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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

**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)**

COMES NOW Petitioner Bryan C. Kohberger (“Kohberger”), by and through undersigned counsel, and respectfully submits this Memorandum in Support of his Motion to Disqualify the Honorable Steven Hippler for Cause pursuant to IRCP 40(b)(1)(D), or, alternatively, requesting that the Court exercise its discretion to voluntarily disqualify pursuant to IRCP 40(c).

INTRODUCTION

This motion does not rest upon one adverse ruling, one harsh statement, or the mere fact that the judge who presided over Bryan Kohberger’s criminal case has been assigned to his post-conviction proceeding. It rests upon the extraordinary convergence of all of them.

Before Kohberger ever pleaded guilty, the constitutional adequacy of his defense team’s preparation was not merely foreseeable. It was expressly, and uniquely litigated.

Trial counsel told this Court that necessary discovery review and investigation could not be completed under the existing capital-trial schedule. Counsel represented that necessary investigation remained unfinished, that investigation into potential alternative perpetrators remained incomplete, and that unresolved “red flags”—impacting Kohberger’s ability to defend himself—required further investigation. Counsel warned that proceeding under those circumstances threatened Kohberger’s constitutional right to effective representation.

At the June 18 hearing, counsel made the problem plainer still: the defense was not prepared to go to trial; all discovery had not been reviewed; significant matters remained unknown; and the

gap between identified “red flags” and completed investigation was precisely where ineffective assistance could occur. *See* **Exhibit 1** at 5:25—6:3; 7:17-22; 8:24—9:23¹.

Judge Hippler rejected those concerns. And he did considerably more than deny a scheduling request. In the public June 26 Order, Judge Hippler affirmatively judged the legitimacy of counsel’s asserted preparedness problem. He characterized counsel’s discovery complaints as “ultimately empty,” concluded that counsel was invoking the extraordinary discovery volume as a tactic for delay rather than because of a legitimate threat to Kohberger’s substantial rights, and described the issue as a “tactical sword” untethered to a seriously legitimate concern about counsel’s ability to be prepared. The Court separately concluded that the defense investigation already “readily appears to satisfy” the professional standards relied upon by the defense and ultimately declared that, after two and one-half years, the defense team “must be satisfied with what they have.”

The Court therefore denied additional time. The State continued to seek death. The trial remained on course. Six days later, there was no trial. Kohberger pleaded guilty. That chronology may or may not establish, by itself, that his plea was constitutionally defective. That question remains to be investigated and adjudicated. But neither can the chronology be sanitized nor ignored.

The Court did not create whatever shortcomings may have existed in trial counsel’s preparation before June 26. It did, however, make the judicial decision that converted those asserted shortcomings from a problem for which counsel was seeking additional time into conditions under which Kohberger would be required to confront an impending capital trial. The June 26 Order thereby became more than procedural history. It became an operative event in the factual sequence surrounding the challenged plea.

The PCR court may now have to determine whether counsel actually was adequately prepared; what discovery remained unreviewed; what investigation remained unfinished; whether counsel possessed sufficient information to intelligently advise Kohberger; what counsel told him about her preparedness and the evidence; whether counsel’s advice was constitutionally adequate; and whether the imminent prospect of proceeding to a *death-penalty* trial under those circumstances materially contributed to the decision to plead guilty.

And there is another unusual wrinkle. Only six days after Judge Hippler found trial counsel’s preparation concerns essentially empty and tactical, the Court asked Anne Taylor during the plea colloquy: “Have you been able to do all the discovery you feel necessary?”

¹ All citations to bold font “Exhibits” reference and refer to the Declaration of Gregory Rauch, filed alongside and in support of this Motion.

Taylor answered: “Yes, Your Honor.” See **Exhibit 2** at 10:24—11:1.

The PCR may now require a factfinder to reconcile those representations with what counsel had said only days earlier.

The same is true of Kohberger. At the plea hearing, Kohberger told Judge Hippler that he had sufficient time to decide, was pleading voluntarily, was satisfied with counsel’s advice, believed pleading guilty was in his best interest, believed counsel had done everything he requested, and was satisfied with the representation. Judge Hippler found the plea freely, voluntarily, and intelligently made. *Id.* at 33:18-25.

Standing alone, Idaho precedent permits a judge to revisit such prior findings in post-conviction proceedings. But the record did not end there.

Three weeks later, at sentencing, Judge Hippler publicly questioned whether Kohberger was even “capable of speaking the truth” and predicted that any explanation from him would consist of “self-serving and aggrandizing untruthful bits.” *Id.* at 110:2-10.

Those statements are fundamentally different from believing Kohberger committed terrible crimes or deserved severe punishment. They are forward-looking judgments about his credibility. And credibility may now be at the center of this proceeding.

The same judge who asked Kohberger questions under oath on July 2, who may now be asked whether Kohberger’s answers should be accepted at face value, thereafter, publicly questioned whether Kohberger is capable of speaking truthfully at all. That is but one of the problems.

It exists alongside the Court’s prior categorical findings concerning counsel’s preparation. It exists alongside the Court’s own role in maintaining the imminent capital-trial setting. And it exists alongside other intensely personal sentencing statements referring to Kohberger as a “faceless coward,” a person who “slithered” into the victims’ home, the “worst of the worst,” and someone in whom the Court could identify nothing remaining that was “good or intrinsically human.” *Id.* at 106:25; 107:7-8; 111:14-19.

Kohberger recognizes that Idaho law does not automatically disqualify a sentencing judge because that judge formed strong views about a defendant. *State v. Beam*, 115 Idaho 208, 766 P.2d 678 (1988). This motion does not ask the Court to disregard *Beam*. It asks the Court to recognize that this case presents far more than *Beam*.

