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| DISTRICT COURT, DENVER COUNTY, COLORADO |  |  |
| Court Address: |  |  |
| Denver District Court |  |  |
| 1437 Bannock St., Room 256 |  |  |
| Denver, CO 80202 | DATE FI | ED: February 8, 2016 4:08 PM |
|  | FILING I | : 51F78F906CED9 |
| **In The Matter of:** | CASE NU | MBER: 2015CV31709**COURT USE ONLY** |
| **ROBERT ABRAMS,** |  |  |
| **Plaintiff** |  |  |
| **Vs.** |  |  |
| **SHAWN BEESON,** |  |  |
| **Defendant** |  |  |
| Law Office of Michael P. Boyce, PC Michael Boyce3773 Cherry Creek Drive North, Suite 575 Denver, CO 80209Phone Number: 303.565.0360 E-mail: mike@boycelawoffice.com FAX Number: 303.648.4849 Atty. Reg. #: 35729 | Case Number: 15CV31709Division 409 |
| **DEFENDANT BEESON’S MOTION TO DISMISS PLAINTIFF’S BREACH OF CONTRACT CLAIM** |

SHAWN BEESON, through his attorney, Michael Boyce, of the Law Office of Michael Boyce, P.C., hereby submits his Motion to Dismiss Plaintiff’s Breach of Contract Claim and states as follows:

CERTIFICATION: C.R.C.P 121 **§** 1-15(8): The undersigned states he has conferred with counsel for Plaintiff who objects to the relief requested herein.

**RELEVANT FACTS**

1. On or about May 27, 2011, Shawn Beeson entered into a contract for legal services on a contingency fee basis with Plaintiff Robert Abrams. This agreement constituted an attorney- client relationship.
2. Plaintiff Abrams claims that at some point during the course of his representation of Mr. Beeson, Mr. Beeson terminated Plaintiff Abrams’s representation of Mr. Beeson.
3. In Plaintiff’s Third Amended Complaint, Abrams seeks to recover alleged damages from Mr. Beeson for Breach of Contract.

**LAW**

**Motion to Dismiss Plaintiff’s Claim for Breach of Contract Should Be Granted Because Breach of Contract is Not An Available Cause of Action Where A Client Terminates An Attorney-Client Relationship**

1. A contingent fee agreement does not create an “ordinary” contract. See Olsen and Brown v. City of Englewood, 889 P2d 673 (1995) at 676. Because of the special fiduciary nature of the

attorney-client relationship, *a client’s discharge of an attorney does not constitute a breach of contract*, but is, instead, the client’s exercise of a right inherent in the relationship. (emphasis added). Rather than being able to sue for breach of contract, an attorney’s remedy is limited to “recovery of the reasonable value of services rendered before discharge on the basis of quantum meruit” when the attorney is discharged without cause under a noncontingecy contract for services, id at 677; when the attorney withdraws from representation before successful completion of a contingency fee case and such quantum meruit recovery is expressly described in the fee agreement Elliot v. Joyce 889 p2d 43; or when the attorney’s services are “successfully completed” but the contingent fee agreement was unenforceable because it was not in writing. Lafond v. Sweeney, 345 P.3d 932, 937 (Colo. App. 2012).

1. Colorado Rules of Professional Conduct Rule 1.16 requires an attorney's withdrawal from representation upon discharge by the client. The Comment to this rule states, in pertinent part: “[a] client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services.” Olsen & Brown v. City of Englewood, 889 P.2d 673, 676 (Colo. 1995).

**Argument**

1. Here, there was a contract for legal services between an attorney (Abrams) and Mr. Beeson. Assuming arguendo, that everything the Plaintiff has alleged in his complaint is true, (and Mr. Beeson makes no statement as to whether the allegations are true or not), Plaintiff’s breach of contract claim fails because it is not a cause of action available to the Plaintiff against his former client.
2. Lafond v. Sweeney, *supra*, is directly on point. The case, and the cases it cites, states in no uncertain terms that, while there are remedies available for recovery of disputed fees, breach of contract is not one of the available causes of action where a client terminates the services of an attorney.

**CONCLUSION**

1. Plaintiff cannot recover on his claim for breach of contract because it is not a cause of action available when an attorney is fired by his client.
2. Plaintiff’s claim for breach of contract against Mr. Beeson must be dismissed.
3. Plaintiff has not properly stated any cause of action entitling him to recover the reasonable value of services rendered before his alleged discharge ( a claim Defendant asserts never occurred in fact and has no bearing on whether the parties performed under the terms and conditions of the contract) on the basis of quantum meruit.
4. Furthermore, Plaintiff’s Partial Motion for Summary Judgment as to the breach of contract claim must be denied.

WHEREFORE, Shawn Beeson, through counsel, respectfully requests this Honorable Court grant the relief requested in this Motion to Dismiss Plaintiff’s Breach of Contract Claim.

Respectfully submitted this 8th day of February, 2016.

THE LAW OFFICE OF MICHAEL P. BOYCE, PC.

/s/ Michael Boyce #35729

Attorney for Defendant

*(Original signature on file at The Law Office of Michael*

*P. Boyce, P.C.)*

# CERTIFICATE OF SERVICE

I hereby certify that I have delivered a true and correct copy of Defendant Beeson’s Motion to Dismiss Plaintiff’s Breach of Contract Claim.

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 /s/ Michael Boyce #35729

*(Original signature on file at The Law Office of Michael P. Boyce, P.C.)*