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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 C. KOHBERGER,
Petitioner,

V.

STATE OF IDAHO,
Respondent.

Case No. CV01-26-15094

RESPONSE TO PETITIONER'S OBJECTION
TO SCHEDULING ORDER AND MOTION
TO HOLD RESPONDENT'S MOTION TO
DISMISS IN ABEYANCE

COMES NOW the State of Idaho, Respondent in the above-titled action, by and through the Latah County Prosecuting Attorney's Office, and respectfully submits the following response to the Court's August 26, 2026, "Order Governing Proceedings and Setting Hearings," and to the "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" filed herein on August 27, 2026.

1. Respondent submits that the approximately eleven-week period of time for the Petitioner to file an amended petition appears reasonable. This is a post-conviction relief proceeding, and the Petitioner waived direct appeal in the underlying criminal case (*State of Idaho v. Bryan C. Kohberger*, Ada County Case CR01-24-31665), so the potential issues to be

raised are necessarily substantially limited compared to the myriad issues litigated during the course of the underlying criminal case. Respondent acknowledges it has represented to Petitioner's counsel that the Respondent is not opposed to a reasonable extension of time for filing of the Amended Petition. The referenced conversations between counsel for the parties occurred prior to the Court's August 26, 2026, "Order Governing Proceedings and Setting Hearing."

Petitioner's objection appears to be a request for additional time to search for potential grievances that can be pled. Unfortunately for Petitioner, that is not how discovery in post-conviction proceedings works. "The UPCPA provides a forum for known grievances, not an opportunity to research for grievances." *State v. Abdullah*, 158 Idaho 386, 482 (2014) (citing to *Murphy v. State*, 143 Idaho 139, 148 (Ct. App. 2006)). A petitioner must earn discovery by showing "it is necessary to protect his substantial rights." *Id.* at 482 (citing to *Hall v. State*, 151 Idaho 42, 45 (2011)). This requires the petitioner to "identify the specific subject matter where discovery is requested and why discovery as to those matters is necessary to his or her application." *Id.*

In light of the discovery restrictions in post-conviction proceedings, Petitioner's complaint of a "sequencing problem" rings hollow. (Obj. at pp.5-7.) The amended petition deadline should precede any discovery precisely because this is his forum to litigate "known grievances, not an opportunity to research for grievances." *Abdullah*, 158 Idaho at 482. Petitioner's failure to "identify the specific subject matter where discovery is requested and why discovery as to those matters is necessary to his . . . application" means he is not entitled to discovery, much less an extension of time to engage in discovery. *Id.* The timeline in this Court's scheduling order is reasonable under the UPCPA.

In the State's view, the only change needed in this Court's scheduling order is additional language making clear Petitioner must comply with the post-conviction rules on discovery. "The provisions for discovery in the Idaho Rules of Civil Procedure do not apply [to Post-Conviction Proceedings] except as and only to the extent ordered by the trial court." I.C.R. 39(b). "The decision to authorize discovery during post-conviction relief is a matter left to the sound discretion of the district court . . . [u]nless discovery is necessary to protect an applicant's substantial rights, the district court is not required to order discovery." *State v. Raudebaugh*, 135 Idaho 602, 605 (2001). These limits exist "so that the prosecution will not be inundated with discovery requests from applicants who . . . are simply on fishing expeditions." *Aeschliman v. State*, 132 Idaho 397, 401 (Ct. App. 1999). Thus, "[i]n order to be granted discovery, a post-conviction applicant must identify the type of information that he or she may obtain through discovery that could affect the disposition of his or her application for post-conviction relief." *Id.* The State requests the Court amend the scheduling order to clarify that Petitioner must make this showing before he is allowed discovery.

2. Petitioner also appears to be asserting that he needs more time for expert investigation. In the first instance, there is no reason that this could not be done without engaging in formal discovery. Secondly, using the same analysis as above, if Petitioner cannot specify why he needs more time for his experts to investigate, he should not get more time.

3. As to Petitioner's "Motion to Hold Respondent's Motion to Dismiss in Abeyance," the Respondent has no objection. This Court's August 26, 2026, "Order Governing Proceedings and Setting Hearing" makes it clear that any Amended Petition for Post-Conviction Relief will necessarily supersede the initial Petition filed pro se by Petitioner. If the Petitioner elects to not file an Amended Petition, the Court could then address the Respondent's August 25,

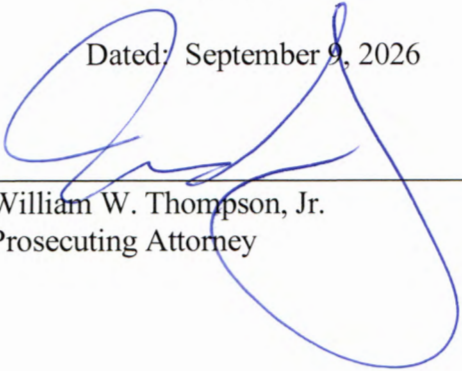
2026, “Answer to Petition for Post Conviction Relief” and “Respondent’s Motion for Order Dismissing Petition for Post Conviction Relief.”

4. In response to the Court’s August 26, 2026, “Order Governing Proceedings and Setting Hearing,” the Respondent respectfully requests that the Court extend the period of time for the Respondent to answer any Amended Petition to a minimum of thirty (30) days from filing and service of the Amended Petition. This would be consistent with Idaho Code 19-4906(a) which contemplates a presumptive period of thirty (30) days for Respondent to answer post-conviction petitions. If, upon receipt and review of any Amended Petition, the Respondent believes that additional time would be necessary beyond thirty (30) days, it will promptly notify the Court and Counsel.

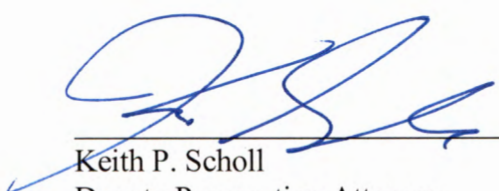
Based on the above, the Respondent respectfully prays that the Court amend the “Order Governing Proceedings and Setting Hearings” as follows:

- (b) The State’s answer shall be due within *thirty (30)* days of the filing of an amended petition or, if none is filed, the deadline for filing the amended petition.
- (c) *If any discovery is authorized by the Court subject to the provisions of I.C.R. 39(b), any authorized discovery requests shall be completed by May 7, 2027.*

Dated: September 9, 2026



William W. Thompson, Jr.
Prosecuting Attorney



Keith P. Scholl
Deputy Prosecuting Attorney

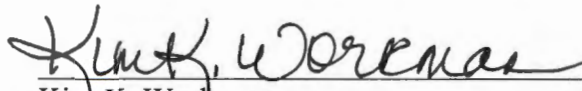
CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the forgoing document were served on the following in the manner indicated below:

Greg Rauch
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326 E. Sixth Street
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- ☐ U.S. Mail
- ☐ email
- ☐ Fax
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Dated this 9th day of September, 2026.



Kim K. Workman