



May 11, 2015

By Overnight Delivery

Honorable Patricia D. Benke, Acting Presiding Justice
Honorable Judith L. Haller, Justice
Honorable Terry B. O'Rourke, Justice
California Court of Appeal
Fourth Appellate District, Division One
Symphony Towers
750 B Street, Suite 300
San Diego, California 92101

Re: *Faton v. Ahmedo*, Request for Publication of Decision filed April 22, 2015
Court of Appeal Case No. D066119
Superior Court Case No. DV037475

Honorable Acting Presiding Justice Benke and Justices Haller and O'Rourke:

Family Violence Appellate Project (FVAP) respectfully requests publication of this Court's opinion in the above-captioned case pursuant to California Rule of Court 8.1120(a). We are joined in this request by Bay Area Legal Aid, California Partnership to End Domestic Violence, California Women's Law Center, Community Overcoming Relationship Abuse, Domestic Violence Legal Empowerment and Appeals Project, the Harriet Buhai Center for Family Law, Laura's House, Legal Aid Association of California, Legal Aid Foundation of Los Angeles, Neighborhood Legal Services of Los Angeles County, the Pro Bono Project of Silicon Valley, Rape Crisis Advocates Serving Fresno County, and San Diego Volunteer Lawyer Program (statements of interest of each organization are below)*.

The Court's opinion in *Faton v. Ahmedo* directly addresses a recurring issue that is important to domestic violence victims who obtain restraining orders: the ability to seek attorney fees pursuant to the Domestic Violence Prevention Act (DVPA), Family Code sections 6200, *et seq.* If published, this will be the first decision to provide guidance to trial courts in the common instance where a victim of abuse is not initially represented and so does not request attorney fees, but later obtains an attorney and then seeks attorney fees.

Publication of an appellate decision is encouraged when, as here, an opinion "explains" an "existing rule of law" and "advances . . . clarification . . . or construction" of a statutory provision. (Cal. R. Ct. 8.1105(a)(3), (4).) *Faton v. Ahmedo* establishes that the prevailing party in a domestic violence restraining order case has the right to an award of attorney fees, made after notice and a hearing, even if the party failed to request attorney fees on the initial restraining order application, and even though the request "deviates from the procedure provided

for in the [DV-100] form.” (Slip. Op. at 9.) This Court affirmed the trial court’s grant of attorney fees, holding that a litigant is not barred from making a request for attorney fees if such request was not made in his or her initial restraining order application. Rather, all that is required under the DVPA for a court to award attorney fees is a “notice and a hearing.” (Slip. Op. at 11.) This decision *should* therefore be published as it explains an existing rule of law. (Cal. R. Ct. 8.1105(a)(3) [emphasis added].)

Further, this Court’s explication of the legislative intent behind Family Code section 6344 and the DVPA “makes a significant contribution to legal literature by reviewing . . . the development of . . . the legislative . . . history of a provision of a . . . statute, or other written law.” (Cal. R. Ct. 8.1105(c)(7).) This Court held the intent of the DVPA is to prevent domestic violence, “and this intent is advanced through expeditious issuance of restraining orders” and not the expeditious resolution of attorney fees requests. (Slip. Op. at 11.) Therefore, despite appellant’s contention to the contrary, nothing in the underlying goals of the DVPA “require that an attorney fees request be raised and adjudicated at the same time as the merits of the DVRO request.” (Slip. Op. at 12.) Additionally, there was no legislative intent when creating the DVPA to “deprive a trial court of fundamental jurisdiction to award attorney fees solely because the prevailing party failed to make the fee request through the use of the standard form.” (Slip. Op. at 12 -13.) This decision *should* therefore be published as it reviews the legislative history and also advances a new clarification of the attorney fees provision in the DVPA, Family Code section 6344(a). (Cal. R. Ct. 8.1105(a)(4) [emphasis added].)

We also urge publication as this Court’s clarification and explanation of requests for attorney fees under the DVPA will help victims of abuse who seek representation from private attorneys, by ensuring the right to seek attorney fees from the abuser at the end of trial. An appellate decision “should be certified for publication . . . if the opinion . . . [i]nvolves a legal issues of continuing public interest.” (Cal. R. Ct. 8.1105(c)(6).) Domestic violence impacts one in four women and one in fourteen men in the United States,¹ and the Centers for Disease Control estimate that domestic violence costs the United States more than \$5.8 billion yearly.² The California Department of Health Services describes domestic violence as a “devastating public health and safety issue” in this state.³ The ability to seek and obtain representation in order to prevent future abuse will often be tied to the ability to obtain an award of attorney fees.

Finally, California Rule of Court 8.1105(c)(2) states that an opinion of a Court of Appeal *should* be published if the opinion “[a]ppplies an existing rule of law to a set of facts significantly different from those stated in published opinions.” (Emphasis added.) The only other published

¹ Kaiser Permanente Institute for Health Policy, *Kaiser Permanente Policy Story, VI, no.10: Transforming the Health Care Response to Domestic Violence* (2012) <<http://ccrwf.org/wp-content/uploads/2013/01/KPStories-v1-no10-DomesViol-FINAL-rev-2.pdf>> (as of 4/29/15).

