



Surrogacy and Mental Health

Professionals know to “stay in their lane,” which is really easy advice when our lanes are clearly delineated. In family law, emotions run high, and so a lawyer can easily find themselves transition to the role of counselor, as in the mental health variety.

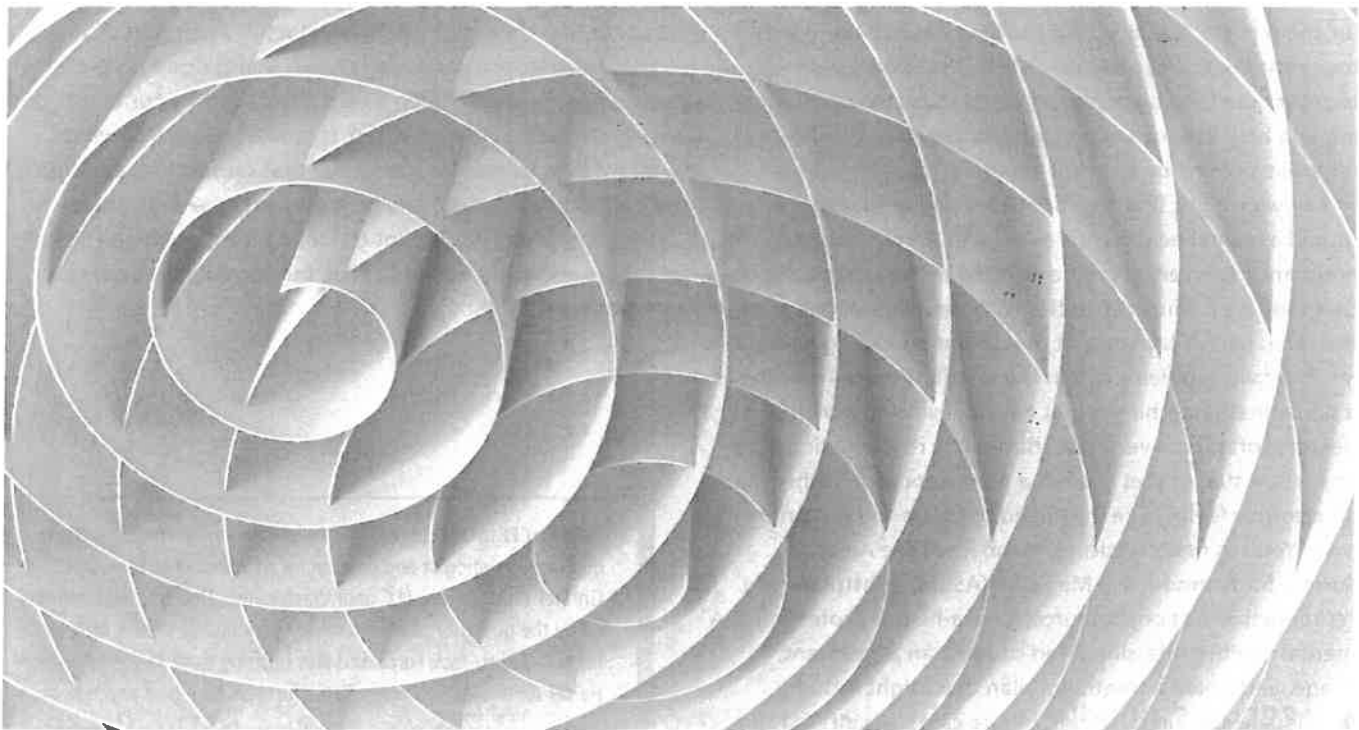
This is particularly true in the high-stakes sub-specialty of reproductive law. Reproductive law’s landscape includes working with gestational carriers, intended parents, egg donors, sperm donors and embryo donors. Oftentimes, the parties that are working together live in different states, so the distance can create its own complications. This article will focus on the intersection of surrogacy (“gestational carrier’s” in particular) and mental health.

