

January 1954

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Recommended Citation

Pierpont Fuller, A Lawyer's Advice to the Unmarried Mother, 31 *Dicta* 112 (1954).

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A LAWYER'S ADVICE TO THE UNMARRIED MOTHER

PIERPONT FULLER*

As every older lawyer knows and as every fledgling practitioner will soon find out, there is one problem, not considered in the law school curriculum and not included in the index of *Corpus Juris Secundum*, which finds its way into the attorney's office with some frequency and in unexpected ways. This is the problem presented by an illegitimate pregnancy. A young unmarried girl may be "in trouble" or a married woman may be going to have a baby not her husband's. You may be consulted by distraught parents, by the frightened mother-to-be or by the worried father. The problems presented may be legal problems only in the broadest sense, and the lawyer if he is not careful may find himself acting as a sort of amateur marriage counsellor, family consultant, psychiatrist, minister and social worker rolled into one.

Whatever the ramifications of the problem, and they can be infinite in their variety, it is always a tremendously serious one to the person or people involved. The whole course of their future lives may depend on the advice the attorney gives at the first interview.

The simple and offhand solution in such cases is for the parties to get married immediately, but, ordinarily, if there had not been good reasons why that could not be done, the lawyer would never have heard of the matter in the first place. The man may not want to get married and it is perfectly clear that he cannot be forced against his will to marry the girl, even if that might seem a good idea. Sometimes real legal questions may present themselves; a divorce for one of the parties may be in order; a bastardly suit may be necessary to require the father to support the child, (C.S.A. 1935, Ch. 20) or a prosecution for nonsupport may have to be instituted (C.S.A. 1935, Ch. 83 Sec. et seq.). But these are really side issues to the main problem, and usually any legal proceeding or anything which might lead to any publicity is the last thing in the world the parties want. Under these circumstances, what is the lawyer's duty to his client and to society?

The first thing to remember is that having a baby is a perfectly natural phenomenon. It happens frequently and the only unusual feature in this case is that certain man-made rules superimposed upon the natural process by custom and statute have been disregarded. Experience has shown that these man-made rules are disregarded with some degree of frequency too, with the result that in all communities of any size now days, facilities have been set up to take care of just such situations.

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The next thing to remember is that these facilities which consist of various private and public organizations and agencies go about their business with no fanfare or publicity whatever. The girl about to have a baby out of wedlock is facing a very serious upheaval in her life. She is usually feeling pretty panicky and often has come to, or is about to go to a strange city where she knows no one so that she may keep her "disgrace" a secret from her friends and probably from her family as well. If she is made to appreciate these two propositions, her psychological problems will be somewhat alleviated. The lawyer in this kind of picture, if he gets into it at all, is not there to act as a spiritual advisor or to pass judgment on questions of morals but to find a practical solution to an unfortunate situation. Having found such a solution he will be very smart to step out of the picture and go back to practicing law. He may be called in again to enforce support payments or advise regarding legal questions which he is trained and equipped to handle, but usually not.

The best advice the lawyer can give, then, is to refer the girl to one of these agencies which are equipped by knowledge, training, and experience to handle all phases of her problem.

The first thing the agency will do will be to quiet the girl's fears of publicity, danger and disgrace. It will arrange for proper medical care, and arrange for her to enter a responsible maternity home if that is the best plan. The girl will have many questions, some half formed and unspoken. An experienced woman will counsel with her as often as necessary to answer all questions. She may be undecided as to whether to keep or give up the child. How can she support the baby if she keeps it? What will happen to the baby if she relinquishes it? All of these matters will be explained her her. The agency will also confer with the father if he is available, and will make arrangements for the payment of anticipated medical expenses in any event.

