

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT DEPARTMENT
CIVIL DOCKET NO.: 2483CV00692

PAUL O'KEEFE, Individually and as Personal)
Representative of the Estate of John Joseph)
O'Keefe, III; MARGARET O'KEEFE, Individually)
and Grandparent/Guardian of KAYLEY FURBUSH,))
and JOHN O'KEEFE, II,)
Plaintiffs)
))
v.)
))
C&C HOSPITALITY, LLC d/b/a C.F. McCarthy's;)
G&S HOSPITALITY, LLC d/b/a C.F. McCarthy's;)
WATERFALL BAR & GRILL, LTD d/b/a)
WATERFALL BAR & GRILL, and KAREN READ)
Defendants.)
_____)

EMERGENCY MOTION FOR A PROTECTIVE ORDER

I. Introduction

Non-Party Michael Proctor ("Mr. Proctor") hereby moves this Honorable Court, pursuant to Mass. R. Civ. P. 26(c), for a protective order as to his deposition, presently scheduled for June 8, 2026. This Motion is supported by ample good cause, as set forth below.

Mr. Proctor is not a party to this matter. He is—at best—a mere fact witness. Although Ms. Read has litigated this case extensively in the media, to the best of the undersigned's knowledge, only three depositions have been taken in this case. Ms. Read's desired litigation strategy aside, Mr. Proctor will be produced for his deposition, but the previously agreed upon date of June 8, 2026, is no longer workable due to a variety of circumstances as described further herein. Given Ms. Read's unwillingness to accommodate a requested scheduling change and

representations that she intends to go forward with the deposition, Mr. Proctor hereby moves for a protective order on an emergency basis.¹ See Superior Court Rule 9A(d)(1).

II. Background

The Court is no doubt familiar with this matter, so Mr. Proctor will be brief. On or about January 23, 2026, counsel for Mr. Proctor accepted service of a deposition subpoena scheduling Mr. Proctor's deposition for April 21, 2026 at 10:00 a.m. On March 25, 2026, counsel for Ms. Read indicated the need to reschedule Mr. Proctor's deposition due to a scheduling conflict and a judge refusing to accommodate the date. Thereafter, counsel for Ms. Read and Mr. Proctor worked to reschedule Mr. Proctor's deposition. On April 3, 2026, counsel for Mr. Proctor accepted service of a deposition subpoena scheduling Mr. Proctor's deposition for June 8, 2026. The undersigned advised counsel for Ms. Read of the scheduling conflict on June 5, 2026. Counsel for Ms. Read indicated that Ms. Read would not agree to reschedule Mr. Proctor's deposition.

III. Argument

"The scheduling of trial and the conduct and scope of discovery and protective orders are issues within the sound discretion of the motion or trial judge." Hanover Ins. Co. v. Sutton, 46 Mass. App. Ct. 153, 159 (1999). See Cronin v. Strayer, 392 Mass. 525, 533–34 (1984). Pursuant to Mass. R. Civ. P. 26(c):

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county or judicial district, as the case may be, where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense

¹ Pursuant to Superior Court Rule 9A(d)(1), the provisions of Superior Court Rule 9A do not apply to emergency motions. As noted further below, and as it pertains to Mr. Proctor's personal circumstances, the undersigned was only recently made aware of the circumstances necessitating a continuance of the deposition.

Id. See Henry v. Bozzuto Mgmt. Co., 98 Mass. App. Ct. 690, 704 (2020). Good cause exists for allowing the instant motion due to (1) existing practice and trial obligations of Mr. Proctor's counsel; (2) Mr. Proctor's personal circumstances; and (3) the lack of any cognizable prejudice to Ms. Read in rescheduling this deposition.

