

CHICAGO LAWYER[®]

FAMILY MATTERS

By Tequia Burt

Mediation helped solve co-parenting issues during the pandemic. But court battles may loom over whether to vaccinate the kids.



In the last two years, everyday life for Illinois families was drastically impacted by the COVID-19 pandemic. School closures and remote learning persisted into 2021, leaving parents to juggle responsibilities between their children and employers.

And now, despite the return of in-person schooling, uncertainty remains. What happens if, for instance, a child is forced into a 10-day quarantine after being exposed to COVID-19 in the classroom?

These issues become even more complex when being navigated by co-parents who are former spouses, legally separated parents, or former couples going through a divorce. And sometimes disagreements get acrimonious.

"Co-parents have been scrutinizing the other more closely since the pandemic started," said Dan Stefani, principal at Katz & Stefani. "There has been a big uptick in disputes regarding the other's parenting skills and parenting decisions

vis-à-vis COVID."

Aronberg Goldgehn member Staci Balbirer notes how clashes around who should or should not get a vaccine, or whether one parent is needlessly exposing their children to COVID, have flourished.

"How does parenting time continue if one parent, for example, is a doctor who is continually being exposed to COVID because of their job," she said. "Illinois responded very clearly that despite one parent being exposed to COVID based on their line of work, parenting agreements must stand. That was hard pill to swallow for a lot of people who were co-parenting with partners who had jobs that put them on the front lines where there was greater exposure."

RISE IN MEDIATIONS IN 2021

While Illinois Gov. J.B. Pritzker provided clarity around parenting time in his March 2020 Shelter in Place order — essentially holding that COVID-19

is not an excuse to deny parents their court-ordered parenting time — the pandemic and subsequent court shutdowns made it much harder for co-parents to leverage the legal system as they had done in the past. With courts not fully up-and-running, and as tensions between co-parents escalated as they dealt with unexpected COVID-related challenges, many in Illinois turned to divorce and family mediators like Kimberly Cook of Dovetail Conflict Resolution to help them settle disputes.

"Mediation was already mandatory in Illinois pre-pandemic for parenting matters for parties who were going through a divorce and hadn't been able to reach an agreement. But, depending on the county that you were in, things really came to a standstill in the courts," Cook said. "Parents realized that they had get some resolution to matters that needed to be addressed immediately — like how has our family's schedule been affected by COVID? All of these real-time decisions really couldn't wait four weeks or months at a time to get in line, to get before a judge."

Though there was some guidance from the governor when it came to already established legal agreements, many families still sought mediation to help them resolve smaller issues, Cook explained. "Do we allow the kids' friends over during visitation? How should we handle virtual school? And who is responsible for that if both parents are working? Things like this became ripe issues in mediation."

And now that more than 65 percent of the population in Illinois is vaccinated, the court system has slowly been regaining its footing. However, according to Stefani, co-parents will continue to rely more on mediations, which can resolve issues more quickly than the courts, is less expensive and gives parties more control in the outcome.

"Mediation was definitely something that a lot more of our cases were involved in when the pandemic hit," he said. "Now fast-forward, we're still mostly on Zoom and using other electronic communication with the court; there's still limited trials in person. Mediation is still really the better option these days."

In the past year, mediation has also helped Bryan Wilson of Kogut & Wilson address unexpected issues that have presented themselves as the government steps in to help financially stressed families. For example, Wilson has seen divorced parents face disagreements

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regarding who should receive the payments of the 2021 Child Tax Credit, part of the stimulus package signed into law by President Joe Biden in March.

For the 2021 tax season, the child tax credit was bumped up from \$2,000 to \$3,000 per dependent ages six to 17, and from \$2,000 to \$3,600 for children ages five or younger. Parents struggling financially because of the COVID-19 crisis could opt to receive up to half of that money through monthly \$250 or \$300 checks sent between July and December. Wilson does a cost-benefit analysis for his clients to help them determine the right course of action — which is often mediation.

"In general, the cost of fees does not warrant going back to court on that one issue, because everybody loses money," Wilson said. "And in cases with an already divorced, post-decree case, I've had judges say, 'I don't know what to do. Since there is no provision in the divorce decree for it, I'm just going to do nothing. And whoever gets the check, gets the check.' Other judges are saying, 'Let's just split it.' But there is not a great answer because there are no laws about it."

POST-VACCINE ISSUES ON THE HORIZON

As we emerge from the pandemic, mediation is likely to become even more important as parenting schedules and job security continue to be in flux, Wilson explained. Indeed, COVID has changed the world of work so much that many businesses are looking to make permanent changes even after the pandemic is resolved. A CNBC survey from July, surveying top executives at major U.S. companies, indicated that the hybrid work model is here to stay. According to the survey, just under half of companies expect to embrace hybrid offices this year.

"Post-COVID, there is probably going to be a lot of restructuring of child support and maintenance, as there has been a lot of change financially for many people," Wilson said. "But the hard part is going to be parenting schedules. Parents who used to be unavailable because they left for the office at 7 in the morning and didn't return until 7 at night may now be working from home for part of the week permanently. There is a lot more availability for people to now parent during the days, so

many are going to have to reevaluate what parenting schedules look like."

And the biggest issue attorneys foresee on the horizon is vaccine hesitancy when it comes to children. Experts say to be on the lookout for appellate court rulings that are going to come down regarding vaccinations.

In early November, the Centers for Disease Control and Prevention approved the Pfizer vaccine for children ages five and up. However, the COVID-19 vaccine has emerged as one of the most polarizing issues during the pandemic. Right before the vaccine was approved for younger children, a Gallup poll found that nearly half (45 percent) of parents say they would not have their children vaccinated against the coronavirus if a vaccine were approved for those under 12 years old.

Stefani said in cases like this, mediation is likely not helpful. "Some cases are just too contentious, whether it be the parties or the issues. An example is if you've got a case where one parent wants to give his or her child the COVID vaccine, and one does not. Well, you can't really mediate that issue, right, because it's too polarizing. It's one answer or the other, and mediation tries to create compromise; some issues you just can't compromise," he said.

However, Cook says that we will continue to see greater emphasis placed on alternative dispute resolution methods in Illinois — even in difficult cases like these.

"Being in court can be a very litigious, and overwhelming, and anxiety-producing process. Mediation allows for people to lessen that mental stress," she said. "By no means does that mean that there aren't high-conflict cases that are mediated or that in every mediation everybody, on some level, gets along.

"What it does mean is that for people who were just emotionally overwhelmed and exhausted by all that was going on during the pandemic, mediation allowed for at least a decreased sense of acrimony in some way. It enables people to try to come up with alternative paths to resolution without having to have that added pressures of being before a judge."

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