If the child is to be relinquished, the effect of that act will be fully explained to the mother. She must understand that a final order of relinquishment entered by the County or Juvenile Court is actually and in all respects final and divests the relinquishing parent of all legal rights and obligations she has in respect to her child. Similarly, it releases the child from all legal obligations to the parents. It is the same as any other final judgment and cannot be set aside except as permitted by Rule 60 of the Colorado Rules of Civil Procedure. This rule provides that any motion to set aside a judgment even on the grounds of "mistake, inadvertence, surprise, excusable neglect, fraud . . . misrepresentation or other misconduct of an adverse party" must be made within a reasonable time and in any event not more than six months after the judgment was entered.

In 1949 a law was passed with the avowed objective of eliminating and making impossible any "black market in babies." (See Ch. 33 Sec. 43 (1) et seq., 1935 C.S.A.). It defines "relinquishment"

as the act of releasing a child to the Colorado State Children's Home, any county Department of Public Welfare, or to a *licensed* child placement agency. It makes the relinquishment or receiving of a child for the purpose of adoption except in the manner set forth in this statute a misdemeanor punishable by fine or imprisonment. The effect of this law is that a mother cannot legally relinquish her child except through the County or Juvenile Court unless it be to the step-parent, grandparent, uncle or aunt of the child. Another effect is that the Court's order of relinquishment will ordinarily award custody of the child to a public or licensed private child placement agency. That is always the case in Denver and some other Counties, but Section 43(6) of the Act as interpreted by an Attorney General's opinion permits the Court to award custody to "whomsoever the Court shall see fit," and under this authority some County Judges undertake to do their own investigating of the health and background of the baby and adoptive parents and place the child for adoption themselves. In any event, the law requires that the Court must be satisfied that the relinquishing parent has been offered advice designed to apprise such parent of the consequences of the act of relinquishment "so that no child shall be hastily deprived of its birthright." This law and its operation will be fully discussed with the girl and she will understand why it is vitally essential for the welfare of the child that all available facts concerning the health, race, physical characteristics and religion of both parents be made available to the agency which will place the child for adoption. For, with this information, the mother can rest assured that an excellent well-suited home will be waiting for her child, and that carefully selected adoptive parents will cherish that baby just as if and probably more than if it were their own.

These agencies through long experience have found that the earlier the girl comes to them the more effective will be their help to her. Early medical attention is very important. Moreover, the girl will learn of the various resources available to her and much of her anxiety can be relieved. The longer the agency knows her the better chance it will have to get acquainted with her and so will be in a better position to help her plan for herself and the child. Probably one of the reasons for abandoned infants, accounts of which occasionally appear in the press, is that the mothers of these babies were bewildered and frightened, unable to cope with their situation by themselves and had one one to tell them where they might get help. Such abandoned babies may have to spend a long period of time in an institution instead of being placed early in an adoptive home because the necessary background material regarding the parents' health and race is not available.

So when the problem of an illegitimate pregnancy is presented, the best thing a lawyer can do is to refer the girl to one of the social agencies which have been organized to meet the needs of

girls confronted with just that situation. Fortunately, there are many such agencies. Some supported by private and some by public funds. In Colorado the best known are:

Booth Memorial Hospital
1001 Jasmine St., Denver

County Department of Public Welfare,
at the county seat in every County.

Denver Catholic Charities
1665 Grant Street, Denver.

Family and Children's Service of Colorado
314 14th Street, Denver

Family Service of Colorado Springs
28 East Boulder.

Family Service Society
322 West Fifth, Pueblo.

Florence Crittenton Home
4901 West Colfax Ave., Denver.

Jewish Family and Children's Service
Room 504, 314 14th Street, Denver.

Lutheran Service Society
Room 204C, 314 14th Street, Denver.

Pueblo Catholic Charities
309 Bon Durant Blvd., Pueblo

(This is the first of two articles covering relinquishments and adoptions. The second on adoptions will appear in an early issue of DICTA.)

A CLAUSE OF A LAWYER'S WILL

Here is a clause for your own will or codicil:

"I hereby give and bequeath to THE COLORADO BAR FOUNDATION, Inc., a Colorado not for profit corporation, the sum of \$....., to be used by it for its general purposes."

Your own interest in the activities of the Foundation will help you to determine the appropriate figure to put in the blank after the dollar sign.