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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF ADA**

BRYAN KOHBERGER,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No.: CV01-26-15094

**PETITIONER'S TIMELY OBJECTION
TO AUGUST 26, 2026, SCHEDULING
ORDER AND MEMORANDUM IN
SUPPORT OF MOTION TO EXTEND
TIME TO FILE AMENDED PETITION
AND TO HOLD RESPONDENT'S
MOTION TO DISMISS IN ABEYANCE**

COMES NOW Petitioner Bryan C. Kohberger ("Kohberger"), by and through undersigned counsel, Magyar, Rauch & Associates, PLLC, and respectfully objects to the amendment deadline contained in the Court's August 26, 2026, Order Governing Proceedings and Setting Hearings and moves to extend the time for filing an Amended Petition and to hold Respondent's August 25, 2026, Motion to Dismiss, together with Petitioner's response deadline, in abeyance.

The requested relief is authorized by Idaho Code section 19-4906(a), I.R.C.P. 2.2(b), I.R.C.P. 15(a), and the Court's August 26 Order, which expressly permits either party to object to the schedule within fourteen (14) days and provides that, upon objection, the Court will set the matter for hearing.

Petitioner does not object to the Court establishing an orderly and efficient schedule for this proceeding. Nor does Petitioner seek an indefinite period in which to investigate potential

claims. The objection is considerably narrower.

The August 26 Order requires the filing of any Amended Petition to be done by November 13, 2026. More significantly, the Order provides that an amended petition supersedes the prior petition in full, prohibits incorporation by reference, and expressly provides that any claim not restated in the amended pleading is waived.

At the same time, the Court's schedule permits Petitioner's expert investigation to continue until at least February 1, 2027, and permits discovery to continue until May 7, 2027. The practical consequence is that newly appointed post-conviction counsel must finally identify, investigate, factually support, plead, and preserve every claim by November 13, 2026, or irrevocably waive it, months before the Court's own deadlines contemplate completion of expert work and discovery that may be necessary to identify and substantiate those claims.

That sequencing creates an unnecessary risk of forfeiture before counsel can reasonably complete the investigation the post-conviction process requires.

Petitioner therefore respectfully asks the Court to modify the November 13, 2026, deadline, hold Respondent's pending Motion to Dismiss in abeyance, and conduct a scheduling hearing, with enough time to evaluate the file, so that an informed amendment deadline can be established after counsel has had a meaningful opportunity to assess the extraordinary underlying record.

CONCISE STATEMENT OF FACTS RELEVANT TO MOTION

1. Kohberger filed his initial Petition for Post-Conviction Relief on July 27, 2026, asserting several claims, including claims alleging ineffective assistance of trial counsel.
2. On August 3, 2026, undersigned counsel was appointed to represent Kohberger in this proceeding.
3. On August 13, 2026, undersigned counsel contacted counsel for Respondent, Mr.

Keith Scholl of the Latah County Prosecutor's Office, regarding Kohberger's intention to amend the Petition and the need for adequate time to investigate potential claims before filing an amended petition.

4. Respondent advised that it did not oppose allowing Kohberger additional time to prepare and file an amended petition and requested additional time to file its answer after the Amended Petition was filed. The parties therefore understood that Petitioner would receive a reasonable period to investigate and amend, after which Respondent would receive additional time to respond.

5. On August 25, 2026, Respondent memorialized that understanding in writing, acknowledging that undersigned counsel had advised he would request additional time and expressly stating that Respondent remained willing to discuss an extension so counsel could "explore the propriety of an Amended Petition" and address proposed filing deadlines with the Court. *See Exhibit 1.*

6. On August 25, 2026, Respondent filed its Answer and a Motion for an Order Dismissing Kohberger's Petition for Post-Conviction Relief.

7. On August 26, 2026, the Court entered its Order Governing Proceedings and Setting Hearings.

8. The Order requires amendment of the pleadings to be completed by November 13, 2026. The Order further provides that an amended pleading supersedes the prior pleading in full, that the prior pleading may not be incorporated by reference, and that any claim contained in the original Petition but not fully restated in the Amended Petition will be deemed waived.

9. The same Order establishes February 1, 2027, as Petitioner's deadline to disclose witnesses, including experts and their opinions and reports; March 1, 2027, as Respondent's

rebuttal-expert deadline; and May 7, 2027, as the deadline for completion of discovery.

10. If an evidentiary hearing is granted, the Court has conditionally scheduled that hearing for June 17, 2027, with a status conference on June 3, 2027.

