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Chief Justice

## Trial Court of the Commonwealth District Court Department

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Honorable Herbert P. Wilkins  
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Dear Chief Justice Wilkins:

Thank you for your kind invitation to meet with the members of the Massachusetts Access to Justice Commission on February 14, 2008, in Framingham. This letter will serve as an overview of the matters I hope to discuss and will provide important information regarding significant initiatives already underway in the District Court to enhance access to justice in areas of our jurisdiction. As I mentioned when we spoke earlier, I ask that the Commission consider appending this letter and the documents attached to any supplemental report the Commission decides to issue.

As you know, the vast majority of petitions for protection from abuse pursuant to G.L. c. 209A commence in our sixty-two district courts. It is essential that we constantly review and improve our procedures in this sensitive area, and the Report will serve as a reminder of issues about which we must remain vigilant. However, I am concerned that the Commission's Report paints with an over-broad brush the reality of District Court practice in the area of domestic violence. Since 1978, when the Legislature enacted G.L. c. 209A, the District Court has spent countless hours in training, committee work and collaboration with other departments to establish a culture where domestic violence matters are recognized as among the most difficult and sensitive matters coming before the court. They frequently involve issues of personal safety in the context of often intense personally and emotionally charged circumstances.

The efforts and initiatives of the District Court in the area of Domestic Violence can best be addressed by focusing the attention of the Commission on the following topics.

## PROFESSIONAL DEVELOPMENT

Professional Development is the primary tool for creating and maintaining a culture that recognizes the difficult and sensitive nature of domestic violence cases and insures an environment where all parties are treated fairly, impartially and with appropriate sensitivity. Our orientation for new judges – a comprehensive four week training provided to each new district court judge upon appointment to the bench – includes intensive on-the-bench observation and guidance in matters relating to Chapter 209A with a member of the District Court Domestic Abuse Professional Development Group.<sup>1</sup> New judges are encouraged to seek advice from a member of the Committee when faced with a troubling or complicated issue in this area.

Judges and clerks participate in continuing education on issues concerning G.L. c. 209A in the frequent continuing legal education offerings from the District Court Committee on Continuing Education and from the Judicial Institute. In 2002, the Judicial Institute sponsored a four-day training program for all recently appointed trial court judges. One entire day was devoted to issues of domestic violence. Included in this training were presentations from experts who work with both victims of domestic violence as well as batterers. Unfortunately, repetition of the multi-day program has been a casualty of budget constraints in the last 5 fiscal years.

In May, 2006, the District Court Domestic Abuse Professional Development Group developed a major education conference entitled “209A Primer for Judges” sponsored by the Judicial Institute. In March, 2007, this all-day training was repeated for the benefit of the large number of recently appointed District Court judges. While attendance was required for new appointees, many more senior District Court judges, who had not been able to attend the 2006 program, also participated. Its comprehensive manual of program materials was later distributed to all District Court judges. I have attached a copy of the program materials so that the Commission can more fully appreciate the depth and scope of the issues covered by the course. Attachment 1.

Each of these trainings consisted of presentations from experts who work with victims of domestic violence as well as experts who work with batterers. Understanding the victim’s perspective, especially that of the recanting victim and the on-and-off vacating plaintiff to a 209A order, are topics that receive great emphasis in the programs and are always fully explored. Indeed you might find it useful to review the attached suggested form of colloquy, prepared by one of our District Court judges to be used when a plaintiff attempts to vacate an order. This model colloquy is distributed to District Court judges whenever materials on Chapter 209A are provided, as they are each year at our annual education conference. Attachment 2.

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<sup>1</sup> The District Court Domestic Abuse Professional Development Group is one of the District Court’s standing Committees the members of which I appoint. Because the Committee plays an integral role in the District Court’s achievements in the area of Domestic Violence, I have included more information on the Committee and its work at the end of this correspondence.

The efficacy of certified batterers' intervention programs, when the statute requires such a referral, as well as the distinction between these programs and "anger management" programs are consistently covered in great detail. Support orders are frequently an important part of these all-day training programs.

This year members of the District Court Committee are again working with the Judicial Institute on the development of two other programs relating to this topic for the benefit of District Court judges. One program will focus on trial issues in domestic violence cases and the second will deal with issues of elder abuse.

While many judges attending these programs do so voluntarily, under certain circumstances I require that individual judges attend these educational programs. I am not aware of any District Court judge who has refused to participate in any training due to a suggestion that their impartiality would be compromised.

