

1 Marketing Know-How

Defining Your Target Market

Just because you are a competent attorney prepared to provide assisted reproductive technology (ART) legal services does not mean clients will automatically flock to your door. Marketing yourself as an ART attorney requires creativity. It may be perfectly appropriate for a personal injury law firm to have its name on drink cozies at the ball park, but that type of promotion is not appropriate in this field.

Before you hang your shingle, you must take time to research your specific market and understand what options are available for referrals; otherwise you will be disappointed when you open your practice only to find yourself sitting and waiting for your phone to ring. Determining who and where your clients are and how to reach them is just as essential to your success as having the knowledge and experience to assist them.

ART attorneys must be purposeful in their marketing. Assisted reproductive technology is not a service widely used by the general population, and it is critical that you identify the segment of society you are serving. For starters, the truth of the matter is that ART is expensive, and not everyone can afford it.

In ART law, there are two basic target audiences: the consumers of ART services themselves—single fathers, single mothers, infertile heterosexual couples, same-sex couples—and the providers of ART services: surrogacy, sperm and egg donor agencies, and, in some markets, fertility clinics.

In order to determine how to best reach your potential clients, you must understand how the ART industry functions in your geographic location. Where are the ART providers who are serving your potential clients, and how do they interact with one another?

Who Are Your Allies?

In large metropolitan areas, clinics refer to the surrogate and donor agencies, and the agencies refer to lawyers. An agency is defined as a business chapter that facilitates third-party assisted reproduction by matching intended parent(s) with qualified gamete donors or gestational carriers or both. Some agencies only match for purposes of surrogacy, others for purposes of gamete (egg/sperm/embryo) donation, and some do both. If you are in a big-city market, it's essential to develop relationships with the agencies; if you don't, your clients will trickle in slowly. In more geographically remote locations, where agencies are few and far between, it may make more sense to reach out to nearby fertility clinics directly. Don't forget to consider that clinics and agencies in bordering states may also potentially be within your market reach.

In large markets, absolutely consider networking with other ART attorneys. You may find some are a little protective of their "turf," but if you do manage to get a friendly person on the phone, ask how they got started in practice, where and how they get their business, and what their recommendations are for you as you begin your practice. If you're lucky, some of them might even be comfortable allowing you to shadow them on a client consult. Some of these attorneys may even become your colleagues as your practice grows. Just as effective, seek out an ART attorney in a state with a similar judicial landscape to seek guidance on marketing, advocating, and educating fellow professionals.

In any market, but particularly in smaller markets where there are few attorneys focusing specifically on ART law, seek relationships with attorneys in complementary practices, such as family law

or estate law, in addition to attorneys with ART experience. ART is a new, specialized and rapidly evolving field of law, and you may find established attorneys eager to bring you on when ART expertise is needed. Likewise, consider marketing yourself to large national or international ART firms that may have a need to affiliate with ART attorneys in different parts of the country or world.

In smaller, less urban markets where there are few attorneys focusing on ART law, networking with family law attorneys may be particularly helpful in building your ART practice. In many parts of the country, ART law is still new terrain, and family law attorneys practicing in those areas are less likely to be experienced with ART legal issues. But in divorce cases, reproductive issues are increasingly common, regardless of where you practice. For example, a wife may have put family-building on hold while her husband completed his education, but, once he graduates, the couple decides to divorce. In this scenario, in order to borrow more time for family formation, the wife might ask that the husband pay the cost of cryopreservation, or freezing, of the wife's gametes as part of marital assets negotiation. Many experienced family law attorneys will have had no prior experience with this new wrinkle on divorce law.

As an attorney with a focus in ART law, you can position yourself as a resource to attorneys in other types of practice. Offer to make a CLE presentation to your local family law bar. When cases come up that involve assisted reproduction issues, you are likely to be consulted or asked to serve as associate counsel, expanding your referral network in the process.

