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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**

STATE OF IDAHO,

Plaintiff,

V.

BRYAN C. KOHBERGER,

Defendant.

CASE NUMBER CR01-24-31665

**OBJECTION TO COURT'S ORDER
RE: SPECIAL APPOINTMENT OF
SPECIAL ASSISTANT ATTORNEYS
GENERAL AND DECISION WITHOUT
HEARING**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and objects to the "Amended Petition for Appointment of Special Assistant Attorneys General" filed November 19, 2024 and the Request for Decision Without Hearing on same, filed November 20, 2024.

The grounds for this objection are that the state has not articulated good cause for the appointment, Idaho Code does not authorize multiple “attorneys” general, and Mr. Kohberger will be denied the right to a fair trial if the state is given the broad authority to appoint multiple special assistant attorney general without any specification of who and how many. ¹

Idaho Code 31-2603(b) states:

(b) The prosecuting attorney may petition the district judge of his county for the appointment of *a* special assistant attorney-general to assist in the prosecution of any criminal case pending in the county; and if it appears to the district judge to whom such petition is addressed that *good cause appears* for granting such petition, the district judge, *may*, with the approval of the attorney-general, appoint *an assistant attorney-general* to assist in such prosecution.[emphasis added]

The plain language of the statute allows, upon a finding of good cause for “a” assistant attorney general to assist in the prosecution. The state’s petition seeks to give Idaho’s Criminal Law Division of the Attorney General’s Office the broad discretion to appoint as many designees as he sees fit. The authority sought in the proposed court order is “that Deputy Attorney General Jeff Nye and any other Deputy Attorney general selected by the Attorney General’s Office, be appointed as Special Assistant Attorneys General to assist the prosecution of this case.” This language, when coupled with the explanation in the petition and the letter that accompanied the petition, is to grant Mr. Nye or his designee carte blanche authority to choose “assigned deputy **attorneys** general as may be appropriate.” The authority sought in the petition and draft order is without any rational for good cause and is beyond the scope of the authority set forth in the statute for “a” attorney. This is different than what the state did earlier in this case. When the state first sought the appointment of the Idaho Attorney General’s Office in April of 2023, the petition set forth two specific names.

The time for Mr. Kohberger to object is now because Idaho caselaw indicates that once a special assistant attorney is appointed, there is no collateral attack available absent a showing

¹ Defense counsel reached out via email to the state to seek an understanding of the state’s intentions. No response was provided.

of an unfair trial. *State v. Bell*, 84 Idaho 153, 160 (1962). It is important that Mr. Kohberger have knowledge of what prosecutors are acting on behalf of the state to preserve all issues associated with a fair trial.²

This is not a routine matter as asserted by the state. This case is a very high-profile case and as such the Court has taken many measures to protect sensitive information. These measures include a non-dissemination order, sealed filings, and protective orders. The case has a huge amount of discovery, over 60 terabytes of information. It is critical to the preservation of the confidential nature of this case that this Court and the defense know who has access to the case file and who is acting on behalf of the state as a prosecutor. As such, counsel for Mr. Kohberger took the prosecutor up on his offer in the letter to the Court and emailed with a request for clarification relating to the requested broad authority for Mr. Nye; no answer came.

Upon a showing of good cause, and a finding of good cause, the court should limit the appointment of the Special Assistant Attorney General to a single attorney or at a bare minimum to a specifically named prosecutor. Under a plain reading of the statute, there is no statutory authority for more than one attorney or broad discretion of an open appointment to an entire attorney general's office.

A hearing is requested on this matter, as it is not a routine matter to give an entire legal division of the Idaho Attorney General's Office authority over who to appoint as prosecutors in this case.

DATED this 21 day of November, 2024.

/s/ Elisa G. Massoth
ELISA G. MASSOTH

² The state currently has the assistance of the United States Attorney's Office for the District of Idaho. United States Attorney Joshua Hurwitt and Assistant United States Attorney Tracy Whalen have conducted grand jury proceedings, the extent of which is only known through over 70 subpoena returns and two subpoena duces tecums.

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 21 day of November, 2024 addressed to:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov

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