11. The underlying criminal record is extraordinary in size. The defense file and discovery include approximately sixty-eight (68) terabytes of material. To demonstrate the size of the discovery, if it were all pdf documents, it would consist of approximately 1,020,000,000 pages. Based on the federal CJA standard of one (1) minute per page, it would take a single person 1,939 years reading nonstop to complete the review of the discovery of that size.

12. Current PCR counsel had no responsibility for assembling or reviewing that record during the underlying prosecution and was appointed only on August 3, 2026.

13. Counsel does not contend that every item of discovery must be reviewed before an amended petition can be filed. Counsel must, however, conduct a reasonable, claim-driven investigation sufficient to identify potentially viable constitutional claims, determine their factual basis, evaluate what admissible evidence supports them, consult with Kohberger and former counsel where appropriate, and obtain expert assistance where necessary.

14. The Court's November 13 deadline would require that process to culminate in a final claim-waiver pleading before completion of the expert investigation and discovery expressly contemplated by the Court's own scheduling order.

ARGUMENT

I. THE COURT EXPRESSLY AUTHORIZED OBJECTIONS TO THE SCHEDULING ORDER, AND GOOD CAUSE EXISTS TO MODIFY THE NOVEMBER 13 AMENDED PETITION DEADLINE.

Idaho Code section 19-4906(a) expressly provides that "[t]he court may make appropriate orders for amendment of the application or any pleading or motion, for filing further pleadings or motions, or for extending the time of the filing of any pleading."

Post-conviction proceedings are civil in nature and are generally governed by the Idaho Rules of Civil Procedure. *Creech v. State*, 173 Idaho 470, 474, 543 P.3d 500, 504 (2024); *see also* I.C.R. 39(b).

I.R.C.P. 2.2(b)(1)(A) permits enlargement of a specified period for good cause when relief is requested before the applicable period expires. I.R.C.P. 15(a)(2) likewise directs that leave to amend should be freely given when justice so requires. Idaho follows the traditional liberal policy favoring amendment of pleadings. *Davis v. Blast Props. (In re Certification of Question of Law)*, 174 Idaho 37, 40, 551 P.3d 706, 709 (2024).

Here, there is an additional basis for relief: the August 26 Order itself expressly authorizes either party to object to the schedule within fourteen days and directs that a hearing be set upon receipt of such an objection.

This objection is timely. The question is therefore not whether the Court possesses authority to establish deadlines. It plainly does. The question is whether good cause exists to modify a particular deadline now that its relationship to the remainder of the Court's schedule is apparent. It does.

II. THE PRESENT SCHEDULE REQUIRES PETITIONER TO IRREVOCABLY WAIVE UNPLEADED CLAIMS BEFORE THE COURT'S OWN DEADLINES FOR EXPERT INVESTIGATION AND DISCOVERY.

The principal concern is not simply that November 13 arrives quickly. It is what November 13 means under the Order. The Court has expressly provided that the Amended Petition will replace the original Petition in its entirety and that any existing claim not fully restated will be waived. Thus, November 13, 2026, operates as a final claim-preservation deadline.

Yet Petitioner's expert reports are not due until February 1, 2027, and discovery need not be completed until May 7, 2027.

Those provisions create a practical tension. Discovery exists, in significant part, to permit

parties to obtain facts relevant to claims and defenses. Expert investigation exists because certain potential claims cannot responsibly be evaluated without specialized knowledge. Yet under the present schedule, information discovered through those processes may arrive only after Petitioner has been required finally to identify every claim or waive it.

That concern is particularly acute in post-conviction litigation. Idaho's post-conviction pleading and evidentiary standards require considerably more than conclusory allegations. A petitioner must ultimately present admissible evidence in conjunction with the filing of their petition sufficient to establish a prima facie case and survive summary dismissal. *See Bias v. State*, 159 Idaho 696, 701, 365 P.3d 1050, 1055 (Ct. App. 2015); *see also Bell v. State*, ___ Idaho ___, 572 P.3d 209 (2025).

Respondent's own Motion to Dismiss underscores this sequencing problem. Respondent argues that the present Petition is subject to dismissal because its constitutional allegations are "bare, conclusory, and unsupported by admissible evidence," and because Petitioner has not yet made the factual showing necessary to create a genuine issue for relief. *See* Respondent's Motion to Dismiss at p. 2.

The State thus invokes the very evidentiary-development requirement that makes adequate investigation necessary. The tension is apparent: Petitioner is being required to finally preserve every claim before the Court's discovery and expert deadlines have run, while Respondent simultaneously seeks dismissal because the present claims are not yet supported by sufficiently developed admissible evidence. A deadline that forces counsel to plead first and investigate later creates precisely the problem those requirements counsel against.

