# ABUSE PREVENTION LAW AND PRACTICE
# TRAINING MATERIALS
# FOLEY HOAG LLP
# May 2, 2019

**ABUSE PREVENTION LAW AND PRACTICE**
**OUTLINE OF TRAINING**

**FOLEY HOAG LLP**
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| 1. | Welcome and Overview | Lola Remy |
| 2. | Discussion of Pro Bono and Volunteer Opportunities | Rebecca Cazabon |
| 3. | Dynamics of an Abusive Relationship & Unique Aspects of the Attorney-Client Partnership | Jamie Sabino & Rachel Biscardi |
| 4. | M.G.L. c. 209A Abuse Prevention Act | Wyley Proctor |
| 5. | Client Hypothetical and Discussion | Rachel Biscardi & Jamie Sabino |
| 6. | Break/Networking | |
| 7. | Preparing for the 209A Hearing | Noah Kaufman |
| 8. | Conducting the 209A Hearing | Mike Licker |
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## ABUSE PREVENTION LAW AND PRACTICE
## PRESENTER BIOS

**Rachel Biscardi, Esq.** is the Deputy Director of the Women's Bar Association and Foundation. Ms. Biscardi specializes in family law and she recruits, trains, and mentors volunteer attorneys to represent low-income victims of domestic violence. She taught family law at Northeastern University School of Law and New England Law, Boston and was the Course Instructor for the Family Law Clinic at New England Law, Boston. She was the recipient of the 2013 Lawyer's Weekly Excellence in the Law Award, the 2013 Boston University School of Law's Public Interest Award, and the 2011 Women's Bar Association's Certificate of Service. Before joining the WBF, Ms. Biscardi worked at Community Legal Aid, the Essex County District Attorney's Office, and clerked in the Probate and Family Court. Ms. Biscardi served on the Trial Court's 2017 Child Support Guidelines Task Force and the Trial Court's Domestic Violence Education Task Force. In 2010-2011, Ms. Biscardi served as the Women's Bar Association's (WBA) representative on the Legislative Task Force on Alimony which drafted the Alimony Reform Act of 2011. Ms. Biscardi was appointed to the 2016 MBA's Access to Justice Committee in 2014 and the BBA's Family Law Steering Committee in 2009. She has been a member of the Family Law Legal Services Task Force since 2004 and she served as co-chair of the Domestic and Sexual Violence Coalition from 2008-2013. In 2014, Ms. Biscardi published a Law Review Article entitled: "Dispelling Alimony Myths: The Continuing Need for Alimony and the Alimony Reform Act of 2011." She has also authored several articles on the value of pro bono work in such journals as the BBA Family Law Journal and the WBA Chronicle and appeared in television shows such as "Chronicle" and "Greater Boston with Emily Rooney". Ms. Biscardi is a graduate of Boston University School of Law with a specialization in litigation and dispute resolution.

**Rebecca Cazabon** performs a significant role in Foley Hoag's pro bono work and in the firm's training program. As managing attorney for Foley's Pro Bono Program, Rebecca coordinates and manages the pro bono work for the firm. She also represents low-income clients, mainly domestic violence and sexual assault survivors, in abuse prevention, immigration, privacy, housing, special immigration, criminal advocacy, and appellate matters. Rebecca Cabazon received The Massachusetts Association of Hispanic Attorneys Leadership Award in October 2016. In addition, Rebecca assists with the administration of Foley Hoag's litigation curriculum for junior associates.

**Noah J. Kaufman** is an Associate at Morgan Lewis, where he maintains an active pro bono practice. He regularly represents survivors of domestic violence in trial and appellate proceedings against their abusers, and was recently recognized with a Morgan Lewis pro bono award for his work with survivors of violence. While working at his prior law firm, Noah taught legal research and writing as a member of the adjunct faculty at both Northeastern University School of Law and Suffolk University Law School. During law school, he served as chair of the Student Bar Association and worked as an intern at Bay Area Legal Aid in San Francisco.

**Michael Licker** is an associate in Foley Hoag's Litigation Department, where he focuses his practice on white collar crime and government investigations, bankruptcy, securities litigation and other complex civil litigation. Michael's trial experience includes first- and second-chair responsibilities in both federal and state court. He has also argued in state and federal courts and successfully presented oral argument on behalf of a domestic violence survivor to the Massachusetts Supreme Judicial Court, resulting in the lower court's decision being overturned.

In addition to his trial experience at the firm, Michael spent four months serving as a Special Assistant District Attorney in Norfolk County, where he tried several criminal cases. He has represented companies and their executives in government investigations relating to a wide array of matters, including healthcare fraud, government contracting fraud, accounting, insider trading, antitrust, and obstruction of justice. His civil litigation practice includes representing clients in state and federal courts in matters involving RICO, the False Claims Act, accountants' liability, breach of fiduciary and fraud claims and other complex litigation matters.

**Wyley S. Proctor** is committed to public service. She is a zealous pro bono advocate, fighting for victims of domestic violence in divorce and custody cases. She is also active in numerous children's and pro bono organizations, including serving on the Massachusetts Bar Association's Access to Justice Section Council, the Advisory Committee of Bet Tzedek Legal Services, the Board of Friends of the Children Boston, and as a volunteer attorney with the Women's Bar Foundation. Prior to joining McCarter & English, Wyley practiced at Wilmer Cutler Pickering Hale and Dorr LLP focusing on intellectual property litigation.

**Jamie Ann Sabino** is a staff attorney for Massachusetts Law Reform Institute, a statewide nonprofit law and policy center where she works on issues of family law and child welfare and co-manages the Civil Legal Aid to Victims of Crime initiative. Prior to this position Ms. Sabino served for over 13 years as the VAWA STOP Grant Coordinator for the Massachusetts Trial Court, were she worked at a policy level on how the Trial Court handled cases involving domestic violence and sexual assault. Ms. Sabino formally practiced in the law firm of Klibaner and Sabino in Cambridge, MA concentrating in family law and criminal defense appellate law. Ms. Sabino is a past president of the Women's Bar Association and Women's Bar Foundation of Massachusetts and has been honored by the Boston Bar Association, the Women's Bar Association, the National Lawyers Guild, Massachusetts Chapter and Northeastern University School of Law for her commitment to pro bono work. She is a graduate of Wellesley College with a B.A. in History and Political Science and Northeastern University School of Law. Ms. Sabino is the mother of two wonderful sons.

## M.G.L. CHAPTER 209A. ABUSE PREVENTION.

### Section 1. Definitions.

Section 1. As used in this chapter the following words shall have the following meanings:

"Abuse", the occurrence of one or more of the following acts between family or household members:

(a) attempting to cause or causing physical harm;

(b) placing another in fear of imminent serious physical harm;

(c) causing another to engage involuntarily in sexual relations by force, threat or duress.

"Court", the superior, probate and family, district or Boston municipal court departments of the trial court, except when the petitioner is in a dating relationship when "Court" shall mean district, probate, or Boston municipal courts.

"Family or household members", persons who:

(a) are or were married to one another;

(b) are or were residing together in the same household;

(c) are or were related by blood or marriage;

(d) having a child in common regardless of whether they have ever married or lived together; or

(e) are or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston municipal courts consideration of the following factors:

(1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

"Law officer", any officer authorized to serve criminal process.

"Protection order issued by another jurisdiction", any injunction or other order issued by a court of another state, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or tribal court that is issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to another person, including temporary and final orders issued by civil and criminal courts filed by or on behalf of a person seeking protection.

"Vacate order", court order to leave and remain away from a premises and surrendering forthwith any keys to said premises to the plaintiff. The defendant shall not damage any of the plaintiff's belongings or those of any other occupant and shall not shut off or cause to be shut off any utilities or mail delivery to the plaintiff. In the case where the premises designated in the vacate order is a residence, so long as the plaintiff is living at said residence, the defendant shall not interfere in any way with the plaintiff's right to possess such residence, except by order or judgment of a court of competent jurisdiction pursuant to appropriate civil eviction proceedings, a petition to partition real estate, or a proceeding to divide marital property. A vacate order may include in its scope a household, a multiple

family dwelling and the plaintiff's workplace. When issuing an order to vacate the plaintiff's workplace, the presiding justice must consider whether the plaintiff and defendant work in the same location or for the same employer.

**Section 2. Abuse prevention proceedings; venue.**

Section 2. Proceedings under this chapter shall be filed, heard and determined in the superior court department or the Boston municipal court department or respective divisions of the probate and family or district court departments having venue over the plaintiff's residence. If the plaintiff has left a residence or household to avoid abuse, such plaintiff shall have the option of commencing an action in the court having venue over such prior residence or household, or in the court having venue over the present residence or household.

**Section 3. Remedies; period of relief.**

Section 3. A person suffering from abuse from an adult or minor family or household member may file a complaint in the court requesting protection from such abuse, including, but not limited to, the following orders:

(a) ordering the defendant to refrain from abusing the plaintiff, whether the defendant is an adult or minor;

(b) ordering the defendant to refrain from contacting the plaintiff, unless authorized by the court, whether the defendant is an adult or minor;

(c) ordering the defendant to vacate forthwith and remain away from the household, multiple family dwelling, and workplace. Notwithstanding the provisions of section thirty-four B of chapter two hundred and eight, an order to vacate shall be for a fixed period of time, not to exceed one year, at the expiration of which time the court may extend any such order upon motion of the plaintiff, with notice to the defendant, for such additional time as it deems necessary to protect the plaintiff from abuse;

(d) awarding the plaintiff temporary custody of a minor child; provided, however, that in any case brought in the probate and family court a finding by such court by a preponderance of the evidence that a pattern or serious incident of abuse, as defined in section 31A of chapter 208, toward a parent or child has occurred shall create a rebuttable presumption that it is not in the best interests of the child to be placed in sole custody, shared legal custody or shared physical custody with the abusive parent. Such presumption may be rebutted by a preponderance of the evidence that such custody award is in the best interests of the child. For the purposes of this section, an "abusive parent" shall mean a parent who has committed a pattern of abuse or a serious incident of abuse;

For the purposes of this section, the issuance of an order or orders under chapter 209A shall not in and of itself constitute a pattern or serious incident of abuse; nor shall an order or orders entered ex parte under said chapter 209A be admissible to show whether a pattern or serious incident of abuse has in fact occurred; provided, however, that an order or orders entered ex parte under said chapter 209A may be admissible for other purposes as the court may determine, other than showing whether a pattern or serious incident of

abuse has in fact occurred; provided further, that the underlying facts upon which an order or orders under said chapter 209A was based may also form the basis for a finding by the probate and family court that a pattern or serious incident of abuse has occurred.

If the court finds that a pattern or serious incident of abuse has occurred and issues a temporary or permanent custody order, the court shall within 90 days enter written findings of fact as to the effects of the abuse on the child, which findings demonstrate that such order is in the furtherance of the child's best interests, and provides for the safety and well-being of the child.

If ordering visitation to the abusive parent, the court shall provide for the safety and well-being of the child and the safety of the abused parent. The court may consider:

(a) ordering an exchange of the child to occur in a protected setting or in the presence of an appropriate third party;

(b) ordering visitation supervised by an appropriate third party, visitation center or agency;

(c) ordering the abusive parent to attend and complete, to the satisfaction of the court, a certified batterer's treatment program as a condition of visitation;

(d) ordering the abusive parent to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding visitation;

(e) ordering the abusive parent to pay the costs of supervised visitation;

(f) prohibiting overnight visitation;

(g) requiring a bond from the abusive parent for the return and safety of the child;

(h) ordering an investigation or appointment of a guardian ad litem or attorney for the child; and

(i) imposing any other condition that is deemed necessary to provide for the safety and well-being of the child and the safety of the abused parent.

Nothing in this section shall be construed to affect the right of the parties to a hearing under the rules of domestic relations procedure or to affect the discretion of the probate and family court in the conduct of such hearing.

(e) ordering the defendant to pay temporary support for the plaintiff or any child in the plaintiff's custody or both, when the defendant has a legal obligation to support such a person. In determining the amount to be paid, the court shall apply the standards established in the child support guidelines. Each judgment or order of support which is issued, reviewed or modified
pursuant to this chapter shall conform to and shall be enforced in accordance with the provisions of section 12 of chapter 119A;

(f) ordering the defendant to pay the person abused monetary compensation for the losses suffered as a direct result of such abuse. Compensatory losses shall include, but not be limited to loss of earnings or support, costs for restoring utilities, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical and moving expenses and reasonable attorney's fees;

(g) ordering information in the case record to be impounded in accordance with court rule;

(h) ordering the defendant to refrain from abusing or contacting the plaintiffs child, or child in plaintiffs care or custody, unless authorized by the court;

(i) the judge may recommend to the defendant that the defendant attend a batterer's intervention program that is certified by the department of public health.

No filing fee shall be charged for the filing of the complaint. Neither the plaintiff nor the plaintiff's attorney shall be charged for certified copies of any orders entered by the court, or any copies of the file reasonably required for future court action or as a result of the loss or destruction of plaintiffs copies.

Any relief granted by the court shall be for a fixed period of time not to exceed one year. Every order shall on its face state the time and date the order is to expire and shall include the date and time that the matter will again be heard. If the plaintiff appears at the court at the date and time the order is to expire, the court shall determine whether or not to extend the order for any additional time reasonably necessary to protect the plaintiff or to enter a permanent order. When the expiration date stated on the order is on a weekend day or holiday, or a date when the court is closed to business, the order shall not expire until the next date that the court is open to business. The plaintiff may appear on such next court business day at the time designated by the order to request that the order be extended. The court may also extend the order upon motion of the plaintiff, for such additional time as it deems necessary to protect from abuse the plaintiff or any child in the plaintiffs care or custody. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order, of allowing an order to expire or be vacated, or for refusing to issue a new order.

The court may modify its order at any subsequent time upon motion by either party. When the plaintiffs address is inaccessible to the defendant as provided in section 8 of this chapter and the defendant has filed a motion to modify the court's order, the court shall be responsible for notifying the plaintiff. In no event shall the court disclose any such inaccessible address.

No order under this chapter shall in any manner affect title to real property.

No court shall compel parties to mediate any aspect of their case. Although the court may refer the case to the family service office of the probation department or victim/witness advocates for information gathering purposes, the court shall not compel the parties to meet together in such information gathering sessions.

A court shall not deny any complaint filed under this chapter solely because it was not filed within a particular time period after the last alleged incident of abuse.

A court may issue a mutual restraining order or mutual no-contact order pursuant to any abuse prevention action only if the court has made specific written findings of fact. The court shall then provide a detailed order, sufficiently specific to apprise any law officer as to which party has violated the order, if the parties are in or appear to be in violation of the order.

Any action commenced under the provisions of this chapter shall not preclude any other civil or criminal remedies. A party filing a complaint under this chapter shall be required to disclose any prior or pending actions involving the parties for divorce, annulment, paternity, custody or support, guardianship, separate support or legal separation, or abuse prevention.

*[ Tenth paragraph effective until August 8, 2014. For text effective August 8, 2014, see*

*below.]*

If there is a prior or pending custody support order from the probate and family court department of the trial court, an order issued in the superior, district or Boston municipal court departments of the trial court pursuant to this chapter may include any relief available pursuant to this chapter except orders for custody or support.

*[ Tenth paragraph as amended by 2014, 260, Secs. 12 and 13 effective August 8, 2014. For text effective until August 8, 2014, see above.]*

If there is a prior or pending custody support order from the probate and family court department of the trial court, an order issued in the superior, district or Boston municipal court departments of the trial court pursuant to this chapter may include any relief available pursuant to this chapter including orders for custody or support; provided, however, that upon issuing an order for custody or support, the superior, district or Boston municipal court shall, provide a copy of the order to the probate and family court department of the trial court that issued the prior or pending custody or support order immediately; provided further, that such order for custody or support shall be for a fixed period of time, not to exceed 30 days; and provided further, that such order may be superseded by a subsequent custody or support order issued by the probate and family court department, which shall retain final jurisdiction over any custody or support order. This section shall not be interpreted to mean that superior, district or Boston municipal court judges are prohibited or discouraged from ordering all other necessary relief or issuing the custody and support provisions of orders pursuant to this chapter for the full duration permitted under subsection (c).

If the parties to a proceeding under this chapter are parties in a subsequent proceeding in the probate and family court department for divorce, annulment, paternity, custody or support, guardianship or separate support, any custody or support order or judgment issued in the subsequent proceeding shall supersede any prior custody or support order under this chapter.

**Section 3A. Nature of proceedings and availability of other criminal proceedings; information required to be given to complainant upon filing.**

Section 3A. Upon the filing of a complaint under this chapter, a complainant shall be informed that the proceedings hereunder are civil in nature and that violations of orders issued hereunder are criminal in nature. Further, a complainant shall be given information prepared by the appropriate district attorney's office that other criminal proceedings may be available and such complainant shall be instructed by such district attorney's office relative to the procedures required to initiate criminal proceedings including, but not limited to, a complaint for a violation of section forty-three of chapter two hundred and sixty-five. Whenever possible, a complainant shall be provided with such information in the complainant's native language.

**Section 3B. Order for suspension and surrender of firearms license; surrender of firearms; petition for review; hearing.**

Section 3B. Upon issuance of a temporary or emergency order under section four or five of this chapter, the court shall, if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse, order the immediate suspension and surrender of any license to carry firearms and or firearms identification card which the defendant may hold and order the defendant to surrender all firearms, rifles, shotguns, machine guns and ammunition which he then controls, owns or possesses in accordance with the provisions of this chapter and any license to carry firearms or firearms identification cards which the defendant may hold shall be surrendered to the appropriate law enforcement officials in accordance with the provisions of this chapter and, said law enforcement official may store, transfer or otherwise dispose of any such weapon in accordance with the provisions of section 129D of chapter 140; provided however, that nothing herein shall authorize the transfer of any weapons surrendered by the defendant to anyone other than a licensed dealer. Notice of such suspension and ordered surrender shall be appended to the copy of abuse prevention order served on the defendant pursuant to section seven. Law enforcement officials, upon the service of said orders, shall immediately take possession of all firearms, rifles, shotguns, machine guns, ammunition, any license to carry firearms and any firearms identification cards in the control, ownership, or possession of said defendant. Any violation of such orders shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment.

Any defendant aggrieved by an order of surrender or suspension as described in the first sentence of this section may petition the court which issued such suspension or surrender order for a review of such action and such petition shall be heard no later than ten court business days after the receipt of the notice of the petition by the court. If said license to carry firearms or firearms identification card has been suspended upon the issuance of an order issued pursuant to section four or five, said petition may be heard contemporaneously with the hearing specified in the second sentence of the second paragraph of section four. Upon the filing of an affidavit by the defendant that a firearm, rifle, shotgun, machine gun or ammunition is required in the performance of the defendant's employment, and upon a request for an expedited hearing, the court shall order said hearing within two business days of receipt of such affidavit and request but only on the issue of surrender and suspension pursuant to this section.

**Section 3C. Continuation or modification of order for surrender or suspension.**

*[ Text of section effective until January 1, 2021. For text effective January 1, 2021, see below.]*

Section 3C. Upon the continuation or modification of an order issued pursuant to section 4 or upon petition for review as described in section 3B, the court shall also order or continue to order the immediate suspension and surrender of a defendant's license to carry

firearms, including a Class A or Class B license, and firearms identification card and the surrender of all firearms, rifles, shotguns, machine guns or ammunition which such defendant then controls, owns or possesses if the court makes a determination that the return of such license to carry firearms, including a Class A or Class B license, and firearm identification card or firearms, rifles, shotguns, machine guns or ammunition presents a likelihood of abuse to the plaintiff. A suspension and surrender order issued pursuant to this section shall continue so long as the restraining order to which it relates is in effect; and, any law enforcement official to whom such weapon is surrendered may store, transfer or otherwise dispose of any such weapon in accordance with the provisions of section 129D of chapter 140; provided, however, that nothing herein shall authorize the transfer of any weapons surrendered by the defendant to anyone other than a licensed dealer. Any violation of such order shall be punishable by a fine of not more than $5,000 or by imprisonment for not more than two and one-half years in a house of correction or by both such fine and imprisonment.

*[ Text of section as amended by 2014, 284, Sec. 71 effective January 1, 2021. See 2014, 284, Sec. 112. For text effective until January 1, 2021, see above.]*

Section 3C. Upon the continuation or modification of an order issued pursuant to section 4 or upon petition for review as described in section 3B, the court shall also order or continue to order the immediate suspension and surrender of a defendant's license to carry firearms and firearms identification card and the surrender of all firearms, rifles, shotguns, machine guns or ammunition which such defendant then controls, owns or possesses if the court makes a determination that the return of such license to carry firearms and firearm identification card or firearms, rifles, shotguns, machine guns or ammunition presents a likelihood of abuse to the plaintiff. A suspension and surrender order issued pursuant to this section shall continue so long as the restraining order to which it relates is in effect; and, any law enforcement official to whom such weapon is surrendered may store, transfer or otherwise dispose of any such weapon in accordance with the provisions of section 129D of chapter 140; provided, however, that nothing herein shall authorize the transfer of any weapons surrendered by the defendant to anyone other than a licensed dealer. Any violation of such order shall be punishable by a fine of not more than $5,000 or by imprisonment for not more than two and one-half years in a house of correction or by both such fine and imprisonment.

**Section 3D. Transmission of report containing defendant's name and identifying information and statement describing defendant's alleged conduct and relationship to plaintiff to department of criminal justice information services upon order for suspension or surrender**

*[ Text of section added by 2014, 284, Sec. 72 effective January 1, 2015. See 2014, 284, Sec. 108.]*

Section 3D. Upon an order for suspension or surrender issued pursuant to sections 3B or 3C, the court shall transmit a report containing the defendant's name and identifying

information and a statement describing the defendant's alleged conduct and relationship to the plaintiff to the department of criminal justice information services. Upon the expiration, cancellation or revocation of the order, the court shall transmit a report containing the defendant's name and identifying information, a statement describing the defendant's alleged conduct and relationship to the plaintiff and an explanation that the order is no longer current or valid to the department of criminal justice information services who shall transmit the report, pursuant to paragraph (h) of
section 167A of chapter 6, to the attorney general of the United States to be included in the National Instant Criminal Background Check System.

**Section 4. Temporary orders; notice; hearing.**

Section 4. Upon the filing of a complaint under this chapter, the court may enter such temporary orders as it deems necessary to protect a plaintiff from abuse, including relief as provided in section three. Such relief shall not be contingent upon the filing of a complaint for divorce, separate support, or paternity action.

If the plaintiff demonstrates a substantial likelihood of immediate danger of abuse, the court may enter such temporary relief orders without notice as it deems necessary to protect the plaintiff from abuse and shall immediately thereafter notify the defendant that the temporary orders have been issued. The court shall give the defendant an opportunity to be heard on the question of continuing the temporary order and of granting other relief as requested by the plaintiff no later than ten court business days after such orders are entered.

Notice shall be made by the appropriate law enforcement agency as provided in section seven.

If the defendant does not appear at such subsequent hearing, the temporary orders shall continue in effect without further order of the court.

**Section 5. Granting of relief when court closed; certification**

*[First paragraph effective until July 1, 2012. For text effective July 1, 2012, see below.]*

Section 5. When the court is closed for business or the plaintiff is unable to appear in court because of severe hardship due to the plaintiffs physical condition, any justice of the superior, probate and family, district or Boston municipal court departments may grant relief to the plaintiff as provided under section four if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse. In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of an appropriate law enforcement agency, who shall record such order on a form of order promulgated for such use by the chief administrative justice and shall deliver a copy of such order on the next court day to the clerk magistrate of the court having venue and jurisdiction over the matter. If relief has been granted without the filing of a complaint pursuant to this section of this chapter, then the plaintiff shall appear in court on the next available business day to file said complaint. If the plaintiff in such a case is unable to appear in court without severe hardship due to the plaintiffs physical condition, then a

representative may appear' in court, on the plaintiff's behalf and file the requisite complaint with an affidavit setting forth the circumstances preventing the plaintiff from appearing personally. Notice to the plaintiff and defendant and an opportunity for the defendant to be heard shall be given as provided in said section four.

*[First paragraph as amended by 2011, 93, Sec. 40 effective July 1, 2012. See 2011, 93, Sec. 137. For text effective until July 1, 2012, see above.]*

When the court is closed for business or the plaintiff is unable to appear in court because of severe hardship due to the plaintiffs physical condition, any justice of the superior, probate and family, district or Boston municipal court departments may grant relief to the plaintiff as provided under section four if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse. In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of an appropriate law enforcement agency, who shall record such order on a form of order promulgated for such use by the chief justice of the trial court and shall deliver a copy of such order on the next court day to the clerk magistrate of the court having venue and jurisdiction over the matter. If relief has been granted without the filing of a complaint pursuant to this section of this chapter, then the plaintiff shall appear in court on the next available business day to file said complaint. If the plaintiff in such
a case is unable to appear:- in court without severe hardship due to the plaintiffs physical condition, then a representative may appear in court on the plaintiff's behalf and file the requisite complaint with an affidavit setting forth the circumstances preventing the plaintiff from appearing personally. Notice to the
plaintiff and defendant and an opportunity for the defendant to be heard shall be given as provided in said section four.

Any order issued under this section and any documentation in support thereof shall be certified on the next court day by the clerk magistrate or register of the court issuing such order to the court having venue and jurisdiction over the matter. Such certification to the court shall have the effect of commencing proceedings under this chapter and invoking the other provisions of this chapter but shall not be deemed necessary for an emergency order issued under this section to take effect.

**Section 5A. Protection order issued by another jurisdiction; enforcement; filing; presumption of validity.**

Section 5A. Any protection order issued by another jurisdiction, as defined in section one, shall be given full faith and credit throughout the commonwealth and enforced as if it were issued in the commonwealth for as long as the order is in effect in the issuing jurisdiction.

A person entitled to protection under a protection order issued by another jurisdiction may file such order in the superior court department or the Boston municipal court department or any division of the probate and family or district court departments by filing with the court a certified copy of such order which shall be entered into the statewide

domestic violence record keeping system established pursuant to the provisions of section seven of chapter one hundred and eighty-eight of the acts of nineteen hundred and ninety-two and maintained by the office of the commissioner of probation. Such person shall swear under oath in an affidavit, to the best of such person's knowledge, that such order is presently in effect as written. Upon request by a law enforcement agency, the register or clerk of such court shall provide a certified copy of the protection order issued by the other jurisdiction.

A law enforcement officer may presume the validity of, and enforce in accordance with section six, a copy of a protection order issued by another jurisdiction which has been provided to the law enforcement officer by any source; provided, however, that the officer is also provided with a statement by the person protected by the order that such order remains in effect. Law enforcement officers may rely on such statement by the person protected by such order.

**Section 6. Powers of police**

Section 6. Whenever any law officer has reason to believe that a family or household member has been abused or is in danger of being abused, such officer shall use all reasonable means to prevent further abuse. The officer shall take, but not be limited to the following action:

(1) remain on the scene of where said abuse occurred or was in danger of occurring as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of a law officer. This shall include, but not be limited to remaining in the dwelling for a reasonable period of time;

(2) assist the abused person in obtaining medical treatment necessitated by an assault, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility, notwithstanding any law to the contrary;

(3) assist the abused person in locating and getting to a safe place; including but not limited to a designated meeting place for a shelter or a family member's or friend's residence. The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances;

(4) give such person immediate and adequate notice of his or her rights. Such notice shall consist of handing said person a copy of the statement which follows below and reading the same to said person. Where said person's native language is not English, the statement shall be then provided in said person's native language whenever possible.

"You have the right to appear at the Superior, Probate and Family, District or Boston Municipal Court, if you reside within the appropriate jurisdiction, and file a complaint requesting any of the following applicable orders: (a) an order restraining your attacker from abusing you; (b) an order directing Yo-' attacker to leave your household, building or work place; (c) an order awarding you custody of a minor child; (d) an order directing your attacker to pay support for you or any minor child in your custody, if the attacker has a legal obligation of support; and (e) an order directing your attacker to pay you for losses suffered

as a result of abuse, including medical and moving expenses, loss of earnings or support, costs for restoring utilities and replacing locks, reasonable attorney's fees and other out of pocket losses for injuries and property damage sustained.

For an emergency on weekends, holidays, or week nights the police will refer you to a justice of the superior, probate and family, district, or Boston municipal court departments.

You have the right to go to the appropriate district court or the Boston municipal court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and your children can leave or until your safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or a friend's residence, or a similar place of safety.

You may request a copy of the police incident report at no cost from the police department."

The officer shall leave a copy of the foregoing statement with such person before leaving the scene or premises.

(5) assist such person by activating the emergency judicial system when the court is closed for business;

(6) inform the victim that the abuser will be eligible for bail and may be promptly released; and

(7) arrest any person a law officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no contact order or judgment issued pursuant to section eighteen, thirty four B or thirty four C of chapter two hundred and eight, section thirty two of chapter two hundred and nine, section three, three B, three C, four or five of this chapter, or sections fifteen or twenty of chapter two hundred and nine C or similar protection order issued by another jurisdiction. When there are no vacate, restraining, or no contact orders or judgments in effect, arrest shall be the preferred response whenever an officer witnesses or has probable cause to believe that a person:

(a) has committed a felony;

(b) has committed a misdemeanor involving abuse as defined in section one of this chapter;

(c) has committed an assault and battery in violation of section thirteen A of chapter two hundred and sixty five.

The safety of the victim and any involved children shall be paramount in and decision to arrest. Any officer arresting both parties must submit a detailed written report in addition to an incident report, setting forth the grounds for dual arrest.

No law officer investigating an incident of domestic violence shall threaten suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.

No law officer shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a domestic violence incident for an arrest based on probable cause when such officer acted reasonably and in good faith and in compliance with this chapter and the statewide policy as established by the secretary of public safety.

*[Fifth paragraph effective until November 4, 2010. For text effective November 4, 2010, see below.]*

Whenever any law officer investigates an incident of domestic violence, the officer shall immediately file a written incident report in accordance with the standards of the officer's law enforcement agency and, wherever possible, in the form of the National Incident-Based Reporting System, as defined by the Federal Bureau of Investigation. The latter information may be submitted voluntarily by the local police on a monthly basis to the crime reporting unit of the criminal history systems board.

*[Fifth paragraph as amended by 2010, 256, Sec. 103 effective November 4, 2010. For text effective until November 4, 2010, see above.]*

Whenever any law officer investigates an incident of domestic violence, the officer shall immediately file a written incident report in accordance with the standards of the officer's law enforcement agency and, wherever possible, in the form of the National Incident-Based Reporting System, as defined by the Federal Bureau of Investigation. The latter information may be submitted voluntarily by the local police on a monthly basis to the crime reporting unit of the department of criminal justice information services.

The victim shall be provided a copy of the full incident report at no cost upon request to the appropriate law enforcement department.

When a judge or other person authorized to take bail bails any person arrested under the provisions of this chapter, he shall make reasonable efforts to inform the victim of such release prior to or at the time of said release.

When any person charged with or arrested for a crime involving abuse under this chapter is released from custody, the court or the emergency response judge shall issue, upon the request of the victim, a written no contact order prohibiting the person charged or arrested from having any contact with the victim and shall use all reasonable means to notify the victim immediately of release from custody. The victim shall be given at no cost a certified copy of the no contact order.