The question is not merely whether Judge Hippler has formed strong views about Kohberger. The question is whether an informed and reasonable observer could question the impartiality of having the same judge:

(1) adjudicate whether trial counsel’s preparation concerns were genuine after previously

declaring those concerns essentially empty and tactical;

- (2) adjudicate whether the capital-trial predicament materially contributed to the challenged plea after the Court's own discretionary ruling preserved that predicament;
- (3) resolve factual conflicts between trial counsel's pre-plea representations and her representations six days later;
- (4) determine whether Kohberger's plea-colloquy answers should be credited; and
- (5) determine Kohberger's credibility after publicly questioning whether he is capable of telling the truth and predicting that his future explanations would be untruthful.

Idaho law requires more than confidence in the subjective absence of bias. It protects the appearance of impartial justice. Under these exceptional circumstances, reassignment is warranted.

FACTUAL BACKGROUND

A. Trial Counsel Expressly Placed Her Ability to Prepare an Effective Capital Defense Before the Court.

On May 20, 2025, trial counsel moved to continue the capital trial. Counsel did not frame the request as one of convenience. She represented that it was "impossible" to review and integrate the necessary discovery under the existing schedule while also completing necessary investigation, including investigation into alternative perpetrators and unresolved "red flags." The motion expressly tied the requested time to the ability to mount an effective defense. *See Exhibit 3* at pp. 28-29.

The significance of those representations is important. The present ineffective-assistance issue was not invented after the guilty plea.

Before Kohberger surrendered his right to trial, the lawyers responsible for defending his life were already telling the Court that substantial work remained unfinished; including review of potentially exculpatory evidence. Counsel reinforced those representations at the June 18 hearing. Among other things, counsel stated that the defense had not reviewed everything, substantial investigation remained unfinished, significant matters remained unknown, and that Kohberger had a right to proceed with prepared counsel who had completed a full investigation. Trial counsel expressly connected the unfinished work to the risk of ineffective representation. *See Exhibit 1* at 6:6-7; 6:20—7:25; 11:10-18; *Exhibit 3* at pp. 28-29.

This was contemporaneous evidence concerning counsel's professed state of preparation in the subject criminal proceeding itself. It was not retrospective PCR advocacy.

B. A Court-Imposed Alternative-Perpetrator Deadline Passed While Counsel Maintained That the Underlying Discovery Review and Investigation Remained Incomplete.

On April 18, 2025, the Court entered its *Order Memorializing Oral Rulings on Motions in Limine*. With respect to the State’s motion concerning alternative-perpetrator evidence, the Court recognized that such offers of proof ordinarily could be made at trial but concluded that the complexity of this case warranted resolving them in advance. The Court therefore ordered the defense to present any alternative-perpetrator offer of proof no later than May 14, 2025, so the issue could be addressed at the pretrial conference.

The May 14 deadline passed. Six days later, on May 20, counsel moved to continue the capital trial and expressly advised the Court that counsel still needed time to complete “investigations relating to the merits phase—including into alternative perpetrators.” **Exhibit 3** at p. 28.

Counsel represented that review of the discovery remained incomplete and that further investigation was necessary to mount an effective defense.

The June 26 public Order itself confirms that the issue remained unresolved. The Court stated that counsel had not fully reviewed *thousands* of law-enforcement tips and that counsel maintained those tips could lead to evidence of an alternative perpetrator. The Court then observed that “[t]he deadline for presenting alternate perpetrator evidence has come and gone,” with no motion by the defense to extend it. **Exhibit 4** at p. 4.

This sequence provides a concrete illustration of the predicament trial counsel was describing. A Court-imposed deadline governing an important defense avenue had expired while counsel continued to maintain that discovery review and resulting investigation remained incomplete.

The constitutional adequacy of counsel’s handling of that deadline, whether additional investigation would have produced admissible evidence, and whether any deficiency affected Kohberger’s decision to plead are merits questions not presented by this motion.

The relevance here is narrower: Judge Hippler was not merely aware in the abstract that counsel wanted additional preparation time. He had presided over the deadlines constraining that preparation, knew that counsel maintained the underlying work remained unfinished, and thereafter relied upon the expiration of one such deadline when rejecting counsel’s request for additional time.

C. The Court Also Received Additional Information Under Seal Concerning Why Further Time Was Allegedly Necessary.

The Court additionally received an *ex parte*, sealed supplement identifying further reasons counsel asserted additional time and expert assistance were necessary. Because those matters remain

sealed, Petitioner does not disclose them in this public memorandum.² Their significance to the present motion is addressed in Petitioner’s sealed submission, filed contemporaneously with this Motion.

D. Judge Hippler Rejected the Legitimacy of the Asserted Preparation Problem in Express and Categorical Terms.

The June 26 Order did not merely conclude that counsel had failed to satisfy the legal standard for a continuance. Judge Hippler expressly found counsel’s complaints about an inability to meaningfully review discovery “entirely unconvincing.” The Court criticized counsel’s failure to obtain additional resources and specifically identified counsel’s inability to complete review of thousands of tips and security video. **Exhibit 4** at p. 3.

The Court then went substantially further. It concluded that counsel’s conduct: “belie[d] his counsel’s ongoing—and ultimately empty—discovery complaints.” *Id.* at p. 4.

The Court stated that counsel was using the volume of discovery as a tactic to delay the proceeding rather than because of a legitimate threat to Kohberger’s substantial rights. Characterizing the discovery issue as a: “tactical sword, untethered to [a] seriously legitimate concern about the ability to be prepared.” *Id.* at p. 4 fn 8.

Those are not neutral scheduling findings. They amount to an affirmative assessment of the legitimacy of counsel’s stated preparedness concerns and the Court injecting itself into Kohberger’s Constitutional right and ability to prepare a meaningful defense.

The Court similarly evaluated whether additional defense investigation was constitutionally necessary, concluded that the investigation already undertaken “readily appears to satisfy” the professional standards cited by the defense, rejected further investigation as potentially becoming a “fishing expedition,” and stated: “At some point—and particularly after two and one-half years of investigation—the defense team must be satisfied with what they have.” *Id.* at pp. 7, 13.

Thus, before the plea ever occurred, Judge Hippler had already expressed definite views concerning matters that may become central PCR factual disputes: whether the claimed preparation problem was genuine, whether the unreviewed discovery likely mattered, whether further investigation was constitutionally warranted, and whether counsel already had enough.

