COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT
OFFICE OF THE CHIEF JUSTICE
THREE CENTER PLAZA
BOSTON, MA 02108

MARY C. FITZPATRICK
CHIEF JUSTICE

TEL. (617) 742-9743
FAX (617) 720-4122

TO: ALL JUSTICES, PROBATE AND FAMILY COURT DEPARTMENT

FROM: MARY C. FITZPATRICK, CHIEF JUSTICE M.C.F.

DATE: NOVEMBER 25, 1996

RE: ADMINISTRATIVE ORDER 96-1

ADMINISTRATIVE ORDER 96-1 permits automatic Interdepartmental Assignment of a Probate and Family Court judge to sit as a judge of the District, Superior or Boston Municipal Court to address inconsistencies in 209A orders issued by other Departments of the Trial Court with orders or judgments entered by the Probate and Family Court.

The following three pages specify procedures, requirements of contact between Departments, and the paperwork involved in implementing this Administrative Order.

As questions arise, please contact Attorney Jocelynne D. Welsh in this office.

Pursuant to ADMINISTRATIVE ORDER 96-1, sec. II entitled "Interdepartmental Judicial Assignment", a Probate and Family Court judge may act as a judge of the District/Superior/Boston Municipal Court to modify, extend, or vacate a 209A order entered by another Department having concurrent 209A jurisdiction.

The purpose of ADMINISTRATIVE ORDER 96-1 is to eliminate conflict between the terms of the District/Superior/Boston Municipal Court 209A order and the terms of any orders or decisions issued by the Probate and Family Court.

ADMINISTRATIVE ORDER 96-1 precludes the necessity of a Probate and Family Court judge seeking an assignment as a judge of a different Department when presented with matters involving 209As issued by another Department and orders or judgments entered by the Probate and Family Court which address custody and/or visitation.

The ORDER eliminates the burden on, and inconvenience to, the parties of having to appear in two different Court Departments, and, should assist the police by eliminating conflicting orders.

◇ ◇ ◇

The following directives are intended to give guidance as to how the Probate and Family Court can best eliminate potential conflicts.

A party seeking resolution of a conflict between a Probate and Family Court order or judgment and a 209A order issued by another Department shall file a motion in the Probate and Family Court seeking resolution of the conflict.

When the Probate and Family Court is requested to modify, extend or vacate an order issued by another Department, the Family Service Office will request that the 209A issuing court (District/Superior/Boston Municipal Court) FAX a copy of the 209A complaint, affidavit, and order to the Probate and Family Court **before** the Probate and Family Court conducts a hearing.

The parties to the original order must be given notice and an opportunity to be heard.

If the address of the plaintiff in the complaint brought in the other Department has been impounded, notice of the hearing shall be given by the Probate and Family Court Registry to prevent disclosure of the impounded address.

After the hearing, if appropriate, the Probate and Family Court judge, sitting as a District/Superior/Boston Municipal Court judge pursuant to this automatic interdepartmental judicial assignment, may modify, extend or vacate the 209A order issued by the other Department in order to resolve the problem of conflicting or inconsistent orders.

To **modify** a 209A order entered by another Department, a Probate and Family Court judge sitting as a District/Superior/Boston Municipal Court judge should check the "modified" box (=E) on page two of the copy of the other Department's 209A Abuse Prevention Order.

If the new 209A Abuse Prevention Order has previously been modified, a new 209A Abuse Prevention Order must be completed as Box E on page two will have already been used. In this situation, the caption at the top of page one must be filled out exactly as on the original 209A order showing the name and address of the District/Superior/Boston Municipal Court, etc. Box E should be filled in by the Probate and Family Court judge sitting as a District/Superior/Boston Municipal Court judge, reflecting the terms of the modification.

The judge should indicate on the 209A form whether or not both parties have been served in-hand by the court's designee with a copy of the modified order.

The 209A statute requires the filing of a motion to modify a 209A order. In a situation where no motion has been filed, for example, where the conflict is brought to the attention of the Probate and Family Court judge while the parties are before the court on the Probate and Family Court matter, the Probate and Family Court judge may decide to act as a judge of the District/Superior/Boston Municipal Court to address inconsistencies in a 209A order issued by another Department. The judge should indicate at Box E "The court on its' own motion...".

The terms of the modification should be written in the space available. If this space is inadequate, write "See modified order of even date". A new 209A order should then be completed with the caption reflecting the name and address of the original issuing court, the docket number of the issuing court's case, etc. The new order will modify only those portions of the original 209A order that conflict with the orders of the Probate and Family Court.

It should be noted that a Probate and Family Court judge sitting as a District/Superior/Boston Municipal Court judge <u>cannot</u> modify a 209A order by completing Section 8 regarding visitation.

When modifying the order of another Department, the Probate and Family Court judge sitting as a District/Superior/Boston Municipal Court judge must use the same dates for further hearing and expiration as appear in the original order.

At the space for signature, the Probate and Family Court judge should sign his/her name and add the appropriate designation: " District/Superior/Boston Municipal Court judge".

Although ADMINISTRATIVE ORDER 96-1 permits a Probate and Family Court judge to modify, extend or vacate an order entered by another Department, it is <u>unlikely</u> that the <u>vacate</u> option will be utilized frequently as the Probate and Family Court is not acting as the Appeals Court regarding orders entered by the issuing court.

To **vacate** a 209A order entered by another Department, a Probate and Family Court judge sitting as a District/Superior/Boston Municipal Court judge should check the "vacate" box (=F) on page two of the copy of the other Department's 209A Abuse Prevention Order.

At the space for signature, the Probate and Family Court judge should sign his/her name and add the appropriate designation: "District/Superior/Boston Municipal Court judge".

Please note that a judge who vacates a 209A order entered by another Department cannot then "reissue" a 209A order incorporating the information contained in the vacated order UNLESS the parties are before the Probate and Family Court with a new 209A complaint and affidavit.

When another Department's 209A is modified or vacated as described above, the Family Service Office will immediately transmit a copy of the order (and the accompanying order if space on the original 209A was inadequate for the complete details of the modification) and a copy of the motion and return of service, by FAX, to the issuing court for entry **by that court** into the Domestic Violence Record Keeping System; for notification **by that court** to the police department; and, to update their case file.

The Family Service Office will then return the papers to the Registry which will send a copy of all relevant papers to the issuing court as soon as possible, and in any event no later than three days after the order has been changed, by first class mail.

A Probate and Family Court judge sitting as a District/Superior/Boston Municipal Court judge who modifies, extends, or vacates a 209A order issued by another Department shall advise the party/parties appearing of the effects of the changed order, and that the changed order is subject to further modification, extension or vacating in future proceedings.

Specifically, the judge should explain, for example, that permitting pick-up for visitation does not mean that the 209A defendant may in any other circumstances violate the stay-away provisions of the order, or, that the defendant can telephone the plaintiff regarding a missed visitation if telephone contact is prohibited.

If the 209A order has been changed to accommodate visitation, the judge should advise the noncustodial parent to take a copy of the modified order with him/her when picking the children up or bringing them back to avoid any misunderstandings with the police.

The interdepartmental assignment shall expire immediately following issuance of a modified, extended, or vacated order.

Re: Notice to Police Departments

The original issuing court will notify the police that an order dated _____ entered by the District/Superior/Boston Municipal Court has been modified, extended, or vacated.

ADMINISTRATIVE ORDER 96-1 becomes effective December 1, 1996.