**Section 7. Abuse prevention orders; domestic violence record search; service of order; enforcement; violations.**

Section 7. When considering a complaint filed under this chapter, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that an outstanding

warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

*[ Second paragraph effective until August 8, 2014. For text effective August 8, 2014, see below.]*

Whenever the court orders under sections eighteen, thirty-four B, and thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, sections three, four and five of this chapter, or sections fifteen and twenty of chapter two hundred and nine C, the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order and one copy of the complaint and summons forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant, together with a copy of the complaint, order and summons and notice of any suspension or surrender ordered pursuant to section three B of this chapter. The law enforcement agency shall promptly make its return of service to the court.

*[ Second paragraph as amended by 2014, 260, Sec. 14 effective August 8, 2014. For text effective until August 8, 2014, see above.]*

Whenever the court orders under sections eighteen, thirty-four B, and thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, sections three, four and five of this chapter, or sections fifteen and twenty of chapter two hundred and nine C, the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiffs minor child, the register or clerk-magistrate shall transmit two certified copies of each such order and one copy of the complaint and summons forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant, together with a copy of the complaint, order and summons and notice of any suspension or surrender ordered pursuant to section three B of this chapter. Law enforcement agencies shall establish adequate procedures to ensure that, when effecting service upon a defendant pursuant to this paragraph, a law enforcement officer shall, to the extent practicable: (i) fully inform the defendant of the contents of the order and the available penalties for any violation of an order or terms thereof and (ii) provide the defendant with informational resources, including, but not limited to, a list of certified batterer intervention programs, substance abuse counseling, alcohol abuse counseling and financial counseling programs located within or near the court's jurisdiction. The law enforcement agency shall promptly

make its return of service to the court.

Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order. The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated and shall direct the agency to destroy all record of such vacated order and such agency shall comply with that directive.

Each abuse prevention order issued shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

*[ Fifth paragraph effective until August 8, 2014. For text effective August 8, 2014, see below.]*

Any violation of such order or a protection order issued by another jurisdiction shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment. In addition to, but not in lieu of, the forgoing penalties and any other sentence, fee or assessment, including the victim witness assessment in section 8 of chapter 258B, the court shall order persons convicted of a crime under this statute to pay a fine of $25 that shall be transmitted to the treasurer for deposit into the General Fund. For any violation of such order, the court shall order the defendant to complete a certified batterer's intervention program unless, upon good cause shown, the court issues specific written findings describing the reasons that batterer's intervention should not be ordered or unless the batterer's intervention program determines that the defendant is not suitable for intervention. The court shall not order substance abuse or anger management treatment or any other form of treatment as a substitute for certified batterer's intervention. If a defendant ordered to undergo treatment has received a suspended sentence, the original sentence shall be reimposed if the defendant fails to participate in said program as required by the terms of his probation. If the court determines that the violation was in retaliation for the defendant being reported by the plaintiff to the department of revenue for failure to pay child support payments or for the establishment of paternity, the defendant shall be punished by a fine of not less than one thousand dollars and not more than ten thousand dollars and by imprisonment for not less than sixty days; provided, however, that the sentence shall not be suspended, nor shall any such person be eligible for probation, parole, or furlough or receive an deduction from his sentence for good conduct until he shall have served sixty days of such sentence.

*[ Fifth paragraph as amended by 2014, 260, Sec. 15 effective August 8, 2014. For text effective until August 8, .2014, see above.]*

Any violation of such order or a protection order issued by another jurisdiction shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment. In addition to, but not in lieu of the forgoing penalties and any other

sentence, fee or assessment,
including the victim witness assessment in section 8 of chapter 258B, the court shall order persons convicted of a crime under this statute to pay a fine of $25 that shall be transmitted to the treasurer for deposit into the General Fund. For any violation of such order, or as a condition of a continuance without a finding, the court shall order the defendant to complete a certified batterer's intervention program unless, upon good cause shown, the court issues specific written findings describing the reasons that batterer's intervention should not be ordered or unless the batterer's intervention program determines that the defendant is not suitable for intervention. The court shall not order substance abuse or anger management treatment or any other form of treatment as a substitute for certified batterer's intervention. If a defendant ordered to undergo treatment has received a suspended sentence, the original sentence shall be reimposed if the defendant fails to participate in said program as required by the terms of his probation. If the court determines that the violation was in retaliation for the defendant being reported by the plaintiff to the department of revenue for failure to pay child support payments or for the establishment of paternity, the defendant shall be punished by a fine of not less than one thousand dollars and not more than ten thousand dollars and by imprisonment for not less than sixty days; provided, however, that the sentence shall not be suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shalt have served sixty days of such sentence.

When a defendant has been ordered to participate in a treatment program pursuant to this section, the defendant shall be required to regularly attend a certified or provisionally certified batterer's treatment program. To the extent permitted by professional requirements of confidentiality, said program shall communicate with local battered women's programs for the purpose of protecting the victim's safety. Additionally, it shall specify the defendant's attendance requirements and keep the probation department informed of whether the defendant is in compliance.

In addition to, but not in lieu of, such orders for treatment, if the defendant has a substance abuse problem, the court may order appropriate treatment for such problem. All ordered treatment shall last until the end of the probationary period or until the treatment program decides to discharge the defendant, whichever comes first. When the defendant is not in compliance with the terms of probation, the court shall hold a revocation of probation hearing. To the extent possible, the defendant shall be responsible for paying all costs for court ordered treatment.

Where a defendant has been found in violation of an abuse prevention order under this chapter or a protection order issued by another jurisdiction, the court may, in addition to the penalties provided for in this section after conviction, as an alternative to incarceration and, as a condition of probation, prohibit contact with the victim through the establishment of court defined geographic exclusion zones including, but not limited to, the areas in and around the complainant's residence, place of employment, and the complainant's child's school, and order that the defendant to wear a global positioning satellite tracking device designed to transmit and record the defendant's location data. If the defendant enters a court defined exclusion zone, the defendant's location data shall be immediately transmitted to the complainant, and to the police, through an appropriate means including,

but not limited to, the telephone, an electronic beeper or a paging device. The global positioning satellite device and its tracking shall be administered by the department of probation. If a court finds that the defendant has entered a geographic exclusion zone, it shall revoke his probation and the defendant shall be fined, imprisoned or both as provided in this section. Based on the defendant's ability to pay, the court may also order him to pay the monthly costs or portion thereof for monitoring through the global positioning satellite tracking system.

In each instance where there is a violation of an abuse prevention order or a protection order issued by another jurisdiction, the court may order the defendant to pay the plaintiff for all damages including, but not limited to, cost for shelter or emergency housing, loss of earnings or support, out-of-pocket losses for injuries sustained or property damaged, medical expenses, moving expenses, cost for obtaining an unlisted telephone number, and reasonable attorney's fees.

Any such violation may be enforced in the superior, the district or Boston municipal court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston municipal court departments may each enforce by civil contempt procedure a violation of its own court order.

The provisions of section eight of chapter one hundred and thirty-six shall not apply to any order, complaint or summons issued pursuant to this section.

**Section 8. Address of plaintiff; exclusion from court documents; confidentiality of records.**

*[Text as amended by 2000, 236, Sec. 24 effective November 8, 2000 applicable as provided by 2000, 236, Sec. 100. See 2000, 236, Sec. 101. For text effective until November 8, 2000, see 1998 Edition and 1999 Supplement.]*

Section 8. The records of cases arising out of an action brought under the provisions of this chapter where the plaintiff or defendant is a minor shall be withheld from public inspection except by order of the court; provided, that such records shall be open, at all reasonable times, to the inspection of the minor, said minor's parent, guardian, attorney, and to the plaintiff and the plaintiffs attorney, or any of them.

The plaintiffs residential address, residential telephone number and workplace, name, address and telephone number, contained within the court records of cases arising out of an action, brought by a plaintiff, under the provisions of this chapter, shall be confidential and withheld from public, inspection, except by order of the court, except that the plaintiffs residential address and workplace address shall appear on the court order and accessible to the defendant and the defendant's attorney unless the plaintiff specifically requests that this information be withheld from the order. All confidential portions of the records shall be accessible at all reasonable times to the plaintiff, and plaintiffs attorney, to others specifically authorized by the plaintiff to obtain such information, and to prosecutors, victim-witness advocates as defined in section 1 of chapter 258B, domestic violence victim's counselors as defined in section 20K of chapter 233, sexual assault counselors as defined in

section 20J of chapter 233, and law enforcement officers, if such access:is necessary in the performance of their duties. The provisions of this paragraph shall apply to any protection order issued by another jurisdiction, as defined in section 1, that is filed with a court of the commonwealth pursuant to section 5A Such confidential portions of the court records shall not be deemed to be public records under the provisions of clause twenty-sixth of section 7 of chapter 4.

**Section 9. Form of complaint; promulgation.**

Section 9. The administrative justices of the superior court, probate and family court, district court, and the Boston municipal court departments shall jointly promulgate a form of complaint for use under this chapter which shall be in such form and language to permit a plaintiff to prepare and file such complaint *pro se*.

**Section 10. Assessments against persons referred to certified batterers' treatment program as condition of probation.**

Section 10. The court shall impose an assessment of three hundred and fifty dollars against any person who has been referred to a certified batterers' treatment program as a condition of probation. Said assessment shall be in addition to the cost of the treatment program. In the discretion of the court, said assessment may be reduced or waived when the court finds that the person is indigent or that payment of the assessment would cause the person, or the dependents of such person, severe financial hardship. Assessments made pursuant to this section shall be in addition to any other fines, assessments, or restitution imposed in any disposition. All funds collected by the court pursuant to this section shall be transmitted monthly to the state treasurer, who shall deposit said funds in the General Fund.

**Section 11. Possession, care and control of domesticated animal owned by persons involved in certain protective orders; notice to law enforcement upon finding of imminent threat to household member or animal**

*[Text of section added by 2012, 193, Sec. 50 effective October 31, 2012.]*

Section 11. (a) Whenever the court issues a temporary or permanent vacate, stay away, restraining or no contact order or a judgment under section 18, 34B or 34C of chapter 208, or under section 32 of chapter 209, or under section 3, 4 or 5 of this chapter, or under section 15 or 20 of chapter 209C, or under section 3 to 7, inclusive, of chapter 258E or a temporary restraining order or preliminary or permanent injunction relative to a domestic relations, child custody, domestic abuse or abuse prevention proceeding, the court may order the possession, care and control of any domesticated animal owned, possessed, leased, kept or held by either party or a minor child residing in the household to the plaintiff or petitioner. The court may order the defendant to refrain from abusing, threatening, taking, interfering with, transferring, encumbering, concealing, harming or otherwise

disposing of such animal.

(b) A party to any proceeding listed in subsection (a) may petition the court for an order authorized by said subsection (a).

(c) Whenever the court issues a warrant for a violation of a temporary or permanent vacate, stay away, restraining or no contact order or a judgment issued under section 18, 34B or 34C of chapter 208, or under section 32 of chapter 209, or under section 3, 4 or 5 of this chapter, or under section 15 or 20 of chapter 209C, or section 3 to 7, inclusive, of chapter 258E or otherwise becomes aware that an outstanding warrant for such a violation has been issued against a person before the court, the judge may make a finding, based upon the totality of the circumstances, as to whether there exists an imminent threat of bodily injury to any party to such judgment or the petitioner of any such protective order, a member of the petitioner's family or household or to a domesticated animal belonging to the petitioner or to a member of the petitioner's family or household. If the court makes a finding that such an imminent threat of bodily injury to a person or domesticated animal exists, the court shall notify the appropriate law enforcement officials of such finding and the law enforcement officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

**COMPLAINT FOR PROTECTION FROM ABUSE (G.L. c. 209A) Page 1 of 2**

COURT USE ONLY – DOCKET NO.

**TRIAL COURT OF MASSACHUSETTS**

A ☐ BOSTON MUNICIPAL COURT ☐ DISTRICT COURT ☐ PROBATE & FAMILY COURT ☐ SUPERIOR COURT _____ DIVISION

B Name of Plaintiff *(person seeking protection)*

F Name of Defendant *(person accused of abuse)*

Defendant's Alias, if any

Sex: ☐ M ☐ F

C
☐ I am 18 or older.
☐ I am under the age of 18, and
_____,
my_____ *(relationship to Plaintiff)*
has filed this complaint for me.
☐ The Defendant is 18 or older.

G The Defendant and Plaintiff:
☐ are currently married to each other
☐ were formerly married to each other
☐ are not married but we are related to each other by blood or marriage; specifically, the Defendant is my
_____
☐ are the parents of one or more children
☐ are not related but live in the same household
☐ were formerly members of the same household
☐ are or were in a dating or engagement relationship.

D To my knowledge, the Defendant possesses the following guns, ammunition, firearms identification card, and/or license to carry:

E Are there any prior or pending court actions in any state or country involving the Plaintiff and the Defendant for divorce, annulment, separate support, legal separation or abuse prevention? ☐ No ☐ Yes If Yes, give Court, type of case, date, and (if available) docket no.

H Does the Plaintiff have any children under the age of 18?
☐ No ☐ Yes
If Yes, the Plaintiff shall complete the appropriate parts of Page 2.

I On or about (dates) _____ I suffered abuse when the Defendant:
☐ attempted to cause me physical harm
☐ caused me physical harm
☐ placed me in fear of imminent serious physical harm
☐ caused me to engage in sexual relations by force, threat or duress

J **THEREFORE, I ASK THE COURT:**

☐ 1. to order the Defendant to stop abusing me by harming, threatening or attempting to harm me physically, or placing me in fear of imminent serious physical harm, or by using force, threat or duress to make me engage in sexual relations.
☐ 2. to order the Defendant not to contact me, unless authorized to do so by the Court.
☐ 3a. to order the Defendant to leave and remain away from my residence: *See Plaintiff Confidential Information Form.*
*If this is an apartment building or other multiple family dwelling, check here* ☐
☐ 3b. to order the Defendant to leave and remain away from my workplace: *See Plaintiff Confidential Information Form.*
☐ 3c. to order the Defendant to leave and remain away from my school: *See Plaintiff Confidential Information Form.*
☐ 4a. to order that my residential address not appear on the order.
☐ 4b. to order that my workplace address not appear on the order.
☐ 4c. to order that my school address not appear on the order.
☐ 5. to order the Defendant to pay me $_____ in compensation for the following losses suffered as a direct result of the abuse:
_____
☐ 6. to order the Defendant, who has a legal obligation to do so, to pay temporary support to me.
☐ 7. to order the relief requested on Page 2 of this Complaint pertaining to my minor child or children.
☐ 8. to order the following: _____
☐ 9. to order the relief I have requested, except for temporary support for me and/or my child(ren) and for compensation for losses suffered, without advance notice to the Defendant because there is a substantial likelihood of immediate danger of abuse. I understand that if the Court issues such a temporary Order, the Court will schedule a hearing within 10 court business days to determine whether such a temporary Order should be continued, and I must appear in Court on that day if I wish the Order to be continued.

| DATE | PLAINTIFF'S SIGNATURE | Please complete affidavit on reverse of this page |
|---|---|---|
| | X | |

This is a request for a civil order to protect the Plaintiff from future abuse. The actions of the Defendant may also constitute a crime subject to criminal penalties. For information about filing a criminal complaint, you can talk with the District Attorney's Office for the location where the alleged abuse occurred.

FA-1 (5/15)



COURT COPY

| COMPLAINT FOR PROTECTION FROM ABUSE (G.L. c. 209A) Page 2 of 2 | COURT USE ONLY – DOCKET NO. | TRIAL COURT OF MASSACHUSETTS |
|---|---|---|

## ISSUES PERTAINING TO CHILDREN

A. **RELATED PROCEEDINGS.** Is there any proceeding that the Plaintiff knows of or has participated in which is pending or has been concluded in any Court in the Commonwealth or any other state or country involving the care or custody (including any care & protection or guardianship actions) of the child or children of the parties? ☐ YES ☐ NO
If Yes, the Plaintiff shall complete and file with this Complaint an Affidavit Disclosing Care or Custody Proceedings as required by Trial Court Uniform Rule IV, and provide copies of documents required by the Rule. This Affidavit and related information are available from the office of the Clerk-Magistrate or Register of Probate of the Court.

B. **RELATED PROCEEDINGS.** Are there any prior or pending court actions in any Court in the Commonwealth or in any other state or country involving the Plaintiff and the Defendant for paternity? ☐ YES ☐ NO

C. **CUSTODY.**

☐ I request custody of the following minor child or children of the parties:

| NAME | AGE | NAME | AGE |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

D. **CONTACT WITH CHILDREN.** I ask the Court to order the Defendant not to contact the following minor child or children unless authorized to do so by the Court:

| NAME | AGE | NAME | AGE |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

The specific reasons for this request are: _____

_____

☐ I ask the Court to order the Defendant remain away from the following school(s) and day care(s) (list names and addresses):

_____

**If the Plaintiff alleges that the Defendant has abused the above-named child or children, a separate Complaint may be filed on behalf of each child.**

E. **VISITATION.** If the Plaintiff is filing this Complaint in the Probate and Family Court, the Plaintiff may request a Visitation Order. **Such Visitation Orders are not available in other Courts.** Regarding visitation, I ask the Court to
- ☐ permit visitation.
- ☐ order no visitation between the Defendant and our minor child or children.
- ☐ permit visitation only at the following visitation center: _____ _____, to be paid for by _____ (name).
- ☐ permit only visitation supervised by _____ (name) at the following times: _____ _____, to be paid for by _____ (name).
- ☐ order visitation only if a third party, _____ (name), picks up and drops off our minor child or children.
- ☐ other _____

F. **TEMPORARY SUPPORT.**

☐ I ask the Court to order the Defendant, who has a legal obligation to do so, to pay temporary support for any children in my custody.

| DATE | PLAINTIFF'S SIGNATURE |
|---|---|
| | X |

| AFFIDAVIT | Describe in detail the most recent incidents of abuse. The Judge requires as much information as possible, such as what happened, each person's actions, the dates, locations, any injuries, and any medical or other services sought. Also describe any history of abuse, with as much of the above detail as possible. |
|---|---|

On or about _____, 20 ____, the Defendant _____

If more space is needed, attach additional pages and check this box: ☐

**I declare under penalty of perjury that all statements of fact made above, including those provided on P.1, Section E and P.2, Sections A and B of the Complaint form regarding prior and pending court actions, and in any additional pages attached, are true to the best of my knowledge.**

| DATE SIGNED | PLAINTIFF'S SIGNATURE<br>X _____ |
|---|---|

| WITNESSED BY<br>X _____ | PRINTED NAME OF WITNESS | TITLE OF WITNESS |
|---|---|---|

I have transcribed the above affidavit for the Plaintiff

_____ _____

Signature Print Name

☐ Court Certified Interpreter
☐ Court Screened Interpreter
☐ Other _____
☐ Remote Translation Via Telephone/Video

| TRANSLATION OF AFFIDAVIT<br>G.L. c. 209A or G.L. c. 258E | COURT USE ONLY – DOCKET NO. | TRIAL COURT OF MASSACHUSETTS |
|---|---|---|

The affidavit was originally written in _____.
(language)

**At the Court's request, I have provided a written translation into English, complete and accurate to the best of my ability.**

_____ _____
Signature Print Name

☐ Court Certified Interpreter
☐ Court Screened Interpreter
☐ Other _____
☐ Remote Translation Via Telephone/Video

FA/HA-15 (1/12)

# DEFENDANT INFORMATION FORM
AS PROVIDED BY PLAINTIFF
G.L. c. 209A *or* G.L. c. 258E

DOCKET NO. *(for court use only)*

Massachusetts Trial Court

This information is requested to help police to identify and locate the Defendant in order to serve the Defendant with a copy of any restraining Order that is issued. Please provide as much information as possible.

| DEFENDANT'S NAME | | | | | | DATE OF BIRTH |
|---|---|---|---|---|---|---|
| OTHER NAMES USED BY DEFENDANT, IF ANY | | | | | | PLACE OF BIRTH |
| MOTHER'S MAIDEN NAME (FIRST & LAST) | | FATHER'S NAME (FIRST & LAST) | | | | SOCIAL SECURITY NO. |
| SEX ☐ MALE ☐ FEMALE | RACE | EYES | HAIR | HEIGHT | WEIGHT | PHOTO AVAILABLE? *(very helpful for ID)* ☐ YES ☐ NO |
| BUILD | | OTHER PHYSICAL CHARACTERISTICS *(beard, glasses, scars, tattoos, complexion, hairstyle)* | | | | |
| DEFENDANT'S HOME ADDRESS (NO., STREET, CITY, STATE, ZIP) | | | | | | DEFENDANT'S HOME TELEPHONE NO. |
| APT NO. | FLOOR NO. | NAME ON DOOR/MAILBOX | DOES DEFENDANT UNDERSTAND ENGLISH? ☐ YES ☐ NO IF NOT, WHAT LANGUAGES? | | | |
| DEFENDANT'S EMPLOYER/WORKPLACE | | | | | | WORK TELEPHONE NO. |
| WORK ADDRESS (NO., STREET, CITY, STATE, ZIP) | | | | | | TITLE |
| DEPARTMENT | | | | | | WORK HOURS |
| OTHER PLACES DEFENDANT MAY BE FOUND *(friends, bars, relatives, hangouts)* | | | | | | BEST PLACE TO FIND DEFENDANT |
| MOTOR VEHICLE LICENSE PLATE | YEAR | MAKE | MODEL | COLOR | | BEST TIMES TO FIND DEFENDANT |

DOES DEFENDANT HAVE: *(describe very briefly)*

A history of violence toward police officers? ☐ NO ☐ YES

A history of using/abusing drugs or alcohol? ☐ NO ☐ YES What kind?

Access to guns, a license to carry, or possess a gun? ☐ NO ☐ YES What kind?

Psychiatric/emotional problems? ☐ NO ☐ YES What kind?

ANY OTHER INFORMATION WHICH MIGHT BE HELPFUL IN LOCATING THE DEFENDANT

| DATE SIGNED | PRINT PLAINTIFF'S NAME | PLAINTIFF'S SIGNATURE |
|---|---|---|
| | | X |

FA/HA-5 (5/10)

| PLAINTIFF CONFIDENTIAL INFORMATION FORM<br>G.L. c. 209A, § 8 or G.L. c. 258E, § 10 | DOCKET NO. (for court use only) | Massachusetts Trial Court |
|---|---|---|

This form should be sealed in an envelope marked "PLAINTIFF'S ADDRESS – CONFIDENTIAL".

| PLAINTIFF'S NAME | DATE OF BIRTH |
|---|---|
| | |

| PLAINTIFF'S RESIDENTIAL ADDRESS<br>*If this is an apartment building or other multiple family dwelling, check here* ☐ | PLAINTIFF'S RESIDENTIAL TELEPHONE NO. |
|---|---|
| | |

ANY FORMER ADDRESS PLAINTIFF HAS LEFT TO AVOID ABUSE *(for G.L. c. 209A abuse prevention cases only)*

NAME OF PLAINTIFF'S WORKPLACE

| ADDRESS OF PLAINTIFF'S WORKPLACE | PLAINTIFF'S WORKPLACE TELEPHONE NO. |
|---|---|
| | |

NAME OF PLAINTIFF'S SCHOOL

ADDRESS OF PLAINTIFF'S SCHOOL

PERSONS AUTHORIZED BY PLAINTIFF TO HAVE ACCESS TO THIS CONFIDENTIAL INFORMATION

| DATE SIGNED | PLAINTIFF'S SIGNATURE |
|---|---|
| | X |

**THIS FORM IS CONFIDENTIAL AND IS NOT AVAILABLE TO THE PUBLIC, THE DEFENDANT OR THE DEFENDANT'S ATTORNEY.** Except with a judge's permission, this form is available only to you, to your attorney, to those you authorize to have access (see above), and to certain persons when access is necessary in the performance of their duties (prosecutors, law enforcement officers, victim-witness advocates, sexual assault counselors and, in G.L. c. 209A cases, domestic violence counselors).

**IF A JUDGE ORDERS THE DEFENDANT TO REMAIN AWAY FROM YOUR RESIDENCE, WORKPLACE OR SCHOOL, THOSE ADDRESSES WILL APPEAR IN THE COURT ORDER. THEY WILL NOT BE AVAILABLE TO THE PUBLIC BUT THEY WILL BE DISCLOSED TO THE DEFENDANT. If you do not want those addresses to appear in the court Order and thereby be disclosed to the Defendant, you should specifically request that they be omitted from the court Order.**

*If you and the Defendant are both over 18,* court records of this matter will generally be open to public inspection. If you have good reasons to ask a judge to keep other parts of the court record from public inspection, ask the Clerk's or Register's Office to explain how to file a Motion for Impoundment under Trial Court Uniform Rule VIII on Impoundment Procedure. You may also file a Motion for Impoundment if you have good reasons why your addresses or other confidential information in this case should not be disclosed to those who would otherwise have access in the course of their duties (prosecutors, law enforcement officers, victim-witness advocates, sexual assault counselors and, in G.L. c. 209A cases, domestic violence counselors). Usually, a general preference for privacy is not alone a sufficient reason for a judge to impound court records from public inspection.

*If either you or the Defendant is under 18,* other court records of this matter will not be open to public inspection, and will be available only to you and the Defendant, and to your attorneys. They will also be available to the parent or guardian of any party who is under 18.

| MOTION FOR IMPOUNDMENT & AFFIDAVIT<br>G.L. c. 209A, § 8 *or* G.L. c. 258E, § 10 | DOCKET NO. *(for court use only)* | Massachusetts Trial Court |
|---|---|---|

Pursuant to G.L. c. 209A, § 8 or G.L. c. 258E, § 10, your residential and workplace addresses:

- will automatically be kept from being disclosed to the public.
- will automatically be kept from being disclosed to the defendant and the defendant's attorney unless those addresses appear in the court Order because you have requested that the defendant be ordered to remain away from your residence or workplace.
- will be available to you, to your attorney, to those you authorize to have access, and to certain persons when access is necessary in the performance of their duties (prosecutors, law enforcement officers, victim-witness advocates, sexual assault counselors and, in G.L. c. 209A cases only, domestic violence counselors).

If you have good reasons why your addresses should not be disclosed to those who would otherwise have access in the course of their duties, you may file this motion with the court requesting a judge to issue an Order of Impoundment under Trial Court Uniform Rule VIII on Impoundment Procedure. If you have good reasons, you may also request a judge to impound other information in this case from public inspection. You must explain why there is good cause for a judge to do so. Usually a general preference for privacy is not alone a sufficient reason for a judge to impound court records from public inspection. If you are requesting an Order of Impoundment without prior notice to the defendant and any other interested persons, you must explain why immediate and irreparable injury may otherwise result.

1. Pursuant to Trial Court Uniform Rule VIII, I request the Court to order:

☐ that ***my residential, workplace and/or school addresses and telephone numbers*** be impounded so that they are not disclosed to those persons who would otherwise have access in the course of their duties.

☐ that ***the following information in the case record*** be impounded and unavailable for public inspection:

_____

_____.

☐ I also request the Court to order such impoundment ***without prior notice*** to the defendant and any other interested persons, since immediate and irreparable injury may otherwise result.

2. This request is based on: _____

_____

_____

_____

_____

_____

*If more space is needed, attach additional pages and check this box:* ☐

I declare under penalty of perjury that all statements of fact made above, and in any additional pages attached, are true.

| DATE SIGNED | PLAINTIFF'S SIGNATURE |
|---|---|
| | X |

**JUDGE'S ORDER ON MOTION FOR IMPOUNDMENT**

☐ Motion **ALLOWED** ex parte based on a showing of good cause and that immediate and irreparable injury may result before the defendant or any other interested party may be heard in opposition.

☐ Motion **ALLOWED** based on a showing of good cause, after hearing with notice to the defendant and any other interested party.

☐ Motion **DENIED.**

| DATE SIGNED | JUDGE'S SIGNATURE |
|---|---|
| | X |

FA/HA-8 (5/10)

| PLAINTIFF'S AFFIDAVIT IN SUPPORT OF REQUEST FOR A CHILD SUPPORT ORDER | DOCKET NO. (FOR COURT USE ONLY) | TRIAL COURT OF MASSACHUSETTS |
|---|---|---|

| PLAINTIFF'S NAME | DEFENDANT'S NAME | COURT DIVISION |
|---|---|---|
| | | |

I, _____, do state or affirm that the following is true to the best of my knowledge and belief:

1. The Defendant is the mother/father *(circle one)* and I am the legal custodian of the following child(ren).

   _____ _____

   _____ _____

2. The Defendant works as a _____.

   The Defendant works for _____,

   whose address is _____.

3. My gross income and my expenses are as follows:

| | |
|---|---|
| Gross income (income before taxes) | I make $_____ per week/month *(circle one)*. |
| Health insurance | I pay $_____ per week/month *(circle one)*. |
| Dental and/or vision insurance | I pay $_____ per week/month *(circle one)*. |
| My child care expenses for child(ren) listed in Par. 1 | I pay $_____ per week/month *(circle one)*. |
| Other child support obligations | I pay $_____ per week/month *(circle one)*. |

4. Based on my knowledge, the Defendant's gross income and his/her expenses are as follows:

| | |
|---|---|
| Gross income (income before taxes) | S/he makes $_____ per week/month *(circle one)*. |
| Health insurance | S/he pays $_____ per week/month *(circle one)*. |
| Dental and/or vision insurance | S/he pays $_____ per week/month *(circle one)*. |
| Defendant's child care expenses for child(ren) listed in Par. 1 | S/he pays $_____ per week/month *(circle one)*. |
| Other child support obligations | S/he pays $_____ per week/month *(circle one)*. |

☐ **I state that the above is true, signed under penalties of perjury.**

| PLAINTIFF'S PRINTED NAME | DATE |
|---|---|
| | |

| PLAINTIFF'S SIGNATURE |
|---|
| |

FA-11 (1/12)

| DEFENDANT'S AFFIDAVIT IN CONNECTION WITH REQUEST FOR A CHILD SUPPORT ORDER | DOCKET NO. (FOR COURT USE ONLY) | TRIAL COURT OF MASSACHUSETTS |
|---|---|---|

| PLAINTIFF'S NAME | DEFENDANT'S NAME | COURT DIVISION |
|---|---|---|
| | | |

I, _____, do state or affirm that the following is true to the best of my knowledge and belief:

1. I am the mother/father *(circle one)* of the following minor child(ren):

   _____ _____

   _____ _____

2. The Plaintiff is the legal custodian of the above named child(ren).

3. I work as a _____.

   I work for _____,

   whose address is _____.

4. My gross income and my expenses are as follows:

| | |
|---|---|
| Gross income (income before taxes) | I make $_____ per week/month *(circle one)*. |
| Health insurance | I pay $_____ per week/month *(circle one)*. |
| Dental and/or vision insurance | I pay $_____ per week/month *(circle one)*. |
| My child care expenses for child(ren) listed in Par. 1 | I pay $_____ per week/month *(circle one)*. |
| Other child support obligations | I pay $_____ per week/month *(circle one)*. |

☐ I state that the above is true, signed under penalties of perjury.

| DEFENDANT'S PRINTED NAME | DATE |
|---|---|
| | |

DEFENDANT'S SIGNATURE

FA-12 (1/12)

## Commonwealth of Massachusetts

☐ BOSTON MUNICIPAL COURT ☐ DISTRICT COURT ☐ JUVENILE COURT ☐ PROBATE & FAMILY COURT ☐ SUPERIOR COURT

DIVISION_____ DOCKET NO._____

_____
Plaintiff

v.