² Because the May 20, 2025, Ex Parte Supplement and portions of the record concerning the matters described therein remain sealed, Petitioner has intentionally omitted their substance from this publicly filed memorandum. Those facts are relevant to the appearance issue presented here and are addressed only in Petitioner’s sealed submission so that this motion does not itself disclose information previously protected by Court order.

E. The Order Preserved the Impending Capital-Trial Predicament.

The Court plainly possessed discretion to rule upon the motion for a continuance. But the consequences of exercising that discretion are relevant here. The Order did not itself complete the discovery review counsel said remained unfinished. It did not conduct the investigation counsel said remained undone. It did not answer the unresolved questions counsel said required further expert work. It did, however, eliminate the requested remedy for those asserted problems.

Before June 26, defense counsel sought an additional option: more time to complete the work counsel claimed was constitutionally necessary. After June 26, that option was gone. When a plea agreement emerged days later, Kohberger then confronted a stark choice: accept a disposition that removed the death penalty from the case or proceed toward the imminent capital trial under conditions his own lawyers had just represented were constitutionally inadequate. At that point, the capital-trial setting remained intact.

The PCR court may now be required to determine whether counsel's preparation concerns were factually well-founded and constitutionally consequential. If so, the June 26 ruling was not merely an earlier judicial opinion that the PCR judge would later reconsider; it was a judicial action that preserved the circumstances under which the challenged plea decision thereafter had to be made.

F. Six Days Later, Kohberger Pleaded Guilty.

Four days after the June 26 ruling, Kohberger signed a plea agreement. On July 2—six days after the Court denied additional preparation time—Kohberger appeared before Judge Hippler.

Judge Hippler disclosed that he had learned of the agreement only Monday afternoon and previously believed the case would proceed to trial. **Exhibit 2** at 7:1-5. Petitioner expressly acknowledges that fact. This motion does not allege that Judge Hippler negotiated, solicited, intended, or knowingly caused the plea. The issue is objective consequence, not subjective intent.

At the hearing, Judge Hippler asked Taylor whether she had sufficient time to discuss the case and its ramifications with Kohberger and whether she had discussed his rights, defenses, and consequences of pleading guilty. Taylor answered yes.

Then came the critical question:

THE COURT: "Have you been able to do all the discovery you feel necessary?"

MS. TAYLOR: "Yes, Your Honor."

Only days earlier, the Court had been adjudicating counsel's assertions that substantial discovery review and investigation remained incomplete. The PCR court may now need to determine what changed—if anything—between those representations.

Kohberger likewise answered the customary plea-colloquy questions concerning

voluntariness, threats, promises, satisfaction with counsel, and factual guilt. He denied threats and undisclosed promises and said he was pleading guilty because he was guilty. He said he had enough time, was acting freely and voluntarily, considered the plea in his best interest, was satisfied with counsel's advice, believed counsel had done everything he requested, and was satisfied with counsel's representation.

Judge Hippler consequently found the plea was supported by a factual basis and was freely, voluntarily, and intelligently made. **Exhibit 2** at 33:18-25. The validity of that surrender of constitutional rights is now challenged.

G. At Sentencing, Judge Hippler Went Beyond Condemning the Crimes and Expressed a Forward-Looking Judgment Concerning Kohberger's Capacity for Truthfulness.

On July 23, Judge Hippler sentenced Kohberger. Some of the Court's statements were extraordinarily severe but may still fall within the area addressed by *Beam*: condemnation of horrific crimes, the offender, and punishment. However, some statements do not fall within the acceptable scope of *Beam*. The Court referred to Kohberger as a "faceless coward" and stated that the individual who "slithered" through the sliding door now stood before the world "unmasked." The Court later stated that it could identify nothing redeeming about Kohberger because his conduct had buried anything "good or intrinsically human," and called him "the worst of the worst." **Exhibit 2** at 106:25; 107:7-8; 111:14-19. But other remarks also went beyond character and punishment.

The Court addressed the possibility that Kohberger might someday explain himself: "how could anyone ever be assured that what he speaks is the truth." *Id.* at 110:1-2. Judge Hippler then asked: "Do we really believe, after all of this, he is capable of speaking the truth[?]" *Id.* at 110:2-5. And he predicted: "I suspect the so-called reason would be dished out in enticing self-serving and aggrandizing untruthful bits[.]" *Id.* at 110:6-8.

Those statements did not simply describe Kohberger's past conduct. They predicted the credibility of his future speech. The Court also stated that Kohberger appeared to "crave" attention and power. *Id.* at 109:22-24.

At the beginning of the remarks, Judge Hippler thanked counsel for the professionalism exhibited throughout the case and described it as a "great honor" to preside and help bring "some resolution and hopefully justice" to the case. *Id.* at 106:20-22. Those statements might not be independently disqualifying. They provide context, however, for a proceeding that the Court publicly described as ending and achieving resolution, but whose validity must now be reopened and adjudicated.

ARGUMENT

I. IDAHO LAW PROTECTS THE APPEARANCE AS WELL AS THE REALITY OF IMPARTIAL JUSTICE.

Idaho Rule of Civil Procedure 40(b)(1)(D) authorizes disqualification for cause when “the judge is biased or prejudiced for or against any party or the subject matter of the action.” A motion for cause may be filed at any time and must be supported by an affidavit identifying the grounds and supporting facts. I.R.C.P. 40(b)(1)(D), (b)(2). Rule 40(c) separately authorizes voluntary disqualification without any statement of reason.

These provisions operate against Idaho’s constitutional and ethical requirement of impartial justice.³ Article I, section 18 of the Idaho Constitution guarantees that justice shall be administered without prejudice. Idaho Const. art. I, § 18.

Canon 1 commands a judge to promote the independence, integrity, and impartiality of the judiciary and avoid both impropriety and the appearance of impropriety. Idaho Code Jud. Conduct Canon 1 Rule 1.2. Rule 1.2 requires conduct promoting public confidence in judicial impartiality. Its official commentary provides an objective test: whether conduct creates in reasonable minds a perception reflecting adversely upon the judge’s impartiality, temperament, honesty, or fitness. Rule 1.2 cmt 5.

