

Wendy J. Olson, Bar No. 7634  
wendy.olson@stoel.com  
Cory M. Carone, Bar No. 11422  
cory.carone@stoel.com  
STOEL RIVES LLP  
101 S. Capitol Boulevard, Suite 1900  
Boise, ID 83702  
Telephone: 208.389.9000  
Facsimile: 208.389.9040

*Attorneys for Intervenor*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

Plaintiff,

v.

BRYAN C. KOHBERGER,

Defendant.

Case No. CR29-22-2805

**Declaration of Wendy J. Olson in Support  
of Motion to Vacate the Amended  
Nondissemination Order**

THE ASSOCIATED PRESS; RADIO  
TELEVISION DIGITAL NEWS  
ASSOCIATION; SINCLAIR MEDIA OF  
BOISE, LLC/KBOI-TV (BOISE); STATES  
NEWSROOM DBA IDAHO CAPITAL SUN;  
TEGNA INC./KREM (SPOKANE), KTVB  
(BOISE) AND KING (SEATTLE);  
EASTIDAHONEWS.COM; THE LEWISTON  
TRIBUNE; WASHINGTON STATE  
ASSOCIATION OF BROADCASTERS;  
IDAHO PRESS CLUB; IDAHO EDUCATION  
NEWS; KXLY-TV/4 NEWS NOW AND  
KAPP/KVEW-TV—MORGAN MURPHY  
MEDIA KXLY-TV/4 NEWS NOW; SCRIPPS  
MEDIA, INC., DBA KIVI-TV, A DELAWARE

CORPORATION; THE SPOKESMAN-REVIEW/COWLES COMPANY; THE NEW YORK TIMES COMPANY; LAWNEWZ, INC.; ABC, INC.; WP COMPANY LLC, DBA THE WASHINGTON POST; SOCIETY OF PROFESSIONAL JOURNALISTS; THE MCCLATCHY COMPANY, LLC; and THE SEATTLE TIMES,

Intervenors.

I, Wendy J. Olson, declare and state as follows:

1. I am a partner with the law firm of Stoel Rives LLP, counsel for Petitioners in the above-captioned matter. As such, I have personal knowledge of the facts and statements contained in this declaration. I submit this declaration in support of the Motion to Vacate or Amend the Amended Nondissemination Order.

2. Attached hereto as **Exhibit A** is a true and correct copy of a filing in *State of Idaho v. Bryan C. Kohberger*, case no. CR29-22-2805.

3. Attached hereto as **Exhibit B** is a true and correct copy of a filing in *State of Idaho v. Bryan C. Kohberger*, case no. CR29-22-2805.

4. Attached hereto as **Exhibit C** is a true and correct copy of a filing in *State of Idaho v. Bryan C. Kohberger*, case no. CR29-22-2805.

5. Attached hereto as **Exhibit D** is a true and correct copy of a filing in *State of Idaho v. Bryan C. Kohberger*, case no. CR29-22-2805.

6. Attached hereto as **Exhibit E** is a true and correct copy of a filing in *State of Idaho v. Bryan C. Kohberger*, case no. CR29-22-2805.

7. Attached hereto as **Exhibit F** is a true and correct copy of a filing in *Whitcom 911 v. Nash Holdings, LLC d/b/a The Washington Post*, case no. 23-2-00042-38.

8. Attached hereto as **Exhibit G** is a true and correct copy of a press release from the Moscow Police Department.

9. During the course of representing the media outlets who are challenging this Court's Gag Order, I have been informed of the following by them:

- a. A victim's family wants to speak with the press about Mr. Kohberger's prosecution, but they feel bound by the gag order.
- b. Major Christopher Paris of the Pennsylvania State Police told reporter Chris Ingalls that he could not answer whether police had launched any review of unsolved cases that could be linked to Mr. Kohberger because of the gag order.
- c. Moscow Mayor Art Bettge told reporter Erica Zucco that the city attorney advised he could not answer questions about the overall community healing in Moscow because of the gag order.
- d. Journalist Taylor Mirfendereski's public records requests were denied by the Latah County's Sheriff's Office, Moscow Police Department, Pullman Police Department, and Washington State Police Department because of the gag order.
- e. Gary Jenkins, Chief of Police at Washington State University, and Matt Young, Communication Coordinator for the City of Pullman, told reporter Morgan Romero that they could not answer whether Mr. Kohberger applied for a graduate assistant research position with the Pullman Police Department because of the gag order.
- f. The Moscow Police Department refused to advise a reporter from the Idaho Statesman how many cellphone towers are in the area near where the murders

occurred, the size of Mr. Kohberger's cell, the size of the Moscow jail, and the nature of Mr. Kohberger's meals because of the gag order.

- g. Law&Crime reporter Angenette Levy was denied access to Kohberger's booking video from the Latah County Sheriff's Office because of the "court's non-dissemination order".

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED: May 1, 2023.