_____
Defendant

**PETITION FILED PURSUANT TO G. L. c. 209A, § 11 RELATIVE TO DOMESTICATED ANIMAL(S)**

I _____, a party in the above captioned matter petition this court for an order pursuant to G.L. c. 209A, § 11 and state that:

☐ in the above-captioned matter there has been requested or issued a temporary or permanent vacate, stay away, restraining or no contact order or a judgment under G. L. c. 208, §§ 18, 34B or 34C, G. L. c. 209, § 32, G. L. c. 209A, §§ 3, 4 or 5, G. L. c. 209C, §§ 15 or 20, or G. L. c. 258E, §§ 3 to 7 inclusive, or a temporary restraining order or preliminary or permanent injunction relative to a domestic relations, child custody, domestic abuse or abuse prevention proceeding.

I petition this court issue an order relative to the following domesticated animals: (list the name and description of each domesticated animal and who owns, possesses, leases, keeps, or holds the domesticated animal, i.e., petitioner, respondent, or minor child):

_____

_____

SPECIFICALLY, I ASK THE COURT TO ORDER:

☐ that the respondent _____(name) refrain from abusing, threatening, taking, interfering with, transferring, encumbering, concealing, harming or otherwise disposing of the following animal(s):

_____

☐ that I _____ (name) be given possession, care, and control of the following animal(s):

_____

In support of this request, the petitioner states:

_____

_____

Signed under the penalties of perjury:

_____ _____

DATE PETITIONER'S SIGNATURE

Interim Form – October 2012

| ABUSE PREVENTION ORDER (G.L. c. 209A) Page 1 of 2 | DOCKET NO. | TRIAL COURT OF MASSACHUSETTS |
|---|---|---|

| Plaintiff's Name | DEFT. INFO. Defendant's Name & Address | Alias, if any | |
|---|---|---|---|
| Name & Address Of Court | | Date of Birth | Sex ☐ M ☐ F / Place of Birth |
| | | SS # (Last four digits only) XXX-XX- | Daytime Ph # ( ) / Cell Phone # ( ) |

**VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE** punishable by imprisonment or fine or both.

**A. THE COURT HAS ISSUED THE FOLLOWING ORDERS TO THE DEFENDANT:** *(only those items checked shall apply)*

☐ This Order was issued without advance notice because the Court determined that there is a substantial likelihood of immediate danger of abuse.

☐ This Order was communicated by telephone from the Judge named below to: Police Dept._____ Police Officer_____

☐ 1. **YOU ARE ORDERED NOT TO ABUSE THE PLAINTIFF** by harming, threatening or attempting to harm the Plaintiff physically or by placing the Plaintiff in fear of imminent serious physical harm, or by using force, threat or duress to make the Plaintiff engage in sexual relations.

☐ 2. **YOU ARE ORDERED NOT TO CONTACT THE PLAINTIFF,** in person, by telephone, in writing, electronically or otherwise, either directly or through someone else, and to stay at least _____ yards from the Plaintiff even if the Plaintiff seems to allow or request contact. The only exceptions to this order are: a) contact as permitted in Sections 8, 9, 10 and 11 below; or b) by sending the Plaintiff, by mail, by sheriff or by other authorized officer, copies of papers filed with the court when that is required by statute or court rule.

☐ 3. **YOU ARE ORDERED TO IMMEDIATELY LEAVE AND STAY AWAY FROM THE PLAINTIFF'S RESIDENCE** except as permitted in Sections 8 and 10 below, located at_____ or wherever else you may have reason to know the Plaintiff may reside. The Court also ORDERS you (a) to surrender any keys to that residence to the Police Department; (b) not to damage any belongings of the Plaintiff or any other occupant; (c) not to shut off or cause to be shut off any utilities or mail delivery to the Plaintiff; and (d) not to interfere in any way with the Plaintiff's right to possess that residence, except by appropriate legal proceedings.

☐ **If this box is checked, the Court also ORDERS** you to immediately leave and stay away from the entire apartment building or other multiple family dwelling in which the Plaintiff's residence is located.

☐ 4a. **YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF'S WORKPLACE** located at_____

☐ 4b. **YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF'S SCHOOL** located at_____

☐ 5a. **THE COURT ORDERS** that the Plaintiff's residential address not appear on the order.

☐ 5b. **THE COURT ORDERS** that the Plaintiff's workplace address not appear on the order.

☐ 5c. **THE COURT ORDERS** that the Plaintiff's school address not appear on the order.

☐ 6. **CUSTODY OF THE FOLLOWING CHILDREN IS AWARDED TO THE PLAINTIFF**

| NAME | AGE | NAME | AGE |
|---|---|---|---|
| | | | |
| | | | |

☐ 7. **YOU ARE ORDERED NOT TO CONTACT THE CHILDREN LISTED ABOVE OR ANY CHILDREN IN THE PLAINTIFF'S CUSTODY LISTED BELOW,** either in person, by telephone, in writing, electronically or otherwise, either directly or through someone else, and to stay at least _____ yards away from them unless you receive written permission from the Court to do otherwise.

☐ You are also ordered to stay away from the following school day care(s), other:_____

| NAME | AGE | NAME | AGE |
|---|---|---|---|
| | | | |
| | | | |

☐ 8. **VISITATION WITH THE CHILDREN LISTED IN SECTION 6 IS PERMITTED ONLY AS FOLLOWS (may be ordered by Probate and Family Court only):**

☐ Visitation is only allowed if supervised and in the presence of _____(name) at the following times_____ to be paid for by _____(name)

☐ Transportation of children to and from this visitation is to be done by _____(name) (third party), and not by you.

☐ You may only contact the Plaintiff to arrange this visitation. Contact may be made only by ☐ phone, ☐ e-mail, ☐ text, ☐ other _____

☐ 9. **YOU ARE ORDERED TO PAY SUPPORT IN THE FOLLOWING MANNER:**

☐ $_____ child support per _____ [week/month] by income withholding through the Department of Revenue. Defendant shall send payments to DOR at P.O. Box 55144, Boston, MA 02205-5144 until employer deductions begin.

☐ $_____ child support per _____ [week/month] directly to the Plaintiff by mailing payments to _____.

☐ $_____ support for the Plaintiff per _____ [week/month] directly to the Plaintiff by mailing payments to _____.

☐ Other orders:_____

☐ 10. **YOU MAY PICK UP YOUR PERSONAL BELONGINGS** in the company of police at a time agreed to by the Plaintiff.

☐ 11. **YOU ARE ORDERED TO COMPENSATE THE PLAINTIFF** for $_____ in losses suffered as a direct result of the abuse, to be paid in full on or before _____, 20____ ☐ by mailing directly to the Plaintiff ☐ through the Probation Office of this Court.

☐ 12. **THERE IS A SUBSTANTIAL LIKELIHOOD OF IMMEDIATE DANGER OF ABUSE. YOU ARE ORDERED TO IMMEDIATELY SURRENDER** to the _____ Police Department or to the police officer serving this order all guns, ammunition, gun licenses and FID cards. Your license to carry a gun, if any, and your FID card, if any, are suspended immediately.

- You must immediately surrender the items listed above, and also comply with all other Orders in this case.
- Subject to certain exceptions, purchase and/or possession of a firearm and/or ammunition while this order is in effect is a federal crime. 18 U.S.C. §§ 922(g)(8) and 925.

☐ 13. **ON THE NEXT SCHEDULED HEARING DATE,** the Court will hear testimony and other evidence regarding Section 9 of this order, which involves support for the Plaintiff and/or the minor children. You are hereby ordered to bring with you to the next scheduled hearing date any financial records in your possession (including your most recent tax return and your last four paystubs) that provide evidence of your current income.

☐ 14. **YOU ARE ALSO ORDERED** _____

The Plaintiff must appear at scheduled hearings, or this Order will expire. The Defendant may appear, with or without attorney, to oppose any extension or modification of this Order. If the Defendant does not appear, the Order may be extended or modified as determined by the Judge. For good cause, either the Plaintiff or the Defendant may request the Court to modify this Order before its scheduled expiration date.

| ABUSE PREVENTION ORDER (G.L. c. 209A) Page 2 of 2 | DOCKET NO. | TRIAL COURT OF MASSACHUSETTS |
|---|---|---|

☐ 15. Police reports are on file at the _____ Police Department.

☐ 16. OUTSTANDING WARRANTS FOR THE DEFENDANT'S ARREST:
_____ (DOCKET #s) _____ (PCF #)
to _____

☐ 17. An imminent threat of bodily injury exists to the Plaintiff. Notice issued to _____ Police Department(s) by ☐ telephone ☐ other _____.

## B. NOTICE TO LAW ENFORCEMENT

☐ 1. An appropriate law enforcement officer shall serve upon the Defendant in hand a copy of the Complaint and a certified copy of this Order (and Summons), and make return of service to this Court. If this box is checked ☐, the following alternative service may instead be made, but only if the officer is unable to deliver such copies in hand to the Defendant: _____

☐ 2. Defendant Information Form accompanies this Order.

☐ 3. Defendant has been served in hand by the Court's designee: Name _____ Date _____

| DATE OF ORDER | TIME OF ORDER ☐ A.M. ☐ P.M. | EXPIRATION DATE OF ORDER at 4 P.M. | SIGNATURE OF JUDGE PRINT/TYPE NAME OF JUDGE |
|---|---|---|---|
| | | | |

| The above and any subsequent Orders expire on the expiration dates indicated. Hearings on whether to continue and/or modify Orders will be held on dates and times indicated. | NEXT HEARING DATE: at _____ A.M. ☐ P.M. Courtroom _____ |
|---|---|

## ☐ C. MODIFICATION/EXTENSION

☐ This order was issued after a hearing at which the Plaintiff ☐ appeared ☐ did not appear and the Defendant ☐ appeared ☐ did not appear.

The Court has ORDERED that the prior order issued _____, 20____ be MODIFIED as follows:

_____

_____

_____

_____

_____

☐ The expiration date of this order has been EXTENDED (See Below) ☐ OTHER MODIFICATION(S) _____

_____

☐ Firearm surrender order continued. The items surrendered under paragraph 12 will NOT be returned since doing so would present a likelihood of abuse to the Plaintiff.

| DATE OF THIS MODIFICATION: | EXPIRATION DATE OF ORDER: at 4 P.M. | SIGNATURE OF JUDGE PRINT/TYPE NAME OF JUDGE |
|---|---|---|
| | | |

| TIME OF MODIFICATION: _____ ☐ A.M. ☐ P.M. | NEXT HEARING DATE: _____ at _____ ☐ A.M. ☐ P.M. Courtroom _____ |
|---|---|

## ☐ D. MODIFICATION/EXTENSION

☐ This order was issued after a hearing at which the Plaintiff ☐ appeared ☐ did not appear and the Defendant ☐ appeared ☐ did not appear.

The Court has ORDERED that the prior order issued _____, 20____ be MODIFIED as follows::

_____

_____

_____

_____

_____

☐ The expiration date of this order has been EXTENDED (See Below) ☐ OTHER MODIFICATION(S) _____

_____

☐ Firearm surrender order continued. The items surrendered under paragraph 12 will NOT be returned since doing so would present a likelihood of abuse to the Plaintiff.

| DATE OF THIS MODIFICATION: | EXPIRATION DATE OF ORDER: at 4 P.M. | SIGNATURE OF JUDGE PRINT/TYPE NAME OF JUDGE |
|---|---|---|
| | | |

| TIME OF MODIFICATION: _____ ☐ A.M. ☐ P.M. | NEXT HEARING DATE: _____ at _____ ☐ A.M. ☐ P.M. Courtroom _____ |
|---|---|

## ☐ E. PRIOR COURT ORDER TERMINATED

This Court's prior Order is terminated. Law enforcement agencies shall destroy all records of such Order.

☐ TERMINATED AT PLAINTIFF'S REQUEST.

| SIGNATURE OF JUDGE PRINT/TYPE NAME OF JUDGE | DATE OF ORDER | TIME OF ORDER ☐ A.M. ☐ P.M. |
|---|---|---|
| | | |

| WITNESS - FIRST OR CHIEF JUSTICE | A true copy, attest (Asst.) Clerk-Magistrate/ (Asst.) Register of Probate |
|---|---|
| | |

TO ANY OFFICER OF THE POLICE DEPARTMENT TO WHICH THE COURT HAS DIRECTED THIS ORDER

PURSUANT TO G.L. c. 209A, § 6, THIS ORDER SHALL BE ENFORCED BY ANY LAW ENFORCEMENT OFFICER IN THE COMMONWEALTH WHO IS AWARE OF OR SHOWN A COPY OF THIS ORDER. IF SERVICE ON THE DEFENDANT HAS NOT YET BEEN MADE, ANY LAW ENFORCEMENT OFFICER SHALL ADVISE THE DEFENDANT OF THE TERMS OF THE ORDER AND THEN SHALL ENFORCE IT.

The YELLOW COPY of this Order must be served on the Defendant immediately. Please return the GREEN COPY of this Order to the Court with your return of service prior to any scheduled hearing date, or new service may be required.

The BLUE COPY of this Order is for your records.

"Whenever the court orders . . . the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order . . . forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant . . . The law enforcement agency shall promptly make its return of service to the court.

Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order."

G.L. c. 209A, § 7



| | |
|---|---|
| Atencion: | Notificación oficial del tribunal; si no entiende inglés, obtenga una traducción. |
| Attention: | Avis officiel du tribunal, Anglais limite, veuillez faire traduire. |
| Attenzione: | avviso ufficiale del tribunale. Chi non capisce l'inglese lo faccia tradurre. |
| Atenção: | Este é um anúncio jurídico oficial. Mande traduzí-lo se você não compreende o Inglês. |
| Atenção: | Es é um anúncio oficial di tribunal. Mandâ traduzil si bu ca ta entendê Inglês. |
| Atansyon: | Se avi ofisyel Tribunal la. Fe tradwi'l souple, si'w pa kon Angle. |
| Внимание! | Это повестка из суда. Если Вы не читаете по–английски, обратитесь к переводчику. |
| សូមប្រយ័ត្ន: | ខេះគឺជាសំបុត្រជាផ្លូវការរបស់តុលាការ។ បើលោកអ្នកមិនចេះភាសាអង់គ្លេសទេ សូមរកអ្នកផ្សេងកន្លែងឲ្យ។ |
| XIN CHÚ Ý: | ĐÂY LÀ MỘT THÔNG CÁO CHÍNH THỨC CỦA TÒA ÁN. NẾU QUÍ VỊ KHÔNG BIẾT TIẾNG ANH, VUI LÒNG NHỜ NGƯỜI DỊCH . |
| 注意: | 這是正式的法院通告。如果您不懂英語,請找人代為翻譯。 |

| SUMMONS TO DEFENDANT<br>G.L. c. 209A *or* G.L. c. 258E | DOCKET NO. | Massachusetts Trial Court |
|---|---|---|
| PLAINTIFF'S NAME | | COURT NAME & ADDRESS |
| DEFENDANT'S NAME & ADDRESS | | DATE OF COURT HEARING<br>TIME OF COURT HEARING |

## TO THE DEFENDANT NAMED ABOVE:

The Plaintiff named above has filed with this court the attached:

☐ **Complaint for Protection from Abuse** pursuant to Massachusetts General Laws chapter 209A, section 3, requesting that you be ordered not to abuse the Plaintiff and for other relief as indicated.

☐ **Complaint for Protection from Harassment** pursuant to Massachusetts General Laws chapter 258E, section 3, requesting that you be ordered not to harass or abuse the Plaintiff and for other relief as indicated.

A judge will conduct a hearing on the Plaintiff's Complaint at this court on the date and time shown above.

**YOU ARE HEREBY SUMMONED TO APPEAR** before this Court at that date and time if you wish to be heard on whether the Court should issue the requested Order.

At that hearing, you will have an opportunity to cross-examine any witnesses offered by the Plaintiff. You may also offer witnesses or other evidence on your behalf and you may be heard on whether the Court should issue the requested Order. If you wish, you may retain counsel to represent you at that hearing.

**IF YOU DO NOT APPEAR AT THE HEARING, EITHER PERSONALLY OR BY COUNSEL, THE COURT MAY ISSUE THE REQUESTED ORDER WITHOUT HEARING FROM YOU.**

Whether or not you appear at the hearing, if the Court issues an Order that you are to refrain from abusing or harassing the Plaintiff, to refrain from contacting the Plaintiff or the Plaintiff's minor child, or to vacate the Plaintiff's household, multiple family dwelling or workplace, **ANY VIOLATION OF THAT ORDER IS A CRIMINAL OFFENSE**, punishable by imprisonment or fine or both.

| TESTE OF FIRST JUSTICE<br>WITNESS: | DATE ISSUED | CLERK-MAGISTRATE / ASST. CLERK<br>X |
|---|---|---|

[court seal]

**CERTIFICATE OF SERVICE**

I certify that on this date I served this Summons and a copy of the Plaintiff's Complaint for Protection on the Defendant:

☐ by mailing them by first class mail to the Defendant at the address shown above.

☐ *Other:*

| DATE | SIGNATURE OF PERSON MAKING SERVICE | TITLE |
|---|---|---|
| | X | |

## NOTICE TO PLAINTIFF* REGARDING ABUSE PREVENTION (RESTRAINING) ORDER.

## THIS IS INFORMATION ABOUT THE ABUSE PREVENTION ORDER THAT MAY HELP YOU UNDERSTAND THE TERMS OF THE ORDER. PLEASE READ THE ORDER CAREFULLY.

**A restraining order is a court order.** This means that ONLY a judge can change the order. You CANNOT change or end the order without returning to court. Even if you request, agree, or allow the defendant** to do something forbidden by the order, the defendant will be in violation of the restraining order and will be arrested even if you do not want that to happen.

**A restraining order is a civil order but a violation of the order is a criminal offense.** If you believe that the defendant has violated the order, you should report the violation to the police. A defendant found guilty of violating a restraining order can go to jail for up to 2 ½ years and / or be placed on probation. A criminal conviction (even a continuance without a finding) can (among other things) affect the defendant's ability to obtain employment, public housing, or citizenship, or result in deportation. If the police observe a violation of a restraining order or have probable cause to believe that the defendant has violated the restraining order, the police are required to arrest the defendant.

**If the defendant is ordered not to abuse you, this means that:**

- The defendant cannot physically assault or threaten you.
- The defendant cannot do anything that gives you reason to fear that the defendant might cause you physical harm.
- The defendant must not use force or a threat of any kind to make you have sex unwillingly.

**If the defendant is ordered to have no contact with you, this means that:**

- The defendant cannot live with you.
- The defendant must stay so many feet or yards away from you. The distance is listed on the order.
- The defendant cannot contact you in any way. This includes, but is not limited to, phone calls, text messages, emails, cards, and gifts. The defendant may not contact you through friends, relatives (including children), neighbors, or anyone else, or by sending or posting messages on Facebook, Twitter, SnapChat, LinkedIn, or any other social network site, unless specifically allowed in the restraining order.
- If the defendant is somewhere and you come to that same location, the defendant must leave that place as quickly as possible even if the defendant was there first.

**If the defendant is ordered to leave a residence, this means that:**

- The defendant must leave the residence immediately and stay away from that address while the order is in effect. The defendant must stay away from the address even if you are not there. If the residence is an apartment, the defendant may be ordered to stay away from the entire building, even if the lease is in the defendant's name.
- The defendant cannot damage the residence in any way.
- The defendant cannot shut off any utilities or interrupt mail delivery to you. These orders apply even if the lease and / or utilities are in the defendant's name.

**If the defendant is ordered to stay away from your work, this means:**

- The defendant must stay away from the place where you work as long as the order is in effect. The defendant must remain away from that address even if you are not there at the time.

---

* The plaintiff is the person who asked the court to issue the order

** The defendant is the person the order is issued against.

**If the defendant is ordered to surrender firearms, this means:**

- The defendant must immediately transfer possession of any firearms, ammunition, license to carry firearms, or firearms identification card that he or she has to the police department listed on the order.
- The defendant may not purchase any firearms or ammunition while the order is in effect.

**If you have been given custody of the children, this means:**

- The children will live with you unless or until a judge changes that order.

**If the defendant is ordered to have no contact with the children, this means that:**

- The defendant must stay so many feet or yards away from the children. The distance is listed in the order. The defendant cannot have contact with the children while the restraining order is in effect, unless or until the Probate & Family Court permits such contact with the children.
- The order may include that the defendant stay a specific number of feet or yards away from a child's school or daycare.
- If the defendant is permitted to have contact with the children but not with you, and the children live with you, the defendant must speak only to the children.
- If, after you have gotten an order in District, Boston Municipal, or Superior Court, you and the defendant are in Probate & Family Court on a family case, a Probate & Family Court judge has the authority to change or even end the restraining order if necessary to eliminate any conflict between the restraining order and the order issued in the Probate & Family Court matter. For example, if a Probate & Family Court judge grants a parenting schedule, then the Probate & Family Court judge can change the "no contact" provision in the restraining order to allow the parenting schedule, and can also change the "stay away" provision in the restraining order to allow for specific times for pickup and return. All of the other parts of the restraining order that do not conflict with the Probate & Family Court order shall remain in effect.

## IMPORTANT THINGS TO KNOW:

If you received an *ex parte* restraining order (one issued by a Judge in Court without notice to the defendant), the order will be in effect for not more than ten (10) days. The date for the next court hearing is listed on the second page of the restraining order. The name and location of the court that issued the restraining order is listed at the top right hand corner of the restraining order. The police will give the defendant a copy of the *ex parte* order. During the hearing the judge will listen to evidence presented by both sides and decide if the restraining order should continue in its present form, be changed in some way(s) or be terminated (ended).

If you do not appear at this next hearing, the order will be terminated (ended) at 4 p.m. on the day of the hearing. If the defendant does not come to the hearing, but you do, the Court may extend the restraining order for up to one year.

If you want to change or end the restraining order after it has been issued, you can go to the court that issued the restraining order to file a request that the judge make changes or end the order. The courts are generally open Monday to Friday from 8:30 a.m. - 4:30 p.m. If you wish to remove some of the restrictions on the defendant, the judge may hear you right away, or the judge may set a date for a hearing on your request and notify the defendant of the hearing date. If you wish to have greater restrictions on the defendant because there has been a change in circumstances, the judge may hear you right away if there is a need for an immediate hearing, or the judge may set a date for a hearing and notify the defendant of the hearing date. Court staff in the Clerk's or Register's office will let you know whether they will notify the defendant of the next hearing date or if you have to send notice to the defendant of the hearing date.

## NOTICE TO DEFENDANT* REGARDING ABUSE PREVENTION (RESTRAINING) ORDER.

## THIS IS INFORMATION ABOUT THE ABUSE PREVENTION ORDER THAT MAY HELP YOU UNDERSTAND THE TERMS OF THE ORDER. PLEASE READ THE ORDER CAREFULLY.

**A restraining order is a court order.** This means that ONLY a judge can change the order. The person who requested the order CANNOT change or end the order without returning to court. Even if the plaintiff** requests, agrees to, or allows you to do things forbidden by the order, you will be in violation of the restraining order unless a judge has changed it to permit the conduct.

**A restraining order is a civil order but a violation of the order is a criminal offense.** If you are found guilty of violating a restraining order, you can go to jail for up to 2 ½ years and / or be placed on probation. A criminal conviction (even a continuance without a finding) can (among other things) affect your ability to obtain employment, public housing, or citizenship, or subject you to deportation. If the police observe a violation of a restraining order or have probable cause to believe that you have violated the restraining order, the police are required to arrest you. If you are on probation, violation of a restraining order could also be a violation of your probation.

**If you are ordered not to abuse the plaintiff, this means that:**

- You cannot physically assault or threaten the plaintiff.
- You cannot do anything that gives the plaintiff reason to fear that you might cause the plaintiff physical harm.
- You must not use force or a threat of any kind to make the plaintiff have sex unwillingly.

**If you are ordered to have no contact with the plaintiff, this means that:**

- You cannot live with the plaintiff.
- You must stay away from the plaintiff at the distance indicated on the order, usually a stated number of feet or yards.
- You cannot contact the plaintiff in any way. This includes, but is not limited to, phone calls, text messages, emails, cards, and gifts. You may not contact the plaintiff through friends, relatives (including children), neighbors, or anyone else, or by sending or posting messages on Facebook, Twitter, SnapChat, LinkedIn, or any other social network site, unless specifically allowed in the restraining order.
- If you are somewhere and the plaintiff comes to that same location, you must leave that place as quickly as possible, even if you were there first.

**If you are ordered to leave a residence, this means that:**

- You must leave the residence immediately and stay away from that address while the order is in effect. You must stay away from the address even if the plaintiff is not there. If the residence is an apartment, you may be ordered to stay away from the entire building, even if the lease is in your name.
- You cannot damage the residence in any way.
- You cannot shut off any utilities or interrupt mail delivery to the plaintiff. These orders apply even if the lease and / or utilities are in your name.

**If you are ordered to stay away from the plaintiff's work, this means:**

- You must stay away from the place where the plaintiff works as long as the order is in effect. You must stay away from that address even if the plaintiff is not there at the time.

---

* The defendant is the person the order is issued against.

** The plaintiff is the person who asked the court to issue the order.

**If you are ordered to surrender firearms, this means:**

- You must immediately transfer possession of any firearms, ammunition, license to carry firearms, or firearms identification card that you have to the police department listed on the order.
- You may not purchase any firearms or ammunition while the order is in effect.

**If the plaintiff has been given custody of children, this means:**

- The children will live with the plaintiff unless or until a judge changes that order.

**If you are ordered to have no contact with the children, this means that:**

- You must stay so many feet or yards away from the children (the distance is listed on the order). You cannot have contact with the children while the order is in effect, unless and until the Probate & Family Court permits such contact.
- The order may say that you must stay so many feet or yards away from a child's school or daycare.
- If you are permitted to have contact with the children but not the plaintiff, and the children live with the plaintiff, you must be careful to speak only to the children. You cannot speak to or have any contact with the plaintiff. You must follow the rules permitting contact with the children closely, including how and when you may contact the children. You should not call the home telephone unless the order specifically allows you to call that number.
- If after the District, Boston Municipal, or Superior Court has issued a restraining order, you and the plaintiff are in Probate & Family Court on a family case, a Probate & Family Court judge has the authority to change or even end the restraining order if necessary to eliminate any conflict between the restraining order and the order issued in the Probate & Family Court matter. For example, if a Probate & Family Court judge grants a parenting schedule, then the Probate & Family Court judge can change the "no contact" provision in the restraining order to allow the parenting schedule, and can also change the "stay away" provision in the restraining order to allow for specific times for pickup and return. All of the other parts of the restraining order that do not conflict with the Probate & Family Court order shall remain in effect.

**How do I get my things?**

If you have been ordered to stay away from your home, the order may permit you to go with the police to pick up your personal belongings at a time agreed to by the plaintiff. You must contact the local police to arrange a time that they can go with you to get your clothes and other things you may need.

**IMPORTANT THINGS TO KNOW:**

The date for the next court hearing is listed on the second page of the restraining order. The name and location of the court that issued the order is listed at the top left hand corner of the order. During the hearing the judge will listen to evidence presented by both sides and decide if the restraining order should continue in its present form, be changed in some way(s), or be terminated (ended). If you do not appear at this hearing after receiving notice and the plaintiff appears, the order may be extended for one year.

If you want to change or end the restraining order after it has been issued, you can go to the court that issued the restraining order to file a request that the judge make changes or end the order. The courts are generally open Monday to Friday from 8:30 a.m. - 4:30 p.m. Once the order has issued after a hearing, a judge will only change the restraining order if you show that there has been a change in circumstances. To ask to end an order before the termination date, you have to prove to a judge that there has been a significant change in circumstances. Court staff in the Clerk's or Register's Office can assist you in filing the necessary documents to make this request. After you file your request, a hearing may be scheduled and the plaintiff will be given notice of the hearing. The court staff will let you know if they will notify the plaintiff of the hearing or if you need to send the plaintiff notice of the hearing date by mail.

| PLAINTIFF'S MOTION TO MODIFY OR TERMINATE ABUSE PREVENTION ORDER | DOCKET NO. (FOR COURT USE ONLY) | TRIAL COURT OF MASSACHUSETTS |
|---|---|---|

| PLAINTIFF'S NAME | DEFENDANT'S NAME | COURT DIVISION |
|---|---|---|
| | | |

_____, **Plaintiff** in the above entitled matter, respectfully moves that this court

☐ modify or ☐ terminate the abuse prevention order issued pursuant to G.L. c. 209A.

In support of this request, the **Plaintiff** states: _____

_____

_____

_____

_____

_____

_____

**Plaintiff**: Please read and check box below.

**I understand that I can request at any time a new abuse prevention order, if the Defendant harms or attempts to harm me physically; or places me in fear of imminent serious physical harm; or, by using force, threat or duress, makes me engage in sexual relations.** ☐

Signed under the penalties of perjury.

_____ _____

Signature of Plaintiff Date

**The motion is:** ☐ **ALLOWED** ☐ **DENIED**

_____

_____

_____

| SIGNATURE OF JUDGE<br>PRINT/TYPE NAME OF JUDGE | DATE OF ORDER | TIME OF ORDER | ☐ A.M.<br>☐ P.M. |
|---|---|---|---|
| WITNESS - FIRST OR CHIEF JUSTICE | A true copy, attest (Asst.) Clerk-Magistrate/ (Asst.) Register of Probate | | |

| DEFENDANT'S MOTION TO MODIFY OR TERMINATE ABUSE PREVENTION ORDER | DOCKET NO. (FOR COURT USE ONLY) | TRIAL COURT OF MASSACHUSETTS |
|---|---|---|

| PLAINTIFF'S NAME | DEFENDANT'S NAME | COURT DIVISION |
|---|---|---|
| | | |

_____, **Defendant** in the above entitled matter, respectfully moves that this court

☐ modify or ☐ terminate the abuse prevention order issued pursuant to G.L. c. 209A.

In support of this request, the **Defendant** states: _____

_____

_____

_____

_____

_____

_____

Signed under the penalties of perjury.

_____ _____

Signature of Defendant Date

This motion must be scheduled for a hearing in court AND a copy of this motion and the hearing date must be mailed to the Plaintiff at least ten days before the hearing.

- The Defendant must ask the court how to schedule the hearing
- In some courts the date for the hearing is chosen by the court and the court sends notice to the Plaintiff
- In other courts the Defendant (the person filing the motion to modify or terminate) must get a date for a hearing from the court and mail the motion and notice of the date to the Plaintiff
- Please fill out the hearing information below and check the correct box

**NOTICE OF HEARING:** This motion will be heard at the _____court located at_____
(city/town)

on _____ at_____ .
(month/day/year) (time of hearing)

**CHECK ONE:**
☐ The Defendant has obtained the date of the hearing and is mailing notice to the Plaintiff.
☐ The Court has scheduled a hearing and has notified both parties by mail.

