

Timothy Baldwin
BALDWIN LAW OFFICES, P.A.
Office: 210 2nd St. W., Ste. 200
Mail: PO Box 1520
Kalispell, MT 59903
Office: (406) 393-2330
Fax: (406) 393-2330

John R. Quatman
QUATMAN AND QUATMAN, P.C.
600 8th St E
Whitefish, Mt 59937
Office: (406) 863-2334

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Attorneys 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,

Plaintiff,

vs.

Cory Robert Franklin,

Defendant.

Case No: DC-13-465C
Judge Heidi Ulbricht

**MOTION FOR AN ORDER
TO COMPEL DEPOSITIONS**

COMES NOW the Defendant, Cory Robert Franklin, by and through the undersigned counsel, Timothy Baldwin, and hereby moves this Court for an order requiring Deputy County Attorney Kenneth R. Park, Officer McKeag Johns, Flathead County Attorney Ed Corrigan and Sheriff Chuck Curry to take depositions and produce documents at depositions, and offers the following in support of this motion.

FACTS

The Defendant filed a Defendant's *Motion to Compel Discovery, For Sanctions and To Recuse Kenneth Park and the Flathead County Attorney's Office* in this case. The Defendant filed an affidavit sworn to by Kristina Franklin in support of said motion. In said affidavit, Kristina Franklin stated that she had a phone conversation with Mr. Park and that Mr. Park revealed his personal bias towards the Defendant's attorney and his unfair treatment of the Defendant due to Mr. Park's dislike for this attorney. Mr. Park filed a *Response* to said motion admitting that he talked to Mrs. Franklin on the phone but denying Kristina Franklin's allegations. Subsequent to Mr. Park's *Response*, the Defendant filed a *Reply* and attached a second affidavit of Kristina Franklin wherein she swore under oath to a conversation she had with Officer McKeag Johns who said a number of things to her that prove that Mr. Park and the Flathead County Attorney Ed Corrigan are intentionally interfering with the Defendant's

attorney-client right and prosecuting this case against the Defendant unfairly and unlawfully because of their personal and political dislike for this attorney.

In light of the serious allegations concerning Mr. Park and Mr. Corrigan and the Sheriff's Office, this attorney delivered requests for interviews to Ed Corrigan, Kenneth Park, Chuck Curry and McKeag Johns on June 17, 2014. This attorney attached copies of said requests to his *Notice of Request for Interviews*, which was filed on June 17, 2014. Said persons have shown they are unwilling to submit to interviews because they have failed to respond to said letter even though this attorney asked them to respond within seven (7) days from the date of the letter. On June 17, 2014, this attorney filed a motion to set a hearing on the Defendant's *Motion to Compel Discovery, For Sanctions and To Recuse Kenneth Park and the Flathead County Attorney's Office and Reply*. This Court granted said motion and ordered that a hearing be set after this attorney has completed interviews with said persons and that this attorney notify the Court of when the interviews were complete. Even with said order, the witnesses have not responded to this attorney's request for interviews.

BRIEF

Section 46-15-201(1)(c), MCA provides the right of the Defendant to obtain an order for depositions as follows.

In district or municipal court cases, a deposition may be taken if it appears that a prospective witness...(c) is unwilling to provide relevant information to a requesting party and the witness's testimony is material and necessary in order to prevent a failure of justice. The court shall, upon motion of any party and proper notice, order that the testimony of the witness be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be introduced at the time the deposition is taken.

"Section 46-15-201, MCA, HN7 is obviously a discretionary statute." *State v. Tilly*, 227 Mont. 138, 144, 737 P.2d 484, 488, 1987 Mont. LEXIS 889, 10 (Mont. 1987). It would be an abuse of discretion here not to grant the Defendant's motion to order depositions of these witnesses.

