

Executive Director  
DEANNA (DEE) ROLEWICZ  
President  
DIANNE M. FETZER  
Vice President  
MICHELE BROWN  
Treasurer  
MARY MOLINARO  
Secretary  
COURTNEY SHEPARD  
Past President  
JILL L. BARR  
Journal Editor  
NAGHMEH BASHAR  
Associate Journal Editor  
STEPHEN MONTAGNA  
Legislative Director  
AVI LEVY  
Associate Legislative Director  
DORIE A. ROGERS  
Technology Director  
STEPHEN D. HAMILTON  
Associate Technology Director  
DAVID M. LEDERMAN  
Education Director  
SHERRY PETERSON  
Membership and Benefits Director  
KELLY CHANG RICKERT  
Outreach Director  
RICHARD KLIEVER  
Regional Director  
JASON M. SCHWARTZ  
Chapter Director (1)  
MELINDA SAMMIS  
Associate Chapter Director (1)  
HENRY LEWIS  
Chapter Director (2)  
FREDRICK S. (RICK) COHEN  
Associate Chapter Director (2)  
STEPHANIE L. WILLIAMS  
Chapter Director (3)  
CATHERINE GOODROW  
Associate Chapter Director (3)  
LISA MCCALL  
Coordinating Director (1)  
CHRISTOPHER MELCHER  
Coordinating Director (2)  
STERLING E. MYERS  
Coordinating Director (3)  
DIANE WASZNICKY  
.....

REPLY TO:  
Leslie Ellen Shear  
lescfls@me.com

March 18, 2019

Presiding Justice Luis A. Lavin  
Associate Justice Anne H. Egerton  
Associate Justice Halim Dhanidina  
Court of Appeal of California  
Second District, Division Three  
Ronald Reagan State Building  
300 S. Spring Street  
2nd Floor, North Tower  
Los Angeles, CA 90013

Re: *Molinaro v. Molinaro* B282014

Dear Acting Presiding Justice Lavin and Associate Justices:

The Association of Certified Family Law Specialists, a specialty bar association with approximately 725 members, requests publication of *Molinaro v. Molinaro* under Cal. Rules of Court, rule 8.1105(c)(1)(2)(3)(4) and (6).

*Molinaro* illuminates the intersection of the Domestic Violence Prevention Act internet abuse cases (*In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416; *Altafulla v. Ervin* (2015) 238 Cal.App.4th 571<sup>1</sup>; *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483; and *Conness v. Satram* (2004) 122 Cal.App.4th 197) and the parental conduct and free speech cases (*In re Marriage of Candiotti* (1995) 34 Cal.App.4th 718; *In re Marriage of Hartmann* (2010) 185 Cal.App.4th 1247).

---

<sup>1</sup> *Altafulla* was published at ACFLS's request.

Hon. Luis Lavin and Associate Justices  
Second District Court of Appeal, Div. 3  
March 18, 2018  
Page 2 of 2

*Candiotti* was decided before the explosion of social media. Before Facebook and Twitter and Instagram. Before the cases on family abuse via internet. In other words, this decision expressly addresses the continued viability of *Candiotti* in light of the more recent DVPA cases involving internet abuse. That's really important and new. The mother in *Candiotti* did not have the digital tools that were available to the father in *Molinaro*.

Family law courts and lawyers are increasingly encountering the tensions between protecting children and ex-partners, and protecting free speech in the social media era. The *Molinaro* decision provides valuable guidance for navigating that balancing act.

*Candiotti* involved the mother's comments about a third party – the children's stepmother. This case deals with Facebook posts about the other parent, which is directly relevant to today's world. While we understand how such posts can cause pain and complicate the parents' and children's future interactions, this case reminds us that the restraints must be narrowly framed and focused on protecting the children.

*Molinaro* goes beyond *Evilsizor*, which properly restrained digital distribution of private files intercepted from the wife's mobile phone. *Molinaro* reverses a family court's broader order barring the father from any discussion of the family court proceedings on social media. The opinion distinguishes *Hartmann*, *supra*, upholding a restraint on making disparaging remarks about the other parents to the children.

*Molinaro* rejects (at p. 14) the claim that the DVPA is unconstitutionally vague as to the scope of the conduct that it allows a family court to classify as abuse. This holding is a matter of first impression and thus publication worthy under rule 8.1105(c)(1).

Our committee often hears from family law judicial officers who see value in unpublished family law opinions. Several contacted us about *Molinaro*. One retired bench officer wrote to us,

There are a lot of practical discussions of evidence and procedure that would be valuable to practitioners.

Hon. Luis Lavin and Associate Justices  
Second District Court of Appeal, Div. 3  
March 18, 2018  
Page 3 of 3

There is an important First Amendment ruling as well, which provides useful guidance to trial courts about how far they can go to stop a party from talking about the disso case outside the presence of the immediate family.

There are a number of other topics discussed that also would be useful to practitioners and to judges, particularly those who are not well versed in where the lines are in DV cases and what the court can properly order.

We agree. For example, footnote 3 addresses the application of the Evidence Code hearsay exceptions in commonplace family law and DVPA fact-patterns. At page 6, the opinion notes that Michael's failure to make an offer of proof regarding the children's prospective testimony forfeited that issue on appeal. Similarly, the opinion (at p. 11) illustrates that mentioning exhibits on the record does not amount to getting those exhibits admitted into evidence.

Since its founding at the inception of the certification of family law specialists by the State Bar, ACFLS has played 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. ACFLS has appeared as amicus in many family law appellate cases, including cases where the organization's participation was invited by the appellate court.

ACFLS has an active amicus committee 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. ACFLS's Board of Directors and Amicus committee have no direct ties to or interest in the litigants or their attorneys in this matter.

Respectfully submitted,



Leslie Ellen Shear, CFLS, CALS  
Co-chair ACFLS Amicus Committee