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IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, v. TYLER JAMES ROBINSON, Defendant.	**STATE'S OPPOSITION TO DEFENDANT'S RENEWED REQUEST THAT THIS COURT REFER THE MOTION TO DISQUALIFY TO THE UTAH ATTORNEY GENERAL PURSUANT TO UTAH CODE § 17-68-304** Case No. 251403576 Judge Tony F. Graf, Jr.

INTRODUCTION

This Court should deny Defendant's motion for any one of three reasons. First, Defendant completely misreads the statute that is the only support for his request. Second, even under his countertextual reading, Defendant has not met the threshold standard that he claims would trigger the statute. Any alleged personal interest the Utah County Attorney might have in this prosecution is wholly aligned with his public duty to seek justice. Third, the motion is untimely because Defendant refuses to make it in a way that allows for full analysis and consideration.

Defendant's renewed, but still last-minute, attempt to continue to delay an evidentiary hearing on the disqualification issue rests entirely on a misreading of an obscure statute, section 17-68-304. That statute does not allow this Court to refer anything to the Utah Attorney General's Office, or to require the Utah County Attorney's Office to step aside so the Attorney General can step in. That result would violate the statute's plain language and well-established separation of powers principles. Defendant's novel interpretation finds no support in the statutory language, or in Utah precedent. Instead, Defendant invents from whole cloth the procedure he proposes for handling this motion. Properly read, the statute is a tool that allows an overwhelmed county attorney's office to choose to enlist the Attorney General's assistance. It is not a weapon that a defendant can wield to force a change in his prosecutor, even for a discreet issue in a case.

Because the statute has no application here, there is no threshold showing of conflict that triggers the statute. Even if there were, Defendant has not met the standard he contrives because the supposed personal interest he alleges is wholly aligned with the Utah County Attorney's duty to seek justice. The undisputed facts of this public assassination dictated the charging decisions here, not tangential personal relationships.

Alternatively, Defendant's motion is untimely. Defendant continues to spring this issue on the prosecution and the Court in a way that prevents full briefing and consideration without delaying the scheduled evidentiary hearing. There has already been too much delay in this relatively new case. The victim's representative has asserted the victim's speedy trial rights. This Court must firmly grasp the reins of this case to ensure that May's preliminary hearing goes forward on schedule and that a trial is held as soon as possible thereafter.

I. Far from being "clearly established," Defendant's novel claim that the laws empowers this Court to replace the Utah County Attorney's Office with the Utah Attorney General's Office lacks any support in the language of section 17-68-304 or Utah caselaw.

Nothing in Utah statute or caselaw allows a court to "refer" to the Attorney General a criminal case, or a specific issue in a case, that a county attorney is prosecuting. Indeed, any such provision would patently violate the Utah Constitution's separation of powers principles.

A. Defendant's interpretation ignores and therefore contradicts the statute's plain, unambiguous language.

Utah Code 17-68-304(2) does not support Defendant's position. It states:

> The attorney general shall assist the [county] attorney with a criminal prosecution if a court:
>
> > (a) finds that the attorney is unable to satisfactorily and adequately perform the duties of prosecuting a criminal case; and
> >
> > (b) recommends that the attorney seek additional legal assistance.

Utah Code § 17-68-304(2).

The statute makes clear that the decision to involve the Attorney General in a criminal case ultimately rests with a county attorney, not a court. A court can merely "recommend[]" that the county attorney "*seek* additional legal assistance." *Id.* § 17-68-304(2)(b) (emphasis added). Nothing in the statute allows a court to force that assistance on a county attorney, let alone replace a county attorney with the Attorney General for any case or portion of a case. Indeed, the statute plainly contemplates, at most, that the Attorney General will "assist" a county attorney, not replace him. *Id.* § 17-68-304(2).

Properly read, section 17-68-304 is thus concerned only with a county attorney's capacity and resources—his ability to "satisfactorily and adequately" perform his prosecution duties. *Id.* § 17-68-304. The statute says nothing about the procedure for determining whether a county attorney's prosecution might be unlawful or unethical. An unlawful or unethical prosecution would be improper. And defendants can raise those challenges in a motion to dismiss or to disqualify, as Defendant does here. But section 17-68-304 provides no mechanism for a *defendant* to invoke its provisions in addressing such motions.

Rather, the statute allows an overwhelmed county attorney to secure the Attorney General's help if the Attorney General is otherwise unwilling. In that situation, the Attorney General must provide assistance if a county attorney obtains (1) a finding that he is "unable to satisfactorily and adequately perform" his prosecution duties and (2) a recommendation that he "seek additional legal assistance." *See id.* § 17-68-304(2).