² Institute of Medicine of the National Academy of Sciences, *Clinical Preventive Services for Women: Closing the Gaps* (2011), p. 117. <<http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx>> (as of 4/29/15).

³ California Department of Health Services, *California Statewide Policy Recommendations for the Prevention of Violence Against Women, A Final Report to the National Centers for Disease Control and Prevention* (2006), <<http://www.cdph.ca.gov/HealthInfo/injviosaf/Documents/VAWSPP-EPIC.pdf>> (as of 4/29/15).

case that discusses Family Code section 6344, subdivision (a), in the context of awarding attorney fees to an abused party is *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495. *Loeffler* affirmed an award of attorney fees after the losing party failed in his motion to dissolve a domestic violence restraining order. *Id.* at 1502. Unlike *Loeffler*, the present case involved an award of attorney fees after a party was granted a restraining order. Accordingly, this opinion should be published given the scarcity of authority applying section 6344, subdivision (a), to particular factual settings. (See Cal. R. Ct 8.1105(c)(2).)

For these reasons, and because an opinion that meets the Rule 8.1105 standards “*should* be certified for publication,” we respectfully request that the Court certify *Faton v. Ahmedo* for publication. (Cal. R. Ct. 8.1105(c) [emphasis added].)

Respectfully Submitted,
FAMILY VIOLENCE APPELLATE PROJECT



Jennafer Dorfman Wagner
Senior Attorney

* Family Violence Appellate Project (FVAP), a non-profit 501(c)(3) entity, is the only organization in California whose mission is to bring and defend appeals of family law cases involving important domestic violence issues.

Bay Area Legal Aid (BayLegal) is the largest non-profit law firm serving the seven Bay Area counties in Northern California and represents thousands of domestic violence survivors each year in family law, immigration, public benefits, consumer, youth, housing and health care matters.

California Partnership to End Domestic Violence (CPEDV), *amicus* in this matter, is the federally recognized State Domestic Violence Coalition for California, representing over 200 organizations and individuals statewide, united in their commitment to safety and justice for victims.

The California Women’s Law Center (CWLC) is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls. Since its inception in 1989, CWLC has placed a particular emphasis on eradicating all forms of discrimination and violence against women.

Community Overcoming Relationship Abuse (CORA) provides free and confidential services to victims and survivors of domestic/dating violence and abuse, including child and teen witnesses, in San Mateo County.

Domestic Violence Legal Empowerment and Appeals Project (DV LEAP) provides a stronger voice for justice by helping overturn unjust trial outcomes, advancing legal protections for victims and their children through expert appellate advocacy, training lawyers, psychologists, and judges on the best practices, and spearheading domestic violence litigation in the U.S. Supreme Court. DV LEAP also works to ensure that federal and state courts understand the realities of domestic violence and the law when deciding cases with significant implications for domestic violence litigants.

The Harriett Buhai Center for Family Law is among the largest and few non-profit firms exclusively dedicated to providing comprehensive free family law assistance to very low-income victims of domestic violence in California.

Laura's House is a comprehensive domestic violence agency in South Orange County that provides residential shelter services, counseling and legal services to hundreds of women and children.

The Legal Aid Association of California (LAAC) is a statewide membership association of more than eighty public interest law non-profits, which provide free civil legal services to low-income people and communities throughout California. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations, including domestic violence victims and those seeking access to the courts to protect themselves and their children from abuse.

Legal Aid Foundation of Los Angeles (LAFLA) has been the frontline law firm providing civil legal services to poor and low-income people in Los Angeles County for over 85 years. With six neighborhood offices, three Domestic Violence Clinics and four Self Help Legal Access Centers, LAFLA serves diverse communities and is the first place thousands of poor people turn to when they need legal assistance for a crisis that threatens their shelter, health and livelihood. LAFLA's Supporting Families Working Group advocates provide direct legal and case management services to survivors of domestic violence/intimate partner abuse and their families, including direct representation at the trial and appellate court levels.

Neighborhood Legal Services of Los Angeles County (NLSLA), a private non-profit 501(c)(3) law firm, is one of the primary legal assistance organizations in Los Angeles, providing free attorney assistance to low-income families and individuals. NLSLA's primary mission is to combat poverty through the judicial system to improve the lives of families and individuals in their community.

Since 1986, Pro Bono Project of Silicon Valley has provided legal services to indigent individuals in Santa Clara County, many of whom have experienced domestic violence. Publication of this case expands the body of precedential domestic violence law, benefitting our volunteer attorneys as well as the clients they serve.

Rape Crisis Advocates Serving Fresno County (RCS Fresno) is the only 24-hour response rape crisis center in Fresno County and serves primarily low-income and Latina survivors of sexual violence. Our mission is to end sexual violence and empower survivors while supporting safe, consensual relationships for all people.

San Diego Volunteer Lawyer Program, Inc. (SDVLP), was established in 1983 as a private, not for profit, charitable law firm which provides pro bono legal assistance to indigent residents of San Diego County. One of SDVLP's priority areas of service is legal assistance to victims of domestic violence.

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