

6-17-2014

## State v. Lankford Clerk's Record v. 5 Dckt. 35617

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Supplemental

IN THE  
**SUPREME COURT**  
OF THE  
STATE OF IDAHO

State of Idaho

**HORTON** Plaintiff and Respondent

vs. Mark N. Hankford

Defendant and Appellant

Appealed from the District Court of the Second Judicial District for the State of Idaho, in and

for Idaho County

Hon. James V. Judd District Judge

State Appellate Public Defender

Attorney  for Appellant  
Attorney General's Office

FILED - COPY  
Attorney  Respondent  
JUN 17 19  
Entered on ATS by

Filed this \_\_\_\_\_ day \_\_\_\_\_ Supreme Court Court of Appeals 20

\_\_\_\_\_  
Clerk  
By \_\_\_\_\_ Deputy

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DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 9:17 O'CLOCK A.M.

OCT 16 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

James E. Johnson  
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Attorney for Mr. Mark Lankford

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

STATE OF IDAHO,	)	CR 83-20158
	)	
Plaintiff,	)	
	)	
V.	)	MOTION FOR ORDER PERMITTING
	)	AMENDMENT TO INTEGRATED
	)	SECOND MOTION FOR A NEW
MARK HENRY LANKFORD,	)	TRIAL; AND,
Defendant.	)	MOTION TO CONTINUE
_____	)	

Comes now the Defendant, through his attorney James E. Johnson, and moves the Court for an order allowing amendment to the Integrated Second Motion for a New Trial, Pursuant to Court Order. The Defendant seeks to amend the motion in two significant ways, both of which add claims. While this court ordered that the Defendant file one motion which comprises all of his legally cognizable claims by April 30, 2012, the new claims address fundamental rights of the Defendant which will be severely prejudiced if not recognized, and the Defendant is concerned that any claim not pursued will be deemed to be waived. The amendments that the Defendant seeks to add are 1) a violation of his right to due process under the Fourteenth Amendment,

MOTION FOR ORDER PERMITTING AMENDMENT TO INTEGRATED SECOND MOTION FOR A NEW TRIAL; AND, MOTION TO CONTINUE

ORIGINAL

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based on a *Brady* violation, concomitant violations of his right to confrontation and right to present a defense under the Fifth and Sixth Amendments, and 2) violation of his right to counsel, based on a conflict of interest in representation by one of the defense counsel at trial in 2008.

*Brady* Violation

The *Brady* violation in this case is a very recent development, and was only confirmed on October 11, 2012. The recent confirmation of that violation is the reason for this very late motion to amend. Defense counsel learned on September 28, 2012 that a substantial cash, *unrecorded*, payment had been likely made by an Idaho County detective to Lane Thomas, a significant prosecution witness in this case, within a very few weeks of the 2008 trial. Defendant's follow-up with Defendant's prior trial counsel resulted in confident responses that they were not informed of any monetary payment to Mr. Thomas. Prior defense counsel Mr. Kovic and Mr. Hallin have supplied affidavits to the effect that they were not informed. See Exhibit A and B, attached. Mr. Skott Mealer (formerly an Idaho County detective assigned to this case) stated to this defense counsel on September 28, 2012 that within a few weeks after the 2008 trial, he received a check from Idaho County for a large amount of money, cashed it, and delivered the proceeds to Mr. Thomas by driving to Lewiston, Idaho on the day he received the check. See Exhibit C, Affidavit of James E. Johnson, attached. On October 11, 2012, Defense counsel received a copy of a check made out to Skott Mealer issued by

Idaho County on March 3, 2008, in the amount of \$1500. See Exhibit D, letter of Jay Johnson to Idaho County Auditor's Office, and warrant made out to Skott Mealer, attached. The 2008 trial in this case ended on February 13, 2008. Payment of the proceeds occurred approximately two and a half weeks after trial. The proximity in time is such that such disclosure should have been made to defense counsel when the payment was made, if not before. The first motion for a new trial was filed just before this money transfer occurred. Sentencing occurred after the monetary transfer. The second motion for a new trial occurred well afterward. At any time, Defense counsel should have been notified. The delivery of money to a State witness was evidence with which to impeach the witness.

The Defendant relies on the following U.S. Supreme Court cases:

*Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963), for the principle that material controlled by the prosecution which could be helpful in either reducing culpability or exonerating the defendant must be disclosed to the Defendant.

*Giglio v. U.S.*, 405 U.S. 150, 92 S.Ct 1555 (1972), for the principle that any promise made to a government witness in terms of reducing his liability in exchange for testimony is attributable to the State, whether the actual trial attorney for the State knew of the promise or not.

*U.S. v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375 (1985), for the principle that any material that would be useful in impeaching a State witness is material, and must be disclosed as *Brady* evidence.

*Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555(1995), for the principle that the prosecutor's duty to disclose *Brady*-type evidence is ongoing throughout the criminal process, and once material is learned by law enforcement on the case that knowledge is attributable to the handling prosecutor.

Any understanding, agreement, promise or other undertaking made to Lane Thomas at any time should be disclosed to the Defense. The *defense only learned in trial* that the prosecutor and Skott Mealer had met with Lane Thomas at the Cottonwood prison in December 2008. See Exhibit E, Trial Transcript, State v. Mark Henry Lankford, pp.1211-12. The cash transfer was never revealed. The apparent laundering of the transfer calls for an amendment to the motion for a new trial, along with sufficient time to obtain discovery on the matter. On information and belief, the payment of cash to a witness, particularly who had already told remarkably different versions of what he knows, is highly unusual and indicative of an effort to hide a payment that was previously agreed to be paid, but not until after trial so that the witness would not be impeached with that information.

Right to counsel, U.S. Constitution, 6th Amendment



Secondly, Mr. Kovis should have recused himself from the case when it became apparent that he (or someone else in his office) had represented Lane Thomas in the past, and he was an adverse witness. *Holloway v. Arkansas*, 435 U.S. 475, 98 S.Ct. 1173 (1978); *Cuyler v. Sullivan*, 446 U.S. 335, 100S.Ct. 1708 (1980). The prosecution was concerned about the conflict, and it was brought up in pre-trial motions. Exhibit F, Transcript of Motion Hearing held on December 13, 2007, pp. 158-167. Despite the best intentions on all parties, the conflict cannot be negotiated away with a simple agreement that Mr. Kovis would ignore his past dealings with Mr. Thomas, and would not cross-examine Thomas at trial. The Defendant was not aware that both he and Mr. Thomas would have to waive any conflict, and he was not made aware of any such waiver on Mr. Thomas's part. The Defendant did not waive any conflict of interest. Mr. Kovis had an actual adverse conflict of interest, with his representation of the defendant and his past representation and duty of loyalty and confidentiality that precluded Mr. Kovis from exploring subjects of impeaching cross-examination with the witness Lane Thomas, his former client.

The Defendant relies on the following cases in support of this claim:

*Holloway v. Arkansas*, 435 U.S. 475, 98 S.Ct. 1173 (1978), for the principle that if an attorney has conflicted loyalties to his clients, those clients will not receive the representation they are entitled to under the Sixth Amendment.

*Cuyler v. Sullivan*, 446 U.S. 335, 100S.Ct. 1708 (1980), for the principle that a defendant must demonstrate that an actual conflict adversely affected his attorney's performance, but once that adverse representation is shown, the court must weigh the conflicting contentions.

And,

Idaho Rules of Professional Conduct, Rule 1.8(b) and 1.9(c), for the principle that if an attorney still has a duty of loyalty to a former client, and that duty of loyalty is not waived by informed consent from both parties, an impermissible conflict exists.

The Defendant acknowledges that *Mickens v. Taylor*, 535 U.S. 162, 122 S. Ct 1237 (2001) imposes a burden on the defendant to affirmatively show that the conflict adversely affected his performance. Here, the transcript of the pretrial motion hearing on December 13, 2007 shows that Mr. Kovic agreed to limit his participation at trial to NOT questioning Mr. Thomas while under oath, due to the fact that he had previously represented Thomas. Furthermore, Kovic promised that he would not allow his prior knowledge of Mr. Thomas to be communicated to his co-counsel. In effect, Mr. Kovic, the primary and most experienced counsel on the case, was walled-off from this critical portion of the case that had to do with direct or cross-examination of Mr. Thomas, and thus was not an effective co-counsel. Although the Defendant had Mr. Hallin to represent him, one of the reasons Mr. Kovic was assigned on this case was because of his extensive experience trying criminal cases, compared to Mr. Hallin. The net result

was that the Defendant did not get the benefit of the appointment of Kovis to the extent he was entitled -- full, effective, representation. While Mr. Kovis performed capably in some aspects of the trial, Mr. Thomas was the most critical witness for the State. The Defense was hamstrung in its ability to investigate and impeach Mr. Thomas by the fact that the Defendant's lead attorney could not consult, investigate or impeach the most critical witness in the case.

This claim is generated in concert with the *Brady* claim, for the monetary aspect of the *Brady* claim underscores that Lane Thomas had an interest absolutely adverse to the Defendant.

Furthermore, the claim is underscored by the lapse in acceptable response to discovery which had been ordered by the Court. Defense counsel had moved for the State to disclose all information it had on Lane Thomas, including records of all contacts Idaho County law enforcement had with Lane Thomas, and what he communicated to them. Exhibit G, Defendant's Motion For Discovery Concerning Informant, filed December 6, 2007, attached. The State responded, claiming the request was overburdensome regarding Lane Thomas's contact with all the possible law enforcement. Exhibit H, Response to Defendant's Motion for Discovery Regarding Defendant, dated December 12, 2007, attached. The Court ordered that "...the State was not required to search every law enforcement agency or prosecutor's office in the country, but was obliged to disclose the requested information which is held by its

office and the agencies that have report to it either directly or in regards to Mr. Lankford's case..." and "[t]he State is compelled to answer all Mr. Lankford's discovery requests to the extent such information is held by itself or by others working on its behalf..." Exhibit I, Memorandum Decision and Order, dated January 7, 2008; attached. Defense attorney Mr. Hallin had not been informed of the meeting MacGregor and Skott Mealer had with Lane Thomas until trial had commenced. There was a letter that Sunil Ramalingam had written to MacGregor regarding Lane Thomas, which indicated that it had been cc'ed to Mr. Kovis. See Exhibit J, letter of Ramalingam to MacGregor, attached. MacGregor admitted to the Court that he had not supplied the letter to the Defendant. Exhibit K, Trial Transcript at p.1209, ll.3-6, attached. Because *presumably* Kovis has received the letter from Ramalingam, apparently that was treated as "no blood, no foul." That is hard to gauge. However, the meeting of MacGregor, Mealer and Thomas at Cottonwood was undisclosed, contrary to the Court's order. See Exhibit L, Letter of Hallin to MacGregor, dated February 8, 2008, attached. While Hallin refers to "reports" of the meeting, he was not informed of the meeting, and does not know of the content of the meeting. Id. They were surprised at trial. Exhibit M, Trial transcript, p. 1211, l. 21 to p.1212, l. 4; p 1221, ll 19-22.

In the heat of this battle, Kovis had to state, "I just get emotional about this, and it's Mr. Hallin's thing, because I'm not involved." Exhibit N, Transcript, p. 1220, ll. 11-12.


Had the discovery been properly made to the defense, it would have altered the course of the trial. The Defense reasonably did not know of the meeting between Thomas and the State. Without that knowledge, Mr. Kovic did not know of the adverse position between Thomas and Mark Lankford, because he was relying on his latest information, that Thomas would not testify adversely.

The non-disclosure of a payment to Lane Thomas is clear as a Brady violation as is the failure of the State to comply with a court order regarding discovery. The net effect of the Brady violation in conjunction with the conflict in representation was devastating to Mr. Lankford.

While this conflict claim is a late addition to the claims by the Defendant, these are fundamental rights that have been trespassed. Since the Integrated Motion should be amended to accommodate the very recently discovered information about the unreported cash transaction to Mr Thomas, and to avoid near-certain renewal of this claim if it is denied now, the Defendant urges this Court to allow for amendments to his motion of April 30, 2012.

In order for the State and Defendant to exchange discovery and research these issues, a continuance in the evidentiary hearing is needed. The Defendant requests the opportunity to seek discovery and present his evidence on this matter at an evidentiary hearing on a date well past the current hearing setting of October 18 and 19, 2012.

Dated this 15 day of October, 2012.

  
James E. Johnson  
Attorney for Mark Lankford

Certificate of Service


I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail and emailed a PDF copy to:

LaMont Anderson, Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
[lamont.anderson@ag.idaho.gov](mailto:lamont.anderson@ag.idaho.gov)

Ray Barker, attorney for Lane Thomas  
P.O. Box 9408  
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Gary Amendola, attorney for Bryan Lankford  
Amendola & Doty  
702 N. Fourth Avenue  
Coeur d'Alene, ID 83814  
[gary@aadlawoffice.com](mailto:gary@aadlawoffice.com)

On the 15 day of October, 2012

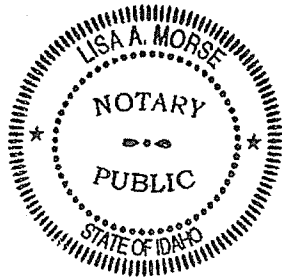
  
James E. Johnson



5. Trial was held in February of 2008.
6. I believe that Mr. Hallin filed a motion for a new trial on February 27, 2008.
7. I believe that Mr. Hallin filed a Second Motion for a new trial on October 29, 2009.
8. At no time either before or after the 2008 State v. Mark Henry Lankford trial, was I aware that any payment was made by an agent of Idaho County to Lane Thomas.
9. This ends this affidavit.

Charles E. Kovis  
Charles E. Kovis

SUBSCRIBED AND SWORN to before me this 15<sup>th</sup> day of October, 2012.



Lisa A. Morse

Notary Public for Idaho

Residing at Moscow, ID

My commission expires 4/3/15





4. Prior to trial, Lane Thomas was disclosed by the State of Idaho as a possible trial witness. During trial, Mr. Thomas was called by the State of Idaho in its case-in-chief to testify against Mr. Lankford.

5. This month, I was first advised of allegations concerning payments tendered to Mr. Thomas by the State of Idaho in exchange for his cooperation in this matter. To the best of knowledge, I do not recall being advised prior/during trial of any payments to be made to Mr. Thomas by the State of Idaho. In addition, I have reviewed my notes and files pertaining to this matter and have not been able to locate anything regarding any payments to Mr. Thomas.

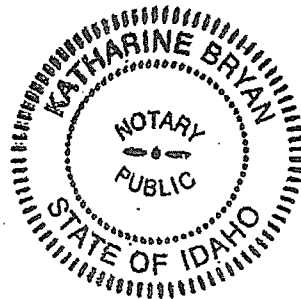
6. The reliability of Mr. Thomas' testimony was a critical concern for the defense in this matter. Prior to trial, Mr. Thomas was interviewed by Chuck Schoonover, a private investigator who assisted Mr. Kovis and I in this matter. During the interview, Mr. Thomas advised Mr. Schoonover that he had fabricated the statements he had previously made to the State's investigators concerning his knowledge of this matter. Additionally, shortly before trial, Mr. Thomas' attorney, Sunil Ramalingam, wrote a letter to the Idaho County Prosecuting Attorney stating that Mr. Thomas recanted the statements he previously made to investigators.

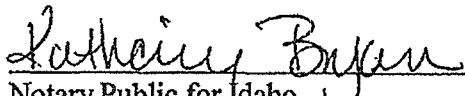
7. I was responsible for cross-examining Mr. Thomas during a trial of this matter in 2008. Had I been aware of any payment arrangements between Mr. Thomas and the State of Idaho, I would have assuredly impeached him on this matter during trial.

8. I was granted leave to withdraw as counsel of record in this matter on February 23, 2010. Had I been aware of any allegations regarding payments to Mr. Thomas prior to my withdrawal, I would have investigated the same, and if warranted, filed a motion for new trial based upon these concerns.

  
\_\_\_\_\_  
JONATHON D. HALLIN

SUBSCRIBED AND SWORN to before me this 15 day of October, 2012.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at: Coeur d'Alene  
Commission Expires: 9-2-2016




4. On September 28, 2012, I interviewed Skott Mealer, who worked on this case as a detective for the Idaho County Sheriff's Office in 2007 and 2008.
5. Mr. Mealer had interviewed Lane Thomas in the Latah County jail as part of this investigation.
6. I interviewed Skott Mealer at his home as part of preparation for this case on September 28, 2012.
7. During that interview, Mr. Mealer revealed to me that while acting in his capacity as a detective on this case, he delivered a cash payment to Lane Thomas.
  - a. Mr. Mealer said he was issued a check by Idaho County. He was not certain of the amount, but thought it was either \$3000 or \$1500.
  - b. Mr. Mealer said he cashed the check and took the proceeds directly to Lane Thomas.
  - c. Mr. Mealer said he gave the entire amount to Lane Thomas.
  - d. Mr. Mealer said the transaction occurred in late February or early March of 2012.
8. On a telephone conversation with Skott Mealer on October 10, 2012, I confirmed that he had conducted that transaction. He said he did not retain any documentation from the transaction. He also stated that he drove to Lewiston, Idaho to deliver the proceeds to Lane Thomas.
9. Previous to this, in the month of May, 2012, I had traveled to Grangeville, Idaho to look at records in this case. I traveled with my volunteer assistant, Uriel Benichou. While in the Idaho County Courthouse, I checked with the Auditor's or Treasurer's Office, seeking a check which would have been made out to Lane Thomas, and was told there was never any check made out to Lane Thomas in their system.
10. On October 11, 2012, I filed a request with the Idaho County Auditor's Office for a copy of a check or county warrant for Skott Mealer for the period of February, March or April, 2008. A copy of the request is attached to this affidavit.
11. I received a response from the Idaho County Auditor's Office that same day, and they provided me a copy of an Idaho County Warrant to the order of Skott Mealer for

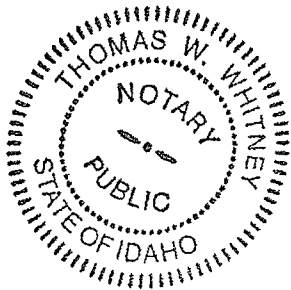
\$1500. A copy of that warrant, endorsed, is attached. The date on the warrant is March 3, 2008.

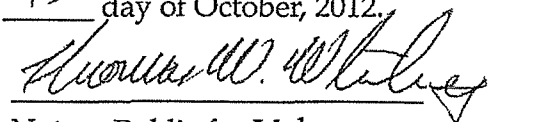
11. I have looked at the website of the Idaho Board of County Commissioners (BOCC) for February, March and April, 2008, in particular the minutes of the meetings of the BOCC. There is no mention of authorizing a check for this purpose, although on March 3, 2008, there is mention of the Board going into executive session three times, one of which was to attend to "legal matters."
12. In my inspection of the files in this case, I have not found any mention of disclosure to defense counsel of this payment to Lane Thomas.
13. In my opinion, this payment made to Lane Thomas should have disclosed to the Defense counsel, and the failure to disclose it is a violation of the Defendant's right to due process under the U.S. Constitution, per *Brady v. Maryland*.

This ends this affidavit.

  
James E. Johnson

SUBSCRIBED AND SWORN to before me this 15 day of October, 2012.



  
Notary Public for Idaho  
Residing at Moreno, ID  
My commission expires 06-11-2016

Jay Johnson  
attorney at law  
604 S. Washington Street, suite 3  
Moscow, Idaho 83843  
208 882 1357

October 11, 2012

Idaho County Auditor's Office  
attn: Records Custodian  
320 W. Main Street  
Grangeville, ID 83530  
sent by fax to 208 983 1428

Re: Check or county warrant issued to Skott Mealer, Winter or Spring of 2008  
Public records request  
Idaho Code § 9-342; access to records about a person by a person

Dear Custodian or Clerk:

I represent Mark Lankford in a pending motion hearing, in his case, CR-1983-20158. The purpose of this letter is to respectfully request that you supply a copy of an Idaho County check or warrant issued to Skott Mealer in late February, March or April of 2008. We believe the amount of the check was about \$1500, although it could be anywhere from \$500 to \$4000. It would have been an "even" amount.

I do not want any recorded information regarding wages or labor compensation to Mr. Mealer. However, if there were any checks or warrants issued to Mr. Mealer that were not for wages or compensation, I need to see copies of those.

The purpose of this request is to find out if Skott Mealer was provided funds to in turn give to a witness in this case. It is imperative that the Court understand the scope of the evidence in this case before making a final determination. I realize the statute allows for ten days for a response to this request. The hearing on this matter begins in seven days, so a faster response would be greatly appreciated. A faxed copy of the check or warrant would be great. If there is any statutorily prescribed cost for production, I will pay that.

Thank you for your time and attention to this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

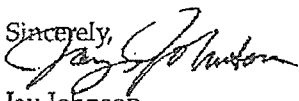
  
Jay Johnson

Exhibit   D



1 substantive testimony. If he gets -- if he gets on the  
2 stand and says I did say that this is what Mr. Lankford  
3 told me and I changed my mind about it, then it's up to  
4 the defense to impeach. And so it seems to me that how  
5 it comes in makes a difference of whether it's  
6 admissible or not, and we're not going to know that  
7 until we talk to Mr. Hathaway and find out what  
8 Mr. Thomas' intentions are.

9 MR. MACGREGOR: Your Honor, and I with Mr.  
10 Hathaway's permission, I talked to Lane Thomas last  
11 night, and he indicated to me that he intended to  
12 testify and that he wanted to testify. That he lied to  
13 their investigator because Mr. Lankford had threatened  
14 to kill him. And he's extremely scared right now.  
15 Very nervous. Is very afraid about his testimony and  
16 what kind of danger that puts his life. And -- but he  
17 wants to tell the truth, and he wants to come into  
18 court and do that.

19 THE COURT: Well, what I'm going to do, Mr.  
20 Hallin --

21 MR. HALLIN: Your Honor, I'm going to further  
22 object that the State did not provide any subsequent  
23 conversations with Mr. Thomas and his attorneys.  
24 They've never been provided to the defense. And these  
25 would be elicited in the case in chief, and they're

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1 statements of a witness and the State has known about  
2 it and substance was never provided and we haven't had  
3 a chance to investigate those or call rebuttal  
4 witnesses to rebut what Mr. Thomas may elicit today.

5 THE COURT: Well, it seems to me that -- and I'm  
6 not being really critical, but it could have been  
7 handled better by both sides in terms of being timely.  
8 Mr. Thomas has been listed as a witness for a long  
9 time -- and I'm not through. We had an in-limine  
10 motion regarding him. He was given to me, and I read  
11 his name to the jury, to the prospective jurors as one  
12 of the persons who would be testifying. I think that  
13 the fact that he was going to testify has been known  
14 for a long time. I do think that under the rules  
15 you're entitled to any exculpatory evidence they might  
16 have had and that would include a recantation by him,  
17 as indicated by Mr. Ramalingam to Mr. MacGregor. But  
18 we're not here -- I'm not here to assess what should  
19 have been done. We're here to decide where we are and  
20 whether it comes in. And I'm going to get Mr. Hathaway  
21 on the phone. He is Mr. Thomas' lawyer, and I want to  
22 hear from him. And then after I've heard from him --  
23 and the luck of getting a hold of him isn't always  
24 good, but we're going to take a short recess. And I'll  
25 see if I can get him on the phone, and I'll see what

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1 disclose that information to the defense.

2 THE COURT: Of where he'll be at?

3 MR. MACGREGOR: As far as where he'll be put,  
4 Your Honor.

5 THE COURT: I don't think it's properly  
6 discoverable. Doesn't have anything to do with the  
7 offense. I mean, the fact that -- you're entitled to  
8 know that the request has been made, and you've  
9 disclosed that. I think that's as far as it goes. No.  
10 10 is Mr. Kovis' former representation of Mr. Lane  
11 Thomas. I don't find anything in discovery rules that  
12 requires that disclosure. And I haven't found any  
13 cases that say it's ethically required.

14 MR. MACGREGOR: Your Honor, my problem with that  
15 is, if Lane Thomas testifies, he's up on the stand, Mr.  
16 Kovis is cross-examining him, Mr. Kovis has information  
17 that he got as his counsel that's confidential  
18 information, he's using -- he could use that  
19 information to cross-examine Mr. Thomas. He may not  
20 even use it, but he has knowledge of it. And he may  
21 use it in a roundabout way by not actually asking him  
22 specifically about it, but he knows probably a lot  
23 about Mr. Thomas.

