

TEXAS LAWYER

Afraid to immunize? Judges may view your reluctance sternly

Elisa Reiter and Daniel Pollack | August 31, 2021



What You Need to Know

- A recent hearing in Cook County, Illinois over child support and other related financial issues resulted in a judge inquiring if the child's mother was vaccinated for COVID.
- The mother apparently responded that she had not been vaccinated, and the judge stripped the unvaccinated mother of her parental rights over her 11-year-old son.

- The judge has since reversed portions of his ruling, to restore the mother's parental rights over her son.

During a recent hearing in Cook County, Illinois, a judge inquired if the child's mother was vaccinated for COVID. The mother apparently responded that she had not been vaccinated, proffering the explanation that she had allegedly had adverse reactions to vaccines in the past. The hearing was ostensibly to focus on child support and related financial issues. The parents, Rebecca Firlit and Matthew Duiven, divorced seven years ago, and have had shared custody of their 11-year-old son since June, 2014. The mother's attorney is appealing the order, arguing that the judge's reach exceeded his grasp in that neither party had pleaded for orders to mandate that the parties obtain inoculations against COVID. The judge has since reversed portions of his ruling, to allow Ms. Firlit access to her son:

A Chicago judge reversed his decision that stripped an unvaccinated mother of her parental rights over her 11-year-old son. 'Judge Shapiro just issued an order vacating portions of his prior order of August 11th so Rebecca Firlit can see her son again,' Rebecca Firlit's attorney, Annette Fernholz, told FOX 32 Chicago Monday.

Turmoil over immunization status, and how the judiciary may impact individual freedoms in regard to the COVID-19 vaccine, translates to the Cook County case not standing alone. Judges in some states have granted lesser sentences to defendants who opt to get the vaccinated, and/or mandated the vaccine as a condition of release from prison for certain inmates. In late July, 2021, Judge Fred Crifasi, who presides over the 19th

Judicial District Court, began to give defendants the opportunity to get vaccinated, and show proof of same, “in lieu of certain community service hours.” Louisiana has one of the highest numbers of reported cases in the nation. Judge Crifasi has offered to waive community service on submission of proof of COVID vaccination as an option, not as a court mandate.

In Ohio, two judges ordered the defendants to get the COVID vaccine and provide proof of same as a condition of probation. On August 4, 2021, Judge Christopher Wagner of the Court of Common Pleas in Hamilton County told a defendant, Brandon Rutherford, who had been convicted of drug offenses, that he must receive the vaccine within 60 days of release, noting that the vaccine appeared to be much safer than fentanyl, possession of which led to the defendant’s conviction. On June 22, 2021, Judge Richard A. Frye gave Sylvaun Latham 30 days to provide proof of vaccination. The defendant agreed to be vaccinated.

How do civil liberties intersect with mask and vaccination mandates? Is the right to privacy impeded by forcing U.S. citizens to obtain COVID vaccines? What about passing local emergency orders mandating individuals to don masks in public? According to *The New York Times*, David J. Carey of the American Civil Liberties Union of Ohio asserts that requiring COVID vaccinations does not pose a clear infringement on fundamental liberties.

In New York and in the Bronx, judges have required defendants to obtain the COVID vaccine as a condition of rehabilitation and/or as a condition precedent to bail being granted.

There has been a rise in the number of Delta variant cases being contracted by children in recent months. The Lambda variant is now recognized and is posing problems for children as well. Should an individual's right to privacy and personal liberty control over an obligation to take personal responsibility to help beat the spread of COVID?

According to Adam Kucharski, John Locke argued that:

It was therefore self-evident that, in the absence of rules or laws, humanity's natural state was 'free, equal, and independent.' He concluded that the aim of a government should be to preserve the natural rights of life, liberty, and property.

With so many COVID-related deaths, should the aim of our judiciary—particularly in the domestic relations and criminal courts—be, in part, to require COVID vaccines to preserve life and liberty? Are we, like Abraham Lincoln, born to try to square the circle—a Euclidean puzzle that involves drawing a square and a circle of equal area? Or, are we destined to be forced to fill in the bubble on an intake sheet that is a first step toward getting a COVID vaccine—whether we want to or not?

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