The elements of the above statute have been met for this Court to grant an order requiring the witnesses to take depositions and produce documents at said deposition; namely, (1) a copy of all correspondence, in whatever format, including written, electronic and cellular, between and among Ed Corrigan, McKeag Johns, Kenneth Park and/or Chuck Curry concerning Tim Baldwin, Kristina Franklin and/or Cory Franklin since the day Cory Franklin was arrested in DC-13-465; (2) all records of phone tolls since the day Cory Franklin was arrested in DC-13-465 wherewith Ed Corrigan, McKeag Johns, Kenneth Park and/or Chuck Curry communicated to each other about Tim Baldwin, Kristina Franklin and/or Cory Franklin; and a copy of all documents, in whatever format including written, electronic and cellular, concerning Tim Baldwin's job application for employment at the Office of the Flathead County Attorney.

First, this is a district court case.

Second, the witnesses, Ed Corrigan, Kenneth Park, Chuck Curry and McKeag Johns, have relevant information concerning the Defendant's *Motion to Compel Discovery, For Sanctions and To Recuse Kenneth Park and the Flathead County Attorney's Office* and the *Reply* to the Kenneth Park's *Response* filed. The relevant information concerns the Defendant's fundamental right to have a fair trial and the integrity of the judicial process in his case. The Defendant has filed two affidavits of Kristina Franklin to show that the Defendant is being denied this fundamental right and that the judicial process is being tainted because of Mr. Park's and Mr. Corrigan's prejudice and dislike for this attorney. The Defendant needs the Court to compel these witnesses' depositions regarding this matter.

Third, their information is material and necessary to prevent a failure of justice; namely, to provide this Court with sufficient information on which to grant the Defendant's *Motion to Compel Discovery, For Sanctions, and To Recuse Kenneth Park and the County Attorney's Office*. For the reasons already stated, the witnesses' information is material and necessary to prevent a failure of justice against the Defendant and to protect the integrity of the judicial system.

Fourth, said witnesses appear unwilling to provide information. This attorney delivered requests for interviews via United States Postal Service first class mail on June 17, 2014, but the witnesses have not responded at all. This Court granted the Defendant's motion to set a hearing on the Defendant's *Motion to Compel Discovery, For Sanctions and To Recuse Kenneth Park and the Flathead County Attorney's Office*. In said order, the Court ordered that said hearing not be set until the Defendant's attorney was able to complete interviews of said witnesses. In spite of this order, the witnesses have showed their unwillingness to submit to interviews.

The nature of the allegations shown by the Defendant through Kristina Franklin's affidavits is very serious and involves fundamental notions of fairness and impartiality among prosecutors and in the judicial system. The Court has a duty to protect the integrity of the judicial system.


A district court's discretion in this regard flows from its inherent authority to control trial administration in the interest of fairness and justice. See, e.g., *Anderson v. Werner Enterprises, Inc.*, 1998 MT 333, P13, 292 Mont. 284, P13, 972 P.2d 806, P13. See also § 3-1-111, MCA (granting all courts the power to provide for the orderly conduct of proceedings, and control, in furtherance of justice, the conduct of all other persons in any manner connected with a judicial proceeding).

Schuff v. A.T. Klemens & Son, 2000 MT 357 (citations omitted). Given prosecutors' special obligations, the Court here should be highly sensitive to and concerned about the facts revealed

by the Defendant in his motion and should ensure that the judicial process is protected. Depositions of said witnesses are necessary for that purpose here.

WHEREFORE, for the aforesaid reasons, the Defendant moves this Court to enter an order requiring Ed Corrigan, Kenneth Park, Chuck Curry and McKeag Johns to take depositions at the date, time and place the Defendant's attorney gives each witness notice and to produce documents at said depositions as the Defendant's attorney requested.

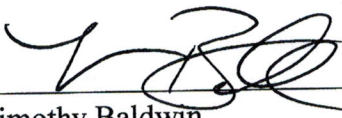
Respectfully submitted this 30th day of June, 2014.



Timothy Baldwin

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery to the Flathead County Attorney, 920 S. Main St., 2nd Fl, Kalispell, MT 59901 on June 30, 2014.



Timothy Baldwin