The District Court also recognizes the importance of the professional development of Clerk-Magistrates, assistant clerks and other support staff who have contact with the parties to Chapter 209A proceedings. Training programs for these trial court employees are also conducted on a regular basis. In 2002 the Judicial Institute sponsored two all day programs on domestic violence issues for Clerk-Magistrates and assistant clerks. A program entitled "Managing Domestic Violence Issues in the Workplace" was conducted 4 times in 2004 and twice in 2005. This program was available to all courthouse managers, including Clerks. Also in 2004 the Judicial Institute sponsored 5 morning 209A refresher programs for trial court support staff. The orientation program for newly appointed Clerk-Magistrates and assistant clerks, conducted by the Education Committee of the Association of Clerk-Magistrates and Assistant Clerks, in conjunction with the Administrative Office of the District Court, includes training on 209A procedures. In addition to addressing the procedures involved in processing a 209A matter, each of these trainings includes a component on responding to victims and batterers in the context of the events which precede and follow court proceedings.

Finally, the annual District Court Education Conference also has been a forum for training in this area. In 2006 at Williamstown, two Probate and Family Court judges joined a panel with District Court judges in which the interrelationship between the two courts in the area of 209A orders was robustly discussed. As referenced in my earlier letter to you, this session provided the impetus for the formation of the joint court committee consisting of representatives from each of the Trial Court Departments with jurisdiction over 209A matters. That Working Group's progress is detailed below.

At the 2007 annual District Court Education Conference, Justice Charlotte Perretta of the Appeals Court joined a packed session to review the current state of the case law in this area. The attendees were predominantly veterans of at least ten to twenty years on the bench. Their questions and comments reflected a sincere effort to grapple with the complexities of 209A practice in the District Court.

## **SELF REPRESENTED LITIGANTS IN THE DISTRICT COURT AND IN 209A PROCEEDINGS**

Clearly, as the Commission has suggested in its report, if competent legal assistance were available to all parties in all Chapter 209A proceedings, concern over the ability of persons coming before the court to represent themselves effectively would disappear. The difficult balance that the court and its employees achieve daily when they provide parties with intelligible procedural information, while at the same time acknowledging their ethical obligation to refrain from advocating for either party, could easily and beneficially be supplemented by a system with counsel representing each of the parties. However, the District Court has long recognized that there are currently insufficient funds available for this type of initiative. Further, the Commission should be aware that the availability of counsel at Chapter 209A proceedings is not simply an issue of funding. Importantly, the absence of counsel, at least initially, during the ex parte proceedings, has less to do with whether a party is capable of affording counsel and everything to do with the emergency nature of such proceedings.

Regardless of the reason for the absence of counsel in 209A proceedings, the District Court has made every effort to insure that the process available for parties who are not represented by counsel in 209A proceedings is sensitive to the parties and does not operate as a barrier to justice. The use of trained lay advocates, as described in the section below, is a system that has evolved as a successful resource for unrepresented persons seeking restraining orders.

More generally, as the Commission is aware, the SJC's Committee on Self-Represented Litigants (SRL's) was formed in 2002. Honorable Peter Doyle, First Justice of the Newburyport District Court, has been an active member of the steering committee since its inception and serves as the District Court's representative. Judge Doyle also serves as a member of the Subcommittee on Judicial Guidelines. The Subcommittee drafted Judicial Guidelines for Civil Hearings Involving Self Represented Litigants which were approved by the SJC in April, 2006. Prior to their approval, the SRL Committee conducted an all day seminar and conference for all Massachusetts judges on the subject. Many District Court judges were able to attend that conference. The guidelines serve as an important tool in addressing many of the procedural issues that arise in the District Court with respect to self represented litigants. The Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants are attached. Attachment 3.

Many of the issues raised in the Access to Justice Report are currently being addressed by the SRL Committee. Members of the Committee, including Judge Doyle, recently toured two courts in Connecticut which have Court Service Centers. The Committee continues to work with DCAM to ensure the availability of space in existing, new and renovated courthouses should the availability of resources permit the creation of such Court Service Centers in Massachusetts.

On November 1, 2 and 3, 2007, Judge Doyle attended a conference at Harvard University entitled National Conference on Leadership, Education and Courtroom Best Practices in Self-Represented Litigation. This conference was intended to provide a guide on how best to train other judges in dealing with SRL's. As always, Judge Doyle will be sharing his insights on this important issue with me and with each of our colleagues.

