

FVAP New Law Alert: AB 2369

How did AB 2369 change how attorney’s fees work in DVPA cases?

2022’s Assembly Bill 2369 ([AB 2369](#), eff. Jan. 1, 2023), amended [Family Code section 6344](#) to make it easier for survivors to get attorney’s fees, and harder for abusers, in domestic violence restraining order (DVRO) cases. [Section 6344](#) should be read such that “petitioner” means “protected party” and “respondent” means “restrained party.” This means that if a protected party defeats a restrained party’s request to *modify* or *terminate* their DVRO, they should still be considered “a prevailing petitioner,” but in these cases some courts may consider them “a prevailing respondent.” The chart below provides more information.

| FC § 6344 | BEFORE JAN. 1, 2023 | AFTER JAN. 1, 2023 |
|---|--|--|
| To get attorney’s fees, a DVRO petitioner has to show . . . | <p>(1) The petitioner is “prevailing”; <i>and</i> (2) The respondent “has or is reasonably likely to have the ability to pay”; <i>and</i> (3) Fees are appropriate, to the satisfaction of the court.</p> <p>Because of how the statute used to be written, some courts (incorrectly, in our view) also required petitioners to file an Income & Expense Declaration (FL-150) and show: (4) The petitioner “cannot afford to pay” for their own attorney’s fees; <i>and</i> (5) Fees are “appropriate” considering the parties’ “respective incomes and needs,” and “any factors affecting the parties’ respective abilities to pay.”</p> | <p>(1) The petitioner is “prevailing”; <i>and</i> (2) The respondent “has or is reasonably likely to have the ability to pay.”</p> <p>The petitioner should NOT have to file an Income & Expense Declaration (FL-150) to get fees under Family Code section 6344. But if the petitioner seeks fees under section 6344 and another law, they may be required to file a Declaration or provide other information for those fees under that other law.¹</p> <p>Generally, amendments to remedial or procedural statutes apply to actions when the new statute becomes effective.² AB 2369 should apply to <i>undecided</i> attorney’s fee requests, even if the DVRO hearing happened when the old law was in effect.</p> |
| To get attorney’s fees, a DVRO respondent has to show . . . | <p>(1) The respondent is “prevailing”; <i>and</i> (2) The petitioner “has or is reasonably likely to have the ability to pay; <i>and</i> (3) Fees are appropriate, to the satisfaction of the court.</p> | <p>(1) The respondent is “prevailing”; <i>and</i> (2) The petitioner “has or is reasonably likely to have the ability to pay”; <i>and</i> (3) The petition or request³ is either: (3a) “frivolous” <i>or</i> (3b) “solely intended to” either: (3b-i) “abuse” (3b-ii) “intimidate,” <i>or</i> (3b-iii) “cause unnecessary delay”*</p> <p>*These are the “6344(b) elements.”</p> |

How do attorney's fees work in domestic violence restraining order cases?

The Domestic Violence Prevention Act ([Fam. Code, § 6200 et seq.](#)) governs DVROs and allows the court to award attorney's fees to a "prevailing" party ([Fam. Code, § 6344](#)), if the party ordered to pay "has or is reasonably likely to have the ability to pay" ([Fam. Code, § 270](#)). This includes appeals.⁴

Step 1: Make your request. You can use the checkboxes on some Judicial Council DVRO forms (e.g., DV-100 and DV-120).⁵ You can make an oral request,⁶ or file a separate written request (e.g., FL-300).⁷ The request deadline is in [California Rules of Court, rule 3.1792](#).

Step 2: Notify the other side of your request.

Step 3: Have a hearing on your request. The court could decide your fees request when it decides the DVRO, or after, depending on the request timing and the court's calendar.

Is my client a "prevailing" petitioner if they only won in part?

It depends.⁸ For instance, the court may say abuse happened but deny a DVRO,⁹ or the court may grant a DVRO but deny some relief, such as financial or property requests. To know if you're "prevailing," maybe ask: Were the results "so insignificant that your client did not achieve any practical benefit from bringing the [request]"?¹⁰ If your client got *some* practical benefit (e.g., a finding of abuse, or granting some relief but not others), they *may be* "prevailing."

[AB 2369](#) shows "the Legislature's strong preference for awarding attorney fees to successful" petitioners, so the law "should be interpreted broadly to favor an award of attorney fees to a partially successful [petitioner]."¹¹ Still, courts may reduce the amount of fees awarded to correspond to the quantum of success.¹²

What if my client is responding to a DVRO request?

A respondent with a *total win* (no DVRO issued and no finding of abuse) would be "prevailing,"¹³ and may get fees if they meet the [6344\(b\) elements](#) (see above).

What makes a petition "frivolous or solely intended to abuse, intimidate, or cause unnecessary delay?"

