

IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY,  
FLORIDA

ANDREW POLLACK and SHARA  
KAPLAN, as Co-Personal Representatives  
of the ESTATE OF MEADOW  
POLLACK, Decedent,  
Plaintiffs,  
v.

Case No. CACE-18-009607-(26)

NIKOLAS CRUZ, SCOT PETERSON,  
ANDREW MEDINA, The ESTATE OF  
LYNDA CRUZ, JAMES SNEAD, et al.,  
Defendants.

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**DEFENDANT ANDREW MEDINA'S AMENDED EMERGENCY  
MOTION FOR PROTECTIVE ORDER**

Defendant, ANDREW MEDINA, by and through undersigned counsel, moves the Court pursuant to Rule 1.280 (c) of Florida Rules of Civil Procedure for an Order of protection and as grounds states:

1. I am counsel for Andrew Medina in the above-referenced matter. Yesterday, at approximately 9:00PM, I received an emergency call from my client. Plaintiff, Andrew Pollack, showed up at Mr. Medina's place of work and threatened him.

2. Mr. Medina has been, and continues to be, a baseball coach in Parkland, Florida. Mr. Pollack showed up yesterday evening at Pine Trails Park in Parkland, Florida and harassed and threatened my client. As I live in Parkland, I was quickly able to get to the scene of the incident. The Broward County Sheriff's Office reported to the scene and Deputy Machado took a report, which, to the best of my knowledge is not currently available. Same will be filed in support of this motion if it is prepared before the hearing.

3. Due to the nature of this incident, the fact that it has happened before, and the

currently noticed deposition of Mr. Medina, I felt it prudent to immediately file a motion for protective order.

4. While the police report is not yet ready, there were several eye witnesses to the harassment. The eye witnesses include three adults who overheard the comments. The eyewitnesses are Mike High of Coral Springs, Florida, Larry Lazar of Coral Springs, Florida, and Stacey Freels of Coral Springs, Florida. I spoke to each of them.

5. The witnesses each reported that Mr. Pollack screamed to Mr. Medina, “Do you know who I am? Do you know who I am? **I’m not through with you yet.**” One of the witnesses, **Mr. High, without prompting, indicated that the “I’m not through with you yet” comment was made in a “very threatening tone.”** The other witnesses agreed. I did not solicit their comments regarding the tone of the statement. In addition to the three adult unbiased witnesses, the incident was also witnessed by Mr. Medina’s assistant coach, Michael Lazar.

6. Prior to the above-mentioned threatening comment, Mr. Pollack also screamed out “how can you have this piece of shit out here.” This comment was made to the general public and was clearly intended to be menacing.

7. This is not the first instance of threats or menacing behavior by Mr. Pollack towards Mr. Medina. There have been numerous threatening and menacing statements made on twitter and in the media. Further, Mr. Pollack, in what can solely be an effort to harass Mr. Medina, has been seen walking his dog around Mr. Medina’s house. Mr. Pollack has no reason to be there other than to harass and scare Mr. Medina.

8. Mr. Medina is fearful of Mr. Pollack, and Mr. Pollack has been unable to control himself when it comes to Mr. Medina. Mr. Medina is so fearful of Mr. Pollack that after last

night's incident, he refused to sleep at his own home out of concerns for his safety. Mr. Medina's personal counsel will be filing an injunction. It is our expectation that the injunction will be filed by the end of the week.

9. Rule 1.280(c) of the Florida Rules of Civil Procedure reads:

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 may make any order to protect a party or person from *annoyance, embarrassment, oppression*, or undue burden or expense that justice requires, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court ....

Emphasis added.

10. As it pertains to this case, Mr. Pollack's threat against Mr. Medina, his menacing behavior, and history of threatening comments regarding the litigants, forfeits any right he has to be present during the deposition of Mr. Medina. Mr. Medina seeks an Order of Protection to that affect. If the Court is unwilling to issue such an Order at this time, Mr. Medina requests that his deposition be abated/stayed so that there can be an adjudication of the forthcoming injunction. There is no rush to proceed with the deposition of Mr. Medina that would jeopardize his safety or make him feel unsafe during the process. Again, the pleadings in this matter are not even closed. Further, as an attorney in this case, I request that all depositions be ordered to proceed at the courthouse. Given Mr. Pollack's animus and his inability to control himself, I believe conducting all depositions in this case in the safety of the courthouse is in the best interest of all participants. We request an Order accordingly.