Besides omitting any reference to the legal or ethical propriety of a prosecution, the statute plainly does not allow the remedy Defendant proposes—replacement of a prosecuting officer, even for a particular issue. Again, the statute allows the Attorney General only to "assist," not to replace, a county attorney in a criminal case. *Id.* And, as explained, the decision about whether this assistance is necessary rests with the county attorney, not the defendant or the court. *See id.*

Defendant's authority does not establish otherwise and, if anything, supports the State's reading. Neither of Defendant's cases addresses, either directly or indirectly, a motion to disqualify a prosecutor for a conflict of interest (or any other reason), or the procedure for handling such motions. *See State v. Robertson*, 924 P.2d 889, 892-93 & n.6 (Utah 1996); *State v. Jiminez*, 588 P.2d 707, 707-09 (Utah 1978). Rather, the only issue in *Jiminez* was whether the Utah Attorney General had the authority to file and prosecute a criminal case, or whether only a county attorney could do so. *See* 588 P.2d at 707. Nor does *Robertson* address a motion to disqualify a prosecutor. *See* 924 P.2d at 890. Rather, the only issue there was whether a different statute, section 10-3-928, which allowed non-elected city attorneys to prosecute certain crimes, was unconstitutional. *See Robertson*, 924 P.2d at 890. The mere fact that both *Jiminez* and *Robertson* generally recognized the Attorney General's statewide prosecutorial authority provides no support for Defendant's novel interpretation of section 17-68-304.

Rather, if *Jiminez* is relevant at all, it actually supports the State's reading of the statute. After quoting a prior iteration of the statue, the *Jiminez* court recognized that "[a]lso implicit in the statutes is the authority of the various County Attorneys to *themselves* [r]equest the assistance of the Attorney General." 588 P.2d at 708 (emphasis added).

Other than *Jiminez*—which again was not a disqualification case—the State could not find any case where section 17-68-304, or its predecessors, was invoked in any situation, let alone in the context of litigating a defense motion to disqualify a county attorney or his office. Yet there are several reported cases where defendants have sought to do just that. *See*, *e.g.*, *State v. Melancon*, 2014 UT App 260, ¶¶ 6, 11-22, 339 P.3d 151;

State v. LoPrinzi, 2014 UT App 256, ¶¶ 12-15, 338 P.3d 253; *State v. Balfour*, 2008 UT App 410, ¶¶ 32-39, 198 P.3d 471; *State v. Gray*, 851 P.2d 1217, 1227-28 (Utah App. 1993). The fact that section 17-68-304 has never been invoked in any case involving a motion to disqualify a prosecutor or a prosecutor's office further undermines Defendant's countertextual reading.

B. Defendant's strained interpretation would also violate constitutional separation of powers principles.

The Utah Constitution's separation of powers provision further dispels any notion that Defendant's interpretation of the statute is correct. Article 5, section 1 of the Utah Constitution divides the powers of government into "three distinct departments" and precludes any person "charged with the exercise of powers properly belonging to one of these departments," from "exercis[ing] any functions appertaining to either of the others" unless expressly permitted. Utah Const. art. I, § 5. But Defendant nevertheless claims that this Court can do just that by dictating which elected prosecutor can prosecute a case. "'[C]ourts are not to interfere with the free exercise of the discretionary powers of [prosecuting] attorneys … in their control over criminal prosecutions.'" *State v. Bell*, 785 P.2d 390, 403 (Utah 1989) (quoting *United States v. Cox*, 342 F.2d 167, 171 (5th Cir. 1965)), *disagreed with on other grounds by State v. Mohi*, 901 P.2d 991, 996 (Utah 1995). Separation of powers principles thus preclude any notion that this Court has statutory authority to replace one executive branch officer with another to prosecute a case, or an issue in a case.

II. Because the statute does not function as Defendant posits, there is no triggering standard for this Court to discern or apply; regardless, Defendant has not met his proposed iteration of that standard.

A. Defendant's proposed reading has things exactly backwards under the statute.

Because section 17-68-304 does not operate as Defendant asserts, there is no need or basis for the Court to consider whether there is a threshold showing of a potential conflict that triggers the statute, or whether Defendant has met that standard here. *See* Mot. at 9-12. This is especially true where, as explained, the Attorney General's requirement to merely "assist" does not arise until *after* both (1) a finding that the county attorney is unable to adequately prosecute the case and (2) the county attorney himself *seeks* the Attorney General's assistance. *See* Utah Code § 17-68-304(2).

