents at the time of birth. This article describes surrogacy, analyzes Colorado and national laws concerning surrogacy, and describes the role of Colorado practitioners in aiding clients involved in using surrogacy to create a family.

Growing Role of Surrogacy

Individuals such as single fathers, infertile couples, and same-sex couples who historically had adoption as the only means of creating a family now have another option. Surrogacy is often seen as preferable to adoption because it can result in a child who is genetically related to one or both intended parents. In addition, surrogacy can be less expensive than adoption and can allow the intended parent more control over the process of creating a family.

It is likely that thousands of Americans have used surrogacy in the last decade to create families.¹ Although technology has certainly contributed to the incidence of surrogacies, use of surrogates as a way to deal with a woman's infertility has been described in the Old Testament as far back as the story of Abraham and Sara.² Today, surrogacy has become so accepted that it is regularly written about in the popular press.³ Moreover, agencies that help parents-to-be by locating and

screening surrogates can be found in at least sixteen states in the United States, including Colorado.⁴ Approximately twenty-five such agencies can be found in California alone.⁵

The growing incidence of children created by surrogate arrangements and other alternative reproductive technologies has prompted the Family Law Section of the American Bar Association to draft the Model Assisted Reproductive Technology Act of 1999.⁶

Types of Surrogacy Arrangements

With traditional surrogacy, also referred to as "egg donor surrogacy," the surrogate supplies the egg as well as the womb. Therefore, the resulting child is genetically related to the surrogate. The sperm may be provided by the intended father or by a sperm donor.

With gestational surrogacy, also known as IVF surrogacy or *in vitro* fertilization, the surrogate mother is not genetically related to the child. Both intended parents of the opposite sex may create an embryo with their egg and sperm. The embryo then is implanted in the womb of the surrogate mother, or "gestational carrier," for gestation. Other variations of gestational surrogacy include: (1) sperm provision by the intended father; (2) sperm donation, where the intended mother's egg is fertilized with donor sperm and implanted in the surrogate; and (3) embryo donation, where none of the parties involved (surrogate, intended mother, and intended father) may be genetically linked to the child.

Statutory Law Addressing Surrogacy

Some states have statutory law regulating surrogacy. However, Colorado has no such statutory law.⁷ The statute that comes closest to addressing the issue is CRS § 19-5-212, which forbids the giving, receiving, or charging of money or other consideration in connection with the relinquishment or adoption of a child. Therefore, the Colorado practitioner who handles matters involving surrogacy arrangements should be familiar with the statutory and case law of other jurisdictions.

Any type of surrogacy contract is void and unenforceable under statutes in Arizona, Indiana, the District of Columbia, and North Dakota.⁸ Surrogacy contracts involving compensation to the surrogate are void and unenforceable under Kentucky, Nebraska, Utah, and Washington statutes.⁹

Michigan's statutes make all surrogacy contracts void, and criminalize the creation of these contracts where compensation to the surrogate is involved.¹⁰ A participating party to a Michigan surrogacy contract for compensation is guilty of a misdemeanor and can be fined up to \$10,000 and imprisoned for up to one year.¹¹ A person other than a participating party who induces, arranges, procures, or otherwise assists in the formation of a surrogacy contract in Michigan is guilty of a felony, can be fined up to \$50,000, and can be jailed for up to five years.¹²

Florida permits contracts for surrogacy, which are called Pre-planned Adoption Agreements. However, under Florida's statute, the surrogate's consent to place her child with the intended parents is not binding until seven days after the birth of the child, during which time the surrogate may rescind her consent.¹³

Surrogacy is legal in West Virginia.¹⁴ Virginia, New Hampshire, and Arkansas have, by far, the most comprehensive statutes regarding surrogacy. Virginia allows surrogacy contracts,¹⁵ although it is a class 1 misdemeanor for any person or entity to recruit or procure surrogates, or to otherwise arrange or induce intended parents and surrogates to enter into surrogacy contracts.¹⁶

New Hampshire statutes allow surrogacy contracts, but only where all parties are medically pre-screened and counseled before the surrogate is impregnated. The surrogacy arrangement also must be pre-approved by a judge.¹⁷ No person or entity may induce a party to enter into a surrogacy agreement for payment.¹⁸