STOEL RIVES LLP

/s/ Wendy J. Olson

Wendy J. Olson

*Attorneys for Intervenors*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of May 2023, I served a true and correct copy of the within and foregoing **DECLARATION OF WENDY J. OLSON IN SUPPORT OF MOTION TO VACATE OR AMEND THE AMENDED NONDISSEMINATION ORDER** upon the following named parties by the method indicated below, and addressed to the following:

Latah County Prosecutor's Office  
William W. Thompson, Jr.  
Prosecuting Attorney  
Latah County Courthouse  
P.O. Box 8068  
Moscow, ID 83843

☐ Hand Delivered  
☐ Mailed Postage Prepaid  
☐ Via Facsimile  
☐ U.S. Mail  
☐ Via email  
☒ Via iCourt efile & serve at:  
*paservice@latahcounty.id.gov*

Anne Taylor  
Attorney at Law  
P.O. Box 9000  
Coeur d'Alene, ID 83816

☐ Hand Delivered  
☐ Mailed Postage Prepaid  
☐ Via Facsimile  
☐ U.S. Mail  
☒ Via email at *ataylor@kcgov.us*  
☐ Via iCourt efile & serve at:  
*pdfax@kcgov.us*

Jeff Nye  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720

☐ Hand Delivered  
☐ Mailed Postage Prepaid  
☐ Via Facsimile  
☐ U.S. Mail  
☒ Via email at *jeff.nye@ag.idaho.gov*  
☐ Via iCourt efile & serve at:

Shanon Gray  
2175 N. Mountain View Road  
Moscow, ID 83843

☐ Hand Delivered  
☐ Mailed Postage Prepaid  
☐ Via Facsimile  
☐ U.S. Mail  
☐ Via email  
☒ Via iCourt efile & serve at:  
*shanon@graylaw.org*

/s/ Wendy J. Olson  
Wendy J. Olson

# **EXHIBIT A**

Anne C. Taylor, Public Defender  
Kootenai County Public Defender  
PO Box 9000  
Coeur d'Alene, Idaho 83816  
Phone: (208) 446-1700; Fax: (208) 446-1701  
Bar Number: 5836  
iCourt Email: pdfax@kcgov.us

*Assigned Attorney:*

Anne C. Taylor, Public Defender, Bar Number: 5836  
Jay Weston Logsdon, Chief Deputy Litigation, Bar Number: 8759

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,  
Plaintiff,

**V.**

BRYAN C. KOHBERGER  
Defendant.

Case No. CR29-22-2805

STIPULATION FOR  
NONDISSEMINATION ORDER

COMES NOW, Bryan C. Kohberger, by and through his undersigned attorneys, Anne C. Taylor, Public Defender and Jay Weston Logsdon, Chief Deputy Litigation, and Latah County Prosecutor William W. Thompson, Jr., and hereby stipulate to the issuance of a nondissemination order prohibiting attorneys, investigators, and law enforcement personnel from making any extrajudicial statement, written or oral, concerning this case, other than a quotation from or reference to, without comment, the public records of the Court in this case.

This stipulation is based on the Sixth Amendment and the Defendant's and State's interests under both the Idaho and U. S. Constitution. This Court has both a constitutional duty and the

inherent authority to "minimize the effects of prejudicial pretrial publicity" and "to ensure the efficacious administration of justice." *Gannett Co. v. DePasquale*, 443 U.S. 368,377 (1979); *Hall v. State*. 151 Idaho 42,46 (2011).

As this Court is aware, this case involves matters that have received a great deal of publicity. The United States Supreme Court has identified nondissemination orders as being properly narrowly tailored as well as the least restrictive means to ensure a fair trial in the view of First Amendment protections. *Nebraska Press Ass 'nv. Stuart*, 427 U.S. 539 (1976); *Sheppard v. Maxwell*, 384 U.S. 333, 361 (1966).

Therefore the parties stipulate that a nondissemination order be issued to protect against adversely affecting the integrity of the case to be presented at trial.

SO STIPULATED

1/3/2023



Anne C. Taylor  
Kootenai County Public Defender



1/3/23

William W. Thompson, Jr.  
Latah County Prosecuting Attorney



# **EXHIBIT B**

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,  
Plaintiff,

v.

BRYAN C. KOHBERGER  
Defendant.

Case No. CR29-22-2805

NONDISSEMINATION ORDER

The Court, by stipulation of the parties, enters its Order as follows:

IT IS HEREBY ORDERED that the parties to the above titled action, including investigators, law enforcement personnel, attorneys, and agents of the prosecuting attorney or defense attorney, are prohibited from making extrajudicial statements, written or oral, concerning this case, other than a quotation from or reference to, without comment, the public records of the case.

This order specifically prohibits any statement, which a reasonable person would expect to be disseminated by means of public communication that relates to the following:

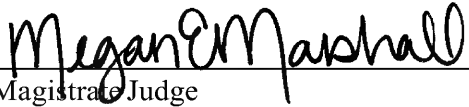
1. Evidence regarding the occurrences or transactions involved in this case;
2. The character, credibility, or criminal record of a party;
3. The performance or results of any examinations or tests or the refusal or failure of a party to submit to such tests or examinations;

4. Any opinion as to the merits of the case or the claims or defense of a party;
5. Any other matter reasonably likely to interfere with a fair trial of this case, such as, but not limited to, the existence or contents of any confession, admission, or statement given by the Defendant, the possibility of a plea of guilt to the charged offense or a lesser offense, or any opinion as to the Defendant's guilt or innocence.

IT IS FURTHER ORDERED that no person covered by this order shall avoid its proscriptions by actions that indirectly, but deliberately, cause a violation of this order.

IT IS FURTHER ORDERED that this order, and all provisions thereof, shall remain in full force and effect throughout these proceedings, until such time as a verdict has been returned, unless modified by this court.

SO ORDERED     **1/3/2023 4:58:57 PM**

  
Magistrate Judge

# **EXHIBIT C**

LATAH COUNTY PROSECUTOR'S OFFICE  
WILLIAM W. THOMPSON, JR.  
PROSECUTING ATTORNEY  
Latah County Courthouse  
P.O. Box 8068  
Moscow, ID 83843  
Phone: (208) 883-2246  
ISB No. 2613  
paservice@latah.id.us

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,  
Plaintiff,

V.

