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## Ann Arbor attorney shares his experience with trying parental alienation cases in new ABA book

By BRIAN COX  
Legal News

After two years of writing and more than a decade spent becoming an expert in litigating parental alienation cases, Ann Arbor attorney Ashish Joshi's book on the complex subject was published last month by the American Bar Association.

"Litigating Parental Alienation: Evaluating and Presenting an Effective Case in Court" is a practitioner's manual that provides an overview of the concept of parental alienation and explains how to correctly handle it in court. The ABA describes the book as an "essential resource for the family lawyer."

"It's an interesting book," says Joshi. "I was able to synthesize my experience in trying parental alienation cases all over the country."

Most often seen in divorce cases, parental alienation occurs when one parent uses strategies - sometimes referred to as brainwashing, alienating, or programming - to distance a child from the other parent.

"Litigating Parental Alienation" provides an in-depth examination of evaluating a case of parental alienation and practical guidance for handling a case in court. An overwhelming number of American family courts have acknowledged that parental alienation exists, according to the ABA, although there is significant variance in how the courts have defined it and how they deal with it. As these special and complicated cases involve not just family law practitioners, Joshi's book offers science, case law, and practice pointers for Guardians ad Litem, family court judges, referees, minors' counsel, and custody evaluators.

"This book provides practical tips for family law attorneys, from investigating allegations of parental alienation and domestic violence to admitting expert testimony to aid the court in its fact-finding," Michigan Supreme Court

Chief Justice Bridget Mary McCormack wrote in a foreword for the book. "Still, the main focus is the law, examining the contexts in which this issue comes up, how courts address the subject across the states and worldwide, the role of a Guardian ad Litem, and the legal interventions available to courts. It is a resource that will make practitioners and court professionals better."

Joshi, who earned his law degree from Sir L. A. Shah Law College in India and later a Master of Laws degree from the University of Michigan Law School, is the owner and managing partner of Joshi Attorneys + Counselors.

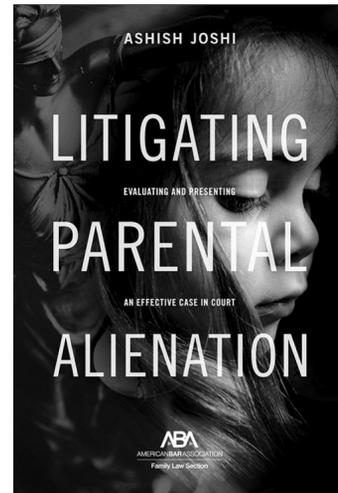
While this is the first book Joshi has penned under a single byline, he has co-authored several books and published numerous articles on topics ranging from parental alienation to criminal defense, commercial litigation, international litigation and trial practice. He is the former editor-in-chief and currently, a senior editor for "Litigation," the journal of the American Bar Association's Section of Litigation, and sits on the Advisory Board for "Champion," the journal published by the National Association of Criminal Defense Lawyers.

Joshi describes writing the book as a "labor of love."

The first chapter provides both a brief history and overview of the controversies surrounding the phenomenon of parental alienation, providing a starting point for a fundamental



Ashish Joshi



understanding of the concept. Joshi distills his experience of litigating parental alienation cases before family courts all over America and internationally. He discusses not just the concepts but also offers "hands on" practice pointers with supporting case law in presenting cases of parental alienation in family courts. The book also discusses the criteria for the admissibility of expert testimony on parental alienation, how to present the expert evidence, as well as a state map of admissibility standards. Finally, Joshi debunks the commonly-held myths and fallacies that compromise judicial outcomes in parental alienation cases.

The book is available at the ABA website at [www.americanbar.org/products/inv/book/409061453/](http://www.americanbar.org/products/inv/book/409061453/)

### Q&A with Ashish Joshi

#### What led you to write this book?

My primary goal was to educate lawyers, judges, referees, and court-involved professionals who work in American family courts. Having represented victims of parental alienation in courtrooms around the country, I realized that despite the judicial decisions acknowledging parental alienation that have come down from an overwhelming number of states, we still continue to struggle with myths, fallacies, and misinformation about the concept of parental alienation. In writing this book I attempted to do two things, first, to educate the legal community on parental alienation, and second, to help the lawyers develop tools to effectively present a case of parental alienation in a courtroom.

#### What's the reason for the controversy surrounding the topic of parental alienation?

There really is no controversy. In this day and age, with the peer-reviewed scientific literature that's readily available along with the judicial opinions from the family courts around the country (and from the courts around the world), it's absurd to question the existence of parental alienation. It would be similar to our challenging the fact that mankind went to the moon. But many lawyers and judges continue to believe, mistakenly, that parental alienation doesn't exist or that "it's not in the DSM" or some similar fable. Why? There could be several reasons. One, the lawyer is not specialized in the area of parental alienation and child enmeshment and is simply unaware of the latest research and judicial decisions in this area. Two, the lawyer is reluctant to challenge the biased or incompetent professionals who are involved in the case for the fear of "burning bridges" with the local professional community. Third, the lawyer may believe that the assigned judge "doesn't believe in parental alienation." Whatever the reason given, there is no excuse for not taking timely, aggressive, and appropriate measures when alienating behaviors are present. There is no doubt that parental alienation exists.

