

Highlights of September 2011 Revisions to Guidelines**Changes based on appellate case law:**

- *Case law supporting broad interpretations of family and household members – Guideline 3:02.* Two cases emphasize that there should be a broad interpretation of subject matter jurisdiction, specifically addressing the definitions of family and household members. Turner v. Lewis, 434 Mass. 331, 334 (2001); Aguilar v. Hernandez-Mendez, 66 Mass. App. Ct. 367 (2006).
- *Issuing orders without personal jurisdiction – Guideline 3:03A.* Caplan v. Donovan, 450 Mass. 463, 463-64, (2008), *cert. denied*, Donovan v. Caplan, 553 U.S. 1018 (2008).
- *The relationship of no-contact and stay-away orders – Guidelines 4:01, 4:02, 8:02.* Commonwealth v. Finase, 435 Mass. 310, 314 (2001).
- *What constitutes notice to a defendant – Guideline 4:07.* Commonwealth v. Henderson, 434 Mass. 155, 161-164 (2001); Commonwealth v. Welch, 58 Mass. App. Ct. 408 (2003); Commonwealth v. Melton, 77 Mass. App. Ct. 552 (2010), *rev. denied*, Commonwealth v. Melton, 458 Mass. 1109 (2010).
- *Standards for extension of orders – Guidelines 5:04, 5:05, 6:08, 12:10.* Rauseo v. Rauseo, 50 Mass. App. Ct. 911, 913 (2001), *rev. denied*, Rauseo v. Rauseo, 434 Mass. 1103 (2001); Iamele v. Asselin, 444 Mass. 734, 734-735 (2005).
- *Expungement of records – Guideline 6:04.* Comm’r of Probation v. Adams, 65 Mass. App. Ct. 725 (2006); Commonwealth v. Boe, 456 Mass. 337 (2010).
- *Mutual orders – Guideline 6:07.* Sommi v. Ayer, 51 Mass. App. Ct. 207 (2001); Uttaro v. Uttaro, 54 Mass. App. Ct. 871 (2002).

Revisions based on statutory changes:

- *Amendments to the bail statute – Guidelines 8:04-8:06.* G.L. c. 276, § 58 was amended in 2006 to provide for the imposition of certain conditions of release, specifically, to impose restrictions, as a condition of release, on personal associations or conduct including, but not limited to, avoiding all contact with an alleged victim of the crime and any potential witness or witnesses who may testify concerning the offense.
- *The requirement of an order to complete a certified batterer intervention program when abuse prevention orders have been violated – Guideline 8:14.* G.L. c. 209A, § 7 now provides that a conviction of or an admission to a violation of an abuse prevention order requires an order to complete a certified batterer intervention program, unless the court makes specific written findings of good cause for not so ordering, or the program finds that the defendant is not suitable for the program.

Procedural issues:

- *Terminology change from ‘vacated’ to ‘terminated’ order – Guideline 1:00.* This change was made as the term “vacated” carries with it the connotation that the original order was flawed in some way. Terminated, therefore, is a more appropriate term for an order that has expired or been terminated by the court. Please note: in certain Guidelines the term vacated is still used when the Guideline refers to cases or when the Guideline refers to G.L. c. 209A, § 7 where the term vacated is used. In these instances, a footnote explains why the term vacated is being used.
- *Discovery – Guideline 1:03.* Discovery orders are left to the court's discretion upon a hearing and a showing that that such discovery is necessary to provide specific essential information.
- *Expanded sections on minors as plaintiffs and as defendants – Guidelines 1:06, 1:06A.* These sections expand on issues such as the appointment of a *guardian ad litem*, requirements for impoundment, and consideration of the impact of orders to vacate or stay-away on a minor's living and school situations.
- *Interpreters – Guidelines 1:07, 2:03.* Information has been added concerning accessing interpretation service by telephone in emergency situations and the protocol for transcribing and translating affidavits.
- *Protocols applicable when a plaintiff comes to a court without venue – Guideline 1:09.* This section outlines the protocol to be used if a plaintiff has come in error to a court without venue and a judge determines that the plaintiff is unable to reach the court with venue that day due to time or transportation issues and/or there is a safety consideration. The Guideline provides that the judge will be designated to sit on the matter as a judge of the court with venue. The Guideline outlines the steps that should be taken by the clerk's office and the probation department in the court where the plaintiff has appeared.
- *Protocols applicable when a plaintiff comes to a court where a judge is not sitting – Guideline 1:10.* This section outlines the protocol that is currently used in most situations where a plaintiff comes to a court where a judge is not sitting. The case will be opened in the court where the plaintiff has appeared and a judge at another court in the same Department will be contacted to conduct the hearing by telephone.
- *Protocols applicable when a plaintiff seeks an ex parte order that would conflict with an existing order in a Probate and Family Court domestic relations matter – Guideline 1:11 (see also Guidelines 2:07, 6:06, 12:07).* This Guideline clarifies and streamlines the protocol in a case in which a party is requesting an *ex parte* order from the Boston Municipal, District or Superior Court that would conflict with an existing Probate and Family Court order and a judge finds that there is an allegation or threat of serious harm to the children who are the subject of an existing Probate and Family Court custody or visitation order and the plaintiff is unable to reach that court.

- *Modifications of District Court orders – Guidelines 2:07, 6:06, 12:07.* When pursuant to Administrative Order 96-1, a Probate and Family Court judge sits as a Boston Municipal, District or Superior Court judge and modifies an abuse prevention order to eliminate inconsistencies between orders, to the extent possible, the modified provisions should be specifically and clearly identified on the face of the c. 209A order. The modified order should not simply refer to an attached order or agreement, particularly with respect to modification of the provisions regarding the contact and stay-away orders between the parties and/or children.
- *Limiting the use of side bar – Guideline 3:04.* Because abuse prevention hearings are public, as a general rule, *ex parte* hearings should not be conducted at sidebar. However, use of sidebar may be appropriate in specific circumstances.
- *Logistics for sending documents to the police for service – Guideline 4:07.* This Guideline clarifies that transmission of the papers for service on the defendant should be accomplished in the manner best designed for speed and effectiveness, which in many courts will be by facsimile. In other courts, police personnel pick up the order for service. The papers should not be mailed to the police or given to the plaintiff to bring to the police.
- *Alternative service – Guideline 6:03.* This section now provides examples of some additional types of alternative service.
- *Expanded Guideline on child support – Guideline 6:05B.* This Guideline consolidates information on ordering child support as part of an abuse prevention order and provides more information on the use of the Child Support Guidelines, the role of the Department of Revenue, and the importance of child support as a safety issue.
- *Request for identification from plaintiffs moving to terminate orders – Guideline 5:08.* Clerk's offices should request identification from plaintiffs moving to terminate orders to guard against the situation where a person other than the plaintiff claims to be the plaintiff and brings such a motion.
- *Requirement to enter emergency orders issued under the Judicial Response System into the Statewide Registry of Civil Restraining Orders – Guideline 11:00.* Because emergency orders are enforceable orders issued by a judge and because the order remains in effect until 4 P.M. on the next available business day, they should be entered in the Statewide Registry of Civil Restraining Orders whether or not the plaintiff appears at court on the day the order expires.
- *Judicial Response System return of cases – Guideline 11:00.* In 2008 the Trial Court adopted a Judicial Response System policy that provides that when a plaintiff has an ongoing case in the Probate and Family Court, an emergency abuse prevention order should be returnable to that court unless the defendant has been arrested and will be arraigned the next court business day in a Boston Municipal or District Court, the plaintiff cannot travel to the Probate and Family Court, or the plaintiff objects to the matter being returned to the Probate and Family Court.

- *Safety assessment – Guidelines 12:01, 12:03.* These Guidelines have been rewritten based on *Supervised Visitation Risk Assessment For Judges, Probate and Family Court*, April 26, 2005, and other recent literature on the issue.