24 THE COURT: He also is under an ethical  
25 obligation to confidentiality as to those offenses with

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1 Mr. Thomas, so he has professional constraints that I'm  
2 sure he'll observe.

3 MR. MACGREGOR: Well, and I think, you know, we  
4 may need to go and have some type of in-camera hearing.

5 THE COURT: Well, I'm happy to do that, but I  
6 simply tell you that I don't think that my review of  
7 the rules, and it's been a quick review, my review of  
8 the rules is that there was no obligation of Mr. Kovic  
9 to disclose his representation of the prior offenses,  
10 that is the eluding and the misdemeanor. I forgot what  
11 it was.

12 MR. MACGREGOR: Oh, I agree with that, Your  
13 Honor. The fact --

14 THE COURT: Let me finish.

15 MR. MACGREGOR: I'm sorry.

16 THE COURT: Mr. Kovic has his own professional  
17 relationship, past professional relationship, with all  
18 of the professional obligations that obtain in that  
19 relationship that he had with Mr. Thomas, and I comp  
20 him and I know he will observe those. And unless he  
21 has Mr. Lane's -- I mean, Mr. Thomas' consent not to,  
22 and if that becomes an issue I'll be happy to take it  
23 up in-camera. But I would suggest the two of you talk  
24 about that.

25 MR. KOVIS: Well, I can tell you right now, Your

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1 Honor, that I don't plan on cross-examining Mr. Thomas.  
2 I'm going to have Mr. Hallin do it, number one. And  
3 number two, I appreciate the fact that you said the  
4 rules of professional conduct apply in this case. And  
5 certainly as soon as I saw that he was disclosed,  
6 that's as far -- that's the first thing I thought of.  
7 And so, I think the rule says that if you represented  
8 somebody in the same or substantially related matter,  
9 and I don't. And quite frankly, I didn't really  
10 represent him. Somebody else in my office did. So,  
11 although technically I did, but I haven't gained any  
12 knowledge about Mr. Thomas. There's no surreptitious  
13 thing here. But Mr -- just to keep me one step away,  
14 Mr. Hallin is going to do the cross-examination.

15 MR. MACGREGOR: Your Honor, a couple of things.  
16 Number one, the defense served the State with a motion  
17 asking for just a huge amount of information on  
18 Mr. Thomas. Yet, they never informed me that Mr. Kovic  
19 had actually represented Mr. Thomas twice before.

20 THE COURT: I don't think he's required under the  
21 rule. I looked at the rules. I don't think he's  
22 required to.

23 MR. MACGREGOR: But, Your Honor, I've had -- and  
24 I guess I don't want to push this too far, because  
25 we're so close to trial, but I've had other cases where

1 this situation has come up, and the defense attorneys  
2 have asked to be removed from the case because they  
3 feel they have a conflict of interest. That, they  
4 can't really go after the witness on the stand because  
5 they used to represent him. And that --

6 THE COURT: Mr. Kovis has said he's not going to  
7 do the questioning.

8 MR. MACGREGOR: Well --

9 THE COURT: And that he -- that he's going to  
10 observe --

11 MR. MACGREGOR: But I think the State is entitled  
12 to know, maybe that should be an in-camera hearing  
13 outside the presence of the public, of what Mr. Kovis  
14 knows and doesn't know.

15 THE COURT: I don't think Mr. Kovis is entitled  
16 to tell me. I think his confidentiality constraints  
17 preclude him from telling me or anyone else what his  
18 conversations were with Mr. Thomas.

19 MR. MACGREGOR: But, Your Honor, it's disturbing  
20 to me that he at one time represented a key state  
21 witness. Has information about him. I assume that --  
22 I don't know what he knows and doesn't know.

23 THE COURT: And you're not supposed to. And he's  
24 not supposed to use it, in this trial or any other  
25 trial, without Mr. Thomas' permission. And he's told

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1 you that he's not going to, and he's going to have Mr.  
2 Hallin do the examining. I think your concern has been  
3 addressed.

4 MR. MACGREGOR: How do we monitor that situation?  
5 There's no way to monitor what he knows and doesn't  
6 know and whether that's used against Mr. Thomas.

7 THE COURT: Well, Mr. Thomas will know. He's  
8 your witness. If there's something disclosed, he can  
9 tell you.

10 MR. MACGREGOR: Still, like I say, I don't want  
11 to push this too far because I don't want new counsel  
12 to come in.

13 THE COURT: I understand. I don't think there's  
14 much life left in the horse. I don't think that  
15 there's a problem.

16 MR. MACGREGOR: You don't see the conflict of  
17 interest of the defense --

18 THE COURT: I do not.

19 MR. MACGREGOR: -- co-counsel going after  
20 Mr. Thomas, where the other co-counsel represented  
21 Mr. Thomas?

22 THE COURT: No, because I assume that Mr. Kovic  
23 is going to observe the professional obligations that  
24 obtain, and that would be he not disclose it to  
25 anybody. And he said he's not going to. He's having

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1 Mr. Hallin doing the questioning, who won't have that  
2 knowledge. I don't see where the problem is.

3 MR. MACGREGOR: Well, one thing, Your Honor, they  
4 asked whether Mr. Thomas has ever worked as a  
5 confidential informant before, whether he's ever worked  
6 for law enforcement before. I don't know if Mr. Kovis  
7 knows that's or not.

8 THE COURT: Well, it doesn't matter. They're  
9 entitled to ask. That's legitimate discovery.

10 MR. MACGREGOR: But if he knows that, that's  
11 something I should know, so I don't have to provide it  
12 to him.

13 THE COURT: That is not how it works.

14 MR. MACGREGOR: Well, Your Honor, if he knows  
15 that, then that can't be used --

16 THE COURT: He can't tell you if he knows it. He  
17 cannot tell you if he knows it because he's not free to  
18 disclose --

19 MR. MACGREGOR: See, and that's --

20 THE COURT: He is not free to disclose to you or  
21 anybody else what Mr. Thomas has told him.

22 MR. MACGREGOR: That's the problem we have.

23 THE COURT: It is not a problem, because he can't  
24 disclose it, and he's not disclosing it.

25 MR. MACGREGOR: So, we're all supposed to trust

1 Mr. Kovis?

2 THE COURT: Yes.

3 MR. MACGREGOR: That he doesn't cross-examine Mr.  
4 Thomas on things that he knows about?

5 THE COURT: You're supposed to trust him, and  
6 he's supposed to trust you, to follow the rules.  
7 That's exactly right.

8 MR. MACGREGOR: Well, I'm surprised at the  
9 position on that. It just seems that I have a right to  
10 know --

11 THE COURT: You do not have a right to know any  
12 confidential information that Mr. Thomas has given to  
13 his lawyer. That is fundamental to the practice of  
14 law. You do not disclose -- lawyers do not disclose  
15 information imparted to their lawyers, during a  
16 lawyer-client relationship. And Mr. Kovis is not free  
17 to disclose that to you or anybody else.

18 MR. MACGREGOR: So I have no way of knowing if  
19 Mr. Kovis is cross-examining Mr. Thomas on confidential  
20 information?

21 THE COURT: You don't have to worry about it  
22 because he isn't going to cross-examine him. He's  
23 already told you that.

24 MR. MACGREGOR: Well, but he's a co-counsel with  
25 Mr. Hallin. I assume they know everything about --

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1 MR. KOVIS: Your Honor, Mr. Hallin won't do that  
2 either. And if he wants to know what I know, ask  
3 Mr. Thomas.

4 THE COURT: Yes. Sure.

5 MR. KOVIS: Mr. Hallin won't do that either.

6 MR. MACGREGOR: Well, they've asked me for a lot  
7 of information. Just a minute. This is something, a  
8 side issue, Your Honor. They've asked me for all kinds  
9 of information regarding Mr. Thomas that is irrelevant,  
10 is burdensome, and, you know, how am I supposed to know  
11 if they already have that information or not?

12 THE COURT: It doesn't matter. Doesn't matter.  
13 He's not free to disclose that. If he disclosed that  
14 information he would be violating his ethical  
15 obligation to Mr. Thomas. He's not free to do that.  
16 He would be subject to a bar complaint if he disclosed  
17 that information to you, to Mr. Hallin, or to anybody  
18 else.

19 MR. MACGREGOR: Well, one thing I did have on  
20 that is, on the information that Mr. Kovich has  
21 requested, why can't they just talk to Mr. Thomas and  
22 find these things --

23 THE COURT: He's not entitled to do that. He's  
24 not entitled to use any information he has with  
25 Mr. Thomas.

2 THE COURT: Regarding this case.

3 MR. MACGREGOR: No, but additional things that's  
4 he has asked for from the State.

5 THE COURT: Because he's entitled to ask for it  
6 under the rules from the State.

7 MR. MACGREGOR: So I have to go everywhere in the  
8 country and find out about --

9 THE COURT: You have to do what you can, what is  
10 reasonably required. If you think it's oppressive,  
11 then you can oppose it.

12 MR. MACGREGOR: Well, the rule says that I'm only  
13 required to provide information from what -- from the  
14 law enforcement agencies that I work with on a regular  
15 basis. That's Rule 16A of discovery, and that's all  
16 I'm going to provide him.

17 THE COURT: Well, if you think it's overly broad,  
18 you can object to it, and I can rule on it.

19 MR. MACGREGOR: And I have done that already,  
20 Your Honor, four weeks ago. So, that's another one  
21 that you'll have to rule on.

22 THE COURT: Okay.

23 MR. MACGREGOR: Okay.

24 THE COURT: Did you get that, Kara? We will go  
25 and look at the extent to which that's beyond the scope

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1 of permissible discovery. If he's going beyond  
2 permissible discovery, we will stop that.

3 MR. MACGREGOR: I just wanted a ruling on that at  
4 some point so I know what I have to disclose and what I  
5 don't. What I have to attempt to obtain.

6 THE COURT: Okay. Any more with that horse?

7 MR. MACGREGOR: No, Your Honor.

8 THE COURT: Okay. Then, as I understand it, 11  
9 is the request that prior felony charges that were  
10 dropped not be allowed to be used to impeach Robert  
11 Baldwin, the former sheriff of Idaho County. Now, the  
12 same impeachment rule will apply there. If they're  
13 charges only and only thing allowed are convictions  
14 that go to credibility. Of course, unless there's a  
15 plan or something, which isn't at play in this context.  
16 And I think those rules apply. And what he was accused  
17 of is, in my judgment, not admissible.

18 MR. MACGREGOR: Thank you, Your Honor.

19 THE COURT: Mr. Kovis?

20 MR. KOVIS: I'm fine, Your Honor.

21 THE COURT: Okay. I'm coming to yours now.

22 MR. KOVIS: Pardon?

23 THE COURT: I'm coming to yours now.

24 MR. KOVIS: Oh, okay.

25 THE COURT: And they are few. I guess I'm asking

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*Attorneys for Defendant*

IDAHO COUNTY DISTRICT COURT  
AT 7:50 FILED 10 O'CLOCK 11 A.M.  
DEC 06 2007

ROSE E. GEHRING  
CLERK OF DISTRICT COURT  
LEIGH ZIMMERMAN DEPUTY

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

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR-1983-20158

**DEFENDANT'S MOTION FOR  
DISCOVERY CONCERNING  
INFORMANT**

COMES NOW, the Defendant, Mark Lankford, by and through his attorneys of record and moves the Court for an order compelling disclosure of the following material and information to Counsel for the Defendant unless the State commits itself to not calling Layne Franklin Thomas to testify against defendant at any proceeding herein. All of the requested material and information relates to Layne Franklin Thomas disclosed in the State's *Eighth Response To Request for Discovery*.

Exhibit 6

**COPY**

The specific items requested herein are as follows:

1. A listing of each criminal prosecution or investigation, including title of court, docket number, investigating police agency and identifying number of police report or other law enforcement report, and name of defendant, in which Layne Franklin Thomas has provided information to any law enforcement agency or law enforcement personnel, excluding those cases in which there was never any defendant or suspect other than Layne Franklin Thomas.
2. A listing of each law enforcement agent, personnel, and agency, including but not limited to employees of police and sheriffs' agencies, district attorneys' offices, departments of justice, departments of correction, parole departments, custodial institutions and other law enforcement agencies, to whom Layne Franklin Thomas ever provided any information concerning, describing, or relating to any alleged criminal activity by any person other than Layne Franklin Thomas.
3. The specific information provided by Layne Franklin Thomas to any of the persons or agencies described in request number 2, above, together with the date(s) on which Layne Franklin Thomas provided such information.
4. The custodial status of Layne Franklin Thomas at each time he communicated with any person as described in request number 2, above, including the specific reason why Layne Franklin Thomas was in custody on any such occasion if, in fact, he was in custody on such occasion. In addition, if Layne Franklin Thomas was in custody because of an arrest, a complete description of the agency or agencies who were involved in such arrest in any way, including investigation of the allegations which resulted in the arrest of Layne Franklin Thomas, the report numbers of all police or other law enforcement reports describing such arrest, investigation or concerning the charges for which Mr. Thomas was arrested; the actual police or other law enforcement reports describing such arrest, investigation, or concerning the charges for which Mr. Thomas was arrested; and the specific charges for which Mr. Thomas was arrested.
5. A complete listing of all criminal charges pending against Layne Franklin Thomas at each time he communicated with any person as described in request number 2, above, including the title of the court in which said charges were pending and the docket number of the case in which such charges were pending.
6. The probation and parole status of Layne Franklin Thomas at each and every time he communicated with any person as described in request number 2, above, identifying the conviction(s) for which he was on probation or parole, including the title of the court in which such conviction occurred and the docket number of the action in which he was convicted, and the specific offenses as to which he was convicted.
7. A complete description of the final disposition of any and all criminal charges, arrests, custody status, probationary status, and parole.

status described in request numbers 4, 5, and 6, above.

8. Any and all promises, benefits, inducements, rewards, or other consideration offered, discussed with or provided to Layne Franklin Thomas by any law enforcement agent or employee, including but not limited to employees of police and sheriffs' agencies, district attorneys' offices, departments of justice, departments of correction, parole departments, custodial institutions and other law enforcement agencies, in exchange for any information provided by or sought from Layne Franklin Thomas as described in request number 2, above.

9. Any arrest ever suffered by Layne Franklin Thomas, including juvenile arrests; any misdemeanor or felony conviction ever suffered by Mr. Thomas; and any pending charges, any pending parole or probation, either at the time of the alleged offense or at any time during the pendency of the instant prosecution against defendant herein, and

10. Whether Layne Franklin Thomas ever had or required any psychiatric or psychological treatment and, if so, then a description of:

- (a) When and where the treatment occurred;
- (b) The exact nature of the condition treated;
- (c) Whether Mr. Thomas has ever been admitted to a hospital for mental health treatment and, if so, when and where, the diagnosis and prognosis; and
- (d) Whether Mr. Thomas is currently receiving mental health treatment and, if so, the nature of such treatment and the nature of the condition being treated.

This motion for discovery is based on the court records and files herein; the independent state and federal constitutional guarantees to due process of law, confrontation and cross-examination of adverse witnesses, the ability to present affirmative evidence in one's defense, the assistance of counsel, the privilege against self-incrimination; Article I, sections 6, 7 and 13 of the Idaho Constitution; and the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

#### STATEMENT OF FACTS:

During the months of October and November 2007, Layne Franklin Thomas was a cellmate of the Defendant Mark Lankford. During the time they were housed together, Mr. Thomas claims that Mr. Lankford made several statements to him. Mr. Thomas relayed those

alleged statements to visitors he had at the jail and then, later, to Idaho County Sheriff's Detectives Skott Mealer and Joan Renshaw.

### ARGUMENT:

In *Brady v. Maryland* (1963) 373 U.S. 83, 87, the United States Supreme Court held that due process forbids a prosecutor from suppressing "evidence favorable to an accused upon request where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (See, also, *Giglio v. United States* (1972) 405 U.S. 150, 164; *United States v. McCrane* (3d Cir. 1975) 527 F.2d 906, *aff'd after remand*, (3d Cir. 1976) 547 F.2d 205.) The United States Supreme Court has also emphasized that impeachment evidence, as well as exculpatory evidence, falls within the *Brady* rule. (*United States v. Bagley* (1985) 87 L.Ed.2d 481, 490.) Such evidence, if disclosed and used effectively, may be the difference between conviction and acquittal. (See *Napue v. Illinois* (1959) 360 U.S. 264: "The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.")

In acknowledging that the prosecution has a duty to disclose any favorable evidence that could be used at trial, it is frequently overlooked that the prosecution also has a duty to disclose any favorable evidence that could be used "in obtaining further evidence." (*Giles v. Maryland* (1967) 386 U.S. 66, 74.) Additionally, favorable evidence need not be competent evidence or evidence admissible at trial. (*United States v. Gleason* (S.D.N.Y. 1967) 265 F. Supp. 850, 886; *Sellers v. Estelle* (5th Cir. 1981) 651 F.2d 1074, 1077, fn. 6 (evidence suppressed was material to the preparation of petitioner's defense, regardless whether it was intended to be admitted into evidence).)

As observed by the California Supreme Court in *People v. Morris* (1988) 46 Cal.3d 1: It is well settled that the prosecution has a duty to disclose all substantial material evidence favorable to an accused. [Citations omitted.] That duty exists regardless of whether there has been a request for such evidence [citation omitted] and irrespective of whether the suppression was intentional or inadvertent. [Citation

omitted.] As the United States Supreme Court in the seminal case of *Brady v. Maryland* (1963) 373 U.S. 83, 87 [10 L.Ed.2d 215, 218-219, 83 S.Ct. 1194], succinctly stated: “[T]he suppression by the prosecution of evidence favorable to an accused . . . violates due process . . . irrespective of the good faith or bad faith of the prosecution.” [¶] The duty to disclose evidence favorable to the accused extends to evidence which may reflect on the credibility of a material witness. [Citation omitted.] As this court said in [*People v. Ruthford* (1975) 14 Cal.3d 399, 121 Cal.Rptr. 261, 534 P.2d 1341, A.L.R. 4th 3132]: “[S]uppression of substantial material evidence bearing on the credibility of a key prosecution witness is a denial of due process.” [Citation omitted.] [¶] The duty to disclose evidence bearing on the credibility of a prosecution witness manifestly includes any promises or inducements that have been made to obtain the witness’s testimony. As we recently explained in *People v. Phillips*, [(1985)] 41 Cal.3d [29.] 46, “[s]ince a witness’s credibility depends heavily on his motive for testifying, the prosecution must disclose to the defense and jury any inducements made to a prosecution witness to testify and must also correct any false or misleading testimony by the witness relating to any inducements.”

(Emphasis supplied by the court.)

Thus, it is well settled that the constitutional guarantees to due process of law require disclosure of evidence which reflects on the credibility of a prosecution witness; *a fortiori*, evidence which may demonstrate that the entire testimony of a prosecution witness is inadmissible because it was obtained in violation of defendant’s constitutional rights must also be disclosed to defendant. It is also clear that the federal due process clause requires the prosecution to disclose the witness’s history of being an informant in other cases; “his history of misconduct while acting as an informant”, including the negative opinions of his credibility held by the law enforcement officers who worked with the informant in previous cases; and any benefits or inducements provided to the informant. (*Benn v. Lambert* (9<sup>th</sup> Cir. 2002) 283 F.3d 1040, cert. den. 2002 U.S. Lexis 7363.)

Mr. Thomas’s history as an informant is relevant and crucial to a determination of whether or not any statements he purportedly elicited from defendant are admissible or must be excluded as having been obtained in violation of defendant’s constitutional rights. In addition, Mr. Thomas’ history as an informant is important in order to assess his motivation for claiming that defendant allegedly made certain statements to him and to evaluate the credibility of any potential testimony by Mr. Thomas concerning defendant’s purported statements. “[W]hen the ‘reliability of a given witness may well be determinative of guilt or innocence,’ nondisclosure of



evidence affecting credibility” may violate the federal constitutional guarantee to due process of law. *Giglio v. United States* (1972) 405 U.S. 150, 154 [31 L.Ed.2d 104, 108, 92 S.Ct. 763].) Therefore, disclosure of Mr. Thomas’s history as an informant and as an incarcerated criminal is required.

Defendant recognizes that the Idaho County Prosecuting attorney may claim that he does not have personal knowledge of the information sought by the instant motion for discovery, or that such information may not be in the physical possession of the Idaho County Prosecuting Attorney. However, courts long have interpreted the prosecutorial obligation to disclose relevant materials in the possession of the prosecution to include information “within the possession or control” of the prosecution.” (*In re Littlefield* (1993) 5 Cal.4th 122, 135.) It is well settled “that materials discoverable by the defense include information in the possession of all agencies (to which the prosecution has access) that are part of the criminal justice system, and not solely information “in the hands of the prosecutor.” (*Ibid.*) Information that must be disclosed by the prosecution includes information that is “readily available” to the prosecution and not accessible to the defense.” (*Ibid.*)

The United States Supreme Court has never precisely pinpointed the time at which the disclosure under *Brady* must be made. It is abundantly clear, however, that disclosure by the prosecution “must be made at such a time as to allow the defense to use favorable material effectively in the *preparation* and presentation of its case, even if satisfaction of this criteria requires pre-trial disclosure.” (*United States v. Pollock* (D.C. 1976) 534 F.2d 964, 973. *Accord United States v. Presser* (6th Cir. 1988) 844 F.2d 1275, 1283.) Manifestly a more lenient disclosure burden on the government would drain *Brady* of all vitality. (*United States v. Elmore* (5th Cir. 1970) 423 F.2d 775, 779.)


The disclosures requested herein should be made at least 30 days prior to trial so that appropriate defense preparation can be made. Failure of the prosecution to provide such information will deny defendant the opportunity to adequately prepare for trial which would constitute a denial of due process and effective assistance of counsel, and violate defendant’s

rights to a fair jury trial, confrontation of adverse witnesses, and presentation of affirmative evidence in his defense.

CONCLUSION:

For all of the foregoing reasons, defendant must be provided with the discovery requested herein, unless the prosecution commits itself to not calling Layne Franklin Thomas as a witness at any stage of the proceedings against defendant.

DATED this 6<sup>th</sup> day of December 2007.

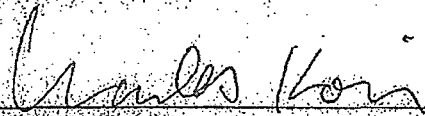
  
CHARLES E. KOVIS  
An Attorney for Mark H. Lankford

CERTIFICATE OF SERVICE

I hereby certify that on the 6<sup>th</sup> day of December, 2007, a true and correct copy of the foregoing instrument was hand delivered via courthouse basket to:

KIRK A. MacGREGOR  
IDAHO COUNTY PROSECUTOR  
416 W. MAIN  
P.O. BOX 463  
GRANGEVILLE, ID 83530

By

  
Charles E. Kovis

12/12/07

IDAHO COUNTY  
PROSECUTING ATTORNEY'S OFFICE  
416 W. MAIN  
PO BOX 463  
GRANGEVILLE, ID 83530  
PHONE: (208) 983-0166  
FAX: (208) 983-3919

KIRK A. MACGREGOR - PROSECUTING ATTORNEY  
DENNIS L. ALBERS - DEPUTY PROSECUTING ATTORNEY

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

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR 83- 20158

RESPONSE TO DEFENDANT'S  
MOTION FOR DISCOVERY  
CONCERNING INFORMANT

COMES NOW, Idaho County Prosecuting Attorney, KIRK A. MacGREGOR, and hereby responds to the defendant's Motion For Discovery Concerning Informant.

The defendant has asked for extremely extensive and burdensome requests regarding a State witness in this case, Lane F. Thomas. Lane F. Thomas was not an informant for the State of Idaho and is not an informant for the State of Idaho. Lane F. Thomas was recorded by the Latah County Sheriff's Office stating information regarding confessions that Mark Lankford made to him while he was his cell mate in the Latah County Jail. Lane F. Thomas informed his girlfriend during a visitation meeting of these confessions. The Latah County Jail then notified the Idaho County Jail who notified your undersigned. Your undersigned asked Detective Skott Mealer with the Idaho County Sheriff's Department to travel to Moscow, Idaho and interview Lane F. Thomas regarding what, if any, confessions Mark Lankford made to Lane F. Thomas. Detective Mealer interviewed Mr. Thomas at the Latah County Jail and a tape recording of that interview, along with the transcribed version of that interview was provided to the defense. The State also provided the taped interview of Lane F. Thomas with his girlfriend. Let it be known that the State never solicited Lane F. Thomas to work for them as

RESPONSE TO DEFENDANT'S MOTION  
FOR DISCOVERY CONCERNING INFORMANT - 1

Exhibit H

1 an informant for them in any way whatsoever. This information that was discovered by the State was  
2 simply discovered by "luck".