This is decided on a case-by-case basis.

There is little DVRO case law on [Family Code section 6344](#). One case, *Loeffler v. Medina*, could be useful to show what a "frivolous" request to end a DVRO early looks like.¹⁴ Another case, *S.A. v. Maiden*, could be useful to show these fees may act as a sanction.¹⁵ FVAP's [case-annotated compendium](#) has additional cases.

Given the limited caselaw so far, it can be useful to look for analogies. "Frivolous" can mean, for instance, "totally and completely without merit or for the sole purpose of harassing an opposing party."¹⁶ Synonyms for "frivolous" include "groundless," "unreasonable," and "vexatious."¹⁷ Frivolousness could also arguably be demonstrated by meeting one of the definitions for "vexatious litigant."¹⁸ Whereas "frivolous" is an *objective* standard¹⁹ judged against a "reasonable attorney,"²⁰ a party's intent behind their filing is *subjective*, focused on their motivation, which can be inferred from surrounding circumstances.²¹

"Abuse" is defined in Family Code [sections 6203](#) and [6320](#).

[AB 2369](#) was meant to be like other laws that make it easier for one party to get fees than another, such as FEHA, anti-SLAPP, and the Political Reform Act.²² Those laws may also have cases that could be useful for you to show a petition is frivolous or solely intended to abuse, intimidate, or cause unnecessary delay.²³

Both my client and the opposing party sought DVROs—who is “prevailing?”

It depends.²⁴ The chart below provides more information.

| | Opposing Party (OP) Wins | OP Loses |
|-----------------------|--|---|
| Your Client (YC) Wins | <p>YC and OP are both “prevailing” petitioners and should get fees <i>for winning their own cases</i>.</p> <p>If YC and OP <i>partially win</i>—e.g., the court finds both parties abused each other but issues neither a DVRO, or the court grants each some but not all requested relief—both are arguably “prevailing” petitioners in their own cases and should get fees, but maybe at lesser amounts.</p> | <p>YC would get fees for “prevailing” as the petitioner <i>in YC’s DVRO case</i>.</p> <p>The court may grant YC fees for <i>defeating OP’s DVRO request</i>, if the other 6344(b) elements are met (see above).</p> |
| YC Loses | <p>OP would get fees for “prevailing” as the petitioner <i>in OP’s DVRO case</i>.</p> <p>The court may grant OP fees for <i>defeating YC’s DVRO request</i>, if the other 6344(b) elements are met (see above).</p> | <p>YC and OP are both arguably “prevailing” respondents, so the court may grant each party fees <i>for defeating the other’s request</i>, if the other 6344(b) elements are met (see above).</p> |

How do I show the other party “has or is reasonably likely to have the ability to pay?”

This is within the court’s discretion.²⁵ When deciding, the court may consider more than actual income and debt, including “property owned and obligations to be met as well as . . . [an] ability to earn.”²⁶ The court may also look to property recently sold,²⁷ or to the testimony of one party²⁸ or one third party witness,²⁹ and may presume someone will work or be self-employed to cover basic living expenses.³⁰

Note that [Family Code section 270](#) cases are useful *only to a point*—for establishing the ordered-to-pay party’s ability to pay, or likelihood thereof. But [section 270](#) cases are limited in providing guidance because they often also discuss *other* Family Code statutes governing attorney’s fees, which require the court to consider the needs and ability to pay *of the party asking for and being awarded fees*, unlike [Family Code section 6344](#).³¹

What is a reasonable amount of fees to request?

The amount is within the court’s discretion, reversed on appeal only if there is no substantial evidence to support it³² or it is so high or low it “shocks the conscience.”³³

The court can consider the Rules of Professional Conduct governing fee agreements, and “the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney’s efforts, [their] learning, [their] age, and [their] experience in the particular type of work demanded; the intricacies and importance of the litigation, the labor and the necessity for skilled legal training and ability in trying the cause, and the time consumed.”³⁴

How do I get more assistance?

Contact FVAP at info@fvaplaw.org or (510) 858-7358.

¹ *C.T. v. K.W.* (2021) 71 Cal.App.5th 679; *Darab Cody N. v. Olivera* (2019) 31 Cal.App.5th 1134.

² [Family Code section 9](#); *City of Clovis v. County of Fresno* (2014) 222 Cal.App.4th 1469, 1483-1485.

³ “Petition” and “request” should be considered basically interchangeable. The initial DVRO request is often called the “petition” (e.g., [Fam. Code, § 6225](#)), and subsequent requests to, e.g., modify or terminate, are often just called “requests” (e.g., [Cal. Rules of Court, rule 5.92\(a\)\(2\)](#)); some statutes say “application” more broadly (e.g., [Fam. Code, § 6222](#)).

