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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,	)	
	)	
Plaintiffs,	)	Case No. CR29-22-2805
	)	
v.	)	<b>MEMORANDUM IN SUPPORT OF</b>
	)	<b>MOTION TO UNSEAL COURT</b>
	)	<b>RECORD REGARDING CONFLICT</b>
BRYAN C. KOHBERGER,	)	<b>ISSUES OF DEFENSE COUNSEL</b>
	)	
Defendant.	)	

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 Unseal the Court Record Regarding Conflict Issues of Defense Counsel.

The Court held a hearing regarding Conflict Issues of Defense Counsel, Ann Taylor on January 27, 2023. The parties present were Defense Counsel and Ashley Jennings, representing the Latah County Prosecutors Office.

I am not aware of any other counsel that was present at the hearing.

I am also not aware that anyone other than the parties mentioned above were even notified of the hearing on this matter.

The Goncalves Family and I only became aware that there was a hearing on this matter from a meeting with the Latah County Prosecutor’s Office and investigators on February 8, 2023 or we would have never known such hearing took place.

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**LEGAL AUTHORITY**

Idaho Court Administrative Rule 32 governs the release, exemption from release and limitations upon release of judicial records. Specifically, I.C.A.R. 32 (i) outlines the procedure for sealing court records:

In ruling on whether specific records should be disclosed, redacted or sealed by order of The court, the court shall determine and make a finding of fact as to whether the interest in privacy or public disclosure predominates. If the court redacts or seals records to protect predominating privacy interests, it must fashion the least restrictive exception from disclosure consistent with privacy interests. Before a court may enter an order redacting or sealing records, it must also make one or more of the following determinations in writing:

- (1) That the documents or materials contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person, or
- (2) That the documents or materials contain facts or statements that the court finds might be libelous, or
- (3) That the documents or materials contain facts or statements, the dissemination or publication of which would reasonably result in economic or financial loss or harm to a person having an interest in the documents or materials, or compromise the security of personnel, records or public property of or used by the judicial department, or
- (4) That the documents or materials contain facts or statements that might threaten or endanger the life or safety of individuals, or
- (5) That it is necessary to temporarily seal or redact the documents or materials to preserve the right to a fair trial.

State v. Allen, 156 Idaho 332, 336, 325 P.3d 673, 677 (Ct. App. 2014). That Rule provides: “The public has. A right to examine and copy the judicial department’s

1 declarations of law and public policy and to examine and copy the records of all  
2 proceedings open to the public.” I.C.A.R. 32 (a). Idaho Code Section 74-101 et. Seq.  
3 memorializes Idaho’s Public Records Act. In determining whether a record should  
4 be sealed there should also be a consideration of “whether the place and process have  
5 historically been open to the press and general public” and “whether public access  
6 plays a significant positive role in the functioning of the particular process in question.”  
7 Press Enterprise Co. v. Superior Court, 478 U.S. 1,8, (1986)

8  
9 **ARGUMENT**

10 Since the record has been sealed regarding the conflict issues regarding Defense  
11 Counsel Ann Taylor on this matter and the fact that the Latah County Prosecutor’s Office did  
12 not offer any objections or evidence at the time of the hearing we will presume there is a  
13 minimal record of findings and conclusions.  
14

15 It is also my understanding that there were no witnesses called during the hearing and  
16 no other outside testimony was given to the court other than that of Defense Counsel, Ann  
17 Taylor.

18 In determining whether to seal the record of the hearing on the conflict issues of  
19 Defense Counsel, Ann Taylor, the Court, would have to analyze and apply I.C.A.R. 32 (i) and  
20 public policy case law.  
21

22 Conflict issues in this case would involve Ms. Taylor’s ability to represent Mr.  
23 Kohberger after previously representing Cara Kernodle (the mother of one of the Victims’ in  
24 this case Xana Kernodle) as well as any other actual or potential conflicts with any other  
25 clients. In addition, the court would have had to address any issues regarding why Ms. Taylor  
26 withdrew from Cara Kernoodle’s representation as a current client in order to take on Mr.

1  
2 Kohberger’s case. That would include if there has been a waiver filed by Cara Kernoodle  
3 and/or possibly eliciting testimony from Cara Kernoodle to determine the extent of any contact  
4 and information relayed to Ms. Taylor during the representation. Additionally, the Court  
5 should have considered the potential for a conflict to arise at different stages of the criminal  
6 proceedings based on Mrs. Taylor’s prior representation of any witnesses or parties involved in  
7 this matter.

8           Upon gathering this information, the Court should have first determined whether the  
9 sealing the record of the conflict hearing is consistent with openness and public policy.  
10 Secondly, the Court should have determined whether sealing the record of the conflict hearing  
11 is consistent with the type of hearing being “historically been open to the press and general  
12 public”. Finally, the Court would need to have applied I.C.A.R. 32 (i) and made a finding of  
13 fact regarding the applicable issue and fashion the least restrictive exception, consistent with  
14 privacy interests.  
15

16           Taking into consideration the information the court reviewed in this case which was  
17 merely, Defense Counsel, Ann Taylor’s testimony to the court, the scope of the information  
18 obtained by the Court from Ms. Taylor, and the lack of any findings on this matter, the Court  
19 must unseal the court record regarding the conflict issues with Defense Counsel.  
20

21           In applying the above considerations, it is not common to seal records regarding  
22 conflict issues of attorneys. At this stage of the criminal proceeding conflict issues should be  
23 open to the public. This avoids any actual or potential conflicts the court may not be aware of  
24 and helps insure any actual or potential conflicts may be avoided. By opening the record to the  
25 public the Court can fully analyze all conflicts not just those recognized by Defense  
26

1 Counsel. The number of witnesses and the scope of this case is massive and the possibility of  
2 other conflicts regarding Defense Counsel should be thoroughly investigated.

3 In applying, I.C.A.R. 32 (i), the Court must have made a determination that that the  
4 record of the Conflict issues contained one or more of the following:

- 5 1) Highly intimate facts or statements the publication of would be highly  
6 objectionable to a reasonable person, or
- 7 2) The record contains facts or statements that the Court finds might be libelous, or
- 8 3) The record contains facts of statements that may compromise financial security or  
9 economic or financial loss to a party having an interest in the proceeding, or
- 10 4) The record contains facts or statements that might threaten or endanger the life or  
11 safety of individuals, or
- 12 5) The sealing of the record is necessary to preserve the right to a fair trial, or
- 13 6) The record contains personal data identifiers that should have been redacted.

14 I cannot see any fact pattern applying the above determinations that would justify the  
15 Court sealing the records of the Conflict matter in this case. It appears the only  
16 testimony given at the hearing was Mrs. Taylors. Additionally the Latah County  
17 Prosecutor's Office failed to do any due diligence prior to the hearing regarding any conflicts  
18 and failed to inquire or object at the time of the hearing to clarify or identify any actual or  
19 potential conflicts. The proper remedy for the Court if they believed that protected  
20 information had been provided would have been to redact that information and then provide  
21 the full record to the public.

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THEREFORE, on behalf of my clients the Goncalves Family we would request that the court unseal the court record regarding the Conflict Issues of Defense Counsel in this matter.

DATED THIS 27<sup>th</sup> DAY OF February 2023

By: elect. Sign. Shanon L. Gray  
Shanon L.Gray, IDB#12061  
Attorney for Goncalves Family