Currently, I am aware that the SJC Committee on SRL's continues its work in this area including an evaluation of the ongoing pilot projects involving limited representation and unbundling, with a view ultimately of making recommendations regarding the appropriateness of such methods in other settings as well as a manual on self-represented litigants for clerks and their employees.

Finally, in 56 of our 62 court divisions free alternative dispute resolution services are available to assist pro se and other litigants in the resolution of their cases. These services are provided mostly in the area of small claims, but are also available in some locations to assist with summary process, regular civil and minor criminal matters.

## **THE ROLE OF ADVOCATES IN 209A PROCEEDINGS**

Fortunately, hearings on Chapter 209A restraining orders rarely require legal expertise by the parties. In fact, a heightened role for legal advocates in a 209A hearing may serve to hinder the court's fact-finding ability. The single most crucial component of any 209A hearing is the judge's determination of the validity of the basis upon which an order is sought. Testimony directly from the plaintiff (absent extraordinary circumstances, such as hospitalization from injuries) is required so that the court can determine the plaintiff's credibility. District Court judges are accustomed to dealing with pro se presentations and are adept at asking appropriate questions to elicit relevant information. No matter how disjointed a party's testimony may be, the hearsay assertions of a lawyer or a trained advocate are never a good substitute. The Court must remain in a position to assess the credibility of the parties and witnesses by viewing their demeanor in the course of their testimony.

This is not to suggest that there is no role for trained advocates in domestic violence matters. Advocates can and do provide valuable assistance to the court when they assist a plaintiff in filling out paperwork, in providing emotional support, in making referrals to appropriate community services, and in advising plaintiffs about safety planning. The Trial Court Guidelines for Judicial Practice: Abuse Prevention Proceedings<sup>2</sup> (Trial Court Guidelines) specifically address the role of advocates, suggesting that the court "support the participation of advocates at each stage of the 209A process". Attached is a copy of the Trial Court Guidelines. Attachment 4. The

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<sup>2</sup> The Trial Court Guidelines on Abuse Prevention Proceedings provide an analysis of the law of 209A proceedings as well as guidance on the "unique practical, procedural and policy issues presented by the Abuse Prevention Act." See Commentary to Trial Court Guidelines at 1:00.

provisions relating to the role of the advocates can be found at §2:08 Role of Advocates in Assisting Parties and §5:02 Role of Advocates at a Hearing After Notice. Consistent with the Trial Court Guidelines most judges permit lay advocates to be present with the plaintiff when he or she addresses the court. Many judges permit the advocate to speak directly to the court under certain circumstances, or in the alternative, to speak quietly to the plaintiff to assist him or her during the course of the hearing. The advocate's valuable role should not be enlarged to include the presentation of evidence on behalf of and in lieu of testimony by either party.

Contrary to the assertions made in testimony to the Commission, domestic violence advocates are available in District Courts throughout the Commonwealth. In at least 30 District Courts, SAFEPLAN, the statewide court-based program of the Massachusetts Office for Victim Assistance, provides specially trained and certified advocates to assist victims of domestic violence in the courts. Other courts rely on volunteers from the community. Some of the advocates available to the courts are law school students or trained paralegals. In courts without these resources, the Victim Witness Advocate in the District Attorney's office is often available to serve as an advocate for a plaintiff in a 209A proceeding, in most cases without regard to whether or not the complainant is involved in a criminal matter.

The Massachusetts Office for Victim Assistance conducts a 4 day training at least three times a year for all of its advocates and volunteers in the District and Probate Courts and makes this same specialized training available to the Victim Witness Advocates from the District Attorney's offices.

A recent survey conducted by my office failed to indicate any District Court that was without some access to an advocate's assistance. It would be optimal for SAFEPLAN to have the resources necessary to provide a trained presence in every District Court in the Commonwealth all day every day. Until that is possible, we are fortunate in being able to provide some support and advocacy for almost every party who comes before the court needing assistance in these matters.

## **HEARINGS ON 209A PROCEEDINGS IN THE DISTRICT COURT**

As a matter of course in virtually all of our local courts a 209A petitioner is given priority and easy access to a judge. The staff in each clerk's office has been educated about the sensitive and at times dangerous nature of these matters, and has put procedures in place consistent with such concerns. Once the initial paperwork is complete, matters proceed to the courtroom where both clerks and judges most often will expedite calling the matter and conducting a full and fair hearing on the facts. In many courts local police prosecutors go far beyond what is normally required to expedite service of restraining orders issued by our courts.