**The motion is:** ☐ **ALLOWED** ☐ **DENIED**

_____

_____

_____

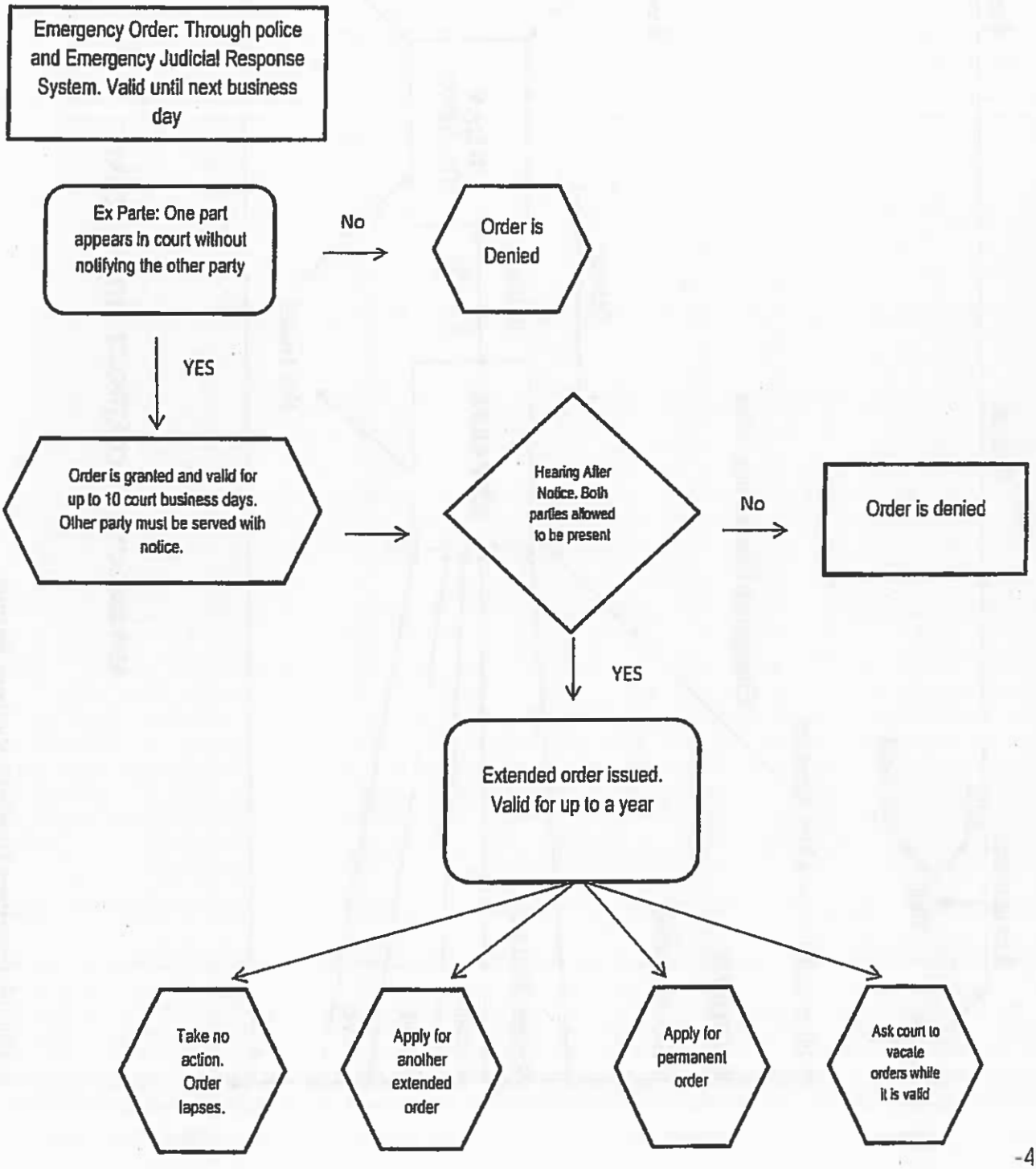
| SIGNATURE OF JUDGE<br>PRINT/TYPE NAME OF JUDGE | DATE OF ORDER | TIME OF ORDER | ☐ A.M.<br>☐ P.M. |
|---|---|---|---|
| WITNESS - FIRST OR CHIEF JUSTICE | A true copy, attest (Asst.) Clerk-Magistrate/ (Asst.) Register of Probate | | |

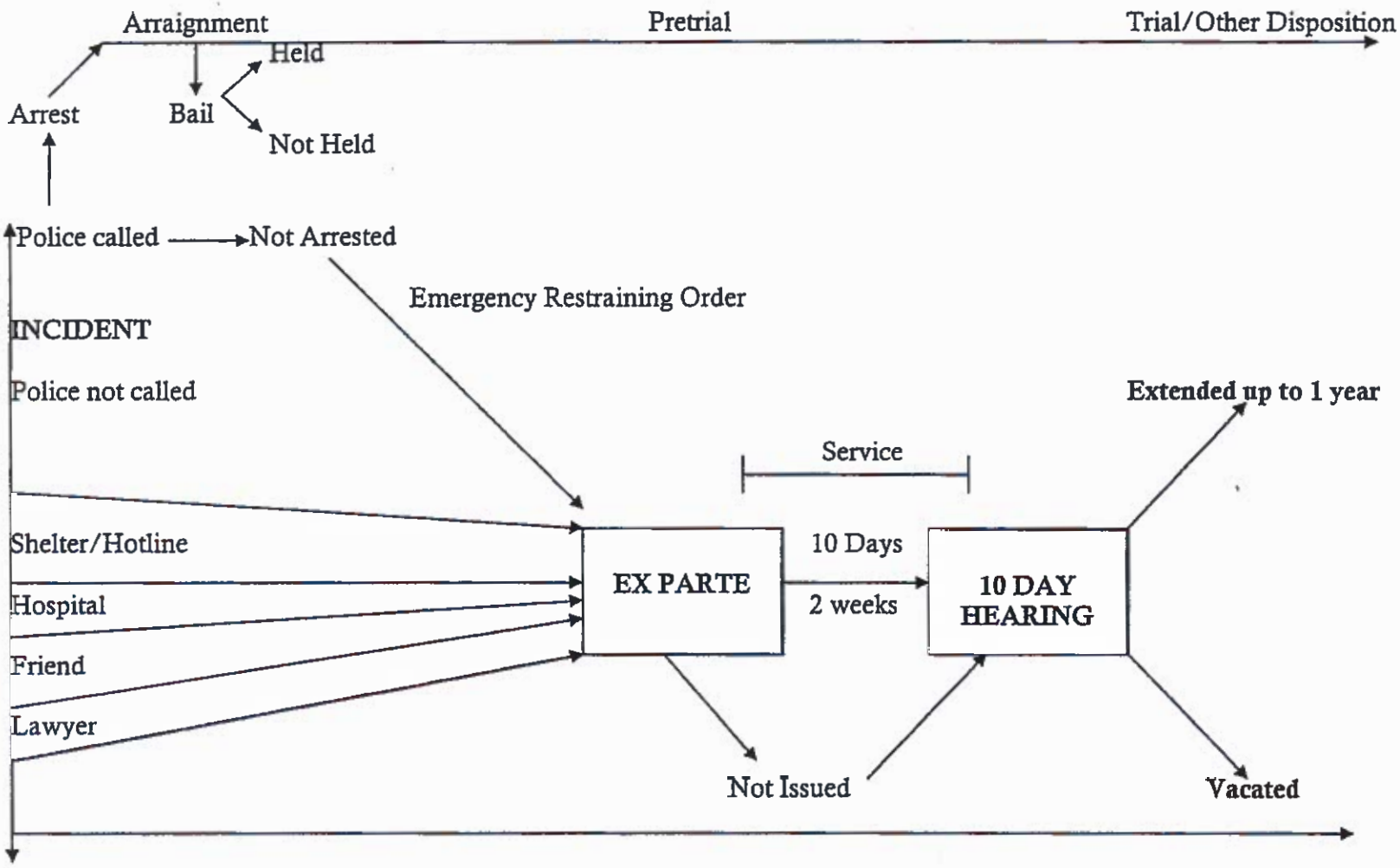
FA-14 (1/12)

COURT COPY

WBF

The Massachusetts Restraining Order Process






**ADVOCACY THROUGHOUT THE PROCESS**

Credit: Northeastern Domestic Violence Institute

## AFFIDAVIT

Describe in detail the most recent incidents of abuse. The Judge requires as much information as possible, such as what happened, each person's actions, the dates, locations, any injuries, and any medical or other services sought. Also describe any history of abuse, with as much of the above detail as possible.

On or about Jan [redacted] 2015, the Defendant threatened to kill me with a kitchen knife in front of my daughter when I asked him for the money that he had taken from me back. He makes me very afraid because he has physically and sexually abused me in the past as well. [redacted] I have also been afraid to tell people about the abuse because he has threatened to kill me if I tell anyone (my doctor, etc.) about the abuse

If more space is needed, attach additional pages and check this box: ☐

I declare under penalty of perjury that all statements of fact made above, including those provided on P.1, Section E and P.2, Sections A and B of the Complaint form regarding prior and pending court actions, and in any additional pages attached, are true to the best of my knowledge.

| DATE SIGNED | PLAINTIFF'S SIGNATURE |
|---|---|
| 1-[redacted] 15 | X [redacted] |

| WITNESSED BY | PRINTED NAME OF WITNESS | TITLE OF WITNESS |
|---|---|---|
| X _____ | | |

I have transcribed the above affidavit for the Plaintiff

_____ _____
Signature Print Name

☐ Court Certified Interpreter
☐ Court Screened Interpreter
☐ Other _____
☐ Remote Translation Via Telephone/Video

Commonwealth of Massachusetts
**THE TRIAL COURT**

**BOSTON DIVISION** **DOCKET #**

Jane DOE

PLAINTIFF

v.

John DOE,

DEFENDANT

**SUPPLEMENTAL AFFIDAVIT OF PLAINTIFF**
**FOR 209A ABUSE PREVENTION HEARING**

I, Jane Doe, state and affirm the following:

1. John Doe is my husband. We have been married for three years. We are both from Morocco but we got married in the United States. We have one daughter together, Jenny Doe (D.O.B. 1/2/2014).

2. John has abused me, insulted me, and humiliated me throughout our marriage. He hit me in the face once about a year ago. He also forced me to have sex with him twice in the past year.

3. Things between us became much worse after I became pregnant with our daughter. Early in my pregnancy I felt quite sick and asked John to bring me things I could eat without feeling nauseated. He refused to bring me food and twice I had to go to the emergency room because I wasn't eating. He also wouldn't help me carry things even when I was very pregnant.

4. Four days after our daughter was born I began to experience a lot of pain. I asked John to call me an ambulance and he said he didn't want to. He told me he hoped I would die. I finally called the ambulance myself and spent the night in the emergency room alone. John refused to come to the hospital.

5. I have been too scared to report the abuse until now because John and his brother have threatened to hurt me if I told anyone. John brother told me that if I ever called the police, he knew men who could hurt me and my daughter.

6. On January 8, 2015, John threatened me with a knife. I asked him about money that he had borrowed from me for his business. I told him he was taking advantage of me and not using the money from the business to support my daughter or me. He got angry, pointed a kitchen knife at me, and said, "If you ask me again I will kill you." Our one-year old daughter was in the room.

7. On January 15, 2015, I came home from having surgery on my nose and discovered that John had moved out of our apartment. He took his clothes, some money, and other valuables with him. This was the third time he had left me and my daughter alone for more than a week without telling us where he was going and without access to any money; the first two times were right after I had given birth.

8. The day after John left, I called him because our daughter was sick with a high fever. I asked him to take her to the emergency room. He said he would see what he could do and call me back. He never did. A neighbor ended up helping me take her to the hospital.

9. On January 21, 2015, I went to the barbershop where John works to ask him for financial help. I was upset and crying, but he refused to talk to me and just called the police. I was overwhelmed and collapsed onto the floor. The police called an ambulance which took me to the emergency room. I learned that I had legal rights to protect myself and my daughter and requested this restraining order two days later.

10. John was served with the restraining order on January 30, 2015. The following Monday his brother called our landlord and told him my husband was not living there anymore and that I planned to leave at the end of the month. John used to threaten to put me out on the street. I had to explain to the landlord that I did not plan to move out.

11. I am scared of John because his behavior has gotten worse over the past year, and I do not want him coming near me or contacting me. I am also asking the court for custody of our daughter and to prevent John from seeing her right now. I am scared of what he is capable of doing because he threatened me with the knife in front of our daughter.

12. I am also asking for John to support me and our daughter financially. I cannot work right now because of the surgery I just had, and I believe John makes a lot of money from the barbershop he owns.

Signed under pains and penalties of perjury,

Date: January 2015

_____

Jane Doe

Boston Police

*William B. Evans, Police Commissioner*

# INCIDENT REPORT

ORIGINAL — STATUS: APPROVED

| KEY SITUATIONS | COMPLAINT NO. | RPT DIST. | CAD RA | RPT RA | CLEAR. DIST. |
|---|---|---|---|---|---|
| DVIP | [redacted] | B3 | 432 | 432 | |

| UCR INCIDENT DESCRIPTION | UCR FINAL INCIDENT DESCRIPTION | STATUS | DATE OCCURRED FROM | DATE OCCURRED TO |
|---|---|---|---|---|
| VERBAL DISPUTE | VERBAL DISPUTE | | 08[redacted]2014 | |

| LOCATION OF INCIDENT | APT | DISPATCH TIME | TIME OCCURRED FROM | TIME OCCURRED TO |
|---|---|---|---|---|
| [redacted] | | 04:24 PM | 04:21 PM | |

| NEIGHBORHOOD | TYPE OF BUILDING | PLACE OF ENTRY | WEATHER | LIGHTING |
|---|---|---|---|---|
| DORCHESTER | RESIDENTIAL HOUSE | N/A | CLOUDY | OUTSIDE - DAY |

| TYPE OF WEAPON-TOOL | SUSPECT MODE OF TRANSPORTATION | VICTIM'S ACTIVITY | SUSPECT RELATIONSHIP TO VICTIM |
|---|---|---|---|
| HANDS | CAR | GOING INTO HOME | SPOUSE |

UNUSUAL ACTIONS AND STATEMENTS OF PERPETRATOR

**PERSON 1**

| # | TYPE | NAME (LAST, FIRST, MI) | S.S. NO. | BOOKING NO. | DOCKET NO. |
|---|---|---|---|---|---|
| 1 | VICTIM | [redacted] | | 0 | |

| ALIAS | ADDRESS | GENDER | RACE | DOB | AGE |
|---|---|---|---|---|---|
| | [redacted] DORCHESTER MA 02124-0000 | MALE | BLACK NON-HISPANIC | [redacted] | 8 |

| HEIGHT | WEIGHT | BUILD | HAIR | EYES |
|---|---|---|---|---|
| 0-00 | | N/A | | |

| OCCUPATION | MARITAL STATUS | EMAIL ADDRESS | CONTACT #1 | CONTACT #2 |
|---|---|---|---|---|
| | MARRIED | | (000)-000-0000 | |

SPECIAL CHARACTERISTICS(INCLUDING CLOTHING)
NON-VERBAL, SUFFERS FROM AUTISM

**PERSON 2**

| # | TYPE | NAME (LAST, FIRST, MI) | S.S. NO. | BOOKING NO. | DOCKET NO. |
|---|---|---|---|---|---|
| 2 | VICTIM | [redacted] | | 0 | |

| ALIAS | ADDRESS | GENDER | RACE | DOB | AGE |
|---|---|---|---|---|---|
| | [redacted] DORCHESTER MA 02124-0000 | FEMALE | BLACK NON-HISPANIC | [redacted] | 41 |

| HEIGHT | WEIGHT | BUILD | HAIR | EYES |
|---|---|---|---|---|
| 0-00 | 000 | N/A | | |

| OCCUPATION | MARITAL STATUS | EMAIL ADDRESS | CONTACT #1 | CONTACT #2 |
|---|---|---|---|---|
| | | | [redacted] | (000)-000-0000 |

SPECIAL CHARACTERISTICS(INCLUDING CLOTHING)

**PERSON 3**

| # | TYPE | NAME (LAST, FIRST, MI) | S.S. NO. | BOOKING NO. | DOCKET NO. |
|---|---|---|---|---|---|
| 3 | REPORTER | SAME AS ABOVE | | 0 | |

| ALIAS | ADDRESS | GENDER | RACE | DOB | AGE |
|---|---|---|---|---|---|
| | | | | | 0 |

| HEIGHT | WEIGHT | BUILD | HAIR | EYES |
|---|---|---|---|---|
| | | | | |

| OCCUPATION | MARITAL STATUS | EMAIL ADDRESS | CONTACT #1 | CONTACT #2 |
|---|---|---|---|---|
| | | | | |

SPECIAL CHARACTERISTICS(INCLUDING CLOTHING)

**PERSON 4**

| # | TYPE | NAME (LAST, FIRST, MI) | S.S. NO. | BOOKING NO. | DOCKET NO. |
|---|---|---|---|---|---|
| 4 | WITNESS | [redacted] | | 0 | |

| ALIAS | ADDRESS | GENDER | RACE | DOB | AGE |
|---|---|---|---|---|---|
| | [redacted] DORCHESTER MA 02124-0000 | MALE | BLACK NON-HISPANIC | [redacted] | 8 |

| HEIGHT | WEIGHT | BUILD | HAIR | EYES |
|---|---|---|---|---|
| 0-00 | | N/A | | |

| OCCUPATION | MARITAL STATUS | EMAIL ADDRESS | CONTACT #1 | CONTACT #2 |
|---|---|---|---|---|
| | | | | |

SPECIAL CHARACTERISTICS(INCLUDING CLOTHING)
SUFFERS FROM AUTISM

PERSONS

| # | TYPE | NAME (LAST, FIRST, MI) | S.S. NO. | BOOKING NO. | DOCKET NO. |
|---|---|---|---|---|---|
| 5 | WITNESS | [redacted] | | 0 | |

| ALIAS | ADDRESS | GENDER | RACE | DOB | AGE |
|---|---|---|---|---|---|
| | [redacted], DORCHESTER MA 02124-0000 | MALE | BLACK NON-HISPANIC | [redacted] | 11 |

| HEIGHT | WEIGHT | BUILD | HAIR | EYES |
|---|---|---|---|---|
| 0-00 | | N/A | | |

| OCCUPATION | MARITAL STATUS | EMAIL ADDRESS | CONTACT #1 | CONTACT #2 |
|---|---|---|---|---|
| | | | (000)-000-0000 | (000)-000-0000 |

SPECIAL CHARACTERISTICS(INCLUDING CLOTHING)

| # | TYPE | NAME (LAST, FIRST, MI) | S.S. NO. | BOOKING NO. | DOCKET NO. |
|---|---|---|---|---|---|
| 6 | OFFENDER | [redacted] | 000-00-0000 | 0 | |

| ALIAS | ADDRESS | GENDER | RACE | DOB | AGE |
|---|---|---|---|---|---|
| | [redacted] 02748-0000 | MALE | BLACK HISPANIC | [redacted] | 42 |

| HEIGHT | WEIGHT | BUILD | HAIR | EYES |
|---|---|---|---|---|
| 0-00 | | N/A | | |

| OCCUPATION | MARITAL STATUS | EMAIL ADDRESS | CONTACT #1 | CONTACT #2 |
|---|---|---|---|---|
| | MARRIED | | [redacted] | (000)-000-0000 |

SPECIAL CHARACTERISTICS(INCLUDING CLOTHING)

NARRATIVE AND ADDITIONAL INFORMATION:

About 4:24pm on Tuesday, [redacted] 2014, Officer [redacted] in the C422F unit, responded to a radio call for a Domestic Violence Intimate/Partner Dispute at [redacted], Dorchester. Also responding was the C202F unit, Officers [redacted] and [redacted].

Upon arrival, Officer [redacted] spoke to the victim, [redacted] who stated that she had gotten into an argument with her husband, suspect [redacted]. The victim stated that the suspect was giving her and their three children a ride home, when they go into an argument and she called him a "dirty man." The victim stated that the suspect drove to her home, and while she was getting the children out of the car he pushed the front gate closed, striking their son, [redacted] and hitting her left leg. Officer [redacted] asked the victim if either herself or her son needed EMS, to which she declined.

The victim explained to the officer that her son [redacted] suffers from Autism and he is non-verbal. She also stated that his twin brother [redacted], also suffers from Autism. As the officer was speaking with the victim, their eldest son, [redacted], stated that he witnessed his father push his mother against the wall yesterday.

Officer advised the victim of her 209a Rights, and advised her to re contact police if the suspect returns. She stated that the suspect resides in New Bedford, and he does not have keys to her home.

Form 51a filed.

| UNIT ASSIGNED | SHIFT | REPORTING OFFICER'S NAME | REPORTING OFFICER'S ID | PARTNER'S ID |
|---|---|---|---|---|
| C422F | 3 | [redacted] | [redacted] | 0 |

SPECIAL UNITS NOTIFIED(REPORTING)

AREA B-3;DOMESTIC VIOLENCE UNIT

| DATE OF REPORT | TIME COMPLETED | APPROVING SUPERVISOR NAME | APPROVING SUPERVISOR ID |
|---|---|---|---|
| 03/[redacted]2014 | 06:39 PM | MICHAEL J HEGARTY | 11209 |

## 209A Case Preparation checklist

Pre-Hearing

- Complete a conflict check
- Prepare a retainer agreement or other engagement documents with the client
- Draft affidavit.
- Prepare supplemental documentary evidence, such as:
  - ✓ Police and hospital reports
  - ✓ Witness affidavits
  - ✓ Financial documentation of either or both parties if appropriate
  - ✓ Any documents from the Probate and Family Court if appropriate
- If the opposing party is represented, look the attorney up online
- Obtain client approval of affidavit and edits.
- Review any relevant evidentiary rules if appropriate
- Arrange a safe meeting place with the client (e.g., civil clerk's office, coffee shop)

Hearing

- Bring:
  - ✓ Client file (including Complaint and Temporary Order)
  - ✓ Cab vouchers, if appropriate
  - ✓ Affidavits (4 copies)
  - ✓ Supplemental documentary evidence referenced above (4 copies)
  - ✓ 209A Statutes and any other relevant case law
  - ✓ Any other case materials
- Have client sign affidavits.
- File notice of appearance (will need BBO #).
- Serve copies of any affidavits and financial documents, if appropriate, with clerk and opposing counsel.
- Wait in courtroom for the client's name to be called. Watch where other attorneys and clients stand if there are 209As before you. When the client's name is called go to the front of the courtroom. You should always stand in between your client and the opposing party. If you are unsure of where to stand, look for directions from the court officer.
- Always remember to let the judge and other side speak without interrupting. If the judge omits something you requested from the 209A, you should inquire as to his or her ruling on that issue (i.e. stay away from child's school) before you sit down.

Post-Hearing

- Sit in safe location in the courthouse for order.
- Review order for any errors.
- Prepare closing letter and send to client.
- Prepare case evaluation form and, if applicable, any intake organization evaluation forms.

# THE DOMESTIC & SEXUAL VIOLENCE COUNCIL

## GUIDELINES FOR REPRESENTING CLIENTS AT 209A EXTENSION HEARINGS

**March 2011**

## INTRODUCTION

The Domestic & Sexual Violence Council ("DSVC")[1] is a coalition of lawyers and legal advocates that helps victims of domestic and sexual violence by coordinating legal services, providing trainings to providers of services, and advocating to improve legislative and judicial policies concerning domestic violence and sexual assault in Massachusetts.

For over two decades, DSVC member law firms and legal services organizations have advocated for and represented survivors of sexual assault and intimate partner violence in both trial and appellate courts. The DSVC also drafts amicus curiae briefs in appellate cases that impact domestic and sexual violence victims and their advocates, on issues ranging from defending the constitutionality of various provisions of the abuse prevention law, to preventing the disclosure of confidential mental health and sexual assault counseling records in criminal cases.

In 2005, the DSVC filed an amicus brief with the Massachusetts Supreme Judicial Court in *Iamele v. Asselin*, 444 Mass. 734, 736 (2005)[2], which is the leading case in Massachusetts on 209A order extensions. In our brief, we asserted that at a 209A renewal hearing, a showing that the plaintiff has a reasonable fear of future harm is enough to establish a continued need for the restraining order. The SJC agreed. Since the *Iamele* decision, DSVC member attorneys and legal advocates have seen a significant amount of inconsistency in the way that trial court judges have applied the law on 209A orders at the renewal stage of the case. Specifically, some judges have failed to apply the correct legal standards when deciding whether a plaintiff has met her/his burden in showing that she/he is in reasonable fear of abuse and therefore in need of an extension of the 209A order.

From this vast reservoir of experience and observation, the DSVC has developed a toolkit for lawyers and advocates to use as a resource when preparing clients for 209A Abuse Prevention hearings, and in particular, 209A extension or renewal hearings. The following "Guidelines For Representing Clients at 209A Extension Hearings" are meant to capture the key provisions, cases, and factors that the courts have often used to analyze whether a plaintiff should be granted a 209A order. Included in these Guidelines are the following five sections: 1. Key Legal Standards on Extending 209A Orders, 2. Additional Guidance on Extending 209A Orders, 3. Totality of Circumstances Evaluation, 4. Other Factors that Plaintiffs Identify as Reasons for Extending a 209A Order and 5. Relevant Case Law on Extensions of 209A Orders.

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[1] The Domestic & Sexual Violence Council was formally known as the Domestic Violence Council ("DVC").

[2] Jane Doe Inc., the Women's Bar Association of Massachusetts, Emerge, Inc., Massachusetts Citizens for Children and Foley Hoag LLP's Domestic Violence Prevention Program joined the Domestic & Sexual Violence Council on this amicus brief.

## THE DOMESTIC & SEXUAL VIOLENCE COUNCIL
## GUIDELINES FOR REPRESENTING CLIENTS AT 209A EXTENSION HEARINGS

The Domestic & Sexual Violence Council is very pleased to distribute these Guidelines to our members and partner organizations. We hope that they will serve as a valuable resource to those attorneys and advocates helping survivors of sexual and domestic violence seek safety and protection from their perpetrators.

### 1. KEY LEGAL STANDARDS ON EXTENDING 209A ORDERS[3]

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| **Plaintiff has Burden of Proof** | |
| The plaintiff has the burden to establish facts justifying the issuance and extension of the order, whether seeking the issuance of an initial 209A order or a later extension of that order. | *Iamele v. Asselin*, 444 Mass. 734, 736 (2005) (quoting *Frizado v. Frizado*, 420 Mass. 592, 596 (1995)); *Guidelines for Judicial Practice: Abuse Prevention Proceedings*, Section 5:04, Massachusetts Administrative Office of the Trial Court (revised in 2000) [4] |
| **Standard of Proof is Preponderance of the Evidence** | |
| The standard of proof in c. 209A hearings is the usual civil standard of preponderance of the credible evidence. | *Iamele; Guidelines for Judicial Practice*, Sections 3:06 and 5:04 |
| **Rules of Evidence Applied with Flexibility** | |
| The common law rules of evidence, e.g. regarding hearsay, authentication and best evidence, need not be followed provided there is fairness in what evidence is admitted and relied on. | *Frizado v. Frizado*; *Guidelines for Judicial Practice*, Sections 3:06 and 5:03 |
| **No New Or Ongoing Incident of Abuse Required for Extending the Order** | |
| The fact that defendant did not abuse the plaintiff during the pendency of an order does not constitute sufficient ground for refusing to extend the order; Chapter 209A does not require additional abuse to have occurred since the issuance of original protective order. | M.G.L. 209A, §3; *Pike v. Maguire*, 47 Mass. App. Ct. 929 (1999); *Kane v. Casto*, 72 Mass. App. Ct. 1105 (2008) [*Unpublished*]; *Guidelines for Judicial Practice*, Section 6:08 |
| **Court Cannot Deny 209A Request Because it was not Filed Within a Particular Time Period** | |
| Chapter 209A, § 3 provides that a court "shall not deny any complaint filed under this chapter solely because it was not filed within a particular time period after the last alleged incident of abuse." | M.G.L. 209A, §3; *Guidelines for Judicial Practice*, Commentary to Section 6:08 |
| **Only Criterion is Continued Need for Protection from Abuse** | |

[3] This section includes some of the key legal standards that apply to hearings on extending Chapter 209A orders; these key legal standards are supported by a range of legal authority, including statutory authority (M.G.L. Chapter 209A), binding legal precedent (Supreme Judicial Court and Mass. Appeals Court decisions), persuasive legal authority (unpublished Rule 1:28 Mass. Appeals Court summary decisions), and relevant judicial guidance on 209A abuse prevention proceedings (Guidelines for Judicial Practice on Abuse Prevention Proceedings), all of which are cited in the right-hand column.

[4] The *Guidelines for Judicial Practice on Abuse Prevention Proceedings* may be found at: http://www.mass.gov/courts/formsandguidelines/domestic/dvtoc.html

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| At a 209A extension hearing, the plaintiff must show that she/he continues to require protection from abuse as defined in c. 209A, § 1, based on the totality of the circumstances of the parties' relationship. | *Iamele; Jones. v. Gallagher*, 54 Mass. App. Ct. 883 (2002); *Pike v. Maguire; Guidelines for Judicial Practice*, Commentary to Section 6:08 |
| **Plaintiff must Show Continued "Abuse" and/or Continued Fear of Abuse** | |
| At a 209A extension hearing, the plaintiff must show:<br>❖ That the defendant is causing or attempting to cause physical harm, or<br>❖ ***That the plaintiff has a reasonable fear of imminent serious physical harm***, or<br>❖ That the defendant is causing the plaintiff to engage involuntarily in sexual relations by force, threat or duress. | *Iamele* |
| **Typically Plaintiff Must Show Reasonable Fear of Imminent Serious Physical Harm Based on Past Abuse and Other Factors** | |
| Unless the defendant during the pendency of the 209A order has caused the plaintiff physical harm, has threatened the plaintiff, or has sexually assaulted the plaintiff, the plaintiff will need to show that she/he has a reasonable fear of "imminent serious physical harm" at the time of the 209A extension hearing. | *Iamele* |
| **Judge Must Consider Totality of the Circumstances to Determine Whether Plaintiff is in Reasonable Fear of Imminent Serious Physical Harm** | |
| In determining whether the plaintiff has shown that she/he is in reasonable fear of imminent serious physical harm from the defendant, the judge must consider the totality of the circumstances of the parties' relationship at the time the plaintiff seeks the extension of the 209A order, viewed in the light of the initial abuse prevention order. No one factor is likely to be determinative. | *Iamele; Bernson v. Tennent*, 72 Mass. App. Ct. 1116 (2008) [*Unpublished*]; *Daniel v. Daniel*, 71 Mass. App. Ct. 1111 (2008) [*Unpublished*]; *Vittone v. Clairmont*, 64 Mass. App. Ct. 479 (2005) |

## 2. ADDITIONAL GUIDANCE ON EXTENDING 209A ORDERS[5]

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| **When Plaintiff May Request Extension of 209A Order** | |
| During the pendency of an existing 209A order, or at the time scheduled for the order to expire, the plaintiff may seek to extend the order. | *Guidelines for Judicial Practice: Abuse Prevention Proceedings*, Commentary to Section 6:08, Massachusetts Administrative Office of the Trial Court (1997, revised in 2000) |
| **Affidavit in Support of Extension of Order Preferred** | |
| The plaintiff should file an affidavit which explains the continued need for a protective order. | *Guidelines for Judicial Practice*, Commentary to Section 6:08 |

[5] This section provides additional guidance on 209A extension hearings and is supported by a range of legal authority, including statutory authority, case law and judicial guidelines.

