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| DISTRICT COURT, DENVER COUNTY, COLORADO |  |  |
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| Denver District Court |  |  |
| 1437 Bannock St., Room 256 |  |  |
| Denver, CO 80202 | DATE FI | LED: August 10, 2015 9:54 PM |
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| **In The Matter of:** | CASE N | MBER: 2015CV31709**COURT USE ONLY** |
| **ROBERT ABRAMS,** |  |  |
| **Plaintiff** |  |  |
| **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 |
| **RESPONDENT’S REPLY TO PLAINTIFF’S RESPONSE TO RESPONDENT’S MOTION *IN LIMINE* TO EXCLUDE PLAINTIFF’S PROPOSED EXHIBITS 1, 2, 4, 5, 11 and 14** |

SHAWN BEESON, through his attorney, Michael Boyce, of the Law Office of Michael Boyce, P.C., hereby submits his reply to Plaintiff’s response to the amended motion to excluded Plaintiff’s proposed exhibits 1, 2, 4, 5, 11 and 14 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).
6. Respondent hereby incorporates Respondent’s Amended Motion In Limine to Exclude Plaintiff’s Proposed Exhibits 1, 2, 3, 4, 5, and 11, filed on July 26, 2015. In his response, Plaintiff noted the withdrawal of proposed exhibit 5.

# PLAINTIFF’S RESPONSE MISTAKENLY RELIES UPON COLORADO RULES OF PROFESSIONAL CONDUCT 1.6

1. In his response, Plaintiff cites C.R.P.C. Rule 1.6 in his assertion he is able to disclose Respondent’s confidential information.
2. First, Rule 1.6 applies to an attorney’s ethical obligation to *current* clients. Mr. Beeson is not a current client of Plaintiff’s.
3. Furthermore, Rule 1.6(b)(1) authorizes disclosure of confidential information “to prevent reasonably certain death or substantial bodily injury.” Comment 6 to Rule 1.6(b)(1) states “[s]uch harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat.” The information must be learned while in the course of representation, the attorney must currently be representing the client, and the harm must be reasonably certain to occur.
4. Plaintiff’s reliance on Rule 1.6(b)(6) is also misplaced. This Rule for disclosure of otherwise confidential information when the lawyer is the subject of a claim initiated against the lawyer and the lawyer has the right to defend against the claim. Comment 10 to Rule 1.6(b)(6) is instructive:

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and *can be based on a wrong allegedly committed by the lawyer against the client* or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(6) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may

be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced. (Emphasis added).

1. Rule 1.6(b)(6) does not authorize the Plaintiff to disclose Mr. Beeson’s confidential information because the Plaintiff is the one who initiated the proceedings.
2. Therefore, in light of Rule 1.9(c), Plaintiff is barred from introducing confidential and privileged information learned in the course of representing Mr. Beeson in the Permanent Protection Order Hearing currently before the Court.

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

1. The Plaintiff states in his Response that the proposed exhibits he seeks to introduce are for the motive, intent, preparation, and planning of what the Plaintiff describes as the assault against him.
2. The proposed evidence is still does not satisfy CRE 401 or CRE 403. All of the evidence Plaintiff seeks to introduce is conduct Plaintiff repeatedly describes as evidence of Respondent’s “violence” during other instances.
3. The Oxford English Dictionary defines “Violence” as: “[t]he deliberate exercise of physical force against a person, property, etc.; physically violent behaviour or treatment; the unlawful exercise of physical force, intimidation by the exhibition of such force.” None of the medical records the Plaintiff seeks to introduce, nor the testimony he seeks to elicit, deal with acts of violence. Plaintiff continues to throw the word “violence” around when it is inapplicable to the testimony he seeks to introduce.
4. By his own admission, Plaintiff is seeking to introduce exhibits 1 and 4 for impermissible evidentiary purposes. In paragraph 17 of Plaintiff’s Response, he states “These records are relevant because they show defendant’s harassing and violent nature, which in turn, supports the violence of his motive to plan and assault plaintiff.” In paragraph 19, the Plaintiff states “Defendant is a violent and abusive man with motive and intent to retaliate against Plaintiff” by introducing an exhibit of a conversation Mr. Beeson allegedly had with an employee after he was released from Denver CARES with a severe back injury. This is by definition the exact type of evidence the rules are designed to exclude.
5. The Plaintiff then proceeds to allege that the allegations Plaintiff is making were planned by the Respondent. This is unfounded and unsupported by any of the assertions in the complaint and is not supported by any of the proposed exhibits.