The Commission's specific recommendations on the manner in which a 209A hearing should be conducted, mirror many of the best practices outlined in the Trial Court Guidelines. See §2:01 Assisting the Plaintiff; §2:02 Ensuring Privacy; and §5:01

Conduct of Hearing After Notice. Attachment 4. The District Court practice has long been consistent with the Trial Court Guidelines.

**a. Separation of parties:**

In suggesting that the court be cognizant of the security issues raised when a hearing is conducted in a 209A matter, the Trial Court Guidelines specifically require, at §5:01 Conduct of Hearing After Notice, that the court “address placement of participants in the courtroom with this in mind.” Attachment 4. Consistent with these guidelines, it is common practice in the District Court for a court officer to position himself between the parties in order to minimize any form of intimidation of the plaintiff by the defendant. It is also common practice to keep the defendant inside the courtroom until the plaintiff has safely left the building even in those cases where no order is issued.

**b. Interpreters:**

The Office of Court Interpreters prioritizes requests for interpreters for 209A hearings. In most cases an interpreter is available to respond to requests despite the fact that many of these matters will, by necessity, proceed without advance notice. If no court interpreter is available, the Office of Court Interpreters offers assistance in obtaining interpreters to assist on the telephone. Consistent with the cautionary note set forth in the Trial Court Guidelines, “minor children are never asked to interpret for their parents unless there is absolutely no alternative”. See Trial Court Guidelines §1.07 Non-English Speaking Parties in c. 209A Actions (2000). Attachment 4. In this circumstance, the Court would utilize the family member only to the extent necessary to have a hearing regarding issuing a preliminary order with any further action continued until the next date when an interpreter would be provided.

**c. Children in the courtroom:**

Plaintiffs in 209A hearings frequently arrive at the courthouse with children. Judges must deal with the circumstances of children in the courtroom on a case-by-case basis. Under some circumstances, the separation of a child from his mother immediately following an incident of domestic abuse may be more traumatic to the child than it would be to permit the child to be present during a calmly conducted hearing. When older children are present, judges can appropriately request that the children wait in another area until the plaintiff has completed the hearing. Judges and court personnel are generally creative in fashioning appropriate solutions to these issues; some children must be permitted to keep the plaintiff in sight; others are easily directed to a location outside the courtroom. While the creation of child care facilities in the court would help to alleviate some of the difficulties presented when a parent appears for a hearing with his or her child, it would not completely eliminate the need for our judges to acknowledge and provide an appropriate solution for those circumstances where a child-care drop-off would not be appropriate.

#### **d. Judicial Response:**

In fiscal year 2007 over seven thousand emergency matters were heard by judges serving on judicial response. Over 6,500 of these emergency matters were 209A petitions. These numbers stand in stark contrast to the anecdotal information received by the Commission charging that police were either unaware of the availability of court orders or failed to inform potential victims. Judges from every trial court department, including each of the 155 District Court judges, hear emergency matters while serving on judicial response. Local and state police contacting the judicial response system on behalf of individuals who are concerned about their own safety are immediately able to speak to a judge who can issue an emergency court order any time court is not in session.

#### **INTERDEPARTMENTAL RELATIONSHIP AMONG THE DISTRICT, SUPERIOR, PROBATE & FAMILY AND BOSTON MUNICIPAL COURTS**

The Commission refers to the need for coordination among each of the Trial Court Departments with jurisdiction of 209A matters. Approximately two years ago an interdepartmental working group was formed to consider issues of common concern regarding procedures under 209A and to further the cooperation among the departments in implementing their joint jurisdiction. The working group includes representatives of the District, Probate & Family, Superior and Boston Municipal Court Departments. I am pleased to report that the group has made significant headway in reviewing, revising and in some cases preparing several policy and procedural recommendations. Among these are the following:

- The development of draft legislation to eliminate the current interdepartmental complexity when an order of one court is amended by another court;
- A policy for the decision by Emergency Response System (ERS) judges on whether to make an order “returnable” to the Probate & Family Court, District or Boston Municipal Court;
- A process and form to document action by Probate & Family Court judges when modifying District and Boston Municipal Court orders and returning them to the issuing court; and
- Revisions to the 209A forms.

This interdepartmental working group has proved to be a valuable forum for addressing many of these difficult issues. All of the departmental Chief Justices have recently renewed their interest in continuing participation on this Committee, with each formally designating one of their respective judges to join the staff from each department as an official designee.

## **CHILD SUPPORT**

Training on fashioning child support orders as part of 209A orders has long been a part of District Court education, both for new and experienced judges. Child support orders occupied a major place in the 2006 program on Chapter 209A discussed above.