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| **Plaintiff Need Not Remain in the Court's Jurisdiction** | |
| The fact that the plaintiff may have moved out of the jurisdiction is not a reason for denying the 209A extension, or requiring the plaintiff to reapply in the court within whose jurisdiction the plaintiff now lives. | *Guidelines for Judicial Practice*, Commentary to Section 6:08 |
| **Placing Plaintiff in Fear of Imminent Serious Physical Harm Analogous to Assault** | |
| The aspect of the definition of "abuse" under c. 209A which involves "placing another in fear of imminent serious physical harm" is analogous to the common law crime of assault: an intentional act by one person that creates an apprehension in another of an imminent harmful or offensive contact. | *Commonwealth v. Gordon*, 407 Mass. 340 (1990); *Kane v. Casto*, 72 Mass. App. Ct. 1105 (2008) [*Unpublished*] |
| **Court Should Consider Words and Actions of Defendant to Determine Whether Plaintiff's Fear is Reasonable** | |
| In determining whether a victim's fear of physical force is reasonable, a court will look at the actions and words of the defendant in light of the attendant circumstances. | *Commonwealth v. Gordon*; *Kane v. Casto* |
| **Plaintiff Can Show Reasonable Fear of Defendant Even if No Contact During Pendency of 209A Order** | |
| When the abuse that occurred was particularly egregious, the judge can find that the plaintiff still fears the defendant even though when there has been no contact between the parties in the past two years. | *Doe v. Keller*, 57 Mass. App. Ct. 776 (2003) |
| **Plaintiff Not Required to Re-establish Facts of Abuse** | |
| The plaintiff is not required to re-establish facts sufficient to support the initial grant of a 209A order. | *Rauseo v. Rauseo*, 50 Mass. App. Ct. 911 (2001); *Relevant Case law on Extending 209A Orders*, Attachment to Memorandum from Chief Justice Connolly dated 8/26/10[6] |
| **No Additional Notice to Defendant Required** | |
| "If the plaintiff appears at the court at the date and time the order is to expire" (M.G.L. c. 209A, §3), and the defendant was served with notice of that scheduled hearing in the order, no new notice need be sent, and the same order may be extended. | *Guidelines for Judicial Practice*, Commentary to Section 6:08 |
| **Whether Extension of 209A is Reasonably Necessary to Protect Plaintiff** | |
| When the plaintiff appears for the 209A extension hearing, the court has three options: (1) to permit the order to expire without further action, (2) to extend the order for "any additional time reasonably necessary" to protect the plaintiff from abuse, or (3) to make the order permanent. | M.G.L. c. 209A, §3; *Guidelines for Judicial Practice*, Commentary to Section 6:09 |
| **Plaintiff Must Show Facts that Justify Extension of 209A Order; No Presumption that Order be Extended** | |
| • The prior issuance of a one-year order is not itself sufficient reason to issue a permanent order absent a | *Jones. v. Gallagher*, 54 Mass. App. Ct. 883 (2002) |

[6] Relevant excerpts from Chief Justice Connolly's Memorandum dated 8/26/10 are attached to this document as an Addendum; the entire District Court Memorandum may be found at: http://www.masslegalservices.org/node/33375

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| finding that a permanent order is, in fact, what is reasonably necessary to protect the plaintiff from abuse.<br>• No presumption arises from the fact that the prior order has issued; it is the plaintiff's burden to establish that the facts that exist at the time extension of the order is sought, justify an extension of the order. | *Smith v. Jones*, 67 Mass. App. Ct. 129 (2006) |
| **Defendant Cannot Challenge Underlying Facts that Supported Issuance of Initial 209A** | |
| The defendant may not challenge the prior testimony of the plaintiff, her affidavit, or any other evidence that supported the initial 209A order. | *Iamele v. Asselin*, 444 Mass. 734 (2005) |
| **Defendant Not Found Criminally Liable Does Not Mean Preponderance of Evidence Standard Cannot be Met for Purposes of Extending 209A Order** | |
| The fact that defendant is not found criminally liable for abusing the plaintiff does not mean that plaintiff will be unable to show that an extension of the 209A is justified; the question before a grand jury (and a clerk magistrate and arresting police officer) is whether there is probable cause to believe that defendant committed a crime against the plaintiff and the question before a district court judge is whether based on a preponderance of the evidence, there is a continuing need for a restraining order under G. L. c. 209A. | *Frizado v. Frizado*, 420 Mass. 592, 597 (1995); *Doe v. Keller* |
| **Judge May Grant a Permanent Restraining Order** | |
| After extending the order at a 10-day hearing for one year or less, a judge may extend the order for a discretionary period or make it permanent at the expiration date, "regardless of whether there has been any new incident of abuse." | M.G.L. 209A, §3; Crenshaw v. Macklin, 430 Mass. 633, 636 (2000); *Guidelines for Judicial Practice;* Commentary to Section 6:08 |

## 3. TOTALITY OF THE CIRCUMSTANCES EVALUATION: FACTORS THAT CAN SHOW THAT PLAINTIFF IS IN FEAR OF IMMINENT SERIOUS PHYSICAL HARM AND THEREFORE IN NEED OF AN EXTENSION OF THE 209A ORDER[7]

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| ➢ The basis for the initial 209A order | *Iamele v. Asselin*, 444 Mass. 734 (2005) |
| ➢ The nature of the past abuse, i.e. whether the past abuse was so severe or pervasive that the risk of future abuse is likely should the existing order expire | *Iamele, Doe v. Keller*, 57 Mass. App. Ct. 776 (2003); *Doe v. Khosla*, 77 Mass. App. Ct. 1107 (2010) [*Unpublished*] |
| ➢ Defendant's past violations of 209A orders | *Iamele; Rauseo v. Rauseo*, 50 Mass. App. Ct. 911 (2001); *Pike v. Maguire*, 47 Mass. App. |

[7] This section is not intended to be an exhaustive list of all factors that may be relevant to the totality of the circumstances evaluation at a 209A extension hearing; rather it is a compilation of the factors articulated in several key Supreme Judicial Court and Massachusetts Appeals Court decisions, and in the Checklist for Extending 209A Orders, which is an attachment to Chief Justice Connolly's Memorandum dated 8/26/10.

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| | Ct. 929 (1999) |
| ➢ Defendant's past and/or current charges for domestic assault and/or battery | *Bernson v. Tennent*, 72 Mass. App. Ct. 1116 (2008) [*Unpublished*]; *Checklist for Extending 209A Orders*, Attachment to Memorandum from Chief Justice Connolly dated 8/26/10 |
| ➢ Defendant's criminal record | *Checklist for Extending 209A Orders* |
| ➢ Defendant's serious prior physical abuse or egregious nature of relevant prior crimes | *Doe v. Khosla*; *Doe v. Keller*; *Checklist for Extending 209A Orders* |
| ➢ Defendant's threats of violence toward plaintiff | *Checklist for Extending 209A Orders* |
| ➢ Defendant's displays of anger or menace toward plaintiff | *Comm. v. Robicheau*, 421 Mass. 176 (1995); *Ginsberg v. Blacker*, 67 Mass. App. Ct. 139 (2006) |
| ➢ Defendant's intimidating or controlling conduct in lieu of contacting plaintiff | *Vittone v. Clairmont*, 64 Mass. App. Ct. 479 (2005) |
| ➢ Defendant's stalking, repetitive or compulsive contacts with plaintiff | *Smith v. Jones*, 75 Mass. App. Ct. 540 (2009) |
| ➢ Defendant causing trauma or threat of harm to plaintiff's minor child or children | *Kane v. Casto*, 72 Mass. App. Ct. 1105 (2008) [*Unpublished*]; *Smith* (2009); *Vittone* |
| ➢ Defendant is currently in jail | *Vittone v. Clairmont*; *Comm. v. Ditsch*, 19 Mass. App. Ct. 1005 (1985) |
| ➢ The credibility of the plaintiff's testimony at the 209A hearing | *Iamele* |
| ➢ The credibility of the defendant's testimony at the 209A hearing | *Iamele* |
| ➢ An adverse inference that may be drawn from the defendant's failure to testify at the 209A hearing (such inference is not itself sufficient to justify the extension of the order and does not shift the burden of proof) | *Doe v. Khosla; Frizado v. Frizado*, 420 Mass. 592, 596 (1995); *Jones v. Gallagher*, 54 Mass. App. Ct. 883, 890 (2002) |
| ➢ Plaintiff's prior testifying against defendant in criminal case | *Vittone* |
| ➢ Ongoing child custody and/or visitation disputes | *Iamele; Pike v. Maguire; Rauseo v. Rauseo* |
| ➢ Ongoing litigation between the parties that engenders or is likely to engender hostility | *Iamele* |
| ➢ The parties' demeanor in court | *Iamele* |

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| ➢ The likelihood that the parties will encounter one another in the course of their usual activities (e.g. residential or workplace proximity, attendance at the same place of worship, social events, school or other) | *Iamele*; *Checklist for Extending 209A Orders* |
| ➢ Significant changes in the circumstances of the parties | *Iamele* |
| ➢ Defendant does not object to the extension of the order | *Checklist for Extending 209A Orders* |

## 4. OTHER FACTORS THAT PLAINTIFFS IDENTIFY AS REASONS FOR EXTENDING A 209A ORDER[8]

- ➢ Defendant has filed or attempted to obtain a retaliatory or baseless 209A order against the plaintiff
- ➢ Defendant has filed or attempted to file other retaliatory court cases against the plaintiff
- ➢ Defendant's refusal to attend a batterer intervention program
- ➢ The order has prevented abusive conduct and harassment from the defendant
- ➢ The defendant still minimizes, denies or fails to take responsibility for the abuse
- ➢ The defendant is jealous of the plaintiff's new partner
- ➢ The defendant is angry about child support, property, custody, or other issues
- ➢ The defendant has expressed hostility about the plaintiff to their children or others
- ➢ The defendant has monitored the plaintiff's activities or appears obsessed with the plaintiff
- ➢ The defendant has hovered at distances close enough to intimidate the plaintiff, even if not amounting to criminal violations of the 209A order
- ➢ The defendant has abused or intimidated the plaintiff's family or others supportive of the plaintiff
- ➢ The defendant is unstable, unpredictable, or in need of restrictive limits
- ➢ The defendant is a serial batterer or has a tendency to abuse others

[8] This list of factors is included in the law article, *Why Victims Need Extensions of Protective Orders*, MA Family Law Journal, (June-July 2005), pgs 92-93, by Dr. Lisa A. Goodman, Pauline Quirion & Sarah Weintraub.

## 5. RELEVANT CASELAW ON EXTENSIONS OF 209A ORDERS[9]

**Bernson v. Tennent, 72 Mass. App. Ct. 1116 (2008)** [*Unpublished*] (Judge acted within his broad discretion in determining that a c. 209A plaintiff had met burden of proof by a preponderance of the evidence that she had reasonable fear of imminent serious physical harm. Judge must consider totality of circumstances, including parties' demeanor in court. Here, defendant had physically harmed plaintiff in past; had served time in jail for domestic abuse against her; had threatened, via third parties, to take their daughter away from her; and responded to the judge's granting of a protective order by uttering expletives in court. Judge did not err in denying defendant's request that plaintiff testify from witness stand, where judge specifically found that the parties faced each other during cross-examination of plaintiff and judge did not limit defendant's cross-examination of plaintiff.)

**Crenshaw v. Macklin, 430 Mass. 633, 636 (2000)** (Upholding the authority of district court judges to issue permanent 209A protective orders; M.G.L.A. c. 209A, § 3 empowers a judge in the district court, or any other court with jurisdiction to consider the matter, to issue a permanent protective order at a renewal hearing; it was error for the judge to refuse to entertain a request for a permanent abuse prevention order against the defendant.).

**Daniel v. Daniel, 71 Mass. App. Ct. 1111 (2008)** [*Unpublished*] (In determining the reasonableness of a complainant's fear in connection with the issuance of a c. 209A abuse prevention order, the court must consider the totality of the circumstances of the parties' relationship. Issuance of an order was warranted when past abuse had been severe and when there was an ongoing risk that the defendant would deviate from his medication and become dangerous, even if no particularized threat of harm to the victim had arisen in the immediately preceding two or three years.)

**Comm. V. Ditsch, 19 Mass. App. Ct. 1005 (1985)** (A Defendant in jail may still cause a victim to be in fear. "A letter from a prisoner may give rise to justifiable apprehension on the part of the recipient that the threat will be carried out." Absence of immediate ability (physically or personally) to do bodily harm does not preclude a conviction for "threats.")

**Doe v. Keller, 57 Mass. App. Ct. 776 (2003)** (Holding that the fact that the defendant is not found criminally liable for abusing the plaintiff does not automatically mean that plaintiff will be unable to show that an extension of the 209A is justified; the question before the grand jury was whether there was probable cause to believe that defendant raped the plaintiff; the question before the district court judge was whether, based on a preponderance of the evidence, there was a continuing need for a restraining order under G. L. c. 209A; different questions may result, as they did here, in different answers; when the abuse that occurred was particularly egregious, as is a rape, the judge can find that the plaintiff still feared the defendant even though there had been no contact between the parties in the past two years.)

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[9] This section is not intended to be an exhaustive list of all Massachusetts domestic violence cases; rather it summarizes several key Chapter 209A and other domestic violence related decisions that were cited to in these Guidelines. In addition, this compilation includes unpublished Rule 1:28 summary decisions issued after 2/25/08, which, after a Massachusetts Appeals Court decision in *Chace v. Curran*, 71 Mass. App. Ct. 258, *appeal denied*, 451 Mass. 1103 (2008), may now be cited for persuasive value, but not as binding precedent.

**Doe v. Khosla, 77 Mass. App. Ct. 1107 (2010) [*Unpublished*]** (Holding that the uncontested testimony established that both defendants sexually assaulted the plaintiff, leaving her with an ever-present fear of harm at their hands, and in light of her undiminished fear of the defendants and the serious nature of the abuse that gave rise to the initial abuse prevention orders, the judge was warranted in extending the orders despite the lack of contact between the parties since the issuance of the initial orders.)

**Frizado v. Frizado, 420 Mass. 592 (1995)** (Upholding constitutionality of c. 209A; describing appropriate level of process due at civil restraining order hearings; plaintiff makes a case for relief by preponderance of the evidence; an adverse inference may be drawn from defendant's refusal to testify at a 209A hearing.)

**Ginsberg v. Blacker, 67 Mass. App. Ct. Mass. App. Ct. 139 (2006)** (Court affirmed finding that defendant had placed his ex-wife "in fear of imminent serious physical harm" based on evidence that he flew into a rage at a trivial incident [his mistaken perception about his son's haircut]. Defendant "came right up into [plaintiff's] face," screaming and waving his hands so close to her face that she "could feel his spit on [her] face". Further, he pursued her upstairs and downstairs when she tried to avoid his presence and called her obscene names, all in front of their son. This occurred against the background of his previous statement that plaintiff's family should be shot. Court held that physical harm prior to the abusive incident is not requisite for a reasonable fear of "imminent serious physical harm".)

**Iamele v. Asselin, 444 Mass. 734 (2005)** (Affirming that the only criterion for extending original c. 209A order is a showing of continuing need for the order; judge must consider the totality of the circumstances of the parties' relationship in determining whether the plaintiff has met this burden; factors that a judge should consider include the basis for the initial order; the defendant's violations of protective orders; ongoing child custody or other litigation that engenders or is likely to engender hostility; the parties' demeanor in court; the likelihood that the parties will encounter one another in the course of their usual activities; and significant changes in circumstances of the parties; defendant may not challenge the evidence underlying the initial order.)

**Jones v. Gallagher, 54 Mass. App. Ct. 883 (2002)** (Holding that to extend order, court must find continuing need for protection from abuse; fact that 209A order was issued in past, standing alone, is not enough for judge to conclude that renewal is needed to protect the plaintiff.)

**Commonwealth v. Gordon, 407 Mass. 340 (1990)** (The aspect of the definition of "abuse" under c. 209A which involves "placing another in fear of imminent serious physical harm" is analogous to the common law crime of assault; in determining whether a victim's fear of physical force is reasonable, a court will look at the actions and words of the defendant in light of the attendant circumstances.)

**Kane v. Casto, 72 Mass. App. Ct. 1105 (2008) [*Unpublished*]** (Upholding extension of protective order over defendant's argument that plaintiff had failed to show imminent serious physical harm because there had been no abuse during the period of the order. Given the evidence that the protected parties [children] "would be hurt and traumatized by seeing [defendant] again" and the history of the parties' relationship, it was within judge's discretion to extend the order.)

**Pike v. Maguire, 47 Mass. App. Ct. 929 (1999)** (Defendant's appeal of a permanent order is without merit because 209A, § 3 does not require additional abuse to have occurred since issuance of the original protective order; "The only criterion for extending the original order is a showing of continued need for the order.")

Rauseo v. Rauseo, 50 Mass. App. Ct. 911 (2001) (Affirming an extension of restraining order issued by the Probate and Family Court, because, based on the evidence, the judge could have reasonably found that the defendant continued to engage in conduct that caused fear in plaintiff.)

Commonwealth v. Robicheau, 421 Mass. 176 (1995) (Holding that the evidence sustained the conviction of defendant for violating a 209A order, where the victim's relationship with the defendant was so tense that she had sought and obtained consecutive 209A orders against him; in light of this relationship and the other circumstances, the jury were entitled to find that the defendant's belligerent words and conduct caused a reasonable apprehension in the victim that he intended to harm her.)

Smith v. Jones, 75 Mass. App. Ct. 540 (2009) (Evidence was insufficient to establish that plaintiff had a reasonable fear of imminent physical harm to herself or to her daughter when permanent extension of protective order was entered. A permanent extension of a c. 209A no-contact order must be reversed because even considering that the intensity of the defendant's immediate post-breakup telephone calls and other activities permitted a finding that the plaintiff had a reasonable fear of imminent serious physical harm, in the absence of overt threats, nothing in the record suggests that the defendant's intensity persisted for the two-year period between January 2006, when the original order entered, and April 2008, when the plaintiff sought the permanent order.)

Smith v. Jones, 67 Mass. App. Ct. 129 (2006) (Defendant appeals from both an ex parte abuse prevention order and a subsequent extension order. The ex parte order is affirmed and the extension order is vacated. Here, the Court holds that the evidence failed to show that defendant (plaintiff's former boyfriend) attempted to cause or caused physical harm or placed plaintiff in fear of imminent serious physical harm. In seeking to extend the ex parte order, the teenage plaintiff submitted evidence that when the parties engaged in anal intercourse, she experienced pain; plaintiff's admission that she did not interpret the defendant's stated desire to stab her in the heart as a threat to be taken literally; plaintiff's testimony that defendant had not physically harmed her or had threatened to do so; plaintiff's stated fear that the defendant would embarrass or humiliate her, causing her mental or emotional harm; and her testimony that defendant's presence caused her to shake out of nervousness, was insufficient to support a finding of abuse under c. 209A.)

Vittone v. Clairmont, 64 Mass. App. Ct. 479 (2005) (Affirming grant of plaintiff's permanent abuse prevention order, where, considering the totality of the circumstances of the parties' relationship, including the defendant father's prior serious physical and sexual abuse of the plaintiff and the rape and sexual assault of their children, as well as his conduct while in prison, the judge reasonably could have concluded that the plaintiff had met her burden of demonstrating that she was in reasonable fear of "imminent serious physical harm", justifying her continued need for the order.)

## ADDENDUM

Lynda M. Connolly
*Chief Justice*

Trial Court of the Commonwealth
District Court Department

Administrative Office
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| TRANSMITTAL NO. 1053 | |
|---|---|
| Last Transmittal No. to: | |
| First Justices | 1052 |
| Other Judges | 1052 |
| Clerk-Magistrates | 1051 |
| CPOs | 1048 |

MEMORANDUM

TO: District Court Judges, Clerk-Magistrates and Chief Probation Officers
FROM: Hon. Lynda M. Connolly, Chief Justice
DATE: August 26, 2010
SUBJECT: *Legal Matters*

1. **Instructing jurors not to use personal communication devices**
2. **Correction to model jury instruction on subsequent offenses**
3. **Revised breath test regulations**
4. **Jury waiver need not be in writing for guilty plea**
5. **New legislation on texting and cellphone use while driving**
6. **G.L. c. 123, § 35 extended to chronic inhalent abusers**
7. **Federal protections for residential tenants in foreclosed properties**
8. **Checklist for extending Chapter 209A orders**



8. Checklist for extending Chapter 209A orders. Attached to this transmittal is a checklist and a synopsis of the relevant criteria for extending G.L. c. 209A abuse prevention orders, which judges may find useful on the bench. It reworks materials on *Iamele v. Asselin*, 444 Mass. 734 (2005), that were developed by the District Court Professional Development Group on Domestic Abuse and have



been previously distributed at various presentations. Thanks to the members of the Professional Development Group for their ongoing assistance in staying current in this important area.

## CHECKLIST FOR EXTENDING 209A ORDERS

**LEGAL STANDARD**

The plaintiff must show by a preponderance of evidence that the defendant is *currently:*

- ☐ causing or attempting to cause the plaintiff physical harm, *or*
- ☐ placing the plaintiff in reasonable fear of imminent serious physical harm, *or*
- ☐ causing the plaintiff to engage involuntarily in sexual relations by force, threat or duress. *G. L. c. 209A, § 1*

**RELEVANT FACTORS**

- ☐ Content and credibility of the: *Ginsberg v. Blacker, 67 Mass. App. Ct. 139 (2006)*
  - ☐ plaintiff's affidavit ☐ plaintiff's testimony ☐ defendant's testimony
- ☐ Factual basis of existing order as relevant to risk of future abuse *Iamele v. Asselin, 444 Mass. 734 (2005)*
- ☐ Serious prior physical abuse or egregious nature of relevant prior crimes *Id.*
- ☐ Ongoing child custody or other litigation or disputes likely to engender hostility *Id.*
- ☐ Likelihood that parties will encounter one another during their usual activities involving: *Id.*
  - ☐ residence ☐ workplace ☐ social occasions ☐ religious activity ☐ school ☐ other: _____
- ☐ Defendant's past violations of restraining orders, or domestic assault and/or battery *Id.*
- ☐ Defendant's criminal record for: _____
- ☐ Defendant's threats of violence toward plaintiff
- ☐ Defendant's displays of anger or menace toward plaintiff *Comm. v. Robichaud, 421 Mass. 176 (1995); Ginsberg*
- ☐ Defendant's other intimidating or controlling conduct in lieu of contacting plaintiff *Vittone, 64 Mass. App. Ct. 479 (2005)*
- ☐ Defendant's stalking, repetitive or compulsive contacts with plaintiff *Smith, 76 Mass. App. Ct. 640 (2009)*
- ☐ Defendant's trauma or threat of harm to plaintiff's minor child(ren) *Smith; Vittone*
- ☐ Plaintiff's prior testifying against defendant in criminal case *Vittone*
- ☐ The parties' demeanor in court *Iamele*
- ☐ An adverse inference from the defendant's failure to testify *Vittone*
  *(Such inference is not itself sufficient and does not shift the burden of proof.)* *Jones v. Gallagher, 54 Mass.App.Ct. 883, 890 (2002)*
- ☐ Defendant does not object to the extension of the order
- ☐ Other: _____.

# THE DOMESTIC & SEXUAL VIOLENCE COUNCIL
# GUIDELINES FOR REPRESENTING CLIENTS AT 209A EXTENSION HEARINGS

RELEVANT CASELAW ON EXTENDING 209A ORDERS

- ***Same standard as for initial order.*** "[A] plaintiff seeking an extension of a [G.L. c. 209A] protective order must make a showing similar to that of a plaintiff seeking an initial order [but as of] the time that . . . an extension of an order is sought . . . . The inquiry at an extension hearing is whether the plaintiff has shown by a preponderance of the evidence that an extension of the order is necessary to protect her from the likelihood of 'abuse' as defined in G. L. c. 209A, § 1. Typically, the inquiry will be whether a plaintiff has a reasonable fear of 'imminent serious physical harm.' G. L. c. 209A, § 1(b). If the plaintiff were suffering from attempted or actual physical abuse, see G. L. c. 209A, § 1(a), or involuntary sexual relations, see G. L. c. 209A, § 1(c), there is no question that an extension should be granted." *Iamele v. Asselin*, 444 Mass. 734, 734-735, 739-740 & n.3, 741 n.6 (2005).

- ***No presumption of extension.*** At a hearing "for an extension of an order issued after notice to the defendant and an opportunity to be heard, the plaintiff is not required to re-establish facts sufficient to support that initial grant of an abuse prevention order." *Rauseo v. Rauseo*, 50 Mass. App. Ct. 911, 913 (2001). However, "[n]o presumption arises from the fact that a prior order has issued; it is the plaintiff's burden to establish that the facts that exist at the time extension of the order is sought justify relief." *Smith v. Jones*, 67 Mass. App. Ct. 129, 133 (2006). The prior issuance of a one-year order is not itself sufficient reason to issue a permanent order absent "a finding that a permanent order is, in fact, what is reasonably necessary to protect" the plaintiff from abuse. *Jones v. Gallagher*, 54 Mass. App. Ct. 883, 889 (2002).

- ***Same definition of "abuse."*** "'Abuse' has the same statutory definition in the context of initial, extended, and permanent orders, and there is no presumption or entitlement that an initial order will be continued or made permanent absent a showing of continued need . . . . The inquiry is particularized and situation dependent, calling upon the judge to examine the words and conduct in the context of the entire history of the parties' hostile relationship." *Vittone v. Clairmont*, 64 Mass. App. Ct. 479, 485-487 (2005). Past abuse alone is not sufficient. *Dollan v. Dollan*, 55 Mass. App. Ct. 905 (2002). "Generalized apprehension, nervousness, feeling aggravated or hassled, i.e., psychological distress . . . , when there is no threat of imminent serious physical harm, does not rise to the level of fear of imminent serious physical harm . . . . The judge must focus on whether serious physical harm is imminent . . . ." *Wooldridge v. Hickey*, 45 Mass. App. Ct. 637, 639 (1998). "The standard for determining whether a defendant's acts rise to the level of abuse . . . is not subjective. Rather, the court looks to whether the plaintiff's apprehension that force may be used is reasonable." *Carroll v. Karle*, 56 Mass. App. Ct. 83, 87 (2002). It "closely approximates the common law description of the crime of assault." *Commonwealth v. Gordon*, 407 Mass. 340, 349 (1990).

- ***Absence of incidents not controlling.*** "The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order." G. L. c. 209A, § 3. This is the rule because "in some cases, respondents will obey the initial order, and that obedience alone is not a ground for refusing an extension of the initial order." *Iamele*, 444 Mass. at 738. "But the provision surely does not make the absence of abuse irrelevant" as to the likelihood of further abuse. *Smith v. Jones*, 75 Mass. App. Ct. 540, 545 n.10 (2009).

- ***Extension of mutual orders*** additionally requires "specific written findings of fact" and "a detailed order, sufficiently specific to apprise any law officer as to which party has violated the order, if the parties are in or appear to be in violation of the order." *Uttaro v. Uttaro*, 54 Mass. App. Ct. 871 (2002); *Sommi v. Ayer*, 51 Mass. App. Ct. 207 (2001).

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## CASES RELATED TO ENTRY AND EXTENSION OF PROTECTIVE ORDERS OR FEAR OF ABUSE

BY PAULINE QUIRION, GREATER BOSTON LEGAL SERVICES (10-15-17)

***Commonwealth v. Ditsch***, 19 Mass. App. Ct. 1005, 475 N.E2d 1235 (1985). Defendant who is incarcerated may still cause a victim to be in fear. "A letter from a prisoner may give rise to justifiable apprehension on the part of the recipient that the threat will be carried out." Absence of an immediate ability (physically or personally) to do bodily harm does not preclude a conviction for "threats." *See below, Callahan v. Callahan*, 85 Mass. App. Ct. 369 (2014) (extending a 209A order against an incarcerated defendant).

***Cobb v. Cobb***, 406 Mass. 21, 545 N.E.2d 1161 (1989). Wife's status as armed forces' member at military installation in an area ceded to Federal government did not preclude her seeking Chapter 209A orders which are effective against her husband in ceded military areas.

***Commonwealth v. Gordon***, 407 Mass. 340, 553 N.E.2d 915 (1990). Leading case on the definition of abuse. The "abuse" required to be put "in fear of imminent serious physical harm" approximates or approaches the common law definition of assault, meaning an act placing another in reasonable apprehension that force may be used. In defining abuse under Chapter 209A, the court looks at the defendant's actions and words in the "attendant circumstances." The SJC held that: (1) a "vacate" order requires a defendant not only to leave, but to remain away from the residence; (2) even if the defendant did not physically assault his wife, he violated the "refrain from abuse" order by violating the vacate order which placed her in fear of imminent harm; (3) his yelling and calling his wife "bitch" and "whore" in front of his son was relevant and admissible although defendant claimed it was unduly prejudicial.

***Brossard v. West Roxbury District Court***, 417 Mass. 183, 629 N.E.2d 295 (1994). Defendant appealed 209A order claiming that he lacked a "substantive dating" relationship with the plaintiff. The SJC held that Chapter 209A does not preclude the possibility of a plaintiff having more than one substantive dating relationship at one time.

***Commonwealth v. Hrycenko***, 417 Mass. 309, 630 N.E.2d 258, 264 (1994). "Evidence that the victim failed to pursue a claim is not evidence that the claim was falsely made." *Practice note*: This is consistent with G.L. c. 209A. "A court shall not deny any complaint filed under this chapter solely because it was not filed within a particular time period after the last alleged incident of abuse." G.L. c. 209A, § 3.

***Frizado v. Frizado,*** The SJC holds that 209A proceedings are constitutional; there is no right to a jury trial under Ch. 209A. Ch. 209A does not compel a defendant to testify. An adverse inference can be drawn from a failure to testify, but the inference alone does not meet the plaintiff's burden. There is a general right to cross-examine but judges may limit cross-examination for good cause in exercise of discretion; the defendant should be given the opportunity to review the affidavit before cross-examining the plaintiff. "[T]he rules of evidence need not be followed, provided that there is fairness in what evidence is admitted and relied on." The SJC references Dist. Court Draft Standards of Judicial Practice § 5:01, 5:03, and 5:04. *Standard § 5:01 provides*

*that cross-examination should be not permitted for harassment or discovery purposes. § 5.03 provides that the court need not apply the rules of evidence; commentary says that "[t]estimony that might qualify as hearsay should not be excluded on that basis, but rather should be given such weight, if any, as the court deems appropriate." § 5.05 provides the standard of proof is the civil standard of preponderance of evidence. These earlier Draft Standards were put out by the Admin. Office of the District Court.*

***Smith v. Joyce***, 421 Mass. 520, 658 N.E.2d 677 (1995). Appeal of extension of Probate Court 209A order. The SJC held that there was no violation of defendant's rights in holding a hearing in his absence; that it is permissible to allow a plaintiff to adopt her affidavit as testimony; that the burden of proof was not shifted to the defendant because the judge referred to the absence of contrary evidence from the defendant. In a Chapter 209A case, the burden of proof should not be greater than a preponderance of evidence. The affidavit about abuse during marriage and the defendant's attempt to have contact with her before her present Chapter 209A order provided a basis for concluding that the defendant might "re-ignite" his anger and was a basis for finding that the plaintiff was "in fear of imminent serious harm." The no-contact order presented no serious restriction on his rights, but courts should not issue a 209A simply because it will not cause a defendant no real inconvenience. The SJC stated that if a 209A order provides for no contact with the children and conflicts with an existing visitation order, the Probate Judge should amend the visitation order; District Court judges who enter Chapter 209A orders that conflict with custody or support orders should make findings of fact per Standards of Judicial Practice.

