



# Parental Alienation: WHAT FAMILY LAWYERS NEED TO KNOW

Despite decades of case law and peer-reviewed literature, detractors continue to misrepresent and question the existence of parental alienation. Unfortunately, this only serves to keep children with the abusive parent who is brainwashing them.

By Ashish Joshi, Family Lawyer

**P**arental alienation (PA) is a strategy one parent uses to brainwash, manipulate, or program a child to reject or resist contact with the other parent. As Dr. William Bernet states in *Parental Alienation: Science and Law* (Charles C. Thomas, 2020), parents who program or brainwash their children “virtually always blame others for problems, issues, and circumstances that arise.” Despite several decades of case law and peer-reviewed literature on PA, detractors continue to misrepresent what it is and question whether it exists at all.

The psychological harm on children affected by PA is readily apparent, and it can last well into adulthood. For example, in his book *Children Held Hostage: Identifying Brainwashed Children, Presenting a Case, and Crafting Solutions* (ABA Publishing), co-authors Dr. Stanley Clawar and Brynne Valerie Rivlin share this poignant statement by a 21-year-old woman affected by PA: “It screwed up my life during my early years and now I have trust problems in close relationships. Do me a favor, kill me if I ever do this to my kids.”

In *Martin v. Martin* (331 Mich. App. 224, 238 [2020]), the Michigan Court of Appeals stated: “There is no reasonable dispute that high-conflict custody disputes frequently involve acts by one parent designed to obstruct or sabotage the opposing parent’s relationship with the child.” The mother in that case contended that parental alienation is “junk science.”

Alienating parents and the lawyers who represent them may refer to it as junk science, but family courts and researchers alike have acknowledged PA and the harm it causes to alienated children. Judges make findings of fact that support their decisions regarding child custody, parenting time, visitation, restraining orders, and mental health interventions – and PA is a factor that can dramatically change a court’s decision on child custody and parenting time orders.

## Courts Require *Prima Facie* Proof of PA

Family courts require proper evidence before accepting a claim of PA: proof of alienating behaviors on the part of the

alienating parent and of signs of alienation in the children affected by such behavior. And when lawyers fail to present such proof, the courts have rejected hollow claims of PA. For instance, in *Moir v. Moir*, the trial court dismissed the claim because it “found no evidence of parental alienation...”<sup>1</sup> In Ohio, a court opined: “No evidence was submitted that supports a conclusion that Mother engaged in parental alienation... the sole concern raised by the guardian ad litem was unsubstantiated by the evidence.”<sup>2</sup> In California, a court objected to the presentation of an expert witness without a *prima facie* proof of PA. “[T]he court impliedly found no expert was necessary, because there was no evidence of parental alienation...”<sup>3</sup>

Family courts have acknowledged the severe adverse effects of PA. For instance, a Colorado court found how severe alienation can cause personality disorders and cause a feeling of abandonment in the child.<sup>4</sup> In case after case, from a variety of jurisdictions, family courts have intervened when presented with compelling evidence of PA.

PA is not a legal fiction: it is child psychological abuse. As such, it is important to define PA and debunk common misconceptions regarding it. The widely accepted definition of PA is “a mental condition in which a child – usually one whose parents are engaged in a high-conflict separation or divorce – allies strongly with one parent (the favored parent) and rejects a relationship with the other (the alienated parent) without legitimate justification... The most common cause of PA is the child’s indoctrination by the favored parent to dislike or fear the alienated parent.”<sup>5</sup>

## 5 Fallacies About Parental Alienation

**1 PA theory assumes that just because a child is rejecting a parent, it must be due to alienation.** The theory of PA harbors no such assumptions. If there is a legitimate reason for the rejection – such as domestic violence, abandonment of the child, or physical or sexual abuse – then it may well not be a case of PA. The evidence must fit the diagnosis of PA to attach. Moreover, to determine whether a case is one of PA, mental health professionals rely on the Five Factor Model – not just on the signs the children are displaying.<sup>6</sup>

**2 PA is a legal defense used by abusive fathers in court.** However, the data on PA cases disproves this assertion: in over half of the cases where PA was found to have occurred, there were no allegations of other forms of abuse.<sup>7</sup> PA is a mental condition that favors no specific gender; all genders are as likely to be alienated parents and indeed have been found by courts to have done so where PA was present.

**3 PA should not be recognized because it will be misused by abusers.** For any type of abuse, there is always a risk of abusers pretending to be victims. This risk creates the need for clear standards and reliable screening and assessment tools to prevent misuse. The Five-Factor Model provides that standard by requiring that abuse and neglect are absent before

PA can be diagnosed.<sup>8</sup> The real threat lies dormant in the disagreement over whether PA should be accepted as a concept. While detractors discuss whether PA is a valid concept, the data over the past 35 years has been consistent. What remains are children everywhere experiencing this phenomenon where one parent indoctrinated them against the other parent. Years later, some of those children realize the severity of the alienating parent’s action on their well-being.

**4 PA is unscientific.** This is a false claim. “Clinical, legal, and scientific evidence on PA has accumulated for over 35 years. There are over 1,000 peer-reviewed articles, chapters, and books published on the topic, and the empirical research on the topic has expanded greatly...”<sup>9</sup> In addition, courts do not entertain PA claims if the facts do not support it. Thus, it is untrue, at least when it comes to legal cases, that PA does not require a rigorous, scientific process. A significant amount of the published studies on PA are peer-reviewed, meaning that a team of neutral, independent scholars were either able to recreate the studies or found other suitable methods to confirm the claims asserted in those studies. The claim that PA is pseudoscience is unfounded.