3 Under Idaho Criminal Rule 16(b)(6) the State is required to disclose all State witnesses and their  
4 address along with any record of prior felony convictions. The State is also required to provide the  
5 statements made by the prosecution witnesses to the prosecuting attorney or the prosecuting attorney's  
6 agents. The State has complied with Idaho Criminal Rule 16(b)(6) by providing Lane F. Thomas as a  
7 witness and providing copies of statements that he made to agents of the prosecuting attorney's office.  
8 The State also will be providing a copy of Lane F. Thomas' entire criminal record.

9 Idaho Criminal Rule 16(a) also requires the State to disclose any exculpatory information in their  
10 possession or control. The prosecuting attorney's obligations under this paragraph extend to, "material  
11 and information in the possession or control of members of prosecuting attorney staff and of any others  
12 who have participated in the investigation or evaluation of the case who either regularly report or with  
13 reference to the particular case have reported to the office of the prosecuting attorney." The defendant  
14 has inquired whether Lane F. Thomas has worked as an informant for any law enforcement agency or  
15 law enforcement personnel. This is outside the scope of the Idaho Discovery Rules. The State in this  
16 case is required to contact the Idaho County Sheriff's office and the Grangeville Police Department who  
17 are agencies that the prosecuting attorney has worked with on a regular basis, to determine whether  
18 Lane F. Thomas has worked as an informant or provided information to them. The State also is making  
19 inquiry of the Latah County Prosecutor's office and Sheriff's Office regarding Lane F. Thomas and their  
20 knowledge as to whether Lane F. Thomas has worked as a confidential informant or provided  
21 information to law enforcement. However, anything beyond those inquiries the State believes is not  
22 required under Idaho Criminal Rule 16. As the Court knows the defense was given the services of a  
23 private investigator in this case. The private investigator certainly can contact Lane F. Thomas to  
24 discuss issues which the defendant is attempting to discover. In addition said investigator can contact  
25 any prosecutor's office in the Northwest for that matter. He also can contact any law enforcement  
26 agency regarding Lane F. Thomas. The State is not required to go on "wild goose chases" and spend  
27 its time prior to trial chasing information down on Lane F. Thomas. The State certainly intends to  
28 comply with Rule 16, but beyond that compliance the defendant certainly has the means with the

1 services of a private investigator to track down certain information.

2 The defense in this case has not shown, or even argued, any undue hardship required for court  
3 ordered discovery under Idaho Criminal Rule 16(b)(9). In other words the defense has not even  
4 attempted to obtain this information themselves. Really, all they have done is make a bare, vague  
5 allegation that the requested information is needed to prepare. This is not a showing of substantial need  
6 under Idaho Criminal Rule 16(b)(9). How, for example, are misdemeanor and juvenile convictions  
7 necessary for preparation of their case. In addition, *State v. Pierce* makes it very clear and has been the  
8 law in the State of Idaho for substantial time that misdemeanor convictions can not be used for  
9 impeachment purposes of any witness. Idaho Criminal Rule 16 and United States Supreme Court cases  
10 of *Strickler v. Greene*, 527 US 263 and *Kyles v. Whitley*, 514 US 419, indicate how extensive the State  
11 has to look for exculpatory evidence. It does not include every law enforcement agency or every  
12 prosecutor's office in the country. Idaho Criminal Rule 16(a) is consistent with the United States  
13 Supreme Court decisions. In *Strickler*, the Court held, "In order to comply with *Brady*, therefore, the  
14 individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the  
15 governments behalf in this case, including the police." And, in *Kyles v. Whitley*, the Court held, "On  
16 the one side, showing that the prosecuting knew of an item of favorable evidence unknown to the  
17 defense does not amount to a *Brady* violation without more. But the prosecution, which alone can know  
18 what is undisclosed, must be assigned the consequent responsibility to gauge the likely net effect of all  
19 such evidence and make disclosure when the point of 'reasonable probability' is reached. This in turn  
20 means that the individual prosecutor has a duty to learn of any favorable evidence known to the others  
21 acting on the government's behalf in the case, including the police."

22 The defendant relies heavily on *In re Littlefield*, 1993 (5 Cal. 4<sup>th</sup> 122, 135) However the  
23 *Littlefield* case was a California court deciding a question under a new California law. The quotation  
24 cited by the defendant was only dicta. The case was about whether a defense attorney could be held in  
25 contempt for failure to comply with discovery. In any event, to the extent *Littlefield* implies that an  
26 Idaho prosecutor is held to a different standard than Idaho Criminal Rule 16 and the US Supreme Court  
27 opinions it is simply not true. The defendant also failed to cite the following portions of *Littlefield*:  
28 "We find no basis for petitioner's assumption that by designating discoverable information under

1 Section 1054.1 as that 'in the possession of' the prosecution or its investigating agencies, Proposition  
2 115 was intended to abrogate this prior rule, precluding the prosecuting from withholding information  
3 that is 'reasonably accessible' to it, such as the address of a witness that readily could be obtained  
4 through request of the witness. Rather the more likely purpose of including such language in the statute  
5 was simply to clarify and confirm that the prosecution has no general duty to seek out, obtain and  
6 disclose all evidence that might be beneficial to the defense. (See *In re Koehne* [1960] 54 Cal. 2d 757,  
7 759 [8 Cal. Rptr. 435] ['The law does not impose upon law enforcement agencies the requirement that  
8 they take the initiative, or even any affirmative action in procuring the evidence deemed necessary to  
9 the defense of an accused.']) *People v. Hogan* (1982) 31 Cal. 815, 851 (183 Cal. Rptr. 817). [There is  
10 no general duty on the part of the police or the prosecution to obtain evidence, conduct any tests or  
11 gather up everything which might eventually prove useful to the defense.]"

12 Therefore, based upon the above the State intends to respond as outlined previously in this  
13 response.

14 DATED this 12 day of DEC., 2007.

15 IDAHO COUNTY PROSECUTING  
16 ATTORNEY'S OFFICE

17 By: \_\_\_\_\_

18 KIRK A. MACGREGOR, ISB #3880  
19 Idaho County Prosecuting Attorney  
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RESPONSE TO DEFENDANT'S MOTION  
FOR DISCOVERY CONCERNING INFORMANT - 4

CERTIFICATE OF SERVICE

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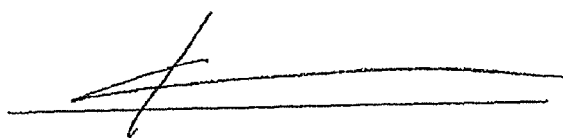
The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the following person(s) in the manner indicated below on the 12 day of December, 2007:

Chuck Kovis  
Attorney at Law  
PO Box 9292  
Moscow, ID 83843  
FAX #: 208-882-5379

Courthouse Tray  
 Hand Delivered  
 US Mail  
 Fax

Todd Wilcox  
Jonathon Hallin  
WILCOX & HALLIN  
FAX #208-634-5880  
Attorneys at Law  
PO Box 947  
McCall, ID 83638

Courthouse Tray  
 Hand Delivered  
 US Mail  
 Fax



JAN - 7 2008

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO  
ROSE E. GEHRING  
DEPUTY

STATE of IDAHO ,  
  
Plaintiffs,  
  
v.  
  
MARK HENRY LANKFORD,  
  
Defendants.

Case No.: CR: 83-20158  
MEMORANDUM DECISION AND ORDER

This case comes before on Mr. Lankford's motion to compel discovery concerning Lane Franklin Thomas, unless the State commits to not calling him as a witness.

I. BACKGROUND

Mr. Thomas was a cellmate with Mark Lankford during the months of October and November 2007. The Latah County Sheriff's Office recorded a conversation Mr. Thomas had with his girlfriend in which he shared information regarding confessions allegedly made by Mark Lankford during their time together as cellmates. Mr. Thomas was subsequently interviewed by State Prosecutor, Kirk MacGregor, and Idaho County Detective Skott Mealer regarding these alleged confessions by Mark Lankford. Mark Lankford now moves to compel the following discovery regarding Mr. Thomas:

1. A listing of each criminal prosecution or investigation, including title of court, docket number, investigating police agency and identifying number of police report or other law enforcement report, and name of defendant, in which Layne Franklin Thomas has provided information to any law enforcement agency or law enforcement personnel, excluding those cases in which there was never any defendant or suspect other than Layne Franklin Thomas.



2. A listing of each law enforcement agent, personnel, and agency, including but not limited to employees of police and sheriff's agencies district attorneys' offices, departments of justice, departments of correction, parole departments, custodial institutions and other law enforcement agencies, to whom Layne Franklin Thomas ever provided any information concerning, describing, or relating to any alleged criminal activity by any person other than Layne Franklin Thomas.
3. The specific information provided by Layne Franklin Thomas to any of the persons or agencies described in request number 2, above, together with the date(s) on which Layne Franklin Thomas provided such information.
4. The custodial status of Layne Franklin Thomas at each time he communicated with any person as described in request number 2, above, including the specific reason why Layne Franklin Thomas was in custody on any such occasion if, in fact, he was in custody on such occasion. In addition, if Layne Franklin Thomas was in custody because of an arrest, a complete description of the agency or agencies who were involved in such arrest in any way, including investigation of the allegations which resulted in the arrest of Layne Franklin Thomas; the report numbers of all police or other law enforcement reports describing such arrest, investigation or concerning the charges for which Mr. Thomas was arrested; the actual police or other law enforcement reports describing such arrest, investigation, or concerning the charges for which Mr. Thomas was arrested; and the specific charges for which Mr. Thomas was arrested.
5. A complete listing of all criminal charges pending against Layne Franklin Thomas at each time he communicated with any person as described in request number 2, above.

including the title of the court in which said charges were pending and the docket number of the case in which such charges were pending.

6. The probation and parole status of Layne Franklin Thomas at each and every time he communicated with any person as described in request number 2, above, identifying the conviction(s) for which he was on probation or parole, including the title of the court in which such conviction occurred and the docket number of the action in which he was convicted, and the specific offenses as to which he was convicted.
7. A complete description of the final disposition of any and all criminal charges, arrests, custody status, probationary status, and parole status described in request number 4, 5, and 6 above.
8. Any and all promises, benefits, inducements, rewards, or other consideration offered, discussed with or provided to Layne Franklin Thomas by any law enforcement agent or employee, including but not limited to employees of police and sheriff's agencies, district attorneys' offices, departments of justice, departments of correction, parole departments, custodial institutions and other law enforcement agencies, in exchange for any information provided by or sought from Layne Franklin Thomas as described in request number 2, above.
9. Any arrest ever suffered by Layne Franklin Thomas, including juvenile arrests; any misdemeanor or felony conviction ever suffered by Mr. Thomas; and any pending charges, any pending parole or probation, either at the time of the alleged offense or at any time during the pendency of the instant prosecution against defendant herein, and
10. Whether Layne Franklin Thomas ever had or required and psychiatric or psychological treatment and, if so, then a description of:

- a) When and where the treatment occurred
- b) The exact nature of the condition treated;
- c) Whether Mr. Thomas has ever been admitted to a hospital for mental health treatment, and, if so, when and where, the diagnosis and prognosis; and
- d) Whether Mr. Thomas is currently receiving mental health treatment and, if so, the nature of such treatment and the nature of the condition being treated.

Although the state has responded to several of these discovery requests it filed a brief on December 12, 2007, claiming that Mr. Lankford's requests were, in part, "extremely extensive and burdensome." *Response to Defendant's Motion for Discovery Concerning Informant 1*. The state explained that much of the information requested extended beyond the scope of discoverable material as described in Idaho Criminal Rule 16. The issue I must decide, therefore, is whether the State is excused from or compelled to respond to the allegedly extensive or burdensome discovery requests made by Mr. Lankford regarding Mr. Thomas.

## II. DISCUSSION

The discovery obligation of the State in criminal matters is established by Idaho Criminal Rule 16. Under this rule the State is automatically required to disclose "any material . . . which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefore." Idaho Criminal Rule 16(a). This applies to information possessed or controlled by members of the prosecuting attorney's staff or by those who report to the prosecuting attorney's office either regularly or in reference to the particular case. The State is also obliged under Idaho Criminal Rule 16(b)(6) to provide the defendant, upon request, the name and address of all State witnesses, a record of their prior felony convictions, as well as their statements to the prosecuting office or their agents. Finally Idaho Criminal Rule 16(b)(6)

allows a defendant to request any information substantially needed in the preparation of the defendant's case.

The State contends that Mr. Lankford's request for information involving any law enforcement agent, personnel, and agency, including but not limited to employees of police and sheriffs' agencies, district attorneys' offices, departments of justice, departments of correction, parole departments, custodial institution and other law enforcement agencies, extends beyond the proper scope of discovery. *Response to Defendant's Motion for Discovery Regarding Informant*, 2. It contends that it is required to disclose only that information held by its office and the agencies that have reported to it regularly or in regards to Mr. Lankford's case, which include the Idaho County Sheriff's office and Grangeville Police Department, the Latah County Prosecutor's office and the Latah County Sheriff's Office.

Rule 16(a) by its own language, clearly limits the scope of the State's discovery obligation to that information possessed or controlled by the prosecution office itself or by those agencies that report to it, either regularly or in regards to the particular case. This limit to the State's discovery obligation is well-recognized and established in the case law. *See e.g. Strickler v. Greene*, 527 U.S. 263, 281 (1999) (holding that "the individual prosecutor has a duty to learn of any favorable evidence known to the *others acting on the government's behalf in this case*, including the police.") (quoting *Kyles v. Whitley*, 514 U.S. 419, 437 (1995)) (emphasis added).

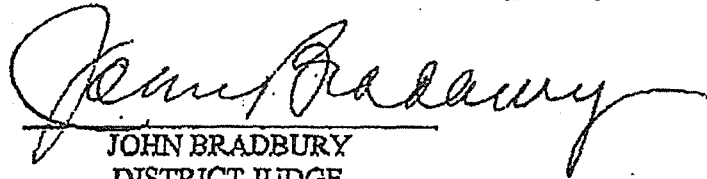
The State is not obligated to search every law enforcement agency or every prosecutor's office in the country for the information Mr. Lankford requested regarding Mr. Thomas. Rather, the State is obliged to disclose only that requested information which is held by its office and the agencies that have reported to it either directly or in regards to Mr. Lankford's case, which the

State has identified to be the Idaho County Sheriff's Office, the Grangeville Police Department, the Latah County Prosecutor's Office, and the Latah County Sheriff's Department.

III. ORDER

The State is compelled to answer all Mr. Lankford's discovery requests to the extent such information is held by itself or by others working on its behalf, including law enforcement other agencies that report to the Idaho County Prosecuting Attorney's Office either regularly or in regards to Mr. Lankford's case.

It is so ORDERED, this the 7<sup>th</sup> day of January, 2008

  
JOHN BRADBURY  
DISTRICT JUDGE

**SUNIL RAMALINGAM**

Attorney at Law  
P.O. Box 9109  
Moscow, ID 83843  
(208) 892-0387  
Fax: (208) 892-0397

January 25, 2008

Kirk MacGregor  
Idaho County Prosecuting Attorney  
P.O. Box 463  
Grangeville, ID 83530

RE: Lane Thomas

Dear Kirk,

I am writing to follow up on our telephone conversation a couple of weeks ago. You indicated to me at that time you intended on calling my client Lane Thomas to the stand in *State v. Lankford*. Lane is currently at North Idaho Correctional Institution in Cottonwood, Judge Stegner having retained jurisdiction in Lane's Latah County case.

Lane called me from Cottonwood after he was subpoenaed. I believe he had met with his prison counselor prior to calling me, and was in the presence of two Idaho Department of Corrections employees at the time of the call. He told me that Mark Lankford had not confessed anything to him, and that he had made up a story in order to try and get a deal out of the Latah County Prosecutor. He told me he did not want to persist in this lie, and could not truthfully testify in a manner consistent with what he told your investigator. He asked me to call you to see if you would release him from his subpoena, since he had admitted his original story was not true. I did call on his behalf as noted above, and was not able to dissuade you from calling Lane.

Subsequently Lane has informed me that he saw a document written by Lankford's brother containing details of the crime, and this is where he got the information he relayed to your investigator. He repeated that Mark Lankford did not confess to him that he had committed the murders.

Based on what he has told me, it appears that Lane cannot truthfully testify that Lankford confessed to him. If forced he would instead have to testify that he made up a story in order to try to avoid receiving a retained jurisdiction at his sentencing. Of course he has a Fifth Amendment right not to testify at all, as he has the right to remain silent rather than testify that he violated I.C. 18-705 by providing false information to an officer.

It is my understanding based on our phone conversation that should Lane refuse to testify at trial you will ask that he be held in contempt. However, he cannot be forced to commit perjury and he has now stated to me in front of two Department of Corrections employees that he

Exhibit 5

lied when he said Lankford had confessed to him. He also cannot be forced to testify that he lied to the investigator as he has the right to avail himself of his constitutional right to remain silent.

Therefore I am asking that you reconsider your decision to call Lane. If you do call him as a witness, I believe he should be appointed counsel to assist him with the decisions he must make.

Yours Truly,



Sunil Ramalingam

sr/me  
cc: Charles Kovis

1 As I understand, I guess, this is an interview by the  
2 private investigator?

3 THE COURT: I guess the question -- the first  
4 question, I guess, was: Did you provide a copy of Mr.  
5 Ramalingam's letter to you to the defense?

6 MR. MACGREGOR: I don't think I did, Your Honor.  
7 What I was -- what I was told -- I actually went and  
8 met with Skott Mealer. Skott Mealer had met with Lane  
9 Thomas. Lane Thomas -- this is what we wanted to  
10 discuss with you -- he said that he changed his story  
11 because he was threatened by Mr. Lankford, his life was  
12 threatened. That Mr. Lankford threatened to kill him  
13 over the fact that he was going to testify as a witness  
14 against him. And I explained that to Mr. Ramalingam --  
15 is how I'm going to say it. I can't say it any other  
16 way -- and Mr. Ramalingam didn't really seem to be too  
17 interested in that explanation. But I asked him to  
18 talk to his client and explore that possibility, which  
19 apparently he did 10 days ago, 12 days ago, and then  
20 got back with me and said, you may be right, I didn't  
21 consider that. I may have jumped to conclusions here,  
22 but I want to protect -- I think -- I think Lane Thomas  
23 should be protected. And so, I would ask you to ask  
24 the Court for an attorney to be appointed for him,  
25 which I did on Tuesday morning. Apparently they're

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kkreport@mtida.net



Todd J. Wilcox  
Jonathon D. Hallin

Law Offices of  
**WILCOX & HALLIN, PLLC**  
200 Park Street  
P.O. Box 947  
McCall, Idaho 83638

Telephone: (208) 634-7118  
Facsimile: (208) 634-5880

February 8, 2008

*VIA HAND DELIVERY*

Kirk A. MacGregor  
Idaho County Prosecuting Attorney  
P.O. Box 463  
Grangeville, Idaho 83530

RE: State of Idaho v. Mark Henry Lankford, Idaho County Case No. CR-1983-20158  
Lane Thomas

Dear Kirk:

The purpose of writing this letter is to advise you of the existence of a recorded conversation between Mr. Lane Thomas and our private investigator, Mr. Chuck Schoonover. During the conversation recorded at the Latah County Jail on December 19, 2007, Mr. Thomas makes a complete recantation of all statements previously made to Ms. Debra Tanner, and Officers Skott Mealer and Joan Renshaw. The entire conversation was recorded and subsequently transcribed.

In the event that you introduce Mr. Thomas as a witness, I will seek to publish the entire taped conversation as impeachment evidence of anything that Mr. Thomas may testify to. Further, I will seek to admit the previous letter submitted by Mr. Sunil Ramalingam as substantive evidence. To assist your decision, I am hereby providing you a copy of the transcript of the conversation that I received Wednesday evening.

I have purposely refrained from advising you of the existence of the recorded recantation as I did not reasonably believe that you intended to sponsor Mr. Thomas as a witness. As you are aware, it was not until February 7, 2008 that Mr. Kovic or myself were advised of your intent to call Mr. Thomas as a witness on Friday, February 8, 2008. As the tape would only be used for rebuttal purposes, the disclosure requirements of I.C.R. do not apply. See *State v. Olsen*, 103 Idaho 278, 281 (1982).

Given Mr. Thomas multiple recantations, I am at a loss of what you hope to gain by his testimony. For the sake of argument, I acknowledge that the State may impeach its own witnesses. Assuming Mr. Thomas refuses to testify or states he previously lied, there would be nothing substantive to gain by his testimony. Eliciting such would do nothing more than confuse the issues and taint the Jury with otherwise inadmissible evidence. See *Bench Brief Re: Lane F. Thomas*, dated February 8, 2008.

Exhibit     L

I am further concerned by reports that I have received concerning a recent meeting between yourself, Skott Mealer, and Lane Thomas at the North Idaho Correctional Institution. I have been advised that during such meeting, Mr. Thomas confirmed that he previously lied to Ms. Tanner, and Officers Mealer and Renshaw. It is my understanding that Mr. Thomas reiterated his unconditional desire to avoid any further involvement in this matter. If there is any veracity to this report, this is clearly exculpatory information, the substance of which has never been disclosed or made known to the defense.

I have given all of the foregoing matters great thought and consulted with other members of the Bar to maintain a certain level of objectivity. After analyzing the issues from multiple approaches and perspectives, I am left with one conclusion; the State's intended use of Mr. Thomas begs the appearance of suborning perjury, or the attempt thereof. See Idaho Code § 18-5410. Consequently, the State of Idaho is hereby on notice that in the event Mr. Thomas is called as a witness at a trial of this matter, the defense will deal with such a situation accordingly.

Sincerely,

*JS*

JONATHON D. HALLIN

cc: Hon. John Bradbury, District Judge  
Sunil Ramalingam, Attorney at Law, *via facsimile*  
Jack Hathaway, Attorney at Law, *via facsimile*  
client

1 substantive testimony. If he gets -- if he gets on the  
2 stand and says I did say that this is what Mr. Lankford  
3 told me and I changed my mind about it, then it's up to  
4 the defense to impeach. And so it seems to me that how  
5 it comes in makes a difference of whether it's  
6 admissible or not, and we're not going to know that  
7 until we talk to Mr. Hathaway and find out what  
8 Mr. Thomas' intentions are.

9 MR. MACGREGOR: Your Honor, and I with Mr.  
10 Hathaway's permission, I talked to Lane Thomas last  
11 night, and he indicated to me that he intended to  
12 testify and that he wanted to testify. That he lied to  
13 their investigator because Mr. Lankford had threatened  
14 to kill him. And he's extremely scared right now.  
15 Very nervous. Is very afraid about his testimony and  
16 what kind of danger that puts his life. And -- but he  
17 wants to tell the truth, and he wants to come into  
18 court and do that.

19 THE COURT: Well, what I'm going to do, Mr.  
20 Hallin --

21 MR. HALLIN: Your Honor, I'm going to further  
22 object that the State did not provide any subsequent  
23 conversations with Mr. Thomas and his attorneys.  
24 They've never been provided to the defense. And these  
25 would be elicited in the case in chief, and they're

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1 statements of a witness and the State has known about  
2 it and substance was never provided and we haven't had  
3 a chance to investigate those or call rebuttal  
4 witnesses to rebut what Mr. Thomas may elicit today.

5 THE COURT: Well, it seems to me that -- and I'm  
6 not being really critical, but it could have been  
7 handled better by both sides in terms of being timely.  
8 Mr. Thomas has been listed as a witness for a long  
9 time -- and I'm not through. We had an in-limine  
10 motion regarding him. He was given to me, and I read  
11 his name to the jury, to the prospective jurors as one  
12 of the persons who would be testifying. I think that  
13 the fact that he was going to testify has been known  
14 for a long time. I do think that under the rules  
15 you're entitled to any exculpatory evidence they might  
16 have had and that would include a recantation by him,  
17 as indicated by Mr. Ramalingam to Mr. MacGregor. But  
18 we're not here -- I'm not here to assess what should  
19 have been done. We're here to decide where we are and  
20 whether it comes in. And I'm going to get Mr. Hathaway  
21 on the phone. He is Mr. Thomas' lawyer, and I want to  
22 hear from him. And then after I've heard from him --  
23 and the luck of getting a hold of him isn't always  
24 good, but we're going to take a short recess. And I'll  
25 see if I can get him on the phone, and I'll see what

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1 THE COURT: We'll go late if we have to.

