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**IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT
OF THE STATE OF MONTANA AND FOR THE COUNTY OF FLATHEAD**

STATE OF MONTANA,

Plaintiff,

vs.

Cory Robert Franklin,

Defendant.

Case No: DC-04-15(C)

**MOTION FOR RULE 11 SANCTIONS
AND REQUEST FOR A HEARING**

COMES NOW the Defendant, Cory Robert Franklin, by and through the undersigned counsel, and files this motion for Rule 11 sanctions against Kenneth R. Park and the Office of Flathead County Attorney and offers the following in support.

FACTS

The Defendant's probation expires naturally on February 25, 2015. A hearing on Mr. Park's petition to revoke is set for July 31, 2014. This attorney represented the Defendant in DC-13-465, 14-128 and 04-15 as a contract attorney for the Office of Public Defender. This attorney's fees were and are being paid by the tax payers of the State of Montana.

Mr. Park, a Deputy County Attorney and employee of the Office of Flathead County Attorney, filed a petition to revoke the Defendant's sentence in DC-04-15 on May 8, 2014. Mr. Park alleged that probation officer Paul Parrish filed a Report of Violation dated May 7, 2014. As a basis for his petition to revoke, Mr. Park refers to the report of violation allegedly filed by Mr. Parrish. In that report, Mr. Parrish alleged that the Defendant committed crimes in DC-2014-128 and DC-13-465. Mr. Parrish made other allegations for which Mr. Parrish did not file a report of violation until May 7, 2014, even after the Defendant was arrested in December 2013 in DC-13-465 and then again in March 2014 in DC-14-128.

After this attorney revealed evidence, which is a matter of record in DC-13-465 and DC-14-128, showing that Mr. Park was abusing his power as a prosecutor, and after this attorney took proper steps to hold Mr. Park and the Flathead County Attorney responsible for Mr. Park's unethical actions, Mr. Park moved to dismiss both cases. Judge Ulbricht and Judge Lympus granted Mr. Park's motions to dismiss.

After the Courts dismissed said cases, the Defendant had a conversation with his probation officer Paul Parrish about his probation and the cases that were dismissed. Mr. Parrish told the Defendant that he would not have filed a report of violation except that Mr. Park told him to do so. Mr. Parrish told the Defendant that he was going to wait to see the results of DC-13-465 and DC-14-128 before filing a report of violation. Mr. Parrish told the Defendant that if he was found not guilty of the charges, he was not going to file a report of violation. Mr. Parrish told this to Mr. Park, but Mr. Park told Mr. Parrish to file a report of violation anyway. A true and accurate copy of the Defendant's affidavit is attached hereto as **Exhibit A**.

The evidence in DC-13-465 and DC-14-128 shows that Mr. Park had an actual bias against the Defendant's attorney and used his power as a prosecutor to treat the Defendant and his attorney unfairly, unethically, and in violation the federal and Montana Constitution. Now, evidence reveals in this case that Mr. Park used his power as a prosecutor to compel Mr. Parrish to file a report of violation. To date, the State has not filed a motion to revoke Mr. Park's petition.

Though Mr. Park appears to be the primary culprit in the unethical actions against this attorney and the Defendant, Mr. Park's unethical actions have been perpetrated against other defendants in Flathead County and are known through this county by defense attorneys. In fact, Ed Corrigan, the Flathead County Attorney, knows of Mr. Park's egregious prosecutorial misconduct. As the elected official for Flathead County Attorney, Mr. Corrigan is responsible for the actions of his employees. One may potentially excuse Mr. Corrigan's lack of supervision over his employees had he not known of Mr. Park's unethical actions; but given the continual and egregious nature of Mr. Park's prosecutorial misconduct, Mr. Corrigan should be held responsible as well for Mr. Park's unethical and improper actions in this case.

BRIEF

Section 46-1-103(1), MCA states, "This title governs the practice and procedure in all criminal proceedings in the courts of Montana *except where provision for a different procedure is specifically provided by law*" (emphasis added). The Rules of Civil Procedure apply in the present circumstances. Rule 11, M.R.Civ.P. applies generally to all filings of motions by attorneys, including criminal filings. The Criminal Rules of Procedure do not impose on attorneys the requirements of Rule 11 when they file motions and pleadings, but clearly attorneys are bound by Rule 11 when attorneys file motions with the Court.

