|  |  |  |
| --- | --- | --- |
| DISTRICT COURT, DENVER COUNTY, COLORADO |  |  |
| Court Address: |  |  |
| Denver District Court |  |  |
| 1437 Bannock St., Room 256 |  |  |
| Denver, CO 80202 | DAT | E FILED: July 14, 2015 6:19 PM |
|  | FILIN | G ID: 3D4835E5F3904 |
| **In The Matter of:** | CASE | NUMBER: 2015CV31709  **COURT USE ONLY** |
| **ROBERT ABRAMS,** |  |  |
| **Plaintiff** |  |  |
| **Vs.** |  |  |
| **SHAWN BEESON,** |  |  |
| **Respondent** |  |  |
| Law Office of Michael P. Boyce, PC Michael Boyce  3773 Cherry Creek Drive North, Suite 575 Denver, CO 80209  Phone Number: 303.565.0360 E-mail: [mike@boycelawoffice.com](mailto:mike@boycelawoffice.com) FAX Number: 303.648.4849 Atty. Reg. #: 35729 | | Case Number: 15CV31709  Division 409 |
| **RESPONDENT’S MOTION *IN LIMINE* TO EXCLUDE PLAINTIFF’S PROPOSED EXHIBITS 1, 2, 4, 5, AND 11** | | |

SHAWN BEESON, through his attorney, Michael Boyce, of the Law Office of Michael Boyce, P.C., hereby requests Plaintiff’s proposed exhibits 1, 2, 4, 5, and 11 be excluded for the hearing regarding the Plaintiff’s complaint and request for a permanent protection order and states the following:

# iNTRODUCTION

1. On May 13, 2015, Respondent Shawn Beeson was assaulted by Plaintiff Robert Abrams. Mr. Beeson called the police on May 13, 2015 after Mr. Abrams fled the scene of the assault. Mr. Abrams was charged with assault in Denver Municipal Court.
2. In response to the charge of assault against Mr. Beeson, Mr. Abrams filed a Verified Complaint and Motion for Civil Protection Order. The Court issued a Temporary Protection Order and set the matter for a Permanent Protection Order hearing on June 1, 2015. The matter was reset for a Permanent Protection Order hearing on July 16, 2015.
3. In the Verified Complaint and Motion for Civil Protection Order, the Plaintiff alleges instances on two specific dates resulting in his request for a Permanent Protection Order. The first instance alleges that between approximately April 1 and April 15, 2015, the Respondent called him a “piece of shit.” The second instance is from May 13, 2015, when the Plaintiff was charged with assaulting the Respondent.
4. Mr. Beeson’s relationship with the Plaintiff began in 2012 when Mr. Beeson hired the Plaintiff to represent him in a lawsuit alleging mistreatment and injuries Mr. Beeson received while in the custody of the Denver Police Department and Denver CARES facility. Denver CARES was represented by an attorney name Paul Faraci.
5. In support of his Verified Complaint and Motion for Civil Protection Order, the Plaintiff has provided counsel for Mr. Beeson exhibits he intends to submit in support of his request for a Permanent Protection Order. The exhibits include Mr. Beeson’s medical records from 2009 (Exhibit 4) and 2011 (Exhibit 1), one page of a deposition transcript of a witness named Paul Rose being questioned by Denver CARES attorney Paul Faraci (Exhibit 2), attorney Paul Faraci’s Motion to Dismiss as a Sanction for Willful Misconduct on behalf of Denver CARES (Exhibit 5), and Mr. Beeson’s prior criminal history (Exhibit 11).

# STANDARD FOR MAKING TEMPORARY PROTECTION ORDER PERMANENT

1. In order to grant the Plaintiff’s request to make the temporary protection order permanent,

The judge or magistrate shall examine the record and the evidence. If upon such examination the judge or magistrate finds by a preponderance of the evidence that the respondent has committed the acts constituting the grounds for issuance of a civil protection order and that unless restrained will continue to commit such act or acts designated to intimidate or retaliate against the protected person, the judge or magistrate shall order the temporary civil protection order be made permanent or enter a permanent civil protection order with provisions different from the temporary civil protection order. (CRS Section 13-14-106(1)(a).

1. The Plaintiff’s proposed exhibits are not relevant to the Court’s determination as to whether Mr. Beeson committed the acts constituting the grounds for the issuance of the civil protection order nor are they relevant to the Court’s determination as to whether Mr. Beeson will continue to commit the acts alleged unless restrained if the Court does find that the acts were committed by a preponderance of the evidence. The proposed exhibits are inadmissible pursuant to the Colorado Rules of Evidence (CRE) and the Colorado Rules of Professional Conduct (CRPC).