Arkansas may have the most surrogate-friendly statutes of all fifty states. A child born as the result of a surrogacy contract automatically is assumed to be the child of the intended parents. A stepparent adoption is not required if only one of the intended parents is the biological parent of the child; both intended parents' names are put on the Arkansas birth certificate. In cases where an intended parent is not married, only his or her name is put on the birth certificate. If a controversy ensues, the language of the surrogacy contract prevails.¹⁹

Case Law Addressing Surrogacy

No Colorado appellate court has addressed the issue of surrogacy. However, on the national level, the seminal surrogacy case is known as the *Baby M.* case, which was decided in 1988.²⁰ In that highly publicized New Jersey case, the intended parents entered into a surrogacy contract with Mary Beth Whitehead. In this egg donor (traditional) surrogacy, Whitehead's egg was to be fertilized with the intended father's sperm. She was paid a fee, and she agreed to gestate the child and deliver the baby to the intended parents at birth.

Immediately after the birth of Baby M., Whitehead found she could not part with the child and ran with the baby to another state. The intended parents brought suit against her, seeking to enforce the surrogacy contract. The New Jersey Supreme Court invalidated the surrogacy contract, calling it "illegal, perhaps criminal, and potentially degrading to women."²¹ The Court viewed the surrogacy contract as a private placement adoption, in which money exchanged hands, and the biological mother had to irrevocably agree to surrender the child before birth. Neither situation is permissible under New Jersey's laws involving private placement adoptions.

The New Jersey Supreme Court ordered that the intended father have custody of the child. It voided the trial court's termination of the surrogate mother's parental rights, voided the trial court's order of adoption of the child by the intended mother, and granted the surrogate mother visitation with the child.

The New Jersey Supreme Court found that the surrogacy contract entered into between Whitehead and the intended parents constituted the "sale of a child."²² However, the Court also stated that a woman could voluntarily and without payment be

a surrogate mother for others, as long as she was not subject to a binding agreement to surrender the child before a certain time.²³

Five years later, in California's first surrogacy case, *Johnson v. Calvert*,²⁴ a California appellate court viewed surrogacy situations differently than the New Jersey court. A married couple contracted with a woman to be a surrogate for an embryo created with the intended parents' egg and sperm. Thus, the surrogate mother was not genetically related to the child. During the pregnancy, the surrogate mother decided she wanted more money from the intended parents, and told them she would not deliver the child to them after the birth.

The intended parents sued. The legal question at issue was who had maternal rights in a maternity claim—the woman who provided the genetic material for the child or the woman who carried and gave birth to the child. The California Supreme Court resolved the conflict by looking at the intent of the parties. The surrogacy contract demonstrated that the intended mother and father planned to bring about a child. Because the surrogate mother would not have been impregnated with the intended parents' egg and sperm had she not agreed to deliver the child to them, the clear intent of the contract was for the intended mother to be the legal mother of the child. Thus, the intended mother's claim to maternity prevailed over the gestational mother's claim.

In 1998, a California Court of Appeals decided *In re the Marriage of Buzzanca*,²⁵ another groundbreaking case. In that case, a couple used gestational surrogacy to produce a child; neither intended parent was biologically related to the child, nor was the surrogate mother. Before the child was born, the intended parents began divorce proceedings. The intended father wished to disclaim any responsibility for or ties to the child. The intended mother wanted to have the intended father declared the legal father of the child. The surrogate mother wished to make it clear that she made no claim to the child.

Although the trial court determined that the child had no parents, the California Court of Appeals held that the intended parents were the legal parents of the child. It analogized the surrogacy situation to that addressed in the Uniform Parentage Act ("UPA"), where an infertile man who consents to the artificial insemination of his wife is deemed the legal father of a resulting child.²⁶ If an intended father's actions helped to produce a child, the fact

that the intended father was not the inseminator did not relieve him of responsibility for the resulting child.

Many other states have heard cases involving surrogacy.²⁷ Nevertheless, no clear majority opinion has determined whether or not surrogacy should be tolerated. Central to the surrogacy debate are weighty religious and moral issues, ranging from whether tolerance of surrogacy is tantamount to a proclamation that "God is dead"²⁸ to whether surrogacy is a form of oppression of poorer women.²⁹ Such religious and moral issues are beyond the scope of this article.