#### Is parental alienation included in the DSM-5?

The concept of parental alienation is included in the DSM-5. Also,

the concept of parental alienation meets the scientific standards necessary to be recognized and presented as evidence in American courts. It has passed both Daubert and Frye gatekeeping. The term "parental alienation" or "parental alienation syndrome" itself is not in the DSM-5 because it does not meet the standard definition of a mental disorder. How? Because this condition in children is cultivated by an external source (the alienating parent), it is not considered an internal condition, which is a requirement for inclusion in the DSM-5. The members of the DSM-5 Task Force have gone on record to make it known that they have never said that they doubted the reality or the importance of parental alienation. And the co-authors of the DSM-5 chapter on personality disorders have clarified that the concept of parental alienation is firmly covered by the DSM-5.

#### What are some of the challenges that lawyers face when dealing with a case involving parental alienation?

Parental alienation cases are profoundly counterintuitive. A lawyer—whether representing a targeted parent (the parent who is being rejected because of alienation) or a minor child or acting as a Guardian ad Litem—who is not knowledgeable, skilled and experienced in these cases faces a very high risk of failure and turning a bad case into a worse nightmare imaginable. Well-meaning lawyers often tell clients to "cut back," agree to a "cooling-off period," or advise them to "not be aggressive" in court filings, or simply to "give the kids some room." These lawyers fail to understand that parental alienation is child psychological abuse and the children who are being brainwashed, programmed and alienated need help — and they need it now! A "cooling-off period" is not going to help; it will only serve to entrench alienation and strengthen the child's unjustified rejection of the parent.

It is interesting that despite the abundant availability of professional and legal literature, lawyers continue to have misconceptions about parental alienation. And it shows in what their clients report in surveys. In a survey conducted by Dr. Amy J. L. Baker, the targeted parents were

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asked about their attorneys' handling of their case. The survey results provide us with poor results on how targeted parents viewed their attorneys' handling of their court cases. Many reported that their lawyer had "no idea" about parental alienation and how it impacted the client and his or her relationship with their children. Some targeted parents reported that the lawyers were "in it" only for the money and lacked compassion or concern for the clients. Others reported that their lawyers advised to give up fighting for custody and tried to convince them to settle before the pathological behaviors were addressed. The vast majority of lawyers who represented the targeted parents were perceived as not preparing their clients for litigation. Adding to the targeted parents' frustration was their outrage that their lawyers did nothing to enforce their rights or to hold the alienating parent accountable. These grievances are alarming, particularly when we consider the fact that family law is one of the top three highest risk areas of practice for attorneys in terms of malpractice exposure.

**What are the gender dynamics of parental alienation?**

The concept of parental alienation, unfortunately, has been weaponized by a propaganda of gender politics. At the end of the day, both sexes have been found to have engaged in alienating behaviors. Dads alienated, and so do moms. And both sexes have been held accountable by courts. When parental alienation is found, courts have taken custody away from dads as they have done with moms. But the myths and fallacies continue to create unnecessary and unwarranted controversies. In a recent peer-reviewed article published in a journal of the American Psychological Association, the authors debunked and falsified a myth that family courts have allowed parental alienation to be used as a legal defense in cases in which there are allegations of domestic violence and child abuse. In reality, parents found (not just alleged) to have alienated their children, regardless of their gender, have greater odds of losing parenting time or custody of their children—as they should, since causing severe parental alienation is tantamount to causing child psychological abuse.

**What are the consequences if a lawyer fails to get a timely court intervention?**

A common phrase in reunification therapy is "time is a major enemy." Alienating behaviors must be stopped as soon as they are recognized; the longer false

assumptions exist in a child's mind, the likelier they are to become permanent beliefs. Alienated children become entrenched in pathological, dysfunctional dynamics. False beliefs are a complex symptom of parental alienation, which require specialized handling. In alienation cases, delay only serves the alienating parent and can frequently allow the child to age out and be beyond the court intervention. Even if children don't reach majority, they frequently come of an age where judges simply assume that any decision related to reunification will be fruitless, or it is simply too late, or the children will reunite "on their own" as they get older. Lawyers who fail or refuse to act appropriately and in a timely manner end up causing a lot of frustration and harm, sometimes irreparable, to the clients and their relationship with their children.

**What tips do you have for family court judges who deal with cases of parental alienation?**

The best thing that a court can and should do in case where alienation is alleged is to make findings of fact. Early intervention and early fact finding is critical because it not only allows a court to distinguish a case of parental alienation from that of an estrangement or hybrid case, but it also provides an opportunity to put in place the right kind of mental health intervention. Therapeutic intervention for cases of parental alienation is unique and different from traditional psychotherapy. Delay not only makes a case more complex, but also enables alienation. In my opinion, a family court's failure or refusal to hold an evidentiary hearing in a case of parental alienation is tantamount to judicially-created alienation.

The second-best thing that a court could do is to appoint a Guardian ad Litem (GAL), not Lawyer Guardian ad Litem (LGAL). A GAL's obligation is to the court and his or her job is to assist the court in making the right decision that protects the best interests of the child. However, when appointing a GAL, the court should ensure that the professional is competent, knowledgeable, skilled, and experienced in the area of parental alienation. Unfortunately, what we see in cases after cases is the sad story repeating itself where a court is misled by an incompetent or inexperienced GAL. A good GAL can do wonders and can be very helpful to the court in making the right decision. A bad GAL can make alienation far worse, inflame hostility, over-empower the children, and cause a significant waste of judicial resources and litigants' money.