Defendant's interpretation therefore gets things exactly backwards. Ignoring the unambiguous statutory language, he posits that this Court can first require the Attorney General to take over this disqualification issue, and then later determine whether or not the Utah County Attorney can "satisfactorily and adequately perform" his prosecution duties because of a potential disqualifying conflict. Utah Code § 17-68-304(2)(a). But as demonstrated, the statute plainly allows for the Attorney General's involvement only *after* a court "*finds* that the [county] attorney is unable to satisfactorily and adequately perform" his prosecution duties. *Id.* Moreover, as demonstrated, Defendant's nonsensical interpretation completely ignores (1) that the Attorney General can only "assist," not replace, a county attorney, and (2) that it is the county attorney who must "seek additional legal assistance." *See id.* § 17-68-304(2)(b).

Contrary to Defendant's assertion, the statute articulates no threshold showing of a conflict that must be met before the statute is triggered because, as demonstrated, the statute has no application to this disqualification issue.

B. Regardless, Defendant has not made a threshold showing of a potential conflict.

But even if the statute could apply here and requires the Attorney General's involvement upon merely a threshold showing of a potential conflict, Defendant has not made that showing here. As argued at the January 16, 2006, hearing, the affidavit and other evidence on file demonstrates that the prosecutor's family member is not a necessary witness by any measure. The family member was only one of thousands of attendees at Mr. Kirk's rally and did not see the actual shooting. Instead, the family member only learned that Mr. Kirk had been shot through hearsay reports of other attendees. And the event had no significant or lasting impact on the family member.

Nor does the Utah County Attorney's testimony at the January 16, 2006, hearing create a threshold showing of a conflict. The fact that children of two members of the County Attorney's religious congregation were among the thousands present at the rally creates no conflict or an appearance of conflict. Defendant makes no effort to explain how such an attenuated connection to individuals who were present at the mass gathering where the crime occurred could give rise to a conflict. Rather, as the defense recognizes, the County Attorney did not learn about these individuals' presence at the event until after charges were filed. Mot. at 5.

In fact, the loose personal connections that Defendant relies on do not even come close to creating conflict, because any personal interest they might create is wholly aligned with the County Attorney's public interest and sworn duty to seek justice. "[A] number of courts have declined to find a due process violation where the prosecutor is alleged merely to have a personal interest that might add to his or her zeal." *People v. Vasquez*, 137 P.3d 199, 209 (Cal. 2006). "[T]hat a public prosecutor might feel unusually strongly about a particular prosecution … does not inevitably indicate an actual conflict of interest, much less a constitutional bar to prosecution." *Id.* at 209.

"The key in deciding whether a prosecutor should be disqualified is whether the prosecutor has a significant personal interest in the litigation which would impair the prosecutor's obligation to act impartially toward both the State and the accused." *State v. Cope*, 50 P.3d 513, 516 (Kan. App. 2002). Thus, the question is whether the "prosecutor's interest in prosecuting a particular case goes beyond an ordinary dedication to his or her duty to see that justice is done." *See State v. Pennington*, 365 S.E.2d 803, 811 (W. Va. 1987) (cleaned up). Put simply, the question is "whether the prosecutor's interest is public or personal." *Id.*

The County Attorney's neighborly association with the parents of two attendees of the event does not even come close to the type of association that would create a personal interest in this prosecution, as opposed to the ordinary public interest to carry out his sworn duty to seek justice. So too for the County Attorney's association with his prosecutor whose family member also merely attended the event. The County Attorney's decisions about the appropriate charge and penalty here were based on the undisputed facts of this public assassination, not his relationships with people whose family members were among the thousands at the event.

Other cases have found no prosecutorial conflict of interest based on far more substantial relationships. For example, the prosecutor in *State v. Newman*, 605 S.W.2d 781, 787 (Mo. 1980), had no conflict of interest in prosecuting a defendant for murder even though the prosecutor had done business with the victim, knew him personally, and served as a pallbearer at his funeral.

Likewise, neither the Gwinnett County District Attorney, nor his Georgia office, had a conflict of interest even though his chief investigator dated and later married the victim in a case that the office was prosecuting. *See Head v. State*, 560 S.E.2d 536, 537 (Ga. App. 2002). Where the investigator took no part in the criminal investigation, the mere fact of the relationship between the prosecutor and his investigator did not create a conflict even though the chief investigator and victim were dating while the case was being investigated and prosecuted. *See id.* Not only did that relationship present "no evidence of any conflict of interest," the court refused to "presume or find the appearance of such conflict solely because an investigator who works for the district attorney has a close personal relationship with the victim." *See id.*

Likewise, the Johnson County District Attorney's Office in Kansas did not have a conflict of interest that required its disqualification from prosecuting a defendant for making a criminal threat, even though the defendant threatened to blow up the very courthouse that also housed the district attorney's office. *State v. Cope*, 50 P.3d 513, 516-17 (Kan. App. 2002).

If the circumstances in the above cases were not sufficient to create a conflict of interest, then the far less significant relationships here do not create a conflict, especially where there is no evidence that the attendees at issue are necessary witnesses. Thus, even if section 77-68-304 could apply here and a threshold showing of a conflict could allow this Court—contrary to the statute—to allow Defendant to substitute the Attorney General for the Utah County Attorney's Office, Defendant has not made that threshold showing.