Legal Issues Concerning Surrogacy in Colorado

Even though no Colorado law addresses surrogate parenting—or perhaps because of it—children are born in the state as a result of surrogacy. Colorado is home to Creating Families, Inc., a thriving surrogacy agency. Additionally, Colorado has a reproductive technologies clinic that handles a high number of surrogacies.

Many legal questions loom in the background of each surrogacy situation in Colorado, such as: Are surrogacy contracts enforceable? Do surrogacy situations fall within the prohibition of CRS § 19-5-212 against baby selling? If surrogacy contracts are, indeed, legal, to what can intended parents and surrogates agree? What can be the monetary consideration for such agreements?

Resolving the threshold issues invariably brings other interesting questions to the forefront: What happens if a surrogate who is genetically related to the child does not want to give up the child once it is born? What if a surrogate who is not genetically related to the child does not want to give up the child? What happens if one or both of the intended parents do not want the child? What happens if the intended parents divorce while the surrogate is pregnant? What happens if one of the intended parents considers the other intended parent to be unfit to be a parent? If a surrogate breaches the surrogacy contract in any way during the pregnancy, can the intended parents disclaim the child? If the child is born disabled as the result of drug use by the surrogate mother, who, if anyone, is exposed to liability (the surrogate, an agency, the attorney)? If the intended parents mistreat the child, can the surrogate sue either the intended parents or an agency?³⁰ What are the ethical traps for attorneys in surrogacy situations?³¹

A highly uncertain legal landscape is unlikely to deter those who want children from using surrogates to create families. An attorney is usually required in the surrogacy arrangement. The remainder of this article describes the functions of the Colorado legal practitioner in a surrogacy situation.

Counsel's Role in Surrogacy Situations

In surrogacy arrangements with attorney involvement, counsel often is involved in the process from the very beginning. Attorneys may aid in connecting parents or surrogates with an agency, drafting and negotiating surrogacy agreements, counseling the intended parents or surrogate, obtaining a birth certificate, and addressing legal child placement issues.

In most circumstances, intended parents use the services of a surrogacy agency or reproductive technologies clinic to arrange for the services of a surrogate. Although attorneys could aid in the process of arranging privately for a surrogate without independent agency involvement, the authors recommend that Colorado attorneys not take this approach. Surrogacy arrangements are by nature complicated due to the medical and emotional health issues involved that are beyond the ken of most attorneys. Attorneys who serve the dual roles of agent and legal counsel are likely to be exposed to enormous liability and ethical dilemmas.

Agencies screen surrogates and intended parents for physical and mental health problems, and provide them with mental health counseling.³² These agencies also have contacts with reproductive technology medical centers. Agencies establish connections between surrogates and intended parents, and can aid in contract negotiations.

Negotiating and Drafting The Contract

Prior to the surrogate becoming impregnated or inseminated, the surrogate and intended parents enter into a contract. An attorney needs to draft the contract and counsel intended parents in surrogacy situations. A different attorney should be used by the surrogate and, if applicable, the surrogate's husband. The surrogacy contract may specify the following issues:

- 1) identities of the concerned parties—intended parents, surrogate, surrogate's spouse or significant other, and, if not anonymous, donors of the sperm and/or egg;

- 2) intents of all parties, including their rights and responsibilities;
- 3) decisions regarding medical and genetic screenings, and possible termination of the pregnancy;
- 4) sexual abstinence by the surrogate;
- 5) other restrictions to be placed on the surrogate (for example, smoking, drinking, using caffeine, taking drugs and medications, traveling, participating in high-impact sports);
- 6) prenatal care;
- 7) physical transfer of the child after birth;
- 8) rights to name the child;
- 9) issues regarding contact between intended parents, surrogate, and child (for example, presence or non-presence of intended parents at the birth, and issues of ongoing contact between the parties—some surrogates and intended parents agree not to have any contact);
- 10) payment of expenses associated with the surrogacy (it is typically assumed that the intended parents pay for all expenses, which can include medical costs, lost wages, life insurance, medical insurance, legal

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- 11) medical screening, psychological screening, and/or psychological or psychiatric counseling for any or all of the parties;
- 12) guardianship of the child should something happen to the intended parents before the child is born;
- 13) DNA testing of the child if an intended parent also is supposed to be a biological parent; and
- 14) customary contract provisions of choice of law (notice, non-assignability, severability, remedies for breach, equity and specific performance, and disclaimers).