**5 PA is a short-lived response to the parents’ divorce.**<sup>10</sup> Although some divorces can cause a child to favor one parent against the other, PA presents children who absolutely reject a loving parent without any ambivalence or guilt. Consider this quote by a child who was affected by PA: “It happened so slowly that I couldn’t even tell what was happening until you made me talk about my childhood from the family photo album. Holy God, Mom was there and didn’t abandon me, did she?” This type of trauma is not short-lived. This level of trauma can drastically impact the development of a child by causing the loss of a relationship with the other parent that the child never had the chance to properly process.

**Before you take on a case involving parental alienation, ask yourself whether you are truly prepared to face how challenging – and frankly distressing – these cases can be.**

- [1] *Moir v. Moir*, 2016 WL 555838, at \*11 (Mich. Ct. App. Feb. 11, 2016), appeal denied, 500 Mich. 881 (2016).
- [2] *Maxwell v. Maxwell*, 2008 WL 754861, at \*5 (Ohio Ct. App. March 24, 2008).
- [3] *In re Marriage of Daniel*, 2005 WL 1515414, at \*4 (Cal. Ct. App. June 28, 2005).
- [4] *In re Marriage of Humeny v. Ortiz*, No. 05DR2192, at \*4 (Col. D. Ct. June 16, 2021).
- [5] Bernet, W. (2021) *Recurrent Misinformation Regarding Parental Alienation Theory*, The American Journal of Family Therapy, DOI: 10.1080/01926187.2021.1972494.
- [6] Bernet, W. (2020). *The Five-Factor Model for the diagnosis of parental alienation*. Feedback- Journal of the Family Therapy Association of Ireland, 6, 3-15; Lorandos, D. & Bernet, W. (2020). *Parental Alienation: Science & Law*. Springfield, IL: Charles C Thomas, LTD.
- [7] Harman, J. J., & Lorandos, D. (2020). *Allegations of family violence in court: How parental alienation affects judicial outcomes*. Psychology, Public Policy, & Law; Harman, J. J., Leder-Elder, S., & Biringen, Z. (2019). Prevalence of adults who are the targets of parental alienating behaviors and their impact: Results from three national polls. *Child & Youth Services Review*, 106, 1-13.
- [8] Bernet, W. (2020). *The Five-Factor Model for the diagnosis of parental alienation*. Harman, J. J., Bernet, W., & Harman, J. (2019). *Parental alienation: The blossoming of a field of study*. *Current Directions in Psychological Science*, 28, 212-217; Lorandos, D. & Bernet, W. (2020). *Parental Alienation: Science & Law*. Springfield, IL: Charles C Thomas, LTD.
- [10] Richard A. Warshak, *The Parental Alienation Fallacies that Compromise*

## 4 Tips for Working with Alienated Parents and Children

It is good to understand a problem, and it is even better to find a solution. Here are four quick tips on working with families dealing with PA.

**1 Do no harm.**<sup>11</sup> Before accepting such cases, a lawyer should consider whether they are capable and have the experience, training, skill, and time necessary for such difficult and time-consuming cases. PA is counterintuitive; a lawyer's experience in practicing general family law matters may not be enough to be able to competently handle a severe PA case.

**2 Keep abreast of the latest research, publications, and peer-reviewed literature on PA.**<sup>12</sup> PA cases often result in a "battle of experts" and a lawyer who lacks a sound understanding of the professional literature on the topic will not be able to competently cross-examine the opposing expert or educate the court on the nuances of PA.

**3 It is critical to frame the case properly.** Literature from research studies makes it clear that causing severe PA is a form of psychological child abuse, and the primary goal in a PA case must be to protect the child(ren) from further harm at the hands of the alienating parent. Custody and parenting time issues are secondary to this goal.

**4 Learn to manage the clients.** Parents who are targets of alienation can be traumatized and difficult to manage. Frequently involving false allegations of physical, emotional, or sexual abuse, these cases are stressful to litigate. When one parent is manipulating and indoctrinating the children into believing and making false allegations, your ability to reassure the alienated parent that you believe and will help them gather the necessary evidence is essential.

## Misconceptions Surrounding PA Serve the Alienating Parent

Parental alienation is a problem affecting children in every country in the

world. The data about PA shows the real effects on a vulnerable group in our society, and that children exposed to this form of psychological abuse suffer long into adulthood. The misconceptions surrounding PA only serve to keep children with the pathological and abusive parents who are brainwashing and programming the children.

If you are a family law practitioner, before you take on a case involving PA, ask yourself whether you are truly prepared to face how challenging – and frankly distressing – these cases can be. ■

*Decisions in Court and in Therapy*, American Psychology Association, 5.

[11] Ashish Joshi, *A Is for Alienation: Tips on Litigating Parental Alienation in Custody Battles*, NYSBA Family Law Review, 8.

[12] *Id.* at 9.



*The managing partner of Joshi: Attorneys + Counselors, Ashish Joshi serves as lead counsel in high-stakes, complex family law cases in state, federal, and international courts. He is the author of Litigating Parental Alienation: Evaluating and Presenting an Effective Case in Court (ABA Publishing, 2021) and a contributing author to Parental Alienation: Science and Law (C. Thomas, 2020). [www.joshiattorneys.com](http://www.joshiattorneys.com)*

## Related Article

### Winning Parental Alienation Cases: A Roadmap for Family Lawyers

Family lawyers should view winning parental alienation cases differently from other types of custody cases. Making smart, insightful moves that will correct the alienation is the winning strategy here.

[www.familylawyermagazine.com/articles/winning-parental-alienation-cases](http://www.familylawyermagazine.com/articles/winning-parental-alienation-cases)