

# How Vaccine Choices and Court Rulings are Impacting Co-parenting and Divorce

Evan D. Schein, Esq.  
Samantha Cooper, Esq.  
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 BERKMAN BOTTGER NEWMAN & SCHEIN, LLP



**NATIONAL ASSOCIATION  
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# COVID-19 in 2020

- Initial custody issues raised early in the pandemic
  - At the onset of the pandemic, Courts closed (March 2020-May 2020)
  - Many parents stopped turning their children over to the other parent during quarantine and it was impossible for the other parent to seek judicial relief.
  - On March 27, 2020, Judge Jeffrey Sunshine (NY Coordinating Judge for Matrimonial Cases) released an article in the New York Law Journal entitled "COVID-19 and Future Custody Determinations." He warned against self-help:
    - *"Simply put when you behave a certain way and there is a judge in the equation, how will a parent behave when I am no longer involved in their lives? With parents who are not obeying court orders, or where no orders exist are engaging in "self-help", attorneys may and should remind them that the actions they take today and during this crisis could well be determinative or dispositive at the time of a final decision by a judge."*

# How did parents adapt at the onset of the pandemic?

- Many parents worked together to adjust their parenting schedules (i.e. larger periods of time with the children to minimize transitions and travel)
- Out of court resolutions (i.e. mediation)
- Greater use of technology: Parenting time taking place over FaceTime and Zoom

# The impact of COVID-19 on divorce in a post-vaccine world

- Once the COVID-19 vaccine became widely available in early-mid 2021, new custody issues were presented.
- While some were lining up to receive the vaccine at the first availability, others were and remain unwilling to receive the COVID-19 vaccine.
- This presents two concerns:
  1. 1. Children ages 5 and up are now eligible to receive the COVID-19 vaccine. What if one parent wants to vaccinate the children and one does not?
  2. 2. What if a parent does not want to receive the vaccine? Do they present a risk and danger to their child warranting a change to parenting time? Particularly if their child is too young to be vaccinated?

# Disagreements over vaccinating the children: J.F. v. D.F

- Issue presented: Whether the Judge could order vaccination of an eligible child over a parent's objection
- J.F. v. D.F. (December 3, 2021) Monroe County, New York
  - The mother wanted the 11-year-old child vaccinated, the child wanted to be vaccinated and the child's attorney supported her receiving the vaccine
  - The father opposed the vaccine for the child (though was vaccinated himself)
  - The Court ruled that the mother was to schedule an immediate appointment for the Child to receive the vaccine
  - *"This Court, weighing the child's best interests, cannot wait for the vaccine's side effects or efficacy to be scientifically established beyond a reasonable doubt or even to the father's satisfaction. The imminent risk of contracting the disease is too high and the consequences of acquiring it potentially too dire."*

# When a parent will not be vaccinated: C.B. v. D.B.

- Issue presented: Can the judge limit/condition parenting time based upon a parent's vaccination status.
- As framed by the Judge: "whether the plaintiff-mother, who has de facto custody of the child and is fully responsible for her care and upbringing, can condition the defendant-father's access with the child, which is limited and supervised, on defendant and his supervisor being vaccinated, or at the very least, submitting to a testing regimen prior to each of the access periods."
- Facts:
  - The parties have a 3-year-old child.
  - Mother is vaccinated, father is not.
  - Mother brings a motion to suspend the father's visits until he receives a vaccine.

# C.B. v. D.B. continued

- Father's argument:
  - He already had COVID-19 and said he would consult with his doctor and provide expert medical opinion as to whether he should receive the vaccine.
  - Then he abandoned that argument and argued receiving the vaccine conflicted with his beliefs as a Roman Catholic.

Guardian ad litem supported the mother's requested relief

# C.B. v. D.B. continued

- Judge Cooper's Decision: Suspended defendant's in-person access with the child until he and any approved supervisor either received a first dose of a COVID-19 vaccine or submitted to a COVID-19 testing regimen that included a PCR test once per week and a COVID-19 antigen test (AKA "rapid test") within 24 hours of any in-person visit.

# C.B. v. D.B.: Court's Decision

- Judge Cooper's rationale:
  - The father's justification based upon religious beliefs "rings hollow given that Pope Francis, the head of the Catholic Church, is vaccinated and has encouraged Catholics everywhere to be vaccinated for "the common good."
  - "It is not necessary to more fully address defendant's reasons for not being vaccinated, be they medical, religious, or constitutional. This is because he was offered an alternative to vaccination: submit to regular COVID-19 testing."
  - Judge Cooper also pointed to the father's "history of substance abuse and untreated mental health issues, as well as the significant periods where he had not seen the child at all."

# C.B v. D.B. takeaways

- Will this case set a precedent for future cases in which one parent refuses to be vaccinated against COVID-19?
  - This may depend on where you live and practice. Judge Cooper pointed out that “As of August 17, 2021, **New York City** requires everyone over the age of 12 to provide proof of vaccination to enter bars, restaurants, indoor entertainment, and gyms. New York City public employees, public school teachers, police officers, health care workers, and others are being required to be vaccinated in order to continue their employment.” While vaccine mandates are prevalent in New York, they are not in other states.
  - The child in this CB v. DB is under 5 and ineligible for the vaccine. Now, children over 5 are eligible. Will there be less similar issues now that many children can be vaccinated?
  - While there will likely be less cases like this as children over 5 can be vaccinated, we expect to see an increase in cases like the one in Monroe County, where parents are disagreeing over whether to vaccinate their kids

# COVID-19 in 2022: Predictions

- Lessons learned- The divorce landscape is constantly changing.
- Future custody implications?
  - The relationship between technology, COVID, and parenting time: Court orders directing virtual parenting time
- Financial considerations?
- What divorce professionals should know
- Relocation issues?

Questions?



EVAN D. SCHEIN, ESQ.  
SAMANTHA COOPER, ESQ.

 BERKMAN BOTTGER NEWMAN & SCHEIN, LLP

521 Fifth Avenue, 31<sup>st</sup> Floor  
New York, New York 10175  
(212) 867-9123  
eschein@berkbot.com  
scooper@berkbot.com