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Abuse Protection Orders and Domestic Relations Matter

A Domestic Violence Abuse Prevention Order, pursuant to Massachusetts General Laws Section 209A, is a Court Order that protects you from being abused by another member of your family or household. Additionally, an Abuse Prevention Order may also be obtained so as to protect you from someone you are currently dating, or were dating.

Section 1, of Chapter 209A, defines “Abuse” as:

The occurrence of one or more of the following acts between family or household members:

- (a) Attempting to cause or causing physical harm;
- (b) Placing another in fear of imminent serious physical harm;
- (c) Causing another to engage involuntarily in sexual relations by force, threat or duress.

Section 1, of Chapter 209A, defines “Family or Household Members” as persons who:

- (a) are or were married to one another;
- (b) are or were residing together in the same household;
- (c) are or were related by blood or marriage;
- (d) having a child in common regardless of whether they have ever married or lived together; or
- (e) are or have been in a substantive dating or engagement relationship.

Abuse Protective Orders may also be referred to as, "Restraining Orders," or "209A's." If you are a party in a divorce, paternity, or support action within the Probate and Family Court, you may be able to seek a Domestic Relations Protective Order. These Orders can be obtained through the Probate and Family Court, and give the same protections as a 209A.

A 209A or a Domestic Relations Protective Order is a civil matter. This means that it is filed by one person against another person. The District Attorney does not get involved in civil cases. Furthermore, the person who abused you will not necessarily be arrested or fined simply because you obtain a Restraining Order. Rather, the court orders the Defendant to comply with the terms of the order itself. However, if the court grants you 209A and the Defendant violates the terms of that Order, their violation is a criminal offense. In fact, the Abuse Prevention Order states at the top that “VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE punishable by imprisonment or fine or both.”

But how do I know if the Defendant has violated the order?

In order to know whether there has been a violation, the Plaintiff must refer to the specific order itself. If for example the order states that the Defendant is not to contact the Plaintiff, then the Defendant is not to contact the Plaintiff in any manner, either directly or indirectly. This means that, (except as specifically noted in the order) that the Defendant shall not call you; leave messages on your voicemail; text you; write to you; speak to you; or attempt to make contact in any way. Furthermore, the Defendant may not utilize third persons as a means of contact. For instance, the Defendant may not have friends or family contact you in order to transmit a message. No contact means NO contact!

What do I do if I believe there has been a violation of the order?

If the Defendant violates the order, report it to the police. The police may arrest them.

Should I obtain a 209A or a Domestic Relations Protection Order?

Protection Orders are designed to protect individuals and children. While a Protection Order should never be sought so as to simply gain leverage in a Domestic Relations case, if there is abuse, or threat of abuse, the victim should act to protect themselves. In cases where an individual has been a victim of abuse for a long period of time, seeking help can be difficult. Furthermore, may abusers intentionally isolate and humiliate their victims simply for the purpose of limiting that persons access to assistance. Additionally, abusers may use threats of retaliation, further physical harm, and, or may threaten to take away the victims children. Seeking an abuse protection order is undeniably scary; however, a Restraining Order may end up saving your life, or the lives of your children.

What if someone has obtained a 209A against me simply to gain leverage in a Domestic Relations matter?

While Abuse Prevention Orders are intended to protect victims of domestic violence, a party engaged in a divorce, paternity, or support action may dishonestly obtain a protection order simply as an attempt to gain leverage. If you feel that a Restraining Order has been obtained through an abuse of process, you should speak with an attorney so as to protect your rights and interests.

What impact could a 209A have on a Divorce, Paternity, Custody, or Support action?

A 209A can have serious consequences on a Domestic Relations matter, particularly cases involving children. For instance, the Court may need to assign a parenting coordinator simply so as communicate between the parties in arranging parenting time. Further, the Court may levy the cost of the parenting coordinator against the party whom the 209A seeks to protect against. A 209A may limit a party's parenting time with their children, even if the children are not included in the protective order. For example, a party claiming abuse may argue that the other party is not safe to be around minor children, and therefore request that the Court terminate their parenting rights, or that the Court order all visitation with the children to be supervised. Furthermore, the Court may determine that an individual, such as a Guardian Ad Litem, (GAL), must be assigned to the case in order to investigate and issue recommendations as to custody and parenting time. Again, the Court may order that the party against whom the protection order has been obtained shall be solely responsible for all costs and expenses related to the GAL.

Abuse Protection Orders can have serious and lasting impacts on a domestic relations matter. A temporary lack of contact or involvement in a child's life, can turn into a more permanent one. For example, a Judge may determine that it is in the best interest of the child to continue a custody and parenting arrangement so as to provide the child continuity, (even if that arrangement was only put into place on a temporary basis, while allegations of abuse were being investigated). The Judge may also consider evidence of past domestic violence, including Abuse Prevention Orders, when making decisions regarding child custody and visitation. For these reasons, it is critical to take restraining orders seriously and to obtain legal counsel as soon as possible to discuss your options completely. Parties often do not realize the serious impact a 209A, or Domestic Relations Protection Order, can have on their case, and may not initially recognize the complexity of the situation.

If someone is harming you or you are worried someone may harm you, whether in a Family Court proceeding or not, contact the police immediately. Furthermore, if you are engaged in an action within the Probate and Family Court, where allegations of abuse are a contested matter, you should obtain an attorney with experience in such matters. The Denby Law Office, P.C. has experience in complex cases involving domestic violence, and approaches all cases with sensitivity, compassion, and zealous advocating.

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