



## **CASE ALERT**

### **Guidance for Requesting Orders on Social Media Use and other Speech in Domestic Violence Cases**

Family Violence Appellate Project was involved in the partial publication of the California case *Molinaro v. Molinaro*, 33 Cal.App.5th 824 (2019). The only section of the case that is published and usable in court is Section 3.

**This case may be useful if your client wants** orders that limit or protect against communication by the other party, especially on social media platforms in Domestic Violence Restraining Order cases.

#### **Summary of the Case**

##### **Courts cannot stop all postings on social media as part of a restraining order**

In *Molinaro*, a parent challenged a part of a domestic violence restraining order that stated the parent was not allowed to **'post anything about the case on Facebook.'** In this case, the parent had made negative comments about the other parent in his posts, but most of the posts talked about the divorce generally. Importantly, there was no evidence that these posts were directed at, or shown to, the children in the case. The appellate court ruled that stopping the parent from posting anything on Facebook about the case was too broad of an order. The order violated the parent's right to free speech under the California Constitution. Generally, the California Constitution has stronger protections than the First Amendment of the US Constitution. Here the court found that the order went too far.

##### **Courts can make orders that a parent may not post about a case or the other parent when the posts are directed to or exposed to the children**

In this case, the appellate court recognized that the trial court had the right to make an order stopping the parent from posting things about the case or the other parent when it was directed to the minor children or would be seen by the children. In this case, though, the parent who posted on Facebook made general comments about the case and his feelings about it. There was no evidence the posts were directed at the children or that the children saw them. As a result, a blanket order, preventing all speech about the case on Facebook was too broad.

##### **Courts can always make orders that a parent may not post speech that is abuse**

In this case, the court confirmed that some speech could qualify as harassment, threats, or disturbing the peace, which are abuse under the Domestic Violence Prevention Act. **Trial**

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**courts can always make orders forbidding those types of abusive speech.** For instance, in the case of *Evilsizor v. Sweeney*, the court made an order stopping one parent from sharing the other parent's email and text messages with others. The court of appeal said the order did not violate the parent's right to free speech because sharing the other parent's private information disturbed her peace, and so the speech was domestic abuse. **Any speech that is abuse under the Domestic Violence Prevention Act is not protected by the Constitution, and the court can make orders stopping this type of speech.**

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### Practice Tips

**If you want an order that stops or prevents the other person from posting about your case on social media, explain how:**

- 1) these posts or messages are abuse because they are threats or disturb your peace; or**
- 2) these posts are directed at the children, or the children will be exposed to them.**

**If possible, attach specific examples of the types of postings you want to stop. In your declaration, describe the types of postings and their effect on you and the children.**

For questions or clarifications, contact Family Violence Appellate Project at [info@fvaplaw.org](mailto:info@fvaplaw.org) or (510) 858-7358. Thank you!