July 22, 2025

Via TrueFiling

First District Court of Appeal, Division Five
350 McAllister Street
San Francisco, CA 94102-7421

Re: *Michael V. K. v. Janice Cho* (Case No. A169917)
Publication Request (Cal. Rules of Court, rule 8.1120)

Dear Honorable Justices Burns, Simons, and Chou,

On behalf of the Association of Certified Family Law Specialists (ACFLS) Amicus Committee, we write to request publication of your recent decision in *Michael V. K. v. Janice Cho* (July 10, 2025, A169917) (*Michael V. K.*).

Michael V. K. meets the standards for publication because it applies an existing rule of law to a set of facts significantly different from those stated in published opinions, addresses an apparent conflict in the law, and involves a legal issue of continuing public interest. (Cal. Rules of Court, rule 8.1105.)

Michael V. K. stands for the proposition that when the content of an attorney's extrajudicial statements clearly involves allegations from underlying family law litigation, those statements are afforded the protections of anti-SLAPP because they concern "litigation-related activity." It makes no difference that the context in which the statements were made—here, a separate chargeback dispute—might not be directly tied to the litigation. No prior case has applied anti-SLAPP to a factual scenario such as this involving statements made concerning litigation but in the context of a separate chargeback rebuttal statement.

Publication of *Michael V. K.* would be valuable to all legal professionals in the family law community. Malicious prosecution and defamation lawsuits brought by disgruntled family law litigants against their ex-spouses' family law attorneys have

become disturbingly common. Usually, these lawsuits involve litigation-related statements made within the context of the case itself, such as oral statements made in court or in a declaration submitted to the court. *Michael V. K.*'s guidance is valuable in extending the protections of anti-SLAPP to unrelated extrajudicial statements that otherwise clearly arise from allegations in the underlying family law litigation.

1. Grounds for Publication

"An opinion of a Court of Appeal [. . .] should be certified for publication [. . .] if the opinion: [. . .] (2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions; [. . .] (5) Addresses or creates an apparent conflict in the law; [or] (6) Involves a legal issue of continuing public interest." (Cal. Rules of Court, rule 8.1105.) *Michael V. K.* meets these three standards.

a. *Michael V. K.* applies an existing rule of law to a set of facts significantly different from those stated in published opinions. (Rule 8.1105(2).)

The existing rule of law is that the anti-SLAPP statute generally protects statements made related to litigation in furtherance of a party's right to petition the courts for relief, including "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." (Code Civ. Proc., § 425.16, subd. (b)(1), (e)(2).) Cases construing the subdivision hold that "a statement is 'in connection with' litigation under section 425.16, subdivision (e)(2), if it relates to the substantive issues in the litigation and is directed to persons having some interest in the litigation." (*Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1266.) This has included examples such as a document soliciting funds for litigation (*Dziubla v. Piazza* (2020) 59 Cal.App.5th 140, 150) and settlement negotiations (*Seltzer v. Barnes* (2010) 182 Cal.App.4th 953, 963).

Here, however, the trial court said: "[Cho] cites no authority indicating that a communication directed to an uninterested third party [Chase] concerning payment of legal fees qualifies for protection under the anti-SLAPP statute." But, as correctly noted by this Court "as plainly established by Michael's pleading itself, his three causes of action arose directly out of the content of Cho's statements in the chargeback rebuttal, not the fact that Cho disputed his chargeback. And Cho's rebuttal did not contain any statements of fact about Michael that were unrelated to the issues in the dissolution and DVRO actions." (Opinion, at p. 10.) Accordingly, the Court correctly held that "Cho made the threshold showing of demonstrating that Michael's claims arose from protected activity." In doing so, it dispensed with Michael's counterarguments that the activity was unprotected because Chase Bank (to whom the chargeback rebuttal was directed) was not a party to the case or that the "context in which Cho's statements were made—the credit card chargeback dispute—[was] wholly unrelated to any issue under review in the litigation." (Opinion at pp. 10-11.)

Michael V.K. therefore contributes to the current body of law regarding protected activity by applying it to a set of facts significantly different from those stated in published opinions—namely, a chargeback rebuttal to a non-party credit card company that consists solely of statements of fact about a party related to issues in an underlying case. This is valuable published authority because it demonstrates that the context in which the statement is made is only one factor. When the context is seemingly unrelated to the underlying litigation, this does not prevent the statements from being protected. Statements may still be afforded protection when those statements directly arise from facts about a party related to issues in an underlying case.

b. *Michael V. K.* addresses an apparent conflict in the law. (Rule 8.1105(5).)