***Flynn v. Warner***, 421 Mass. 1002, 654 N.E.2d 926 (1995). Single justice appeal of the court's extension of Chapter 209A orders by the defendant. The SJC held that: (1) there is no statutory or constitutional requirement that the complaint's affidavit be served with the order and that Flynn was not prejudiced because he was permitted to read the affidavit by the judge on his request; (2) any rights to due process or equal protection are not violated because Chapter 209A does not provide a convenient route of appeal; and (3) the Court can rely on hearsay statements by mother that child said that Flynn told him to slit the mother's and her attorney's throats. The SJC cited *Frizado v. Frizado* and stated "the rules of evidence need not be followed provided that there is fairness in what evidence is admitted." Note: Route of appeal was later modified in *Zullo* case in 1996 to require appeals be filed in Appeals Court.

***Delk v. Gonzalez***, 421 Mass. 525, 658 N.E.2d 681 (1995). UCCJA and PKPA case. Chapter 209A custody order was vacated because Virginia rather than Massachusetts had jurisdiction to decide custody because of a prior Virginia order.

***Silvia v. Duarte***, 421 Mass. 1007, 657 N.E.2d 1262 (1995). Defendant in a Chapter 209A action declined to testify, claimed his right against self-incrimination, and appealed limitation on his lawyer's cross-examination of the plaintiff. The SJC held that there may be circumstances in which a judge may limit cross-examination. The SJC noted that the plaintiff was *pro se* and the judge properly considered court records that disclosed defendant had a history of violence directed at Duarte and others which resulted in his imprisonment. The SJC noted that "[a]

rehearing would produce the same result" and the absence of the right to cross-examine was not prejudicial.

***Zullo v. Goguen***, 423 Mass. 679, 672 N.E.2d 502 (1996). If police are unable to serve a Ch. 209A order, SJC holds that the lower court "may order that service be made by some other identified means reasonably calculated to reach the defendant. Where such substituted service appears unlikely to notify the defendant, the judge may excuse service." 209A appeals in the future are to be filed in the Appeals Court.

***Vaccaro v. Vaccaro***, 425 Mass. 153, 680 N.E.2d 55 (1997). In general, judges are not authorized to order expungement of records from the statewide domestic violence record keeping system if an order not extended.

***Larkin v. Ayer District Court***, 425 Mass. 1020, 681 N.E.2d 817 (1997). Record did not support extension of a restraining order where it only included an allegation that the victim was in fear because she received notice of a future lawsuit and court proceedings. "Generalized apprehension, nervousness, feeling aggravated or hassled, i.e., psychological distress from vexing but nonphysical intercourse, when there is no threat of imminent serious physical harm, does not rise to the level of fear of imminent serious physical harm." The SJC noted that the conduct complained about--sending legal notices by mail or via sheriff were expressly permitted by the temporary 209A order.

***Jordan v. Westfield District Court***, 425 Mass. 1016, 681 N.E.2d 276 (1997). Footnote 3 of the case indicates that plaintiff did not allege on the 209A application that the defendant had attempted to cause her harm or had caused her physical harm. The plaintiff said the defendant was in jail for assault and battery against her and expressed concerns that the defendant knew her home and work addresses, or her children's school address. The SJC found that she did not produce evidence at the hearing that his actions placed her in fear of imminent serious physical injury. *Compare Callahan v. Callahan*, 85 Mass. App. Ct 369, 10 N.E.3d 159 (2014) where the Appeals Court recognized victims can remain in fear of a defendant even if he is in jail.

***Wooldridge v. Hickey***, 45 Mass. App. Ct. 637, 700 N.E.2d 296 (1998). There was no evidence of imminent serious physical harm to the children where "the most that Wooldridge said about the children, other than that they were subjected to verbal harassment by their father, is that their father has hit my son and grabs him when angry. When asked why she was afraid for them, the plaintiff replied "because." Without further explanation, the plaintiff's statements were not evidence of abuse within the meaning of the statute. "Generalized apprehension, nervousness, feeling aggravated or hassled, i.e., psychological distress from vexing but nonphysical intercourse, when there is no threat of imminent serious physical harm, does not rise to the level of fear of imminent serious physical harm." Case cites *Larkin v. Ayer Div. of the Dist. Court Dept.*, 425 Mass. 1020, 681 N.E.2d 817 (1997). Chapter 209A order that the defendant stay away from plaintiff was affirmed, but the no contact order regarding the children was vacated.

***Pike v. Maguire***, 47 Mass. App. Ct. 929, 716 N.E.2d 686 (1999). The Appeals Court affirmed extension of a protective order where the judge credited the plaintiff's testimony that she was fearful based on observation of parties' demeanor and "the notoriously volatile nature of child custody and visitation battles." Appeals Court notes that the Chapter 209A order can be extended even if no violation occurs and there was no error in the Probate and Family Court entering a permanent Chapter 209A order. This case has discussion of "fear" of imminent harm based on prior abusive acts." The "reasonableness" of her " apprehension of the defendant could be drawn from (1) the defendant's record of violations of a prior order, for which he was placed on probation...(2) the defendant's emotionally charged statements at the November 22 hearing, demanding to 'get an answer from you [the judge] today why she's allowed to come in' and proclaiming that the plaintiff was engaged in a 'systematic attempt to keep me away from my children' . . ., statements which could well have indicated to the judge a basis for concluding that the defendant's anger against the plaintiff might reignite, . . . and (3) the defendant's failure to testify at the December 18 hearing.

***Champagne v. Champagne***, 429 Mass. 324, 708 N.E.2d 100 (1999). Probate Court can issue permanent protective orders as part of a divorce judgment. The SJC noted the importance of permanent orders and stated that "no evidence suggests that the risk of harm that necessitated the temporary order during the pendency of the divorce is alleviated on a final judgment."

***Crenshaw v. Macklin***, 430 Mass. 633, 722 N.E.2d 458 (2000). SJC reverses District Court judge's ruling that the court had no authority to enter permanent 209A orders at the renewal hearing held after extension of the order. This case clarifies confusing *dicta* from the *Champagne* case about whether Chapter 209A orders can be permanent.

***Commonwealth v. Silva***, 431 Mass. 401, 727 N.E.2d 1150 (2000). Footnote says repeated hang-up calls could be grounds to extend a protective order citing *Pike v. Maguire.* Case affirmed the conviction of a no-contact order violation. Defendant argued that jury was not instructed about his intent in contacting with his former wife; he argued the terms of the order were ambiguous and impossible to comply with strictly where it permitted him to call wife's home to talk his children. Defendant called and angrily told her he would call when he wanted to and threatened to make her pay.

***Sorgman v. Sorgman***, 49 Mass. App. Ct. 416, 729 N.E2d 1141 (2000). Chapter 209A covers parties who used to live together and "ex-step-children." Defendant claimed plaintiff had no standing under 209A because she is not living with him or related to him. He was formerly married to her mother. "Particularly where, as here, the parties continued to have contact and involvement with each other long after the marriage and living arrangements which initially gave rise to their relationship ended, the defendant's suggestion that we imply such limitations is devoid of merit."

***Rauseo v. Rauseo***, 50 Mass. App. Ct. 911, 740 N.E.2d 1063 (2001). Defendant appealed 209A extension where same order had been extended before. The husband's sending of flowers to wife was not benign and could reasonably be perceived as a hostile and threatening act for purposes of

extending restraining order in light of parties' acrimonious divorce proceedings. The husband called her a jerk in court and threatened to have the child taken away. Appeals Court affirmed order and granted attorneys' fees to the wife. "In light of established case law . . . and the unambiguous provisions of G. L. c. 209A, § 3, the defendant's claims -- that there was no basis for the extension in the absence of evidence that the defendant had since the issuance of the initial 209A order been violent or "threatened [the plaintiff] with physical harm," and that the evidence that was submitted did not establish that he had placed his wife 'in fear of imminent serious physical harm" -- were "frivolous, immaterial or intended for delay,' G. L. c. 211A, § 15." The Appeals Court held that: "At a hearing on the plaintiff's request for an extension of an order issued after notice to the defendant and an opportunity to be heard, the plaintiff is not required to re-establish facts sufficient to support that initial grant of an abuse prevention order. This case cites and summarizes *Pike v. Maguire* as "rejecting argument that, in order to grant extension, the judge was required to find that the defendant had committed acts enumerated in c. 209A justifying initial grant of order." Also cites "Commentary to § 6:08 of the Guidelines for Judicial Practice: Abuse Prevention Proceedings (June 1997)." Note: Attorneys fees were awarded on appeal to the victim's attorney.

***Commonwealth v. Milo***, 433 Mass.149, 740 N.E.2d 967 (2001). A drawing by a student depicting a student pointing a gun at his teacher constitutes a threat. The context in which the act occurred, i.e. the "climate of apprehension concerning school violence," factored into whether a teacher's fear of a student was reasonable.

***Commonwealth v. Chou***, 433 Mass. 229, 741 N.E.2d 17 (2001). SJC affirmed conviction for offensive disorderly acts and conduct. Defendant had posted flyers containing sexualized descriptions of the victim appealed his conviction. "Sexually explicit language, when directed at particular individuals in settings in which such communications are inappropriate and likely to cause severe distress may be inherently threatening." This is not withstanding lack of evidence that the threat will be followed by actual violence or the use of physical force.

***Sommi v. Ayer***, 51 App. Ct 207, 744 N.E.2d 679 (2001). Mutual 209A order vacated because the trial court that issued the second restraining order failed to make findings of fact as required by Chapter 209A, § 3. Appeals Court noted that although the 209A's were from different district courts, they were "mutual" and therefore, required findings of fact. Appeals Court disagreed with the position taken in the Standards for Judicial Practice in Abuse Prevention Proceedings that orders from different courts involving the same parties are not mutual. Note: The Standards were later changed to adopt the position that such orders are mutual.

***Turner v. Lewis***, 434 Mass. 331; 749 N.E.2d 122 (2001). Definition of family and who is related under Chapter 209A. Case has discussion of statutory construction of Chapter 209A based on goal of the law and legislative intent inferred by the history of Chapter 209A. Paternal grandmother with guardianship of her grandchild had standing under Chapter 209A to obtain restraining order against the child's mother although the parents were never married.

***Hennessey v. Sarkis***, 54 Mass. App. Ct. 152; 764 N.E.2d 873 (2002). Husband appealed issuance of a limited "no-contact" order (which was not on a Domestic Relations Protective Order form and did not contain the Ch. 208, § 34C language that violation is a criminal offense). The judge had incorporated the no contact order into the parties' preexisting divorce judgment and issued it nearly a year after the entry of the divorce judgment *without a hearing* based only on the wife's Rule 60(b) motion while proceedings before special master were ongoing to divide the marital property. Appeals Court stated: "Viewing the order as a temporary order, we are unpersuaded by the husband's contention that the order was defective because it was entered summarily, without a hearing. Had the order been given permanent effect or had it provided that its violation would be a criminal offense pursuant to G. L. c. 209A, §§ 7, we would question the propriety of granting such relief without affording the husband greater procedural protections." The Appeals Court noted that: "We draw this distinction in recognition that G. L. c. 208, §§ 18, has come to serve two, somewhat different, purposes. First, the statute allows a judge to respond with some immediacy and flexibility to harassing behaviors that may be temporarily exhibited by parties during divorce proceedings, but which do not rise to the level of "abuse" justifying intervention under G. L. c. 209A. Second, it may be utilized for abuse prevention purposes akin to those of G. L. c. 209A, and, when used in that way, the serious consequences of such an order require that procedural formalities like those employed in 209A proceedings be observed." (Footnotes omitted). That portion of the divorce judgment incorporating the restraining order was vacated, but the Appeals Court held that the restraining order would remain in effect as a temporary order until such time as the master's proceedings are concluded or for thirty days from the date of this decision, whichever is later and that the wife was not precluded from seeking further restraining order protection in the trial court, if it is warranted." *Practice note:* Query whether the judge may have been relying on her general equity power rather than Ch. 208, §18? In this case, however, the Appeals Court said: "The judge's decision not to designate the order in this case as criminally enforceable suggests that she did not consider the husband's behavior to constitute "abuse"; the order in this case was not issued on the standard form used by the Probate Court for abuse prevention orders." In another case, the SJC held that a restraining order that did not contain the criminal warning, but was part of a divorce judgment, was to be deemed a criminally punishable Chapter 208, § 18 order and triggered enhanced penalties under the stalking law. *Comm. v. Alphas*, 430 Mass. 8, 11-12, 712 N.E.2d 575 (1999).

***Uttaro v. Uttaro***, 54 Mass. App. Ct. 871, 768 N.E.2d 600 (2002). A probate judge entered a mutual order against a Ch. 209A plaintiff because she had some voluntary contact with the defendant. "The bottom line is that neither G.L. c. 209A, nor the decisions interpreting it, contain any authority allowing the fear of arrest, even upon innocent contact, as a basis for a reciprocal restraining order." The mutual 209A order was vacated. A 209A order "requires proof of some act that places the complainant in reasonable apprehension that force may be used." Fear of arrest is not grounds for a 209A order.

***Jones v. Gallagher***, 54 Mass. App. Ct. 883, 768 N.E.2d 1088 (2002). Defendant appealed extension of Chapter 209A order at renewal hearing. Order was granted initially because the defendant wrote a poem with violent imagery. There was no history of physical violence or

direct threats. Order was vacated because deemed to have been extended solely on the allowance of the earlier order.

***Sertel v. Kravitz***, 54 Mass. App. Ct. 913, 766 N.E.2d 546 (2002). Wife obtained a 209A order in District Court but decided to file for new order in the Probate Court in the pending divorce under Chapter 208, Section 18. The husband appealed entry of the Domestic Relations Protective Order. The Appeals Court considered whether the order was properly before the Appeals Court because a divorce judgment had not yet entered. The Appeals Court decided the matter was properly before it. This case has dicta citing *Hennessey v. Sarkis* that some section 18 orders are not in the nature of abuse prevention orders and do not carry the notice that violation is a criminal offense. Order was affirmed, but decision is vague about details of abuse. *Practice note*: Chapter 208 §34C has language that requires that certain orders such as *vacate* orders and orders to *refrain from abuse* must include a criminal warning.

***Litchfield v. Litchfield***, 55 Mass. App. Ct. 354, 770 N.E.2d 554 (2002). Defendant appealed extension of a Chapter 209A order that was further extended at a renewal hearing. The judge made the order permanent and ordered defendant to stay 500 yards away from plaintiff and a mile from her home. The defendant claimed 500 yards and one mile were overbroad. The Appeals Court held a judge has broad "discretion" to renew a restraining order. The Court also noted that the record evidenced extreme danger to the plaintiff, particularly because defendant had a machine gun and a silencer; the defendant also had repeatedly beaten and threatened the plaintiff and was in prison for abusing her. The Court affirmed the orders, but stated that in cases where a record does not indicate such danger to the plaintiff, findings should be made to support imposition of such a great distance; the Court cited the Abuse Guidelines Section 4 which suggests that 100 yard orders usually are sufficient.

***R.F. v. S.D.***, 55 Mass. App. Ct. 708, 774 N.E.2d 636 (2002). The defendant argued that an initial restraining order and the extension were unsupported by evidence. He failed to file a timely appeal of the orders and the Appeals Court declined to consider whether the orders were valid. "We note, however, that no new incident of abuse is required to extend an order. Under G. L. c. 209A, § 3, as amended by St. 1990, c. 403, §§ 3, "the fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order, of allowing an order to expire or be vacated, or for refusing to issue a new order. The only criterion is a showing of continued need." Case cites *Uttaro v. Uttaro* and *Jones v. Gallagher.*

***Dollan v. Dollan***, 55 Mass. App. Ct. 905, 771 N.E.2d 825 (2002). The defendant contacted the police who contacted her daughter and relayed a message that defendant was concerned and wanted her daughter to contact her. The daughter obtained a Ch. 209A order and alleged that her mother had abused her as a child and that she feared her mother was trying to coerce her back into living with her. The Appeals Court reversed holding that the defendant's contacting of her daughter through the police was "cannot reasonably be said to have placed the plaintiff in fear of "imminent serious physical harm." The Court said: "The plaintiff failed to present any evidence that the abuse might resume if the c. 209A order was not issued." The Court cited *Woolridge v.*

*Hickey* and concluded the plaintiff's fear that her mother might coerce her into living with her is a "generalized apprehension" that courts have refused to recognize as abuse under Chapter 209A.

***Carroll v. Kartell,*** 56 Mass. App. Ct. 83, 775 N.E.2d 457 (2002). The plaintiff dated the defendant and found out that he had been criminally charged with the murder and shooting of his wife's boyfriend and that his wife had a restraining order against him. The plaintiff asked the defendant for no further contact. She was frightened because he demanded to see her after she requested no contact. He persisted in calling, sending mail and attempting to send her faxes. She obtained a 209A order. The Appeals Court reversed because the defendant did not threaten her directly or indirectly. Citing *Woolridge v. Hickey,* the Court notes that generalized apprehension when there is no threat (or violence) does not rise to level of "fear of imminent serious harm."

***Szymkowski v. Szymkowski***, 57 Mass. App. Ct. 284; 782 N.E.2d 1085 (2003). Father appealed 209A entered on behalf of his 7 year old daughter. Father had kicked child hard behind the legs, told her about a dream where she was killed with a knife, threw a milk carton at her, struck her on the chin twice, and had pinched her in the past causing a bruise; he also had pushed her hard and pinned her down in the back seat of a car. DSS worker did not substantiate "51A." The Appeals Court reversed the finding that father's behavior was "unacceptable parental behavior" and found that the child was not in fear of imminent harm and that supervised visitation or cessation of visitation were alternative remedies. Appeals Court noted the case had "distinct overtones of the use of c. 209A as a weapon . . . of reciprocal hostility between divorced parents . . . ." This is a troubling case that appears more focused on technical definitions of "51A" abuse under DSS regulations rather than abuse prevention or why it at might be reasonable for the child to be in fear of abuse.

***Lonegran-Gillen v. Gillen***, 57 Mass. App. Ct. 746, 785 N.E.2d 1285 (2003). Judge refused to give victim a permanent 209A at renewal hearing because of his philosophy that there was no harm in having victims appear yearly to renew an order and concern for due process rights of the defendant. The extension was unopposed. The defendant did not attend the hearing. Decision vacated; it was improper for judge to impose his personal views rather than applying the law.

***Doe v. Keller***, 57 Mass. App. Ct. 776, 786 N.E.2d 422 (2003). Defendants appealed entry of permanent 209A order entered at the one year renewal hearing. Victim who was raped by defendants had no contact with them after the order was entered. The Appeals Court noted that "the triggering event (the rape) "was particularly egregious," we hold that the judge did not abuse his discretion in ruling that the plaintiff still feared the defendants even though there had been no contact between the parties in the past two years." "The crime of rape is a traumatic offense, no matter the gender of the victim. It is "a crime involving not simply sex but violence and domination calculated to humiliate, injure and degrade." The type of abuse was a factor in favor of the extension. The defendants' defense that the grand jury failed to criminally indict them was held to have had no merit. Their argument that an extension could not be based solely on a victim's testimony failed. Defendants also did not testify at the hearing. Order was affirmed.

***Keene v. Gangi***, 60 Mass. App. Ct. 667, 805 N.E.2d77 (2004). The Appeals Court held that defendant's actions, including placing a video camera in plaintiff's bedroom and leaving message on her answering machine that: "if I was going to do something like that, you would never know about it . . . I'm a lot smarter and I have access to a lot more stuff and I could hire somebody to do it the correct way" were not "abuse." The fact that she saw his vehicle outside as she fled her apartment after finding the camera, and her testimony that he had a temper, that she had heard him scream at an acquaintance, that he had access to technological equipment, that he would sometimes say that he could have someone "taken care of" and that he had been in her apartment without her permission or knowledge, was not abuse. Also troubling is the following dicta using her delay in getting a restraining order as a reason to deny the order. "Although there are many circumstances that can show that a delay in seeking a protective order is understandable rather than attributable to a lack of fear of physical harm, none have here been presented. Rather, Keene testified that her only intent at the time she went to the police on June 25 was to make a record of the incident concerning the video camera." *Note: G.L. c. 209A § 3 prohibits denial of an order because it was not filed within a particular time frame.* The case implicates what can be a very common dynamic among victims --- minimization of abuse, which does not mean abuse did not occur. "By her own testimony, Keene seemed to concede that her fear lacked a reasonable basis. As put by her, *'as irrational as it may sound*, I was very scared of what he was capable of doing'." (Emphasis added).

***C.O. v. M.M.***, 442 Mass. 648, 815 N.E.2d 582 (2004). SJC vacated a Ch. 209A order based on insufficient evidence of a "substantive dating relationship." The mother, acting on behalf of her teenage daughter, was vague and uncertain in her testimony about the extent of her daughter's relationship with the defendant. Dicta in the case indicates, however, it is not the role of the court to impose additional standing requirements on victims when a statute is clear and sets forth the criteria to evaluate whether there is a "substantive dating relationship." The SJC added that" "It is not [the court's] role to impose additional constraints on the interpretive instructions provided by the Legislature." In addition, the judge erred by refusing to let defendant's attorney conduct any cross-examination.

***Mitchell v. Mitchell***, 821 N.E.2d 79, 62 Mass. App. Ct. 769 (2005). "In this case there was evidence before the judge of the long history of the husband's physical abuse of the wife which gave rise to the order of January 3, 2002." Wife's order was vacated before it expired on motion of husband. Appeals Court said that "in proceedings to vacate, terminate, or modify a c. 209A order, the wife has no burden to establish the basis for the issuance of the underlying order." Wife's conduct after order entered went only to her credibility and was not newly discovered evidence warranting retroactive vacating of order. As a matter of first impression, Appeals Court says: "Such an abuse prevention order ... should be set aside only in the most extraordinary circumstances and where it has been clearly and convincingly established that the order is no longer needed to protect the victim from harm or the reasonable fear of serious harm." Case recognizes abusers can re-victimize victims through court actions. "Unwarranted requests to modify may themselves be a form of abuse and create a burden on the courts as well as on the opposing party."

***Commonwealth v. Paton***, 63 Mass. App.Ct. 215, 824 N.E.2d 887(2005). "A reasonable person would be greatly disturbed by, and fearful of, the defendant" where the defendant did not speak to the victim, but appeared at her workplace repeatedly and stared at her and also appeared at other places in her proximity.

***Iamele v. Asselin***, 444 Mass. 734, 831 N.E. 2d 324 (2005). Leading case on 209A extensions. The SJC remanded the case after the District Court order denied extension of the 209A order at a renewal hearing and reversed the order vacating the 209A order. The plaintiff had argued that the judge did not apply the correct legal standard at the extension hearing, and the SJC concluded it was "unclear what standard the judge used" and that it was not evident from the record below whether the judge found her credible. SJC adopted and affirmed the language of the Guidelines for Judicial Practice and prior decisions that the "only criterion for extending the original 209A order is a showing of a continued need for the protective order." The decision mandates two things that may encourage judges to pay more attention to the dynamics of abuse and to apply Chapter 209A in accordance with its protective purpose. First, "a judge must consider the totality of the circumstances of the parties' relationship." Second, "the judge is to consider the basis for the initial order in evaluating the risk of future abuse. . . ." "The standard for extending an order is not lesser (or higher) at a renewal hearing than for an original order. Here the SJC emphasized that a defendant's "obedience alone is not a ground for refusing an extension of the initial order." The SJC spelled out other factors beyond violence and past abuse to be looked at in reviewing the " totality of the circumstances of the parties' relationship" and determining whether the plaintiff has a reasonable continued fear of imminent harm justifying renewal of an order. These include <u>but are not limited to</u> the likelihood that the parties will encounter one another in the course of their usual activities (e.g., residential or workplace proximity, attendance at the same place of worship), ongoing child related disputes or other litigation, the parties' demeanor in court, 209A violations, and whether there has been significant changes in the circumstances of the parties. At a renewal hearing, the judge's role is to extend an order, let it expire, or enter a permanent order. See Judicial Guidelines § 6:09. Note: remand was appropriate here because while the evidence supported extension, it did not appear that the judge bothered to consider it.

***Vittone v. Clairmont***, 64 Mass. App. Ct. 479, 834 N.E.2d 258 (2005). Permanent order affirmed. Plaintiff let her order lapse while defendant was in jail but sought protection after his release. He had things posted on the internet while he was in jail that were derogatory about her, but had not contacted her. The Appeals Court rejected defendant's claim that the statutory scheme, as construed by the case law, requires evidence of recent words or conduct that would themselves place a person in reasonable fear of imminent serious physical harm and that there was no such evidence here. He relied on the Legislature's use of the present tense in the definition of abuse in Chapter 209A which refers to only those "suffering from abuse." He cited *Dollan v. Dollan* to require that the focus must be "on preventing imminent serious physical harm, not merely responding to past abuse." The Appeals Court said: " Indeed, the nature and duration of a relationship, as well as any prior history of violence, threats, or hostility within it, serve as the necessary backdrop for reaching a proper understanding of more recent words and behavior as well as for assessing the reasonableness of an applicant's fear of imminent serious physical harm. Citing *Iamele v. Asselin*, the opinion notes that: "Other factors that the judge should

consider include, but are not limited to: the defendant's violations of protective orders, ongoing child custody or other litigation that engenders or is likely to engender hostility, the parties' demeanor in court, the likelihood that the parties will encounter one another in the course of their usual activities ... and significant changes in the circumstances of the parties. No one factor is likely to be determinative. It is the totality of the conditions that exist at the time that the plaintiff seeks the extension, viewed in the light of the initial abuse prevention order, that govern."

***Commissioner of Probation v. Adams***, 65 Mass. App. Ct. 725, 843 N.E.2d 1101 (2006). Former girlfriend obtained a permanent 209A order against her former boyfriend. He filed for a 209A against her in retaliation and the order was extended for a year. After he was convicted of 209A related crimes, she filed motion to vacate his 209A order and have it expunged from domestic violence registry. The District Court allowed both motions based on boyfriend's "fraud on the court" and Commissioner of Probation appealed. Appeals Court affirmed the orders noting a narrow exception for expungement of 209A cases involving "fraud on the court." Note: *See also Vaccaro v. Vaccaro* (1997) re: expungement issue; *Paternity of Cheryl*, 434 Mass. 23, 746 N.E.2d 488 (2001) re: "fraud on the court."

***Lamarche v. Lussier***, 65 Mass. App. Ct. 887, 844 N.E.2d 1115 (2006). This is a troubling case in that domestic violence is based on power, control and intimidation in a relationship that continues whether a victim remains in the same state as a defendant. Former boyfriend who lived out of state appealed entry of Chapter 209A order claiming lack of personal jurisdiction. Victim did not participate in the appeal. Victim had moved from Massachusetts to New Hampshire in 2002 to live with the defendant and later moved again to Washington with him. In late 2003, she left him and returned to New Hampshire and moved back to Massachusetts in 2004. The record indicated no claims that threats, violence or abuse occurred in Massachusetts. Defendant had never lived here, owned no property here, and had not transacted business here. Appeals Court vacated the 209A order. Be sure to read footnote 13 in this case which loudly hints at a way to get relief for a victim. The footnote explains that: "It does not appear that the parties raised before the trial court judge any suggestion that, absent personal jurisdiction over Lussier, there was any means by which to afford Lamarche the protection of our statutory scheme, designed to preserve the 'fundamental human right to be protected from the devastating impact of family violence." The footnote also says: "This being so, and given the absence of an appellee's brief, we do not address the matter further except to note that courts in Iowa and New Jersey have recently addressed essentially this situation and have taken somewhat different paths to the same end. The courts in both jurisdictions make the distinction between prohibitory and affirmative relief, holding that the former, but not the latter, is available when the court lacks personal jurisdiction over the defendant." The footnote then cites cases from Iowa and New Jersey granting protective orders "on theory that protection of resident from domestic abuse affects only her "civil status," personal jurisdiction over nonresident defendant unnecessary for court to issue protective "stay away" order." ***Practice note***: ***See Caplan v. Donovan*** decided in 2008 by the SJC which holds that personal jurisdiction is not required for most Chapter 209A relief.

***Aguilar v. Hernandez-Mendez***, 66 Mass. App. Ct. 367, 848 N.E.2d 779 (2006). Defendant, who was the son of the victim's boyfriend formerly lived in same home as the plaintiff, retained

keys and got his mail there until the Chapter 209A entered. He claimed he was never a household member as defined by Chapter 209A. Appeals Court rejected defendant's claim that to be a household member, he would have to share emotional and financial connections with the plaintiff; he claimed such ties were lacking although they shared living space together. Chapter 209A order was affirmed.

***Smith v. Jones***, 67 Mass. App. Ct. 129, 852 N.E.2d 670 (2006). Appeal of ex-parte order and the subsequent order extended at ten day hearing and request for expungement of the 209A order from the Registry by the defendant. Both parties were minors who had dated. Defendant sent plaintiff an email saying he wanted to stab her in the heart after they split up and she obtained an ex-parte order. At the next hearing, she stated she did not fear that he would harm her based on this statement and that she regretted having sex with him. She testified she was afraid the defendant would embarrass her at school and that his presence made her so nervous she shook. Appeals Court affirmed ex-parte order, vacated subsequent order, and denied request for expungement because of absence of "fraud on the court" and special circumstances as set forth in *Comm. of Probation v. Adams*. Practice note: *see also Vaccaro v. Vaccaro* (1997) re: expungement issue; *Paternity of Cheryl,* 434 Mass. 23, 746 N.E.2d 488 (2001) re: "fraud on the court."

***Ginsberg v. Blacker***, 67 Mass. App. Ct. 139, 852 679 (2006). Defendant appealed 209A order claiming former wife was not in fear of imminent serious physical harm. He exclaimed that victim's family should be shot and that she ruined his life. He also flailed his arms and he was shouting so close to her that she felt spit on her face. 209A order was affirmed with Appeals Court noting that judge had opportunity to view the parties' demeanors. Footnote 7 notes that courts have held that shouting angrily, shaking a fist or raising a hand is an assault. Wife awarded costs of appeal, but an attorney's fee award denied because appellate arguments of the defendant were not "foredoomed."