Canon 2 is equally direct. Rule 2.2 requires judicial duties to be performed impartially, and the commentary explains that impartiality requires objectivity. Most importantly, Rule 2.11(A) provides: “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned[.]”

Its commentary expressly explains that disqualification applies whenever impartiality might reasonably be questioned regardless of whether one of the Rule’s specifically enumerated circumstances applies. The inquiry therefore is not exhausted by asking whether Judge Hippler subjectively believes he can remain impartial. The Code asks how the circumstances reasonably appear.

Idaho decisions distinguish the ethical standard expressed in Rule 2.11 from the procedural determination whether disqualification is required in a particular case. *See Boren v. Gadwa*, ____ Idaho ____, ____ 578 P.3d 861, 879 (Idaho 2024). Petitioner therefore does not invoke Rule 2.11 as

³ Petitioner cites the Idaho Code of Judicial Conduct as authoritative guidance concerning impartiality, appearance, and disqualification, and as relevant to the exercise of discretion under I.R.C.P. 40. Petitioner does not contend that the Code independently creates a collateral cause of action or remedy. The Scope expressly cautions against using the Code as an independent basis for collateral remedies or tactical advantage. *See Idaho Code Jud. Conduct, Scope ¶ 7.*

an independent procedural basis for disqualification, but as the Code’s objective standard informing the Rule 40 inquiry and the Court’s exercise of discretion.

II. PETITIONER ACKNOWLEDGES THE SAME-JUDGE AUTHORITIES—AND DOES NOT BASE THIS MOTION UPON ORDINARY PRIOR JUDICIAL INVOLVEMENT.

Kohberger anticipates the authority the State will invoke, *State v. Beam*, 115 Idaho 208, 766 P.2d 678 (1988). That case recognizes that a judge who presides over a grave criminal case may develop powerful views concerning the offense, punishment, and defendant, and that such judicially acquired opinions do not automatically require disqualification in later proceedings. *Id.* at 215, 766 P.2d at 685.

Freeman v. State, 114 Idaho 521, 757 P.2d 1240 (Ct. App.1988), likewise recognizes Idaho’s general practice of permitting the sentencing judge to preside over PCR proceedings, even when issues concerning the plea are later litigated. *See Id.* at 524, 757 P.2d at 1243. *State v. Jones*, 146 Idaho 297, 193 P.3d 457 (Ct. App. 2008), establishes that prior involvement and the need to revisit earlier judicial determinations do not themselves establish bias. *Id.* at 299, 193 P.3d at 459. *State v. Dunlap*, 155 Idaho 345, 391, 313 P.3d 1, 47 (2013), quoting *Liteky v. United States*⁴, similarly recognizes that judicially formed opinions ordinarily do not support disqualification unless they demonstrate the extraordinary degree of favoritism or antagonism incompatible with fair judgment. *See also Hall v. State*, 172 Idaho 334, 367, 533 P.3d 243, 276 (2023) (same).

Kohberger does not ask this Court to hold otherwise. The fact that Judge Hippler denied motions, presided over the plea, imposed sentence, or formed strong opinions regarding four murders does not alone establish this motion. Nor does Kohberger contend that Judge Hippler must determine whether his June 26 ruling was legally “wrong.” The argument is different.

The June 26 ruling became an operative fact in the circumstances of the plea; the Court has already made categorical judgments about counsel’s asserted preparation deficiencies; the Court may now need to reconcile materially different representations by counsel; and the Court has effectively, at least in the public’s eye, prejudged Kohberger’s capacity to provide truthful explanations.

Those circumstances must be evaluated cumulatively, not reduced to the ordinary same-judge rule addressed in *Beam*.

⁴ *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157 (1994).

III. **HOLLIS DEMONSTRATES THAT AN EXERCISE OF JUDICIAL DISCRETION THAT FORCES A PROCEEDING FORWARD DESPITE COUNSEL’S ASSERTED INABILITY TO PROVIDE EFFECTIVE REPRESENTATION CAN ITSELF CREATE AN APPEARANCE PROBLEM.**

The Idaho Supreme Court’s recent decision in *Hollis v. State*, 174 Idaho 168, 551 P.3d 1262 (2024), is particularly instructive. In *Hollis*, appointed PCR counsel advised the district court that he could no longer ethically or effectively represent the petitioner and sought withdrawal and a continuance. *Id.* at 170, 551 P.3d at 1264. The district court nevertheless required the matter to proceed and later summarily dismissed the petition. *Id.* at 171, 551 P.3d at 1265.

The Supreme Court held that the district court abused its discretion by forcing the proceeding forward without adequately addressing counsel’s asserted inability to provide effective representation. *Id.* at 174, 551 P.3d at 1268. It then separately concluded that the circumstances had **“created the appearance of bias”** and ordered assignment of a different district judge. *Id.* at 177, 551 P.3d at 1271. *Hollis* is not factually identical.⁵ But its principle is highly relevant.

In *Hollis*, the appearance concern did not arise merely because the judge had formed views while adjudicating a case. It arose because the court’s exercise of discretion forced the litigation forward at a critical stage despite counsel’s own representation concerning counsel’s ability to effectively represent the client. Here, the stakes were greater still.

Trial counsel advised Judge Hippler that she could not complete the preparation she considered constitutionally necessary for a trial at which the State sought Kohberger’s death. Judge Hippler rejected the asserted problem as essentially empty and tactical. He denied the requested time, maintained the capital-trial setting, and six days later, Kohberger surrendered his right to trial.

The present proceeding may now require a determination whether counsel’s warning was substantively correct and whether the resulting circumstances contributed to the plea. *Hollis* demonstrates that the relationship between judicial discretion, counsel’s asserted inability to effectively represent a client, and the appearance of later impartial adjudication is not foreign law.

