

COVID update, 7/21

Jill H. Teitel interview with Colleen Quinn, Esq., a Richmond, Virginia Reproductive and Adoption Attorney and Jeanne O'Brien, M.D. at Shady Grove Fertility in Rockville, Maryland.

After the dystopian year we have had, there have been significant changes in the ways reproductive attorneys and doctors are approaching their practices. I interviewed

I asked Colleen the following question: What has changed in your practice since COVID?

Colleen's practice is multifaceted, she handles adoption matters, is an expert witness in litigations involving lost embryo and gamete cases and does surrogacy law and estate planning. She has noticed positive changes in the administrative and the judiciary brought on as a result of COVID. In Colleen's family formation practice, she noticed that while courts, administrative offices, including embassies suffered slowdowns and closures, she had to resort to her tried and true networking to get her work done and her practice remain intact. Court hearings and conferences for obtaining parentage orders did not require in person hearings or conferences but for adoption proceedings, birth mothers' appearances were necessary and the courts responded to COVID shutdowns by instituting virtual appearances. The absence of in person court hearings triggered the immediate savings for Colleen as well as her clients – the hours spent waiting for a court to call your case was a thing of the past. The Courts began to like evolution to "virtual" as well. Now, one year after the intensity of the crises, most of her hearings are back in person. Colleen enjoys resuming her in person meetings with her clients and other lawyers. She relayed to me that it is very important to get to know your clients. Her clients have also become more aware of the necessity in these meetings and does not rely as much upon their agency matching programs; they want to meet their surrogates and lawyers in person now.

In the administrative realm of her surrogacy law practice, she began to use expeditors in order to timely obtain birth certificates. It didn't hurt knowing how to directly access these agencies actually through side and back doors at the height of COVID; by and large, Colleen attributes the maintenance of her practice during COVID to her important contacts and personal networking! One of the biggest challenges even pre-COVID had been obtaining permission from the airlines and embassies to permit Intended Parents ("IPs") and children to travel internationally. Since COVID, there has been innumerable hours spent on drafting letters to embassies and clinical program coordinators in order to obtain permission for these persons to travel. Where her practice has benefitted from saving time on the court appearances, she quickly replaced those hours with these letters. In terms of her transactional practice for reproductive law and surrogacy, she adopted the COVID force majeure provisions and has spent much time counseling her clients on health risks and the contours of these new clauses in her agreements. Since most of her clients are electronically savvy, she has reported saving a few trees by scaling back on her printing. Specific to VA, Colleen has had to work with her IPs to designate a temporary guardian as there are no standby guardian appointments in her state. Another unintended consequence of COVID was that extra money needed to be allocated for unknowns in her escrow agreements. Of note, Colleen has witnessed more self-matching going on directly between IPs and Gestational Carriers ("GCs"), which may be in response to COVID or perhaps in response to personal choices and risk factors inherent in a "unknown" GC or sperm/egg donor.

I asked Dr. Jeanne O'Brien the same question posed to Colleen. Dr. O'Brien reported that after a total cessation of their practice including the screening of GCs and non-emergency care (including IVF and IUI cycles) in March through April of 2020 she is back in full force and seeing an increased demand for surrogacy. There is so much demand right now because of the backlog that they experienced due to the 8 week closure and the unavailability of GCs. Dr. O'Brien explored with me why there are not as many available GCs as in pre-COVID times. She notes that the agencies that her team works with are not able to find eligible GCs. These women usually have

families of their own and she believes that as a culture, our global existential priorities have become clearer as a result of COVID. She posits that it is perhaps because the GCs are taking care of their own families more now since the demands of family life has increased. The IPs are realizing there is no time to waste in creating their families which created a continuous demand. Now, she is busy counseling her patients on the extended period of time it is taking her patients to find GCs. She believes that with continued counseling and outreach by the agencies, she is hopeful that more GCs will become available soon. She reminds that for the GCs, financial remuneration is not the biggest draw, there are psychological motivations igniting their drive and desire to help other families; their recruitment is essential though. She is seeing an increase in women freezing their eggs and an increase in hybrid parental arrangements set up among the gestational parents and biological ones since COVID. She believes that given the complex nature of the hybrid parenting roles that her patients are entering into, including the potential for custody disputes down the road, legal advice should be sought out early, before stepping into these life-long commitments. We discussed health concerns surrounding COVID and the vaccines and how Dr. O'Brien in her practice advocates for the COVID vaccine but needs to be poised for those instances where the Surrogate decides against vaccinating themselves.

The fertility practice continues to change and mutate with the demands of getting back to work as a society. The medical doctors, lawyers and agencies should be mindful of the shortage of eligible GCs and understand the trending tides toward a more self-directed approach to surrogacy and our roles in assisting families with structure through our legal guidance on these frameworks.