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| DISTRICT COURT, DENVER COUNTY, COLORADO |  |  |
| Court Address: |  |  |
| Denver District Court |  |  |
| 1437 Bannock St., Room 256 |  |  |
| Denver, CO 80202 | DATE | FILED: May 19, 2016 8:55 AM |
|  | FILIN | G ID: 254716D7DC5B0 |
| **In The Matter of:** | CASE | NUMBER: 2015CV31709**COURT USE ONLY** |
| **ROBERT ABRAMS AND ABRAMS AND ASSOCIATES, LLC, A** |  |  |
| **COLORADO LIMITED LIABILITY COMPANY.** |  |  |
| **Plaintiffs** |  |  |
| **Vs.** |  |  |
| **SHAWN BEESON,** |  |  |
| **Respondent** |  |  |
| 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’S RESPONSE TO PLAINTIFF’S MOTION FOR ATTORNEY’S FEES, COSTS AND SANCTIONS AGAINST DEFENDANT SHAWN BEESON AND DEFENDANT’S COUNSEL MICHAEL BOYCE** |

SHAWN BEESON, through his attorney, Michael Boyce, of the Law Office of Michael P. Boyce, P.C., hereby submits Defendant’s Response to Plaintiff’s Motion for Attorney’s Fees, Costs, and Sanctions against Defendant Shawn Beeson and Defendant’s Counsel Michael Boyce and states the following:

# INTRODUCTION

1. On April 29, 2016, the parties held a pre-trial phone conference scheduled to discuss matters pertaining to Defendant’s Motion *in Limine* to Exclude Plaintiff’s Proposed Trial Exhibits and Plaintiff’s Motion to Enforce Settlement.
2. Prior to beginning the pre-trial conference, defense counsel informed the Court that Mr. Beeson wanted to pursue claims not previously raised and seek new counsel. The Court granted a continuance of the trial and set a status conference with Mr. Beeson.
3. After the Court granted defense counsel’s motion, Plaintiff advised the Court he would be seeking costs and attorney’s fees based on the Court’s determination a continuance of the trial was warranted. The Court advised the Plaintiff that the Court would consider costs associated with the continuance of the jury trial regarding costs such as issuing subpoenas as potential costs that would be assessed against the Defendant.
4. On May 5, 2016, Plaintiff filed a Motion for Attorney’s Fees, Costs, and Sanctions Against Defendant Shawn Beeson and Defendant’s Counsel Michael Boyce seeking to hold both the defendant and defense counsel jointly and severally liable for attorney’s fees, costs, and

sanctions. In addition to unsubstantiated costs for subpoenas, Plaintiff included the preparation time in preparing for the pre-trial conference, along with costs for preparing their request for attorney’s fees.

1. It is worth noting that Plaintiff fraudulently certified that counsel conferred pursuant to C.R.C.P. 121 section 1-15 and C.R.C.P. 37(a) (which is inapplicable to the motion) prior to Plaintiff’s filing of his motion. First, while a telephone conversation was had between counsel after the pre-trial conference, Plaintiff called counsel in an attempt to conduct plea negotiations. There was no discussion of defense counsel’s position on Plaintiff’s motion.
2. Plaintiff then fraudulently asserts that, after a discussion that never happened, Defendant’s counsel takes no position. It is absurd that defense counsel would not oppose the sanctions against defense counsel requested by Plaintiff or that defense counsel would not object to attorney’s fees and costs Plaintiff is not entitled to. No good faith conference ever occurred between the parties and defense counsel objects to all of the relief requested by the Plaintiff.
3. Defense counsel further requests this Court summarily deny the relief requested in Plaintiff’s motion as a sanction against Plaintiff for blatantly misrepresenting the contents of the phone discussion between the parties after the pretrial conference and fraudulently asserting defense counsel’s position to the Court.
4. Defendant and counsel for defendant object to the Plaintiff’s motion and request the relief sought by Plaintiff be denied.
5. On May 18, 2016, a substitution of counsel was filed by Wadi Muhaisen entering as counsel for Defendant. Defense counsel Michael Boyce remains on the case for the limited purpose of litigating Plaintiff’s Motion for Attorney’s Fees, Costs, and Sanctions against Defendant Shawn Beeson and Defendant’s Counsel Michael Boyce.