⁵ Petitioner does not contend that *Hollis* establishes that the June 26 Order was an abuse of discretion. In *Hollis*, the Supreme Court had already determined that the district court acted arbitrarily in denying counsel’s motions. No appellate court has made a comparable determination concerning the June 26 Order here. *Hollis* is cited for the separate proposition that judicial insistence upon proceeding at a critical stage despite counsel’s asserted inability to provide effective representation may contribute to an appearance problem sufficiently serious to warrant reassignment. *Hollis* also involved an unopposed request, no record indication of dilatory conduct or strategic delay, and no identified prejudice to the State. Those circumstances differ from this case, where the State opposed continuance and the Court expressly evaluated and rejected counsel’s explanations. Petitioner does not obscure those distinctions. *Hollis* is relied upon for the narrower principle that requiring a critical proceeding to continue despite counsel’s contemporaneous representation that counsel cannot provide adequate representation can become relevant to the later appearance-of-impartiality inquiry.

IV. THE JUNE 26 ORDER DID MORE THAN CREATE A PRIOR RULING: IT MATERIALLY CREATED AND PRESERVED THE PREDICAMENT FROM WHICH THE PLEA-BASED PCR CLAIM MAY NOW ARISE.

This is the central distinction from ordinary same-judge PCR authority. The Court did not create counsel's asserted lack of preparation. But the constitutional consequence of that asserted lack of preparation would not fall upon counsel. It would fall upon Kohberger. Whatever responsibility trial counsel may have borne for reaching that point, it was Kohberger—not his attorneys—who faced the death penalty if the case proceeded to trial.

That distinction matters. The relevant question was not whether counsel should have been better prepared, whether counsel should have sought additional resources earlier, or whether the Court was justified in criticizing counsel's handling of the case. The question was whether Kohberger should be required to confront a capital trial while the attorneys responsible for defending his life were affirmatively telling both the Court and Kohberger that they were not adequately prepared to do so.

The June 26 Order decided the request against counsel, but the practical consequence of that ruling was borne by the client. Kohberger remained exposed to an imminent death-penalty trial under the very conditions his attorneys had just represented were constitutionally inadequate.

A finding that counsel was responsible for her own lack of preparation did not make the defense prepared. Nor did attributing counsel's concerns to delay eliminate the constitutional consequences if those concerns were factually well founded.

But once counsel presented that alleged constitutional problem and asked for more time as the remedy, the Court necessarily acted upon it. Judge Hippler denied the remedy. That decision preserved the approaching capital trial under the same schedule counsel had just represented would prevent completion of necessary preparation.

The June 26 Order thus converted the alleged preparation problem from something counsel sought time to cure into one of the conditions under which Kohberger would confront trial.

The alternative-perpetrator issue illustrates the point concretely: by the time counsel sought a continuance, a Court-imposed deadline governing that defense avenue had already expired even though counsel continued to represent that the underlying tip review and investigation were incomplete; the June 26 Order then relied upon that expired deadline as a reason to deny further time.

When the plea agreement emerged days later, the practical choice confronting Kohberger was stark: accept a disposition that removed the death penalty from the case, or proceed toward an imminent capital trial under conditions his own lawyers had just represented were constitutionally

inadequate. The June 26 Order therefore became part of the factual circumstances surrounding the plea, not merely an earlier ruling whose legal correctness might later be reconsidered.

That matters regardless of whether the order was legally correct. A legally correct judicial ruling can still become an operative fact in a later constitutional claim. If the PCR investigation ultimately establishes that significant evidence remained unreviewed, meaningful investigation remained unfinished, counsel was materially unprepared, or counsel's advice was shaped by that unpreparedness, the Court will need to determine what effect those circumstances had on Kohberger's plea decision. The relevant inquiry would not be limited to whether the June 26 Order was correct when entered. It may include whether the circumstances that Order preserved materially affected the advice counsel gave and the choice Kohberger made six days later.

Judge Hippler may therefore have to adjudicate the constitutional consequences of a factual predicament his own exercise of discretion materially helped create and preserve. That is substantially different from simply asking a judge to reconsider a prior legal ruling.

V. THE COURT HAS ALREADY EXPRESSED DEFINITE VIEWS ABOUT FACTUAL ISSUES THE PCR MAY PLACE DIRECTLY IN DISPUTE.

The appearance problem is strengthened by the substance, not merely the existence, of the June 26 findings. Judge Hippler has already said that trial counsel's discovery complaints were "ultimately empty." **Exhibit 4** at p. 4. He has already attributed them to delay rather than a legitimate threat to Kohberger's substantial rights. He has already characterized the discovery claim as a "tactical sword." *Id.* at p. 4 fn 8

He has already concluded that the investigation appeared professionally adequate. And he has already declared that counsel eventually had to be satisfied with what the defense had. PCR may now ask whether those judgments were correct.

The post-conviction court may need to determine precisely what remained unreviewed on June 26 and July 2; whether it mattered; what investigative avenues remained unfinished; whether those avenues reasonably should have been pursued; whether counsel possessed adequate information before recommending a plea; whether counsel conveyed that adequate information to the client to make an informed decision; and ultimately whether counsel's performance met constitutional standards.

These are not merely legal questions. They are factual questions concerning the precise subject upon which Judge Hippler had already expressed strong conclusions before the challenged plea ever occurred. The appearance concern is therefore not that Judge Hippler possesses familiarity with the record. It is that he may be asked to neutrally adjudicate a controversy upon which he

previously expressed categorical judgments about the very legitimacy of one side's position.

VI. THE JULY 2 PLEA TRANSCRIPT CREATES A CREDIBILITY CONTEST THE COURT MAY NOW BE REQUIRED TO RESOLVE.

The plea transcript sharpens the issue. On June 26, Judge Hippler concluded that counsel's preparation complaints were essentially empty and tactical. On July 2, Taylor told Judge Hippler she had completed all discovery she considered necessary. Those statements potentially coexist without contradiction; circumstances could have changed, counsel could have concluded the remaining material was unnecessary, or other developments could explain her answer. But those are precisely the sorts of matters PCR investigation must now explore.