11. As the Court is aware, this is not the first allegation of Mr. Pollack making threats. Mr. Peterson also filed a Motion for Protective Order to address, in part, threats by Mr. Pollack.

Mr. Pollack threatened Mr. Peterson, writing “[t]he only thing we should help him [Peterson] with is which solid tree to hang a noose from.” See Peterson Motion for Protective Order filed on November 29, 2018. Mr. Peterson’s threatening and harassing actions should not be tolerated by a Court of law. Mr. Peterson’s loss does not mean he can threaten people with impunity.

12. The intent of rule 1.280(c) is to protect people where possible so that the discovery process is not threatening or menacing. If fact, the standard is even lower than threatening or menacing; the standard is annoying, embarrassing, and unduly burdensome. Therefore, the Court has to weigh the equities. Mr. Pollack is entitled to have his attorney zealously represent him and question Mr. Medina about relevant issues related to this case. However, by his threatening and intimidating actions, he has waived his right to be present at the deposition.

13. Currently, Mr. Medina is a witness in the criminal matter, State of Florida v. Nikolas Cruz. Mr. Cruz is charged with a capital felony. F.S. § 914.22 (4) specifically addresses harassing a witness, victim or informant. Subsection (4)(e) of this statute provides the penalty for harassing a witness. This section states:

Felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a felony of the first degree punishable by a term of years not exceeding life or a prosecution of a life or capital felony.

Therefore, Mr. Pollack has arguably committed a life felony by virtue of his conduct on the evening of February 6, 2019.

14. Assuming this court does not agree that Mr. Pollack committed a First degree felony then, undoubtedly, he committed a felony of the third degree. Subsection 4(f): specifically, states:

Felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the offense level of the affected official investigation or official proceeding is

indeterminable or where the affected official investigation or official proceeding involves a noncriminal investigation or proceeding. (emphasis added)

15. F.S. § 914.24 provides remedies the Broward County State Attorney's office can undertake in an effort to protect Mr. Medina. At the time of this writing, the Broward County State Attorney's Office has been notified regarding Mr. Pollack's conduct. Although this statute addresses the jurisdiction of harassment within the context of a criminal matter, it fails to address the same issue as it relates to a noncriminal proceeding. However, the Court should note that Subsection (3)(a) defines Harassment as:

- (a) "Harassment" means a course of conduct directed at a specific person that:
  - 1. Causes substantial emotional distress in such person; and
  - 2. Serves no legitimate purpose.
- (b) "Course of conduct" means a series of acts over a period of time, however short, indicating a continuity of purpose.

16. As such, at minimum, Mr. Pollack's conduct has been harassment of Mr. Medina within the meaning of Florida law.

17. Lastly, this court should not be concerned with the content of Mr. Pollack's statements. "Whether a statement or other communication constitutes a true threat that has the probable consequence of causing reasonable apprehension in the hearer is a question of fact for the jury." *Pickett v. State*, 254 So. 3d 1162 (Fla. 3rd DCA 2018).

18. Lastly, it bears comment that in my efforts to reasonably resolve our dispute regarding the scheduling of depositions, I have conferred with the parties. Yesterday, I learned that the hold-up in rescheduling the deposition of Mr. Peterson is not related to the schedule of the attorneys but rather on the fact that Mr. Pollack, who wants to be present, is allegedly typically out of town. Plaintiff's counsel made a point of telling me how infrequently Mr. Pollack is in South Florida. In fact, I was told he does not live here and that he was currently in Washington D.C. He was in Washington D.C. Last night, he was back in Parkland, Florida.

**WHEREFORE**, Defendant Medina requests that the Court issue an Order protecting Mr. Medina from the threats of plaintiff, precluding plaintiff from sitting in on Mr. Medina's deposition or abating the deposition until there an adjudication of the forthcoming injunction, and establishing protocols such that all depositions in this case be held in the courthouse.

Dated: February 7, 2019

Respectfully submitted,

*/s/ David S. Henry*

David S. Henry

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 7, 2019, I electronically filed the foregoing with the Florida Courts E-Filing Portal, which will serve it via electronic email to counsel of record on the Service List below.

*/s/ David S. Henry*

DAVID S. HENRY

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