Obtaining a Birth Certificate

Assuming a successful pregnancy, and assuming there are no disputes, the intended parents should arrange to obtain a birth certificate with their names on it. If there are disputes between the intended parents and the surrogate (and her husband), a protracted legal battle probably will be inevitable.

Because no Colorado law deals with surrogacy, existing laws must be used creatively to acquire a birth certificate with the names of the intended parents on it. There are three approaches: (1) obtain a declaratory judgment; (2) pursue relinquishment and adoption; and (3) use a midway method. Each approach is discussed next.

Declaratory Judgments: In some Colorado districts, the intended parents can obtain a birth certificate that names them as mother and father at the time of the birth. This process can be accomplished with a petition for adjudication of parentage and a motion for a declaratory judgment. The declaratory judgment names the intended parents as the “natural”³³ parents of the child and declares the surrogate (and her husband, if applicable)³⁴ “legal strangers” (non-parents) to the child. This procedure does not require testimony from the parties.³⁵

Parties to the action are the intended parents and the surrogate mother, as well as her husband, if she is married. Counsel for the intended parents should file a verified petition for determination of parent and child relationship. The petition asks the court to determine that the intended parents are the “legal” parents of the child.³⁶ The motion for declaratory judgment includes a request for an order that the Department of Vital Statistics issue a

birth certificate conforming to the court’s determination that the intended parents are the child’s legal parents.

The petition also should inform the judge of the facts of the case and present the intended parents’ argument, which is that a controversy exists because the unborn child has numerous presumed parents, and a court order is needed to clarify who are the legal parents. The petition should state that the court has jurisdiction over the matter by virtue of the child being conceived in Colorado,³⁷ and the fact that the UPA does not require the child at issue to have been born before issuing a determination of parentage.³⁸ Other pleadings to be filed are an admission of non-maternity signed by the surrogate, an admission of non-paternity signed by the surrogate’s spouse, an admission of paternity signed by the intended father, and an admission of maternity signed by the intended mother.

Counsel should include a draft order. The order should state that there is a controversy, that the court has jurisdiction over the controversy, that each intended parent meets some of the requirements for a determination of parentage under the UPA, and that, in this case, where there may be conflicting presumptions of parentage, the case is resolved in favor of the intended parents. Finally, the order should include an order for the Department of Vital Records to list the intended parents on the birth certificate if there is a live birth.

Relinquishment and Adoption: Some Colorado districts require a two-step process of relinquishment and adoption/step-parent adoption to obtain a birth certificate carrying the names of two intended parents. In a relinquishment and adoption proceeding, a relinquishing parent must have mental health counseling regarding the relinquishment.³⁹ In surrogacy situations, the relinquishing parent is the surrogate.⁴⁰ The relinquishing surrogate must disclose to the court all payments received in connection with pregnancy, birth, and relinquishment.⁴¹ The court must find the relinquishment to be knowing, voluntary, and not the result of threats, coercion, undue influence, or inducements.⁴² The court can refuse to grant the relinquishment if it finds it is not in the child’s best interests.⁴³ Once the child has been relinquished, he or she is available for adoption. However, the relinquishing surrogate can revoke the relinquishment within ninety days of the order if she proves the relinquishment was the product of duress or fraud.⁴⁴

If neither intended parent is genetically related to the child, the county department of social services or a licensed child placement agency must assess and approve the intended parents.⁴⁵ The court may place the child with the intended parents pending the finalization of the adoption,⁴⁶ which takes no less than six months.⁴⁷ To finalize the adoption, the department of social services or a placement agency must complete and file a home study and perform a criminal background check.⁴⁸

If the intended parents are married and at least one intended parent is genetically related to the child, the process is simpler. The surrogate should not have to go through the relinquishment process, and the intended parents should not need a home study. If one parent is genetically related to the child, the spouse can adopt as a stepparent with the written, verified consent of the surrogate if the child is “born out of wedlock.”⁴⁹ If both parents are genetically related to the child, the parents still may have to go through a stepparent adoption process.

