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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

OBJECTION TO PETITIONER'S MOTION
TO MAINTAIN EX PARTE STATUS AND
TO SEAL CONFIDENTIAL SUPPLEMENT
TO MOTION TO DISQUALIFY

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 objection to *Petitioner's Motion to Maintain Ex Parte Status and to Seal Confidential Supplement to Motion to Disqualify* filed in this matter on August 28, 2026. The State requests that it be provided the *Ex Parte Supplement to Motion to Continue* and any appended materials filed in CR01-24-31665 on May 20, 2025.

With respect to the *Sealed Supplemental Memorandum* that has been filed in this case, the Court has already ordered the Petitioner to provide the *Sealed Supplemental Memorandum*, and the Petitioner has complied with the Court's order. However, the State objects to the

Petitioner's *Motion to Maintain Ex Parte Status* relating to the *Ex Parte Supplement to Motion to Continue* filed in CR01-24-31665 on May 20, 2025.

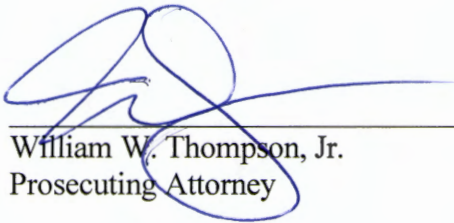
As the Court has cited in its *Order Regarding: Sealed Supplemental Memorandum*, "by asserting an ineffective assistance claim of trial counsel, Petitioner has waived any privilege over his communications with trial counsel relevant to the conduct placed at issue." *See Order Re: Sealed Supplemental Memorandum at n.1* (citations omitted). Petitioner put the content of the ex parte filing in the criminal case at issue by expressly relying on it to support his motion to disqualify the judge presiding over this post-conviction matter. *See Sealed Supplemental Memorandum in Support of Motion to Disqualify Judge at 1.*

In order for the State to make appropriate responsive briefing to *Petitioner's Motion to Disqualify Judge for Cause Pursuant to I.R.C.P. Rule 40(b) or in the Alternative, Request for Voluntary Disqualification Pursuant to Rule 40(c)*, the State should be afforded the same opportunity to review the information provided to the court, not just the characterization of that material from Petitioner's post-conviction counsel. Without this information, the State is at a significant disadvantage to respond properly, and must rely on the characterizations of the material by Petitioner's counsel in the *Sealed Supplemental Memorandum* rather than its own independent review of the material. In further support of any waived privilege with respect to the ex parte material requested, the Petitioner's own *Affidavit of Facts in Support of Post Conviction* at 1, filed on July 27, 2026, states, "...during attorney-client discussions, most of which included members of Bryan C. Kohberger's immediate family, [P]etitioner was convinced to..." indicating third parties were present during what was characterized as attorney-client communications. Based on this assertion, it appears attorney-client privilege has already been waived. *Perry v. State*, 4 Idaho 224; 38 P. 655, 661 (Idaho 1894) (holding that while confidential

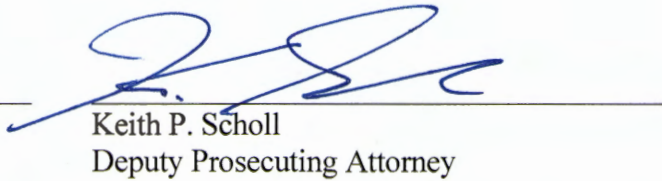
communications between attorney and client are privileged, and neither can be allowed to reveal them, where such communications are overheard by a third person, either by accident or design, such person can testify to them). Additionally, no exceptions allowing Petitioner or a member of Petitioner's immediate family to claim attorney-client privilege appear to apply. *See* I.R.E 502(c).

For the reasons stated above, Respondent respectfully requests that a copy of the *Ex Parte Supplement to Motion to Continue* filed in *State of Idaho v. Bryan C. Kohberger*, Ada County Case CR01-24-31665, filed on May 20, 2025, and any appended materials be immediately provided to the State.

Dated: September 15, 2026



William W. Thompson, Jr.
Prosecuting Attorney



Keith P. Scholl
Deputy Prosecuting Attorney

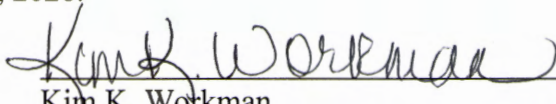
CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the OBJECTION TO PETITIONER'S MOTION TO MAINTAIN EX PARTE STATUS AND TO SEAL CONFIDENTIAL SUPPLEMENT TO MOTION TO DISQUALIFY was served on the following in the manner indicated below:

Gregory R. Rauch
Attorney at Law
326 E. Sixth Street
Moscow, ID 83843

- ☐ U.S. Mail
- ☐ email
- ☐ Fax
- ☐ Hand Delivery
- ☒ iCourt Service

Dated this 15th day of September, 2026.



Kim K. Workman