

Trial Court Administrative Order 21-3: Procedure for Superseding Orders Issued by a Probate and Family Court Judge Subsequent to a Chapter 209A Order

This Administrative Order supersedes Administrative Order 96-1: Procedure for Interdepartmental Determinations in Abuse Prevention Proceedings, and Administrative Order 96-1 is hereby rescinded and replaced with Administrative Order 21-3: Procedure for Superseding Orders Issued by a Probate and Family Court Judge Subsequent to a Chapter 209A Order.

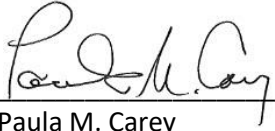
In order to comply with G.L. c. 209A, § 3, which provides that an order for custody or support issued pursuant to c. 209A by the Superior, District or Boston Municipal Court Departments shall be superseded by a subsequent custody or support order issued by the Probate and Family Court department, and to ensure that an active c. 209A Order is consistent with and accurately reflects subsequent orders issued by the Probate and Family Court department, the following procedure is hereby established pursuant to the superintendence power of the Chief Justice of the Trial Court pursuant to G.L. c. 211B, § 9. Additionally, pursuant to this superintendence power, Probate and Family Court judges are authorized to terminate a c. 209A Order at the plaintiff's request pursuant to the procedures provided herein.

- I. **Definitions.** In this Administrative Order the following words and phrases shall have the following meanings:
 - A. "c. 209A Order" means an abuse prevention order issued pursuant to G.L. c. 209A.
 - B. "Issuing Court" means the court that has issued an abuse prevention order pursuant to G.L. c. 209A.
 - C. "Superseding Court" means a division of the Probate and Family Court Department in which a justice of that court has issued a custody order (which should be understood to include a parenting time order) and/or support order inconsistent with and subsequent to the issuance of a c. 209A Order.
 - D. "Superseding Order" means a custody order (which should be understood to include a parenting time order) and/or support order issued by a justice of the Division of the Probate and Family Court Department subsequent to and inconsistent with an active c. 209A Order.
 - E. "Superseding c. 209A Order" means a c. 209A Order which has been amended by a superseding court pursuant to the authority granted by this Administrative Order or has been terminated in its entirety on the plaintiff's request.
 - F. "Registry" means the Domestic Violence Record Keeping System established pursuant to St. 1992, Chapter 188 and maintained by the Commissioner of Probation.
- II. **Interdepartmental Judicial Assignment.** The judges of the Probate and Family Court Department are hereby authorized to sit as a judge of the Boston Municipal Court Department, the District Court Department or the Superior Court Department to issue superseding c. 209A Orders as provided by this Administrative Order. This

interdepartmental judicial assignment shall expire upon the issuance of a superseding c. 209A Order.

- III. Superseding Custody, Support and/or Parenting Time Order(s) and Amending Active c. 209A Orders.** Whenever a party to an active c. 209A Order appears before a justice of the Probate and Family Court Department and the justice issues a subsequent custody, parenting time, and/or support order that is inconsistent with the c. 209A Order, said justice must amend the active c. 209A Order to eliminate any conflict between the superseding order(s) and the active c. 209A Order. If such amendments are required, the Probate and Family Court judge must issue a superseding c. 209A Order which should, to the extent possible, specifically and clearly identify the amendments made to the c. 209A Order on the face of the superseding c. 209A Order. The superseding c. 209A Order should not simply refer to an attached agreement, particularly with respect to the no contact and stay away provisions of the c. 209A Order. The justice of the Probate and Family Court issuing the superseding c. 209A Order shall advise the party or parties appearing before said justice of the effect of the superseding c. 209A Order and explain that the superseding c. 209A Order will be immediately returned to the issuing Court, subject to further modification, extension or vacating as authorized by G.L. c. 209A when a party to the order appears before the issuing court in future proceedings.
- IV. Terminating c. 209A Order at Plaintiff's Request.** If a party to an active c. 209A Order appears before a justice of the Probate and Family Court Department and the justice issues a subsequent custody, parenting time, and/or support order that is inconsistent with the c. 209A Order, said justice may, at the plaintiff's request, terminate the previously issued c. 209A Order in its entirety. Prior to doing so, the plaintiff should be given an opportunity to speak with a victim witness advocate or, if a victim witness advocate is unavailable, with a representative from the probation department, and the plaintiff should be advised that the request to terminate the c. 209A Order in no way precludes the plaintiff from again seeking a c. 209A Order if the need arises. Guideline 5:08 of the Guidelines for Judicial Practice: Abuse Prevention Proceedings, Request by the Plaintiff to Terminate Abuse Prevention Order provides useful guidance that may be consulted when considering a plaintiff's request to terminate a c. 209A Order.
- V. Entry of Order into Registry.** The Probation department of the superseding court shall enter the superseding c. 209A Order into the Registry on the day that the superseding c. 209A Order is issued and follow the requirements of the Standard to Establish and Maintain a Domestic Violence Record Keeping System, including the Registry of All Civil Vacate, Restraining, Protective and Abuse Prevention Orders established by the Commissioner of Probation with regard to entry of orders into the Registry.
- VI. Transmittal of Superseding c. 209A Order.** The Probation department in the superseding court shall promptly transmit the superseding c. 209A Order to the appropriate police department, and to the issuing court.
- VII. Docketing of Order.** The Clerk or Clerk-Magistrate of the issuing court shall cause the superseding c. 209A Order to be docketed in the appropriate case file of the issuing court in a timely manner.

Dated: November 4, 2021
Effective: November 4, 2021



Paula M. Carey
Chief Justice of the Trial Court