



**§6309 Is Now The Law**

**...Now What?**

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**Hon. Susan Lopez-Giss (Ret.) – ADR Services, Inc.**

**Hon. Lawrence Riff – Los Angeles Superior Court**

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## Today's Speakers



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# Full Content of Code §6309

6309.

(a)(1) The Legislature finds and declares all of the following:

- (A) Domestic violence is an urgent public safety and public health crisis. More than one in three California women and one in seven men experience intimate partner physical violence, intimate partner sexual violence, or intimate partner stalking in their lifetimes. Sexual and gender minorities, including queer, gender nonbinary, intersex, and transgender persons, experience domestic violence at rates as high or higher than cisgender and heterosexual persons. Domestic violence accounts for more than 15 percent of all violent crimes in California and more than 10 percent of all California homicides.
- (B) Domestic violence survivors are most at risk when attempting to leave an abusive relationship. Without effective intervention in domestic abuse, the violence often increases in frequency and severity over time. Research has established that the civil domestic violence restraining order is the most effective legal remedy for intervening in and preventing future abuse.
- (C) Domestic violence survivors who enter the family or civil court systems seeking protection often face ongoing abuse in the form of litigation abuse. Litigation abuse is the use of legal or bureaucratic procedures by abusive partners to continue to attack, harass, intimidate, coercively control, or maintain contact with their former partners through the litigation system by exerting power over them, forcing them to have contact, financially burdening them with excessive discovery and litigation, degrading and insulting them in legal papers, unduly delaying the court process and final resolution of important issues, or dissuading them from pursuing legal protection. Studies show that litigation abuse causes severe consequences for survivors, including economic hardship and psychological harm, and foregoing legal relief in part or in whole. Research also shows that judicial officers and court evaluators often misunderstand or overlook litigation abuse and its effects on survivors.
- (2) It is the intent of the Legislature to accomplish the following:
  - (A) To promote the health and safety of domestic violence survivors and their children.
  - (B) To ensure that domestic violence survivors can seek and receive, without delay, the protection offered by the domestic violence restraining orders, which are remedial injunctive orders intended to offer expedited separation and protection from abuse.
  - (C) To provide for separation and to prevent future acts of domestic violence by streamlining any domestic violence restraining order discovery to expedite the adjudication of requests for restraining orders and prevent abusive litigation tactics that interfere with legislative intent to protect domestic violence victims.

(b) Consistent with the findings and declarations and statements of legislative intent in subdivision (a), discovery pursuant to the Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure), is not permitted pursuant to this part except as set forth in this section.

# Full Content of Code §6309

(c)(1) A court may grant a request for discovery only upon a showing of good cause for the discovery by the party making the request.

- (2) A party may make an oral or written request for discovery to the court at an evidentiary hearing pursuant to this part.
- (3) A person shall not be required to make a written objection or response to a request for discovery but may express any objection or response orally or in writing or at the hearing.

(d) In determining whether to permit discovery in a proceeding pursuant to this part, the court shall consider all of the following:

- (1) The importance and relevance of, and need for, the information sought to be obtained.
- (2) The likelihood that the information may be acquired by another permitted discovery method, or may be acquired by other methods including pleadings or examination at the hearing.
- (3) The delay in completion of the hearing, which is entitled to calendar preference pursuant to Section 244, if the discovery is permitted.
- (4) The potential, if any, that the discovery may induce trauma in any person involved in the proceeding.
- (5) Whether one or more persons are subject to any restraining or protective orders.
- (6) Any other factor that may affect the prompt and fair resolution of the proceeding.

(e) If a court finds good cause and grants a request for discovery pursuant to subdivision (c), the court may do either of the following:

- (1)(A) Continue the commencement of hearing for a reasonable period to permit one or more methods of discovery.
  - (B) If the court continues the hearing to allow for discovery pursuant to subparagraph (A), the court shall extend, and may modify, any restraining order in place.
- (2) Commence the hearing to receive evidence and then continue the hearing to permit one or more methods of discovery.

(f) The court shall limit and control any permitted discovery to the least intrusive methods as authorized pursuant to the Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) and the minimum number of items reasonably necessary to secure the requested information. The court shall specify the time for response to any permitted discovery after considering the items in subdivision (d).

(g) Nothing in this section is intended to take away rights afforded in the Domestic Violence Prevention Act. Nothing in this section is intended to infringe on the ability for abuse survivors to receive their police reports and evidence pursuant to Section 6228 or on parties' ability to discover their own business records without obtaining court permission, including medical records, phone records, or recordings of calls to 911, to provide corroborating proof.

## 4 Key Points of 6309

1

The Legislature has now finally answered the question: Yes, civil discovery is permissible in DVPA proceedings.

2

Such discovery is NOT as a matter of right; it is permitted only for good cause shown.

3

A party may not serve discovery before the evidentiary hearing; a party may SEEK discovery at the evidentiary hearing by oral request or in writing.

4

The court may or may not permit the discovery based on the good cause showing, the risk of abuse and the consequences of delay. The court may make any order, including modifying the TRO as necessary, limiting the method and timing of the requested discovery if discovery is permitted.

## Bonus Items!

Section 6309 does not preclude parties from agreeing to conduct civil discovery. Courts will expect counsel to meet and confer concerning potential discovery requests prior to the evidentiary hearing.

The court may permit the petitioner to present their case on the date set for the evidentiary hearing and then suspend the hearing for a short period of time to permit the respondent to conduct the permitted discovery.

# In Practice: Hypothetical 1

A temporary DRVO was issued alleging that Resp, the father of the party's 7 year old son, had, over a period of months engaged in coercive control by cutting off use of the credit card, by yelling at Petitioner, and by belittling Petitioner in front of the parents of children at their child's school. The temporary order gave Mother sole legal and physical custody of the child.

At the hearing, Respondent's lawyer orally requests a continuance pursuant to ----- to take petitioner's deposition or in the alternative asking Petitioner for the names of the witnesses to the alleged conduct at the school. Additionally Dad, argues that he wants to see the child.

- What do you suggest that Respondent's attorney include in this request...and ... what issues might Petitioner's lawyer respond and finally what might a judge order?
- And does the court take the meet and confer efforts into consideration or should counsel at least advise the court of what counsel tried to be prior to hearing to obtain discovery.

See: [\*In re Marriage of D.S. and A.S. \(2023\) 87 Cal.App.5th 926\*](#)

## In Practice: Hypothetical 2

FC 6309 requires "good cause" for discovery requests - but FC

Family Code §721(b):

The fiduciary relationship requires spouses to disclose "including but not limited to the other" as follows: (1) Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying.

And Family Code Section 271 allows for sanctions when a party prolongs or frustrates settlement.

How can FC Section 6309 be reconciled with FC sections 721 and 271?



## In Practice: Hypothetical 3

Parties are involved in a family law action (either a dissolution or parentage) and while the family law matter is pending one party files a DVRO. Does this stay any or all discovery in the underlying case?