BRYAN C. KOHBERGER  
Defendant.

Case No. CR29-22-2805

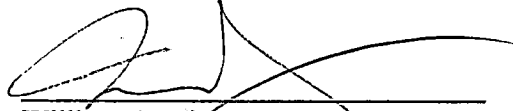
STIPULATION TO UNSEAL  
WITH REDACTIONS

COME NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and the above-named Defendant, by and through his undersigned attorney of record, and hereby stipulate to the Court unsealing the attached redacted copy of the "Memo" summarizing a January 13, 2023, In Chambers conference which was filed under seal on January 20, 2023. The redactions are pursuant to Idaho Court Administrative Rule 32(i)(2)(D) in that, given the extent of threats and harassment of potential witnesses, disclosure of the redacted potential witnesses' names and their representative's names at this

STIPULATION TO UNSEAL  
WITH REDACTIONS:


time might threaten or endanger their life or safety.

RESPECTFULLY SUBMITTED this 24 day of February, 2023.



---

William W. Thompson, Jr.  
Prosecuting Attorney



---

Anne Taylor  
Attorney for Defendant

The following is a summary of the in chambers Zoom meeting with Judge Marshall on January 13, 2023:

The following attorneys were present and attending by Zoom: Bill Thompson (Prosecutor), Ashley Jennings (Senior Deputy Prosecutor), [REDACTED] attorney for [REDACTED], [REDACTED] co-counsel/attorney for [REDACTED], [REDACTED] attorney for [REDACTED], Shanon Gray (attorney or Goncalves family), and Anne Taylor (public defender for Bryan Kohberger). Judge Marshall's clerk, Jennifer Oliphant, was also present.

This meeting was off the record. Judge Marshall read the substantive parts the nondissemination order that was issued on January 3, 2023. Judge Marshall reminded the parties that the order mirrors Idaho Rules of Professional Conduct Rule 3.6 which she then read.

Judge Marshall directed everyone's attention to the Commentary for the Rule, specifically subparagraphs 1 and 3.

Judge Marshall's states her reading of the Commentary 3 leads her to believe the rule applies to all lawyers participating in the Zoom meeting. This includes not only the State and the Defense, but also attorneys for witnesses.

Judge Marshall directed everyone's attention to the Commentary for the rule, specifically subparagraphs 5 and 7.

After a review of the Rule 3.6, Judge Marshall explained that the purpose for the meeting was in response to what she has been seeing and hearing from various media sources. She has tried to ignore most media covering the case since she will be presiding over the preliminary hearing. This case has garnered national and international attention. This is a high-profile case, and she wants to remind all attorneys not to engage in any conduct that would interfere with a fair trial. Because of the nature of the case this will be a long process. She further advised it is not the responsibility of the attorneys in this case to disseminate information to the media. She is not ordering clients (i.e. witnesses) not to talk to the media but stressed this case should not be tried in the media but in the court of law. Lawyers involved need to "take their duties in utmost regard" when conducting themselves and advising their clients.

Judge Marshall stated she wanted to make her expectations clear regarding the lawyer's ethical duties (described above). If lawyers fail to adhere to their ethical duties, she will have to either find them in contempt of her order and/or report their actions to the Idaho State Bar.

Shanon Gray responded that he reached out after the Nondissemination Order was issued asking for clarification and he did not receive a response. He asked if the

order precludes victims/witnesses from speaking. Judge Marshall reiterated that her order does not preclude witnesses from speaking.

██████████ responded that he expects his client, ██████████ will be a witness in this case. He also expects that the decedents' families will be witnesses in this case since it is a potential capital case and they would be called to testify. He has handled numerous homicide cases, including capital cases, during his career. He assures the Court he has advised his client, ██████████ to decline all media and will continue to do that. He and his client and will not comment as it would be inappropriate to comment.

Judge Marshall appreciates ██████████ perspective. Judge Marshall reiterates she is not saying that clients cannot talk to the media but does question whether it is wise for them to talk to the media. Reminds lawyers they have a responsibility in giving advice to their clients. If any lawyer has questions about this, or takes issue with this, they should contact the Idaho State Bar and seek clarification.

Shanon Gray speaks about emailing the State and wanting to contact the Court to seek clarification. Mr. Gray stated he would seek clarity from the Idaho State Bar. Judge Marshall responded that she appreciates Mr. Gray reaching out but that she has had limited accessibility with a full court calendar. This is why she scheduled this meeting.

Mr. Gray discusses PC Affidavit and alleges that information is getting leaked from the Prosecutor's Office.

Judge Marshall reminds the parties about IRPC 3.6 and the lawyers' duties. Lawyers should not be speculating. Judge Marshall clarifies that the public record is what is in the court's case file, it is not information reported by the media.

Judge Marshall clarifies that attorneys are not prohibited from advising their clients, but they are prohibited from speaking to the media (example: you can advise your client about what might happen at the status hearing; but you should not be speculating what will happen to the media).

Judge Marshall also reminds attorneys that their statements made must also be true.

Mr. Gray takes issue with the interpretation of "substantially prejudices" (referring to substantial likelihood of materially prejudicing an adjudicative proceeding in the matter). States his client (Goncalves) have kept "this story alive" and their "comments have helped the investigation."

Judge Marshall explains the necessity of convening an impartial jury in Latah County. The public is obsessed with this case and comments are harming the



ability to impanel a jury. All parties need to allow the judicial process to see this case through.