2 MR. ALBERS: Could be rearranged, too.

3 THE COURT: Yeah. We'll go late if we have to.

4 MR. MACGREGOR: Mr. Dahlinger, too, he is a  
5 jailer so I just want to make sure. Would he be able  
6 to testify that Mark Lankford was in jail, Lane Thomas  
7 was in jail?

8 THE COURT: Yes.

9 MR. MACGREGOR: Okay.

10 MR. ALBERS: The final issue we need to talk  
11 about is if Mr. Thomas is asked why he recanted, can he  
12 be permitted to say why? And that is he was  
13 threatened. Exactly a quote.

14 THE COURT: It's up to him as to whether or not  
15 he recanted it, whether -- and if he says he didn't  
16 recant it then he's subject to cross-examination on the  
17 fact of the recantation. If he recants his recantation  
18 I assume he can give his motive for doing that.

19 MR. HALLIN: Your Honor, the defense will state  
20 its objections to any statements that were subsequently  
21 obtained were not disclosed to the defense that the  
22 State intends to use in its case in chief.

23 THE COURT: Okay. That's fine. Well, I'll  
24 handle that when we get to it. That's down the road.  
25 We'll tell the jury we're continuing our break, and

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1 State to be leading him, did he tell you that, what did  
2 he say?

3 THE COURT: Did Mr -- I'm not --

4 MR. KOVIS: Okay, I understand.

5 THE COURT: I'm not framing the question, but did  
6 Mr. Lankford tell you anything about the offense for  
7 which he has been charged. Then he can answer either  
8 yeah, he did or he didn't.

9 MR. KOVIS: Okay, Your Honor.

10 THE COURT: I think that's admissible.

11 MR. KOVIS: I just get emotional about this, and  
12 it's Mr. Hallin's thing, because I'm not involved.

13 THE COURT: And you should be, and there's -- I  
14 expect advocates to be passionate both in their defense  
15 and the prosecution. I have been there. I understand  
16 that. But that's where we are. I guess the question  
17 is now the order of proof. Is there anybody that we  
18 can get -- who did you expect to have after this  
19 witness and Mr. Thomas, because I would like to hear  
20 from Mr. Hathaway first.

21 MR. MACGREGOR: Bryan Lankford, Your Honor.

22 THE COURT: Well, is he available?

23 MR. MACGREGOR: I believe so.

24 MR. ALBERS: That can be time sensitive with Mr.  
25 Ploeger's flight, if we can.

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Exhibit N

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

- COURT MINUTES -

John R. Stegner  
District Judge

Sheryl L. Engler  
Court Reporter  
Recording: Z: 3/2012-10-16  
Time: 11:17 A.M.

Date: October 16, 2012

STATE OF IDAHO,	)	
	)	Idaho County Case No. CR-1983-20158
Plaintiff,	)	
	)	APPEARANCES:
vs.	)	
	)	Lamont Anderson, Prosecutor
MARK HENRY LANKFORD,	)	Appearing on behalf of the State
	)	
Defendant.	)	Defendant represented by counsel,
	)	James E. Johnson, Public Defender
	)	
	)	D. Ray Barker appearing on behalf of
	)	Lane Thomas
	)	
	)	Gary Amendola appearing on behalf of
	)	Bryan Lankford

---

*Subject of Proceedings:* **Motion to Continue Motion for New Trial  
by telephone conference call**

This being the time fixed pursuant to oral notice for hearing of the defendant's motion to vacate the hearing of the motion for new trial in this case, Court noted the participation of counsel in this conference call.

Court stated that it had just received a written stipulation signed by Mr. Johnson and Mr. Anderson to vacate and reschedule the evidentiary hearing scheduled for October 18, 2012. Court granted approved the stipulation and granted that motion.

Colloquy was had between Court and counsel regarding rescheduling the evidentiary hearing. There being no objection from counsel, Court rescheduled the

Terry Odenborg  
Deputy Clerk


COURT MINUTES - 1

550

evidentiary hearing on the defendant's Amended Second Motion for New Trial for 9:00 A.M. on January 3 and 4, 2013.

Court recessed at 11:25 A.M.

APPROVED BY:

  
JOHN R. STEGNER  
DISTRICT JUDGE

### CERTIFICATE OF SERVICE

I do hereby certify that a full, true, complete and correct copy of the foregoing COURT MINUTES was transmitted by PDF email to:

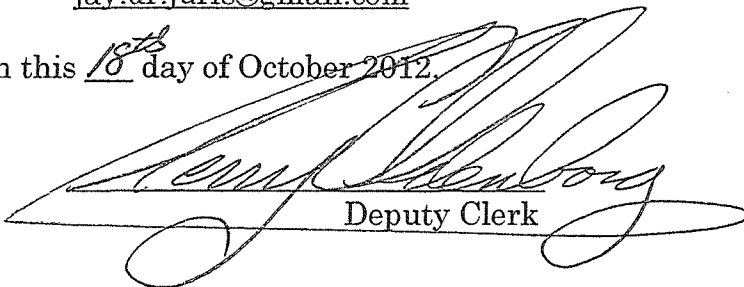
Gary Amendola  
Attorney for Bryan Lankford  
[gary@aadlawoffice.com](mailto:gary@aadlawoffice.com)

Lamont Anderson  
Deputy Attorney General  
[Lamont.anderson@ag.idaho.gov](mailto:Lamont.anderson@ag.idaho.gov)

D. Ray Barker  
Attorney for Lane Thomas  
[d.raybarker@turbonet.com](mailto:d.raybarker@turbonet.com)

James E. Johnson  
Attorney at Law  
[jay.dr.juris@gmail.com](mailto:jay.dr.juris@gmail.com)

on this 10<sup>th</sup> day of October 2012.

  
Deputy Clerk

Terry Odenborg  
Deputy Clerk



James E. Johnson  
604 S. Washington Street, suite 3  
Moscow, ID 83843  
208 882 1357, fax 208 882 1362  
ISBN 6383

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 12:43 O'CLOCK P.M.

DOCKETED

OCT 29 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY  
*[Signature]*

Attorney for Mr. Mark Lankford

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

STATE OF IDAHO,	)	CR 83-20158
	)	THIRD
Plaintiff,	)	EX-PARTE MOTION UNDER
	)	SEAL FOR CONDITIONAL
V.	)	ADVANCE APPROVAL OF
	)	DEFENSE INVESTIGATOR
MARK HENRY LANKFORD,	)	AT COUNTY EXPENSE
Defendant.	)	
_____	)	

James E. Johnson, court-appointed attorney for Mr. Mark Lankford, again moves the Court ex-parte and under seal for an order under seal conditionally approving of expenses for an investigator as outlined in the attached affidavit.

This motion is made ex-parte because a prosecutor should have no standing regarding the provision of funds for the defense of an indigent criminal defendant. Furthermore, should the matter proceed to trial, the information gathered during this phase of the defense should not necessarily be made available to the State.

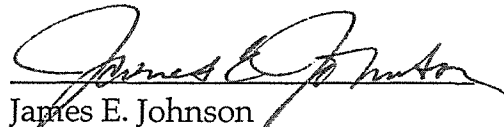
This motion is accompanied by an affidavit of James E. Johnson in support of the motion.

ORIGINAL

552

Counsel will submit to the Court, after the resolution of this phase of the case, a detailed accounting of investigatory expenses so the Court can determine the reasonableness of the charges. The investigator shall not, without additional approval, incur more than \$2905.00 in fees and costs, in addition to the \$3000 previously approved by this Court by its order of December 9, 2011.

Dated this 19th day of October, 2012.

  
James E. Johnson  
attorney for Mark Lankford

#### CERTIFICATE OF NON-SERVICE

Submitting Defendant's financial matters to the State might violate the Defendant's constitutional and statutory rights, including his right to Due Process, Effective Assistance of Counsel, Attorney / Client privilege, and Work Product confidentiality. Therefore, this Motion is brought ex-parte and the State has not been served with this motion.

October 19, 2012

  
James E. Johnson

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 10:43 O'CLOCK P.M.

OCT 29 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

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

STATE OF IDAHO, )  
)  
Plaintiff, )  
)  
vs. )  
)  
MARK HENRY LANKFORD, )  
)  
Defendant. )  
)

Case No. CR-1983-20158

ORDER DENYING EX PARTE MOTION  
FOR CONDITIONAL ADVANCE  
APPROVAL OF DEFENSE  
INVESTIGATOR AT COUNTY EXPENSE

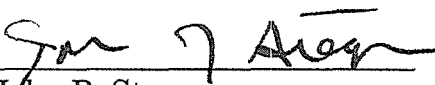
James E. Johnson, counsel for Mark Henry Lankford, has requested additional money to hire an investigator to be paid with county funds. The basis for that request is set out in Mr. Johnson's affidavit, in which he states: "There is an additional need for an investigator's services following the revelation of Idaho County's undocumented payment to Lane Thomas shortly after his testimony in the 2008 trial in this case." Mr. Johnson has not made a sufficient showing to justify the substantial additional expenditure he seeks. He has not expended \$1,468.50 of previously approved funds. That amount should be more than adequate to establish the purported payment to Lane Thomas by Idaho County. If it is not, he may renew his request. For the reasons stated, the motion for additional funds is DENIED, without prejudice.

ORDER DENYING EX PARTE MOTION FOR  
CONDITIONAL ADVANCE APPROVAL OF DEFENSE  
INVESTIGATOR AT COUNTY EXPENSE - 1

ORIGINAL

This Court is also unaware of any basis to consider *ex parte* motions in an ongoing matter. For that reason, this order and the previous proceedings will not be sealed.

DATED this 26<sup>th</sup> day of October 2012.

  
John R. Stegner  
District Judge

### CERTIFICATE OF SERVICE

I do hereby certify that a full, true, complete and correct copy of the foregoing **ORDER DENYING EX PARTE MOTION FOR CONDITIONAL ADVANCE APPROVAL OF DEFENSE INVESTIGATOR AT COUNTY EXPENSE** was delivered to:

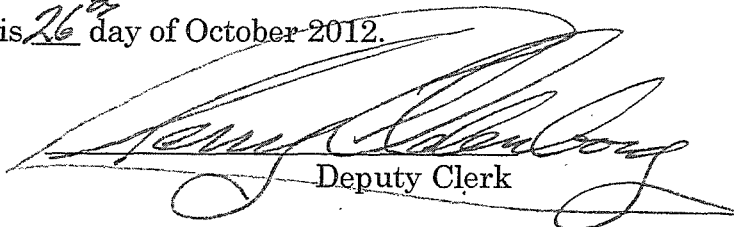
Gary Amendola  
Attorney for Bryan Lankford  
[gary@aadlawoffice.com](mailto:gary@aadlawoffice.com)

Lamont Anderson  
Deputy Attorney General  
[Lamont.anderson@ag.idaho.gov](mailto:Lamont.anderson@ag.idaho.gov)

D. Ray Barker  
Attorney for Lane Thomas  
[d.raybarker@turbonet.com](mailto:d.raybarker@turbonet.com)

James E. Johnson  
Attorney at Law  
[jay.dr.juris@gmail.com](mailto:jay.dr.juris@gmail.com)

on this 26<sup>th</sup> day of October 2012.

  
Deputy Clerk

**ORDER DENYING EX PARTE MOTION FOR  
CONDITIONAL ADVANCE APPROVAL OF DEFENSE  
INVESTIGATOR AT COUNTY EXPENSE - 2**

James E. Johnson  
604 S. Washington Street, suite 3  
Moscow, ID 83843  
208 882 1357  
ISBN 6383

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 8:51 O'CLOCK A.M.

NOV - 9 2012

KATHY MACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY  
*Kathy Mackerman*

Attorney for Mr. Mark Lankford

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

STATE OF IDAHO,	)	CR 83-20158
	)	
Plaintiff,	)	MOTION FOR ORDER
	)	FOR COUNTY PAYMENT TO
V.	)	DEFENSE INVESTIGATOR
	)	
MARK HENRY LANKFORD,	)	
Defendant.	)	
_____	)	

James E. Johnson, court-appointed attorney for Mr. Mark Lankford, moves the Court for an order of payment to the defense investigator.

The Defendant sought conditional advance approval for this purpose by an ex-parte motion and affidavit filed on October 19, 2012. The Court denied that motion by its order issued October 26, 2012. The order states that "Mr. Johnson has not made a sufficient showing to justify the substantial additional expenditure he seeks. He has not expended \$1468.50 of previously approved funds. That amount should be more than adequate to establish the purported payment to Lane Thomas by Idaho County."

MOTION FOR ORDER FOR COUNTY PAYMENT  
TO DEFENSE INVESTIGATOR

**ORIGINAL**

However, the issue that needs to be investigated and thoroughly examined is not whether Idaho County paid Lane Thomas, but rather all the circumstances regarding that payment. All of the ramifications of such a payment are important; the State shows no sign of conceding that the payment to Thomas would necessarily result in the need to re-try the case. It is the Defendant's understanding that the State's investigator has visited and interviewed several of the same witnesses that have knowledge of the payment.

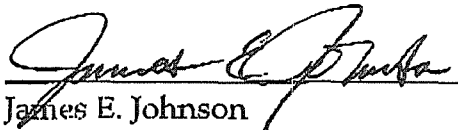
The Defendant sent an investigator to determine what happened regarding that payment. He determined several things, but he was unable to reach some people with knowledge of the transaction. Furthermore, since Mr. Thomas is unavailable to the Defendant or his agents, several facts have to be determined without his answers to significant questions.

The additional investigation, which is incomplete, has incurred \$1932.11 in investigator's expenses. Due to the specificity in the bill, it is not attached to this motion, but is available for in-camera review. The Defendant requests an order for payment to Mr. Starkey for the expenses incurred.

Furthermore, the Defendant requests advance approval of an additional \$1000 for follow-up with people whom the investigator could not reach earlier in spite of his efforts, specifically Mr. MacGregor and Mr. Albers. Furthermore, the investigator has

not written his reports yet.

Dated this 8th day of November, 2012.

  
James E. Johnson  
attorney for Mark Lankford

Certificate of Service

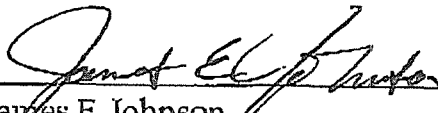
I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail to:

LaMont Anderson, Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
[lamont.anderson@ag.idaho.gov](mailto:lamont.anderson@ag.idaho.gov)

Ray Barker, attorney for Lane Thomas  
P.O. Box 9408  
Moscow, ID 83843  
[d.raybarker@turbonet.com](mailto:d.raybarker@turbonet.com)

Gary Amendola, attorney for Bryan Lankford  
Amendola & Doty  
702 N. Fourth Avenue  
Coeur d'Alene, ID 83814  
[gary@aadlawoffice.com](mailto:gary@aadlawoffice.com)

On the 5th day of November, 2012

  
James E. Johnson

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 12:55 O'CLOCK P.M.

NOV 19 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy M. Ackerman*  
DEPUTY

DOCKETED

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

STATE OF IDAHO,	)	Case No. CR-83-20158
Plaintiff,	)	
	)	ORDER
v.	)	
MARK LANKFORD,	)	
Defendant.	)	
_____	)	

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, James E. Johnson (for the month of October, 2012) hereby approves the same and orders payment of Five Thousand Three Hundred Five Dollars and Forty-three Cents (\$5,305.43).

DATED this 19<sup>th</sup> day of November, 2012.

*John R. Stegner*  
John R. Stegner  
District Judge



IDAHO COUNTY DISTRICT COURT  
FILED  
AT 8:45 O'CLOCK A.M.

NOV 20 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

James E. Johnson  
604 S. Washington Street, suite 3  
Moscow, ID 83843  
208 882 1357, fax 208 567 0551  
ISBN 6383

Attorney for Mr. Mark Lankford

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

STATE OF IDAHO,	)	CR 83-20158
	)	
Plaintiff,	)	
	)	
V.	)	MOTION TO CONTINUE
	)	EVIDENTIARY HEARING
	)	
MARK HENRY LANKFORD,	)	
Defendant.	)	
_____	)	

Comes now the Defendant, through his attorney James E. Johnson, and moves the Court for an order continuing the evidentiary hearing set for January 3 and 4, 2013. This motion is based on recent developments in the case which need further research and investigation.

As noted in the Defendant's Motion For Order Permitting Amendment To Integrated Second Motion For A New Trial; And Motion To Continue, Defense counsel learned on September 28, 2012 of the \$1500 payment made to Lane F. Thomas, the State's witness; the payment was made twenty-four days after Thomas testified for the prosecution, sixteen days after the trial ended. That testimony was critical evidence.

MOTION TO CONTINUE EVIDENTIARY HEARING

ORIGINAL<sup>1</sup>

560

Defense counsel obtained independent confirmation of that \$1500 payment on October 11, 2012. Because of that revelation, the Defendant and the State needed much more time to prepare for the evidentiary hearing. The Defendant and State stipulated to such a continuance, which the Court agreed to on October 16, 2012. The hearing was rescheduled for January 3 and 4, 2013. In addition, the Defendant's concerns about Idaho County and its relationship with Lane Thomas have been compounded due to Idaho County prosecutor's apparent failure to comply with the Court's order of January 7, 2007, in that at least one meeting, between Thomas, Kirk MacGregor and Skott Mealer, occurred weeks prior to trial and was undisclosed to the Defense until the date of Thomas's testimony.<sup>1</sup> The failure to disclose that meeting very likely caused the Defense to seriously misjudge what Thomas would testify to, because their last information was that Thomas had recanted his prior information to the detectives of Idaho County.

The Defendant has encountered difficulties following up on the necessary investigation. Mr. Thompson, who was the prosecutor on Lane Thomas's Latah County case number CR-2007-3656, was out of town for over two weeks prosecuting a case for

---

<sup>1</sup> The Defendant moved to compel the State to provide "[a] listing of each law enforcement agent, personnel, and agency, including but limited to employees of police and sheriff's agencies, district attorneys' offices, departments of justice, departments of correction, parole departments, custodial institutions and other law enforcements agencies, to whom Layne (sic) Franklin Thomas ever provided any information concerning, describing, or relating to any alleged criminal activity by any person other than Layne (sic) Franklin Thomas." Defendant's Motion For Discovery Concerning Informant, dated December 6, 2007. Judge Bradbury ordered that "the State is obliged to disclose only that requested information which is held by its office and the agencies that have reported to it either directly or in regards to Mr. Lankford's case..." Decision and Order, dated January 7, 2008.

Canyon County. As the prosecutor on the Latah County case CR-2007-3656, he was most familiar with the procedural steps on that case, the background notes and communications as it affected Lane Thomas in this case, and his interaction with the Court and its disposition of Lane Thomas's sentence. Mr. Thompson met with Defense counsel on November 8, 2012, copies were requested on November 9, but the requested copies of file documents just arrived November 14, due to production time and the Veterans' Day holiday.

Secondly, the Defendant's response to starting the investigation was slowed by the lack of funding. The Defendant finally dispatched Mr. Starkey to Grangeville to follow up with possible witnesses there, but has stopped due to exhausting the allotted funds.

Further, due to the increased focus and importance of the role of Mr. Thomas, the Defendant is pursuing a lead concerning a Sam York, who was jailed with Thomas and Mark Lankford in Latah County Jail in 2007. According to 2007-2008 interviews of York and Thomas, York (with the help of Mark Lankford) produced a document which further clouds Thomas's relationship with Idaho County; the Defendant is seeking that document, which may be of high value to the Defendant. In addition, the Defendant is still seeking all contacts between Idaho County law enforcement and Thomas, due to suggestions within those same interviews about those contacts.

Due to the above problems, the Defendant still lacks information regarding any of the specifics of any agreement to pay Thomas, the specifics on State contacts with Thomas, specifics on witnesses to those contacts and communications by Thomas, and is still seeking answers about the document once possessed by Sam York.

In short, the Defendant needs to know the following:

- Who negotiated the deal that resulted in a \$1500 payment to Thomas.
- When that deal was struck.
- Who, on behalf of the State, participated in consummating the deal.
- What were the precise details of the deal, from the State's perspective.
- What were the precise details of the deal, from Thomas's perspective.
- Why no one from the State will now accept responsibility for the deal, or provide adequate documentation memorializing the deal.
- Who has information regarding the Sam York statement.
- Information specifying the substance of all Idaho County law enforcement or prosecutor's office contacts with Lane Thomas prior to and following the 2008 Mark Lankford trial.


Furthermore, Mr. Anderson has mentioned that Mr. Thomas filed a Bar complaint against Mr. MacGregor some time after the payment was made, and the Defendant will seek to learn the substance of that complaint.

Furthermore, due to some technical difficulties in the Attorney General's office, the Defendant has not received responses to his requests for discovery regarding the recent revelations.

Given that the scheduled evidentiary hearing is six weeks off, with holidays in the middle of those six weeks, and the volume of work seems to be increasing, the

Defendant moves the Court for an order vacating the present setting and re-setting it approximately two months later.

Dated this 19<sup>th</sup> day of November, 2012.

  
James E. Johnson  
Attorney for Mark Lankford

Certificate of Service

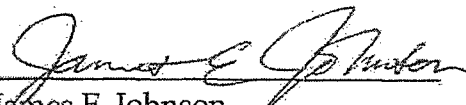
I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail and emailed a PDF copy to:

LaMont Anderson, Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
[lamont.anderson@ag.idaho.gov](mailto:lamont.anderson@ag.idaho.gov)

Ray Barker, attorney for Lane Thomas  
P.O. Box 9408  
Moscow, ID 83843  
[d.raybarker@turbonet.com](mailto:d.raybarker@turbonet.com)

Gary Amendola, attorney for Bryan Lankford  
Amendola & Doty  
702 N. Fourth Avenue  
Coeur d'Alene, ID 83814  
[gary@aadlawoffice.com](mailto:gary@aadlawoffice.com)

On the 19<sup>th</sup> day of November, 2012

  
James E. Johnson

IDAHO COUNTY DISTRICT COURT  
AT 2:23 P.M.

DOCKETED

NOV 27 2012

KATHY MACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY  
*Kathy Mackerman*

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

STATE OF IDAHO,	)	CR 83-20158
Plaintiff,	)	ORDER FOR DELIVERY OF
	)	I.D.O.C. RECORDS, AND
v.	)	ORDER OF PROTECTION
	)	
MARK HENRY LANKFORD,	)	
Defendant.	)	
_____	)	

James E. Johnson, court-appointed attorney for Mr. Mark Lankford, has requested records of Lane Franklin Thomas from the Idaho Department of Correction (IDOC), regarding any inmate and disciplinary records of Mr. Thomas. Counsel for the IDOC, the office of the Idaho Attorney General, and counsel for the Defendant have filed with this Court a Stipulation For Protection Order, pursuant to I.C.R. 16(k).

Good cause appearing, the IDOC shall forward to James Johnson, counsel for Mr. Mark Lankford, the requested inmate and disciplinary records regarding Lane Franklin Thomas within the IDOC custody and control. Pursuant to I.C.R. 16(k), a protective order is hereby placed upon said records upon Mr. Johnson's receipt of those records.


ORDER FOR DELIVERY OF I.D.O.C. RECORDS, AND ORDER OF PROTECTION

ORIGINAL

*205*

Mr. Johnson shall not disclose the records to the Defendant or to the general public, without further action from this Court specifically permitting such disclosure.

Dated this 27<sup>th</sup> day of November, 2012.