Likewise, your practice can benefit from consultation with attorneys in other areas of practice. ART attorneys frequently encounter clients initiating ART procedures, even though the intended parents'

relationship status is in question—they are in the middle of a divorce, or a woman wants to use her boyfriend’s sperm, but she’s still married to someone else. In such situations, the advice of an experienced family law attorney about parental presumptions, and when they do and do not apply, may be invaluable to you and your clients.

Another way to develop your referral network is to offer to review clinic or agency intake forms and informed consent documents. In a field such as assisted reproductive technology, in which not only the science and the law but also social structures are evolving rapidly, forms can quickly become dated or obsolete. Even experienced ART attorneys must periodically review and update agreement forms.

In one recent case, a celebrity couple had created and preserved a number of embryos with the intention of one day starting a family. When the couple later separated, the man brought suit to prevent the embryos from their union from being destroyed, as the woman wished them to be. Both had signed the forms provided by their IVF clinic, which stated the disposition of the embryos in the event of the intended parents’ death—but these forms did not address what was to be done in the event the couple split up. The result was a legal imbroglio, with accompanying sensational headlines, that could easily have been avoided had the forms been more thorough in outlining possible scenarios.

Offering agencies your expert review to make sure all forms are up-to-date with current ART law and cover all possible situations is a great way to position yourself as a partner and referral-worthy resource.

Established ART attorneys are a potential resource for you, too. You may want to consider asking them to associate with you on your case, for a portion of the client fees, while you learn the ropes.

As you gain knowledge and experience, attorney colleagues may also gain enough confidence in your abilities to send additional work your way. You can also offer your services to an experienced ART colleague as a reviewing attorney. By offering to review an initial draft provided by opposing/drafting counsel, you will become more familiar with the structure and flow of an agreement, geographical issues, and collaborative approaches used by practicing attorneys. This will help your own creative processes as you begin to develop and structure your own template agreements.

Other places to connect with both your target markets—ART consumers and ART providers—are the nonprofit organizations created to promote, serve, and advocate for assisted reproductive technology and the families formed via ART. Getting involved with, presenting to, or volunteering for these organizations gives you visibility and helps you develop relationships with the consumers and professionals who are most active in ART research, advocacy, and policy-making.

Worthwhile organizations that can help connect you to consumers and ART professionals—and that deserve your support—include, among others, RESOLVE, the American Society for Reproductive Medicine (ASRM), the Society for Assisted Reproductive Technologies (SART), and Path2Parenthood (formerly the American Fertility Association). Similarly, LGBT advocacy groups such as the Family Equality Council and local LGBT organizations offer support and advocacy for same-sex couples and their families and can be good places to lend your support. For example, the national organization RESOLVE operates a consumer hotline for individuals with questions or concerns about fertility issues. As a hotline volunteer, you will learn about the issues your potential clients care about and the challenges they face. Local hospitals and fertility clinics often sponsor infertility support groups. Offer yourself as a resource to speak to groups about ART legal issues: these are your potential future clients.

In summary, there are many effective ways of making the connections and building the relationships that will allow your practice to grow:

- Join the ABA Family Law Section, including the ART Division.
- Cultivate relationships with ART agencies and clinics.
- Network with other ART attorneys in your jurisdiction or in states with similar legal environments.
- Develop relationships with attorneys in complimentary areas of practice.
- Become an ART law resource by offering to make CLE presentations at local family law bars.
- Offer to review and help update agency intake forms and medical informed consent documents.
- Invite experienced ART attorneys to associate with you on cases.
- Offer your services to established ART attorneys as a reviewing attorney.
- Connect with ART consumers and providers through non-profit organizations.

Marketing Materials

In developing any marketing piece, you must first answer the basic questions: Who is my target audience? What do I want to say to my target audience? Where and how can I best reach my target audience? What is my ultimate goal?

Since you are marketing your own services, you also must consider: Who is going to distribute the materials—you, or someone else?