***Aguilar v. Hernandez-Mendez***, 66 Mass. App. Ct. 367, 848 N.E.2d 779 (2006). Defendant, who was the son of the victim's boyfriend formerly lived in same home as the plaintiff, retained keys and got his mail there until the Chapter 209A entered. He claimed he was never a household member as defined by Chapter 209A. Appeals Court rejected defendant's claim that to be a household member, he would have to share emotional and financial connections with the plaintiff; he claimed such ties were lacking although they shared living space together. Chapter 209A order was affirmed.

***Caplan v. Donovan***, 450 Mass. 463, 879 N.E.2d 117 (2008) (cert. denied 128 S. Ct. 2088). Out-of-state defendant appealed 209A order claiming the order violated due process because he resided in Florida, the incidents of alleged abuse occurred in Florida, and he had no "minimum contacts" with Massachusetts so as to fall under the long arm statute. The SJC affirmed the order (except for the gun surrender related relief) and held minimum contacts are not required for Chapter 209A relief that in the nature of prohibiting the defendant from abusing the victim. The gun surrender related relief was vacated because that would require the defendant to perform affirmative actions and the trial court lacked personal jurisdiction to enter such an order. In this

case, the record below had no evidence about the content of the phone calls made to the victim after she arrived here or that the calls caused fear, but the case opens the door for exercise of long arm jurisdiction where such evidence is provided to the court. Thus, in other cases, a victim might obtain a gun surrender order and other affirmative relief such as child support.

***L.F. v. L.J.***, 71 Mass. App. Ct. 813, 887 N.E.2d 294 (2008). Appeals Court held that the Probate Court has jurisdiction to hear a contempt action filed by a Chapter 209A plaintiff who has moved out of state where the defendant continues to reside in Massachusetts and the violations took place out of state. The defendant had filed a meritless case in New York against the plaintiff which was not a violation of a Chapter 209A order, but she also made threats to the plaintiff through his lawyer to get him in trouble with the IRS and so forth. Although her threats were not technically threats of abuse as set forth in Chapter 209A, they were threats intended to hurt, punish, retaliate or intimidate him that violated the "no contact" order. As such, they fell outside the permissible parameters of the New York court case. The judgment of contempt was affirmed, but the order for a bond was vacated because the judge did not make findings about the defendant's financial resources or effectiveness of a bond to deter future violations. The Appeals Court noted the judge was free to enter another order for a bond following the steps outlined in its opinion.

***Commonwealth v. Saladin***, 73 Mass. App. Ct 416, 898 N.E.2d 514 (2008). Appeals Court affirmed conviction of a defendant who argued it was not a violation of the Chapter 209A order for him to return to the home he was ordered to stay away from after the victim-plaintiff moved out. The order was still in effect; he could have sought a modification of the order under Chapter 209A section 3. The Appeals Court rejected his claim of a constitutional right to return home after the victim moved out.

***In re Balliro***, 453 Mass. 75, 899 N.E.2d 794 (2009). BBO recommended that attorney be given a public reprimand for giving false testimony about whether her boyfriend abused her at a criminal trial. The Supreme Judicial Court held that six months suspension was the appropriate sanction because the attorney acted knowingly when she testified falsely about her injuries at trial, but disbarment was not appropriate sanction. The SJC said it recognized "the perceived inequity of sanctioning the respondent more severely than attorneys who have been convicted of domestic assault." See Matter of Grella, 438 Mass. 47, 51, 777 N.E.2d 167 (2002) (attorney suspended for two months after conviction of violent assault on wife). "The distinction with respect to the circumstances of the present case is that the respondent's misconduct occurred in the context of testifying under oath in a criminal trial. Such misconduct was a violation of the fundamental tenets of her oath of office and of her ethical obligations, matters at the very heart of the legal profession." *Practice note:* Defense counsel may try to spin this case in ways to generally discredit victims who initially minimize or deny abuse (a common dynamic in domestic violence). *Balliro,* however, has to do with attorneys testifying in court.

***In re Angwafo***, 453 Mass. 28, 899 N.E.d 778(2009). The SJC held that the conduct of an attorney, who was a victim of domestic violence and a plaintiff in a Probate Court warranted a one month suspension. She had misrepresented her assets on the financial statement she filed in

court in close proximity to her abuser and misrepresented that she was married. *Practice note:* The SJC noted that it was "particularly disturbing" that a family service officer directed a victim of abuse to fill out a financial statement "in the same area" as the abuser--"about five feet away." "This should not have happened." *Id.* at 38. This language could be helpful in educating court staff or probation officers who do not consider 209A's or past violence when they instruct parties to fill out various forms or direct them to wait in certain areas.

***Smith v. Jones***, 75 Mass. App. Ct. 540, 915 N.E.2d 260 (2009). Extension of 209A order was reversed by Appeals Court with one justice dissenting. In January 2006, victim obtained an ex parte 209A order after ending an extramarital relationship; the defendant called hundreds of times and said he was going to "force" her to talk to him. She renewed the order in 2007 and 2008. The case did not involve physical violence, but unwanted phone calls, faxes before entry of the order, and coming within 10 feet of the victim at a trade show in March 2006 when the order was in effect. The Appeals Court vacated the permanent 209A order issued in 2008 which was 2 years after the initial one year extension in February 2006. In its reversal, the Appeals Court noted the defendant had engaged in "stalking" and "potentially criminal behavior under Chapter 265, section 43(a) in the past. They opined that although he made no direct threats and was not violent, "the evidence of his compulsive contacts . . . was of sufficient intensity to permit the judge to conclude that Agnes was in reasonable fear of physical harm" to support the initial orders. They found it significant that he made no further calls after his initial promise to make no more calls in January 5, 2006 as indicated in a transcript of one of his prior calls. They concluded there was no evidence that he "was inherently incapable -with the passage of years-of accepting the reality that his relationship was order." Justice Cypher wrote a dissenting opinion noting that he violated the order in 2006, tracked her whereabouts on vacation, and previously made hundreds of calls after saying he would force her to talk with him. Justice Cypher's dissent points to the Chapter 209A section 3 language that says failure to violate an order is not grounds to refuse extension of an order; she notes that the defendant did not even appear for the last hearing and the majority erred in relying on apologetic letters the defendant wrote back in 2006. ***Practice note:*** If a defendant fails to appear for a hearing, one could argue that the matter is uncontested, and thus, the defendant cannot rebut the victim's claims even if an attorney appears based on the lawyer's testimony. A plaintiff might argue that as matter of due process or fairness, the plaintiff should have right to cross examine the defendant rather than the judge relying on assertions made through his attorney, or past written documents or statements that may be stale or unreliable. It is hard to reconcile the Chapter 209A, Section 3 language which provides that failure to violate an order is not grounds to refuse extension of an order with the majority opinion, particularly when the court could not assess the defendant's credibility in his absence. In contrast, cases like the SJC's Iamele and the Appeals Court's Vittone case and the dissent in this case show insight into dynamics of abuse. The victim here did not seek further review by the SJC.

***Banna v. Banna***, 78 Mass. App. Ct. 34 , 934 N.E. 2d 1272 (2010). The Appeals Court vacated the 209A order of sister against brother that was extended at a one year renewal hearing. The defendant opposed the extension and the only thing said by the plaintiff at the hearing was "yes" after the judge asked if she wanted an extension. The only evidence the judge had was the

plaintiff's past affidavit. The Appeals Court held that the judge erred in not ascertaining the current state of affairs between the parties. This case demonstrates the importance of making a record at a renewal hearing and having clients talk about their continuing fear of a defendant.

***Commonwealth v. Belmer***, 78 Mass. App. Ct. 62, 935 N.E.2d 327 (2010). A 209A affidavit that resulted in issuance of a 209A order could be admitted at criminal trial. The defendant claimed 209A affidavits were not as reliable as grand jury proceedings because the 209A guidelines provide for much deference to victims and victims might be coached by overzealous victim advocates. The Appeals Court said it did not endorse the defendant's "cynical views" of the Guidelines which promote sensitivity to domestic violence.

***Commonwealth v. Shangkuan***, 78 Mass. App. Ct. 827, 943 N. E.2d 466 (2011). A return of service by an out-of-state police officer on a Chapter 209A order is not testimonial for purposes of the confrontation clause of the Sixth Amendment. The officer need not testify in person and the return of service is admissible under the public record exception to the hearsay rule.

***Commonwealth v. Buzell***, 79 Mass. Ap. Ct. 460, 947 N.E.2d 75 (2011). This short decision is a "must read" for anyone helping immigrants. Defendant argued the judge erred in not letting him cross examine the victims about their undocumented immigrant status during his prosecution. The Appeals Court held that a witness's immigration status is not admissible to impeach his or her credibility. "There is no reason to believe that the fact that the witnesses may not have been legally resident in this country made them any less likely to be truthful. If anything, their insecure legal status would likely make them less inclined to turn to law enforcement officials for help." The defendant also had no right to cross-examine them about possibly having obtained Social Security numbers improperly because they were not convicted of a crime related to this insinuated misconduct.

***S.T. v. E.M.***, 80 Mass. App. Ct. 423, 953 N.E. 2d 269 (2011). A nicely written decision by the Appeals Court reversing a judge's order vacating a 209A case which discusses some of the worst judicial practices that occur in sexual assault and domestic violence cases. The plaintiff was a college student who was sexually assaulted and abused by another student. The judge did all he could to discourage the victim from extending her ex-parte order because he thought the problem should be handled by the university rather than the court. In his view, it was the university's responsibility rather than the court's responsibility to protect the plaintiff from abuse. He tried to have the case mediated, found excuses to continue the case and not hold an evidentiary hearing, vacated all of the victim's orders except the "no abuse" and gun order in the interim, and when he finally held a hearing, he refused to let the plaintiff call the defendant as a witness. The judge disputed that an adverse inference can be drawn from a 209A defendant's refusal to testify. The Appeals Court held the plaintiff had a right to call the defendant as a witness and to have an inference drawn against him if he failed to testify. The Appeals Court wisely opined that the case should be heard by another judge on remand.

***O'Brien v. Borowski***, 461 Mass. 415, 961 N.E.2d 547 (2012). Defendant who failed to appear at the hearing on extension of an ex-parte harassment order appealed entry of order to Single Justice of SJC. The SJC held that the Chapter 258E harassment prevention statute was not

unconstitutionally overbroad and that appeals of such orders go to the Appeals Court. Harassment is not protected speech and is broader than "fighting words." A gesture, such as giving a plaintiff the finger, can be "fighting words" or intended as a "true threat." It depends on the context. Here the "totality" of the conduct was not First Amendment protected speech. The defendant followed the plaintiff to a bar and gave him the finger. He also drove to the plaintiff's home and while driving by gave him the finger again. "We interpret the word "fear" in G.L. c. 258E, § 1, to mean fear of physical harm or fear of physical damage to property. With that narrowed construction, we conclude that the civil harassment act, G.L. c. 258E, is not constitutionally overbroad because it limits the scope of prohibited speech to constitutionally unprotected "true threats" and "fighting words." The SJC noted problems with the record below. "We need not reach the issue whether there was sufficient evidence for the judge to conclude that the totality of O'Brien's conduct, including the raising of the middle finger, met the standard for civil harassment because there is another issue that, if the case were not moot, would require a remand for further factual findings." "Because the judge did not make any factual findings, orally or in writing, we cannot know whether the judge made this finding as to each of the three alleged acts of harassment, and the evidence is not so strong as to permit us to infer such a finding, especially with respect to the first act committed outside the bar." "In such circumstances, we would generally remand the case to the judge for further factual findings, but such a remand makes no sense where the case is moot, the harassment prevention order having expired." "Because the case is moot as a consequence of the expiration of the harassment prevention order and because further findings from the judge would be needed to affirm the finding of civil harassment, we remand the case to the county court and direct the single justice to vacate the order of harassment."

*Diaz v. Gomez,* 82 Mass. App. Ct. 55, 970 N.E. 2d 355 (2012). Appeals Court affirmed order extending a Chapter 20A order for the plaintiff who had protective orders in the past against her ex-husband. She claimed the defendant in the past had threatened to put her six feet under, physically abused her, and put a gun to her head, and more recently harassed her by parking his police cruiser in the vicinity of her home. The defendant did not testify, but his lawyer claimed that : (1) the plaintiff's statement in her affidavit that the defendant put her gun to her head in the past was inconsistent with prior affidavits filed in other 209A proceedings; (2) the defendant who is a police officer was "cleared" by an internal police investigation; and (3) the plaintiff needed counsel because Fifth Amendment issues were present because his memory of her past testimony was starkly different than her present affidavit. The pro se plaintiff suggested the court call the domestic abuse police officer and the lawyer suggested checking with police regarding the police investigation. The judge decided to collect the affidavits from the other courts and have probation collect other information from the police department during the court break. The judge found the affidavits while not the same, were not contradictory. Probation reported that the police sergeant said they had taken the defendant's guns in past, that he borrowed friends' guns, and that the plaintiff had reported he made threats more recently regarding a paternity matter involving her non-marital child. The judge informed counsel he could request an evidentiary hearing when he said he wanted to subpoena the sergeant, but he failed to request an evidentiary hearing. On appeal, he claimed a denial of due process because the court relied in part on hearsay from the police. The Appeals Court found this issue was waived because he failed to raise it or

object below, and even participated in the judge's crafting of out of court inquiries. The dissent (Graham, J.) opined that the hearsay in this case did not have sufficient indicia of reliability and the judge relied on it improperly. The dissent cites the *Frizado* case, nevertheless, which says hearsay is admissible as long as the process used in the case is fair.

***Lawrence v. Gauthier,*** 82 Mass. App. Ct. 904, 973 N.E2d 145 (2012). Appeal of an expired Chapter 258E harassment prevention order where there was no record that a hearing was held on extension of the order. The Appeals Court seems to read the SJC's opinion in *O'Brien v. Borowski* which found the appeal of the 258E order was moot to mean that any appeal of a Chapter 258E order is moot if the order is expired and there was no hearing. Note: The Appeals Court seemed to be distinguishing 258E orders from 209A orders, but the mootness issue was later addressed in *Seney v. Morhy*, 467 Mass. 58 (2014) where the SJC said 209A and 258E orders are treated the same on the issue of mootness. *See also Allen v. Allen*, 89 Mass. App. Ct. 403 (2016) finding that an appeal of ex-parte that was not extended was moot.

***E.C.O. v. Compton***, 464 Mass. 558, 984 N.E. 2d 787 (2013). Defendant appealed entry of 209A order obtained on behalf of a 16 year old by her father who disapproved of his daughter's consensual relationship with an older man. The daughter did not participate in the hearings. The defendant argued the relationship was not a "substantive dating relationship" as required by the statute because their communications were mostly electronic via email, Skype and Facebook. The SJC disagreed and noted "the changing nature of relationships and, specifically, the fact that an increasing number of relationships, including ones involving teenagers, are being conducted electronically." The SJC cited a study showing teenagers "are incorporating technology into their intimate relationships." The SJC explained that "Chapter 209A must be interpreted to protect all who are in a substantive dating relationship from abuse, regardless of whether the relationship was developed or conducted by the use of technology." The SJC, however, vacated the order for lack of evidence of forced sexual relations or other "abuse" as defined by Chapter 209A. The defendant's acts, such as offering a minor alcohol, were "understandably reprehensible," but did not rise to the level of "abuse" under Chapter 209A.

***Moreno v. Naranjo***, 465 Mass. 1001, 987 N.E.2d 550 (2013). Plaintiff appealed entry of a 209A limited to only 6 months rather than a full year as she requested. The District Court judge limited the duration because the order would have an adverse impact on the defendant's ability to visit the parties' minor child. The Appeals Court affirmed the order in Moreno v. Naranjo, 79 Mass. App. Ct. 117 (2010). On further review, the SJC held that the district court improperly considered the impact of extension of the order on the defendant's ability to visit the child. The SJC held that "nothing in the statute authorizes the judge to limit the duration of an abuse prevention order out of concern for the defendant's visitation rights." The SJC cited the Trial Court Guidelines and noted that the "well-established purpose of the statute is to protect victims of domestic violence." The trial judge erred in telling the victim she would get only a 6 month order unless the victim made an agreement for visitation. Protection is the purpose of the statute. "The defendant's visitation rights are simply not an appropriate consideration in a c. 209A extension hearing." The SJC noted the extension of the order was moot because the defendant did not appeal the order and the plaintiff did not seek a further extension of the order in district

court. However, the SJC ruled on the issues because the case raised "an important concern" regarding Chapter 209A proceedings.

***Seney v. Morhy***, 467 Mass. 58, 3 N.E. 3d 577 (2014). The Appeals Court had dismissed the defendant's appeal of a Ch. 258E harassment order because it had expired while the appeal was pending. The SJC held that appeal of a harassment order is not rendered moot due to expiration of the order pending appeal. SJC remanded case to District Court to vacate the order because there were not three incidents of harassment as defined by the statute which targeted the plaintiff. One of the incidents was not specific as to the words used as harassment and the other incident involved the defendant emailing another person rather than the plaintiff to describe him in unflattering terms.

***MacDonald v. Caruso***, 467 Mass. 382, 5 NE3d 831 (2014). In 2011, the defendant appealed denial of a motion to end a permanent 209A order in that had entered years earlier in 2001. After a hearing, at which the plaintiff did not appear, the judge (who was the same judge who had ordered an extension of the order at a prior adversary hearing) denied the motion and concluded that the defendant had not met his burden of proving, by clear and convincing evidence, that there has been a significant change of circumstances and that the order was unnecessary to protect the plaintiff from harm or the reasonable fear of harm. The defendant argued his marriage to another woman was a significant change and his burden was only proof by a preponderance of the evidence that the plaintiff no longer had a reasonable fear of imminent serious physical harm. The SJC held that a defendant seeking to terminate an order must "prove by clear and convincing evidence that the protected party no longer has a reasonable fear of imminent serious physical harm from the defendant, and that continuation of the order would therefore not be equitable." To prove that he had truly "moved on with his life," the defendant had "to demonstrate not only that he has moved on to another relationship but also that he has "moved on" from his history of domestic abuse and retaliation." defendant rested his motion to terminate solely on his own attestations in his verified motion. He did not submit an affidavit from the chief of police or other authority in his city in Utah to show police had no record of any allegations of domestic abuse, or submit the New York and Utah equivalents of the CORI and restraining order registry records to show the absence of arrests or convictions or other restraining orders. The SJC held the judge did not abuse her discretion in finding that the defendant's personal assertions alone fell short of meeting this burden. The SJC directed judges in future to make findings of fact on such motions on the record, whether the motion is allowed or denied, to assist appellate court in reviewing decisions on appeal.

***Silva v. Carmel***, 468 Mass. 18, 17 N.E.3d 1096 (2014). Plaintiff and defendant were intellectually disabled residents of a residential program under the Department of Developmental Services. The defendant appealed the 209A order. The SJC found they were not "household members." "The Legislature did not intend the statute to apply to acquaintance or stranger violence, nor did it intend to cover the myriad of relationships that exist . . . ." "Our conclusion is supported by the fact that the Legislature presumably enacted G.L. c. 258E, which "allow[s] individuals to obtain civil restraining orders against persons who are not family or household

members," to close the gap left by G.L. c. 209A." involves the serious and important matter of the safety

***Capuano v. Singh***, 468 Mass. 328, 10 N.E. 3d 1074 (2014). This case chronicles the hardships of repeated continuances and short term protective orders. Here the 209A plaintiff requested a one year extension at the ten day hearing. The District Court repeatedly declined to hold an evidentiary hearing and extended the order for three months periods because he felt the Probate Court was a better forum and did not want the defendant to testify while a criminal case was pending regarding the alleged abuse. At one of hearings where the judge declined to hold an evidentiary hearing, he also vacated the no-contact and stay away provisions in the order and extended the no abuse order for three months. At a later hearing another three months later, the plaintiff finally testified and the defendant asserted his right against self-incrimination. The judge summarily refused to draw an adverse inference as requested by plaintiff's counsel and again extended the order for three months and limited relief to only a "no abuse" order. The plaintiff appealed and the SJC held the issue was moot because by that time, she had obtained a 209A order three years in duration from another judge. The SJC issued an opinion because of the importance of the issues. The major rulings are:

1. "Neither the pendency of criminal proceedings against the defendant nor a judicial preference that the matter be decided in another forum is an appropriate consideration in deciding whether to continue a hearing."

2. "Because of the extraordinary sensitivity of abuse prevention matters, the applicable statute, G.L. c. 209A, and the guidelines promulgated by the Trial Court call for prompt evidentiary hearings on the merits of applications for such orders. ... "The decision to continue or suspend a hearing or to postpone the receipt of evidence must be made in light of the judicial responsibility to hear and decide cases in a manner that is consistent with the purposes of the statute and the interests of justice."

3. Refusal to exercise discretion is an abuse of discretion. "In this case, if the judge's statement that he would 'not draw an adverse inference for [Capuano's] refusal to testify when there's a pending criminal matter' reflected a hard-and-fast rule never to draw an adverse inference against nontestifying defendants, it would have been improper."

4. "Without first hearing the evidence, a judge should not, over objection, vacate any provision of a c. 209A order once issued, as the judge in this case did with the no-contact and stay-away provisions."

5. "Decisions to grant, deny, extend, modify, or vacate orders must be based on the evidence, after hearings, and only upon proper considerations, and orders that are granted must be of sufficient duration to protect the plaintiff, for whose benefit they are issued. . . . .The exclusive focus must be on the applicant's need for protection. As we said in *Moreno v. Naranjo*, 465 Mass. at 1002 n. 2, 987 N.E.2d 550: 'The Trial Court's guidelines for proceedings under G.L. c. 209A strongly suggest that an order after notice should be for a minimum of one year, unless the plaintiff requests a shorter period or the court finds that a shorter period is warranted, and that

orders for shorter periods should not be routinely issued over the plaintiff's objection. Guidelines for Judicial Practice: Abuse Prevention Proceedings § 6.02 & commentary (Sept. 2011).' "

***Callahan v. Callahan***, 85 Mass. App. Ct 369, 10 N.E.3d 159 (2014). Former husband appealed extension of a 209A order entered by the Probate Court and claimed that the plaintiff could not reasonably be in fear of imminent serious physical harm because he was incarcerated and his probation terms mirrored the 209A order. The Appeals Court disagreed and affirmed the order. "[W]e observe that the interpretation sought by Richard would turn the policy underlying c. 209A abuse prevention orders on its head." Were fear of "imminent serious physical harm" a sine qua non for extension of an order against a defendant who is imprisoned for physical abuse of the plaintiff, imprisonment would likely provide a victim less protection from abuse than existed before imprisonment, possibly subjecting the victim to unwanted letters, telephone calls, and other contact. Indeed, under such a statutory regime, the worse the physical harm inflicted, and the longer the resulting prison sentence, the less likely it would be reasonable for a victim to fear "imminent serious physical harm." A plaintiff would need to endure unwanted telephone calls, letters, or other contact from the defendant in order to petition for a new abuse prevention order, and even then would face the same objection that the defendant's imprisonment rendered fear of *imminent* serious physical harm unreasonable. Such was obviously not the intent of the Legislature, which saw fit to specify that "[t]he fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order," and that "[a]ny action commenced under the provisions of this chapter shall not preclude any other civil or criminal remedies." G.L. c. 209A, § 3.

***M.B. v. J.B.***, 86 App. Ct. 108, 13 N.E.3d 1009 (2014). Defendant appealed a Worcester Probate Court 209A order and claimed venue was improper because his wife had moved from Worcester County to Falmouth. The Appeals court affirmed the order noting that the statute permits a victim to file a case in a court having jurisdiction over her present residence or a past residence she left to avoid abuse. The wife had been receiving harassing calls and a mechanic found a GPS tracker on her car. The defendant had been violent before the parties separated. The wife sought a 209A order in the district court after she moved. The defendant/his counsel misrepresented to the Falmouth Court that the Probate Court had denied her a 209A order which caused the District Court to decline relief and refer the victim back to the probate court where the divorce was pending. She had a no contact order at the time of the District Court hearing although the prior 209A order had been continued and was pending when she appeared in the District Court.

***Demayo v. Quinn***, 87 Mass. App. Ct. 115, 25 N.E. 3d 903 (2015). Defendant appealed 258E harassment order that the owner of a horse boarding facility obtained against him. The Appeals Court vacated the order because the defendant's conduct was not aimed at a specific person as required by the statute. The defendant had taken things from the horse barn, rearranged bales of hay, and threw items into the stall of a horse that the plaintiff did not own.

***Petriello v. Indresano***, 87 Mass. App. Ct. 438, 31 N.E.3d 1159(2015). Yet another case on the importance of establishing a good factual record below. This was an appeal of a 258E order by two sons after health care agent acting on behalf of their 88-year-old mother obtained order in

her behalf pursuant to written power of attorney because the sons' unwanted presence around her and their statements caused the elderly mother great distress. Appeals Court held the agent had standing to seek such an order, but the record below was too vague as the sons' actions to permit a finding of three specific acts of harassment needed to support entry of any order. "We do not dismiss lightly the possibility that Petriello's distress caused her physical harm and we express no opinion whether on these facts a judge might find that the defendants intended to cause Petriello harm or whether they did so willfully or maliciously."

***Commonwealth. v. Dossantos***, 472 Mass. 74, 33 N.E.3d 405 (2015). The SJC responded to question reported by trial court related to the domestic violence registry. "We respond to the judge's report as follows: G.L. c. 276, § 56A, first par., requires that before making "a written ruling that abuse is alleged in connection with the charged offense," a judge must first inquire into and be satisfied that there is an adequate factual basis for the Commonwealth's allegation of abuse."

***F.A.P. v. J.E.S.***, 87 Mass. App. 595, 33 N.E.3d 1245(2015). 11 year old defendant appealed 258E harassment order pertaining to a 7 year old victim; case involved digital rape of child. Order affirmed and Appeals Court stated the trial court erred in imposing intent to cause fear and harm as extra element that the plaintiff had to prove because a sex offense was committed.

***Schechter v. Schechter***, 88 Mass. App. Ct. 239, 37 N.E.3d 632 (2015). Husband appealed 209A and divorce judgment order entered by the Probate & Family Court that suspended his visitation rights for one year, along with a corresponding G.L. c. 209A order precluding any contact between the father and child during that period. Appeals court affirmed the orders noting under Chapter 209A that "a case a judge is not also required to find that the defendant has committed a separate act or acts of abuse against the parties' child to order that the defendant have no contact with that child." Here, the rebuttable presumption G.L. c. 208, § 31A applied that sole or shared custody with the abusive parent was not in the child's best interests based on a finding that the father placed the mother in fear of imminent serious physical harm.

***Allen v. Allen***, 89 Mass. App. Ct. 403, 50 N.E.3d 836 (2016). The defendant appealed ex-parte 209A order which had not been extended at a further hearing. The Appeals Court held that an appeal does not lie from an ex parte order issued in circumstances where the order was terminated at a hearing after notice pursuant to c. 209A, § 4. "Because the defendant cannot obtain any additional relief even by means of a successful appeal, the appeal is moot." For similar rulings, see *Seney v. Morhy*, 467 Mass. 58 (2014) and *Lawrence v. Gauthier,* 82 Mass. App. Ct. 904 (2012).

***Quinn v. Gjoni***, 89 Mass. App. Ct. 408, 50 N.E.3d 448 (2016), *review denied*, 475 Mass. 1102 (2016). Plaintiff sought and obtained a 209A order against her ex-boyfriend which included a provision restricting his ability to post information about her online because online postings had caused others to harass and threaten her. Defendant appealed claiming the order impermissibly infringed on his First Amendment rights of free speech. Plaintiff filed motion to terminate the order while appeal was pending because she felt he was using it to draw attention to himself which increased third party threats to her. Appeals Court held the matter was moot because

"neither party retains anything but an academic interest in those issues, which go to the scope of the now terminated order." SJC declined further review.

***Gassman v. Reason***, 90 Mass. App. Ct. 1, 55 N.E. 3d 997(2016). Tenant appealed extension of 258E harassment prevention order granted to another tenant who lived above her. Order vacated where the behavior was the defendant's complaints about noise, filing of complaints with police, and filing of an assault and battery complaint.

***M.C.D. v. D.E.D.,*** 90 Mass. App. Ct. 337, 59 N.E.3d 1173 (2016), *review denied*, 75 N.E.3d 1130. (2017). Order expunging a 209A order vacated on appeal. This is yet another case demonstrating the high standard required to prove "fraud on the court" to expunge abuse prevention orders. The Appeals Court explained: "We think it important to distinguish between a false allegation, on the one hand, and a deliberate scheme, on the other, typically involving others in the court system, combined with a larger pattern of harassment that has been held to constitute fraud on the court." It gave examples such as bribery of judges, employment of counsel to 'influence' the court, bribery of the jury, and the involvement of an attorney [an officer of the court] in the perpetration of fraud." False testimony, alone, would not support a finding of fraud on the court, without evidence of more egregious conduct. Here the Appeals Court noted that: "It was the defendant's own view, at the time of the hearing after notice, that the plaintiff suffered from alcohol addiction and did not knowingly make a false complaint."

***B.C. v. F.C.***, 90 Mass. App. Ct. 345 (2016), *review denied*, 476 Mass. 1108 (2017. The plaintiff and defendant filed joint motion to expunge 209A order from domestic violence registry after it expired. Order for expungement was vacated by Appeals Court. The judge did not find by clear and convincing evidence that the order was obtained through a fraud on the court; thus, the court had no authority to override the statutory requirement of a record of the order in the registry. The plaintiff said she experienced a psychotic episode and unknowingly provided false facts in writing and during the hearing at which the order was issued. This was not fraud on the court.

***McIsaac v. Porter***, 90 Mass. App. Ct. 730, 65 N.E.3d 23 (2016). Defendant appealed entry of permanent 209A at the one year renewal hearing. The defendant relied on Dollan case (2002) to argue the order was improperly based only on past abuse, without any finding the plaintiff had a continued reasonable fear of imminent serious physical harm. The Appeals Court affirmed and distinguished the case and said: "in contrast, the plaintiff sought protection because the defendant already had caused actual physical harm to her, which constitutes abuse as constitutes abuse as defined in G.L. c. 209A, § 1(*a* )." Citing Callahan (2014), the Appeals Court concluded that "where the victim already had been subject to physical harm, "the 'abuse' is the physical harm caused, and a judge may reasonably conclude that there is a continued need for [an] order because the damage resulting from that physical harm affects the victim even when further physical attack is not reasonably imminent." Limit on cross-examination of plaintiff was permitted where the defendant tried to re-litigate the issuance of the initial order.

***J.S.H. v. J.S.***, 91 Mass. App. Ct. 107, 71 N.E.3d 910 (2017), review denied, 477 Mass. 1103 (2017). Defendant appealed denial of order to expunge harassment prevention order obtained by the director of a program that ran a support group for women who were abused that his wife had

attended. The Appeals Court affirmed denial of expungement noting that although the judge declined to extend the order, that outcome did not entitle the defendant to expungement. The Appeals Court noted that the fact the plaintiff described the e-mails from him as "harassing" and attacking her and the organization, while the defendant claimed they were not, "is merely expected, conflicting testimony interpreting the content of the e-mails." It was not fraud such as submission of forged letters, fabricated e-mails, and a "calculated pattern" of false statements.