The Court may be required to determine: What changed between June 26 and July 2? What had actually been reviewed? What remained unfinished? Why did counsel's stated position change? What advice was given to Kohberger? What information was available when that advice was given? And was that advice constitutionally adequate?

The plea colloquy's conventional inquiry concerning coercion does not eliminate the issue that the PCR may now present. The Court asked Kohberger whether anyone had "threatened [him] or anyone close to [him] to get [him] to plead guilty," and Kohberger answered no. **Exhibit 2** at 14:23-25. Petitioner's present argument does not depend upon proof that any person expressly threatened Kohberger into pleading guilty.

The potential constitutional issue is more nuanced. By June 26, counsel had advised the Court that the defense was not adequately prepared to conduct the scheduled capital trial, that substantial discovery review and investigation remained unfinished, and that further work remained necessary concerning alternative-perpetrator evidence. The Court denied additional time. The State continued to seek the death penalty. The scheduled capital trial remained imminent.

Thus, immediately before the plea, the practical alternatives were no longer simply trial or plea. Trial counsel had sought a third alternative: additional time to complete the work counsel maintained was constitutionally necessary before requiring Kohberger to confront a capital jury. The June 26 Order foreclosed that alternative.

The distinction matters. A guilty plea is not constitutionally involuntary merely because a defendant elects to avoid exposure to the death penalty. *See generally Brady v. United States*, 397 U.S. 742, 751-58, 90 S. Ct. 1463, 1470-74 (1970). But *Brady* also teaches that voluntariness must be evaluated from "all of the relevant circumstances" and emphasized the defendant's ability, **with the assistance of competent counsel**, to rationally weigh the advantages of proceeding to trial against the advantages of pleading guilty. *Id.* at 749-50, 90 S. Ct. at 1469-70.

The potential issue here is therefore not simply whether fear of death motivated Kohberger's decision. It is whether Kohberger was required to make that life-or-death choice under circumstances in which his own attorneys had just represented that they were not adequately prepared to pursue the trial alternative, including completing investigation into a central merits defense theory involving an alternative perpetrator.

The PCR court may therefore be required to determine whether trial counsel's contemporaneous representations concerning preparation were factually accurate and constitutionally consequential; whether Kohberger possessed a constitutionally meaningful choice between the plea offered and the capital trial then confronting him; and whether counsel possessed sufficient information to provide constitutionally adequate advice about that choice. Again, those are questions for the merits.

Their present significance is that the judge assigned to decide them is the same judge whose June 26 exercise of discretion eliminated the additional preparation time counsel had requested and preserved the two alternatives between which Kohberger chose six days later.

Kohberger's own testimony presents an even sharper credibility issue. His plea-colloquy answers are directly adverse to the claims he may now assert. He told Judge Hippler that no one threatened him, that he was pleading because he was guilty, that he had sufficient time, that he acted voluntarily, and that he was satisfied with counsel. The State will understandably rely heavily upon those sworn answers. The PCR court may therefore need to determine whether Kohberger's present explanation for those answers is credible. And therein lies the most unusual feature of the case.

VII. JUDGE HIPPLER HAS ALREADY PUBLICLY QUESTIONED WHETHER KOHLBERGER IS CAPABLE OF TELLING THE TRUTH—THE PRECISE CREDIBILITY QUESTION THE PCR MAY NOW REQUIRE HIM TO DECIDE.

Beam permits a sentencing judge to form severe opinions about a convicted defendant. This motion accepts that rule. But the sentencing remarks relevant here went beyond saying that Kohberger committed horrific acts, deserved life imprisonment, possessed poor character, or lacked redeeming qualities.

Judge Hippler expressly questioned his capacity for future truthfulness: "Do we really believe, after all of this, he is capable of speaking the truth[?]" The Court then predicted what a future explanation from Kohberger would look like: "I suspect the so-called reason would be dished out in enticing self-serving and aggrandizing untruthful bits[.]"

That is qualitatively different. The State may respond that those remarks concerned an explanation of why the murders occurred rather than testimony in a future PCR. Context matters, but

it does not eliminate the concern. The Court did not merely say that a proposed motive would be implausible. It questioned whether Kohberger was “capable of speaking the truth.”

And this PCR may require Kohberger to offer precisely another explanation: why he pleaded guilty, what counsel told him, what he understood, and why his present account differs from his sworn July 2 answers.

The judge deciding that credibility contest has already publicly expressed doubt about whether Kohberger possesses the capacity to give a truthful explanation. That is not simply a view about the offense. It is an advance judgment concerning a testimonial characteristic directly relevant to the adjudication now before the Court.

An informed observer could reasonably ask whether a petitioner begins a credibility contest on neutral ground when the factfinder has already publicly asked whether he is capable of truthfulness and predicted that his explanations will be self-serving and untrue. How do we walk those statements back to get a reasonable view of neutrality?

VIII. THE OTHER SENTENCING LANGUAGE, WHILE NOT INDEPENDENTLY DISPOSITIVE UNDER *BEAM*, MAGNIFIES THE OBJECTIVE APPEARANCE PROBLEM.

Kohberger does not retreat from the balance of the sentencing record. It simply places it in its proper doctrinal role. The references to a “faceless coward,” the person who “slithered” through the sliding door, someone devoid of anything “good or intrinsically human,” and the “worst of the worst” may not independently compel disqualification under *Beam*. But the Court need not pretend those statements were never made when evaluating the whole record.

Rule 2.3 of the Idaho Code of Judicial Conduct requires judges to perform judicial duties without bias or prejudice and specifically recognizes that judicial words can manifest or communicate prejudice. Its official commentary identifies “epithets,” “demeaning nicknames,” and hostile acts as examples and recognizes that words, expressions, and demeanor can communicate an appearance of bias to litigants, lawyers, jurors, the media, and others.