Mr. Gray responds that it is unrealistic to believe that we will find a jury in the U.S. that hasn't heard about this case. Mr. Gray takes issue that he was not given a lot of notice that we would be having this meeting. He was not given enough time to prepare.

Judge Marshall reminds the parties that the Constitution still applies in this case. Lawyers have a duty to uphold the system and allow the system to see the case through.

██████████ reminds Mr. Gray that he is creating a record by his media interactions. His statements are being captured by the defense. All of his statements impact the case and advised Mr. Gray to exercise restraint. Mr. Gray takes issue with ██████████'s advice. Judge Marshall stops any argument.

Judge Marshall solicits final comments from those in attendance.

Prosecutor Thompson states that many of Mr. Gray's accusations are not true. The State is concerned about the ability to impanel a jury and have a fair trial. He is hopeful that all parties will begin to show professional responsibility.

██████████ states that she has advised ██████████ not to comment. She takes ██████████ position.

Anne Taylor thanks the court and expresses appreciation.

# **EXHIBIT D**

JAN 18 2023 PM 4:29  
CLERK OF DIST CT, LATAH  
CASE NO. CR29-22-2805  
BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

Plaintiff,

vs.

BRYAN C. KOHBERGER,

Defendant.

Case No. CR29-22-2805

AMENDED  
NONDISSEMINATION ORDER

There is a balance between protecting the right to a fair trial for all parties involved and the right to free expression as afforded under both the United States and Idaho Constitution. To preserve the right to a fair trial some curtailment of the dissemination of information in this case is necessary and authorized under the law.<sup>1</sup> Therefore, based upon the stipulation of the parties and with good cause,

IT IS HEREBY ORDERED:

1. The attorneys for any interested party in this case, including the prosecuting attorney, defense attorney, and any attorney representing a witness, victim, or victim's family, as well as the parties to the above entitled action, including but not limited to investigators, law enforcement personal, and agents for the prosecuting attorney or defense attorney, are prohibited from making extrajudicial statements (written or oral) concerning this case, except, without additional comment, a quotation from or reference to the official public record of the case.
2. This order specifically prohibits any statement, which a reasonable person would expect to be disseminated by means of public communication that relates to the

<sup>1</sup> See ABA STANDARDS FOR CRIMINAL JUSTICE: FAIR TRIAL AND PUBLIC DISCLOSURE (4<sup>th</sup> ed. 2016); IRPC Rule 3.6; *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976); *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991).

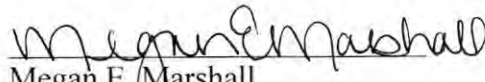
following:

- a. Evidence regarding the occurrences or transactions involved in the case;
- b. The character, credibility, reputation, or criminal record of a party, victim, or witness, or the identity of a witness, or the expected testimony of a party, victim, or witness;
- c. The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test;
- d. Any opinion as to the merits of the case or the claims or defense of a party;
- e. Any information a lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial;
- f. Any information reasonably likely to interfere with a fair trial in this case afforded under the United States and Idaho Constitution, such as the existence or contents of any confession, admission, or statement given by the Defendant, the possibility of a plea of guilt, or any opinion as to the Defendant's guilt or innocence.

IT IS FURTHER ORDERED that no individual covered by this order shall avoid its proscriptions by actions directly or indirectly, but deliberately, that result in violating this order.

IT IS FURTHER ORDERED that this order, and all provisions herein, shall remain in full force and effect throughout the entirety of this case unless otherwise ordered by this court.

Dated: 1/18/2023

  
Megan E. Marshall  
Magistrate Judge

CLERK'S CERTIFICATE OF MAILING

I hereby certify that a true and complete copy of the foregoing was served as follows:

William Wofford Thompson	<u>paservice@latahcountyid.gov</u>	[X] By E-mail
Anne Taylor	<u>pdfax@kcgov.us</u>	[X] By E-mail

JULIE FRY  
CLERK OF THE DISTRICT COURT

DATE 1/18/23

By: [Signature]  
Deputy Court Clerk

# **EXHIBIT E**

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

Plaintiffs,

v.

BRYAN C. KOHBERGER,

Defendant.

Case No. CR29-22-2805

**MEMORANDUM IN SUPPORT OF  
MOTION FOR APPEAL AND/ OR  
CLARIFICATION OF AMENDED  
NONDISSEMINATION ORDER**

I Shanon L. Gray am an attorney licensed in the State of Idaho.

I represent Victim Kaylee Goncalves's family in the above referenced matter.

I make this Memorandum in Support of the Motion to Appeal, Amend and/or Clarify  
the Amended Non-dissemination Order on this case.

The Courts current Amended Non-dissemination Order is based on the following  
referenced case law and legal guidelines:

1. ABA Standards for Criminal Justice: Fair Trial and Public Disclosure (4<sup>th</sup> Ed. 2016)
2. IRPC Rule 3.6
3. Sheppard v. Maxwell, 384 U.S. 333 (1966)
4. Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976)
5. Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991)

1  
2 The Order states as follows:

3 “Therefore, based upon the stipulation of the parties and with good cause,

4 IT IS HEREBY ORDERED:

- 5 1. The attorneys for any interested party in this case, including the prosecuting  
6 attorney, defense attorney and any attorney representing a witness, victim or  
7 victim’s family, as well as the parties to the above entitled action, including but not  
8 limited to investigators, law enforcement personnel, and agents for the prosecuting  
9 attorney or defense attorney are prohibited from making extrajudicial statements  
10 (written or oral) concerning the case, except, without additional comment, a  
11 quotation from or reference to the official public record of the case.
- 12 2. This order specifically prohibits any statement, which a reasonable person would  
13 expect to be disseminated by means of public communication that relates to the  
14 following:
- 15 a. Evidence regarding the occurrences of transactions involved in the case;
  - 16 b. The character, credibility, reputation, or criminal record of a party, victim,  
17 or witness, or the identity of a witness, or the expected testimony of a party,  
18 victim, or witness.
  - 19 c. The performance or results of any examination or test or the refusal or  
20 failure of a person to submit to an examination or test;
  - 21 d. Any opinion as to the merits of the case or the claims or defense of a party;
  - 22 e. Any information a lawyer knows or reasonably should know is likely to be  
23 inadmissible as evidence in a trial and that would, if disclosed, create a  
24 substantial risk of prejudicing an impartial trial;
  - 25 f. Any information reasonably likely to interfere with a fair trial in this case  
26 afforded under the United States and Idaho Constitution, such as the  
existence or contents of any confession, admission, or statement given by  
the Defendant, the possibility of a plea of guilt, or any opinion as to the  
Defendant’s guilt or innocence.

24 IT IS FURTHER ORDERED, that no individual covered by this order shall avoid its proscriptions by  
actions directly or indirectly, but deliberately, that result in violating this order.

25 IT IS FURTHER ORDERED, that this order, in all provisions herein, shall remain in full force and  
26 effect throughout the entirety of this case unless otherwise ordered by this court.”





1 **ARGUMENT**

2 Properly construed, the Order does not apply to the Victims' families in this matter.

3 The only "parties" to the case are the People and the Defendant. Accordingly, as a non-party  
4 citizens, the Victims surviving family members are free to speak to the public and the media  
5 under the First Amendment to the Constitution. Simply put, their rights to freedom of speech  
6 cannot be restricted through a judicial prior restraint. *Gentile* makes clear that only the rights  
7 of attorneys who are actively engaged in litigating a pending matter can be restricted without  
8 satisfying the rigorous prior restraints standard set forth in *Nebraska Press Association v.*  
9 *Stuart*. See *Gentile v State Bar of Nevada*, 501 U.S. 1030, 1072-1074 (1991). ("The speech of  
10 lawyers representing clients in pending cases may be regulated under a less demanding  
11 standard than that established for regulation of the press in *Nebraska Press Assn. v. Stuart*,  
12 427 U.S. 539, 49 L. Ed. 2d 683, 96 S. Ct. 2781 (1976) ..." ) (emphasis added.)  
13  
14

15 As attorney for one of the Victim's families, I am allowed to relay to the media any of  
16 the opinions, views, or statements of those family members regarding any part of the case (as  
17 they are allowed to speak about the case under the First Amendment).

18 This is different from offering up my own opinion regarding the facts and issues  
19 surrounding the case. It would place an undue burden on the Victims' families if the attorney  
20 whom they have retained to represent their interests was prohibited from serving as their  
21 spokesperson (conduit) to the media and other parties in transmitting the Victims' families  
22 thoughts and opinions.  
23

24 As attorney for the Victim's family members, who are not parties to this action, I too  
25 am allowed to comment on the case and other issues surrounding the investigation pursuant to  
26 IRPC Rule 3.6.

1 I am not an attorney of record involved in this case. I have played no part in the  
2 investigation, prosecution or defense of the case. Neither the State nor the Defense has shared  
3 any information regarding the case and therefore the only governing rule for public comment  
4 regarding this case would be IRPC Rule 3.6.  
5

6 Additionally, in the Gentile case the Court upheld ABA Rules 3.6 and 3.8 as they  
7 applied to attorneys who are representing a party to the case but held that the wording of those  
8 rules was unconstitutionally vague.

9 IRPC Rule 3.6 is similar in wording to ABA Rules 3.6 and 3.8 and therefore is vague  
10 in its application to attorneys who are representing a party to the case and even more vague to  
11 attorneys like I, who are **not representing any party to the case.**  
12

13 The Order is facially overbroad and vague. On its face it precludes all comments or  
14 opinions (other than reciting matters of public record), even if there is no possibility, much less  
15 “substantial probability” of prejudicing the tribunal, and it also extends (remains in effect) even  
16 after a jury has been seated and admonished to avoid all press coverage regarding the case. As  
17 such, the Order is unconstitutionally overbroad.

18 The point of a non-dissemination order is to protect the rights of the parties in the case  
19 and especially in criminal cases it is an attempt to preserve a fair and impartial jury pool. Once  
20 the jury has been selected the non-dissemination order becomes moot and therefore would not  
21 be allowed to be in full force for the “entirety of the case.”.  
22  
23  
24  
25  
26

1  
2 AUTHORITIES

3 *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991)  
4 First Amendment to the United States Constitution.  
5 IRPC Rule 3.6  
6

7 THEREFORE, I request that the Court forthwith amend and/or clarify the Amended  
8 Non-dissemination order regarding the issues addressed above and I request a hearing on the  
9 matter.  
10

11 DATED THIS 2<sup>nd</sup> DAY OF February, 2023  
12  
13

14 By: elect. Sign. Shanon L. Gray  
15 Shanon L.Gray, IDB#12061  
16 Attorney for Goncalves Family  
17  
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26

# **EXHIBIT F**



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR WHITMAN COUNTY

WHITCOM 911, a Washington agency,

Plaintiff,

v.