Petitioner does not seek permission to file speculative claims merely to preserve them. To the contrary, he seeks sufficient time to determine which claims can responsibly be alleged and

supported. The Court's own schedule demonstrates that meaningful investigation is expected to continue well beyond November 13. The amendment schedule should accommodate that reality rather than convert November 13 into an irrevocable forfeiture date.

III. NEWLY APPOINTED COUNSEL CANNOT RESPONSIBLY COMPLETE THE NECESSARY CLAIM-DRIVEN INVESTIGATION OF THIS RECORD WITHIN THE PRESENT PERIOD.

Current counsel was appointed August 3, 2026. At the time Kohberger filed his initial Petition, current PCR counsel had not obtained or meaningfully reviewed the defense file and underlying criminal materials. Counsel must now consult with Kohberger, review the claims already asserted, obtain and assess former counsel's file, examine the portions of the criminal record relevant to potential post-conviction claims, identify potentially viable constitutional issues, determine what admissible evidence supports those issues, and consult appropriate experts where necessary.

The underlying record includes approximately sixty-eight (68) terabytes of material. The review must be claim-driven. A claim-driven investigation requires counsel first to identify potential issues, locate the record relevant to them, determine what was known or reasonably available to trial counsel, investigate disputed facts, evaluate prejudice, obtain necessary expert assistance, and determine whether admissible evidence exists sufficient to responsibly plead the claim.

That investigation has only just begun. The concern is magnified by the nature of ineffective-assistance claims. Counsel cannot responsibly evaluate such claims by identifying an unfavorable event in the criminal record and attaching a constitutional label to it. The investigation necessarily includes determining what trial counsel knew, why counsel acted or failed to act, what additional investigation would have revealed, whether a different course was reasonably available, and whether any deficiency was prejudicial.

Requiring counsel to reach final waiver decisions on those matters approximately three months after appointment, while discovery and expert investigation remain scheduled for months thereafter, creates an avoidable risk that potentially meritorious claims will either be prematurely pleaded without adequate support or permanently forfeited before they can reasonably be investigated. Neither result serves the parties or the Court.

IV. PETITIONER SEEKS AN ORDERLY PROCESS, NOT AN OPEN-ENDED DELAY.

Petitioner does not request that the Court leave amendment perpetually open. Nor does Petitioner object to the Court's desire to move this case forward efficiently. The preferable course is to use the mechanism the Court has already provided. To conduct a prompt hearing on this scheduling objection and establish an amendment procedure that accounts for the actual progress of counsel's investigation.

Petitioner respectfully proposes that the November 13 deadline be vacated as a final waiver deadline pending that hearing. At the hearing, counsel can advise the Court regarding the progress of obtaining and reviewing the defense file, consultation with Kohberger and former counsel, the categories of claim-driven investigation then underway, and the anticipated need for expert assistance, without revealing privileged communications or work product.

The Court can then establish a realistic amendment deadline based upon actual information rather than an estimate made approximately three weeks after counsel's appointment. Alternatively, the Court could establish an initial amendment deadline while expressly preserving Petitioner's ability to seek further amendment upon good cause for claims or factual bases reasonably developed through subsequently authorized discovery or expert investigation.

Either approach preserves meaningful judicial control over the schedule while eliminating the risk that claims will be forfeited before the processes contemplated by the Court's own Order

have had an opportunity to develop them

V. RESPONDENT WILL SUFFER NO UNFAIR PREJUDICE FROM A REASONABLE EXTENSION.

This proceeding remains at an early stage. Current counsel was appointed less than one month ago when the August 26, 2026 Order was entered. Respondent previously advised Petitioner that it did not oppose allowing additional time to investigate and amend and requested corresponding additional time in which to answer.

The absence of prejudice is confirmed by Respondent's own written communication. In an August 25, 2026, letter, Respondent's counsel acknowledged the parties' August 13, 2026, discussion concerning additional time, explained that the Answer was filed because Respondent's own response deadline was approaching, and expressly stated that Respondent remained willing to discuss an extension so appointed counsel could explore an Amended Petition and address filing deadlines with the Court. *See Exhibit 1*. Respondent therefore cannot reasonably claim surprise or unfair prejudice from the relief requested here.

The August 26, 2026 Order itself now contemplates that Respondent's Answer will be due fourteen days after the filing of an amended petition, or after expiration of the amendment deadline if no amendment is filed.

Thus, modification of the amendment deadline does not deprive Respondent of an established adjudicative right. Respondent can answer or otherwise respond once the operative pleading has been established.