The Idaho Supreme Court has cautioned that an adjudicative tribunal undermines impressions of impartiality when it resorts to heated rhetoric and denunciation instead of professionally addressing the issues before it. *Pines v. Idaho State Bd. of Med.*, 158 Idaho 745, 757, 351 P.3d 1203, 1215 (2015). And in *Beebe v. North Idaho Day Surgery, LLC*, 171 Idaho 779, 526 P.3d 650 (2023), the Court ordered reassignment where judicial criticism crossed from legitimate feedback into personal attacks demonstrating bias. *Id.* at 793, 526 P.3d at 664. Again, Petitioner does not contend that sentencing judges must speak clinically about unspeakable crimes. The point is cumulative.

The judge who may now determine Kohberger’s credibility has not merely formed a negative opinion of him. He has publicly used intensely personal language to describe him and has separately questioned his capacity for truthfulness. That entire record informs what a reasonable observer would perceive.

IX. IDAHO PRECEDENT RECOGNIZES THAT EXTRAORDINARY CIRCUMSTANCES MAY WARRANT REASSIGNMENT TO PROTECT THE APPEARANCE OF IMPARTIAL JUSTICE.

Two recent Idaho Supreme Court decisions demonstrate why *Beam* does not end this motion. In *Idaho State Appellate Pub. DEF. v. Fourth Jud. Dist. Ct.*, 173 Idaho 214, 540 P.3d 311 (2023), the Supreme Court examined a record in which the district judge ascribed improper motives to counsel, questioned counsel’s ethics, expressed categorical positions on matters the judge would thereafter need to adjudicate, and developed an antagonistic relationship with participants in the proceeding. *Id.* at 231, 540 P.3d at 328. The Court concluded that continued assignment was improper. Importantly, *SAPD* reiterated: “In matters of judicial ethics, appearance and reality often converge as one.” *Id.* at 232, 540 P.3d at 329 (citation and quotation marks omitted).

And, quoting *Liteky* and *Offutt*, the Court emphasized that justice must satisfy the appearance of justice. *Id.* Likewise, in *Hepworth Holzer, LLP v. Fourth Judicial District*, 169 Idaho 387, 400, 496 P.3d 873, 886 (2021), the Supreme Court expressly stated that it was not finding actual bias. Nonetheless, given the unique circumstances, it ordered that another judge preside in order to avoid even an appearance problem.⁶ *Id.* at 399-400, 496 P.3d at 885-86. Petitioner relies upon that narrow doctrine, not an expansion of it.

Those cases answer an important point. A reassignment request need not always amount to an accusation that the judge is dishonest, malicious, or consciously incapable of fairness. Sometimes the institutional problem is enough. Sometimes the circumstances themselves become incompatible with maintaining public confidence in the neutrality of the adjudication. This is such a case.

⁶ *Hepworth Holzer* expressly limited its reassignment holding to the unique circumstances before it and cautioned that the decision should not become an expanded method of routinely disqualifying judges. 169 Idaho at 400, 496 P.3d at 886. Petitioner embraces that limitation. This motion likewise seeks no categorical rule; it rests upon the unusual convergence of the pre-plea preparation dispute, the June 26 Order, the six-day interval preceding the plea, the factual and credibility issues now presented in PCR, and the Court’s subsequent statements concerning Petitioner’s capacity for truthfulness. See also *Wiseman v. Rencher*, 174 Idaho 286, 290–91, 553 P.3d 948, 952–53 (2024) (reaffirming that *Hepworth Holzer* is confined to its “unique facts” and should not be treated as an expanded means of disqualifying judges).

X. THE CUMULATIVE RECORD—NOT ANY SINGLE FACT VIEWED IN ISOLATION—IS THE MOTION.

The State may attempt to divide this record into individual pieces. The June 26 ruling? Prior judicial ruling. The plea finding? *Freeman*. Strong views about Kohberger? *Beam*. Harsh language? *Dunlap*. Credibility comments? Sentencing rhetoric. But no single piece is the motion.

The motion is the whole record. Trial counsel placed her claimed inability to complete necessary capital-trial preparation before Judge Hippler. The Court rejected the legitimacy of that claim in unusually categorical terms. The Court denied the additional time requested to remedy the alleged preparation problem and preserved the imminent capital trial. Six days later, Kohberger relinquished that trial. At the plea hearing, trial counsel gave an answer concerning completed discovery that the PCR may need to reconcile with her recent representations concerning unfinished preparation.

Kohberger gave sworn answers concerning voluntariness, counsel, and guilt that the PCR court may now be asked to evaluate against a contrary account. Judge Hippler may therefore have to decide both Taylor’s credibility and Kohberger’s credibility regarding the circumstances surrounding the plea.

Judge Hippler thereafter publicly questioned whether Kohberger was capable of telling the truth and predicted that future explanations from him would be self-serving and untruthful. And those statements occurred alongside intensely personal judicial denunciations of Kohberger.

The whole is different from the individual parts. The question under Rule 2.11 is not whether every circumstance independently proves bias. It is whether, in light of the entire record, impartiality might reasonably be questioned.

On this cumulative record, a reasonable observer could question the Court’s impartiality, and the circumstances warrant disqualification under Rule 40(b)(1)(D) or, alternatively, voluntary disqualification under Rule 40(c).

XI. THE EXTRAORDINARY PUBLIC ATTENTION DOES NOT LOWER THE LEGAL STANDARD; IT MAKES THE INSTITUTIONAL CONSEQUENCES OF AN AVOIDABLE APPEARANCE PROBLEM MORE SERIOUS.

Kohberger does not seek special treatment because this case receives national attention. Indeed, Rule 2.4 expressly commands that a judge not be swayed by “public clamor or fear of criticism” and that cases be decided without regard to whether a litigant is popular or unpopular with the public or media. The legal standard must be exactly the same whether one citizen is watching or

millions are watching. But that does not mean public confidence is irrelevant.

Canon 1 expressly makes confidence in the judiciary an institutional value. The Code describes judicial office as a public trust and instructs judges to conduct themselves to ensure the greatest possible confidence in judicial independence and impartiality. This proceeding will be scrutinized regardless of who presides.

