

# Surrogacy in Nevada

BY KIM SURRAT, ESQ.

Is there enough surrogacy work out there for you to stay busy? Absolutely! Nevada is a leader in surrogacy. All of Nevada's assisted reproductive statutes reside in Chapter 126 of the Nevada Revised Statutes. It is a complex legal field with many issues surrounding conflict of law, constitutional concerns and international issues.

Nevada allows a surrogacy (also known as gestational carrier) arrangement so long as the surrogate isn't genetically related, and the participants comply with the requirements of Nevada law. The most important elements are that a contract must be entered by the parties prior to the embryo transfer and each side must have their own independent legal representation during the contract negotiations.

What is the process for someone to use Nevada law for surrogacy? First, intended parent(s) and surrogates must find each other. Many intended parent(s) utilize an agency to assist them in the matching process. There isn't a regulatory entity to license such agencies either at the state or federal level. Thus, it is very important for people to carefully screen any agency that they want to use. A good agency will do a complete screening of the carrier to include things such as a background check, psychological screening, credit check, medical screening, etc.

It is not uncommon for the intended parent(s) and surrogate to live in different states or even different countries. In looking at a potential surrogate, the intended parent(s) must take a good look at any conflict of law issues and determine which laws will apply to their situation. This is precisely why Nevada is a good location for parties to begin their surrogacy journey. Nevada has law! Pursuant to NRS 126.720(4)(c), Nevada is a favorable state because Nevada takes jurisdiction under any of the following circumstances: the child will be born in Nevada, the child was supposed to be born in Nevada, the intended parent(s) or the carrier reside in Nevada at birth or when the agreement was executed, the agreement was executed in Nevada or the medical procedures for assisted reproduction that were performed pursuant to the gestational agreement and resulted in pregnancy were performed in Nevada.



Another important analysis in picking a surrogate is the availability of insurance to cover the surrogate's medical expenses. A new bill was passed in the 2019 legislative session effective January 1, 2020. The new law prohibits medical insurance companies in the state of Nevada from discriminating against their insureds based on whether they are pregnant for a surrogacy or pregnant for themselves. During the process of getting the bill passed, the language was removed from the Nevada statutes that apply to the governing body of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the state of Nevada. Many of these entities were already covering an insured's maternity care without discrimination, and each entity still has the moral obligation to cover an insured's maternity care without inquiry into why she is pregnant. The long-term goal is for these entities to make their own decision to not discriminate between their insureds who are pregnant. Nevada is the first state in the nation to have a statute to prevent discrimination based on how the person became pregnant.

After the intended parent(s) determine that they can use a state's law, they must then decide if it is good fit for them and whether they will face discrimination or any hard times in becoming a parent in that state. Again, Nevada is ideal in many ways! First, in Nevada it is statutorily permissible for a surrogate to be compensated. Nevada does not restrict the amount of compensation that a carrier can receive. However, there are restrictions on paying for an embryo donation, so it is important to not confuse the two.



Intended parent(s) in a surrogacy arrangement do not have to be married in the state of Nevada. In addition, a single intended parent can utilize a surrogate in Nevada, and the intended parent can be a male or a female. Nevada's surrogacy statutes are also "gender neutral." Thus, same-sex intended parent(s) are treated the same as opposite-sex intended parent(s). This means that they do not have to register in Nevada as domestic partners or marry each other before becoming parents through surrogacy.

In addition, the Nevada statutes are "genetic neutral," and the intended parent(s) do not need to have a genetic link to the child. This means that either the egg or the sperm or both can be from a third-party donor and not the intended parent(s) themselves, making it possible for the intended parent(s) to utilize the surrogacy laws without an additional adoption. Because our statutes are genetic neutral, the intended parent(s) by statute may use an embryo donation in the state of Nevada and be the legal parent of the child. For all gamete donations (whether sperm, egg

or embryo), the parties must demonstrate that prior to the donation, the person gave consent to donate. That consent can be in the form of medical consent documents at the physician's office or a formal agreement between the donor and the recipient parents. If a person utilizes an egg donation, embryo donation or sperm donation with consent proven there is no need for a John or Jane Doe termination of the donors.

Once the parties are matched and they agree to work with each other, pursuant to Nevada law, both the intended parent(s) and the surrogate must have independent legal counsel while negotiating and entering into their written agreement. This is the case even if the surrogate does not receive compensation for the surrogacy. The reason is to assure that the surrogate isn't under duress and that she understands the risks that she is taking. Surrogacy contracts on average run around 50 pages long. They cover all the potential problems that can arise between the parties.

Once the parties have negotiated a contract, they must have it notarized under Nevada law. However, Remote Notarization became effective in Nevada on July 1, 2018. Thus, the parties can have their contract notarized via video conferencing with an official remote notary. Not all notaries can be a remote notary; you can't just use staff members who are trained notaries. They must check with the Secretary of State in their own jurisdiction to determine what the requirements are to allow them to remotely notarize.

After the contract is signed and notarized by all parties and their attorneys, the attorneys can provide legal clearance to the medical clinic to proceed with the embryo transfer process. Once the parties are pregnant, they can return to their legal counsel for a parentage order. Under Nevada law, the parentage order can be obtained either before the birth of the child or after the birth of the child. The strategic reason for obtaining it before the birth is to give the order to the hospital ahead of time and allow them to prepare for the birth. There are many international compliance reasons why we need to also obtain an order after the birth of the child that includes the child's actual birth date and name.

The purpose of the pleadings for the parentage order is to assure that the parties have complied with Nevada law to know that it is a real surrogacy. I joke with my

clients, although it isn't really a joke, that the court is just making sure that you did not pull an already-pregnant woman in from the street and try to pass her off as a surrogate. The court is looking for compliance with Nevada law by confirming a contract was executed before the embryo transfer took place, the parties each had their own legal counsel and that the contents of the contract contain the minimum requirements under Nevada law. What the court is not looking at is whether they would be good parents or should be parents. Thus, with evidentiary proof in the petition that Nevada law was followed, a hearing is not mandatory. However, as always, the court retains the authority to require a hearing if they suspect something is wrong or the parties failed to sufficiently plead their matter.

Once the court issues the parentage order, the parties provide a copy to the hospital. Upon arriving at the hospital, the intended parent(s) fill out the birth certificate documents for Vital Records as if they had given birth themselves. The surrogate's name never goes on the forms or the final birth certificate. Vital Records will then process the birth certificate with the intended parent(s) names and their dream of being a parent is realized.

This is obviously an oversimplification of the process. However, it gives you an idea of what parents go through and why Nevada is a leader in the assisted reproductive technology world! **NL**



**KIM SURRETT** began her legal career in 2002 and opened her firm in 2007. She continues her role as principal of Surratt Law Practice, a full-service reproductive, family and estate law firm. She began her ART law career in 2004 with her first surrogacy case. She is a fellow with the Academy of Adoption and Assisted Reproductive Technology Attorneys (AAAA), sits on the executive council as the chair for the Family Law Section of the State Bar of Nevada, is a member of the National Family Law Advisory Council for the National Center of Lesbian Rights, and vice president of the Nevada Justice Association. Kim is the chair of the domestic lobbying committee for the Nevada Justice Association and assists the Family Law Section of the State Bar with their lobbying efforts. Kim drafted and lobbied the passage of all the current reproductive family law statutes in Nevada. She has spoken in various countries in several media around the world on reproductive law.