

New harassment orders abused, clerks complain

Some 'inundated' courts seeing frivolous requests

By Phillip Bantz

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When legislation creating harassment protection orders was signed earlier this year, the law was widely lauded for extending the rights of victims disqualified from seeking 209A restraining orders under the state's domestic abuse prevention statute.

But there have been grumblings at some courts, where staffers say the new law frequently is misused, creating piles of paperwork and draining already-strained resources.

"I can honestly say that we are getting inundated with requests," said Bruce Glazer, an assistant clerk at Chelsea District Court. He estimated that 250 harassment orders have been filed at the court since the law took effect in May.

"I'd say that about a third of all our restraining orders are now harassment orders," Glazer added, "and not a lot of the harassment orders are being issued after a hearing. ... We're seeing a lot of frivolous complaints."

Dorchester District Court has handled 175 harassment orders since the law was enacted, along with another 725 domestic abuse protection, or 209A, orders filed during the same six-month span.

"It's contributed a lot more work for all of us, and I'd say about a third are denied just because they don't meet the requirements, especially having the three instances" of harassment or abuse that is required under the law, said a court employee who was not authorized to speak publicly.

"I've seen cases of harassment and sexual assault, but the majority of people that come in are doing it because they just have a simple problem with the other party," the court employee said. "We see a lot of the baby mama versus baby mama sort of thing. A lot of landlord-tenant kind of things that could be going on at the Housing Court instead of here."

Extending protections

Before harassment orders existed in the com-

monwealth, victims seeking protection under the domestic abuse prevention statute had to meet narrow eligibility requirements: The abuser had to be a family member, roommate, current or former spouse, or be involved in a significant romantic relationship with the victim.

Otherwise, the victim would be ineligible for protection under Chapter 209A.

Harassment orders, established with the passage of G.L.c. 258E, opened the doors for a large population of victims in need of court-ordered protection.

Victims qualify under the harassment order statute if they have suffered three or more acts of "willful and malicious conduct ... with the intent to cause fear, intimidation, abuse or damage to property," or if they have been forcibly sexually assaulted.

Elissa Flynn-Poppey, a lawyer at Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, led a team of attorneys at her Boston firm in writing the legislation, which passed in a bipartisan effort with support from defense attor-

neys and prosecutors. Rep. Eugene O'Flaherty, D-Chelsea, pushed for the bill's passage.

Shortly after Gov. Deval L. Patrick signed the harassment protection order law, Martin W. Healy, chief legal counsel for the Massachusetts Bar Association, called the legislation "a tough measure designed to extend protections to victims of harassment" and said it had been tailored to prevent "constitutional infirmities."

Lawyers Weekly also published an editorial praising harassment orders as filling a critical gap in the commonwealth's statutory law.

Sword or shield

Flynn-Poppey said she has received positive feedback on the legislation "from both sides of the aisle," but that with all new laws "there's an educational component for the public at-large."

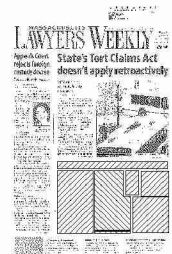
"When we drafted this we made sure frivolous orders would not be granted," she said. The fact that judges have been denying some of the requests shows the law, as written, is working as intended, she said.

"My understanding is that the victims who do need it are getting the protection," Flynn-



FLYNN-POPPEY
Believes law
is working

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Poppey added.

But an opponent of the law, Chelsea defense lawyer Randy S. Chapman fears that people are misusing harassment orders to, ironically, harass neighbors, ex-lovers, landlords and other targets of petty feuds.

"By just filing it you're making someone take a day off from work, and then the complainant doesn't even show up to court," he said. "You've already wasted court resources and inconvenienced the defendant in the case."

Chapman wants the court to impose filing fees on harassment orders and court costs on plaintiffs who fail to attend hearings.

Glazer, the assistant clerk in Chelsea, likes the idea of filing fees.

"I'm not saying they should punish these people for looking for protection, but I think it would reduce the number of frivolous filings," he said. "And it would be a great source of revenue at a time when the courts are struggling."

Lynn District Court Judge Michael C. Lauranzano disagrees.

"I don't think filing fees for these kinds of petitions are appropriate," he said. "It's really up to us to determine whether someone qualifies, and I don't think we want to deter people who need protection."

While Lauranzano's court has already recorded 265 harassment orders, including complaints related to threats and insults made on the social networking website Facebook, he does not believe the law is burdensome or ram-

pantly misused.

"There have been times that people look to the courts to solve common-sense issues, but it's not unusual for us to deny those," Lauranzano said. "I believe these orders are useful. I certainly have granted them in situations where a person was being harassed and did not qualify under 209A."

Lauranzano said he usually requests a hearing with both parties before issuing a harassment order, while he is more inclined to issue ex-parte orders in 209A cases because those victims are more often in immediate danger.

Most judges appear to be holding harassment order hearings with both parties rather than issuing ex-parte orders, Glazer said. And though the hearings may weed out frivolous complaints, it is happening too late in the process, he said.

"Nevertheless, even if the order is not issued or extended, the defendant was still required to appear with witnesses and defend against the allegations," he said. "Many times, the plaintiff does not even bother to appear at the hearing."

In Peabody District Court, Clerk Kevin Finnegan has counted about 75 harassment orders so far this year. The new law may have created some extra work, he said, but he does not see what all the fuss is about.

"It's really just something else we do," he said. "And as far as misuse goes, it's just like anything else. The restraining order system can be used as a shield or a sword. It all depends on the person using it." **MLW**

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