

Attorney Who's Been There Develops Surrogacy Practice

By Anne Marie Ruff

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SAN DIEGO — Going to law school on top of a full-time career is demanding. Add caring for infant twins, and it might seem impossible.

But that is just what Stephanie Caballero did during her last year of law school. To top it off, the birth of Caballero's children came at the end of an eight-year odyssey of fertility treatments, miscarriages, surrogacy and adoption.

The process resulted not only in a family but also in a thriving legal practice.

Caballero, 46, and her husband are the genetic and legal parents of a 5-year-old son and daughter who were carried by Caballero's cousin, who volunteered to be the surrogate. Since the surrogate was in a different state, Caballero and her husband had to legally adopt their children. Her experience inspired her to practice surrogacy law.

Two dozen lawyers in California specialize in what is known as "assisted reproduction" or "family formation" law. The practice involves contracts among surrogates, egg and sperm

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Stephanie Caballero plays with her 5-year-old son and daughter. The twins were carried by her cousin, who volunteered to be the surrogate for Caballero and her husband.

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donors and intended parents; parentage judgments; and legal adoption.

Like Caballero, most attorneys who specialize in the practice have personal experience with surrogacy or gamete donation.

Before her children were born, Caballero had a career in marketing and regulation at Blue Cross.

"I thought I would be in-house counsel with Blue Cross," she said. "I never imagined I would set up my own practice."

But when she and her husband moved from Thousand Oaks to San Diego, she found herself in a new community where she had no professional contacts. However, she was near Thomas Pinkerton.

Now a well-known surrogacy attorney, Pinkerton developed his practice after he was the first man in San Diego to win a court order naming his wife the mother of their child, who had been carried by a surrogate. *Pinkerton v. Scheuer* (1990).

Caballero interned with Pinkerton for a year before striking out on her own. She set up a surrogacy agency — to pair surrogates with intended parents — and a law practice. Within six months, the legal practice had grown so much that her husband had to take over the agency so she could focus on the legal work.

She has had clients from all over the country and even from Japan and Europe.

"Many people come to California for surrogacy or egg donation because it is a favorable [legal] climate for them," Los Angeles-based family-formation attorney Willard Halm said.

Halm and his partner have three surrogate children. When they were first trying to form a family as a homosexual couple in the early 1990s, he said, "it was the dark ages of family formation."

"Adoption circles were not very warm toward us, and no one I knew had ever gone through surrogacy," he said.

Halm asked friends to donate eggs and to act as their surrogate. He drafted his own contracts for them. He had never seen a surrogacy contract before but drew on his corporate law background.

By the time their second child was born, Halm had left his job at

Gibson, Dunn & Crutcher in Los Angeles, started a surrogacy agency and received the first parentage judgment in a gay, gestational-surrogacy case. *Halm-Simard v. Nila* (1998).

Halm, who has one of the country's largest practices serving gay intended parents, recently teamed with Pinkerton to form the National Fertility Law Center. The firm is positioned to serve clients in any state, despite the patchwork of laws that govern surrogacy and adoption.

"The doctrine [of family formation] is much more developed than it was 15 years ago," said Scott Altman, associate dean of USC Gould School of Law and professor of family law and property law. "We have seen a lot of the disputes that before we could only imagine."

Those include surrogate mothers claiming rights to keep the children they carry, the intended mother or father backing out of the claim to the child the surrogate carries, single men asserting their parentage rights over a surrogate mother and disputes over inheritance of posthumously conceived children.

California state law provides no guidance about surrogacy, according to Shirley Zager, director of the Illinois-based Organization of Parents Through Surrogacy which tracks legislation and court decisions on the issue. But there is a growing body of case law.

"This community owes a lot to California jurists for their thoughtfulness and wisdom about what's best for the children," Zager said. "California has been a trailblazer in recognition of the intent of parentage and agreements between surrogates and intended parents."

Altman said the subject is taught in sections of family law, contracts and bioethics courses.

"Students have always been interested in it because it's interesting and in the news," he said. "But I've never had a student come and say, 'I want to practice infertility law.'"

That may be because the money involved is relatively small.

Caballero said the average surrogacy contract she drafts cost \$2,500 to \$3,000. Pre-birth documents establishing parentage are another \$3,000, and legal representation for donors and surrogates are \$350 and \$750, respectively, and are usually paid for by the intended parents.

With total legal fees running \$7,000 to \$8,000, they are one of the smaller expenses intended parents may incur. Donated eggs can cost \$5,000 to \$25,000, fees for surrogates run \$20,000 to \$30,000, and in-vitro fertilization costs \$12,000 per cycle.

Though the legal fees are small, Caballero said a couple of factors work in her favor.

"The number of women in their 40s and 50s going through in vitro fertilization has not declined," she said, so demand is strong.

According to the Centers for Disease Control, the number of infants born in the U.S. through assisted reproduction has increased steadily from 21,000 in 1996 to 49,000 in 2003, the last year for which statistics are available.

As far as the supply of surrogacy lawyers, Caballero said, "most attorneys in this practice only go through law school and start practicing."

"But I had a whole marketing career before I went to law school," she said.

Caballero spent her first two months in business marketing herself and setting up a Web site. She is upfront about the specifics of what she went through because she said it resonates with infertile women much more than if she just said she had a personal experience with surrogacy.

"I have been through all the injections and the emotional roller coaster, so I understand exactly what they are going through," she said.

That is exactly what caught the attention of one of Caballero's clients, who lives in a Maryland suburb. The client spoke on the condition of anonymity out of concern for her children.

She and her husband had a surrogate in California. But when the surrogate was 20 weeks pregnant, she said she would never speak to the intended parents again.

"It was a nightmare," the client said. "I literally found Stephanie on a Web site. I needed someone who knew my side, and she had been there herself. Most female surrogacy attorneys have experience on the egg-donor end, which is radically different."

Caballero set up a chain of communication, and five months ago, the intended parents were able to

receive their twin children shortly after they were born.

"She rescued us," the client said. "She was our voice of reason."

Damon Wolf, one of Halm's clients agreed that the attorney's personal experience is important. Like Halm, Wolf is gay, and he and his partner have two sons through surrogacy.

"It was important for us to have an attorney who had been through the process," Wolf said. "I don't know if we would have trusted someone who had children not through surrogacy."

Caballero said her experience with surrogacy gave her more than she expected.

"I got the children I was supposed to have," she said. "And it's the best job, even with the heartache, because there is nothing like telling someone they are going to have a baby."