

IN THE DISTRICT COURT, FRANKLIN COUNTY, KANSAS  
CRIMINAL DEPARTMENT

STATE OF KANSAS )  
Plaintiff, )  
 )  
vs. )  
 )  
KYLE FLACK )  
Defendant. )  
\_\_\_\_\_ )

Case No. 13 CR 104

**MOTION TO FILE CERTAIN SUBPOENAS UNDER SEAL**

Come now Kyle Flack by and through counsel and moves the Court for an order allowing the defendant to file certain subpoenas under seal. In support of this motion Mr. Flack states as follows:

1. That Mr. Flack is charged with Capital murder and other serious charges.
2. This case has and will continue to draw considerable media coverage of the court proceedings.
3. That defense counsel has an obligation to thoroughly and independently investigate issues of both guilt and penalty. ABA Guidelines For Appointment and Performance of Defense Counsel in Death Penalty Cases Guideline 10.7, Wiggins v Smith 123 S.Ct. 2526 (2003). Various records, some of which are confidential by State and/or Federal statute are only obtainable by the compulsory process of the subpoena power of this court.
4. Due the nature of the items; those records can cannot be set forth in the open subpoenas without the nature of those documents becoming known to the State and/or the public through the media and in turn possibly tainting potential jurors and creating a clear and present danger to the

fairness of the trial. Kansas City Star v. Fossey 230 Kan. 240, 630 P2d 1176 (1981) held a trial court may close a pretrial hearing and may seal the record only if: (1) the dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial and (2) the prejudicial effect of such information on trial fairness cannot be avoided by any reasonable alternative means.

5. A criminal defendant has a constitutional right to present his own witnesses to establish a defense. Defense request that they be allowed to file certain subpoenas under seal and that neither the State nor the public have access to those subpoenas to insure an independent and a constitutionally fair investigation by defense. State v Finley 268 Kan. 557 (2000); Washington v Texas 87 S. Ct. 1920 (1967).

WHEREFORE defense request this court issue and order allowing the defense to file certain subpoenas under seal.

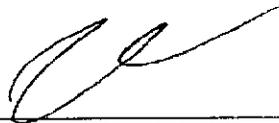
Respectfully submitted,



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#### CERTIFICATE OF SERVICE

The above motion was served by facsimile upon the Office of Attorney General of the State of Kansas, the Franklin County Attorney and a bench copy to Judge Eric Godderz on this 5 day of January, 2015.



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Tim Frieden #12022

**NOTICE OF HEARING**

The above motion shall come on for hearing on the 6th day of February 2015 at 9:00 a.m. before Judge Godderez