To begin with, keep it simple. There are three essential components to an initial marketing campaign: a business card, a rack card or brochure, and a website. All three should share a unified, complimentary “look and feel”: a common color palette, one or two easily

readable type fonts used across all materials, and an image or logo that will serve as your brand “flag.” As your practice grows and expands in scope, you may want to develop additional promotional materials, but this is all you need to get started.

Before you begin, take some time to research the competition. What are other ART attorneys using? What is the look and feel of their brands? What language are they using to describe their services? What are they telling their potential clients, and what are they not saying? You are not going to plagiarize or copy them; you are simply going to determine what you like about how they are marketing themselves, what you don’t like, and how you can highlight the positive attributes that distinguish you and your practice.

Leave your written and electronic thumbprint on the ART world by developing thoughtful marketing materials to distribute and easily be found on the Internet. Marketing technology has become so readily accessible and affordable, there really is no excuse for not having the basics in place.

Can I Give You My Card?

Your business card should be simple, easily readable, and to the point: the name of your practice, your name, and how you can be contacted. You may want to include a brief tagline that describes your service or encompasses the mission of your practice, or you can include a four- or five-bullet abbreviated list of services on the back of the card.

Would You Like My Information?

The second element of your marketing tool kit is a basic hand-out that will be the anchor of your marketing message. Many formats can work, but a 4 x 9-inch rack card or glossy tri-fold brochure is convenient for clinics or agencies to display and for potential clients to pick up and pocket. They also serve as a handy giveaway following your presentations to colleagues or professional organizations.

- **Content:** Include a brief, bulleted list of the services you provide and a short bio of you and/or your practice. Focus on how you can meet your potential clients' needs and alleviate their concerns, and explain why you are the best, most qualified person to provide those services. Don't forget to make sure that your written materials comply with your state bar rules on lawyer advertising. You are investing in your future practice and reputation. It's worth the extra time and research to make sure you start off on the right foot.
- **Design:** There are many capable freelance designers willing to create your business card and professional marketing pieces for you at affordable rates. Templates also are available online via Wordpress, Sitebuilder, and Templatesites, just to name a few.
- **Printing:** Have your materials professionally printed. If budget constraints are a concern, consider an online discount print service that offers fast, affordable print services. Money need not be a barrier to your having professional materials that inspire confidence and trust.

What About a Website/Homepage?

Last but not least, in our increasingly wired world, every credible practitioner must have a website, one that loads quickly and looks equally good on desktop computers, tablets, and mobile phones. This is not as onerous a task as it may seem. Many small, start-up businesses or legal practices are fine with a three- or four-page site created with WordPress or another easily accessible program. Content can mirror your rack card or brochure; again, focus on who you are, what you do, why someone would choose your services over another firm, and how they can contact you. Later, once you grow, you can easily add a resource page, newsroom section, blog, and more—stick with the basics when you are starting up.

Note of caution: You probably already know this, but it's worth a reminder: Do not give legal advice on your website. You may explain the services you provide to potential clients and consumers of ART services, but you may not advise them. Rules on attorney advertising vary from state to state. Best practice is to have the content of your website, your rack card or brochure, and any other materials you distribute reviewed by a seasoned member of your bar or your state Office of Disciplinary Council—another way of connecting with potential colleagues and future referrals.

Even more critical than the content of your website is your URL, or Internet address, the www.somethingsomething.com (or [.biz](http://www.somethingsomething.biz) or [.net](http://www.somethingsomething.net) or other extension). The first step in reserving your URL is to carefully consider what you will be called—if your practice will be named for you, consider including a descriptive word in your URL: www.johnsmithfertilitylaw.com; or www.janedoeARTattorney.com. Including a descriptive word such as *law* or *attorney* will help your search engine ranking (the position you appear in when someone searches online for the type of service you provide).