  
\_\_\_\_\_  
John R. Stegner  
District Judge

Clerk's Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was delivered the to following by the indicated method:

LaMont Anderson, Deputy Attorney General     mailed by U.S. Mail  
P.O. Box 83720     emailed a PDF copy  
Boise, ID 83720-0010  
[lamont.anderson@ag.idaho.gov](mailto:lamont.anderson@ag.idaho.gov)

Ray Barker, attorney for Lane Thomas         mailed by U.S. Mail  
P.O. Box 9408     emailed a PDF copy  
Moscow, ID 83843  
[d.raybarker@turbonet.com](mailto:d.raybarker@turbonet.com)

Gary Amendola, attorney for Bryan Lankford  mailed by U.S. Mail  
Amendola & Doty                                       emailed a PDF copy  
702 N. Fourth Avenue  
Coeur d'Alene, ID 83814  
[gary@aadlawoffice.com](mailto:gary@aadlawoffice.com)

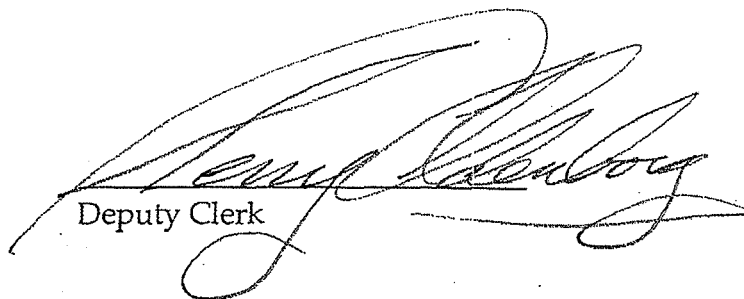
Jay Johnson  
604 S. Washington, suite 3  
Moscow, ID  
[jay.dr.juris@gmail.com](mailto:jay.dr.juris@gmail.com)

mailed by U.S. Mail  
 emailed a PDF copy  
 courthouse mail

William Loomis, DAG  
Office of the Attorney General  
1299 N. Orchard St, suite 110  
Boise, ID 83706-2266  
[wloomis@idoc.idaho.gov](mailto:wloomis@idoc.idaho.gov)

mailed by U.S. Mail  
 emailed a PDF copy

On the 27 day of November, 2012



Deputy Clerk



IDAHO COUNTY DISTRICT COURT  
FILED  
AT 2:23 O'CLOCK P.M.

NOV 27 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*[Signature]* DEPUTY

DOCKETED

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

STATE OF IDAHO,	)	
	)	Case No. CR-1983-20158
Plaintiff,	)	
	)	ORDER VACATING HEARING
vs.	)	
	)	
MARK HENRY LANKFORD,	)	
	)	
Defendant.	)	
_____	)	

Upon motion of the defendant, there being no objection from the State,  
It is ORDERED that hearing of the defendant's Amended Second Motion for  
New Trial, which is scheduled to be conducted on January 3, 2013, is VACATED.

DATED this 27<sup>th</sup> day of November 2012.

*[Signature]*  
John R. Stegner  
District Judge

**CERTIFICATE OF SERVICE**

I do hereby certify that a full,  
true and correct copy of the foregoing  
**ORDER VACATING HEARING**  
was sent by PDF email to:

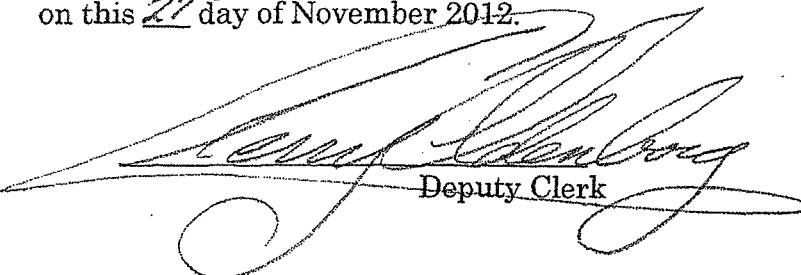
Gary Amendola  
Attorney at Law  
[gary@aadlawoffice.com](mailto:gary@aadlawoffice.com)

D. Ray Barker  
Attorney at Law  
[d.raybarker@turbonet.com](mailto:d.raybarker@turbonet.com)

James E. Johnson  
Attorney at Law  
[jay.dr.juris@gmail.com](mailto:jay.dr.juris@gmail.com)

Kirk MacGregor  
Prosecuting Attorney  
[kmacgregor@Connectwireless.us](mailto:kmacgregor@Connectwireless.us)

on this 27<sup>th</sup> day of November 2012.



Deputy Clerk

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 2:23 O'CLOCK P.M.

NOV 27 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED


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

STATE OF IDAHO,	)	CR 83-20158
	)	
Plaintiff,	)	ORDER FOR
	)	PAYMENT TO
V.	)	DEFENSE INVESTIGATOR
	)	
MARK HENRY LANKFORD,	)	
Defendant.	)	
_____	)	

James E. Johnson, court-appointed attorney for Mr. Mark Lankford, has submitted a motion for payment to investigator Mr. Gary Starkey. The bill exceeds the previously approved amount remaining for investigator expenses (\$1468.50). However, the bill is for expenses reasonably incurred.

It is hereby ordered that Idaho County pay Mr. Starkey the amount billed, One thousand nine hundred thirty-two dollars and eleven cents (\$1932.11).

Dated this 27<sup>th</sup> day of November, 2012.

  
John R. Stegner  
District Judge

ORIGINAL

Clerk's Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was emailed a PDF copy to:

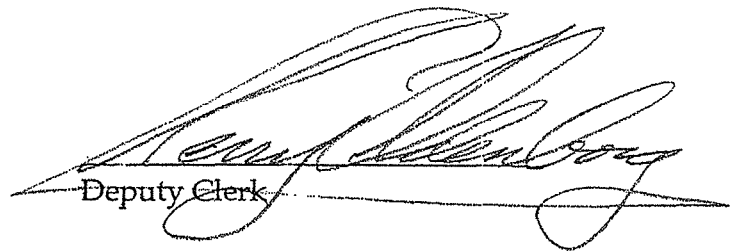
LaMont Anderson, Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
[lamont.anderson@ag.idaho.gov](mailto:lamont.anderson@ag.idaho.gov)

Ray Barker, attorney for Lane Thomas  
P.O. Box 9408  
Moscow, ID 83843  
[d.raybarker@turbonet.com](mailto:d.raybarker@turbonet.com)

Gary Amendola, attorney for Bryan Lankford  
Amendola & Doty  
702 N. Fourth Avenue  
Coeur d'Alene, ID 83814  
[gary@aadlawoffice.com](mailto:gary@aadlawoffice.com)

Jay Johnson  
604 S. Washington, suite 3  
Moscow, ID 83843  
[jay.dr.juris@gmail.com](mailto:jay.dr.juris@gmail.com)

On the 27<sup>th</sup> day of November, 2012

  
Deputy Clerk

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 9:07 O'CLOCK A.M.

DEC - 7 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

D. RAY BARKER  
Attorney at Law  
204 East First Street  
P.O. Box 9408  
Moscow, Idaho 83843-0118  
(208) 882-6749  
Idaho State Bar No. 1380

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

STATE OF IDAHO,	)	Case No. CR-1983-20158
	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER</b>
	)	
MARK LANKFORD,	)	
	)	
<u>Defendant.</u>	)	

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, D. Ray Barker, hereby approves the same and orders payment of Fifty-Two Dollars and Fifty Cents (\$52.50).

DATED this 6<sup>th</sup> day of December, 2012.

  
\_\_\_\_\_  
District Judge

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 11:37 O'CLOCK A.M.

DEC 10 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

Gary I. Amendola  
AMENDOLA & DOTY, PLLC  
702 N. 4th Street  
Coeur d'Alene, ID 83814  
Telephone: (208) 664-8225  
Facsimile: (208) 765-1046  
ISBN: 4872

Attorneys for Bryan Lankford

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

STATE OF IDAHO,  
  
Plaintiff,  
  
vs.  
  
MARK H. LANKFORD,  
  
Defendant.

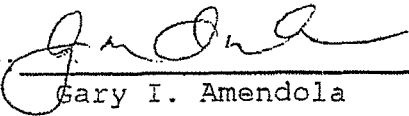
CASE NO. CR-1983-20158  
  
MOTION FOR PAYMENT OF  
ATTORNEYS FEES

Gary I. Amendola, of the law firm of AMENDOLA & DOTY, PLLC, moves this Court for an Order approving payment of the attorney fees incurred in this case on behalf of Bryan Lankford through December 1, 2012. This Motion is supported by the accompanying Affidavit of Gary I. Amendola.

DATED this 7 day of December, 2012.

AMENDOLA & DOTY, PLLC

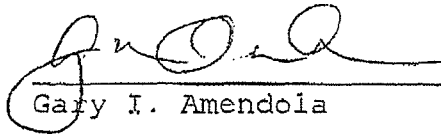
Attorneys for Bryan Lankford

By   
Gary I. Amendola

CERTIFICATE OF SERVICE

I certify that on the 7 day of December, 2012, I caused a copy of the foregoing to be served by the method indicated below on the following:

THE HONORABLE JOHN R. STEGNER	<input type="checkbox"/> U.S. Mail
DISTRICT JUDGE	<input type="checkbox"/> Hand Delivered
LATAH COUNTY COURTHOUSE	<input checked="" type="checkbox"/> Facsimile to: 883-2259
P.O. BOX 8068	<input type="checkbox"/> Overnight Mail
MOSCOW, ID 83843	

  
Gary I. Amendola

ROCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 12:01 O'CLOCK P.M.

DEC 10 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy M. Ackerman* DEPUTY

Gary I. Amendola  
AMENDOLA & DOTY, PLLC  
702 N. 4th Street  
Coeur d'Alene, ID 83814  
Telephone: (208) 664-8225  
Facsimile: (208) 765-1046  
ISBN: 4872

Attorneys for Bryan Lankford

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

STATE OF IDAHO,  
  
Plaintiff,  
  
vs.  
  
MARK H. LANKFORD,  
  
Defendant.

CASE NO. CR-1983-20158  
  
ORDER FOR PAYMENT OF  
ATTORNEYS FEES

Based upon the Motion for Payment of Attorneys Fees filed in  
this case and good cause appearing,

//  
  
//  
  
//  
  
//  
  
//



IT IS ORDERED that Gary I. Amendola of the law firm of AMENDOLA & DOTY, PLLC, be paid \$625.00 for representation of Bryan Lankford through December 1, 2012.

DATED this 7<sup>th</sup> day of December, 2012.

John R. Stegner  
JOHN R. STEGNER  
District Judge

CERTIFICATE OF SERVICE

I certify that on the 10<sup>th</sup> day of December, 2012, I caused a copy of the foregoing to be served by the method indicated below on the following:

Gary I. Amendola  
AMENDOLA & DOTY, PLLC  
702 N. 4<sup>th</sup> Street  
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Facsimile to: 208-765-1046
- Overnight Mail

CLERK OF THE DISTRICT COURT

By: Kathy Johnson  
Deputy Clerk

DOCKETED

DEC 10 2012

KATHY MACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY  
*Kathy Mackerman*

James E. Johnson  
604 S. Washington St., #3  
Moscow, Idaho 83843  
Telephone: (208) 882-1357  
Fax: (208) 567-0551  
ISB #6383

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

STATE OF IDAHO,	)	Case No. CR-83-20158
Plaintiff,	)	
	)	<b>ORDER FOR PAYMENT FOR</b>
	)	<b>LEGAL SERVICES</b>
v.	)	
MARK LANKFORD,	)	
Defendant.	)	
_____	)	

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, James E. Johnson, (for the month of November, 2012) hereby approves the same and orders payment of Three Thousand One Hundred Sixty-Seven Dollars and Ten Cents (\$3,167.10).

DATED this 7<sup>th</sup> day of December, 2012.

*John R. Stegner*  
John R. Stegner  
District Judge

Bradley G. Andrews  
Bar Counsel  
Idaho State Bar  
P.O. Box 895  
Boise, ID 83701  
(208) 334-4500  
ISB No. 2576

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 3:07 O'CLOCK P.M.

DEC 28 2012

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MARK HENRY LANKFORD, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. CR-83-20158

MOTION TO QUASH  
SUBPOENA DUCES TECUM

COMES NOW, the Idaho State Bar, by and through Bar Counsel, Bradley G. Andrews, pursuant to I.C.R. 17(b), and submits its Motion to Quash Subpoena Duces Tecum.

The Subpoena Duces Tecum ("Subpoena") was served on December 27, 2012 by mail. Mr. Andrews signed the Notice of Acceptance of Service of Subpoena that same date. The Subpoena requests "Records of a Bar Complaint filed against Kirk MacGregor (Prosecutor for Idaho County, Idaho), as alleged by Lane F. Thomas, and any documents related to that complaint, including answers by Kirk MacGregor to the allegations." The Subpoena has a return date of January 11, 2013.

The primary basis for the Motion to Quash Subpoena is Idaho Bar Commission Rule 521 ("I.B.C.R.").

The Idaho Bar Commission Rules are rules that were promulgated by the Board of Commissioners of the Idaho State Bar and adopted by Order of the Idaho Supreme Court. Consequently, they are considered rules of the Idaho Supreme Court. I.B.C.R. 521(b) provides that the records requested in the Subpoena are confidential and not subject to disclosure. I.B.C.R. 521 provides in pertinent part:

(a) **Availability of Information.** All proceedings and records relating to Professional Conduct, except the work product of Bar Counsel, a Hearing Committee or the Professional Conduct Board, shall be available to the public after the filing and service of Formal Charges, unless the Grievant or Respondent obtains a protective order for specific testimony, documents or records.

(b) **Confidentiality.** Prior to the filing and service of Formal Charges, a Professional Conduct matter is confidential, except that the pendency, subject and status of a Professional Conduct matter may be disclosed by Bar Counsel if:

- (1) the Lawyer has waived confidentiality in writing;
- (2) the matter is based upon allegations that include either the conviction of a crime or public reciprocal discipline;
- (3) the matter is based upon allegations that have become generally known to the public; or
- (4) there is a need to notify another person or organization, including the Client Assistance Fund, in order to protect the public, the administration of justice, or the legal profession.

(e) **Protective Orders.** In order to protect the interests of a Grievant, witness, third party, Lawyer or Respondent, the Hearing Committee to which a matter is assigned, or Chair of the Professional Conduct Board if the matter has yet to be assigned to a Hearing Committee, may, upon application of any person and for good cause shown, issue a protective order. The protective order shall prohibit the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including

requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

(f) **Request for Nonpublic Information Relating to Discipline.** A request for nonpublic information other than that authorized for disclosure under subsection (b) above shall be denied unless the request is from one of the following agencies:

- (1) an agency authorized to investigate qualifications for admission to practice law;
- (2) a lawyer disciplinary enforcement agency;
- (3) an agency authorized to investigate qualifications for government employment; and
- (4) any other agency designated by the Supreme Court.

(g) **Disclosure with Notice to Lawyer.** Except as provided in subsection (h), if Bar Counsel decides to provide nonpublic information to a requesting agency, and if the Lawyer has not signed a waiver permitting the requesting agency to obtain nonpublic information, the Lawyer shall be notified in writing at his or her last known address of the information that has been requested and the agency making the request, together with a copy of the information proposed to be released. The notice shall advise the Lawyer that the information shall be released at the end of 14 days following mailing of the notice unless the Lawyer objects to the disclosure. If the Lawyer timely objects to the disclosure, the information shall remain confidential unless the requesting agency obtains a court order requiring its release.

(h) **Disclosure Without Notice to Lawyer.** If an authorized requesting agency has not obtained a waiver from the Lawyer to obtain nonpublic information and requests that the information be released without giving notice to the Lawyer, the requesting agency shall certify, in writing, to the satisfaction of Bar Counsel that:

- (1) the request is made in furtherance of an ongoing investigation into misconduct by the Lawyer;
- (2) the information is essential to that investigation; and
- (3) disclosure of the existence of the investigation to the Lawyer would seriously prejudice that investigation.

(j) **Scope of Duty.** All parties and witnesses in the process, together with all officials and employees of the agency authorized to receive information under these Rules, shall conduct themselves so as to maintain the confidentiality mandated by this Rule.

(k) **Order by Supreme Court to Make Public.** Notwithstanding any other provisions of these Rules, the Supreme Court may provide by order that review of Professional Conduct proceedings and/or records in a particular case, in all cases or in any class or group of cases, are open to the public, subject to special or protective orders of the Supreme Court. Bar Counsel and any other member of the Bar or the public shall have standing to petition the Supreme Court for a determination leading to the waiver of confidentiality in such proceedings and/or records in particular cases, and the Supreme Court may grant or deny such petitions in whole or in part as, in its discretion and in the interests of justice, it deems proper.

The capitalized terms in that Rule, are defined in I.B.C.R. 501. I.B.C.R. 501(k) defines Professional Conduct as:

(k) **Professional Conduct.** "Professional Conduct" means conduct that occurs within or without the attorney-client relationship that reflects upon the Lawyer's fitness to practice law.

Since Mr. MacGregor has never had any Formal Charges filed against him relating to his Professional Conduct, all of the records requested in the Subpoena, if any, are confidential, except that the pendency, subject and status of a professional conduct matter may be disclosed by Bar Counsel if any of the four conditions in I.B.C.R. 521(b) are satisfied. In this situation, none of those circumstances exist permitting disclosure by Bar Counsel, unless this Court concludes there is a need to disclose the records in order to protect the public, the administration of justice, or the legal profession.

In addition, I.B.C.R. 522 provides that "Bar Counsel shall destroy all records or other evidence related to a grievance terminated under Rule 509(b)(1) after five years have elapsed after the date of termination; however, Bar Counsel may maintain a docket showing the names

of the Grievant and Respondent and the date of the termination. Thus, consistent with I.B.C.R. 522, some of the requested records, if any, may no longer exist.

Since the requesting party is not one of the agencies recognized in I.B.C.R. 521(f), if Bar Counsel decides to provide non-public information it would require compliance with I.B.C.R. 521(g), which is not possible given the timing of the service and return date of the Subpoena. In that regard, the Idaho State Bar acknowledges that the opposing party in this case may raise issues relating to the Subpoena.

The Idaho State Bar has denied a public records request for these records. See Exhibit A. The applicable statutes provide a means to seek judicial review of that denial. Alternatively, I.B.C.R. 521(k) provides a method by which members of the bar or the public can request the disclosure of confidential Professional Conduct records from the Idaho Supreme Court. Bar Counsel understands those procedures may not now be viable in this particular case.

Finally, if this Court believes that confidential records relating to Professional Conduct should be disclosed in order to protect the administration of justice, then Bar Counsel suggests that the Court may wish to review the requested records in camera, if the Court deems it necessary to make a determination whether the requested records in the Subpoena are relevant in this case. Then, if the Court determines that any of the records should be disclosed, Bar Counsel requests that the Court and parties exercise reasonable measures to assure that the confidential records are accorded all possible protection against unnecessary disclosure, as may be feasible.

For these reasons, the Idaho State Bar requests the Court enter an order quashing the Subpoena.

DATED this 28<sup>th</sup> day of December 2012.

  
\_\_\_\_\_  
Bradley G. Andrews  
Bar Counsel



CERTIFICATE OF SERVICE

I hereby certify that on the 28<sup>th</sup> day of December 2012, I served a true and correct copy of the foregoing MOTION TO QUASH SUBPOENA DUCES TECUM upon the following in the following manner:

James L. Johnson  
Attorney at Law  
604 S. Washington Street, Ste. 3  
Moscow, ID 83843

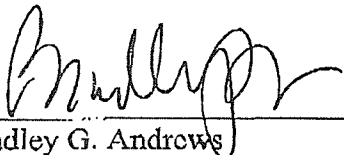
- U.S. Mail
- Hand Delivery
- Facsimile:
- Courthouse Basket

Kirk Angus MacGregor  
Attorney at Law  
P.O. Box 463  
Grangeville, ID 83530

- U.S. Mail
- Hand Delivery
- Facsimile:
- Courthouse Basket

L. Lamont Anderson  
Office of the Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

- U.S. Mail
- Hand Delivery
- Facsimile:
- Courthouse Basket



Bradley G. Andrews  
Bar Counsel

In the Supreme Court of the State of Idaho

IDAHO COUNTY DISTRICT COURT  
FILED  
AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M.

JAN - 8 2013

ASSIGNMENT OF SENIOR JUDGE  
JAMES F. JUDD

ORDER

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

WHEREAS this Court having approved and designated the Honorable JAMES F. JUDD to temporarily sit with any state court as a senior judge pursuant to Idaho Code Sections 1-2005 and 1-2221 with all of the judicial powers of a regularly qualified justice or judge of the courts to which he may hereafter be assigned; and

WHEREAS this Court having determined that the following assignment to Senior Judge JAMES F. JUDD is reasonably necessary and will promote the efficient administration of justice;

Therefore, after due consideration and good cause appearing,

IT HEREBY IS ORDERED that Senior Judge JAMES F. JUDD be, and hereby is, ASSIGNED the case set forth below for purposes of any pending matters and all proceedings necessary for final disposition:

**State v. Mark Henry Lankford**  
**Idaho County Case No. CR-1983-20158**

IT FURTHER IS ORDERED that if a court reporter is not available, Senior Judge JAMES F. JUDD may order that the proceedings to which he is assigned be recorded by an electronic device in lieu of stenographic means, which recording shall constitute the official record of the case.

IT FURTHER IS ORDERED that a copy of this Order shall be placed in a judge assignments file to be maintained by the District Court Clerk as a central register of all judge assignments. Furthermore, the District Court Clerk shall file a copy of this order in the case file and serve a copy upon the parties or their counsel in the case listed above.

DATED this 4<sup>th</sup> day of January, 2013.

By Order of the Supreme Court

Roger S. Burdick  
Roger S. Burdick, Chief Justice

ATTEST:

Stephen W. Kenyon  
Stephen W. Kenyon, Clerk

- cc: Senior Judge James F. Judd
- Administrative District Judge John R. Stegner
- (Acting) Trial Court Administrator Jay P. Gaskill
- District Court Clerk Kathy Ackerman, Idaho County
- Administrative Director of the Courts Patricia Tobias
- Director of Court Management Janica Bisharat
- Financial Office

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 3:19 O'CLOCK P.M.

JAN - 9 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

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

STATE OF IDAHO,	)	Case No. CV-1983-20158
	)	
Plaintiff,	)	
	)	ORDER OF RECUSAL
vs.	)	
	)	
MARK HENRY LANKFORD,	)	
	)	
Defendant.	)	
_____	)	

The undersigned District Judge recuses himself from presiding over this action.

DATED this 9<sup>th</sup> day of January 2013, *nunc pro tunc* to January 4, 2013..

John R. Stegner  
John R. Stegner  
District Judge

**CERTIFICATE OF SERVICE**

I do hereby certify that a full,  
true and correct copy of the foregoing  
**ORDER OF RECUSAL** was transmitted  
by facsimile to:

Gary Amendola  
Attorney for Bryan Lankford  
208-765-1046

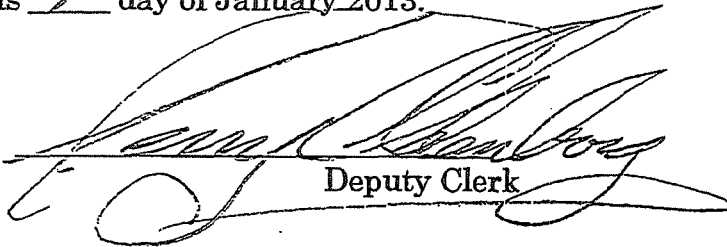
Lamont Anderson  
Deputy Attorney General  
208-854-8074

Brad Andrews  
Attorney at Law  
208-334-2764

D. Ray Barker  
Attorney for Lane Thomas  
208-882-7604

James E. Johnson  
Attorney at Law  
208-567-0551

on this 9<sup>th</sup> day of January 2013.



Deputy Clerk

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:10 O'CLOCK P.M.

JAN 14 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY  
*Kathy M. Ackerman*

DOCKETED

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

**STATE OF IDAHO,**

*Plaintiff,*

vs.

