

ACADEMY CODE OF ETHICS FOR THE ACADEMY OF ADOPTION AND ASSISTED REPRODUCTION ATTORNEYS

PREAMBLE

In order to further the cause of ethical adoption and assisted reproductive technology law practice, the Fellows of the Academy of Adoption and Assisted Reproduction Attorneys (AAAA), hereby establish this ACADEMY CODE OF ETHICS. This Code is to be read in conjunction with each Fellow's governing bar ethics rules and is intended to supplement such rules. Each Fellow of the Academy agrees as follows:

GENERAL PROVISIONS

The Academy Code of Ethics is binding on all Fellows regardless of membership class and applies to all work performed by a Fellow in an adoption case or ART matter.

1. ETHICAL STANDARDS AND COURTESY:

- (a)** A Fellow of the Academy shall fully comply with all laws and rules regulating the practice of law --- including licensing rules and laws, Ethical Rules, Disciplinary Rules, Ethical Canons, and any other Rules of Professional Conduct -- in effect in each jurisdiction in which the Fellow provides legal services.
- (b)** A Fellow shall maintain the highest standards of professional and ethical conduct.
- (c)** A Fellow shall not engage in activities that bring discredit upon the Academy.
- (d)** A Fellow shall extend every possible professional courtesy to other Fellows and to the clients of other Fellows.

2. LEGAL RIGHTS AND OBLIGATIONS:

A Fellow shall assure that the Fellow's clients are aware of their legal rights and obligations and that all parties are aware of their right to separate legal counsel.

3. MULTIPLE REPRESENTATION:

A Fellow shall not simultaneously represent multiple parties with potentially conflicting or competing interests where such representation is prohibited. Where such representation is permitted, a disclosure and waiver shall be required.

4. FRAUD AND MISREPRESENTATION:

A Fellow shall actively discourage fraud or misrepresentation, shall not engage in such conduct, and shall take all reasonable measures, consistent with the confidentiality of the attorney/client relationship, to prevent fraud or misrepresentation. This includes withdrawing from representation where necessary to avoid participation in any such conduct.

5. FINANCIAL ASSISTANCE:

A Fellow shall assure that parties to an adoption or ART Matter are aware of laws in the jurisdiction where the Fellow is licensed to provide legal services as to financial assistance to birth parents in an adoption or parties to an ART Matter. A Fellow shall not assist or cooperate in any adoption or ART Matter in which the Fellow has reason to believe that the birth parent, parents, or parties are being paid or given anything of value contrary to law.

6. LEGAL FEES and SCOPE of REPRESENTATION:

- (a)** A Fellow shall inform the Fellow's client, at the time the Fellow accepts employment, of the scope and terms of the Fellow's services and the fees to be charged for these services. The Fellow shall provide the client with a copy of a written retainer agreement that accurately reflects the scope and terms of such services and states the jurisdiction or jurisdictions in which the Fellow is licensed to practice law.
- (b)** A Fellow shall not enter into any agreement or arrangement with any person or entity that would have the effect of restricting the ability of the Fellow, or the ability of counsel for any party, to exercise independent professional judgment on behalf of, or to provide necessary, complete, and competent legal services to, his or her client. However, a Fellow may accept an engagement that limits the representation of counsel to specific issues as long as (1) the limitation is clearly specified in a written retainer agreement between and signed by the Fellow and the client, and (2) the limitation concerns specific legal issues and is not an arbitrary and unreasonable limit on the number of hours counsel may spend or the amount in fees counsel may incur in the representation. This provision does not prevent a Fellow from entering into an agreement to provide services on a flat fee basis.
- (c)** A Fellow may not accept or retain compensation for representing a client from someone other than the client unless: (1) the client has given written informed consent; (2) the payment arrangement and terms do not interfere with the Fellow's independent professional judgment nor with the attorney-client relationship; and (3) the Fellow maintains and respects all client confidences under this Code and all other applicable legal ethical rules.
- (d)** A Fellow shall not enter into an agreement for, charge, or collect, an illegal or unconscionable fee. Advanced fees collected by a Fellow shall be returned to the Fellow's client if not commensurate with the services that have been provided by the Fellow. In determining whether a fee is unconscionable, the factors to be considered shall include, but not be limited to, the following:
 - (1)** The amount of the fee in proportion to the value of the services performed;

- (2) The novelty and difficulty of the questions involved and the skill required to perform the legal services properly;
- (3) The time limitations imposed by the client or by the circumstances;
- (4) The time and labor required; and
- (5) The experience, reputation and ability of the Fellow performing the services.