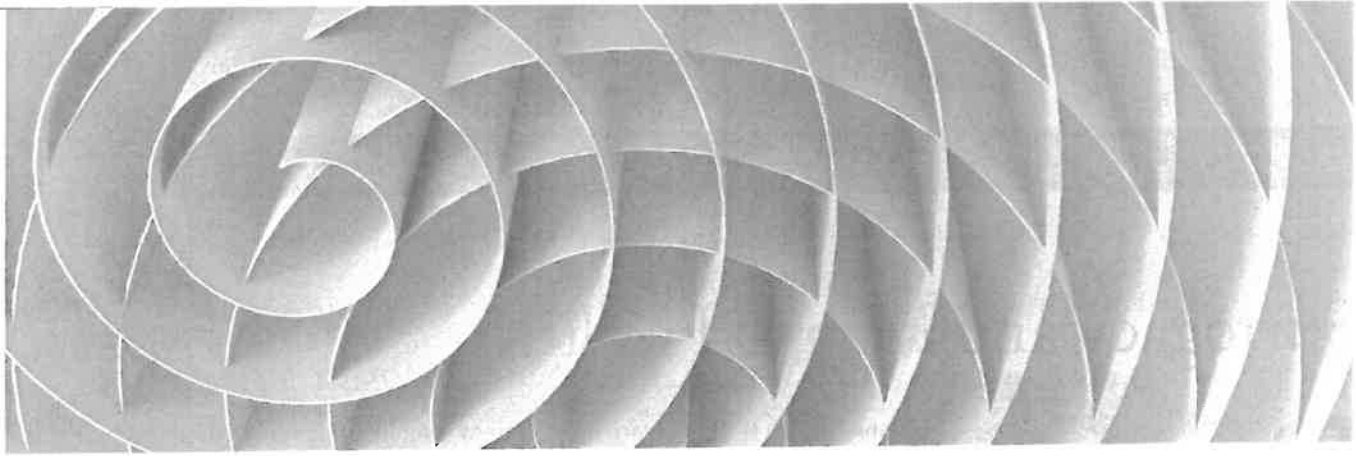
When an intended parent enters into the world where they need to enlist the assistance of a reproductive lawyer, they most likely have already been through the fertility wringer. Commonly, unless part of a same-sex male couple or a woman born without a uterus, the couple has likely been through years of medical treatments, false starts and so much heartache. While the couple is already used to having others be part of their family building journey (which most didn’t imagine would happen when they thought of starting a family), bringing in a gestational

carrier is different given the relationship and the “project” that all are embarking on together.

There is not one single road map that this journey tends to follow not matter who the intended parent is. Often, it begins with a renewed sense of hope and optimism on behalf of the intended parents, with the thought of “this is the way that we are going to finally meet our baby.” There can be a sense of excitement mixed in with a sense of nervousness, as intended parents put so much trust in their gestational carrier. Ideally, the gestational carrier has already gone through a rigorous screening with a mental health professional, and the intended parents have also had an in-depth meeting with one to think through the challenges that might lie ahead. While gestational carriers who have active mental health challenges are screened out, this is seldom the case with intended parents. The current viewpoint is that serving as a gestational carrier is a choice and one that should not add harm to any party involved, whereas intended parents have the right to reproductive autonomy.

Fundamentally, this process is about a relationship, and with the stakes feeling so high, there are lots of ways for things to go sideways. Communication is the foundational building block in this type of relationship, and being able to





communicate expectations from the beginning is so critical. If the intended parents want to be really “hands on,” this is something that the gestational carrier should agree to at the onset and for both parties to flush out what that might look like (e.g., attending doctor’s appointments, frequency of contact, methods of contact). Likewise, if the intended parents view the arrangement as a “business transaction,” that also needs to be communicated to the carrier, so that they don’t read into the lack of contact as something else.

Pre-existing mental health challenges, or those that might arise during a journey, can add layers of complication. If a mental health condition has been in existence for the intended parents, this is something that should be communicated to the carrier, which can be scary for the intended parent to do as they can be concerned about being denied a match. However, this early transparency can help set expectations for the carrier, should the condition be difficult to manage during the journey. Intended parents can share what they might need or how it might be experienced, so that all feel prepared. For example, if an intended parent has an anxiety disorder, it might be useful for them to say that one way for them to manage is with a temporary uptick in communication. Creating a plan together can help both parties understand what is happening and how they can assist one another. This is true regardless of any preexisting issues.

Lawyers might find themselves serving as mediators should a mental health crisis emerge during a surrogacy pregnancy. Lawyers might be notified by their client directly that they are having difficulties with the other party, or by the other party’s lawyer that their client is crossing boundaries. Typically, problems within the relationship will emerge as a signal that something might be off. Involving a mental health professional versed in third-party reproduction is an important step so that there is a team approach, rather than an attorney feeling like they need to figure this out on their own. You can find practicing members of the American Society for Reproductive Medicine (ASRM) at <https://www.reproductivefacts.org/resources/find-a-health-professional>. A mental health professional can conduct an assessment, triage, and create a treatment plan that might include individual or group meetings. In rare cases, hospitalization

might be required, and a mental health professional can assist with that process.

Attorneys practicing third-party law are well aware that anxiety is often something that comes with the territory of working with intended parents, as the process is unknown and the sought-after outcome can feel both so close and yet so far away. Intended parents must trust a relative stranger (which is often, but not always the case) with their developing baby. A degree of flexibility is often important for intended parents to have, as the pregnancy will not be exactly as it might have been should they have carried their own child. Being able to assist clients with their anxiety, by both normalizing it as an expected part of the process and by guiding them towards tools, like staying in the present moment, are important skills to know. Certainly, there are lots of apps that can help teach mindfulness that may be helpful, like Calm, Headspace, Moodfit, Insight Timer, and countless others.

One important thing to note is that the majority of intended parents that are seeking out surrogacy have experienced some degree of reproductive trauma. This means that they might be more reactive as a result of their past experiences, particularly when things don’t go the way they might expect. Being able to help soothe your clients can help the interaction, as often, they are unaware of what might be a trigger (or a situation that causes their emotional reactivity to increase) and how they experience it. Understanding where your client is starting from will help you help them navigate this complicated, but incredibly wonderful experience. ■

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