**MARK HENRY LANKFORD,**

*Defendant.*

Case No. **CR 1983 20158**

**ORDER REQUIRING  
SERVICE OF COPIES OF  
FUTURE FILINGS ON JUDGE**

As I do not have chambers in Idaho County and pursuant to I.C.R. 3.2, **IT IS ORDERED** that;

1. Each party shall hereafter serve a conformed copy of each filing on the undersigned at:

Judge James F. Judd  
851 W. Front St., Apt. 1202  
Boise, Idaho 83702

2. Each party shall reflect such service on the Certificate of Service on each such filing.

**ENTERED** this 2<sup>nd</sup> day of January, 2013.

*James F. Judd*  
James F. Judd, Senior Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of January, 2013 a true and correct copy of the foregoing was mailed, postage prepaid or, if the Fax service block is checked, sent a copy via facsimile to:

	Fax Service		Fax Service
L. LaMont Anderson Deputy Attorney General P.O. Box 83720 Boise, Idaho 83720-0010	<input checked="" type="checkbox"/> (208) 854-8074	James E. Johnson Attorney at Law 604 S. Washington St., Suite 3 Moscow, Idaho 83843	<input checked="" type="checkbox"/> (208) 882-1362
Gary I. Amendola Amendola & Doty, PLLC 70 North 4 <sup>th</sup> Street Coeur d'Alene, Idaho 83814	<input checked="" type="checkbox"/> (208) 765-1046	D. Ray Barker Attorney at Law P.O. Box 9408 Moscow, Idaho 83843	<input checked="" type="checkbox"/> (208) 882-7604
Bradley G. Andrews Idaho State Bar P.O. Box 895 83701-0895	<input checked="" type="checkbox"/> (208) 334-2764		

*-mailed too  
1/14/13*

**Clerk of the District Court**

By: *Kathy Johnson*  
Deputy Clerk

589

JAN 17 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy M. Ackerman* DEPUTY

DOCKETED

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

**STATE OF IDAHO,**

*Plaintiff,*

vs.

**MARK HENRY LANKFORD,**

*Defendant.*

Case No. **CR 1983 20158**

**ORDER FOR STATUS AND  
SCHEDULING STATEMENT**

In my review of the file, it is clear that there are several issues that need to be addressed prior to any evidentiary hearing, **IT IS THEREFORE ORDERED** that;

1) Each lawyer who is currently appearing in this matter shall, not later than January 28, 2013, file with the court and serve upon other counsel a status and scheduling statement with the following information:

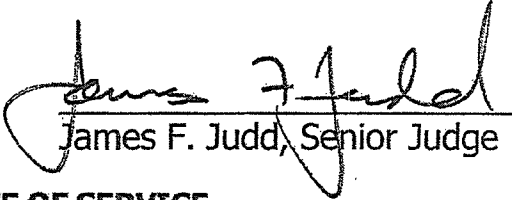
- a) A list of all outstanding and unresolved preliminary motions identified by the filing date, the name of the pleading and whether all filings and responses to such motion have been completed and the same can be scheduled for hearing.
- b) Whether the Integrated Second Motion for A New Trial filed on April 30, 2012 is ready to be set for hearing and if so, the number of days for which it should be scheduled.
- c) After giving consideration for the locations of the court, counsel and witnesses, counsel's preference for the time and location for the evidentiary hearing.

597

2) In lieu of separate status and scheduling statements counsel may submit a joint statement or statements.

3) Their availability for a telephone scheduling conference to be held on Monday, February 11, 2013 at 10:00 o'clock a.m. MST.

**ENTERED** this 17<sup>th</sup> day of January, 2013.

  
James F. Judd, Senior Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_ day of January, 2013 a true and correct copy of the foregoing was mailed, postage prepaid or, if the Fax service block is checked, a copy was sent via facsimile to:

	Fax Service		Fax Service
L. LaMont Anderson Deputy Attorney General P.O. Box 83720 Boise, Idaho 83720-0010	<input type="checkbox"/> (208) 854-8074	James E. Johnson Attorney at Law 604 S. Washington St., Suite 3 Moscow, Idaho 83843	<input type="checkbox"/> (208) 882-1362
Gary I. Amendola Amendola & Doty, PLLC 70 North 4 <sup>th</sup> Street Coeur d'Alene, Idaho 83814	<input type="checkbox"/> (208) 765-1046	D. Ray Barker Attorney at Law P.O. Box 9408 Moscow, Idaho 83843	<input type="checkbox"/> (208) 882-7604
Bradley G. Andrews Idaho State Bar P.O. Box 895 83701-0895	<input type="checkbox"/> (208) 334-2764		

**Clerk of the District Court**

By: \_\_\_\_\_  
Deputy Clerk



DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 8:50 O'CLOCK A.M.

JAN 22 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy Ackerman*

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

**STATE OF IDAHO,**

*Plaintiff,*

vs.

**MARK HENRY LANKFORD,**

*Defendant.*

Case No. **CR 1983 20158**

**ORDER PRESERVING  
RECORDS**

A Motion to Quash Subpoena Duces Tecum filed by the Idaho State Bar on December 28, 2012 is pending before this court and has not yet been scheduled for hearing.

In order to preserve the record pending such hearing, **IT IS ORDERED** that the Idaho State Bar shall preserve, pending further order of this court, any and all documents that are subject to the Subpoena Duces Tecum service of which was acknowledged by Bradley G. Andrews on December 27, 2012.

**ENTERED** this 21<sup>st</sup> day of January, 2013.

*James F. Judd*  
James F. Judd, Senior Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of January, 2013 a true and correct copy of the foregoing was mailed, postage prepaid or, if the Fax service block is checked, a copy was sent via facsimile to:

L. LaMont Anderson  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010

Fax Service

*mailed*



(208) 854-8074

Gary I. Amendola  
Amendola & Doty, PLLC  
70 North 4<sup>th</sup> Street  
Coeur d'Alene, Idaho 83814



(208) 765-1046

Bradley G. Andrews  
Idaho State Bar  
P.O. Box 895  
83701-0895



(208) 334-2764

James E. Johnson  
Attorney at Law  
604 S. Washington St., Suite 3  
Moscow, Idaho 83843

Fax Service

*mailed*



(208) 882-1362

D. Ray Barker  
Attorney at Law  
P.O. Box 9408  
Moscow, Idaho 83843



(208) 882-7604

**Clerk of the District Court**

By: *Kathy Johnson*  
Deputy Clerk

James E. Johnson  
604 S. Washington St., #3  
Moscow, Idaho 83843  
Telephone: (208) 882-1357  
Fax: (208) 567-0551  
ISB #6383

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 1:18 O'CLOCK P M.

DOCKETED

JAN 22 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*[Signature]* DEPUTY

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

STATE OF IDAHO,	)	Case No. CR-83-20158
Plaintiff,	)	
	)	<b>ORDER FOR PAYMENT FOR</b>
	)	<b>LEGAL SERVICES</b>
v.	)	
MARK LANKFORD,	)	
Defendant.	)	
_____	)	

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, James E. Johnson, (for the month of December, 2012) hereby approves the same and orders payment of One Thousand Eight Hundred Twenty-Six Dollars and Twenty Cents (\$1,826.20).

DATED this 15<sup>th</sup> day of January, 2013.

*[Signature]*  
James Judd  
District Judge

ORIGINAL

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 10:00 O'CLOCK A M.

DOCKETED

FEB 11 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*James Johnson* DEPUTY

James E. Johnson  
604 S. Washington St., #3  
Moscow, Idaho 83843  
Telephone: (208) 882-1357  
Fax: (208) 567-0551  
ISB #6383

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

STATE OF IDAHO, )  
Plaintiff, )  
)  
)  
v. )  
MARK LANKFORD, )  
Defendant. )  
\_\_\_\_\_ )

Case No. CR-83-20158

ORDER FOR PAYMENT FOR  
LEGAL SERVICES

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, James E. Johnson, (for the month of January, 2013) hereby approves the same and orders payment of One Thousand One Hundred and Six Dollars and Zero Cents (\$1,106.00).

DATED this 8<sup>th</sup> day of February, 2013.

*James Judd*  
James Judd  
District Judge

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 10:00 O'CLOCK A.M.

FEB 11 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY  
*[Signature]*

D. RAY BARKER  
Attorney at Law  
204 East First Street  
P.O. Box 9408  
Moscow, Idaho 83843-0118  
(208) 882-6749  
Idaho State Bar No. 1380

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

STATE OF IDAHO,	)	Case No. CR-1983-20158
	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER</b>
	)	
MARK LANKFORD,	)	
	)	
<u>Defendant.</u>	)	

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, D. Ray Barker, hereby approves the same and orders payment of Two Hundred Eighty Dollars and No Cents (\$280.00).

DATED this 8<sup>th</sup> day of February, 2013.

*[Signature]*  
District Judge

COURT MINUTES

CR-1983-0020158

State of Idaho vs. Mark Henry Lankford

Hearing type: Telephonic Scheduling

Hearing date: 2/11/2013

Time: 8:37 am

Judge: James F Judd

Courtroom: District

Court reporter: none

Minutes Clerk: KATHYJ

Tape Number: District

Defense Attorney: James Johnson (Lankford appears telephonically)

Prosecutor: Lamont Anderson, Ray Barker, Gary Amendola, Brad Andrews

9:04 Court addresses counsel re: additional funds for investigator  
Court grants motion

9:05 Johnson addresses court and requests \$1000 for additional funds and will submit order

9:05 Court grants motion to amend and consolidated motion for new trial  
Court requires counsel to refer to ROA to name documents required from court file

9:06 Johnson responds to the court re: time for new filing

9:08 Court orders Johnson to file new motion by April 26

9:09 Court states Johnson waives

9:10 Lankford joins call, Court addresses Lankford  
Court gives summary of call to this point  
Court clarifies waiver to Johnson

9:11 Anderson addresses court  
Court responds – looking for date in June  
Anderson addresses the court, there will be a response to the amended motion

9:12 Johnson indicates end of June okay except for June 27<sup>th</sup>

9:13 Anderson addresses the court re: unavailability of witness  
Court responds  
Court plans to have hearing in Moscow

9:14 Johnson indicates 4 -5 days for motion hearing

9:15 Anderson addresses the court re: testimony of Brian Lankford  
Court responds

9:15 Court addresses motion to quash summons

9:16 Andrews responds to the court  
Court directs Andrews to file copy in camera

9:17 Andrews responds

9:18 Court addresses Barker  
Barker responds re: consent to examination of bar file  
Court questions counsel further  
Amendola responds

9:19 Andrews responds to the court  
Court responds and requires something in writing from MacGregor

9:20 Anderson responds to the court and will get something in writing from MacGregor

9:21 Barker will contact his client  
Court requires him to file statement with his issues

9:21 Johnson addresses the court re: waiver of confidentiality

9:22 Court responds

9:23 Johnson responds to the court  
Court responds and will prepare report after in-camera review

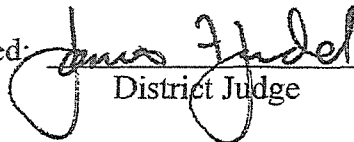
9:24 Johnson responds and questions court how long before report  
Court responds  
Andrews responds to the court

9:25 Andrews questions the court re: copy of file presented to MacGregor as well  
Court responds  
Court concurs

9:27 Johnson addresses the court  
Court will prepare an order re: time lines  
Johnson will prepare order

9:27 Recess

Signed:

  
District Judge

Signed: \_\_\_\_\_


  
Deputy Court Clerk





1. The Amended and Consolidated Motion for New Trial shall separately restate each previously asserted claim of newly discovered evidence in addition to each newly asserted claim of newly discovered evidence.
2. As to each such asserted claim, Lankford shall give a brief statement of the facts supporting such claim and its legal basis.
3. To the extent any asserted claim relies on materials already filed of record in this proceeding, Lankford shall, as to each such claim, identify the documents relied on by reference to the document and its filing date as shown on the Court's Register of Actions.
4. Any known claim of newly discovered evidence not stated in the Amended and Consolidated Motion for New Trial shall be deemed abandoned and waived by Lankford.
5. The Amended and Consolidated Motion for New Trial shall be filed on or before April 26, 2013.

**ENTERED** this 13<sup>th</sup> day of February, 2013.

  
James F. Judd, Senior Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of February, 2013 a true and correct copy of the foregoing was mailed, postage prepaid or, if the Fax service block is checked, a copy was sent via facsimile to:

	Fax Service		Fax Service
L. LaMont Anderson Deputy Attorney General P.O. Box 83720 Boise, Idaho 83720-0010	<input checked="" type="checkbox"/> (208) 854-8074	James E. Johnson Attorney at Law 604 S. Washington St., Suite 3 Moscow, Idaho 83843	<input checked="" type="checkbox"/> (208) 567-0551
Gary I. Amendola Amendola & Doty, PLLC 70 North 4 <sup>th</sup> Street Coeur d'Alene, Idaho 83814	<input checked="" type="checkbox"/> (208) 765-1046	D. Ray Barker Attorney at Law P.O. Box 9408 Moscow, Idaho 83843	<input checked="" type="checkbox"/> (208) 882-7604
Bradley G. Andrews Idaho State Bar P.O. Box 895 83701-0895	<input checked="" type="checkbox"/> (208) 334-2764		

**Clerk of the District Court**

By: Kathy Johnson  
Deputy Clerk

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED AT 9:30 O'CLOCK A.M.

FEB 19 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*[Signature]*

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

STATE OF IDAHO,	)	CR 83-20158
	)	
Plaintiff,	)	
	)	
V.	)	ORDER PRE-APPROVING
	)	DEFENSE INVESTIGATOR
	)	EXPENSES
MARK HENRY LANKFORD,	)	
Defendant.	)	
_____	)	

James E. Johnson, court-appointed attorney for Mr. Mark Lankford, has moved this Court for pre-approval of payment to the Defendant's investigator in this case. He has requested approval for \$1000 additional to the amounts already expended in this case.

It is hereby ordered that an additional \$1000 in defense investigator expenses is pre-approved in this case.

Dated this 14<sup>th</sup> day of February, 2013.

*[Signature]*  
James F. Judd  
District Judge

Clerk's Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail to:

LaMont Anderson, Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
[lamont.anderson@ag.idaho.gov](mailto:lamont.anderson@ag.idaho.gov)

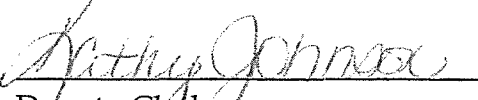
Ray Barker, attorney for Lane Thomas  
P.O. Box 9408  
Moscow, ID 83843  
[d.raybarker@turbonet.com](mailto:d.raybarker@turbonet.com)

Gary Amendola, attorney for Bryan Lankford  
Amendola & Doty  
702 N. Fourth Avenue  
Coeur d'Alene, ID 83814  
[gary@aadlawoffice.com](mailto:gary@aadlawoffice.com)

Bradley Andrews, Bar Counsel  
Idaho State Bar  
P.O. Box 895  
Boise, ID 83701  
[bandrews@isb.idaho.gov](mailto:bandrews@isb.idaho.gov)

Jay Johnson  
604 S. Washington, suite 3  
Moscow, ID  
[jay.dr.juris@gmail.com](mailto:jay.dr.juris@gmail.com)

On the 19<sup>th</sup> day of February, 2013

KATHY M. ACKERMAN, Clerk  
  
Deputy Clerk

MAR - 5 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

James E. Johnson  
604 S. Washington Street, suite 3  
Moscow, ID 83843  
208 882 1357  
ISBN 6383

Attorney for Mr. Mark Lankford


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

STATE OF IDAHO,	)	CR 83-20158
	)	
Plaintiff,	)	MOTION FOR ORDER
	)	FOR COUNTY PAYMENT TO
V.	)	DEFENSE INVESTIGATOR
	)	
MARK HENRY LANKFORD,	)	
Defendant.	)	
_____	)	

James E. Johnson, court-appointed attorney for Mr. Mark Lankford, moves the Court for an order of payment to the defense investigator.

The Court issued an Order Pre-Approving Defense Investigator Expenses on February 14, 2013. That order had a limit of \$1000.00 for investigator expenses, without further court approval. The amount submitted is \$373.75. The attached invoice details the investigator's claimed services, which are reasonable.

Dated this 4th day of March, 2013.

  
James E. Johnson  
attorney for Mark Lankford

ORIGINAL

1004

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail to:

LaMont Anderson, Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
[lamont.anderson@ag.idaho.gov](mailto:lamont.anderson@ag.idaho.gov)

Ray Barker, attorney for Lane Thomas  
P.O. Box 9408  
Moscow, ID 83843  
[d.raybarker@turbonet.com](mailto:d.raybarker@turbonet.com)

Gary Amendola, attorney for Bryan Lankford  
Amendola & Doty  
702 N. Fourth Avenue  
Coeur d'Alene, ID 83814  
[gary@aadlawoffice.com](mailto:gary@aadlawoffice.com)

On the 4<sup>th</sup> day of March, 2013

  
James E. Johnson

P.I. Lic. # 21676

# TPM Investigations

(208) 855-0378

Terry Murphy  
Over 30 Years Investigative  
Experience

---

---

## Invoice

**Client Name:** Johnson / Langford  
**Case #:** ID130202  
**Retainer Received:** None

**Receipt Date:** 2/15/2013  
**Invoice #:** 1306

Description:	Amount:
2/15/2013 Case set up.	\$37.50
Tel/con with Johnson re: case investigative needs. Received information.	
Conducted an internet database search for Samuel York. Prepared a report	
re: York & emailed to Johnson. 1.5 hours	\$112.50
Database costs.	\$35.00
2/16/2013 Search for cellphone # for York. .5 hour.	\$37.50
2/19/2013 Completed cellphone # search & emailed results. No hit.	\$50.00
2/20/2013 Attempted to located landline or cellphone attached to Birch St., Walla	
Walla address. Verified utilities in the name of York at that address. .5 hour	\$37.50
Database cost.	\$45.00
2/25/2013 Texts & Tel/con Johnson. .25 hour.	\$18.75

6006

Photos:			\$0.00
Copying Charges:			\$0.00
Out of Town Food Allowance:	\$35.00 per day		\$0.00
Hotel Expenses:	\$0.00 minimum rate		\$0.00
Mileage Total:			
	@ \$0.65	miles roundtrip	
		per mile	\$0.00
		<b>Total :</b>	<b>\$373.75</b>

1433 NW Second Street #3  
Meridain, Idaho 83642

**Thank you for choosing TPM Investigations**

1007



IDAHO COUNTY DISTRICT COURT  
FILED  
AT 11:00 O'CLOCK A.M.

MAR 08 2013

KATHY M ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

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

**STATE OF IDAHO,**

*Plaintiff,*

vs.

**MARK HENRY LANKFORD,**

*Defendant.*

Case No. **CR 1983 20158**

**ORDER FOLLOWING  
IN CAMERA  
REVIEW**

Lankford has subpoenaed Idaho State Bar "Records of a Bar Complaint filed against Kirk MacGregor (Prosecutor for Idaho County, Idaho) as alleged by Lane F. Thomas, and an documents related to that complaint, including answers by Kirk MacGregor to the allegations." [Subpoenaed Materials]. The Idaho State Bar has filed a Motion to Quash the subpoena asserting the confidentiality of lawyer disciplinary proceedings prior to the filing of Formal Charges. I.B.C.R. 521(b).

The court ordered that the Subpoenaed Materials be filed under seal and that both Lane F. Thomas and Kirk MacGregor be consulted as to their consent to the release of the Subpoenaed Materials. Thomas has consented to the release. MacGregor has not consented to the release. The Idaho State Bar has filed the Subpoenaed Materials under seal.

The court has undertaken an *in camera* review of the materials in order to determine if the Subpoenaed Materials should be released "in order

to protect ... the administration of justice...." I.B.C.R.(b)(4).

The Subpoenaed Materials consist of unsworn statements by both Mr. Thomas and Mr. MacGregor, letters from the Idaho State Bar Office of Bar Counsel, and copies of public court records.

The instant proceeding is Lankford's Motion for New Trial pursuant to I.C. § 19-2406(7). I find that in order to protect the administration of justice, it is appropriate to allow Lankford's counsel and the State's counsel access to the Subpoenaed Materials, subject however to protective order restrictions pursuant to I.B.C.R. 521(e). I further find that the Subpoenaed Materials contain 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. I.C.A.R. 32(I)(3).

**IT IS ORDERED** that upon James E. Johnson's and L. Lamont Anderson's filing a written consent to the terms of the protective order hereinafter stated, the Clerk of the Court shall provide them with a copy of the Subpoenaed Materials in a sealed envelope marked confidential and with a certified copy of this order attached.

### **PROTECTIVE ORDER**

**IT IS FURTHER ORDERED**, that:

1. The Subpoenaed Materials being provided pursuant to this order are confidential and shall not be disclosed to any person not specified in this order.
2. The Subpoenaed Materials shall neither be copied nor provided to another person other than a lawyer or investigator working on this matter under the supervision of either Johnson or Anderson, and then only upon such lawyer or investigator signing and filing with the court a statement agreeing to be bound by the terms of this protective order.

3. Johnson may discuss the nature of the Subpoenaed Materials with his client, but he shall not provide any copy or extract of the Subpoenaed Materials to his client.


4. The Subpoenaed Materials shall not be quoted in any writing to any person.

5. The Subpoenaed Materials shall not be quoted in any writing filed with the court unless filed under seal as provided in I.C.A.R. 32(i).

6. Upon this court's determination of the pending motion for new trial, Johnson and Anderson shall retrieve all copies of the Subpoenaed Materials that they may have distributed and shall destroy all but a single file copy that they shall retain as a sealed confidential record.

7. Upon this court's determination of the pending motion for new trial, Johnson and Anderson together with any person to whom they may have provided a copy of the Subpoenaed Materials being provided pursuant to this order shall file with the court their written and sworn certification of compliance with the terms of this Protective Order.

**ENTERED** this 6<sup>th</sup> day of March, 2013.

  
James F. Judd, Senior Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of March, 2013 a true and correct copy of the foregoing was mailed, postage prepaid, or if the Fax service block is checked, sent a copy via facsimile, or if the PDF Email service block is checked, sent a PDF copy by email to:

L. LaMont Anderson  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010

**Fax Service**  
(208) 854-8074  
 **PDF Email Service**  
Lamont.anderson@ag.idaho.gov

James E. Johnson  
Attorney at Law  
604 S. Washington St., Suite 3  
Moscow, Idaho 83843

**Fax Service**  
(208) 567-0551  
 **PDF Email Service**  
jay.dr.juris@gmail.com

Gary I. Amendola  
Amendola & Doty, PLLC  
70 North 4<sup>th</sup> Street  
Coeur d'Alene, Idaho 83814

**Fax Service**  
(208) 765-1046  
 **PDF Email Service**  
gary@aadlawoffice.com

D. Ray Barker  
Attorney at Law  
P.O. Box 9408  
Moscow, Idaho 83843

**Fax Service**  
(208) 882-7604  
 **PDF mail Service**  
d.raybarker@turbonet.com

Bradley G. Andrews  
Idaho State Bar  
P.O. Box 895  
83701-0895

**Fax Service**  
(208) 334-2764  
 **PDF Email Service**  
bandrews@isb.idaho.gov

**Clerk of the District Court**

By: *Lyle Zimmerman*  
Deputy Clerk

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 2:30 O'CLOCK P.M.

James E. Johnson  
604 S. Washington St., #3  
Moscow, Idaho 83843  
Telephone: (208) 882-1357  
Fax: (208) 567-0551  
ISB #6383

MAR 11 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy M. Ackerman*  
DEPUTY

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

STATE OF IDAHO, )  
Plaintiff, )  
)  
)  
v. )  
MARK LANKFORD, )  
Defendant. )  
\_\_\_\_\_ )

Case No. CR-83-20158

ORDER FOR PAYMENT FOR  
LEGAL SERVICES

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, James E. Johnson, (for the month of February, 2013) hereby approves the same and orders payment of Eight Hundred and Ninty-Nine Dollars and Ten Cents (\$899.10).

DATED this 8<sup>th</sup> day of March, 2013.

*James Judd*  
James Judd  
District Judge

ORIGINAL

MAR 1 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy Johnson*

DOCKETED

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

THE STATE OF IDAHO,	)	
	)	Case No. CR-1983-20158
Plaintiff,	)	
	)	
vs.	)	ORDER FOR PAYMENT
	)	FOR INVESTIGATION
MARK HENRY LANKFORD,	)	SERVICES
Defendant.	)	

---

On motion of the Defendant, this Court issued an Order Pre-Approving Defense Investigator Expenses, on February 14, 2013. The Defendant has submitted an invoice for the services of Terry Murphy, Private Investigator, with a breakdown of his services and fees. The claimed expenses are reasonable and do not exceed the amount conditionally approved. It is hereby ordered that Idaho County pay Terry Murphy, d.b.a. TPM Investigations, \$373.75 for his services to date, as described on his invoice number 1306, submitted with the Defendant's motion for payment on this matter.

Dated this 8<sup>th</sup> day of March, 2012.