First, counsel for Mr. Proctor were each scheduled to try three separate cases during the month of June; two of which did not ultimately go forward, one of which did go forward, and all of which required extensive trial preparations. The undersigned was scheduled to begin a three-week jury trial in the United States District Court on May 18, 2026. See Fusion Learning, Inc. v. Andover School Committee, et al., USDC, C.A. No. 1:21-cv-11059-MJJ. That case settled on the eve of trial. Attorney Crotty was scheduled to begin a multi-week jury trial in Superior Court in the matter of Louise Barron, et al. vs. Town of Southborough, et al., Worcester Superior Court, C.A. No. 2085CV00382, which was continued at the final trial conference. Lastly, Attorney DiGangi was engaged on trial in Superior Court in the matter of Thompson v. Town of Sherborn, et al. Middlesex Superior Court C.A. No. 2181CV01004. The jury returned its verdict yesterday, June 4, 2026. These existing practice and trial obligations hampered counsel's ability to confer with and prepare Mr. Proctor in advance of his June 8, 2026 deposition and renders the June 8, 2026 date an undue burden. See Mass. R. Civ. P. 26(c).

Second, due to personal circumstances, Mr. Proctor has also been unavailable for deposition preparation. The undersigned only became aware of these circumstances recently. Counsel for Mr. Proctor will, if the Court so desires, provide additional information to the Court regarding Mr. Proctor's personal circumstances and need to reschedule.²

² As noted above, Ms. Read has litigated this matter extensively in the press. See Town of Canton's Opposition to the Defendant's Motion to Compel, Paper No. 96.2 at 2 (noting that "[i]mmediately

Third, this Motion should be allowed because Ms. Read cannot demonstrate any prejudice resulting from the requested relief. See Hanover, 46 Mass. App. Ct. at 163 (finding no error or abuse of discretion in issuance of protective order based on delay in expert viewing confidential information). To be abundantly clear, Mr. Proctor is not seeking relief under Mass. R. Civ. P. 26(c)(1) “that the discovery not be had[.]” The relief sought here lies under Mass. R. Civ. P. 26(c)(2), namely that the discovery “may be had only on specified terms and conditions, including a designation of the time, place or manner.” Id. In other words, this is a scheduling dispute—not an outright refusal to produce the discovery sought by Ms. Read. Ms. Read can show no prejudice based on a short delay in completing one of the twenty depositions Ms. Read has indicated she intends to take. Moreover, per the Superior Court docket, the fact discovery deadline in this matter is currently August 17, 2026. With over two months left to complete discovery, the Parties should be readily able to identify an agreeable date for this non-party deposition.

III. Conclusion

For the aforementioned reasons, good cause exists for allowing this Motion for a Protective Order under Mass. R. Civ. P. 26(c). This disagreement arises from nothing more than a scheduling dispute which the undersigned bring to this Honorable Court only out of necessity and due to Ms. Read refusing to accommodate a schedule change. Mr. Proctor respectfully requests that this Honorable Court allow Mr. Proctor’s Motion for a Protective Order.

after the [administrative leave letter for a Canton Police Officer] was produced to the Defendant, however, copies of the letter were posted online”).

Respectfully submitted,

INTERESTED PARTY,

MICHAEL PROCTOR

By his Attorneys,

PIERCE DAVIS & PERRITANO LLP

/s/ Matthew J. Hamel

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Dated: June 5, 2026

CERTIFICATION PURSUANT TO SUPERIOR COURT RULE 9A(d)(1)

I, Matthew J. Hamel, certify that on June 5, 2026, I conferred with counsel for the Defendant in an effort to narrow the areas of dispute relative to this emergency motion. My understanding is that the Defendant intends to oppose this Motion. I also conferred with counsel for the Plaintiffs, who indicated that while Plaintiffs do seek Mr. Proctor's deposition and intend to inquire at same, Plaintiffs are not opposed to rescheduling the deposition presently scheduled for June 8, 2026.

CERTIFICATE OF SERVICE

I, Matthew J. Hamel, certify that on June 5, 2026, a true copy of the aforementioned document was served via electronic mail upon counsel listed below.

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/s/ Matthew J. Hamel

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