The venue for the relinquishment proceeding is the place of residence of the child or surrogate, or the location of the placement agency.⁵⁰ The venue for an adoption proceeding is the place of residence of an intended parent or the location of the placement agency.⁵¹ Where the intended parents are from out-of-state, which is often the case, venue requirements can make the adoption process difficult and add to the expense of the adoption.⁵²

Midway Method: Some Colorado districts require an amalgam of the two types of approaches: declaratory judgments and the relinquishment/adoption process. These districts may require testimony regarding the fitness of the intended parents to be parents, the voluntary nature of the surrogate’s contract, the agreement to give the child to the intended parents, and the mental health counseling received by the surrogate. Some Colorado districts also will require that a copy of the surrogacy agreement be filed and that a genetic test be performed on the child. Alternatively, the physician who performed the fertilization and implantation procedures must submit an affidavit stating the genetic background of the child.

In all of these procedures, obtaining a birth certificate that names the intended parents as the child’s “legal” parents is easiest when at least one parent is genetically related to the child. Moreover, a genetic relationship to at least one parent helps the intended parents should a future dispute arise concerning the child.⁵³

Conclusion

Regardless of what judges and legislators may think of surrogacy, as long as there are people who want families but cannot have children without the aid of available reproductive technology, more babies will be born of surrogate mothers. When there are disputes, such cases are bound to reach the appellate courts and new laws may result. Until Colorado squarely addresses surrogacy issues, counsel representing parties involved in surrogacy situations must creatively use existing law to address the unique challenges presented by surrogacy situations.

NOTES

1. The authors have been unable to locate reliable statistics on how many babies were born using a surrogate mother in the United States. However, the Center for Surrogate Parenting, Inc. estimated that 4,000 surrogate births had occurred in the United States between the late 1970s and 1993. Garrison, "Law Making for Baby Making: An Interpretive Approach to the Determination of Legal Parentage," 113 *Harv.L.Rev.* 835, 850 (2000). One surrogacy center alone boasts more than 800 babies born through some type of surrogacy process since 1998. See Center for Surrogate Parenting, Inc., at <http://www.creatingfamilies.com>. A 1998 report by the U.S. Centers for Disease Control and Prevention stated that .07 percent of live births in the United States resulted from some sort of assisted reproductive technology. See U.S. Centers for Disease Control and Prevention, "Preface to Assisted Reproductive Technology Success Rates in the United States: 1998 National Summary and Fertility Clinic Reports" at: <http://www.cdc.gov/nccdphp/drh/art98/98nation.htm>.

2. "Genesis" 16:1-2 (King James Version) ("Now Sarai Abram's wife bore him no children; and she had a handmaid, an Egyptian, whose name was Hagar. And Sarai said unto Abram, Behold now, the Lord hath restrained me from bearing; I pray thee, go in unto my maid; it may be that I may obtain children by her:").

3. Dam and Wihlborg, "Fertility Treatments and a Surrogate Mother," *People Magazine* (June 9, 2000) at: <http://www.people.com/000619/features/tiegs2.html>.

4. See <http://www.surrogacy.com/agencies/states.html>.

5. *Id.*

6. See http://www.abanet.org/ftp/pub/family/art_monograph.doc.

7. The 2000 Uniform Parentage Act ("UPA"), which has been adopted by only a few states, addresses gestational agreements in Article 8. It is unlikely that the Colorado legislature will address adoption of the new UPA before 2003.

8. Ariz. Rev. Stat. § 25-218; Ind. Code §§ 31-20-1-1 *et seq.*; D.C. Code Ann. §§ 16-401 and -402; N.D. Cent. Code § 14-18-05.

9. Ky. Rev. Stat. § 199.590; Neb. Rev. Stat. § 25-21 and -200; Utah Code § 76-7-204; Wash. Rev. Code §§ 26.26.210 *et seq.*

10. Mich. Comp. Laws § 722.855.

11. *Id.* at § 722.859.