*James F. Judd*  
James F. Judd  
District Judge

1013 ORIGINAL

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the ORDER FOR PAYMENT FOR INVESTIGATION SERVICES were served on the following in the manner indicated below:

Lamont Anderson  
Office of the Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
fax: 208 334 4539  
lamont.anderson@ag.idaho.gov

U.S mail  
 overnight mail  
 fax  
 hand delivery  
 PDF email

Jay Johnson  
Attorney at Law  
604 S. Washington, ste 3  
Moscow, Idaho 83843  
[jay.dr.juris@gmail.com](mailto:jay.dr.juris@gmail.com)

U.S. mail  
 overnight mail  
 fax 208 567 7313  
 hand delivery  
 PDF email

Clerk of the Court  
Idaho County Courthouse  
320 West Main Street  
Grangeville, Idaho 83530  
c/o Kathy Johnson, Deputy Court Clerk

*Judge Judd*

U.S. Mail  
 fax 208 883 2259  
 PDF email, to:

dated this 11 day of March, 2012

*Kathy Johnson*  
Deputy Clerk

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 10:04 O'CLOCK A.M.

MAR 14 2013

DOCKETED

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY  
*Kathy Ackerman*

D. RAY BARKER  
Attorney at Law  
204 East First Street  
P.O. Box 9408  
Moscow, Idaho 83843-0118  
(208) 882-6749  
Idaho State Bar No. 1380

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

STATE OF IDAHO,	)	Case No. CR-1983-20158
	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER</b>
	)	
MARK LANKFORD,	)	
	)	
Defendant.	)	

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, D. Ray Barker, hereby approves the same and orders payment of One Hundred Fife Dollars and No Cents (\$105.00).

DATED this 11<sup>th</sup> day of March, 2013.

*[Signature]*  
District Judge



DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 9:16 O'CLOCK A.M.

APR 11 2013

KATHY M ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

James E. Johnson  
604 S. Washington St., #3  
Moscow, Idaho 83843  
Telephone: (208) 882-1357  
Fax: (208) 567-0551  
ISB #6383

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

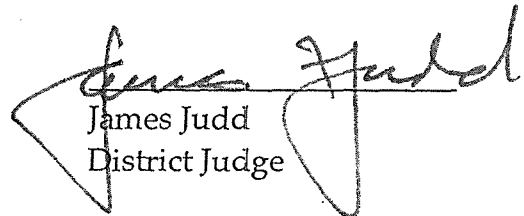
STATE OF IDAHO, )  
Plaintiff, )  
)  
)  
v. )  
MARK LANKFORD, )  
Defendant. )  
\_\_\_\_\_ )

Case No. CR-83-20158

ORDER FOR PAYMENT FOR  
LEGAL SERVICES

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, James E. Johnson, (for the month of March, 2013) hereby approves the same and orders payment of One Thousand Thirty Dollars and and Ninty-Two Cents (\$1,030.92).

DATED this 8<sup>th</sup> day of April, 2013.

  
James Judd  
District Judge

ORIGINAL

DOCKETED

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:47 O'CLOCK P.M.

APR 16 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

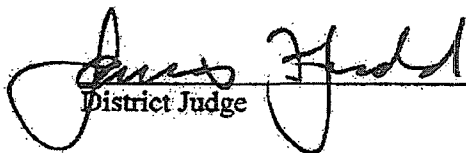
D. RAY BARKER  
Attorney at Law  
204 East First Street  
P.O. Box 9408  
Moscow, Idaho 83843-0118  
(208) 882-6749  
Idaho State Bar No. 1380

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

STATE OF IDAHO,	)	Case No. CR-1983-20158
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
MARK LANKFORD,	)	
	)	
<u>Defendant.</u>	)	

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, D. Ray Barker, hereby approves the same and orders payment of Seventeen Dollars and Fifty Cents (\$17.50).

DATED this 16<sup>th</sup> day of April, 2013.

  
District Judge

James E. Johnson  
604 S. Washington Street, suite 3  
Moscow, ID 83843  
208 882 1357, fax 208 567 0551  
[jay.dr.juris@gmail.com](mailto:jay.dr.juris@gmail.com)  
ISBN 6383

**DOCKETED**

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 5:12 O'CLOCK P.M.

**APR 22 2013**

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

Attorney for Mr. Mark Lankford

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

STATE OF IDAHO,	)	CR 83-20158
	)	
Plaintiff,	)	MOTION FOR ORDER
	)	PERMITTING REFERENCED
V.	)	EXHIBITS TO "AMENDED AND
	)	CONSOLIDATED SECOND
MARK HENRY LANKFORD,	)	MOTION FOR NEW TRIAL"
Defendant.	)	TO BE FILED UNDER SEAL
_____	)	

Comes now James E. Johnson, counsel for Mark H. Lankford in this action, and hereby moves the Court for an order permitting referenced exhibits of the upcoming Amended And Consolidated Motion For A New Trial to be filed under seal.

This motion is made in response to the Order Permitting The Filing Of An Amended And Consolidated Motion For New Trial (entered February 13, 2013), the Order Following In Camera Review (entered March 6, 2013), and upon review of the Subpoenaed Materials which were supplied under the protective order within the Order Following In Camera Review. The Defendant maintains that much of the

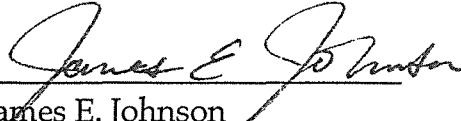
1018

**ORIGINAL**

Subpoenaed Materials is material and necessary to his motion, yet needs to maintain the protection ordered by the Court regarding the sensitive Subpoenaed Materials.

Mr. LaMont Anderson, the Deputy Attorney General on this case, has stated he does not object to this motion.

Dated April 19, 2013.

  
James E. Johnson  
attorney for Mark Lankford

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document, Motion For Order Permitting Referenced Exhibits To "Amended And Consolidated Second Motion For New Trial" To Be Filed Under Seal, was mailed by U.S. Mail to:

LaMont Anderson, Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
[lamont.anderson@ag.idaho.gov](mailto:lamont.anderson@ag.idaho.gov)

Ray Barker, attorney for Lane Thomas  
P.O. Box 9408  
Moscow, ID 83843  
[d.raybarker@turbonet.com](mailto:d.raybarker@turbonet.com)

Gary Amendola, attorney for Bryan Lankford  
Amendola & Doty  
702 N. Fourth Avenue  
Coeur d'Alene, ID 83814  
[gary@aadlawoffice.com](mailto:gary@aadlawoffice.com)

Bradley Andrews  
Idaho State Bar  
P.O. Box 895  
Boise, ID 83701-0895  
[bandrews@isb.idaho.gov](mailto:bandrews@isb.idaho.gov)

Hon. James Judd  
851 W. Front Street, Apt. 1202  
Boise, ID 83702

On the 19 th day of April, 2013

  
James E. Johnson

APR 23 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

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

**STATE OF IDAHO,**

*Plaintiff,*

vs.

**MARK HENRY LANKFORD,**

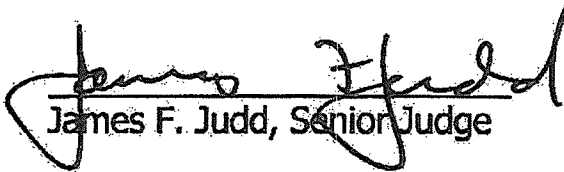
*Defendant.*

Case No. **CR 1983 20158**

**ORDER REQUIRING  
CERTAIN PROPOSED  
EXHIBITS TO BE FILED  
UNDER SEAL**

To the extent any party proposes to offer as an exhibit or exhibits portions of the "Subpoenaed Materials" provided to counsel in this Court's Order Following *In Camera* Review, **IT IS ORDERED** that such exhibits shall be filed under seal.

**ENTERED** this 23<sup>rd</sup> day of April, 2013.

  
James F. Judd, Senior Judge

621

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of April, 2013 a true and correct copy of the foregoing was mailed, postage prepaid, or if the Fax service block is checked, sent a copy via facsimile, or if the PDF Email service block is checked, sent a PDF copy by email to:

L. LaMont Anderson  
Deputy Attorney General -  
P.O. Box 83720  
Boise, Idaho 83720-0010

Fax Service  
(208) 854-8074  
 PDF Email Service  
Lamont.anderson@ag.idaho.gov

James E. Johnson  
Attorney at Law  
604 S. Washington St., Suite 3  
Moscow, Idaho 83843

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(208) 567-0551  
 PDF Email Service  
jay.dr.juris@gmail.com

Gary I. Amendola  
Amendola & Doty, PLLC  
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Coeur d'Alene, Idaho 83814

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D. Ray Barker  
Attorney at Law  
P.O. Box 9408  
Moscow, Idaho 83843

Fax Service  
(208) 882-7604  
 PDF mail Service  
d.raybarker@turbonet.com

Bradley G. Andrews  
Idaho State Bar  
P.O. Box 895  
83701-0895

Fax Service  
(208) 334-2764  
 PDF Email Service  
bandrews@isb.idaho.gov

**Clerk of the District Court**

By: Kathryn Johnson  
Deputy Clerk

1022

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 12:16 O'CLOCK P.M.

APR 26 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY  
*Kathy M. Ackerman*

James E. Johnson  
604 S. Washington Street, suite 3  
Moscow, ID 83843  
208 882 1357, fax 208 567 0551  
jay.dr.juris@gmail.com.  
ISBN 6383

Attorney for Mr. Mark Lankford

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

STATE OF IDAHO,	)	CR 83-20158
Plaintiff,	)	
	)	AMENDED AND CONSOLIDATED
	)	SECOND MOTION FOR
v.	)	A NEW TRIAL
	)	
MARK HENRY LANKFORD,	)	
Defendant.	)	
_____	)	

Comes now the Defendant, through his attorney of record James E. Johnson, and moves the court for an order granting the Defendant a new trial. This motion is intended to supersede the following previous court filings: Second Motion for a New Trial, filed October 29, 2009 by J.D. Hallin, attorney for Mr. Mark Lankford; the Amended Second Motion for New Trial, filed December 9, 2009 pro se by the defendant; the Second Amended Petition for Second Motion for New Trial, filed April 5, 2011 pro se by the defendant; the Defendant's Memorandum Of Support For Motion For New Trial (2nd): With Affidavit of George Junior Porter, filed April 5, 2011 pro se by the



Defendant; and the Integrated Second Motion For A New Trial, Pursuant To Court Order, filed April 30, 2012 by the undersigned counsel for the Defendant. This motion is filed in response to the Court's order of February 13, 2013.

In the order of February 13, 2013, the Court ordered that "[a]ny known claim of newly discovered evidence not stated in the Amended and Consolidated Motion for New Trial shall be deemed abandoned and waived by Lankford." The Defendant filed a motion for a new trial on February 27, 2008; that motion was denied by a Memorandum Decision filed on October 21, 2009, and is currently on appeal. The Defendant will not repeat the basis for the new trial as articulated in his first Motion, and by this motion does **not** intend to withdraw or abandon that basis. The Defendant asserts that the initial motion remains viable (on appeal) on its own merits and should proceed in due course. The immediate motion at bar intends to address any basis for a trial subsequent to the Defendant's first motion, denial and appeal.

For the purpose of simplifying identification of exhibits attached to this motion, exhibits which have been previously marked in Mark Lankford's motions since October 2011 (and attached to motions) will retain those identification marks and be referred to by those same marks. Exhibits marked with evidence stickers will be noted as being marked for court. Exhibits being presented for the first time with this motion will be noted as a double-letter (e.g., "ZZ"). An index of exhibits is provided after the Certificate of Service for this document.

This motion is brought pursuant to Idaho Code § 19-2406(7) and Rule 34 of the Idaho Criminal Rules. The Defendant makes the following claims.

1(a) Perjury at trial -- Lane Thomas

In an unsworn statement revealed to this court, the State Attorney General's Office, and Defense counsel, Mr. Thomas revealed that he had indeed sworn untruthfully at the 2008 trial. See Exhibit U, filed under seal per order of this Court. The matters he has lied about were of the utmost gravity. The Defendant has secured a subpoena for Mr. Thomas, but counsel for Mr. Thomas is still advising the undersigned that he will advise Mr. Thomas to remain silent under questioning. The statement as revealed to this Court has merit on its own, particularly in light of the irrefutable corroboration of the payment made to Lane Thomas. Exhibits D and DD.

Further supporting rationale for the perjury -- threats of prosecution, threats of possible trouble to Thomas if incarcerated, promises of relief from incarceration -- are given within exhibit U (sealed under order of this Court).

On top of this, Thomas testified at trial that he was not gaining anything from this damaging testimony. At the time he was able to give the impression that he was testifying for the purpose of justice. His later statements revealed his trial testimony to be just the opposite. See exhibit AA, trial testimony p. 1254, ll. 16-21; and exhibit U, sealed per order of this Court.

Furthermore, assertions made under oath by Bryan Lankford support the Defendant's assertions that Lane Thomas lied under oath at Mark Lankford's 2008 trial. Bryan Lankford refers to coaching of both himself and Lane Thomas by the prosecutors. See Exhibit H, marked as a court exhibit. In addition to the documents listed above, the Defendant asserts that other documents show that Thomas lied under oath during the 2008 Mark Lankford trial. These include the documents presented to the Court in the Defendant's three motions in limine filed on January 30, 2012.

Bryan Lankford's credibility has always been a difficult matter for the courts who have dealt with his sworn statements. His credibility was at issue in the 2008 trial. Exhibit BB, trial transcript at p. 1580, ll. 9-11. However, when his statements regarding the coaching prior to trial correspond to statements given by Lane Thomas in a later and very separate context, this presents a new problem -- even given that the statements were given by two habitual liars, the chances of them telling the same lie in two completely separate contexts, for two completely separate reasons, strongly suggests that their allegations are true.

The Defendant propounded in his Motions in Limine of January 30, 2012 that Lane Thomas lied at the 2008 trial. Thomas testified that he was receiving nothing in return for his testimony, and then it became clear within weeks that he received relief from incarceration. It is clear in the record of Latah County case number CR-07-3656 that Thomas received a free pass out of the Idaho Correctional Institution at

Cottonwood. Exhibits S and T, marked as court exhibits. Further email exchanges from prosecutor MacGregor to the Latah County prosecutor show the continued relief that Thomas received. Exhibit CC (seven pages), and Exhibit V, sealed under order of this Court. And on March 3, 2008, he received \$1500 in cash from Detective Mealer.

The email exchange supports what could be interpreted as a genuine concern for Thomas's well-being in the prison system. However, that interpretation is **greatly undercut when juxtaposed against the record of Mark Lankford's behavior in prison.** See Exhibit EE, disciplinary records of Mark Lankford in IDOC custody, attached. Mark Lankford has no history of violence in the Idaho Correctional Institution system. He has no gang affiliation. Whatever was interjected into the mix regarding what danger to Lane Thomas is the figment of someone's imagination, or inspired to give extra motivation to give Thomas a further motivation to lie, by saying he will suffer if incarcerated. This is documented in the sealed exhibits. See Exhibit U, sealed under order of the Court.

A seemingly innocuous misrepresentation was Thomas's representation that he was the father of five children, and then he mis-named those children. At least two of his actual children were unnamed. See exhibits I and J, marked as court exhibits. This further bolsters the Defendant's contention that Thomas has a propensity to lie. Given the strong motivation to lie that he was subjected to, it is small wonder that Thomas lied, and lied convincingly, under oath at the 2008 trial.

In the context of I.C. § 19-2117, as explained by the Ninth Circuit Opinion No. 99-99015 filed November 7, 2006 in this case, corroboration was absolutely critical to the prosecution's case. When Lane Thomas is shown to have lied under oath at the 2008 trial, the State is left with no corroborating evidence to support Bryan Lankford's testimony, which was also perjured. See Exhibit BB, trial transcript at p. 1580, ll. 9-12. Judge Bradbury might have granted the Defendant's motion for acquittal.

1(b). Perjury at trial -- Bryan Lankford.

Based on representations made under oath by Bryan Lankford, Mark Lankford submits that Bryan Lankford committed perjury at Mark Lankford's trial in 2008. Bryan Lankford has testified to contrary versions of the tragic events of June 1983, but the testimony that he gave in February 2008 that led to Mark's conviction was that Mark participated in the the murders. However, Bryan has contradicted himself on several occasions, as documented throughout the history of this case. Mark Lankford's assertion that Bryan has perjured himself is made based on the following documents, but it not confined to those documents:

Bryan Lankford's Petition for Writ of Habeas Corpus, case number 09-538-LMB filed October 20, 2009 in U.S. District Court for the District of Idaho. (Attached and marked as court Exhibit G).

Bryan Lankford's Civil Suit for Violations Under Color of Law, filed July 10, 2008 in the District Court in and for Idaho County. (Part of Exhibit G.)

Bryan Lankford's affidavit, dated November 30, 2010 and filed December 15, 2010 in this case. (Attached and marked as court Exhibit H.)

These documents were created since the 2008 trial and qualify as new information, sufficient to meet the requirements of Idaho law as articulated in I.C. 19-2406 and ICR 34. Other documents and other various testimony over the years serve to support the Defendant's position that Bryan Lankford lied at Mark Lankford's trial.

1(c) Influenced testimony at trial -- Lee John Lankford.

Lee John Lankford supplied an affidavit to the Defendant, attached as Exhibit LL. See also Exhibit MM, a claim form from Idaho County for payment to Lee John Lankford for \$2152.06; and exhibit KK, letter from Kirk MacGregor regarding the payment. The exhibits make clear that the State compensated Lee John Lankford for both his traveling expenses and what was purported to be lost wages. No documentation was available from Idaho County to support the claim for the lost wages, only Lee John Lankford's representation that he would have earned that money had he not traveled to testify against his brother Mark Lankford. See Exhibit FF, attached, 12/20/2012 Response to Public Record Request.

While it is not obvious from the supplied documentation that Lee John Lankford altered his testimony in response to the payment, the change in testimony from the trial testimony to the sentencing testimony is clear. If the Defendant is successful in getting Lee John Lankford to testify at the evidentiary hearing set for July 2013, the purpose will be to show that Lee John Lankford was under the impression that Bryan Lankford's

testimony and Mark Lankford's continued incarceration would lead to Bryan Lankford being paroled.

## 2. Prosecutorial Misconduct

### 2(a). Presentation of perjurious testimony -- Lane Thomas

As propounded by the Defendant in his Motions in Limine filed in January of 2012, the State provided various motivations for Lane Thomas to commit perjury. The motions in limine asserted that the incarceration relief provided to Thomas showed that there had been a promise of relief before Thomas's testimony.

Since that time, proof of a \$1500 cash payment provided to Thomas has surfaced, as documented by the check made out to Skott Mealer on March 3, 2008. See Exhibit D. The Idaho County Auditor's office has provided the documentation that showed the money was intended for Thomas, as a "witness fee," (see Exhibit DD) and no other record or accounting occurred -- no report to the IRS, the State of Idaho tax commission, or Health and Welfare regarding his unsupported children. Exhibit GG, 10/23/2012 Response to Public Record Request. The unsworn statement provided in the Subpoenaed Materials, attached as exhibit U, sealed per order of the Court, ties all of the subornation of perjury together -- relief from incarceration, threats of harm, threats of new charges, and payment of cash. The source of all the motivation was the Prosecutor's office. The money was paid. Even in the interpretation most favorable to

the State, the prosecutor's office is responsible for the representations made by its agents. *Giglio v. U.S.*, 405 U.S. 150, 92 S.Ct. 1555 (1972). The information of the subpoenaed materials provides a final linchpin to the allegations leveled by the Defendant since 2008 -- he was convicted by perjured testimony.

2(b). Presentation of perjurious testimony -- Bryan Lankford

As listed in the allegations of perjury, demonstrated by Bryan Lankford's own statement above in paragraph 1(b), Bryan's perjury was furthered by the prosecutor's showing of leniency/favoritism toward Bryan. Bryan received favors while incarcerated in the Idaho County jail. While in Idaho County, he was allowed the use of a cell phone to contact the outside world, including his friend in France, Francoise-Marie, and his communication with Francoise-Marie was facilitated by the Idaho County Prosecutor. See Exhibit HH, attached. More telling is the allegation that he was promised support for his chance of being paroled by the Idaho County prosecutor and Detective Mealer. See exhibits N, O, and P, marked as court exhibits.

Furthering the reliability of such allegations of subornation of perjury are the charges within the sealed Subpoenaed Materials, which give corroboration to the stories told by Bryan Lankford in his prior court filings which detail the quid-pro-quo offered by the prosecutor. It is highly unlikely that Lane Thomas would have had the initiative to view the court filings produced by Bryan Lankford, but the details listed within his



statement support the charges leveled by Bryan. Bryan Lankford says that his and Lane Thomas's testimony was coached, but Lane Thomas's statements give the "how and where" of the coaching. See exhibit U, filed under seal per order of this Court.

None of these allegations were known at the time of the 2008 trial, and thus they qualify as new evidence.

### 3. Brady Violations.

#### 3(a). The Deal for Thomas's Testimony

Any material or information controlled by the State which could exonerate or reduce culpability for the defendant, or any information which could be used to impeach a State witness, must be disclosed to the Defendant. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963). Violations of this failure to disclose are a violation of a defendant's right to Due Process under the Fourteenth Amendment, concomitant to violations of his right to confrontation and right to present a defense under the Fifth Amendment and Sixth Amendment. *Id.* In this case, the *Brady* violations include the failure to inform the Defendant of the payment to Lane Thomas, the other inducements offered to Lane Thomas, the failure to inform the Defendant of the promises made to Bryan Lankford regarding the promise of support at parole hearings, and the failure to inform the Defendant of the payment made to Lee John Lankford regarding payment not only for travel expenses but also purportedly to cover lost wages and a lost commission.

The most egregious violations are the payment and other inducements offered to Lane Thomas, which have been documented in court filings previously supplied to this Court in the Defendant's motions filed in October 16, 2012. The existence of the (March 3, 2008) check made out to Skott Mealer, the labeling of the county claim form as "P/A witness fees" and the unsworn statement of Thomas in the Subpoenaed Materials, exhibit U, (filed under seal per order of this Court), point conclusively to the existence of the payment. The statement was given over two years later, based only on the memory of Lane Thomas; the fact that the amount cited corresponds exactly to the amount actually paid gives further support to the credibility of Thomas's statement, and that it was a quid-pro-quo for testimony. Aside from the subornation of perjury, the payment was a *Brady* violation, in that the payment was never disclosed to the Defendant. See Exhibits A and B, affidavits of Kovis and Hallin, initially provided to this Court on October 16, 2012.

Of course, the payment was in addition to the promises made of, *at a minimum*, favorable treatment in terms of the changed sentence that Thomas received. Kovis and Hallin were never informed of the changed sentence that Thomas received, except through the second-hand information filtered back to them. The mere fact that Thomas received a free pass out of IDOC custody should have been disclosed to the Defendant.

Again, the information disclosed in the sealed materials confirms and emphasizes the quid-pro-quo that was the deal made with Thomas, made before trial and never disclosed to the Defendant.

Two years after the 2008 trial, the Idaho County prosecutor was challenged by allegations of this abhorrent witness payment, and in response he either ignored or covered up the payment, by denying its existence in response to an inquiry by an outside investigator. Approximately six weeks elapsed between the investigator's initial inquiry and the response by the prosecutor. See exhibit V, sealed by order of this court. The payment, although well-hidden, should have been known at least by the person who delivered the money to Thomas, Detective Mealer. At a minimum, it was a dereliction of duty by the prosecutor to not learn of and disclose the payment.

3(b). The compensation for Lee John Lankford's additional testimony.

In addition, it is clear from information supplied from the Idaho County auditor's office that payment was made to Lee John Lankford to compensate him for traveling and testifying. Lee John Lankford was essentially paid handsome wages to testify at the sentencing of Mark Lankford -- over \$2000. Lee John Lankford acknowledged that he was paid this compensation. See Exhibit W, affidavit of Lee John Lankford. The payment was not made known to the Defendant. See exhibit II, affidavit of Kovis dated 4/22/2013, and exhibit JJ, affidavit of J.D. Hallin, dated 4/22/2013. Such

information would have been useful for impeachment purposes at the sentencing.

Furthermore, it would have been fodder for examining the differences between Lee

John Lankford's differences in testimony at the trial of February 2008 and the sentencing

hearing of July 2008.

A lawyer may not offer or pay to a witness any consideration:

(1) in excess of the reasonable expenses of the witness incurred and the reasonable value of the witness's time spent in providing evidence, except that an expert witness may be offered and paid a noncontingent fee; ...

...

