

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
ADMINISTRATIVE ORDER 10-2**

For the Conduct of a Pilot Program at the Barnstable Division of the Probate and Family Court Department and for the Interdepartmental Transfer of Certain Abuse Prevention Proceedings

This Order is issued pursuant to the authority set forth in G.L. c. 211B, § 9(xx).

I. Order of Transfer. Any judge of the Barnstable Division of the Probate and Family Court Department may, acting *sua sponte* or upon the motion or request of any party to a domestic relations case pending in the Barnstable Division of the Probate and Family Court Department, order the transfer to said court of any abuse prevention proceeding then pending in the Barnstable, Falmouth or Orleans District Courts. The transfer is not to be done over the objection of the parties except for good cause shown.

Prior to the issuance of any such transfer order the Barnstable Probate and Family Court shall provide all parties with an opportunity to be heard.

Upon the issuance of such a transfer order by the Probate and Family Court judge, the District Court action shall **forthwith** be transferred to the Barnstable Division of the Probate and Family Court, with the Probate and Family Court thereupon having the authority to extend, modify or terminate District Court orders (hereinafter "G.L. c. 209A orders") issued prior to such transfer or to make new orders in the transferred action as if the action had commenced in the Probate and Family Court. Any current District Court G.L. c. 209A order shall be considered as an existing order of the Probate and Family Court and shall be deemed to have issued on the date said G.L. c. 209A order issued in the District Court.

II. Procedures for Transfer. Upon the issuance of a transfer order, the following shall occur:

- A. A judge of the Barnstable Division of the Probate and Family Court who orders a transfer shall:
- (1) on that same day issue a written Order of Transfer and thereupon forthwith issue a single 209A order using a Probate and Family Court docket number that shall state all terms of the 209A order currently in effect including any terms transferred from the District Court.
 - (2) advise the party or parties appearing before said judge of the effects of the transfer including but not limited to an explanation that:
 - (a) the abuse prevention proceeding shall thereafter be a matter docketed in the Barnstable Division of the Probate and Family Court;
 - (b) all further proceedings will take place in the Probate and Family Court; and

(c) the case in the District Court will be transferred.

B. The Register of the Barnstable Division of the Probate and Family Court shall on the same day the transfer order is issued:

- (1) prepare such case files and make such docket entries as he or she deems appropriate provided, however, that such case shall be assigned a new Probate and Family Court docket number;
- (2) notify the Probation Department of the Probate and Family Court that the District Court G.L. c. 209A order has been transferred to the Barnstable Probate and Family Court;
- (3) inform the Clerk of the District Court of the transfer by faxing notification to the District Court;
- (4) transmit a copy of the Probate and Family Court c.209A order and Order of Transfer to the relevant police department(s) in the same manner as required when any other G.L. c. 209A order is modified; and
- (5) serve a copy of the Probate and Family Court G.L. c. 209A order and Order of Transfer on all parties in the same manner as required when any other G.L. c. 209A order is modified.

C. The Probation Department of the Barnstable Division of the Probate and Family Court shall:

on the same day of the transfer order make an appropriate entry of such transfer and of any subsequent modification of such order into the Statewide Registry of Civil Restraining Orders.

D. On the same day Notification of Transfer is received by the District Court, the Clerk of the District Court shall:

- (1) note the transfer on the District Court docket;
- (2) Immediately transmit copies of any case papers that have not previously been transmitted to the Register of the Barnstable Division of the Probate and Family Court. All original case papers shall be retained in the District Court case files; and
- (3) notify the Probation Department of the District Court that the District Court G.L. c. 209A order has been transferred to the Barnstable Probate and Family Court.

E. Upon notification from the Clerk's office that the G.L. c. 209A order has been transferred, the Probation Department of the District Court shall:

- (1) verify that the transferred order has been entered into the Statewide Registry of Civil Restraining Orders by the Probation Department of the Probate and Family Court department; and
- (2) make the appropriate entry to indicate that the G.L. c. 209A order has been transferred to the Probate and Family Court Department.

COMMENTARY

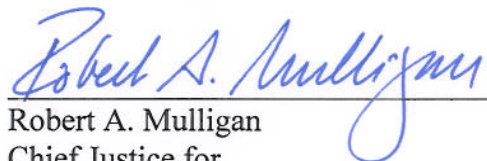
This Administrative Order serves two purposes. The first purpose is to minimize the burden otherwise imposed on parties to related cases simultaneously pending in different court departments. For example, this would avoid the need for a plaintiff who has an abuse prevention proceeding pending in the District Court to have to complete a new complaint and affidavit and have a new hearing on the abuse prevention proceedings if he or she has related matters in the Probate and Family Court and they wish to have the case heard in the Probate and Family Court or it is determined after hearing and upon good cause shown that a transfer of the 209A matter to the Probate and Family Court is appropriate. This will alleviate any possible confusion to the parties as to where any subsequent hearings are to take place and will minimize the number of times parties need to travel to different courts.

A second purpose of this order is to improve the efficiency of the handling and processing of these important cases. For example, this improved efficiency will help minimize any potential delay in entering information into the Statewide Registry of Civil Restraining Orders and will enhance the enforcement of these court orders. The transfer of such cases will ultimately result in a more seamless process for modifying existing orders.

Where either party objects to a transfer of the proceedings, the Probate and Family Court judge should consider factors including, but not limited to, the parties' ability to travel to the Probate and Family Court and whether an ongoing criminal proceeding may require the presence of the parties in District Court. The Probate and Family Court Judge may nonetheless transfer the matter if a determination of good cause is shown.

Six month review:

This pilot will commence on December 1, 2010, and will be effective for a period of 12 months. The program will be reviewed after six months by the Chief Justice of the Probate & Family Court and the Chief Justice of the District Court to determine whether any modifications in the procedure are warranted and to determine whether to recommend to the Chief Justice for Administration and Management expansion of the pilot.



Robert A. Mulligan
Chief Justice for
Administration and Management

Date: Nov. 23, 2010