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May 11, 2023

Acting Presiding Justice Richard D. Huffman
Justice William Dato
Justice Truc T. Do

Fourth District Court of Appeal, Division One
Symphony Towers
750 B Street, Suite 300
San Diego, California 92101

Re: T.W. v. M.S. - No. D079984
Request for Publication

Dear Acting Presiding Justice Huffman and Justices Dato and Do:

The Association of Certified Family Law Specialists (ACFLS) requests publication of this Court's opinion in the case *T.W. v. M.S.*, no. D079984, filed on April 28, 2023. This opinion, which addresses the renewal of domestic violence restraining orders ("DVRO"), meets the standard for publication under subdivisions (2), (3), (4), and (6) of Rule 8.1105(c).

In *T.W. v. M.S.*, the Court reversed the denial of a request to renew a DVRO. The Court found the trial court applied the correct legal standard, but abused its discretion under the facts of the case, because the evidence established continued abuse and hostility through the restrained party's misuse of the court system. This included multiple filings made with the intent of harassing the protected party and destroying her mental and emotional calm. These filings were so meritless that the trial court had declared the restrained party a vexatious litigant. The restrained party had also repeatedly violated court orders, including those which required him to pay for child support,

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sanctions, and therapy costs. The restrained party had also continued to harass the protected party's attorney and his staff, despite a civil restraining order protecting those individuals. The protected party asserted that if the restrained party felt comfortable violating the court's orders when a DVRO was in place, her apprehension was genuine and reasonable that his harassment would continue, if not escalate, in the absence of such an order.

This Court found that while the methods of abuse had changed since entry of the DVRO, the restrained party's aggressive and abusive behavior had remained unchanged. In the face of this conduct, the protected party's apprehension of future abuse was genuine and reasonable. The restrained party's litigation conduct also demonstrated that he had not moved on with his life, which fact also supported a reasonable apprehension of future abuse.

This opinion meets the standard for publication under subdivision (2) of Rule 8.1105(c), because it applies an existing rule of law to a new set of facts. At least two cases address the issue of litigation conduct as domestic violence.

The court in *Lister v. Bowen* (2013) 215 Cal.App.4th 319, 336 said in dicta: "We see no reason why a court, along with findings that it might make about such things as a party's inappropriate demeanor in court or troublesome statements as a witness, cannot also find, where appropriate, that a party's litigation strategies and tactics are evidence of inappropriate behavior that provides grounds for a restraining order's renewal." However, the *Lister* court did not actually decide that issue, noting: "Nonetheless, we do not need to, and do not, make a determination of this issue herein."

The reviewing court in *Ashby v. Ashby* (2021) 68 Cal.App.5th 491, 516-517 went a little further, holding: "[C]ustody and financial disputes are often used by a restrained party as a pretext to continue harassing and controlling the protected party. Our record shows Jeff willfully violated multiple custody court orders and strategized to financially starve Michelle and pressure her into terminating the DVRO. Judge Melzer's factual findings regarding Jeff's spiteful litigation tactics, including Jeff's appalling alliance with Michelle's abusive father, demonstrated a high level of viciousness and malevolence towards Michelle."

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However, neither *Lister* nor *Ashby* goes into the same level of detail as *T.W. v. M.S.*, which addresses at length the type and amount of harassing litigation conduct that may be considered to have risen to the level of domestic violence. ACFLS is not aware of another case which addresses this issue so thoroughly.

This is extremely important because it is, in the experience of our members, *very common* for abusers to use litigation as a means to contact and torment domestic violence survivors after issuance of a DVRO. If it is not clear that such contact can support a finding of a reasonable apprehension of future abuse, there will be no reason for abusers to curb such conduct. Publication of this opinion will make clear to both litigants and trial judges that abuse of all kinds, including through litigation, will support renewal of restraining orders.

The formal recognition that domestic abusers often apply their talents to finding new ways of harassing their victims that may not initially appear to violate the DVRO, and that these can be grounds for a reissuance, would be incredibly helpful to domestic violence survivors in California.

As for subdivision (3), this opinion provides a clear and thorough explanation of the DVRO renewal process, and the showing required for renewal.

As for subdivision (4), this opinion clarifies Family Code section 6345, to ensure that litigation harassment is part of the analysis.

And as for subdivision (6), this opinion addresses domestic violence, and the renewal of restraining orders, both of which are legal issues of very significant public interest.

ACFLS is a nonprofit, statewide bar association with 700 members certified by the State Bar of California, Board of Legal Specialization as family law specialists. Since its founding at the inception of the State Bar's family law certification program, ACFLS has taken an active public policy role when the Appellate Courts, Legislature, and Judicial Council consider matters of significance to family courts, family court populations, or the family law bar.

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ACFLS has an active, all-volunteer amicus committee that reviews cases and makes recommendations to the Board of Directors regarding letters supporting publication or depublication of opinions, letters supporting or opposing California Supreme Court review, and amicus curiae briefs.

The ACFLS Board of Directors and Amicus Committee have no direct ties to or interests in the litigants or the attorneys in this matter.

ACFLS has appeared as amicus curiae in approximately 16 intermediate court of appeal and California Supreme Court cases. Lawyers and family court judges throughout California bring cases to the committee for consideration. The Amicus Committee includes as its members some of the most experienced family law and appellate attorneys, including the six lawyers who are dual certified in family law and appellate law (Leslie Ellen Shear, Claudia Ribet, Stephen Temko, Ronald Funk, Christopher Melcher, and Michelene Insalaco); retired supervising Family Law Division Judge Thomas Trent Lewis; and one of the State's foremost family law continuing education lecturers, Garrett C. Dailey. ACFLS' amicus committee is an all-volunteer effort.

Best Regards,

M. Insalaco

Michelene Insalaco, CFLS, CALS
ACFLS Amicus Committee

CA 4th District Court of Appeal Division 1 Court Name	PROOF OF SERVICE	D079984 Case Number
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I declare under penalty of perjury that the foregoing is true and correct.

05-11-2023

Date

/s/Michelene Insalaco

Signature

Insalaco, Michelene (161711)

Last Name, First Name (Attorney Number)

Sucherman - Insalaco LLP

Firm Name