⁴ *Nicole G. v. Braithwaite* (2020) 49 Cal.App.5th 990, 1001.

⁵ Judicial Council forms can be found [online here](#).

⁶ [Family Code section 6344](#) merely requires a “request,” “notice,” “and a hearing.”

⁷ *Faton v. Ahmedo* (2015) 236 Cal.App.4th 1160, 1169-1173.

⁸ [Code Civ. Proc., § 1032, subd. \(a\)\(4\)](#).

⁹ *In re Marriage of Fajota* (2014) 230 Cal.App.4th 1487, 1499 fn. 8.

¹⁰ *City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 782.

¹¹ See *Mann v. Quality Old Time Services* (2006) 139 Cal.App.4th 328, 338-340 (anti-SLAPP).

¹² See *Downey Cares v. Downey Community Development Com.* (1987) 196 Cal.App.3d 983, 997.

¹³ [Code Civ. Proc., § 1032, subd. \(a\)\(4\)](#).

¹⁴ *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1508-1509.

¹⁵ *S.A. v. Maiden* (2014) 229 Cal.App.4th 27, 38.

¹⁶ [Code Civ. Proc., § 128.5, subd. \(b\)\(2\)](#). This statute is cited *only* for defining “frivolous”; the other procedural or substantive requirements in this statute generally *should not* apply to attorney’s fees in DVRO cases. For a case using a similar definition, see *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.

¹⁷ *Christiansburg Garment Co. v. EEOC* (1978) 434 U.S. 412, 421-422.

¹⁸ [Code Civ. Proc., § 391 et seq.](#)

¹⁹ *Chitsazzadeh v. Kramer & Kaslow* (2011) 199 Cal.App.4th 676, 683-684.

²⁰ *Moore v. Shaw* (2004) 116 Cal.App.4th 182, 199.

²¹ *Jones v. Goodman* (2020) 57 Cal.App.5th 521, 533-540 (discusses differences between objective and subjective standards; compares “frivolous” to “bad faith” in a statutory scheme).

²² Committee analyses of AB 2369 can be useful for legislative intent: [found online here](#).

²³ Three statutory schemes can serve as examples, in addition to others: (1) Fair Employment and Housing Act (FEHA); [Gov. Code, § 12965, subd. \(b\)](#); e.g., *Patterson v. Superior Court* (2010) 70 Cal.App.5th 473, 487; *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 984; *Flannery v. Prentice* (2001) 26 Cal.4th 572, 583; *Beaty v. BET Holdings, Inc.* (9th Cir. 2000) 222 F.3d 607, 612.

(2) Anti-SLAPP statute ([Code Civ. Proc., § 425.16, subd. \(c\)\(1\)](#)): e.g., *Area 51 Productions, Inc. v. City of Alameda* (2018) 20 Cal.App.5th 581, 604-606; *Nunez v. Pennisi* (2015) 241 Cal.App.4th 861, 879; *Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 486; *City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, 627, fn. 19; *Graham-Sult v. Clainos* (9th Cir. 2014) 756 F.3d 724, 752. (3) Political Reform Act of 1974 ([Gov. Code, § 81000 et seq.](#)): e.g., *Travis v. Brand* (Jan. 30, 2023, S268480) ___ Cal.5th ___.

²⁴ Mutual or competing DVRO requests are also governed by [Fam. Code, § 6305](#).

²⁵ *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1509; *Blank v. Blank* (1933) 129 Cal.App. 403, 406-407.

²⁶ *Alcalay v. Alcalay* (1962) 200 Cal.App.2d 820, 823, internal quotation marks and citation omitted.

²⁷ *Kadello v. Kadello* (1934) 220 Cal. 1, 3.

²⁸ *In re Marriage of Mix* (1975) 14 Cal.3d 604, 614, citation omitted; *In re Marriage of F.M. & M.M.* (2021) 65 Cal.App.5th 106, 119, citing *In re Marriage of In re Marriage of Fregoso & Hernandez* (2016) 5 Cal.App.5th 698, 703.

²⁹ *Application of Sigismund* (1961) 193 Cal.App.2d 219, 224.

³⁰ *In re Schleich* (2017) 8 Cal.App.5th 267, 293.

³¹ E.g., [Fam. Code, §§ 2030, 7605](#).

³² *Faton v. Ahmedo* (2015) 236 Cal.App.4th 1160, 1173.

³³ *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1509.

³⁴ *In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 296-297.

The development of this product was supported in part by funding awarded by the United States Department of Justice, Victims of Crime Act, XL-22-05-1029, through the California Governor's Office of Emergency Services.

This fact sheet is not providing legal advice, should not replace the advice of an attorney, and uses California law only. Last updated February 28, 2023. Copyright © Family Violence Appellate Project 2023.