# PLAINTIFF’S ARGUMENT THAT HE WAIVED HIS RIGHT TO DENVER CARES MEDICAL RECORDS IS FALSE

1. When an individual waives their right to confidentiality in medical records for the purpose of litigation, to their attorney, they are still entitled to confidentiality of the medical records. C.R.P.C. 1.6 and 1.9 preserve the confidentiality learned by an attorney during and after the course of their representation.
2. The language in the releases cited by the Plaintiff in paragraph 40 of his Response (“that redisclosure may occur and protection under HIPAA no longer applies”) does not operate as a permissive clause for the recipient of the records to redisclose the information however they choose. Rather, this clause is clearly an attempt to inform the privilege holder that the released information could potentially be disclosed again and that the HIPAA bound agency is not liable for any redisclosure. However, in the instant case, the C.R.P.C. still apply and prevent the unauthorized redisclosure by the Plaintiff.
3. The Plaintiff goes on to misquote, misconstrue, and cite cases that are completely inapplicable in an attempt to further his argument for the admissibility of the proposed exhibits.
4. Plaintiff begins by citing *Conyers v. Massa*, 512 Pd. 283 (Colo. App. 1973) for the proposition that “A person waives the privilege when the person entitled to the protection of the statute voluntarily makes public matters of which a disclosure is required without his consent is prohibited.” Conyers is a case where a plaintiff was in a car accident and sought treatment for a foot injury which she intended to be disclosed to an insurance company, not her attorney. There the Court found the privilege waived because it was intended to be disclosed to a third party, an insurance company, when she sought the medical attention. Mr. Beeson never made his medical records public.
5. Plaintiff next proceeds to cite cases from 1912 to 1941. He states the cases in paragraph 41 of his Response stand for the proposition that “When a patient authorizes that the confidential information become public, e.g. at a public trial, the reason for the privilege ceases to exist.”
6. In the contracts and wills case of *Fearnley v. Fearnley*, cited by the plaintiff, the defendant in the matter had charged her attorney with fraud. The defendant took the stand and testified as to conversations she and her husband had with their attorney when he was assisting in various legal matters. The attorney was then permitted to testify about his conversations with his former clients.

This, it is claimed, was error, because of the provisions of section 4824, Mills' Ann. St., which inhibits an attorney, without the consent of his client, from disclosing any communication made by the client to him in the course of professional employment. The ***\*430*** law as thus declared should be rigidly enforced, but there are instances when the statute does not apply, of which the case at bar is an example. The object of the statute is to extend to the client the privilege that his communication shall not be disclosed without his consent. It is a personal privilege, and if he makes the disclosure himself it ceases to be a secret. The defendant testified to what

transpired between her husband, Mr. Dunklee, and herself. By so doing she made it public, and thereby waived her right to object to Mr. Dunklee giving his own account of the matter.

1. *Sholine v. Harris*, 123 P 330 (Colo. App. 1911) states:

“An attorney shall not, without the consent of his client, be examined as to any communication made by the client to him or his advice given thereon in the course of professional employment.” The purpose of this statute is to protect the client against publicity as to admissions or statements made by him to his attorney while the relation of client and attorney exists between them, and is undoubtedly for the benefit of the client. However, when the client sees fit to voluntarily appear in a court of justice and testify under oath as to such statements or admissions, there is no longer any reason for the application of the rule, and we believe it is the universal practice, when such a situation exists, to permit the attorney to be examined fully in relation thereto.

1. In *Met Life Ins. Co. v. Kaufman*, 87 P2d. 758 (1939), the Court found that where a doctor had already testified in one trial matter, the privilege could not then be rescinded in another similar matter.
2. The cases cited by Plaintiff to “support” his argument are not relevant, are misquoted, or completely irrelevant. Mr. Beeson has not authorized the disclosure of his medical records or any other information the Plaintiff learned during the course of Plaintiff’s representation of Respondent.

# CONCLUSION

1. Plaintiff has failed to show that he is able to circumvent the Colorado Rules of Professional Conduct in order to introduce exhibits that are based on his prior representation of Mr. Beeson.
2. Plaintiff has failed to show how any of the material he seeks to admit constitutes anything more than inadmissible character evidence.
3. Plaintiff has failed to demonstrate a waiver of any privilege on the part of Mr. Beeson that would allow for the introduction of any of the proffered evidence.
4. 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 this Reply to Plaintiff’s Response to Respondent’s Motion In Limine to Exclude Plaintiff’s Proposed Exhibits 1, 2, 4, 5, and 11.

Respectfully submitted this 10th day of August, 2015.

THE LAW OFFICE OF MICHAEL P. BOYCE, PC.

Date: 8/10/2015

 /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 Reply to Plaintiff’s Response to Respondent’s Amended Motion *In Limine* to Exclude Plaintiff’s Proposed Exhibits 1, 2, 4, 5, 11, and 14 to the following on August 10, 2015:

*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.)*