12. *Id.*

13. Fla. Stat. Ch. 63.212.

14. W.Va. Code § 48-4-16.

15. Va. Code §§ 20-159, -156, and -165.

16. Va. Code § 20-165.

17. N.H. Rev. Stat. § 168-B:16.

18. *Id.*

19. Ark. Code Ann. §§ 9-10-201 *et seq.*

20. *Matter of Baby M.*, 537 A.2d 1227 (N.J. 1998).

21. *Id.* at 1234.

22. *Id.* at 1248.

23. *Id.* at 1264.

24. *Johnson v. Calvert*, 851 P.2d 776 (Cal.1993).

25. *In re the Marriage of Buzzanca*, 72 Cal. Rptr.2d 280 (Cal.App. 1998).

26. Cal. Fam. Code § 7610. Colorado's statute is identical to California's statute. See CRS § 19-4-106.

27. *Doe v. Doe*, 710 A.2d 1297 (Conn. 1998) (Where husband and wife have child using sur-

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rogate and child genetically related to husband and surrogate, surrogate's parental rights are terminated and wife never adopts child. Husband and wife divorce; husband claims court does not have subject matter jurisdiction over custody of child, as not child of marriage. Court held child not child of marriage, but trial court has subject matter jurisdiction over custody of child under third-party custody statutes); *R.R. v. M.H. & Another*, 689 N.E.2d 790 (Mass. 1998) (surrogacy agreements not enforceable; in surrogacy situation, adoption statutes govern); *Belsito v. Clark*, 644 N.E.2d 760 (Ohio 1994) (Ohio appellate court would not follow *Johnson v. Calvert* when addressing cases involving surrogacy); *McDonald v. McDonald*, 196 A.2d 7 (N.Y. 1994) (twins conceived by implanting anonymously donated egg fertilized with husband's sperm into wife's uterus. Husband and wife divorced; husband claimed as only person genetically related to the children, he should receive full custody of children, and wife should be deemed non-parent. Court applied intent-based reasoning found in *Johnson v. Calvert* and found mother/wife is "natural" mother of the children; see note 33, *infra*); *Adoption of Matthew B.*, 284 Cal.Rptr. 18 (Cal.App. 1991) (intended parents entered traditional surrogacy agreement with surrogate who gave birth, went through paternity proceedings with intended father, and signed release for stepparent adoption. Ten months later, surrogate mother filed petition asking to withdraw consent to stepparent adoption and for court to vacate paternity order; trial court denied both requests. Court of Appeals upheld both judgments, applying only paternity and adoption laws; not addressing legality of surrogacy agreements).

28. The Catholic Church sees surrogacy, and all other types of reproductive technology, as akin to creating a *golem*—man-made life. Once man can create life, God is no longer necessary. "Genetic Cloning and the Sanctity of Life," *Catholics United for Life*, pamphlet # 0332.

29. See McEwen, "So You're Having Another Woman's Baby: Economics and Exploitation in Gestational Surrogacy," 32 *Vand. J. Transnat'l L.* 271 (1999); Kerian, "Surrogacy: A Last Resort for Infertile Women or a Commodification of Women's Bodies and Children?" 12 *Wis. Women's L.J.* 113 (1997).

30. See *Phyllis A. Huddleston v. Infertility*, 700 A.2d 453 (Pa. 1997) (traditional surrogacy where only one intended parent is biological father who later murders child; surrogate mother, who is also biological mother, sues agency that brokered surrogacy. Court found that if parties bringing suit were proper, tort case could be brought against agency because harm

to child after surrogate relinquishes child is foreseeable, and traditional notions of negligence are applicable to surrogacy situations).

31. *Stiver v. Parker*, 975 F.2d 261 (6th Cir. 1992). The most unfortunate demonstration of problematic ethical situations occurred in a Michigan case where an attorney advertised and promoted his services as a surrogacy facilitator. The attorney gathered the appropriate professionals and parties, but failed to have either the surrogate or the sperm donor, who was to be the intended parent, medically tested. The surrogate inadvertently gave birth to her husband's child, instead of the intended father's, but also was exposed to a disease when she was inseminated with the intended father's sperm that left her husband's child mentally retarded. The court ruled that surrogacy facilitators have a special relationship duty to protect the surrogate from foreseeable medical risks posed by the surrogacy procedure and can therefore be sued under traditional tort principles.