7. TRUST FUNDS:

A Fellow shall disburse client trust funds or escrow funds only for those purposes specifically authorized by the client, and the Fellow shall not exercise independent judgment or discretion over trust fund or escrow fund disbursements unless the client has specifically authorized the exercise and scope of such discretion. A Fellow shall promptly account for all client funds held by the Fellow, upon request by the client, and shall promptly reimburse to the client all unearned funds upon request by the client or upon completion of the case.

8. ADVERTISING:

A Fellow shall not make false or misleading claims in advertisements. A Fellow shall not advertise in a manner that is unprofessional or which brings the Academy into disrepute.

9. DISCLOSURES AND REFERRALS:

A Fellow shall avoid any appearance of impropriety and shall fully disclose to the client or clients any familial or financial relationship between the Fellow and any entity or individual to whom the Fellow makes a referral or from whom the Fellow receives a referral. A Fellow may not make a referral to any entity or individual who has a relationship or affiliation with the Fellow for the purpose of charging a referral or matching fee that the Fellow could not have charged. When it is appropriate for a Fellow to make a referral, the Fellow shall fully disclose to the client or clients any financial benefit, directly or indirectly, received by the Fellow from any such entity or individual.

10. AMENDMENTS:

Any amendments to the Academy Code of Ethics shall be made in the same manner as set forth in Article XI of the Bylaws of the Academy of Adoption and Assisted Reproduction Attorneys.

11. RELIANCE UPON REPRESENTATIONS:

A Fellow may ethically rely upon reasonable representations made by legal, medical and/or mental health professionals, as well as the Parties to an adoption or ART Matter.

12. EFFECTIVE DATE:

This Code shall govern any adoption case or ART Matter entered into after September 1, 2016, and, as to amendments adopted and merged into this Code, on July 1, 2018.

ADOPTION PRACTICE

13. INFORMATION PROVIDED TO CLIENTS:

A Fellow may inform a client as to the Fellow's understanding of the laws of a jurisdiction in which the Fellow is not licensed provided that the Fellow discloses that the Fellow is not licensed to practice law in that jurisdiction.

14. REIMBURSEMENT OF FINANCIAL ASSISTANCE:

If a birth parent has received financial assistance from clients represented by another attorney, the Fellow shall endeavor to secure reimbursement, if possible, of the financial assistance to the person(s) who provided same from the prospective adopting parent(s) represented by the Fellow, so long as the reimbursement represents legally permissible and reasonable expenses.

ASSISTED REPRODUCTIVE TECHNOLOGY (ART) PRACTICE

15. ART DEFINITIONS:

(a) ART Matter: Any arrangement where an Intended Parent intends, through ART, to conceive a Child with the collaboration of a Donor/s or a Surrogate, or a Donor/s and a Surrogate. The arrangement may include, but is not limited to, the following matters between or among two or more individuals or between any individual and a coordinating program: a contract; a proposed contract; or legal representation with respect to parentage. For purposes of these definitions, each distinct legal phase of an ART arrangement constitutes a separate ART Matter. Therefore, even in the same ART arrangement, the contract phase and the parentage phase constitute separate ART Matters.

(b) Child: Any child or children born pursuant to an ART Matter.

(c) Client: One or more clients.

(d) Coordinating Program: A medical or non-medical program that locates, matches, and/or coordinates arrangements between or among Intended Parents and Donors and/or Surrogates.

(e) Disbursing or escrow agent: A person who holds funds belonging to one Party to an ART Matter that are intended to be paid to or on behalf of another Party to the ART Matter.

- (f) **Donor:** One or more gamete (sperm or egg) or embryo donor(s); i.e. an individual who provides genetic material in the form of sperm, eggs or embryo(s) to or for another individual or entity through a non-coital method and without the intent, nor, to the fullest extent permitted by law, the legal obligation, to become a legal parent of any resulting offspring.
- (g) **Intended Parent:** Any person who intends to parent a child created through ART.
- (h) **Party:** the Intended Parent, the Donor, the Surrogate and the Donor's or Surrogate's spouse or partner.
- (i) **Process to establish parentage:** A judicial or administrative proceeding to establish parentage in an ART Matter.
- (j) **Surrogate:** A traditional surrogate or a gestational carrier/gestational surrogate.