# ARGUMENT

**THE PROPOSED EXHIBITS ARE INADMISSABLE PURSUANT TO THE COLORADO RULES OF EVIDENCE AS IRRELEVANT AND/OR IMPERMISSIBLE CHARACTER EVIDENCE**

1. “‘Relevant evidence”’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” CRE 401. “Evidence which is not relevant is not admissible.” CRE 402. “Although relevant, evidence may be excluded if its probative value is substantially ourweighed by the danger of unfair predjudice…or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” CRE 403. “Evidence of a person’s character or a trait of his charcter is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion.” CRE 404(a).
2. The Plaintiff seeks to introduce medical records dated 5/21/2011 (Exh. 1) and 3/6/2009 (Exh. 4). The medical records detail observations by medical staff from four years and six years ago, respectively, which have no bearing whatsoever on whether Mr. Beeson committed the acts asserted by the Plaintiff or for determining whether a permanent protection order is necessary. The only purpose for introducing the medical records is to admit statements Mr. Beeson allegedly made to the medical staff that are precluded by CRE 404(a).
3. The Plaintiff seeks to introduce one deposition page of a witness, Paul Rose, deposed on August 27, 2012, when Mr. Abrams was counsel for Mr. Beeson. (Exh. 2) The deposition involves statements Mr. Beeson allegedly made to the deponent while Mr. Beeson was in the hospital. The deponent, Paul Rose, was not a witness to the allegations contained in the Plaintiff’s Verified Complaint and Motion for Civil Protection Order. The statements Mr. Beeson allegedly made to Mr. Rose are not relevant to this proceeding and are precluded by CRE 404(a).
4. Exhibit 5 is the Motion to Dismiss as a Sanction for Willful Misconduct filed by Paul Faraci, opposing counsel to the Plaintiff while he was representing Mr. Abrams. The allegations contained in the pleading are not relevant to the allegations contained in the Plaintiff’s Verified Complaint and Motion for Civil Protection Order. The Motion to Dismiss was ultimately denied by the Court in case 12CV79.
5. Exhibit 11 is Mr. Beeson’s criminal history. This evidence is inadmissible pursuant section 13-90-101 of the Colorado Rules.

# APPLICABLE RULE OF COLORADO RULES OF PROFESSIONAL CONDUCT

1. CRCP Rule 1.9(c) states:

“A lawyer who has formerly represented a client in a matter…shall not thereafter:

* 1. use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or,
  2. reveal information relating to the representation except as these Rules would permit or require with respect to a client.

1. Comment 8 to CRCP Rule 1.9(c) states:

“Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently by used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.”

1. Plaintiff is attempting to use the information he gained during his representation of Mr. Beeson in violation of CRCP Rule 1.9(c). Mr. Beeson’s medical record (Exhibits 1 and

4) is not “generally known” information and does not fall into any exception allowing its admissibility.

1. The one page snippet of the deposition of Paul Rose, dated August 27, 2012 is inadmissible as well since it was learned during the course of Plaintiff’s representation of Mr. Beeson (Exhibit 2). Mr. Rose was not a witness to the allegations contained in Plaintiff’s request for a Permanent Protection Order.
2. The Motion to Dismiss as a Sanction for Willful Misconduct (Exhibit 5) is a pleading filed by the Plaintiff’s opposing counsel and is not evidence. Furthermore, the District Court in 12CV79 ordered the Motion to Dismiss as a Sanction for Willful Misconduct sealed, along with the Response and Reply to the same, and that “[o]nly the parties and the Court may access the document without further Order of the Court.
3. Counsel for Mr. Beeson requests a hearing on this motion.

WHEREFORE, Shawn Beeson, through counsel, respectfully requests this Honorable Court grant the relief requested Respondent’s Motion In Limine to Exclude Plaintiff’s Proposed Exhibits 1, 2, 4, 5, and 11.

Respectfully submitted this 14th day of July, 2015.

THE LAW OFFICE OF MICHAEL P. BOYCE, PC.

Date: 7/14/2015

/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 Respondent’s Motion In Limine to Exclude Plaintiff’s Proposed Exhibits 1, 2, 4, 5, and 11 to the following on July 14,

2015:

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

700 17th Street, Suite 650

Denver, CO 80202 [Robert@AbramsLaw.net](mailto:Robert@AbramsLaw.net)

/s/ Michael Boyce #35729

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