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Attorney for Defendant

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

STATE OF MONTANA,	Case No: DC-04-15(C)
Plaintiff,	Honorable Heidi Ulbricht
vs.	<b>REQUEST FOR ADDITIONAL HARING ON MOTION FOR RULE 11 SANCTIONS</b>
Cory Robert Franklin,	
Defendant.	

COMES NOW the Defendant, Cory Robert Franklin, by and through the undersigned counsel, Timothy Baldwin, and hereby files this request for additional hearing on Defendant's motion for Rule 11 sanctions against Kenneth R. Park and the Office of Flathead County Attorney, and offers the following in support.

FACTS

This attorney possesses critical and substantive evidence on the issue raised by the Defendant's motion for Rule 11 sanctions. The evidence is an audio recording and transcript of Agent McKeag Johns talking to Kristina Franklin on June 4, 2014. This attorney has attached a copy of the audio recording and transcript as Exhibit A1 and A2 of the same, along with the affidavit of Kristina Franklin as Exhibit B, into this motion. This attorney hereby incorporates the same into this motion. This attorney was not able to present this evidence on the September 5, 2014 hearing because he did not have the permission of Kristina Franklin to release this evidence to the public or in a public hearing. However, on September 15, 2014, Kristina Franklin gave consent by affidavit, which is attached to this motion, to release this evidence to the public. The content of this evidence pertains directly to the issues raised by the Defendant in his motion and by the Plaintiff in their Response. Justice will be prevented if the Court does not allow the Defendant to present this evidence and to call Agent McKeag Johns as a witness for the Court's consideration at an additional hearing.



## BRIEF

This Court has original power to hear all facts relevant to a motion brought before it within its jurisdiction. Mont. Const., Art. VII, Section 4. The case before the Court is within her original jurisdiction power. Since there are no specific rules in the Criminal Procedure regarding the setting of hearings and additional hearings, setting an additional hearing is within the Court's discretion.

Generally speaking,

[t]he idea of inherent power implies that its use is for occasions not provided for by established methods...when such methods fail and the court shall determine that by observing them the assistance necessary for the due and effective exercise of its own functions cannot be had, or when an emergency arises which the established methods cannot or do not instantly meet, then...does occasion arise for the exercise of the inherent power.

*Seubert v. Seubert*, 2000 MT 241, P23, 301 Mont. 382, 388-89, 13 P.3d 365, 369 (Mont. 2000); see also, *Clark v. Dussault*, 1993 Mont. Dist. LEXIS 464 (Mont. Dist. Ct. 1993) ("the inherent power of the judiciary is a judicial power, but only in the sense that it is a natural necessary concomitant to the judicial power") (citation omitted). Setting additional hearing on a motion properly brought before this Court is a matter within the Court's inherent power.

As it relates to criminal cases, "this Court has the inherent power to protect the statutory and constitutional rights of criminal defendants." *State v. Garrymore*, 2006 MT 245, P49, 334 Mont. 1, 18, (Mont. 2006). The Montana Supreme Court has also noted that "courts...have, by virtue of their inherent powers, authority to set aside a verdict a grant a new trial, unless such authority is restricted or withheld by statute." *State v. Brummer*, 1998 MT 11, P75, 287 Mont. 168, 190 (Mont. 1998). Specifically, Justice Jim Rice stated that "[s]cheduling issues should remain the province of the district courts, which we should review for abuse of discretion." *State v. Couture*, 2010 MT 201, P103, 357 Mont. 398, 437 (Mont. 2010). Here, there is no statute to restrict the Court from setting an additional hearing, good cause exists to set an additional hearing, and it would be an abuse of discretion for the Court not to set an additional hearing in this matter.

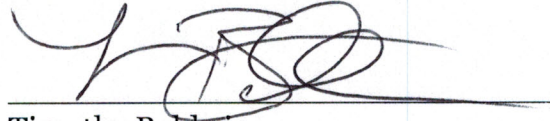
The evidence that this attorney has attached in support of this motion clearly show that an additional hearing is necessary for the Court to determine this issue. Until September 15, 2014, this attorney did not have the consent of Kristina Franklin to release this audio and transcript to the public. Kristina Franklin knew that releasing the evidence could be used against her in a criminal proceeding under the laws of Montana. But she decided that releasing the evidence is necessary to help protect her husband, Cory Franklin's rights. As such, good cause exists for this Court to set an additional hearing in light of this very serious evidence. To deny the Defendant



an opportunity to bring this evidence before the Court's consideration would be an abuse of discretion because it would prevent him from pursuing justice in this case.

WHEREFORE, for the aforementioned reasons, the Defendant moves this Court to hold an additional hearing on the Defendant's motion for sanctions.

Respectfully submitted this 16th day of September, 2014.

  
Timothy Baldwin

CERTIFICATE OF SERVICE

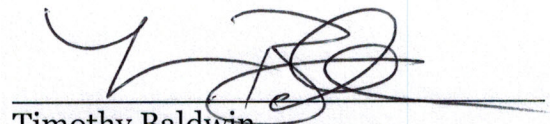
I HEREBY CERTIFY that the foregoing was furnished as indicated below this September 16th, 2014.

Original to:  
Flathead County District Court

Copies to:  
Flathead County Attorney

via:

- ☐ USPS first class mail  
☐ hand delivery

  
Timothy Baldwin