Ask a Lawyer

Considerations of Adoption

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Abstract

A childbirth educator asks for advice relative to a married couple in her class who plans to give up their baby for adoption.

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Question: A couple in my class has told me that they are planning to give the child they are expecting up for adoption. I could not understand this. They have another child and told me it did not seem possible for them to keep a second child. I decided not to act like I am judgmental, but I feel I am judgmental inside. I hardly know how to address this. Recently, I found out that they are being paid by the adoptive parents to have this child. Is this legal? Can they change their minds? How do I talk about babies in a group that includes this couple?

Answer: It is good that you recognize your own reaction to the situation this couple presents and that you did not let it lead to a "reactive" response to them. You want to respond to them in a deliberative, informed, and helpful way. I hope we can all follow this model! While many of us have had women in class who have told us their child was up for adoption, these women usually present us with a different situation, one we are more prepared to understand because it is familiar.

As far as your class presentation goes—and this is not legal advice—I suggest that you as a childbirth educator take the same position a lawyer would take: The test for how to address this is "the best interest of the child."

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Your approach would be “You all want to do what is best for your baby, and I am here to facilitate that.” Even if this couple chooses to attend a class that exclusively concerns infant care or breastfeeding, it should have little impact on your teaching if you keep that framework.

As for your other questions: Whether it is legal depends on the factual details and the applicable laws of your state. Generally, you cannot pay someone to give you a baby. Generally, a woman gets some time after the birth of a child to make a final decision about adoption.

If the couple brings up this issue with you again, you could treat it as an invitation to talk to them about it. After all, they could have kept it a secret from you. That they did not suggests that they are willing to talk to you about it. Ask them to tell you more about their decision, what happened, and how they feel about it. You may find out that they have financial or other constraints and feel they are doing what is in the best interest of this

child. You may find that this woman is a surrogate for her sister and is only getting her expenses paid. (Stranger things are happening!) They may be totally accepting of giving this child to another home, or totally conflicted about it. You can help them explore these feelings and make the best decision for themselves. When you know what their decision is, you can support them in coping with that decision in the best way for their family and for the health of this mother and infant.

If you actually discover that someone is paying for this baby or has told the mother that she has to give it up (e.g., she has signed a contract or both she and her husband have signed a contract), it is not at all clear that either statement is legally accurate. I would not accept that either practice is legal without further inquiry. The best way to get more information on that situation is to ask both an adoption attorney and a criminal attorney who practice in your state.