NASH HOLDINGS, LLC d/b/a THE  
WASHINGTON POST, a Delaware  
limited liability company, THE NEW  
YORK TIMES COMPANY d/b/a THE  
NEW YORK TIMES, a corporation  
incorporated under the laws of the state  
of New York, SPOKANE  
TELEVISION, INC. d/b/a KXLY, a  
Washington Profit Corporation,

Defendants.

NO.

23 2 00042 38

COMPLAINT FOR DECLARATORY  
RELIEF

Plaintiff, WHITCOM 911, by and through its attorneys, Jeffrey R. Galloway and Brian M.  
Werst of Witherspoon Brajcich McPhee, PLLC, claims for relief against the above-named  
Defendants, complains, and alleges as follows:

**I. PARTIES**

1.1 Plaintiff WHITCOM 911 is a Washington agency established pursuant to interlocal  
agreement under RCW 39.34 *et seq.*, through the cooperation of Washington State

COMPLAINT FOR DECLARATORY RELIEF - 1

**WBM** WITHERSPOON  
BRAJCICH  
MCPHEE  
A PROFESSIONAL LIMITED LIABILITY COMPANY  
601 West Main Avenue, Suite 1400  
Spokane, Washington 99201-0677  
Telephone: (509) 455-9077  
Fax: (509) 624-6441



1 political/municipal entities consisting of the County of Whitman, Washington; City of  
2 Pullman, Washington; and Washington State University. WHITCOM 911 is a "person" as  
3 defined under the Washington Uniform Declaratory Judgments Act.  
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5 1.2 Upon information and belief, Defendant NASH HOLDINGS, LLC d/b/a THE  
6 WASHINGTON POST is a Delaware limited liability company and news organization  
7 operating in the District of Columbia. Defendant NASH HOLDINGS, LLC d/b/a THE  
8 WASHINGTON POST ("The Washington Post") is a "person" as defined under the  
9 Washington Uniform Declaratory Judgments Act.  
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11 1.3 Upon information and belief, Defendant THE NEW YORK TIMES COMPANY d/b/a  
12 THE NEW YORK TIMES is a corporation incorporated under the laws of the state of New  
13 York and a news organization located and operating in New York County, State of New  
14 York. Defendant THE NEW YORK TIMES COMPANY d/b/a THE NEW YORK TIMES  
15 ("The New York Times") is a "person" as defined under the Washington Uniform  
16 Declaratory Judgments Act.  
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18 1.4 Upon information and belief, Defendant SPOKANE TELEVISION, INC. d/b/a KXLY, a  
19 Washington Profit Corporation, is a news organization located and operating in Spokane  
20 County, State of Washington. Defendant SPOKANE TELEVISION, INC. d/b/a KXLY  
21 ("KXLY") is a "person" as defined under the Washington Uniform Declaratory Judgments  
22 Act.  
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## 24 **II. JURISDICTION AND VENUE**

25 2.1 This Court has jurisdiction pursuant to RCW 2.08.010 and RCW 7.24 *et seq.*  
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27 2.2 Venue and jurisdiction are proper in Whitman County, State of Washington.  
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### III. FACTUAL ALLEGATIONS

3.1 WHITCOM 911 re-alleges the foregoing paragraphs as though fully set forth herein.

#### WHITCOM 911

3.2 WHITCOM 911 provides Emergency 911 ("911") services for various public agencies, including the City of Moscow, Idaho ("City of Moscow").

3.3 Providing 911 services requires, inter alia, that WHITCOM 911 receives the call, gathers information, and then based upon the information provided by the caller, dispatches the proper agency to the caller's location to assist.

3.4 WHITCOM 911 is an agency subject to the Washington Public Records Act, codified at RCW 42.56 *et seq.*

3.5 WHITCOM 911 and the City of Moscow have entered into an agreement regarding services to be performed by WHITCOM 911 ("Agreement"). Pursuant to the Agreement, 911 calls made by callers in the City of Moscow are received by WHITCOM 911.

3.6 Pursuant to the Agreement between WHITCOM 911 and the City of Moscow, WHITCOM 911 provides 911 services for the Moscow Fire Department, Moscow Police Department, and EMS emergency services for the City of Moscow.

3.7 Pursuant to the Agreement, WHITCOM 911 is affiliated with the Moscow Police Department.

#### NOVEMBER 13, 2022, 911 CALL

3.8 On November 13, 2022, WHITCOM 911 received a 911 call from a caller located in Moscow, Idaho, requesting assistance to 1122 King Road located in Moscow, Idaho ("1122 King Road").



1 3.9 WHITCOM 911 recorded the 911 call. Based upon the information provided in the 911  
2 call, WHITCOM 911 dispatched the Moscow Police Department to 1122 King Road.

3  
4 **ARREST OF BRYAN C. KOHBERGER**

5 3.10 Based upon the investigation of the Moscow Police Department, on December 29, 2022,  
6 a Criminal Complaint and Probable Cause Order was issued for the arrest of Bryan C.  
7 Kohberger.  
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9 3.11 Mr. Kohberger was arrested, and criminal charges are currently pending in Latah County  
10 District Court in Moscow, Idaho.  
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12 **NONDISSEMINATION ORDERS**

13 3.12 On January 3, 2023, Mr. Kohberger's counsel and the Latah County Prosecuting Attorney  
14 stipulated to a Nondissemination Order.  
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16 3.13 On January 3, 2022, the Latah County District Court issued a Nondissemination Order  
17 (attached hereto as "Exhibit 1" and hereinafter referred to as "Nondissemination Order")  
18 that specifically prohibits:  
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20 ...any statement, which a reasonable person would expect to be  
21 disseminated by means of public communication that relates to the  
22 following:

- 23 1. Evidence regarding the occurrences or  
24 transactions involved in this case;
- 25 2. The character, credibility, or criminal record of a  
26 party;
- 27 3. The performance or results of any examinations  
28 or tests or the refusal or failure of a party to  
29 submit to such tests or examinations [sic];
- 30 4. Any opinion as to the merits of the case or the  
31 claims or defense of a party;

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5. Any other matter reasonably likely to interfere with a fair trial of this case, such as, but not limited to, the existence or contents of any confession, admission, or statement give [sic] by the Defendant, the possibility of a plea of guilt to the charged offense or a lesser offense, or any opinion as to the Defendant's guilt or innocence.