***Commonwealth v. Sanborn***, 477 Mass. 393, 77 N.E.3d 274 (2017). A District Court judge reported the question to the SJC of whether G. L. c. 209A authorizes the police to effectuate a motor vehicle stop to serve a civil abuse prevention order. The SJC said no. "Ultimately, whether a stop to serve a c. 209A order is a reasonable measure to avert the harm from an emergency depends on an objective assessment of the necessity of doing so, in light of all facts known to law enforcement at the time." Thus, "[i]n such circumstances, the justification for the stop stems not from G. L. c. 209A, but from the constitutional exception to the warrant requirement." When a stop is not constitutionally justified, reasonable means for service would include the mechanisms typically employed for service: in-person delivery, leaving the order at the defendant's home, or service by mail, as appropriate.

***Beacon Residential Mgt. v. R.P.***, ___Mass.___, 81 N.E.3d 714 (2017). The case illustrates the potential intersections of VAWA, 209A, and housing cases. Mother obtained a 209A order against R.P., the father of her children, which awarded her custody of their children and ordered him to stay away from her apartment. The landlord then filed an eviction action against R.P. and the two children, and alleged the mother was an "unauthorized individual" living in the apartment who was "involved in a disturbance on the property." Landlord alleged that the parents committed fraud to avoid paying higher rent by not adding the mother to the lease. The Appeals Court affirmed the Housing Court's denial of the mother's motion to intervene in the eviction on behalf of herself and her children in a 1:28 decision. Mother then sought further review and the SJC held the mother had a right to intervene. "VAWA provides that tenants may not be denied occupancy rights "solely on the basis of criminal activity directly relating to domestic violence ... that is engaged in by a member of the household of the tenant or any guest ... if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence." 42 U.S.C. § 14043e-11(b)(3)(A)." At the preliminary stage, the judge should have accepted as true the mother's claim that she was prevented from adding her name to the lease as a part of R.P.'s abuse, and the proposition that the criminal activity, i.e., fraud, alleged by the landlord was a result of domestic violence. The judge had prematurely reached the merits of the case. The SJC vacated the judgment of default, reversed the denial of the motion to intervene, and remanded the case for further proceedings consistent with the opinion.

***M.M. v. Doucette***, 92 Mass. App. Ct. 32, 81 N.E.3d 1210 (2017). A defendant who was in prison filed an appeal of the District Court's denial of his petition for writ of habeas corpus so he could attend the hearing and a motion to vacate permanent abuse prevention order entered in his absence. The Appeals Court held that a writ of habeas corpus should have issued to secure the defendant's presence in court and to give him an opportunity to be heard. The Appeals Court remanded the case to the District Court for further proceedings consistent with its opinion with the restraining order remaining in effect until the hearing.

*A.P. v. M.T.*, 92 Mass. App. Ct. 156, ___N.E.3d ___ (2017). The Appeals Court affirmed a 258E civil harassment order against eight-year old boy for indecent assault and battery on a four year old girl. Child was naked and the boys ran away when her mother saw them; there also was physical evidence of abuse. The Appeals court upheld in-court identification, with no prior identification procedure, because the matter was a civil case "where the eyewitness was familiar with the defendant before the commission of the crime." It also said that some limitation by the judge on cross-examination was permissible, and that an adverse inference could be taken based on defendant's failure to testify to rebut the plaintiff's evidence.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

| | | |
|---|---|---|
| Worcester, ss. | | DOCKET NO. |
| NAME<br>Plaintiff | ) | |
| | ) | PLAINTIFF'S REQUEST FOR |
| | ) | AN ABUSE PREVENTION ORDER |
| v. | ) | AND CHILD SUPPORT |
| | ) | |
| NAME<br>Defendant | ) | |

NOW COMES {NAME}, the Plaintiff in this action, who hereby requests a 209A Abuse Prevention Order and child support in conjunction with that order. As reason therefore, the Plaintiff submits this memorandum of law.

FACTS:

LEGAL ARGUMENT:

The District Courts have the authority to grant requests for child support in conjunction with restraining orders pursuant to c.209A. *See* G.L. c. 209A § 3. Massachusetts General Laws c. 209A § 3 gives District Courts authority to grant any condition deemed necessary to provide for the safety and well-being of an abused party or any children in her custody. *Id.* Specifically, c.209A provide District Courts with the authority to grant a request for child support for any child in the plaintiff's custody when the defendant has the legal obligation to support such a person. *Id.*

The Guidelines for Judicial Practice: Abuse Prevention Proceedings further note that plaintiffs who are entitled to child support should be allowed to address the issue upon a finding of abuse. *See* § 10:01 of the Guidelines for Judicial Practice: Abuse Prevention Proceedings. District Courts then have the authority to issue an order of child support for a child in the plaintiff's custody in conjunction with plaintiff's abuse prevention order. *See* § 6:00(e) of the Guidelines for Judicial Practice: Abuse Prevention Proceedings. In determining the amount to be paid, the Court should follow the applicable standards set forth in the child support guidelines. *See* G.L. c. 209A §3.

The primary function of a c.209A abuse prevention order is to provide protection from abuse in the form of protective court orders. *See* § 1:01 of the Guidelines for Judicial Practice: Abuse Prevention Proceedings. District Courts should use their discretion to promulgate and reinforce the primary protective purpose of c.209A orders by granting requests for child support after a finding of abuse. District Courts should follow the example of the Powell court, which held that domestic violence statutes must be interpreted broadly in light of its ultimate protective purpose and that courts should employ broad discretion to fashion any remedy appropriately necessary to end the violence and abuse. *See* Powell v. Powell, 547 A.2d 973, 974-975 (D.C. 1988)

Financial support in the form of child support is often essential for abused victims to escape further violence and abuse. While in the abusive relationship, batterers commonly isolate victims from financial resources, limiting their access to cash, checking accounts or charge accounts. Martha F. Davis and Susan J. Kraham, Protecting Women's Welfare in the Face of Violence, 22 Fordham Urb. L.J. 1141, 1151 (1995). Thus, many domestic violence victims are economically dependent on their abusers and few have the financial resources necessary to begin a new life for themselves and any children in their custody. *Id.*

Many battered victims who attempt to flee an abusive relationship require immediate financial aid to help them break free from the abuser. *See* Sarah M. Buel, Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct, 26 Harv. Women's L.J. 217, 243-246 (2003). The success of a victim's escape

from violence often depends greatly on her available financial resources. Davis and Kraham, 22 Fordham Urb. L.J. at 1153-1154. Without adequate financial support, abuse victims usually find themselves faced with the difficult choice of either returning to the abusive relationship or subjecting themselves to a high risk of poverty. *Id.* If there are children involved, the decisions are even more challenging. Unless the abuser threatens the children as well, victims may very well choose financial security for the children rather than flee an abusive relationship. *See* Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 Mich. L. Rev. 1, 23, note 33 (1991).

Denying requests for child support when an abuse prevention order is already in place could likely force a victim back to the abuser and thus frustrate the protective purpose of a c.209A abuse prevention order. Child support is therefore essential to the financial, mental, and physical well-being of an abuse victim and her dependents. Catherine F. Klein and Leslye E. Orloff, Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law, 21 Hofstra L. Rev. 801, 998 (1993). During the initial period of independence, an order for child support could help pay for the economic costs of separation, stabilize the victim's financial situation, and ensure that the victim does not return to the abuser for fear of poverty. *See* Deborah M. Weissman, Gender-Based Violence as Judicial Anomaly: Between "The Truly National and the Truly Local," 42 B. C. L. Rev. 1081, 1156 (2001). In conclusion, an order for child support in conjunction with an abuse prevention order may very likely be the key to economic freedom, as well as the key to supporting and extending the protective purpose of c.209A protection orders. This Court should therefore grant plaintiff's request for child support in conjunction with the c.209A abuse prevention order.

Respectfully Submitted,
CLIENTS NAME
By Her Attorney

_____
Attorney Name, BBO #
Address
Phone #

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Motion for Short Order of Notice will be delivered this DAY of DATE to the Defendant, NAME, ADDRESS.

Date:_____ _____
ATTORNEY NAME

*This Motion and Memorandum of Law was prepared by the Women's Bar Foundation, Family Law Project for Battered Women.*

**COMMONWEALTH OF MASSACHUSETTS**
**THE PROBATE AND FAMILY COURT DEPARTMENT**
**THE TRIAL COURT**

Worcester, ss. DOCKET NO.

NAME )
Plaintiff )
)
) PLAINTIFF'S OPPOSITION TO
) DISTRICT COURT'S REFERRAL
v. ) TO PROBATE COURT
)
NAME )
Defendant )

NOW COMES {NAME}, the Plaintiff in this action, who hereby opposes to the District Court's referral of this General Laws Chapter 209A Abuse Prevention Order ("209A Order") to the Probate and Family Court. As reason therefore, the Plaintiff submits this memorandum of law.

Issue

May the District Court refuse to extend or extend only briefly a 209A Order based on the Probate and Family Court's concurrent jurisdiction or ancillary facts unrelated to the Plaintiff's safety?

Brief Answer

No. District Courts should honor the plaintiff's choice of forum pursuant to General Laws Chapter 209A and District Courts should only consider factors relevant to the protection of the victim when extending a 209A Order.

Discussion

Pursuant to General Laws Chapter 209A, victims have the right to select a forum in which to bring their case. See generally Mass. Gen. Laws ch. 209A, §2. In S.T. v. E.M., which concerned forum selection, the Court enumerated minimum standards of fairness that must be observed at abuse prevention hearings. See S.T. v. E.M., 80 Mass. App. Ct. 423 (2011). Once the

victim files a complaint, the court may not abuse its discretion and "discontinue an abuse prevention proceeding because [the court] believes [the proceeding] should move to another forum." Id. at 430 (citing Guidelines for Judicial Practice: Abuse Prevention Proceedings § 2:07 Commentary (Dec. 2000)). If the victim brings a 209A Order in a proper forum, the Court should hear it promptly and should not refer it to another court; to do otherwise puts victims of abuse at risk and may discourage victims from seeking relief at all. Id. The court should act to "assure a [victim]'s ability to live independently and free from abuse." Id. The broad authority given the court to grant 209A Orders stems from the fact that most abused persons seeking 209A Orders are at greatest risk when they seek a 209A Order or otherwise attempt to end a relationship. See Angela Browne, Ph.D., When Battered Women Kill, (1987) p. 114.

The court must base its decision to extend a 209A Order solely on whether the extension is "reasonably necessary to protect the plaintiff." Iamele v. Asseslin, 444 Mass. 734, 737 (citing the legislative history of Mass. Gen Laws. Ch. 209A, §3 which indicates that the only relevant factor in extending a 209A Abuse Prevention Order is whether the extension is necessary to protect the victim). The court may not consider other factors such as how long the court thinks it will take for the victim to enter Probate and Family Court or how the 209A order would affect the defendant's visitation rights. See Moreno v. Naranjo, 465 Mass. 1001, 1001-02 (2013). In 2014, the Supreme Judicial Court of Massachusetts admonished a District Court that twice extended a restraining order for a short period of time based solely on its belief that Family and Probate Court was the proper venue for this case simply because there was a visitation dispute. See Singh v. Capuano, 468 Mass. 328 (2014); See also Mass. Gen. Laws ch. 209A, §3. Further, the court may not deny the victim a right the law provides to her by ignoring issues of support or custody where an order of support or custody preserves the victim's safety. Guidelines for Judicial Practice: Abuse Prevention Proceedings § 2:07 Commentary (Sept. 2011).

The court should not issue a short duration 209A order with instruction for the victim to seek relief in the Probate and Family Court. See generally Singh, 468 Mass. 328. The court should issue a 209A Order for a minimum of a year in order to best protect the victim unless "the [victim] requests a shorter period or the court finds a shorter period is warranted . . . ." See Moreno, 465 Mass. at 1002 n.2 (citing Guidelines for Judicial Practice: Abuse Prevention Proceedings § 6.02 Commentary (Sept. 2011)). While the court has discretion in scheduling

hearings, continuances should not be given "lightly," especially in a 209A Order case because the victim's safety is at stake. See Singh 468 Mass. at 331 (citing Moreno v. Naranjo, 465 Mass. 1001 (2013)) (noting that the court should be hesitant to continue a 209A Order case because a 209A Order proceeding focuses on the victim's need for protection and the consequences of not holding a prompt hearing can be significant). Even if the court is overwhelmed with cases, "[the] court that has jurisdiction over an application for an abuse prevention order has a responsibility to hear the application promptly on the merits." Bellew v. Johnson, 84 Mass. App. Ct. 1105 (2013). In short, the court should not apply "self-imposed limitation[s]" that stem from its own philosophies rather than the law. See Lonergan-Gillen v. Gillen, 57 Mass. App. Ct. 746, 748 (2003) (holding that a lower court erred when the court refused to enter a permanent restraining order instead of a year restraining order based solely on the fact that the court believed a permanent restraining order did not provide the defendant with due process).

Conclusion

This Court should not refer Plaintiff to the Probate and Family Court because Plaintiff has properly filed her 209A Order in this Court. Neither the Probate and Family Court's concurrent jurisdiction nor the ancillary facts unrelated to Plaintiff's safety should trump the Plaintiff's choice of forum.

COMMONWEALTH OF MASSACHUSETTS
THE PROBATE AND FAMILY COURT DEPARTMENT
THE TRIAL COURT

Worcester, ss. DOCKET NO.

NAME )
Plaintiff )
)
v. )
)
NAME )
Defendant )

PLAINTIFF'S OBJECTION TO DEFENDANT'S REQUEST FOR VISITATION

NOW COMES {NAME}, the Plaintiff in this action, who hereby objects to the Defendant's request for visitation. As reason therefore, the Plaintiff submits this memorandum of law.

FACTS:

LEGAL ARGUMENT:

The District Court lacks jurisdiction to order visitation over the objections of one or more of the parties. *See* Nazarro v. Justices of the S. Essex Div. of the Dist. Court, No. 86-429. Defendants seeking such an order should be referred to the Probate and Family Court. See id. Commonwealth v. Rauseo, the seminal case on the issue, held that Chapter 209A contains no language authorizing courts to enter visitation orders; only the Probate Court, in actions related to divorce, separate support, or paternity, may enter orders providing for visitation. *See* Commonwealth v. Rauseo, 50 Mass. App. Ct. 699 (2001).

The Guidelines for Judicial Practice: Abuse Prevention Proceedings further supports the applicable case law and holds that the Probate and Family Court "will have... exclusive jurisdiction over visitation of minor children." *See* § 6.00. In fact, § 6:06 states that the Probate and Family Court is the only court with jurisdiction to order visitation for a defendant in a c. 209A action. *See* § 6:06 of the Guidelines for Judicial Practice: Abuse Prevention Proceedings (a defendant seeking visitation with minor children should be referred to the Probate and Family Court).

Lastly, the Guidelines further stress that even the Probate and Family Court should only order visitation in a limited number of circumstances. *See* § 12:00 of the Guidelines for Judicial Practice: Abuse Prevention Proceedings. This is because the purpose of the c. 209A action is to provide for the immediate protection of the victim. *See* Commentary to § 12.00 of the Guidelines for Judicial Practice: Abuse Prevention Proceedings. The time spent in court should be used to optimize the victim's safety, preferably leaving visitation order for a later date. *See* Commonwealth v. Rauseo, 50 Mass. App. Ct. 699, 708 (2001). Additionally, where the Probate Court finds by a preponderance of the evidence that there is a pattern or serious incident of abuse, there exists a rebuttable presumption that it is not in the child's best interest to be placed in shared or sole custody of the abusive parent. *See* Guidelines for Judicial Practice: Abuse Prevention Proceedings §12.05A. In conclusion, the abuse prevention guidelines and subsequent case law prohibit a District Court from awarding visitation over a party's objection in a 209A related case.

Respectfully Submitted,
CLIENTS NAME
By Her Attorney

_____

COMMONWEALTH OF MASSACHUSETTS
THE PROBATE AND FAMILY COURT DEPARTMENT
THE TRIAL COURT

| | | |
|---|---|---|
| COUNTY, ss. | | DOCKET NO. |
| NAME<br>Plaintiff | ) | |
| | ) | XXXXXX |
| | ) | XXXXXX |
| v. | ) | XXXXXX |
| | ) | |
| NAME<br>Defendant | ) | |

NOW COMES {NAME}, the Plaintiff in this action, who hereby request that this Honorable Court renew and make permanent Plaintiff's 209A Abuse Prevention Order. As reason therefore, the Plaintiff submits this memorandum of law.

FACTS:

LEGAL ARGUMENT:

The Court should grant Plaintiff's request for a permanent 209A Abuse Prevention Order because she has shown a continuing need for the order. M.G.L. c. 209A § 3 (2002). When a Plaintiff appears at a renewal hearing, the court may, using its broad discretionary powers, issue a permanent order necessary to reasonably protect the plaintiff. M.G.L. c. 209A § 3; Crenshaw v. Macklin, 430 Mass. 633, 635 (2000). Plaintiff, here, has shown she needs such an order to reasonably protect herself.

The court may issue a permanent 209A if the Plaintiff shows, by a preponderance of the evidence, that the order is necessary in duration to protect her from the "likelihood of abuse," which places the plaintiff in fear of serious physical harm. *See* Iamele v. Asselin, 444 Mass. 734, 739 (2005). The Plaintiff does not, however, need to re-establish facts supporting the grant of the initial order, nor may the defendant challenge the evidence underlying the initial order. M.G.L. c. 209A § 3; Iamele at 740. For example, a Plaintiff may have a reasonable fear of imminent harm upon defendant's imminent release from prison, even though the defendant had been imprisoned during the restraining order period. *See* Vittone v. Clairmont, 64 Mass. App. Ct. 479, 486 (2005).

A judge should consider the totality of the circumstances in determining whether make the order permanent. *See* Iamele at 740-41. While there is no single factor likely to be dispositive, the situation in its entirety must lend itself to the reasonable belief in the possibility of abuse. Id. at 741. An illustrative list of factors the judge should evaluate are: the possibility of future abuse in light of the basis for the original order, the defendant's violation(s) of protective orders, ongoing litigation that may invoke hostility, the parties' demeanor in court, the likelihood that the parties may see each other in their usual course of activities, and any significant circumstantial changes in the parties' lives. Id. The Court should assess these factors against the backdrop of the nature and duration of the relationship. *See* Vittone at 487.

Further, differing standards exist between criminal and civil cases. Thus, the fact that a defendant was not convicted of criminal charges does not counter issuance of a civil, permanent 209A order. *See* Doe v. Keller, 57 Mass. App. Ct. 776, 778 (2003).

Therefore, for all the reasons stated above, the Plaintiff respectfully requests this Honorable Court to make Plaintiff's existing 209A Abuse Prevention Order permanent.

Respectfully Submitted,
CLIENTS NAME
By Her Attorney

_____
Attorney Name, BBO #
Address
Phone #

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Motion for Short Order of Notice will be delivered this DAY of DATE to the Defendant, NAME, ADDRESS.

Date:_____ _____
ATTORNEY NAME

*This motion was composed by Laura Graham for the Women's Bar Foundation Family Law Project.*

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## CHECKLIST FOR COURT ADVOCACY SERVICES*

**RISK ASSESSMENT** (Check any risk factors to which client provides an affirmative answer)

| | | | |
|---|---|---|---|
| Guns | ☐ Yes ☐No | Serious injuries | ☐ Yes ☐ No |
| Other weapons | ☐ Yes ☐ No (specify_____). | Pet abuse | ☐ Yes ☐ No |
| Child abuse | ☐ Yes ☐ No | Threats to kidnap kids | ☐ Yes ☐ No |
| Mental illness | ☐ Yes ☐ No | Substance abuse | ☐ Yes ☐ No |
| Threats to kill | ☐ Yes ☐ No | Suicide threats | ☐ Yes ☐ No |

Victim believes defendant has intent/capacity to kill victim and/or children ☐ Yes ☐ No

Prior criminal record (specify history:_____) ☐ Yes ☐ No

Degree of possessiveness, obsessive behavior, centrality of victim to defendant ☐ Moderate ☐ High ☐ Unsure

Other risk factors: _____

**RISK REDUCTION PLANNING**

**Short Term**

☐ Safety around obtaining 209A

- ☐ Immediate vacate order:
  - ☐ Discuss procedure and safety plan with client around timing of service
  - ☐ Connect client with local police department

☐ Plans upon leaving court

Client has an alternative place to stay tonight? ☐ Yes ☐No ☐ N/A

Is emergency relocation necessary? ☐ Yes ☐No ☐ N/A

(Discussion of shelter options:_____)

☐ Police involvement and related safety issues for client

Is batterer on probation? ☐ Yes ☐No ☐ Unsure

(Court:_____Offense:_____Probation officer:_____)

Outstanding warrants? ☐ Yes (Offense:_____) ☐No ☐ Unsure

- ☐ Discuss possibility of probation surrender or arrest on outstanding warrant

**Long Term**

☐ Safety at current residence

- ☐ Secrecy of current address
- ☐ Change of keys and locks
- ☐ Alternative places to live
- ☐ Access to important documents
- ☐ Access to cell phone and emergency numbers

☐ Safety at school/work

☐ Safety of children at home, school or day care

☐ Discussion of client's financial independence and economic stability

☐ Other safety issues_____

*Adapted from checklist created by the Domestic Violence Institute at Northeastern University

# SAFETY TIPS FOR ATTORNEYS & OTHERS DEALING WITH VIOLENT LITIGANTS

*By Attorney Pauline Quirion, Greater Boston Legal Services*
*197 Friend Street, Boston, Massachusetts 20114*

## TRAVELLING TO AND FROM THE COURTHOUSE

- Know if an how your opponent has been violent
- Find out if the courthouse uses a metal detector
- Consider a change of venue if a metal detector is not available
- Avoid going to court by yourself or leaving alone
- Consider getting a police escort (or security guard) if needed
- Carry a cellular phone so it is easier to call for help
- Use a taxi or get a ride so that your vehicle is unknown
- If driving, avoid parking in an isolated or unsafe location
- Use a leased or other vehicle which is not traceable to your home
- Be vigilant and look behind you when you enter or leave
- Examine your vehicle before and after the court hearing
- If vehicle is unsafe or vandalized, record date, time, and place
- Compare acts of vandalism to case events for the same period

## WHILE AT COURT WITH AN ABUSIVE LITIGANT

- Make sure your opponent goes through the metal detector
- Give court security guard at the metal detector a description
- Let courtroom officers and courtroom clerk know your concerns
- Consider getting co-counsel on case to diffuse the angry litigant
- Avoid hostile interactions/personalizing the case
- Do not disclose personal information, where you live, places you frequent
- Do not go any place alone with an abusive litigant
- Get a court officer whenever you are harassed
- Stay away from isolated or secluded areas of the courthouse
- Be familiar with exits and means to escape if attacked
- Ask the Judge to keep abuser 15 minutes after the hearing for your safety
- Be vigilant and get to a safe place if you are in danger

## PROTECTING YOURSELF AT THE OFFICE

- Install good lock, lighting, and security systems
- Install smoke detectors and get a fire extinguisher
- Set up the office so that you can move easily into a safe area
- Screen all cases and clients for potential violence

- Let co-workers, etc. know about potentially violent litigants or visitors
- Have an escape/emergency plan in the event of a break in or attack
- Park your cars and vehicles in unmarked spaces
- Avoid hostile interactions with the abuser or personalizing the case
- Work with others on a case may help to diffuse an angry litigant
- Hold 4-way and other meetings at a court with a metal detector and security
- Avoid having pictures of your loved ones visible to the abuser
- Do not disclose personal information: where you live, places you frequent
- Get to a safe place if you are in danger
- Do not work late by yourself: lock doors, etc. if you work late
- Check your car before you drive it and vary your route home
- Tell people at home and at work when to expect you
- Be vigilant and watch for others who may follow or attack you
- Talk to police about problems that arise and about your safety issues
- Consider getting a restraining order or other legal remedies if appropriate
- Consider self-defense training, consults with security and forensic experts

## PROTECTING YOURSELF AT HOME

- Get good locks, lighting, and security systems for your home and car
- Install smoke detectors and get a fire extinguisher
- Avoid making business calls from your home phone
- A cellular phone may help with business calls or calls for help
- Avoid giving out your home number except to friends or family
- Get an unlisted home phone number with a block on "Caller ID"/*69
- *69 may be available to call back the source of crank calls
- Call police if harassed; *67 or phone trap may help with repeated crank calls
- "Caller ID" may help you find out who is calling
- Check home & car for safety; track vandalism, etc. to case and client events
- Neighbors and neighborhood crime watch may be helpful
- Have an escape/emergency plan in the event of a break in or attack
- Avoid listing your address or phone on anything that may be public
- Consider putting vehicles, property, etc. in someone else's name
- Leave and get to a safe place if you are in danger at home
- Consider hiring a temporary security guard if needed

*CAVEAT: This document represents an informal "brainstorm" of precautions which is not exhaustive and which may or may not be helpful to you. Any or all of the above considerations or suggestions will not guarantee your safety or the safety of anyone else. If you are at risk, your particular circumstances should be carefully evaluated in any planning related to your safety.*

## DOMESTIC VIOLENCE RESOURCE LIST

**SAFELINK:** 877-785-2020 (Statewide, multilingual, 24/7 confidential hotline)

**Domestic Violence Agencies in the Greater Boston Area**

- **AFAB-KAFANM (Association of Haitian Women of Boston)** (www.afab-kafanm.org): serves survivors of domestic violence, focusing on the Haitian community, through legal advocacy, education, housing advocacy, and other supportive services. 617.287.0096
- **Asian Task Force Against Domestic Violence** (www.atask.org): serves primarily East and Southeast Asian immigrants and refugees suffering from domestic violence. Provides multilingual emergency shelter, helpline, and general advocacy, including crisis intervention, safety planning, and legal advocacy services in Boston and Lowell. 24-hour Helpline: 617.338.2355
- **Casa Myrna Vazquez, Inc.** (www.casamyrna.org): serves survivors through emergency and transitional housing assistance, legal advocacy, counseling, housing advocacy, and self-sufficiency supports. CMV also operates Safelink, the Massachusetts statewide 24/7, toll-free, multilingual hotline: 877-785-2020. Office: 617.521.0100.
- **DOVE, Inc. (DOmestic Violence Ended)** (www.doveinc.info): serves survivors through confidential emergency housing, individual and group domestic violence counseling and safety planning, legal advocacy, and more. 24-hour crisis hotline: 617.417.1234. Office: 617.770.4065.
- **GLBTQ Domestic Violence Project** (www.glbtqdvp.org): serves survivors, focusing on the GLBTQ community, through safety planning, crisis intervention, emergency safe homes, legal advocacy and more. 24-hour hotline: 1.800.832.1901.
- **HarborCOV (Communities Overcoming Violence)** (www.harborcov.org): serves survivors through emergency shelter, individual and group support, legal advocacy, economic advocacy, and more. 24-hour hotline: 617.884.9909. Office: 617.884.9799.
- **Respond, Inc.** (www.respondinc.org): serves victims of domestic violence through individual advocacy and support groups, legal advocacy, emergency shelter and more. 24-hour crisis hotline: 617.623.5900. Office: 617.625.5996.
- **The Second Step** (www.thesecondstep.org): serves victims of domestic violence through transitional housing, children's services, legal advocacy, financial literacy and career counseling, individual and group counseling, and more. Office: 617.965.3999
- **Transition House** (www.transitionhouse.org): serves victims of domestic violence through emergency shelter, transitional and long-term housing programs, and supportive services for survivors and their children. 24-hour crisis hotline: 617.661.7203. Office: 617.868.1650.

Hospital-based Advocacy Programs

- **Center for Violence Recovery and Prevention, Beth Israel Deaconess Medical Center** (http://www.bidmc.org/violenceprevention): Provides advocacy within and without the medical center, group and individual advocacy services and therapy for survivors of domestic violence and sexual assault, crisis intervention, consultation and referrals. 617.667.8141
- **Child Witness to Violence Project, Boston Medical Center** (www.childwitnesstoviolence.org): offers developmentally sensitive counseling and advocacy, child therapy, family therapy, and case-related consultation to schools for children 8 or younger who have witnessed an act of significant violence. 617.414.4244.
- **Domestic Violence Program, Boston Medical Center** (http://www.bmc.org/traumasurgery/injuryprevention/patients-caregivers.htm#7): provides direct advocacy, support, and referrals to community resources. 617.414.7734
- **HAVEN, Mass. General Hospital** (http://www.mghpcs.org/socialservice/programs/haven/): provides safety planning, ongoing counseling and advocacy, support groups, court and other accompaniment, and referrals to resources within or outside MGH. 617.724.0054
- **Passageways, Brigham & Women's Hospital (with community sites at neighborhood health centers)** (www.brighamandwomens.org/about_bwh/communityprograms/our-programs/violence/passageway.aspx): provides free and confidential advocacy services including safety planning, individual and group counseling, medical and legal advocacy. Contact information for each location available online.

Legal Information and Referral Resources

- **Casa Myrna Vazquez Legal HelpLine**: brief advice and service for domestic-violence related legal issues. 617.521.0146
- **DOVE Legal Helpline:** brief advice and service for domestic-violence related legal issues. 617.770.4065 x120.
- **Legal Advocacy Resource Center** (www.larcma.org): operates a free, multilingual legal hotline for individuals on issues of housing, family law, public benefits, employment, consumer law, CORI, and veterans' issues. LARC also serves as the clearinghouse for intake and referral for Greater Boston Legal Services and Volunteer Lawyers Project, and limited screening for Community Legal Services and Counseling Center (family law only), and Metrowest Legal Services. Clients can apply for legal services online at, or by phone at 1.800.342.LAWS or 617.603.1700.
- **Mental Health Legal Advisors Committee** (www.mhlac.org) provides advice and direct representation to children and adults with mental disabilities. 617.338.2345, press "4".

- **Metrowest Legal Services** (www.mwlegal.org): provides free civil legal representation in family law, disability, health care access, housing and elder law in the Metrowest area. 508.620.1830.
- **Volunteer Lawyers Project** (www.vlpnet.org): provides free legal representation through pro bono attorneys in a wide range of substantive areas. 617.423.0648.
- **Women's Bar Foundation, Family Law Project for Battered Women:** (www.womensbar.org): administers large pro bono program focused on providing representation to victims of domestic violence in family law matters. Also provides legal support and information to survivors. 617.973.6666.

Substantive Legal Information

- **Child Support Guidelines and Worksheet**
  http://www.mass.gov/courts/selfhelp/family/child-support.html
- **Guidelines for Judicial Practice in Abuse Prevention Proceedings**
  http://www.mass.gov/courts/docs/209a/guidelines-2011.pdf
- **www.masslegalhelp.org:** Intended for individual consumers, contains a comprehensive overview of legal issues facing individuals living in poverty in MA. Site can be viewed in Spanish, Vietnamese, Russian, Portuguese, Haitian Creole, and Chinese.
- **www.masslegalservices.org:** Overview of legal issues facing low-income litigants in MA, with resources intended for legal advocates and other social service providers.
- **MA Trial Court Libraries** (http://www.mass.gov/courts/case-legal-res/law-lib/): provides access to federal and state laws, regulations, case law, court rules, fees, and more.

Court Information

- www.mass.gov/courts: Overview of MA court system, and contact information for various courts throughout MA. Links to Family and Probate and District Court forms (including 209A forms) and self-help resources for pro se litigants.