# THE LEGAL AUTHORITY CITED BY PLAINTIFF IS COMPLETELY INAPPLICABLE TO TO THE RELIEF REQUESTED

1. The Plaintiff erroneously claims that they are entitled to relief pursuant to C.R.C.P. 37. Rule 37 affords the Court the ability to impose sanctions against a party for failing to make disclosure or cooperate in discovery.
2. The Plaintiff does not allege any failure to disclose pursuant to Rule 37 that constitutes a basis for sanctions. Plaintiff does not assert the defense failed to make any discovery disclosures pursuant to C.R.C.P. 26, 30, 31, 33, 34, 35 or 36. Therefore, Plaintiff cannot rely on Rule 37 as a basis for his claim for attorney’s fees and sanctions.
3. In fact, Plaintiff conducted no discovery whatsoever in the litigation of this case. He made no requests for production of documents, did not conduct depositions, made no requests for admissions, and filed no interrogatories.
4. Even if Rule 37 was applicable, the Rule requires notice to all other parties that they will be applying for an order compelling disclosure or discovery and imposing sanctions. C.R.C.P. Rule 37(a). Plaintiff failed to comply with the notice provision of the rule as defense counsel was unaware Plaintiff’s motion would be filed under Rule 37. More importantly, Plaintiff fails to

request an order compelling disclosure or discovery in addition to imposing sanctions as required by Rule 37.

1. Plaintiff then states that *Eichhorn v. Kelley*, 111 P.3d 544 (Colo. App. Div. II 2004) allows the Court to impose sanctions against defense counsel. In *Eichhorn*, a landowner repeatedly violated court orders mandating that the landowner not interfere with hunters’ use of the same land. “The trial court found that landowner's logging operations were conducted with the ‘purpose or effect’ of frustrating hunters' hunt and that, given the number of hearings and orders that were drafted to avoid such a conflict, landowner acted willfully and his conduct was offensive to the dignity of the court.” *Eichhorn v. Kelley,* 111 P.3d 544 (Colo. App. Div. II 2004). The landowner was fined $1000 and placed in the county jail for two days. The attorney for the landowner was not held in contempt, fined, or jailed.
2. Neither C.R.C.P. Rule 37 nor Eichhorn v. Kelly, *supra*, establish a basis upon which attorney’s fees, costs, and/or sanctions can be imposed.
3. Due to Plaintiff’s failure to cite any law that supports his position for attorney’s fees, costs, or sanctions, Plaintiff’s motion should be denied.

# PLAINTIFF’S REQUEST FOR ATTORNEY’S FEES, COSTS, AND SANCTIONS ARE UNREASONABLE

**PLAINTIFF’S PREPARATION FOR THE PRETRIAL CONFERENCE IS UNAFFECTED BY THE COURT’S GRANTING OF THE CONTINUANCE**

1. Plaintiff contends the Defendant should be responsible for Plaintiff’s preparation for the pretrial conference because the pretrial conference was not held. Plaintiff seeks $1427.25 for the pretrial preparation. The Court clearly stated that costs associated with the continuance would be considered against the Defendant. However, the Plaintiff seeks to be reimbursed for preparation that will have to be litigated anyway. Plaintiff does not allege any costs that are associated with the inconvenience of the continuance of the trial.
2. Plaintiff seeks to recover costs pertaining to Plaintiff and his law clerk’s preparation for the pretrial conference scheduled for April 29, 2016. The Plaintiff seeks attorney’s fees for conferences regarding evidentiary issues, professional conduct rules pertaining to confidentiality, and defense witness testimony issues. The Plaintiff also reviewed Defendant’s motions in limine, the case management order, trial management order, and the law pertaining to evidentiary issues.
3. The preparation and research conducted by the Plaintiff is highly likely to be relevant and useful in future proceedings. The time spent on those issues was not wasted or frustrated by the continuance of the jury trial. The exact same issues presented to the Court in Defendant’s Motions *in Limine* will be issues before the Court at a later proceeding. It is unreasonable to hold Defendant and/or defense counsel liable for preparation for issues unaffected by the trial continuance. The Plaintiff will continue to seek to admit inadmissible evidence as repeatedly demonstrated by his lack of understanding of the Colorado Rules of Evidence, and defense counsel for Mr. Beeson will certainly object.

# DEFENDANT IS NOT RESPONSIBLE FOR PLAINTIFF’S COSTS OF PREPARING A MOTION FOR ATTORNEY’S FEES, COSTS, AND SANCTIONS TO WHICH PLAINTIFF IS NOT ENTITLED

1. Plaintiff seeks to have the Defendant pay for the time it took Plaintiff to draft and file his Motion for Attorney’s Fees, Costs, and Sanctions Against Defendant Beeson and Attorney Michael Boyce. Plaintiff alleges his attorney’s fees for drafting the motion are $1098.75.
2. The motion filed by Plaintiff includes no legal basis for the requested relief. The Plaintiff’s time was spent drafting a motion for attorney’s fees for preparing for a pre-trial hearing to which Plaintiff is not entitled. It is unreasonable for Defendant and/or defense counsel to bear the cost of drafting a Motion where the Plaintiff isn’t entitled to relief.