Once you've decided what you want your URL to be, you need to find out whether it is available or whether someone else has already claimed it. An online search for "Internet service provider" should bring up a list of websites; any of them will have a searchable field allowing you to type in your potential URL. This search will tell you whether your preferred URL is available and what extensions are available. In other words, johnsmithfertilitylaw.com may not be available, but johnsmithfertilitylaw.net may be. Should that happen, consider whether to keep with your original choice or to change your URL to, say, [jsmithfertilitylaw](http://jsmithfertilitylaw.com) instead. Once you have decided on your URL, reserve that URL under all commonly used file extensions—.com, .net, .biz, .org, .info, and .mobi, at a minimum. Down the road, when you are famous in the field of ART law, others may try to lure some of your potential customers away by posing as you, or direct johnsmithfertilitylaw.info to a site selling human growth hormone. Better safe than sorry, and the cost of registering multiple URLs is minimal, often under \$10 per URL per

year—well worth the cost to protect your future, highly valuable brand.

Once you have your website up and running, you'll find easy ways to expand your content and communicate what you are doing. It's easy to publish links to your presentations and educational programs. Cross-linking with websites of your agency, clinic, and attorney allies is another mutually beneficial way to boost your visibility and credibility with your audience. Always be respectful and ask permission before linking to another website, and ask them to return the favor.

Thinking “Outside the Box”

Making connections with individuals and entities that may lead to future business is another important way of marketing your practice. Take another look at your potential allies as you start your practice and consider ways you can connect with them that might not immediately come to mind.

To begin with, become a resource to colleagues and ART providers as well as to potential clients.

For example, one of the ABA ART Committee members developed a PowerPoint presentation on legal and ethical concerns surrounding ART for clinic nurses. The presentation was so popular and so valuable to the nurses that it was approved by the state Nursing Board for Continuing Education Credits (CECs).

Another avenue to referrals is to offer to help plan, present, or moderate educational workshops or CLE webinars on ART law. Consider developing a CLE course for nearby county bar associations. Present at a *family law* bar conference. A family law attorney may have never considered ART legal issues—until he or she ends up handling a divorce case involving custody of frozen embryos or stored sperm. Chances are he or she will remember your ART presentation and pick up the phone.

You may be able to engage your fellow attorneys in complementary practices in other ways as well. Are they considering ART issues as part of their own client intake process? ART has the potential to affect many areas of law, such as Probate/Estate, Family Law, Health Management Law, Business Law, Insurance Law, and Employment Law.

In fact, technological advances and the growing complexity of social structures has our legal system running to keep up—making you, with your expertise in this cutting-edge area of law, a valuable and sought-after commodity.

The potential disposition and use of embryos created during the course of a marriage or committed relationship after that relationship breaks down vary from jurisdiction to jurisdiction and may be different for same-sex couples than heterosexual couples. Increasingly, reproductive issues extend beyond the bounds of marriage; a client may be in the middle of a divorce or relationship breakup but considering forming a family with another person via ART. Stored eggs or sperm, frozen embryos, prior fertility problems, or new fertility problems could be the source of future litigation or estate disputes, and they should be considered when any family law or estate attorney brings in a new client. Offer your expertise to fine-tune your colleagues' intake forms.

As you establish yourself as a resource for ART legal issues, other attorneys will begin to refer to you—and you can refer to them.

Are You Reaching Out to ART Providers?

Some fertility clinics may be using medical consent forms that are not up-to-date. For example, most clinic disclosure forms address what will happen to embryos or eggs in the event of death or divorce of a married couple. But do they also cover what happens in the case of the dissolution of a domestic partnership or the breakup

of an unmarried couple? As an ART attorney who stays abreast of the latest developments in ART legislation and case law, you are uniquely qualified to determine whether clinic disclosure forms and intake procedures deal appropriately with any potential legal issues that may arise. Offer to serve as the legal liaison for your local clinic, or offer to give an in-house presentation to staff.

In addition to your natural allies—agencies, clinics, attorneys in complementary fields of law, and your fellow ART practitioners—think outside the box to identify “hidden” allies. Insurance agencies, health insurance brokers, or escrow agencies—particularly as ART becomes more accessible and more frequent—all may find they have a need to know about the legal issues surrounding ART and a need for experienced legal professional services. Become a resource to them, and when they need to provide a referral, they’ll think of you first!