

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 19-cv-00901-NRN

MICHAELLA LYNN SURAT,

Plaintiff,

v.

RANDALL KLAMSER, in his individual capacity, and
CITY OF FORT COLLINS, a municipality,

Defendants.

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER
REGARDING DEPOSITION OF DEFENDANT KLAMSER**

Plaintiffs, through counsel Helen Oh, David Lane, and Andrew McNulty, hereby submit the following Response to Defendant Klamser's Motion for Protective Order Regarding Deposition of Defendant Klamser [Doc. 77], and state as follows:

CERTIFICATE OF CONFERRAL UNDER D.C.COLO.LCivR 7.1

Counsel for Defendants, Mark Ratner, conferred by email¹ with Plaintiff's counsel on February 5, 2020. Plaintiff opposes Defendants' requested relief.

I. FED. R. CIV. P. 26(C)(1)(E) REQUIRES DEFENDANT TO SHOW GOOD CAUSE FOR THE PROTECTIVE ORDER.

Federal Rules of Civil Procedure 26(c)(1)(E) governs protective orders and the designation of persons who may be present while a deposition is being conducted. Relevant portions of the rule provide:

¹ Judge Neuriter's practice standards require the parties to confer by telephone or face-to-face. Defense Counsel did not do so here.

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition. . . . The court may, **for good cause**, issue an order to **protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.**

Fed. R. Civ. P. 26(c)(1).

Under Rule 26(c), the “good cause” standard is “highly flexible, having been designed to accommodate all relevant interests as they arise.” *Rohrbough v. Harris*, 549 F.3d 1313, 1321 (10th Cir. 2008). This is the same “good cause” standard as stated in the parties’ Protective Order [Doc. 75 ¶ 11]. Importantly, the “good cause” standard is “not met by conclusory statements.” *Henderlong v. Allstate Ins. Co.*, Civ. Action No. 08-cv-01377-CMA-MEH, 2009 U.S. Dist. LEXIS 3450 at *3 (D. Colo. Jan. 13, 2009). Rather, “the party seeking a protective order must show that disclosure will result in a clearly defined and serious injury to that moving party.” *Id.* Courts will balance “the moving party’s need for information against the injury which might result from unrestricted disclosure.” *Id.* at 4.

II. DEFENDANTS HAVE NOT SHOWN GOOD CAUSE FOR THE PROTECTIVE ORDER.

Defendants Klamser and City of Fort Collins have not shown good cause – through Defendants’ annoyance, embarrassment, undue burden, or serious harm to Defendants – for this protective order. Plaintiff’s counsel represented that Ms. Surat would like her parents with her at Defendant Klamser’s deposition for emotional support. As Ms. Surat’s Fourth Amendment claim centers around Defendant Klamser’s use of force in slamming Ms. Surat to the ground, causing her physical injuries and lasting trauma, Ms. Surat has an interest in attending Defendant Klamser’s deposition. As such, she seeks the support of her parents, simply through their quiet presence.

Defendants' assertion that "Plaintiff has presented no legitimate basis for allowing an adult-Plaintiff's parents to attend the deposition" is conclusory and without support. [Doc. 77]. To analogize the importance of having emotional support for someone who has been subjected to violence, victim advocates are routinely present in the courtroom on behalf of victims of crime in criminal proceedings. Simply through their presence in the courtroom, advocates provide emotional support and comfort to victims of crime, as seeing or hearing their assailant can reopen wounds and cause emotional distress. *See Commonwealth v. Harris*, 409 Mass. 461, 470, 567 N.E.2d 899 (1991) (Discussing the important role of victim advocates and explaining that they "generally help [victims] to cope with the realities of the criminal justice system and the disruption of personal affairs . . . during a time of personal trauma."). Ms. Surat need not be in the midst of a criminal trial to experience the same type of emotional distress as victims of crime as defined by statute. Ms. Surat suffered serious physical and emotional injuries at the hands of Officer Klamser. [Doc. 1 ¶¶ 38-45]. Similar to the support victim advocates provide, Ms. Surat's parents wish to provide emotional support for their daughter who will be in the presence of the officer who used force against her and caused her injuries and trauma.

Moreover, Defendants have not demonstrated how Plaintiff's request would bring serious injury to Defendants. Aside from the conclusory statement that the attendance of Ms. Surat's parents would "implicitly" be a means to "harass Officer Klamser," *id.*, this statement without any factual support fails to meet the good cause standard under Rule 26(c) and as stated in the parties' Protective Order.

CONCLUSION

For the reasons above, Defendants' Motion For Protective Order Regarding Deposition of Officer Randall Klamser should be denied.

DATED this 19th day of February 2020.

KILLMER, LANE & NEWMAN, LLP

s/ Helen Oh

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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2020, I filed the foregoing via the CM/ECF system, which will send notice to the following:

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