# PLAINTIFF FAILS TO PROVIDE PROOF OF COSTS

1. Plaintiff seeks $345 for costs associated with witness subpoenas and hearing transcript costs. Plaintiff provides a cost estimate for the transcript request in the amount of $105.00 yet does not provide any proof that he paid the amount for the deposit. The $105.00 is not an actual cost but an estimate from the transcriber as to how much the transcript will cost. The transcript may cost less than the estimate and is therefore not an actual cost. If the transcript cost is less than the estimate, Plaintiff will receive a refund. Plaintiff should not receive a discount on the cost of the transcript in the event the Court agrees that the cost of the transcript should be paid by Defendant and/or defense counsel. However, Plaintiff has failed to demonstrate what he needs from the transcript from the pre-trial conference that Defendant and/or defense counsel should be responsible for. There is nothing in the transcript that is at all relevant to costs associated with the continuance of the jury trial and Plaintiff has not demonstrated otherwise.
2. Plaintiff claims the cost associated with subpoenas is $240.00. Defense counsel finds this shocking. Most of Plaintiff’s witnesses are in or associated with his law firm. Plaintiff provides no documentation to support the costs he claims are associated with their subpoenas. Furthermore, if the costs are for witnesses outside of his law firm, those witnesses were clearly irrelevant and the Court already excluded them from the jury trial. The Defendant and defense counsel respectfully request this Court order the Plaintiff to demonstrate the actual cost of subpoenaing his witnesses, which subpoenaed witnesses he is claiming are a cost associated with continuing the jury trial, and provide an accounting of the $240.00 in costs allegedly incurred.

# PLAINTIFF’S REQUEST FOR ATTORNEY’S FEES FOR THE MAY 10, 2016 STATUS CONFERENCE IS UNREASONABLE

1. Plaintiff seeks $765.00 in attorney’s fees for attending the status conference on May 10, 2016. Defense counsel was not present at the hearing, does not know what issues were addressed, nor how long the status conference lasted. However, it was defense counsel’s understanding that the reason for the hearing was to determine Mr. Beeson’s progress in obtaining new counsel.
2. Plaintiff claims that he is entitled to exactly three hours worth of attorney’s fees at the rate of

$255/hr. He is claiming he prepared for the hearing for one hour and that the hearing lasted two hours. If defense counsel had to guess, Plaintiff likely addressed issues which had already been

ruled on (such as the granting of the continuance of the jury trial and the reasons therefore) and issues that are not ripe until Mr. Beeson obtains new counsel.

1. While the setting of the status conference was due to the continuance, the majority of what was addressed at the status conference was not due to Mr. Beeson’s request to obtain new counsel or the Court’s determination a continuance was necessary. Therefore, Defendant and/or defense counsel should not be assessed the attorney’s fees resulting from the hearing.

# PLAINTIFF’S REQUEST FOR SANCTIONS OF $1200.00 AGAINST DEFENSE COUNSEL IS GROUNDLESS

1. On April 29, 2016, defense made a record as to the reasons defendant was requesting new counsel and a continuance of the jury trial. The Court granted the motion.
2. Contrary to Plaintiff’s assertions, defense counsel never stated he did not follow the Rules of Civil Procedure, ineffectively represented the Defendant, was negligent or incompetent in this matter.
3. Plaintiff further states that defense counsel has yet to file a motion to withdraw with the Court in support of his motion for sanctions. Defense counsel was aware Plaintiff would be filing a motion for attorney’s fees. Defense counsel believes that if defense counsel had filed a motion to withdraw, Plaintiff would not have served him with a copy of the motion and claimed that defense counsel was no longer part of the case as evidence by Plaintiff’s misrepresentations to Court. Plaintiff fraudulently represents to the Court that Plaintiff conferred with defense counsel and that defense counsel takes no position on the motion.
4. Plaintiff’s request for sanctions against defense counsel is groundless and defense counsel rests on the record made on April 29, 2016 requesting a continuance of the trial.
5. Counsel for Mr. Beeson requests a hearing on this motion.

WHEREFORE, Shawn Beeson, through counsel, respectfully requests this Honorable Court grant the relief requested in Defendant’s Response to Plaintiff’s Motion for Attorney’s Fees, Costs, and Sanctions against Defendant Shawn Beeson and Defendant’s Counsel Michael Boyce

Respectfully submitted this 19th day of May, 2016.

THE LAW OFFICE OF MICHAEL P. BOYCE, PC.

Date: 5/19/2016

/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 the Defendant’s Amended Motion In Limine to Exclude Certain Trial Exhibits Proposed by Plaintiff to the following on April 28, 2016:

*Email/Electronic Filing* Abrams & Associates, LLC Robert Abrams

700 17th Street, Suite 650

Denver, CO 80202 Robert@AbramsLaw.net

 /s/ Michael Boyce #35729

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