32. For information about Denver-based Creating Families, Inc., see <http://www.creatfam.com>.

33. There is no definition of "natural" parent in Colorado statutes. CRS § 19-1-103 states that a "natural parent" is one so established under the UPA—*i.e.*, a person adjudicated a parent, although not necessarily a biological parent. CRS § 25-2-113.5 defines a "qualified birth parent" as a genetic, biological, or natural parent, implying that a natural parent may not be a genetic or biological parent. This statute further states that a "birth parent" includes the man who is a parent by adjudication, pursuant to the UPA. Again, this parent need not be biologically related to the child.

34. If the surrogate is married at the time she gives birth, her husband is deemed the "natural" father to the child. Therefore, in cases where the surrogate is married, the husband must be joined in the UPA action as a party, and must state that he is not the "natural" parent of the child the surrogate is carrying.

35. Appellate court cases in other states have upheld this procedure in certain situations. See, e.g., *Belsito*, *supra*, note 27. But see *Syrkowski v. Appleyard*, 333 N.W.2d 90 (Mich.App. 1983) where court held a birth certificate cannot be obtained in this way.

36. CRS § 19-4-104.

37. CRS § 19-4-109. The child is "conceived" either where the egg and sperm were "mixed" (*in vitro* fertilization) or the sperm was implanted (artificial insemination).

38. CRS § 19-4-107. See *People in Interest of Unborn Child v. Estergard*, 457 P.2d 698 (Colo.

1969) where the court construed the word "child" liberally to aid in implementing the purposes of the statute. The court ruled that the health of the child begins before birth. Consequently, the purpose of establishing paternity is to provide means to establish accurately the identity of the father of the child so that responsibility for the child's support can be determined and support ordered.

39. CRS § 19-5-103(1)(a).

40. In most surrogacy situations, only the surrogate need relinquish rights, as the sperm is either provided by the intended father or by an anonymous donor. In theory, if the surrogate is married, her husband also may have to relinquish parental rights if the intended father is not genetically related to the child because the surrogate's husband is the only presumptive father under CRS § 19-4-105.

41. CRS § 19-5-103(1)(b)(II)(C).

42. CRS § 19-5-103(7)(a)(II).

43. CRS § 19-5-103(6). Some cases suggest that, as a matter of public policy, if the surrogacy contract includes compensation to the surrogate, it cannot be free of undue influence or inducements or be in the best interests of the child. See *R.R. v. M.H.*, 689 N.E.2d 790 (Mass. 1998).

44. CRS § 19-5-104(7)(a).

45. CRS § 19-5-206(2)(a).

46. *Id.*

47. CRS § 19-5-201(2).

48. CRS §§ 19-5-207(2) and -207(2.5).

49. CRS § 19-5-203(1)(f).

50. CRS § 19-5-102.

51. CRS § 19-5-204.

52. The location of the reproductive medicine clinic may determine the location of everything else. The existence of a reproductive center will lead to the formation of a surrogacy agency. The surrogacy agency often will locate surrogates in that state, resulting in the insemination, pregnancy, and birth all occurring in that state. Intended parents, on the other hand, often are not from the same state as the surrogate. Thus, when districts require the traditional relinquishment and adoption, the relinquishment would be done in Colorado if the surrogate is a resident of Colorado, and the adoption would have to be done in the intended parents' home state. The mere requirement of having to hire two separate attorneys is likely to considerably increase the legal expense.

53. Compare *Matter of Baby M.*, *supra*, note 20, where the surrogate and child were genetically related, and *Johnson*, *supra*, note 24, where the surrogate had no genetic relationship to the child. ■

ALA, Mile High Chapter Presents "Economic Update," January 17, 2002, in Denver

The Association of Legal Administrators, Mile High Chapter, is hosting a program entitled "Economic Update" on Thursday, January 17, 2002, at NOON at the Pinnacle Club in Denver. Featured speaker is Richard Wobbekind, Associate Dean for External Relations at the University of Colorado-Boulder. To make reservations or for additional information, contact Linda Brittain at (303) 291-2615.