If Kohberger's PCR is ultimately denied, the legitimacy of that result is strengthened when it comes from a judicial officer who did not make the pre-plea preparedness findings at issue and who has never publicly questioned Kohberger's capacity for truthfulness. If relief is granted, reassignment likewise avoids any suggestion that the result represents vindication or repudiation of Judge Hippler's earlier decisions.

Either way, removing the collateral appearance controversy strengthens the judgment. Kohberger does not seek a favorable judge. He seeks a judge as to whom this particular question does not exist.

XII. VOLUNTARY DISQUALIFICATION PROVIDES A NARROW AND DIGNIFIED REMEDY WITHOUT REQUIRING A FINDING THAT JUDGE HIPPLER ACTED IMPROPERLY.

Petitioner recognizes that judges have a duty to hear assigned cases and should not recuse merely because a matter is difficult, controversial, or unpopular.⁷ But Rule 40(c) exists for circumstances in which continued assignment is unnecessary or institutionally undesirable even where a court does not conclude that mandatory disqualification has been established.

The Court need not find that Judge Hippler intentionally caused the plea. It need not find the June 26 Order legally erroneous. It need not conclude that any sentencing statement constitutes disciplinary misconduct. It need not confess subjective bias. And it need not reject *Beam*, *Freeman*, *Jones*, or *Dunlap*. It need only recognize the extraordinary position in which continued assignment now places the Court.

Judge Hippler may be called upon to adjudicate whether trial counsel's asserted preparation problem, the same problem he previously dismissed as essentially empty and tactical, was in fact constitutionally consequential. He may have to determine whether the predicament preserved by his June 26 ruling materially contributed to the plea entered six days later. He may have to determine the credibility of former defense counsel regarding what happened during that period. And he may

⁷ See Idaho Code Jud. Conduct R. 2.7 & cmt. 1. Petitioner does not contend that the extraordinary publicity surrounding this case constitutes a ground for disqualification. To the contrary, Rule 2.4(A) directs that a judge "shall not be swayed by public clamor or fear of criticism." The basis for this motion is the judicial record; publicity merely makes the institutional consequences of an avoidable appearance concern especially visible.

have to determine whether Kohberger is telling the truth after having publicly questioned whether Kohberger is capable of doing so.

The law may permit Judge Hippler to remain. That does not mean the administration of justice is best served by requiring him to remain.

The Code itself instructs judges to strive beyond bare minimum standards, holding themselves to the highest ethical standards in order to enhance the dignity of judicial office. And Idaho's Supreme Court has demonstrated that, under sufficiently unusual circumstances, reassignment may protect the judicial process even without a finding of actual bias. That is the narrower relief requested here.

CONCLUSION

Before Bryan Kohberger ever pleaded guilty, the constitutional adequacy of his lawyers' preparation was already before this Court. His attorneys said necessary discovery review and investigation remained unfinished. They said they were not prepared to proceed under the existing capital-trial schedule. They warned of ineffective assistance.

Judge Hippler rejected those concerns. He found the defense's complaints "ultimately empty." He attributed them to tactical delay. He described them as a "tactical sword." He concluded that the investigation already appeared professionally adequate. He determined that the defense eventually "must be satisfied with what they have." The Court denied more time. The State continued to seek death. The trial remained imminent. **Six days later, there was no trial.** Now the constitutional validity of the plea that eliminated that trial is challenged.

The PCR court may need to decide whether trial counsel actually was inadequately prepared; whether material evidence remained unreviewed; whether necessary investigation remained incomplete; whether counsel possessed sufficient information to advise a plea; what counsel told Kohberger; and whether the circumstances surrounding the imminent capital trial materially contributed to his decision to surrender his constitutional rights.

The PCR court may also need to reconcile trial counsel's representations before June 26 with her July 2 representation that she had completed all discovery she considered necessary. And it may need to decide whether Kohberger should be believed when he explains why his present account differs from the answers he gave Judge Hippler during the plea colloquy.

Judge Hippler has already publicly addressed that question. He asked whether Kohberger was "capable of speaking the truth." He predicted that any explanation Kohberger offered would consist of "self-serving and aggrandizing untruthful bits." That is not simply condemnation of a crime. It is a judgment concerning the credibility of the petitioner whose credibility the Court may

now be required to decide. Perhaps none of these circumstances, standing alone, would overcome Idaho's strong tradition of allowing the original judge to preside over post-conviction proceedings. But they do not stand alone.

This Court is not required to dissect an extraordinary record into innocuous individual parts when Rule 2.11 asks whether, viewing the circumstances as they actually exist, impartiality might reasonably be questioned.

And the Court is not required to remain simply because precedent may permit it to remain. The question is not whether Judge Hippler would endeavor to be fair. The question is why the legitimacy of this proceeding should require anyone to wonder. The administration of justice gains nothing by litigating that question through years of post-conviction proceedings and appellate review. It gains considerably by eliminating it now.

Petitioner does not seek a favorable judge. He seeks an unquestionably neutral forum for adjudicating claims that may implicate his former counsel's performance, his own credibility, and the constitutional validity of the proceeding that resulted in his convictions and sentences. Where the appearance problem is substantial and the remedy is simple, the better course is to remove the problem—not spend years explaining why the law might have permitted it to remain.

For these reasons, Petitioner respectfully requests that Judge Hippler grant the Motion to Disqualify for Cause pursuant to Idaho Rule of Civil Procedure 40(b)(1)(D), or, alternatively, exercise the discretion expressly provided by Rule 40(c) and voluntarily disqualify from further proceedings in this action.

DATED this 27th Day of August 2026.

MAGYAR, RAUCH & ASSOCIATES P.L.L.C.,

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

CERTIFICATE OF SERVICE

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

Prosecutor:
Latah County Prosecutor's Office
Email: paservice@latahcountyid.gov

- ☐ U.S. Mail
- ☐ Overnight Mail
- ☒ Odyssey
- ☐ e-mail
- ☐ Courthouse Mail

MAGYAR, RAUCH & ASSOCIATES, PLLC

By: /s/Matt Ruck
Matt Ruck,
Paralegal to Mr. Rauch