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| DISTRICT COURT, DENVER COUNTY, COLORADO |  |  |
| Court Address: |  |  |
| Denver District Court |  |  |
| 1437 Bannock St., Room 256 |  |  |
| Denver, CO 80202 | DATE | ILED: August 7, 2015 3:40 PM |
|  | FILING | ID: 90AAE6D98C1CE |
| **In The Matter of:** | CASE | UMBER: 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.comFAX Number: 303.648.4849 Atty. Reg. #: 35729 | Case Number: 15CV31709Division 409 |
| **RESPONDENT’S RESPONSE TO PLAINTIFF’S MOTION FOR ENTRY OF CLERK’S****DEFAULT AGAINST SHAWN BEESON** |

SHAWN BEESON, through his attorney, Michael Boyce, of the Law Office of Michael Boyce, P.C., hereby requests this Court deny Plaintiff’s Motion for Entry of Clerk’s Default Against Shawn Beeson 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. On June 25, 2015, Plaintiff filed an Amended Complaint and Jury Demand to include an allegation of false reporting under C.R.S. section 18-8-111.
5. According to the Plaintiff, a response to the amended complaint was due on July 16, 2015 in accordance with C.R.C.P. 12(a).
6. The hearing on the motion to make the temporary protection order permanent began on July 16, 2015.

# PERMANENT PROTECTION ORDER HEARINGS ARE SUBJECT TO A SIMPLIFIED CIVIL PROCESS AND THE COURT LACKS JURISDICTION TO CONSIDER ADDITIONAL CLAIMS ORDINARILY SUBJECT TO THE COLORADO RULES OF CIVIL PROCEDURE

1. C.R.S. section 13-14-100.2(a) states,

The general assembly hereby finds that the issuance and enforcement of protection orders are of paramount importance in the state of Colorado because protection orders promote safety, reduce violence and other types of abuse, and prevent serious harm and death. In order to improve the public's access to protection orders and to ensure careful judicial consideration of requests and effective law enforcement, there shall be two processes for obtaining protection orders within the state of Colorado, a simplified civil process and a mandatory criminal process.

1. The simplified civil process for obtaining a permanent protection order are stated in

C.R.S. section 13-14-106:

(1)(a) On the return date of the citation, or on the day to which the hearing has been continued, 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 acts constituting grounds for issuance of a civil protection order and that unless restrained will continue to commit such acts or acts designed to intimidate or retaliate against the protected person, the judge or magistrate shall order the temporary civil protection order to be made permanent or enter a permanent civil protection order with provisions different from the temporary civil protection order. A finding of imminent danger to the protected person is not a necessary prerequisite to the issuance of a permanent civil protection order. The judge or magistrate shall inform the respondent that a violation of the civil protection order constitutes a criminal offense pursuant to section 18-6-803. 5, C.R.S., or constitutes contempt of court and subjects the respondent to such punishment as may be provided by law. If the respondent fails to appear before the court for the show cause hearing at the time and on the date identified in the citation issued by the court and the court finds that the respondent was properly served with the temporary protection order and such citation, it is

not necessary to re-serve the respondent to make the protection order permanent. However, if the court modifies the protection order on the motion of the protected party, the modified protection order must be served upon the respondent.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), the judge or magistrate, after examining the record and the evidence, for good cause shown, may continue the temporary protection order and the show cause hearing to a date certain not to exceed one year after the date of the hearing if he or she determines such continuance would be in the best interests of the parties and if both parties are present at the hearing and agree to the continuance. In addition, each party may request one continuance for a period not to exceed fourteen days, which the judge or magistrate, after examining the record and the evidence, may grant upon a finding of good cause. The judge or magistrate shall inform the respondent that a violation of the temporary civil protection order constitutes a criminal offense pursuant to section 18-6-803.5, C.R.S., or constitutes contempt of court and subjects the respondent to such punishment as may be provided by law.

1. Furthermore, C.R.C.P. Rule 81(a) regarding special statutory proceedings states:
	1. [The Colorado Rules of Civil Procedure] do not govern procedure and practice in any special statutory insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statute.
2. The Rules for obtaining a permanent civil protection order are special statutory rules with their own simplified civil process. These provisions do not require the respondent to answer a complaint filed by a petitioner, nor do they allow for additional claims, cross- claims, counter-claims, or any other causes of action as permitted in the Colorado Rules of Civil Procedure. The Plaintiff’s amended claims should be dismissed because the Court lacks jurisdiction to consider additional claims other than the hearing on the request for a permanent protection order.

**IN THE ALTERNATIVE, MR. BEESON HAS COMPLIED WITH RULE 55 BY “OTHERWISE DEFENDING” AGAINST THE ASSERTIONS IN THE AMENDED COMPLAINT**

1. According to the Plaintiff, the Respondent had until July 16, 2015 to respond to the amended complaint. On July 16, 2015, Mr. Beeson began defending against all claims made by the petitioner.
2. Therefore, a default judgment is not appropriate against Mr. Beeson since the requirements to enter a default judgment against him have not been made.

# IN THE ALTERNATIVE, MR. BEESON FORMALLY DENIES THE ALLEGATIONS IN THE AMENDED COMPLAINT AND REQUESTS THE MATTER BE SET FOR A TRIAL BY JURY

1. If the Court finds that Jurisdiction is proper and that Mr. Beeson has not otherwise defended against the allegations, Mr. Beeson denies Plaintiff’s First Claim For Relief of False Reporting under C.R.S. section 18-8-11.
2. Mr. Beeson reported to law enforcement authorities that Plaintiff assaulted him, because the plaintiff assaulted him.
3. Mr. Beeson was a victim of an assault by the plaintiff.
4. Any injuries received by the plaintiff resulted from Mr. Beeson’s attempt to defend himself from the plaintiff’s attack.

# ADDITIONAL LAW

1. Default judgments are serious and drastic, particularly in those cases where the defendant has answered and the case is at issue. *Civil Serv. Comm’n v. Doyle*, 162 Colo. 1 (1967). The ramifications that may ensue may cause loss of time and expense of courts and litigants, as well as, possibly, the denial of inherent rights. *Id.*
2. In *Colo. Compensation Ins. Auth. V. Raycomm Transworld Indus., Inc*., the court found that there, the motion for default judgment should have been denied where defendant’s answer, though filed late, was filed before default had been entered and before the trial court had ruled on the motion for default judgment. *Colo. Compensation Ins. Auth. V. Raycomm Transworld Indus., Inc*., 940 P2d 1000 (Colo. App. 1996).
3. If the Court finds that the amended complaint is appropriate and that Mr. Beeson has not otherwise defended against it, Mr. Beeson asks that the Plaintiff’s Motion for Entry of Clerk’s Default Judgment be denied.

WHEREFORE, Shawn Beeson, through counsel, respectfully requests this Honorable Court grant the relief requested in Respondent’s Response to Plaintiff’s Motion for Entry of Clerk’s Default Against Shawn Beeson. Mr. Beeson further requests a hearing on this matter.

Respectfully submitted this 7th day of August, 2015.

THE LAW OFFICE OF MICHAEL P. BOYCE, PC.

Date: 8/7/2015

 /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 Response to Plaintiff’s Motion for Entry of Clerk’s Default Against Shawn Beeson to the following on August 7, 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.)*