

Considering Egg Donation? Here's How One Couple Made it Work

By Elizabeth Swire Falker, Esq.

Through the gift(s) provided by an egg donor, many infertile women are now able to experience pregnancy: sharing their thoughts, feelings, blood supply and the sound of their voice with their baby, and delivering their child into the world. The success rates offered by many egg donation programs are staggering, making this a very popular option in modern family building.

Egg donation is often so successful that many can potentially build an entire family from one egg donation cycle. Of course not every egg donation results in a pregnancy, but more often than not a carefully selected donor not only leads to the birth of a child, but there are extra embryos frozen for future family building.

Let us consider Naomi,¹ and her experience with egg donation. Naomi is in her early forties and after several failed IVF cycles, Naomi's doctors told her that her best chances for becoming a mother were through egg donation or adoption. Naomi wanted to experience pregnancy, and so chose to pursue egg donation.

After doing her research, Naomi decided to work with an egg donation agency, rather than using her clinic's in-house program. While some clinics are very flexible, Naomi found she had more options when using an egg donation agency. By working with an agency Naomi had greater flexibility in choosing her donor, didn't have to share eggs with another infertile family, and would have greater control over her finances. Because she was on a tight budget, most of the agencies she spoke with encouraged Naomi to select a donor who lived near the clinic she would be using, thus avoiding substantial travel expenses. Using an agency, Naomi also had a greater selection of donors with compensation rates to fit her budget, compared with the fixed rates offered by most clinics.

One donor Naomi considered (we'll call her Amy²), was twenty-six years old, single, had near perfect SAT scores, attended an Ivy League college, graduated at the top of her class and was attending medical school. Despite Amy's outstanding academic credentials (which often result in higher compensation rate), Amy's rate was within the lower end of the Society for Assisted Reproductive Technologies' (SART)³ guidelines of \$4,000 - \$7,000 per donation. Amy also visibly resembled Naomi; Amy seemed like the perfect donor.

Amy, however, had no track record donating eggs. Naomi and her partner instead decided to match with "Beth." While Beth also was twenty-six, had high SAT scores and had attended college, she was married, and had two-and-half year old twins and a one year old baby. Beth was clearly fertile and thus would likely respond well to medication, which made her a better candidate. Beth was requesting the same compensation as had Amy (\$5,000) and lived near Naomi's clinic.

Once Naomi and her partner selected Beth as their donor, Naomi's egg donation agency presented them with a list of attorneys to help prepare their egg donation agreement, and it arranged for Beth to be represented by separate counsel in connection with the negotiation and drafting of their agreement. The egg donation agreement is a critical aspect of your egg donation. All parties should be represented by independent counsel. Your agreement will protect your rights as parents and govern your relationship with your donor for years to come. You should have the right to select your own attorney, and I strongly caution you to make sure that the attorney you do use is an experienced reproductive lawyer.

Each egg donation agreement is unique; some agreements provide for complete disclosure of names and addresses and others are completely anonymous. Whatever your comfort level or that of your donor may be regarding future contact, please consider that your agreement should ensure that you could contact your donor in case of a future medical emergency. Among other things, your egg donation agreement should specify your rights to utilize and/or dispose of the eggs/embryos created from the cycle, require that

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your donor follow medical directions, and explicitly state what happens if your donor breaches your agreement.

Within four months of the time Naomi initially contacted the agency, Naomi, Beth and their respective partners had negotiated their agreement and their cycle got underway. Beth produced seventeen eggs of which fifteen fertilized. Naomi conceived a beautiful baby girl on the first embryo transfer and when Naomi's daughter was about a year old, Naomi and her partner went back and did a frozen embryo transfer; this time conceiving twin girls!

Elizabeth Swire Falker is an attorney practicing in the areas of reproductive and adoption law in New Rochelle, NY. She is the author of The Ultimate Insider's Guide to Adoption (Warner Books, November 2006), from which this article is adapted, and The Infertility Survival Handbook (Riverhead, 2004). Danielle Bifulci, JD, who assisted in the preparation of this article, is an attorney working in Ms. Swire Falker's office. For more information, you may visit the website www.storklawyer.com.

(Notes)

¹ Naomi is a combination of several of my clients, a fictitious character created for purposes of this article to help demonstrate a typical egg donation process from a more "real life" perspective.

² Names have been changed to protect people's privacy.

³ SART is an organization which, among other things, establishes ethical and regulatory guidelines that many clinics and agencies agree to comply with. For more information, visit their website, www.sart.org.

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