A reasonable period of investigation should also narrow rather than expand the litigation. It will permit counsel to omit theories that cannot be substantiated, consolidate related allegations, support viable claims with appropriate evidence, and present the Court with a single organized operative petition. That is more efficient than forcing a premature amendment followed by

repeated requests for leave to amend as additional discovery and expert investigation are completed.

VI. RESPONDENT'S MOTION TO DISMISS SHOULD BE HELD IN ABEYANCE UNTIL THE OPERATIVE PETITION IS ESTABLISHED.

Respondent's August 25, 2026, Motion to Dismiss is directed at the original Petition. Petitioner does not object to Respondent's ability to seek dismissal of the operative pleading at the appropriate time. The present issue is sequencing. Respondent's Motion alternatively seeks summary disposition under Idaho Code section 19-4906(c) and itself requests that a briefing and oral-argument schedule be established if the Court proceeds under that subsection. There is therefore no procedural need to adjudicate the current Motion before the amendment issue is resolved and the operative Petition is established.

The Court's August 26, 2026 Order expressly contemplates the filing of an Amended Petition and provides that such an amendment will supersede and replace the original pleading in full. Adjudicating a dispositive motion directed at a pleading the Court has already authorized Petitioner to replace risks unnecessary expenditure of judicial and party resources.

It may also require Petitioner to simultaneously defend allegations current counsel is actively investigating, revising, supplementing, or determining should not appear in the operative Petition.

The more orderly procedure is to hold the pending Motion to Dismiss, and Petitioner's response deadline, in abeyance until the amendment schedule is resolved and the operative petition has been filed. Holding the Motion in abeyance also avoids requiring Petitioner to divert limited early investigative time into defending a pleading that the Court has expressly authorized him to replace, while preserving Respondent's ability to renew or reframe its dismissal arguments against the Amended Petition. Respondent may then direct any appropriate responsive motion to the

pleading that actually governs the case.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court:

1. Sustain Petitioner's timely objection to the November 13, 2026, Amended Petition deadline to the extent that deadline operates as a final waiver of claims before completion of the investigation contemplated by the Court's schedule;
2. Vacate or extend the November 13, 2026, deadline pending a further scheduling hearing from this court.
3. Set a prompt hearing or status conference at which counsel may report on the progress of the claim-driven investigation, and the Court may establish an informed amendment schedule;
4. Alternatively, establish an amendment procedure that permits later amendment upon a showing of good cause for claims or factual bases reasonably developed through subsequently authorized discovery or expert investigation;
5. Hold Respondent's August 25, 2026, Motion to Dismiss, together with Petitioner's deadline to respond to that Motion, in abeyance until the operative Amended Petition is filed; and
6. Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

DATED this 26th day of August 2026.

MAGYAR, RAUCH & ASSOCIATES, PLLC

/s/Gregory Rauch
Gregory Rauch, ISB #7389
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on 27th Day of August 2026 I caused a true and correct copy of the foregoing documents to be served on the following in the manner indicated below:

Prosecutor:

Latah County Prosecutor's Office
paservice@latahcountyid.gov

☐ US Mail
☐ Facsimile
☐ Hand Delivery
☐ Email
☒ eService – iCourt

s/Matt Ruck

Matt Ruck

Paralegal to Mr. Rauch

EXHIBIT 1

August 25, 2026, Letter from Keith P. Scholl

OFFICE OF THE PROSECUTING ATTORNEY

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August 25, 2026

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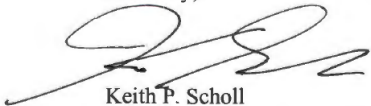
RE: *Bryan Christopher Kohberger v. State of Idaho*
Ada County Case No. CV01-26-10594

Dear Mr. Rauch,

Per our previous conversation on August 13, 2026, I understood that you would be requesting additional time from the court to file an amended petition in this matter either by motion or stipulation. To date, I have not seen any filings. Because the 30-day deadline to file an Answer to the *Petitioner's Petition and Affidavit Post-Conviction Relief* is quickly approaching, and I did not hear back from you, I felt it prudent to file our Answer at this time. Additionally, I have filed a Motion to Dismiss the petition. Copies of both are attached.

Please note that I am still willing to discuss the possibility of an extension so that you can explore the propriety of an Amended Petition on behalf of your client, and we can address any proposed filing deadlines with the court at a scheduling conference should one be set.

Sincerely,



Keith P. Scholl
Deputy Prosecuting Attorney

KPS/kw
Enclosure

"Truth, Justice and the American Way of Life"