III. Alternatively, the Court should deny the motion as untimely.

This Court should not allow the defense to continue to delay the evidentiary hearing on Defendant's disqualification motion by springing issues on the Court and the prosecution at the last minute without a sufficient opportunity to respond, analyze, and rule on the issue. Despite knowing of the potential conflict issue since October 1, 2025, and despite receiving the written opposition to the Motion to Disqualify from the Utah County Attorney's Office on January 5, 2026, Defendant waited until the January 16, 2026, evidentiary hearing on the motion had already begun to *orally* raise an issue about the Utah County Attorney's Office litigating the motion to disqualify. *See* Jan. 16, 2026 Tr. at 10:10–17:4 (Dkt. 332). The Court correctly questioned why defense counsel failed to file a motion raising the issue before the hearing. *See id.* at 17:5-14.

Then, even after hearing the testimony at the severely truncated evidentiary hearing on January 16, 2026, defense counsel waited until the afternoon of January 30, 2026—the Friday before the evidentiary hearing was scheduled to continue on Tuesday, February 3, 2026—to file this motion to refer the disqualification motion to the Attorney General and continue the evidentiary hearing.

The Court has now scheduled two full afternoons to take evidence on the motion to disqualify, and witnesses have been subpoenaed to attend those hearings. Yet the Court has not even heard the full direct examination of the first witness. And Defendant is asking to cancel Tuesday's hearing based on a motion filed just the Friday afternoon before. The Court should therefore deny Defendant's motion on the grounds that it is untimely because Defendant refuses to present it in a way that allows for full consideration. *See State v. Gonzalez*, 2015 UT 10, ¶¶ 18-50, 345 P.3d 1168 (affirming trial court's denial of motion as untimely given court's broad discretion to manage its docket and where defendant had ample time to file the motion). The court should not reward defense counsel's delay and gamesmanship.[1]

Contrary to Defendant's suggestion, his "footnoted expression of *concern*," in his partial reply supporting his motion to disqualify was wholly inadequate to constitute a motion, or to alert the prosecution or this Court of the issue he sprang on everyone at the January 16th hearing, as Defendant admits. Mot. at 3 (emphasis added). Defendant's footnote merely stated his position that the proffers from the County Attorney and Deputy County Attorney in the opposition to the motion to disqualify were insufficient, and that

[1] "Delay is not an uncommon defense tactic. As the time between the commission of the crime and trial lengthens, witnesses may become unavailable or their memories may fade. If the witnesses support the prosecution, its case will be weakened, sometimes seriously so." *Barker v. Wingo*, 407 U.S. 514, 521, 92 S. Ct. 2182, 2187 (1972). Moreover, motions to disqualify counsel "are often simply 'common tools of the litigation process, … used … for purely strategic purposes.'" *Lumbard v. Maglia, Inc.*, 621 F. Supp. 1529, 1539 (S.D.N.Y. 1985). Accordingly, "motions to disqualify 'should be reviewed with extreme caution for they can be misused as a technique of harassment.'" *Chapman Engineers v. Natural Gas Sales Co.*, 766 F. Supp. 949, 954 (D. Kan. 1991).

their testimony was necessary for this Court to rule on the motion. The footnote was not sufficient to put either the Court or the State on notice that Defendant was moving for an order to strike the State's opposition, continue the evidentiary hearing, and appoint the Attorney General's Office to represent the State on the Motion to Disqualify.[2]

Given Defendant's refusal to raise this issue in a manner that allows both the State and the Court a fair opportunity to address it without hijacking a scheduled evidentiary hearing, the Court should deny the motion as untimely. *See Gonzalez*, 2015 UT 10, ¶¶ 18-50.

CONCLUSION

For the foregoing reasons, the Court should deny Defendant's Renewed Request to Refer the motion to Disqualify to the Attorney General as either untimely, or on its merits.

Dated February 2, 2026.

Utah County Attorney's Office

s/ Christopher D. Ballard
Christopher D. Ballard
Deputy Utah County Attorneys

Counsel for Plaintiff

[2] Citing recent statements from Senator Mike Lee, Defendant proclaims, without quoting any specific words or citing any source whatsoever, that the Utah County Attorney has made "similar public pronouncements even before a suspect in the murder of Mr. Kirk had been identified." Mot. at 3 n.1. The County Attorney made no such "similar public pronouncements."

CERTIFICATE OF SERVICE

I certify that on February 2, 2026, I filed the foregoing through the court's electronic filing system, which served a copy on all counsel of record.

s/ Christopher D. Ballard
Christopher D. Ballard