

## CASE ALERT

*A.F. v. Jeffrey F.* (2022) 79 Cal. App. 5th 737

### Key Points:

- **Minors Have the Right to Request a Domestic Violence Restraining Order Against a Custodial Parent.**
- **Attorneys Representing Minors in Civil Matters Are Not “Neutral Minor’s Counsel”.**
- **A Parent and a Child Sharing the Same Interest in Protecting the Child from the Other Parent Does Not By Itself Create an Attorney Conflict of Interest.**
- **Substantial Evidence Must Support a Determination of Whether Representation is Simultaneous or Successive in Ruling on Attorney Conflict of Interest.**

### Summary of the Case

Father had a history of abuse towards his wife, Mother. Mother filed for a Domestic Violence Restraining Order (DVRO) for protection from Father in 2013. The trial court granted Mother a DVRO. Mother also had a Criminal Protective Order against Father. In 2015, Mother and Father dissolved their marriage. They agreed to a settlement including joint legal custody of minor Child who was 8 years old. By 2016 both the DVRO and criminal protective order had expired.

In 2021, there were several incidents between Father and Child. Specifically, Child alleged that Father had struck her in a rage and other physical and emotional abuse. Mother hired Attorney to represent Child so Child could get their own DVRO against Father. Attorney had represented Mother in her 2013 DVRO and 2015 dissolution (divorce) cases with Father. Mother filed the DVRO on behalf of Child and requested appointment as the Child’s Guardian ad Litem. Mother filed a declaration with the trial court detailing Child’s statements about Father’s abuse and the effects on the Child. The declaration also discussed Father’s history of abuse against Mother.

Father responded to the DVRO by requesting orders to 1) remove Mother as Child’s GAL and 2) disqualify Attorney from representing Child. The trial court granted both requests. The trial court found that Mother could not be the GAL as she was not a “disinterested and unbiased” individual who could know the difference between her personal feelings towards Father and what was in the best interests of Minor Child. The trial court also said the Attorney was representing Child and Mother at the same time, creating an impermissible conflict of interest under State Bar Rule of Professional Conduct Rule 1.7 (Rule 1.7).

On appeal, the Fourth District noted that there was not substantial evidence to support the finding that the Attorney was representing Mother and Child at the same time in violation of Rule 1.7. The Court, thus, found that the trial court abused its discretion in disqualifying Attorney from representing Child. While this was the only issue Mother appealed, the Appellate Court discussed other significant points in its opinion. These points included:

**1. Minors Have the Right to Request a Domestic Violence Restraining Order Against a Custodial Parent Even If the Allegations Could be Raised in a Custody Matter.**

This case confirms that a minor child has an independent right to seek a Domestic Violence Restraining Order (DVRO) against their custodial parent under the Domestic Violence Prevention Act (DVPA). The Appellate Court made clear that even though Mother and Father had a custody agreement through their dissolution case, Child had a right to seek their own modifications to that arrangement through a DVRO. Child did not have to wait for Mother to request a change in custody under the dissolution case.

**2. Attorneys Representing Minors in Civil Matters Must Zealously Represent Their Client and Are Not the Same as Court-Appointed Minor's Counsel.**

This case is also helpful for understanding that the role of an attorney representing a child as their client in a DVRO case is different than a court-appointed Minor's Counsel's role in family law matters. The Appellate Court clarified that an attorney representing a minor in a DVRO case is required to "zealously" represent their client interests. In contrast, Minor's Counsel has a duty to represent both what Minor's Counsel believes is in the best interest of the child and what the child wants.

**3. A Parent and a Child Sharing the Same Interest in Protecting the Child from the Other Parent is Not by Itself a Conflict of Interest for an Attorney.**

This case also makes clear that a parent and child can share the same goal of restricting the other parent's access to the child without it being a conflict of interest for the attorney under Rule 1.7. Here, Father argued that Mother had been wanting to change the custody order for a long time and the Child's DVRO was really a custody modification wanted by Mother. Father stated that this was evidence of Mother's influence on Attorney and showed a of conflict of interest. The Court found that Father's accusations that Mother was influencing Attorney's representation of Child were not enough to prove conflict of interest to remove Attorney. The Court also noted that Father's claims were speculation and, by itself, not evidence there was a conflict of interest.

**4. Substantial Evidence Must Support Determination of Whether Representation is Simultaneous or Successive in Ruling on Attorney Conflict of Interest**

The Appellate Court detailed the difference between the two different forms of conflict of interest under Rule 1.7. Successive representation happens where an attorney represents a client whose interest are against or harmful to their former client. Simultaneous representation happens when an attorney represents more than one client at a time and each client's interests may be against or harmful to the other client.

Here, Father had argued that Attorney was representing Mother and Child at the same time. The Appellate Court disagreed based on the following findings:

- 1) Once the trial court removed Mother as Child's GAL she was not a part of Child's DVRO case. Thus, Mother was not "represented" by Attorney in Child's case.
- 2) Mother filing a declaration in Child's case that included *her* history with Father was not enough to prove that Attorney was "representing" her. The declaration was only relevant to the trial court's finding that Mother was an inappropriate GAL for Child, given her personal interests in the dispute.
- 3) While the trial court still had the ability to make orders in Mother's and Father's dissolution case, there were no pending actions or requests waiting to be decided in the case. Thus, at the time Child filed their DVRO request, the dissolution case was inactive or "dormant", so Attorney was not representing Mother in the dissolution case.
- 4) Mother had signed a "conflict of interest" waiver with Attorney. The Court said that this waiver showed that, even if Attorney represented Mother and Child *separately*, it was in different cases at different times and not at the same time in one case.

The Court said it could not determine if Attorney should be disqualified under rules on successive representation. It only determined that disqualification based on simultaneous representation was improper.

#### PRACTICE TIPS

1. Use this case to support a minor child's decision to file for protection through a Domestic Violence Restraining Order against a custodial parent, even if there's an existing custody agreement that could be modified.
2. Use this case to show that the attorney representing a minor child must "zealously" represent the child's interests and that this role is not the same as a court-appointed Minor's Counsel.
3. Use this case to help determine whether there may be a conflict of interest in representing the minor child of a former client particularly if it is the same opposing party or the parent of the minor.

For questions or clarifications, email or call Family Violence Appellate Project at [info@fvapl.org](mailto:info@fvapl.org) or (510) 380-6243. Thank you