

Parental Alienation International

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- **PASG Fundraising Campaign** pg 4
- **Calling on Members!! Join a PASG Committee** pg 5
- **In-the-Office Reunification Therapy in the US: Lessons learned from a survey of providers** pg 12
- **The First Targeted Parents' Column** pg 17
- **Litigating Parental Alienation Cases: The Good, the Bad, and the Ugly** pg 19
- **And more...**

Litigating Parental Alienation Cases: The Good, the Bad, and the Ugly

By Ashish S. Joshi

LAWYERS KNOW THAT representing targeted parents in parental alienation (PA) cases is a tough job: It requires knowledge, skill, experience, and a willingness to go against the current to explicate the seemingly counterintuitive issues to the court. But what's often missed is the other side of the equation: It is equally challenging, if not more, for judges to decide PA cases. These cases demand hard-hitting decisions, which, depending on the case, could be reunification therapy with a no-contact order between the alienating parent and the child, change of custody, and/or jail time for violation of court orders. When faced with an adverse ruling, it's not uncommon for an alienating parent to disparage the court and the professionals involved by attacking, lampooning, and criticizing the court's ruling outside the confines of appellate process. In this day and age of twitter mania and social media obsession, lines are blurred between free speech and cyber-bullying or harassment. It is not uncommon to find judges to be accused of incompetence or bias, even labeled as a "total disgrace."¹

Consider a recent eye-opening article in *Litigation*, the journal published by the American Bar Association (ABA).² Judge Jon Hulsing—a judge for the 20th Circuit Court in Ottawa County, Michigan—wrote about how alienators, upon being held accountable in court, enlist the help of special interests groups in pushing a false narrative to accuse judges and family courts of "corruption," "with the desire to take down judges." He speaks of a case³ where the mother "had sown the seeds of parental alienation," in "a campaign to drive the children away from their father." In addition to her alienating behaviors, the court found that the mother "lacked the ability to tell the truth or discern fact from fiction" (according to the mother's emails that she sent to friends, "god directed her to flee" with the children and that "Jesus was sitting in the seat next to her and providing encouragement for her to abandon her husband."). After "six days of trial, 18 witnesses, and 64 exhibits," the Court issued an opinion explaining in depth why it awarded primary physical custody of the minor children to the father. The Court's opinion went on at length to memorialize the mother's deception and manipulative behavior and "her campaign to damage, distance, or demonize all who opposed her version of reality." After the trial, the mother "dropped a nuclear bomb," and went on to file numerous complaints in two different states falsely alleging that the father had sexually abused the children. As Judge Hulsing put it, "How better to alienate a parent?" Engaging in an attempt to forum shop, kidnapping and secreting the children, dyeing their hair and limiting the children's ability to go outdoors, the mother spent some time in hiding. Ultimately, she was arrested and the children were reunited with their father.

Concurrent with the mother's attempts to alienate the children from their father, she and her allies "attempted to intimidate the judiciary" by filing groundless motions alleging bias on the part of the court, filing complaints with the Michigan Judicial Tenure Commission alleging bias and corruption, and enlisting help from a nationally known author in the area of domestic violence, who upon listening to the mother's "tale of woe, ... immediately concluded that whatever the [mother] said was reality." The author began to blog and post comments regarding the case and criticized the court's evidentiary rulings and began scurrilous, *ad hominem* attacks on the Court alleging that the court had "declared war on mothers" and was "corrupt." Eventually, the children continued to reside with their father, maintained a strong bond with their father, and repaired their relationship with their mother. Living through this nightmare of a case, Judge Hulsing notes:

"It can be unnerving for a judge to be the recipient of negative comments or publicity. Let's face it, most state judges are elected and there may be the concern about the next election. This is particularly true because judges cannot tailor their decisions to appease the public. Rather, decisions must be based on the rule of law and sometimes those decisions are unpopular."

Judge Hulsing is not alone in facing this quandary. It is not fair to ask judges to make tough, unpopular decisions and then abandon them when they are unfairly and unjustly attacked for doing so. Judges cannot fight back these unjustified attacks, especially when done through a campaign of denigration via traditional media, social media, or blogs. "That leaves to us, the lawyers, the task to speak up on behalf of judges unfairly accused."⁴ To assist the state and local bar associations in coordinating responses to inaccurate and unjust

criticisms, the ABA has prepared a guide called *Rapid Response to Unfair and Unjust Criticism of Judges*.⁵ The guide, written by the prior Standing Committee on Judicial Independence, emphasizes the critical need to respond to attacks in a timely manner and appropriate manner. The goal is to provide a mechanism through which a bar association and members of other constituencies can provide timely responses to the serious, unjust criticisms of judges and the judiciary or to misunderstandings about the role of a judge or the judicial system. When confronted with such ugly, unjust, and unfair attacks against court and court-involved professionals, a lawyer representing targeted parents should not hesitate to reach out to the ABA and her state or local bar association to request an investigation. It's not for the lawyer to come to the rescue of the judge who is being attacked—doing so may violate rules of professional conduct and make the matters worse. It's ultimately for the judge to decide whether a public response is necessary and whether to avail of the resources offered by the ABA and the state and local bar associations. As Justice Sandra Day O'Connor reminded us, "where democracy depends on the separation of powers and vital and independent judiciary – '[c]riticism is fine; retaliation and intimidation are not.'"⁶

Author Bio: Ashish Joshi specializes in litigation of cases involving parental alienation. Based out of Ann Arbor, Michigan, Joshi represents clients in courts around the United States and has been a part of legal teams litigating PA cases in several foreign jurisdictions. He is admitted to the state bars of Michigan, New York, District of Columbia; the Supreme Court of the United States, and Gujarat, India. He is the author of the forthcoming book, *Litigating Parental Alienation*.

¹ Pulgram, Laurence, *When Attacks on Judges Go Beyond the Pale*, 4-5, 43 *Litigation* 1, Fall 2016.

² Hulsing, Jon, *Parental Alienation is One Thing, But What Are You Going To Do When They Come For You?*, 46 *Litigation* 4, Summer 2020.

³ *Carpenter v. Carpenter*, File No: 09-63448-DC (Circuit Court for the County of Ottawa, February 9, 2010); *Carpenter v. Carpenter*, 2010 WL 4628937, (Mich. COA, November 16, 2010); *Carpenter v. Carpenter*, File No: 09-63448-DC (Circuit Court for the County of Ottawa, February 22, 2012).

⁴ Pulgram, Laurence, *supra*.

⁵ www.americanbar.org/content/dam/aba/administrative/judicial_independence/rapid_response_pamphlet.pdf.

⁶ O'Connor, Sandra D., *A Fair, Impartial and Independent Judiciary*, 8, *Nat'l Voter*, Feb. 2008.