16. REPRESENTATION in ART MATTERS and AVOIDANCE of CONFLICTS of INTEREST:

- (a) In every ART Matter in which a Fellow represents a Party, the other Party(ies) must also have independent legal counsel except:
 - (1) in an uncontested process to establish parentage in which no actual conflict of interest exists or is likely to arise among the Parties to that proceeding, so long as the unrepresented Party is informed of a right to independent legal counsel;
 - (2) A Fellow may represent (i) both Intended Parents, (ii) a Donor and Donor's spouse or partner or (iii) a Surrogate and Surrogate's spouse or partner provided that there is no actual conflict of interest and the potential conflict of interest has been disclosed and waived.
- (b) A Fellow may represent a Party in an ART Matter if:
 - (1) The representation is in accordance with all applicable laws and ethics rules pertaining to competence, the unauthorized practice of law, and multijurisdictional practice, including the laws and rules of the jurisdiction in which the Fellow is licensed to provide legal services and the laws and rules of any other jurisdiction in which the Fellow provides legal services; and,
 - (2) The Fellow is licensed in at least one of the following jurisdictions: A) the jurisdiction of the Child's expected birth; B) the jurisdiction in which at least one Party resides; or C) the jurisdiction in which the medical procedures in furtherance of the ART Matter are expected to take place.
 - (3) A Fellow who is not licensed in one of the jurisdictions described in 16(b)(2) may provide legal services in a jurisdiction where that Fellow is not licensed to practice law if such legal services are undertaken as co-counsel with, or in consultation with, a lawyer licensed to practice in that jurisdiction.

- (c) A Fellow who represents any Party in an ART Matter shall ensure that any agreement between or among the Parties in that ART Matter is drafted or reviewed by an attorney licensed to practice law in the governing jurisdiction as defined by that agreement's choice of law provisions.

(See comments)

- (d) If the Fellow is advising a client as to the laws of a jurisdiction in which the Fellow is not licensed to practice law, the Fellow shall inform the client as to the Fellow's understanding of the laws of that jurisdiction, provided that the Fellow:
 - (1) Discloses to the client that the Fellow is not licensed to practice in that jurisdiction; and
 - (2) Advises the client of the benefit of obtaining advice from an attorney licensed to practice law in that jurisdiction.
- (e) Except as provided in Section 16 (a) (1) and (2), a Fellow who represents a Party in an ART Matter shall not represent multiple Parties in drafting or negotiating the ART Matter.

17. ESCROW and CLIENT FUNDS:

- (a) A Fellow who represents any Party in an ART Matter shall not act as a disbursing or escrow agent in the ART Matter unless:
 - (1) the funds are held in an IOLTA account or similarly regulated escrow account provided for in the Fellow's particular jurisdiction and holding such funds and any disbursements of such funds is made pursuant to the applicable rules and regulations relating to such accounts; or
 - (2) the practice is specifically authorized by the Fellow's applicable ART law in effect in the Fellow's jurisdiction.
- (b) If a dispute arises regarding disbursement of funds being held by a Fellow as a disbursing or escrow agent, the portion of the funds under dispute shall be maintained in the above-described trust account (or, if the funds are not already in such an account, placed into such an account) by the Fellow and may not be disbursed until the dispute is resolved or until court order.
- (c) These provisions shall not apply to situations in which the Parties are managing their own finances directly between or among themselves without the use of any third party holding and disbursing funds

18. FELLOWS PROVIDING COORDINATING PROGRAM SERVICES

- (a)** A Fellow who provides coordinating program services, or whose law firm provides coordinating program services, must clearly provide the following information in writing to any party who will receive such services:
- (1)** The nature of the legal and coordinating program services the Fellow or the Fellow's firm plans to provide in connection with the ART matter and to whom;
 - (2)** A statement that:
 - (i) identifies the Fellow's client, or if the Fellow does not yet have a specific client in the matter, or has a client who is to remain anonymous, identifying the category of the Fellow's client, *i.e.* Intended Parent(s), Donor, and/or Surrogate;
 - (ii) indicates the Fellow owes that client the duties of diligence, confidentiality and communication, along with a description of what that means and/or a copy of the applicable ethics rules; and
 - (iii) explains the Fellow may not owe such duties to the other Parties receiving services from the coordinating program; and
 - (3)** A statement that:
 - (i) each Party is entitled to and strongly encouraged to have independent legal counsel with regard to any written agreement between the Party and the Fellow or the coordinating program;
 - (ii) every Intended Parent, Donor or Surrogate is required to have independent legal counsel with regard to (a) any written agreement between or among parties; (b) ongoing legal assistance throughout the ART Matter; and (c), subject to Section 16(a), any court proceedings.
- (b)** The information required by this Rule must be provided at least twice: First, before such Party retains the Fellow or the Fellow's law firm for the purpose of providing coordinating program services or enters into any agreement with regard to coordinating program services; and again at the time of a match, or as close to the time of match as is reasonable, but in any event before such Party enters into a contract in an ART Matter.

Section 16(c) comment: "However, a Fellow is not required to ensure independent representation of a party that is a business entity, including but not limited to a law or medical practice, and that offers surrogate or donor matching and/or coordinating services