7 3.14 On January 18, 2023, the Latah County District Court amended its January 3, 2023  
8 Nondissemination Order. The Amended Nondissemination Order (attached hereto as  
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10 "Exhibit 2" and hereinafter referred to as "Amended Order") provides:

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1. The attorneys for any interested party in this case, including the prosecuting attorney, defense attorney, and any attorney representing a witness, victim, or victim's family, as well as the parties [to the case], including but not limited to investigators, law enforcement personal [sic], and agents for the prosecuting attorney or defense attorney, are prohibited from making extrajudicial statements (written or oral) concerning this case, except, without additional comment, a quotation from or reference to the official public record of the case.
  2. This order specifically prohibits any statement, which a reasonable person would expect to be disseminated by means of public communication that relates to the following:
    - a. Evidence regarding the occurrences or transactions involved in the case ...

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**PUBLIC RECORDS REQUESTS**

25 3.15 On January 10, 2023, The Washington Post, submitted a public records request to  
26 WHITCOM 911. The Washington Post requested a "copy of the 911 call placed from 1122  
27 King Road, Moscow, Idaho on Nov. 13 at 11:58 a.m."

28 3.16 On January 16, 2023, The New York Times, submitted a public records request to  
29 WHITCOM 911. The New York Times requested "[c]opies of any 911 calls regarding  
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incidents at King Road or Queen Road in Moscow on November 12 or 13” as well as  
“[a]ny 911 calls from 1122 King Road since January.”

3.17 On January 20, 2023, KXLY, submitted a public records request to WHITCOM 911.  
KXLY requested “...a copy of the audio and a transcript of the 911 call made from 1122  
King Road on 11/13/2022 at 11:56 am.”

3.18 WHITCOM 911 reasonably anticipates that there will be additional public records requests  
for the 911 call made from 1122 King Road on November 13, 2022.

#### WASHINGTON PUBLIC RECORDS ACT

3.19 WHITCOM 911 is an agency, as defined by RCW 42.56.010(1), subject to the Washington  
Public Records Act, RCW 42.56 *et al.*

3.20 The Washington Public Records Act requires disclosure of public records. However, there  
are many exemptions that may exempt disclosure of said public records.

3.21 WHITCOM 911 has not released the 911 call made from 1122 King Road on November  
13, 2022, as requested by The Washington Post on January 10, 2023.

3.22 WHITCOM 911 has not released the 911 call made from 1122 King Road on November  
13, 2022, as requested by The New York Times on January 16, 2023.

3.23 WHITCOM 911 has not released the 911 call made from 1122 King Road on November  
13, 2022, as requested by KXLY on January 20, 2023.

3.24 The 911 call requested by the Defendants is reasonably believed to be a public record  
under the Washington Public Records Act, RCW 42.56 *et al.*

3.25 The rights, status, and/or legal relations of WHITCOM 911 in responding to the  
Defendants’ public records requests, in light of the Nondissemination Order, Amended

Order, and the exemptions applicable to WHITCOM 911 under the Washington Public Records Act, are directly affected.

#### IV. CAUSE OF ACTION

4.1 WHITCOM 911 re-alleges the foregoing paragraphs as though fully set forth herein.

#### DECLARATORY JUDGMENT

4.2 WHITCOM 911 is an agency subject to the Washington Public Records Act, RCW 42.56 *et al.*

4.3 Defendants have requested the 911 call made from 1122 King Road on November 13, 2022, under the Washington Public Records Act.

4.4 The Latah County District Court issued a Nondissemination Order and Amended Order.

4.5 To date, WHITCOM 911 has not disclosed the 911 call made from 1122 King Road on November 13, 2022, as requested by Defendants.

4.6 A controversy exists between WHITCOM 911 and Defendants as to whether WHITCOM 911 is required to disclose the requested 911 call made from 1122 King Road on November 13, 2022, in light of the Nondissemination Order, the Amended Order, and the exemptions applicable under the Washington Public Records Act.

4.7 Pursuant to the Uniform Declaratory Judgment Act, Chapter 7.24 Revised Code of Washington, WHITCOM 911 seeks to have this Court declare the rights, responsibilities, and duties of the parties, including whether WHITCOM 911 must disclose the 911 call made from 1122 King Road on November 13, 2022, as requested by the Defendants.

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V. WHITCOM 911'S PRAYER FOR JUDGMENT

WHEREFORE, WHITCOM 911 prays for judgment as follows:

1. For judgment declaring the rights, responsibilities, and duties of the parties, including whether WHITCOM 911 must disclose the 911 call made from 1122 King Road on November 13, 2022, as requested by the Defendants; and
2. For such other and further relief as may be just, equitable and permitted by law.

DATED this 30<sup>th</sup> day of January, 2023.

WITHERSPOON BRAJCICH MCPHEE, PLLC

By: 

Jeffrey R. Galloway, WSBA #44059

Brian M. Werst, WSBA #28457

Attorneys for WHITCOM 911

# EXHIBIT 1

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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,  
Plaintiff,

Case No. CR29-22-2805

v.