Rule 11(b), M.R.Civ.P. requires the following for an attorney filing any motion.

By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) **it is not being presented for any improper purpose**, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information.

Title 25, Ch. 20, Rule 11, MCA (emphasis added). Mr. Park filed his petition to revoke the Defendant’s sentence for an **improper purpose**. Namely, Mr. Park used his power as a prosecutor to further execute his bias against the Defendant’s attorney, just as he did in DC-13-465 and DC-14-128. The evidence filed in DC-13-465 and 14-128 show clearly that Mr. Park abused his power as a prosecutor. In this case, Mr. Parrish told the Defendant that the only reason he filed the report of violation was because Mr. Park told him to do so. Mr. Park’s petition against the Defendant is plainly a violation of Rule 11. As such, the Court should order sanctions against Mr. Park.

Rule 11(c), M.R.Civ.P. provides the Court with power to order sanctions against an attorney who violates Rule 11. It states,

- (1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held **jointly responsible for a violation committed by its partner, associate, or employee**.
- (2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney fees, incurred for the motion.

(3) On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) Nature of a Sanction. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney fees and other expenses directly resulting from the violation.


(5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction: (A) against a represented party for violating Rule 11(b)(2); or (B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) Requirements for an Order. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

Title 25, Ch. 20, Rule 11, MCA (emphasis added). The sanctions must be proportionate to the violating conduct. In this case, substantial sanctions are appropriate in this case against Mr. Park and the Office of Flathead County Attorney because of the continuing and egregious nature of Mr. Park's unethical and improper actions as not only an officer of the Court but as a representative of the State of Montana. This attorney believes that until a Court actually imposes sanctions on prosecutors who violate the rule of law and who undermine the integrity of the judicial system, Mr. Park's actions will continue unchecked, and until the Court sanctions Ed Corrigan for his permitting his employees to act so unethically, he will not properly supervise his employees and correct these kinds of actions that Mr. Park has demonstrated.

WHEREFORE, the Defendant moves this Court for an order of sanctions against Kenneth R. Park and against the Flathead County Attorney, Ed Corrigan; an award of attorney's fees; to dismiss the petition to revoke; and to discharge the Defendant's probation; and requests a hearing on the same matter.

Respectfully submitted this 16th day of July, 2014.



Timothy Baldwin

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by USPS first class mail to the Flathead County Attorney, 920 S. Main St., 2nd Fl, Kalispell, MT 59901, on July 16th 2014.

Sandra S. Johnson

EXHIBIT "A"

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**IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT
OF THE STATE OF MONTANA AND FOR THE COUNTY OF FLATHEAD**

STATE OF MONTANA, Plaintiff, vs. Cory Robert Franklin, Defendant.	Case No: DC-04-15(C) AFFIDAVIT OF CORY FRANKLIN
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I, Cory Robert Franklin, do hereby swear or affirm that the following facts are true and accurate to the best of my personal knowledge.

I was released on bond with conditions from the Court on July 9, 2014 after Kenneth Park, Deputy County Attorney, dismissed DC-13-465 and DC-14-128. On the following day, July 10, 2014, I met with my probation officer, Paul Parrish, in DC-04-15, who has been my probation officer for about two years. In that meeting, I told Mr. Parrish that Mr. Park dismissed DC-13-465 and DC-14-128. Mr. Parrish told me that he was upset with Mr. Park because Mr. Park came to him personally and told him to file a report of violation against Cory Franklin. Mr. Parrish told Mr. Park at that time that it was not his policy to file a report of violation in this kind of situation unless the probationer was convicted of any charges in the pending criminal case. Mr. Park asked Mr. Parrish at that time if Cory Franklin had any violations during his probation. Mr. Parrish told Mr. Park that Cory Franklin had a few minor violations but none that Mr. Parrish intended to file a report of violation on. Mr. Park told Mr. Parrish that he should file a report of violation against Cory Franklin. Mr. Parrish said that was the only reason he filed the report of violation. Mr. Parrish then congratulated me for the dismissal of DC-13-465 and DC-14-128 and told me that he was going to contact Mr. Park and tell him to dismiss the petition to revoke my sentence.

