

12. District Court Transmittal No. 623, December 4, 1996, “Procedures Regarding Probate and Family Court Action on District Court Domestic Abuse Orders”



## Trial Court of the Commonwealth District Court Department

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TRANSMITTAL NO. 623

Last Transmittal No. to:

Presiding Justices	<u>622</u>
Other Judges	<u>620</u>
Clerk-Magistrates	<u>620</u>
CPOs/POICs	<u>620</u>

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PRESIDING JUSTICES: *Please distribute copies (enclosed) of this memorandum to the clerk-magistrate and chief probation officer of the court. Other judges will receive their copies directly from this office.*

### MEMORANDUM

TO: District Court Judges, Clerk-Magistrates and Chief Probation Officers  
FROM: Chief Justice Zoll  
DATE: December 4, 1996  
SUBJECT: **Procedures Regarding Probate and Family Court Action on District Court Domestic Abuse Orders**

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Trial Court Administrative Order 96-1 authorizes the Probate and Family Court to modify, extend or vacate protective orders issued under G.L. c. 209A by the District Court, Boston Municipal Court or Superior Court when this is necessary to avoid an inconsistency between one of those orders and any order issued by the Probate and Family Court. In such cases the Probate and Family Court judge will act as a judge of the court whose order is being affected.

Trial Court Administrative Order 96-1 is included as Appendix Q of the Guidelines for Judicial Practice, Abuse Prevention Proceedings, issued by the Trial Court Administrative Office. The order has an effective date of December 1, 1996. A copy is enclosed.

The purpose of this memorandum is to distribute to District Court judges, clerk-magistrates and chief probation officers copies of the procedural plan by which the Probate and Family Court intends to implement Administrative Order 96-1, and to explain the District Court responsibilities under that plan.

The Probate and Family Court plan is enclosed. The District Court responsibilities are as follows:

### **1. Sending Documents to Probate and Family Court**

When the Probate and Family Court will act on a pending District Court c. 209A order, that court will request a copy of the complaint, affidavit and order to be sent by FAX from the original court. That request will come from the Probate and Family Court Family Service Office. Upon receipt of such a request, a photocopy of the complaint, affidavit and order should be sent to the requesting court by FAX as soon as possible.

### **2. Probate and Family Court Modification**

If the Probate and Family Court judge, sitting as a District Court judge, modifies the order, he or she will indicate the modification in box E or page 2 of the order and sign it as a District Court judge. As explained in the Probate and Family Court implementation plan, a new, additional c. 209A order form will be used if box E on the original form has already been used or provides inadequate space. The notation "See modification of even date" will be added to the original order.

### **3. Receiving Documents Back From Probate and Family Court; Entry Into Registry; Sending Copies to Police**

Upon modification, the Probation and Family Court Family Service Office will FAX to the District Court a copy of the modified order (including two additional new order pages if a new order form was necessary to record the modification), along with a copy of the motion for modification and proof of service of that motion. (The latter two items will be needed in the District Court if criminal enforcement of the order is necessary.)

Immediately upon receipt of the FAX transmission, the District Court probation department must enter the modified order into the Statewide Domestic Violence Record Keeping System (the Registry). As soon as possible, the District Court clerk-magistrate must then provide the police department that has the original order a complete copy of the modified order for the police files. (It is suggested that the clerk-magistrate advise the police to destroy the original order.)

*NOTE: If the modified order was served on the parties while they were at the Probate and Family Court, that service should be noted by the Probate and Family Court on the*

modified order. If there is no evidence of service of the modified order, the District Court clerk-magistrate must check with the Probate and Family court to determine if police service will be necessary. If one or both of the parties were not already served with a copy of the modified order while at the Probate and Family Court, the District Court clerk-magistrate must send a copy or copies of the modified order to the police for service.

Within three days after the FAX transmission, the Probate and Family Court Register will mail copies of the modified order and other papers to the District Court, presumably including the original, signed modification.

#### **4. Action If Order Vacated Rather Than Modified**

If the Probate and Family Court judge vacates, rather than modifies, the original District Court order, he or she will so indicate by checking box F on the copy of the original order and signing it. The vacated order will then be FAXed and mailed back to the District Court as indicated above, for entry into the Registry and placement in the case file. Notice must be sent to the police to destroy the vacated order, in accordance with G.L. c. 209A, s. 7. The police should also be provided with copies of the vacated order for service on the parties, if service was not made at the Probate and Family Court.

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Confusion between the parties and on the part of the police concerning the terms of restraining orders can have serious consequences. The procedures set forth above must be undertaken promptly and carefully to avoid such confusion when a District Court order is modified or vacated by the Probate and Family Court.