One topic of discussion in the Interdepartmental Working Group is the situation presented to a District Court judge hearing a 209A petition when parties are already before the Probate & Family Court. While common sense would suggest it is more appropriate that support orders be issued in conjunction with custody and visitation orders in the Probate & Family Court, District Court judges can order child support. Plaintiffs who choose to come to the District Court for restraining orders often do not request child support in their complaints, although the form includes support as a possible issue.

If indeed there is reluctance by many District Court judges to raise the issue sua sponte, it may result from the limited administrative resources available to the District Court to both determine appropriate orders and to implement them effectively. The child support determination requires calculations based on the financial data of both parents. In the Probate & Family Court, for example, family service officers are trained and available to assist the parties and the court in evaluating the financial data and drawing conclusions to assist the court. District Court probation officers, who are hired and assigned to supervise criminal defendants, cannot assume this role. While the family service officers in the Probate & Family Court assume this role, District Court Probation cannot appropriately serve as a collection agency in civil cases.

## **DISTRICT COURT DOMESTIC ABUSE PROFESSIONAL DEVELOPMENT GROUP**

The success of the District Court in handling issues arising in domestic violence matters, and in anticipating future controversies in this area, is due in large part to the hard work of the District Court Domestic Abuse Professional Development Group. As discussed above, this Group is one of the District Court's standing committees, the members of which I appoint primarily from the cadre of District Court judges. Additionally, one member is an attorney from the Child Support Enforcement Division of the Department of Revenue. The Group meets approximately once every six weeks and tackles a broad spectrum of policy and procedural issues identifying educational goals for the District Court in this area. The group works with the Judicial Institute to plan and develop educational initiatives in the area of domestic violence and abuse; it identifies and resolves issues that arise in the District Court practice of 209A; advises colleagues of new developments in the law and educates them as to best practices; and it advises me of any potential areas of concern in this important area of the District Court's jurisdiction.

Most recently the Committee provided invaluable assistance to the Trial Court to insure that 209A orders that implicate the Brady gun bill are clearly identified and that such orders are making their way to the Federal Registry in a useful and complete format.

Further, the group assisted in revising 209A forms and orders to ensure that Massachusetts continues to receive the funding it deserves and relies upon from the Violence Against Women Act. The Committee also is working on revising the Trial Court Guidelines, now more than 6 years old, in an effort to ensure that these guidelines continue to inform judges and court personnel of the very best practices available for processing 209A petitions.

## **OTHER MATTERS**

In my last correspondence to you, I included the Report of the Small Claims Working Group, which in many respects addresses the concerns of the Commission in the area of small claims. The Chief Justice for Administration and Management has solicited and received comments on the report from members of the bar and the public. Those comments are under review. I am confident that the Trial Court will be moving in the near future to put in place many of the well-considered proposals found in both the report and the comments. The stated goals of the Working Group on Small Claims are consistent with the goals of the District Court: "to clarify and improve a process by which a vast number of disputes have been resolved in a just, expeditious and inexpensive manner and without the necessity of hiring counsel to do so."

Finally, I think it is worthy of note that the District Court recently adopted a Mission Statement to inform and guide our efforts in every area of our jurisdiction. We are committed to providing a forum for the resolution of disputes in a fair, impartial and timely manner and in an environment that is safe, accessible and respectful to every person who comes before the court. A copy of our Mission Statement is attached. Attachment 5.

I hope you will consider appending the Report of the Working Group on Small Claims, attached again to this letter for your convenience, (Attachment 6), as well as the information provided in this correspondence regarding 209A proceedings in the District Court to your Commission's report. Again thank you for the invitation to meet with the Access to Justice Commission. I look forward to working with you to enhance and improve the access of all to justice in our Commonwealth, especially in the District Court, the true Gateway to Justice.

Sincerely,



Lynda M. Connolly  
Chief Justice of the District Court

**Appendices to January 17., 2008 Letter from Chief Justice Lynda M. Connolly**

1. 209A Primer for Judges, Program Materials, March, 2007
2. Model Colloquy for Petitioner Seeking to Vacate 209A Order
3. Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants, April 28, 2007  
(Omitted here; provided to Commission by Associate Justice Cynthia Cohen in January)
4. Guidelines for Judicial Practice: Abuse Prevention Proceedings (Rev. December 2000)
5. Mission Statement
6. Report of the Small Claims Working Group, August 1, 2007  
(Omitted here; provided to Commission by Chief Justice Connolly September 2007)