In arriving at its conclusion, the Court identifies an apparent division in the law between an established line of cases holding that qualifying litigation-related conduct is protected by section 425.16, subdivision (e)(2) (Opinion, at pp. 9-10), with another line holding that not *every* statement made by a litigant or lawyer after the start of litigation is protected (Opinion, at p. 10; see *Paul v. Friedman* (2002) 95 Cal.App.4th 853, 866). Statements that "bear[] no relationship to" or "ha[ve] *nothing* to do with the claims under consideration" (italics added) in the litigation do not meet subdivision (e)(2)'s governing standard.

In doing so, the *Michael V.K.* Court confirms that the attorney's statements in a chargeback rebuttal about the party are more like the qualifying litigation-related conduct than the non-qualifying conduct, because the party's "three causes of action arose directly out of the content of Cho's statements in the chargeback rebuttal, not the fact that Cho disputed his chargeback." This opinion is ripe for publication because it identifies this split and the law, and firmly places *Michael V.K.* on the side of qualifying conduct. In doing so, it provides clarity for the bench and bar alike when applying anti-SLAPP to future similar factual scenarios.

c. *Michael V. K.* involves a legal issue of continuing public interest. (Rule 8.1105(6).)

Malicious prosecution claims against opposing counsel are a recurring issue in the context of anti-SLAPP litigation in California. Under California law, malicious prosecution actions are generally subject to the anti-SLAPP statute because they arise from protected activity, specifically the filing and prosecution of prior lawsuits. Courts have consistently held that such claims fall within the purview of the anti-SLAPP statute, as they involve acts in furtherance of the right to petition or free speech under the U.S. or California Constitution. By their nature, anti-SLAPP claims often involve legal issues of public interest.

More specifically, malicious prosecution and, as here, defamation cases by family law litigants against their exes' family law attorneys are often fertile ground for successful anti-SLAPP motions to strike, since the offending statements by the family law attorneys almost always involve statements or advocacy arising from the underlying litigation itself and are barred by the Civil Code section 47(b) litigation privilege. (See, e.g., *S.A. v. Maiden* (2014) 229 Cal.App.4th 27, 29.)

Like these predecessor cases, the context from which *Michael V. K.* arises is an issue of continuing public interest. The attorney's statements at issue arose from a rebuttal she filed in a chargeback case after her client's estranged husband initiated a chargeback dispute after her client used their joint credit card to pay the attorney's legal fees. In the rebuttal, the attorney merely submitted a document wherein she provided a timeline of the underlying dissolution and DVRO proceedings. For that, she was wrongfully sued.

The anti-SLAPP statute protects this attorney and others similarly situated for merely doing their jobs to represent their family law clients and to fairly report on those proceedings when asked to do so for a related task—such as responding to a chargeback dispute concerning the lawyer's fees. This case would be useful as published authority for other similar situations that might arise where an attorney may make such statements, such as in a deposition or a fee arbitration. Because the issue of an attorney's ability to make statements on behalf of their client related to or in connection with litigation is an ongoing issue of public concern, this case merits publication.

2. Requestors' Interest

ACFLS is an independent non-profit bar association, currently composed of 605 family law specialists certified by the State Bar. Since 1980, ACFLS has been dedicated to promoting and preserving the practice of family law in California. ACFLS members actively practice family law in California family courts and appellate courts. Our members also serve as court-appointed minors' counsel, mediators, private judges, judges pro tempore, and expert witnesses in child custody proceedings.

Since its founding at the inception of family law specialist certification by the State Bar, ACFLS has played an active public policy role, including regularly weighing in when the Courts of Appeal, Legislature, and Judicial Council consider matters of significance to family courts, family court populations, or the family law bar. ACFLS has appeared as amicus in many family law appellate cases, including cases where the Court of Appeal invited the organization's participation.

ACFLS's Amicus Committee is an active, all-volunteer, 25-member group that reviews cases and makes recommendations to the Executive Committee and Board of Directors

regarding letters in support of publication or de-publication of opinions, letters supporting or opposing California Supreme Court review, and amicus briefs. The Amicus Committee includes all known California attorneys who hold dual certification as both family law and appellate law specialists, and other leaders in the family law community.

ACFLS's Board of Directors and Amicus Committee have no direct ties to or interest in the litigants or their attorneys in this matter. Board Member, David Lederman had a conflict of interest in this matter and did not participate. ACFLS is solely concerned with the development of the law for families and children in California.

1. Conclusion

Because *Michael V. K.* satisfies at least three of the standards for publication as set forth in rule 8.1105, and publication will benefit the bench and bar alike, ACFLS requests the Court publish.

Sincerely,
Association of Certified Family Law Specialists

John T. Sylvester, CALS, CFLS[1]
Member, Amicus Committee

[1] *Certified Legal Specialist – Appellate Law & Family Law, State Bar of California

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3. I electronically served the following documents *(exact titles):*
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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