NONDISSEMINATION ORDER

BRYAN C. KOHBERGER  
Defendant.

The Court, by stipulation of the parties, enters its Order as follows:

IT IS HEREBY ORDERED that the parties to the above titled action, including investigators, law enforcement personnel, attorneys, and agents of the prosecuting attorney or defense attorney, are prohibited from making extrajudicial statements, written or oral, concerning this case, other than a quotation from or reference to, without comment, the public records of the case.

This order specifically prohibits any statement which a reasonable person would expect to be disseminated by means of public communication that relates to the following:

1. Evidence regarding the occurrences or transactions involved in this case;
2. The character, credibility, or criminal record of a party;
3. The performance or results of any examinations or tests or the refusal or failure of a party to submit to such tests or examinations;

4. Any opinion as to the merits of the case or the claims or defense of a party;
5. Any other matter reasonably likely to interfere with a fair trial of this case, such as, but not limited to, the existence or contents of any confession, admission, or statement given by the Defendant, the possibility of a plea of guilt to the charged offense or a lesser offense, or any opinion as to the Defendant's guilt or innocence.

IT IS FURTHER ORDERED that no person covered by this order shall avoid its proscriptions by actions that indirectly, but deliberately, cause a violation of this order.

IT IS FURTHER ORDERED that this order, and all provisions thereof, shall remain in full force and effect throughout these proceedings, until such time as a verdict has been returned, unless modified by this court.

SO ORDERED 1/3/2023 4:58:57 PM

  
Magistrate Judge



## EXHIBIT 2

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OP. CR29-22-2805

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

Plaintiff,

vs.

BRYAN C. KOHBERGER,

Defendant.

Case No. CR29-22-2805

AMENDED  
NONDISSEMINATION ORDER

There is a balance between protecting the right to a fair trial for all parties involved and the right to free expression as afforded under both the United States and Idaho Constitution. To preserve the right to a fair trial some curtailment of the dissemination of information in this case is necessary and authorized under the law.<sup>1</sup> Therefore, based upon the stipulation of the parties and with good cause,

IT IS HEREBY ORDERED:

1. The attorneys for any interested party in this case, including the prosecuting attorney, defense attorney, and any attorney representing a witness, victim, or victim's family, as well as the parties to the above entitled action, including but not limited to investigators, law enforcement personnel, and agents for the prosecuting attorney or defense attorney, are prohibited from making extrajudicial statements (written or oral) concerning this case, except, without additional comment, a quotation from or reference to the official public record of the case.
2. This order specifically prohibits any statement, which a reasonable person would expect to be disseminated by means of public communication that relates to the

<sup>1</sup> See ABA STANDARDS FOR CRIMINAL JUSTICE: FAIR TRIAL AND PUBLIC DISCLOSURE (4<sup>th</sup> ed. 2016); IRPC Rule 3.6; *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Nebaska Press Ass'n v. Stuart*, 427 U.S. 539 (1976); *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991).

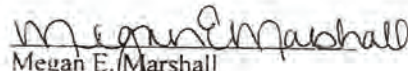
following:

- a. Evidence regarding the occurrences or transactions involved in the case;
- b. The character, credibility, reputation, or criminal record of a party, victim, or witness, or the identity of a witness, or the expected testimony of a party, victim, or witness;
- c. The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test;
- d. Any opinion as to the merits of the case or the claims or defense of a party;
- e. Any information a lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial;
- f. Any information reasonably likely to interfere with a fair trial in this case afforded under the United States and Idaho Constitution, such as the existence or contents of any confession, admission, or statement given by the Defendant, the possibility of a plea of guilt, or any opinion as to the Defendant's guilt or innocence.

IT IS FURTHER ORDERED that no individual covered by this order shall avoid its proscriptions by actions directly or indirectly, but deliberately, that result in violating this order.

IT IS FURTHER ORDERED that this order, and all provisions herein, shall remain in full force and effect throughout the entirety of this case unless otherwise ordered by this court.

Dated: 1/18/2023

  
Megan E. Marshall  
Magistrate Judge

CLERK'S CERTIFICATE OF MAILING

I hereby certify that a true and complete copy of the foregoing was served as follows:

William Wofford Thompson      paservice@latahcountvid.gov      [X] By E-mail

Anne Taylor      pdfax@kcgov.us      [X] By E-mail

JULIE FRY  
CLERK OF THE DISTRICT COURT

DATE 1/19/23

By: [Signature]  
Deputy Court Clerk

# **EXHIBIT G**



# PRESS RELEASE

FOR IMMEDIATE RELEASE

January 3, 2023

## CONTACT

Moscow Police Department

[moscowpdpio@ci.moscow.id.us](mailto:moscowpdpio@ci.moscow.id.us)

Media Line: 208-883-7181

Media Line Hours: 7 a.m. to 5 p.m. (PST)

## Moscow Homicide Case Nondissemination Order

MOSCOW, Idaho – The Moscow Police Department (MPD) is providing the following information to update the public on the on-going homicide investigation and court processes.

On January 3, 2023, Latah County Magistrate Judge Megan Marshall issued a nondissemination order in regard to the murder case against Bryan C. Kohberger. The order prohibits any communication by investigators, law enforcement personnel, attorneys, and agents of the prosecuting attorney or defense attorney concerning this case. A copy of the order can be found on our website. Due to this court order, the Moscow Police Department will no longer be communicating with the public or the media regarding this case.