Comment:

... Under Subsection (1), a lawyer may also compensate a witness for the reasonable value of the witness's time or for expenses actually incurred in preparation for and giving testimony, such as lost wages caused by the witness's absence from employment.

Restatement of the Law, Third. Volume Two, The Law Governing Lawyers, Section 117, pp. 212-13.

What is particularly important in the above section is that the fee paid must be reasonable, which should be a question of fact. To the best that the undersigned can determine, Idaho does not outlaw a compensation to witnesses for lost wages (in contrast to California, which does outlaw that transaction). However, under the citation above, the compensation must be reasonable. Lee John Lanford provided no documentation for his demand for payment, only a representation that he would have earned that money at his job. No taxes were taken from the payment, and it was not reported to the IRS. See Exhibits FF and KK, attached. Had he regularly been paid that amount, after tax, his annual income would have well exceeded \$100,000.

Whether the compensation was reasonable or not, it should have been disclosed to the Defendant, for his use in impeaching the witness.

Furthermore, the Ninth Circuit has recently re-emphasized the importance of full disclosure of actions by agents of the prosecutor's office. Milke v. Ryan, Ninth Circuit Opinion No. 07- 99001, filed March 14, 2013. Actions by the Idaho County prosecutor's office have been so fundamentally contrary to justice in this case that this Court must grant the Defendant a new trial.

#### 4. Prosecution's Violation of Court Order, re: discovery

As outlined in the Defendant's Motion filed on October 16, 2012, the State's failure to comply with the Court's order of January 7, 2008 had a grievous impact on the trial.

Defense counsel had moved for the State to disclose all information it had on Lane Thomas, including records of all contacts Idaho County law enforcement had with Lane Thomas , and what he communicated to them. Exhibit G, Defendant's Motion For Discovery Concerning Informant, filed December 6, 2007, attached. The State responded, claiming the request was overburdensome regarding Lane Thomas's contact with all the possible law enforcement. Exhibit H, Response to Defendant's Motion for Discovery Regarding Defendant, dated December 12, 2007, attached. The Court ordered that "...the State was not required to search every law enforcement agency or

prosecutor's office in the country, but was obliged to disclose the requested information which is held by its office and the agencies that have report to it either directly or in regards to Mr. Lankford's case..." and "[t]he State is compelled to answer all Mr. Lankford's discovery requests to the extent such information is held by itself or by others working on its behalf..." Exhibit I, Memorandum Decision and Order, dated January 7, 2008, attached. Defense attorney Mr. Hallin had not been informed of the meeting MacGregor and Skott Mealer had with Lane Thomas until trial had commenced. There was a letter that Sunil Ramalingam had written to MacGregor regarding Lane Thomas, which indicated that it had been copied to Mr. Kovic. See Exhibit J, letter of Ramalingam to MacGregor, attached. MacGregor admitted to the Court that he had not supplied the letter to the Defendant. Exhibit K, Trial Transcript at p.1209, II.3-6, attached. Because *presumably* Kovic has received the letter from Ramalingam, apparently that was treated as "no blood, no foul." That is hard to gauge. However, the meeting of MacGregor, Mealer and Thomas at Cottonwood was undisclosed, contrary to the Court's order. See Exhibit L, Letter of Hallin to MacGregor, dated February 8, 2008, attached. While Hallin refers to "reports" of the meeting, he was not informed of the meeting, and did not know the content or the gravamen of the meeting. *Id.* They were surprised at trial. Exhibit M, Trial transcript, p. 1211, I. 21 to p. 1212, I. 4; p 1221, II 19-22.

In the heat of this battle, Kovis had to state, "I just get emotional about this, and it's Mr. Hallin's thing, because I'm not involved." Exhibit N, Transcript, p. 1220, ll. 11-12.

Now, there is further material to support the allegation that the meeting occurred, and there is material information as to the substance of what was discussed at that meeting. All of that information is favorable to the Defendant in his motion for a new trial. See exhibit U, sealed under order of the court.

Had the discovery been properly made to the defense, it would have altered the course of the trial. The Defense reasonably did not know of the meeting between Thomas and the State. Without that knowledge, Mr. Kovis did not know of the adverse position between Thomas and Mark Lankford, because he was relying on his latest information, that Thomas would not testify adversely. See Exhibit L, marked as a court exhibit, but not attached due to its bulk. (Exhibit L was the subject of Defendant's Third Motion in Limine, filed January 30, 2012.)

##### 5. Recantation of Trial Testimony

The statements of Bryan Lankford as listed above in section 1(b) constitute his recantation of his testimony at trial in 2008. The statement of Lane Thomas in the Subpoenaed Materials is a recantation. The Idaho Supreme Court has adopted the *Larrison* test as means of gauging whether a new trial is justified on the basis of a recantation. *State v. Lankford*, 116 Idaho 860, 781 P.2d 197 (1989). The three requirements

of *Larrison* are that the court must be satisfied that the testimony by a material witness was false; that without that false testimony the jury might have reached a different conclusion; and the party seeking the new trial was taken by surprise when the false testimony was given and unable to meet it or did not know of its falsity until after the trial. In the 1989 *Lankford* decision, the Court affirmed the District Court denial based on Bryan's recantation.

Here, Bryan has again recanted. Given Bryan's propensity to change his stories, a reviewing court would well be dubious of whatever recantation he delivers.

However, any reviewing court has to be aware that much of what Bryan says is false. In this case, certainly Bryan's testimony was material, if not fully believed by Judge Bradbury. Unfortunately for the Defendant, he cannot reasonably claim that his team was surprised when Bryan testified falsely.

However, the Lane Thomas recantation fits the *Larrison* test. The statement provided has enough corroboration to give it merit, and it is clear that Thomas sought to retract his testimony, and shortly before trial was reluctant to give it, according to Exhibit J, letter from Ramalingam. And without it, not only would a jury have reached a different decision, the presiding judge might not have even let it get to a jury. Exhibit BB. And by Hallin's protests during the trial, the defense team was surprised. Exhibit L (Hallin's letter to MacGregor of February 8, 2008).



The Lane Thomas recantation should be given full effect, and the Court should grant Mark Lankford a new trial.

6. Ineffective assistance of Counsel, as a result of the discovery non-disclosure.

Right to counsel, U.S. Constitution, 6th Amendment

Mr. Kovis should have recused himself from the case when it became apparent that he (or someone else in his office) had represented Lane Thomas in the past, and Thomas was an adverse witness. *Holloway v. Arkansas*, 435 U.S. 475, 98 S.Ct. 1173 (1978); *Cuyler v. Sullivan*, 446 U.S. 335, 100S.Ct. 1708 (1980). The prosecution was concerned about the conflict, and it was brought up in pre-trial motions. Exhibit F, Transcript of Motion Hearing held on December 13, 2007, pp. 158-167. Despite the best intentions on all parties, the conflict cannot be negotiated away with a simple agreement that Mr. Kovis would ignore his past dealings with Mr. Thomas, and would not cross-examine Thomas at trial. The Defendant was not aware that both he and Mr. Thomas would have to waive any conflict, and he was not made aware of any such waiver on Mr. Thomas's part. The Defendant did not waive any conflict of interest. Mr. Kovis had an actual adverse conflict of interest, with his representation of the defendant and his past representation and duty of loyalty and confidentiality that precluded Mr. Kovis from exploring subjects of impeaching cross-examination with the witness Lane Thomas, his former client.

The Defendant relies on the following cases in support of this claim:

1. *Holloway v. Arkansas*, 435 U.S. 475, 98 S.Ct. 1173 (1978), for the principle that if an attorney has conflicted loyalties to his clients, those clients will not receive the representation they are entitled to under the Sixth Amendment;
2. *Cuyler v. Sullivan*, 446 U.S. 335, 100S.Ct. 1708 (1980), for the principle that a defendant must demonstrate that an actual conflict adversely affected his attorney's performance, but once that adverse representation is shown, the court must weigh the conflicting contentions; and,
3. Idaho Rules of Professional Conduct, Rule 1.8(b) and 1.9(c), for the principle that if an attorney still has a duty of loyalty to a former client, and that duty of loyalty is not waived by informed consent from both parties, an impermissible conflict exists.

The Defendant acknowledges that *Mickens v. Taylor*, 535 U.S. 162, 122 S. Ct 1237 (2001) imposes a burden on the defendant to affirmatively show that the conflict adversely affected his performance. Here, the transcript of the pretrial motion hearing on December 13, 2007 shows that Mr. Kavis agreed to limit his participation at trial to NOT questioning Mr. Thomas while under oath, due to the fact that he (or his office) had previously represented Thomas. Furthermore, Kavis promised that he would not allow his prior knowledge of Mr. Thomas to be communicated to his co-counsel. In effect, Mr. Kavis, the primary and most experienced counsel on the case, was walled-off from this critical portion of the case that had to do with direct or cross-examination of

Mr. Thomas, and thus was not an effective co-counsel. Although the Defendant had Mr. Hallin to represent him, one of the reasons Mr. Kovis was assigned on this case was because of his extensive experience trying criminal cases, compared to Mr. Hallin. The net result was that the Defendant did not get the benefit of the appointment of Kovis to the extent he was entitled -- full, effective representation. While Mr. Kovis performed capably in some aspects of the trial, Mr. Thomas was the most critical witness for the State. The Defense was hamstrung in its ability to investigate and impeach Mr. Thomas by the fact that the Defendant's lead attorney could not consult, investigate or impeach the most critical witness in the case.

This claim is generated in concert with the previously stated *Brady* claim regarding Lane Thomas, for the monetary aspect of the *Brady* claim underscores that Lane Thomas had an interest absolutely adverse to the Defendant.

7. Procedural error of Judge Bradbury presiding on the case.

The Defendant asserts that Judge Bradbury should have been disqualified from presiding over the case due to his non-compliance with Idaho Code § 1-809. Judge Bradbury was found by the Idaho Judicial Council to not be in compliance with Idaho Code § 1-809. The Idaho Supreme Court concurred with that finding. See Exhibit Q, marked as a court exhibit, *Bradbury v. Idaho Judicial Council*, 149 Idaho 107, 233 P.3d 38

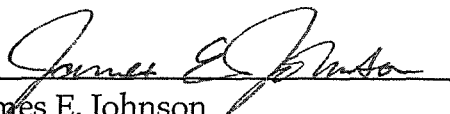
(2009). The Defendant asserts that since the presiding judge was not in compliance with the law, the trial itself was invalid and must be vacated.

This appears to be an issue of first impression for Idaho law.

Prayer for relief

The Defendant seeks that a new trial be granted in his case.

Dated this 25<sup>th</sup> day of April, 2013.

  
James E. Johnson  
attorney for Mark Lankford.

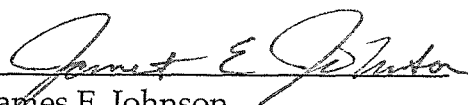
Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail to:

LaMont Anderson, Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
[lamont.anderson@ag.idaho.gov](mailto:lamont.anderson@ag.idaho.gov)

In addition, a copy of the foregoing document was sent to the Court Clerk in Idaho County, Grangeville, Idaho, with a request that it be conformed and then forwarded to Judge Judd 851 W. Front Street, Apt. 1202, Boise, ID 83702

On the 25<sup>th</sup> day of April, 2013

  
James E. Johnson

Index of exhibits

Defendant's SECOND AND CONSOLIDATED SECOND MOTION FOR A NEW TRIAL

Previously marked with court evidence stickers, since October 2011:

Exhibit G

Bryan Lankford's Petition for Writ of Habeas Corpus, case number 09-538-LMB filed October 20, 2009 in U.S. District Court for the District of Idaho.

Bryan Lankford's Civil Suit for Violations Under Color of Law, filed July 10, 2008 in the District Court in and for Idaho County. (Part of Exhibit G.)

Exhibit H

Bryan Lankford's affidavit, dated November 30, 2010 and filed December 15, 2010 in this case.

Exhibit I

Affidavit of Jessica Bonato

Exhibit J

Affidavit of Josephine L. Guernsey

Exhibit L

Statement of Lane Thomas, dated 12/19/2007 (Not present, due to its length)

Exhibit N

Letter, MacGregor to Gary Amendola, 2/4/2008

Exhibit O

Letter, MacGregor to Gary Amendola, 2/7/2008

Exhibit P

Hand-written "agreement" / memo, MacGregor to Bryan Lankford, dated 2/8/2008

Exhibit Q

Bradbury v. Judicial Council, 149 Idaho 107, 233 P.3d 38 (2009)

Exhibit S

Judgment of Conviction And Order Retaining Jurisdiction Pursuant to I.C, 19-2601(4), *State v. Lane Thomas*, Latah County Case number CR-2007-3656

Exhibit T

Order Suspending Execution of Sentence And Order Of Probation, *State v. Lane Thomas*, Latah County case number CR-2007-3656 (which this Court took judicial notice of by order entered April 13, 2012).

newly marked with court evidence Stickers:

Exhibit U

contents sealed, per order of the Court -- Subpoenaed Materials

Exhibit V

contents sealed, per order of the Court -- Subpoenaed Materials

previously used as exhibits to filings, not marked with court evidence sticker:

Exhibit A -- Affidavit of Charles Kovic, dated October 15, 2012 (2 pages)

Exhibit B -- Affidavit of Jonathaon Hallin, dated October 15, 2012 (2 pages)

Exhibit D -- Public Records Request and photocopy of Idaho County Warrant made out to Skott Mealer (2 pages)

Exhibit E -- trial testimony Mark Lankford's 2008 trial, pp 1211-1212 (2 pages)

Exhibit F -- trial testimony Mark Lankford's 2008 trial, pp 158-167 (10 pages)

Exhibit G -- Defendant's Motion For Discovery Concerning Informant (7 pages)

Exhibit H -- Response To Defendant's Motion For Discovery Concerning Informant (5 pages)

Exhibit I -- Memorandum Decision and Order (6 pages)

Exhibit J -- letter, Ramalingam to MacGregor, (2 pages)

Exhibit K -- trial testimony Mark Lankford's 2008 trial, pp 1209 (1 page)

Exhibit L -- letter, Hallin to MacGregor, (2 pages)

Exhibit M -- trial testimony Mark Lankford's 2008 trial, pp 1211-12 (2 pages)

Exhibit N -- trial testimony Mark Lankford's 2008 trial, pp 1220-21 (2 pages)

exhibits new to this filing, not using court evidence stickers:

Exhibit AA -- trial testimony Mark Lankford's 2008 trial, pp 1254 (1 page)

Exhibit BB -- trial testimony Mark Lankford's 2008 trial, pp 1280 (1 page)

Exhibit CC -- email exchange, from State's discovery response to Defendant (7 pages)

Exhibit DD -- Idaho County claim form, 3/3/2008, to Skott Mealer (1 page)

Exhibit EE -- Mark Lankford's IDOC disciplinary record (15 pages)

Exhibit FF -- response to Public Records Request, dated 12/20/2012 (2 pages)

- Exhibit GG -- response to Public Records Request, dated 11/23/2012 (2 pages)
- Exhibit HH -- email exchange, MacGregor to Francoise-Marie (1 page)
- Exhibit II -- Affidavit of Kovis, dated 4/22/2103 (2 pages)
- Exhibit JJ -- Affidavit of Hallin, dated 4/22/2013 (2 pages)
- Exhibit KK -- letter, MacGregor to Idaho County Commissioner, 8/15/2008 (2 pages)
- Exhibit LL -- Affidavit of Lee John Lankford (2 pages)
- Exhibit MM -- Idaho County claim form, payment to Lee John Lankford (1 page)

U.S. COURTS

OCT 20 2009

BRYAN STUART LANKFORD 20488

Full Name/Prisoner Number

I.M.S.I. UNIT J2-53A

P.O. BOX 51

BOISE, IDAHO 83707

Complete Mailing Address

Rcvd \_\_\_\_\_ Filed \_\_\_\_\_ Time \_\_\_\_\_  
CAMERON S. BURKE  
CLERK, DISTRICT OF IDAHO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

BRYAN STUART LANKFORD )

Petitioner, )

(full name) )

vs. )

JEFF ZMUDA )

Respondent, )

(full name) )

CASE NO. 09-538-LMB  
(to be assigned by the Court at filing)

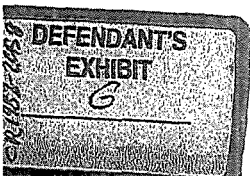
PETITION FOR WRIT  
OF HABEAS CORPUS

PETITION FOR A WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2254  
BY A PERSON IN STATE CUSTODY

PART ONE: CONVICTION AND/OR SENTENCE UNDER ATTACK

- Name and location of the state court which entered the judgment of conviction challenged:  
DISTRICT COURT, SECOND JUDICIAL DISTRICT, GRANGEVILLE, ID.
- Date judgment of conviction was entered: 1984
- Case number 20157
- State each offense of which you were convicted and the sentence for each:  
HOMICIDE, 2 COUNTS, 2 INDETERMINATE LIVES TO RUN CONCURRENT.

Certified to be a true and correct copy of original filed in my office.  
Elizabeth A. Smith, Clerk  
United States Courts, District of Idaho  
By: [Signature] Deputy Dated: 11/20/12



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- 5. What was your plea? Not Guilty  Guilty \_\_\_ Nolo Contendere \_\_\_
- 6. If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement:

NOT GUILTY - BUT WITH PLEA BARGAIN, NEW AGREEMENT WAS: MOVED OUT OF STATE MEDIUM SECURITY, NAME CHANGE, SENATOR PROSECUTOR & CHIEF DETECTIVE TO TESTIFY FOR PLAINTIFF AT PAROLE HEARING ETC.

- 7. Kind of trial: Jury  Judge only \_\_\_ None (pled guilty) \_\_\_
- 8. If you had a trial, did you testify at trial? Yes  No \_\_\_
- 9. Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion? Yes \_\_\_ No  If "Yes," please state details of the other conviction and sentence: \_\_\_\_\_

**PART TWO: CLAIMS**

State concisely every claim that you are being held unlawfully. Briefly state the federal constitutional provision, U.S. Supreme Court case, federal law or federal treaty ("federal ground") upon which you bring the claim, but do not make legal arguments. Briefly summarize the facts supporting each claim. If necessary, you may attach extra pages stating additional claims. You should raise in this petition all claims for relief which relate to the conviction under attack. In order to proceed in federal court, you ordinarily must exhaust the remedies available to you in the state courts as to each claim on which you request relief from the federal court.

**First Claim:**

- 1. Federal Ground: AMENDMENT 14,
- 2. Supporting Facts: STATE OF IDAHO BREACHED AGREEMENT BY NOT HAVING SENATOR JAMES RISCH TESTIFY ON PLAINTIFF BEHALF AT OCT. 23<sup>RD</sup> '08 PAROLE HEARING AS AGREED TO ON FEB. 17<sup>TH</sup> '08, NOR DID STATE PROSECUTORS & SHERIFFS DEPT. TESTIFY POSITIVELY FOR PLAINTIFF. STATE V. LANKFORD, 903 P.2d 1305, 1310 (IDAH 1995)

**Second Claim:**

- 1. Federal Ground: AMENDMENT 8,
- 2. Supporting Facts: PLAINTIFF WAS ASSAULTED BY IDAHO COUNTY SHERIFFS DEPT. AND COEUR D'ALENE IDAHO SHERIFFS DEPT. IN ORDER TO FORCE PLAINTIFF TO TESTIFY IN IDAHO COUNTY CASE # CR-83-20158, AND TO BAR PLAINTIFF FROM TESTIFYING AT SENTENCING, AND SENT PLAINTIFF TO BE KILLED AT HARSHEST PRISON IN USA. 28 USC 1331 & 28 USC 1343(A)(3) THIS COURT HAS SUPPLEMENTAL JURISDICTION OVER PLAINTIFFS STATE-LAW CLAIMS PURSUANT TO 28 USC X 1367.

Third Claim:

1. Federal Ground: AMENDMENT 5,
2. Supporting Facts: STATE AND COUNTY OF IDAHO SHERIFFS DEPT. AND PROSECUTORS STOLE \$2,000,00 WORTH OF PROPERTY FROM PLAINTIFFS PROPERTY IN PLAINTIFFS CELL.  
RAMIREZ V. COUNTY OF ORANGE US, DC, CA # 8,2007 CV-00601, HAYWOOD V. DROWN 2007 NY SLIP OP 9308, 1 (N.Y., 2007)

PART THREE: CASE HISTORY-DIRECT APPEAL AFTER CONVICTION

1. Did you file a direct appeal from the judgment of conviction? Yes  No
  2. Appellate case number: 20157
  3. Case decided by Idaho Court of Appeals  or Idaho Supreme Court
  4. Date of decision: NA -
  5. If case decided by Idaho Court of Appeals, did you file a Petition for Review with the Idaho Supreme Court? Yes  No
  6. Date Idaho Supreme Court denied review or date of decision: GRANTED & DENIED
  7. Specify the claims raised in your direct appeal which are the same as any claims raised in this federal petition:  
BREACH OF AGREEMENT.
- 
- 
8. Attach copies of any Idaho Court of Appeals or Idaho Supreme Court decisions.
  9. If you did not file a direct appeal, explain briefly why you did not: \_\_\_\_\_
- 
10. Did you seek permission to file a late appeal? Yes  No  Not applicable

PART FOUR: CASE HISTORY-POST-CONVICTION PROCEEDINGS

If you have filed any Rule 35 Motions, Post-Conviction Relief Petitions, State Habeas Corpus Petitions, or other post-conviction applications or motions with respect to this judgment in any state court, complete the following for each such motion or petition. If necessary, you may attach extra pages stating additional state court actions you pursued.

1. Name of First Motion or Petition: \_\_\_\_\_  
Date Filed: \_\_\_\_\_  
Name of court: \_\_\_\_\_  
Specify the claims raised which are the same as any claims raised in this federal petition:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Evidentiary hearing held? Yes \_\_\_ No \_\_\_

Result: \_\_\_\_\_

Date of result: \_\_\_\_\_

Did you appeal? Yes \_\_\_ No \_\_\_

Appellate case number: \_\_\_\_\_

Case decided by Idaho Court of Appeals \_\_\_ or Idaho Supreme Court \_\_\_

Date of decision: \_\_\_\_\_

If case decided by Idaho Court of Appeals, did you file a Petition for Review with the Idaho Supreme Court? Yes \_\_\_ No \_\_\_

Date Idaho Supreme Court denied review or date of decision: \_\_\_\_\_

Attach copies of any Idaho Court of Appeals or Idaho Supreme Court decisions.

2. Name of Second Motion or Petition: \_\_\_\_\_

Date Filed: \_\_\_\_\_

Name of court: \_\_\_\_\_

Specify the claims raised which are the same as any claims raised in this federal petition:

\_\_\_\_\_  
\_\_\_\_\_

Evidentiary hearing held? Yes \_\_\_ No \_\_\_

Result: \_\_\_\_\_

Date of result: \_\_\_\_\_

Did you appeal? Yes \_\_\_ No \_\_\_

Appellate case number: \_\_\_\_\_

Case decided by Idaho Court of Appeals \_\_\_ or Idaho Supreme Court \_\_\_

Date of decision: \_\_\_\_\_

If case decided by Idaho Court of Appeals, did you file a Petition for Review with the Idaho Supreme Court? Yes \_\_\_ No \_\_\_

Date Idaho Supreme Court denied review or date of decision: \_\_\_\_\_

Attach copies of any Idaho Court of Appeals or Idaho Supreme Court decisions.

**PART FIVE: NEW CLAIMS**

If any of the claims listed in this federal petition were not previously presented in any other court, state or federal, state briefly which claims were not so presented, and give your reasons for not presenting them:

ALL THREE ARE NEW, OCCURING IN '08 & '09 I HAVE NOT PRESENTED THEM IN ANY OTHER COURT BECAUSE IM IN FEAR OF MY LIFE, THEY ALREADY HURT ME & THEY HAD OTHERS HURT ME, AND THE STATE & SENATOR JAMES RISCAN HAVE ALOT OF POWER, SO IM VERY AFRAID.

**PART SIX: PREVIOUS OR PENDING FEDERAL ACTIONS**

Have you previously filed any type of petition, application or motion in a federal court regarding the conviction challenged? Yes  No

If "Yes," answer the following:

Name and location of court: U.S. SUPREME COURT  
Case number: 88-7247  
Type of proceeding: WRIT OF CERT.  
Claims raised: NOTICE OF DEATH PENALTY

The result: GRANTED  
Dismissed with prejudice?  without prejudice?  unknown  still pending   
If action is completed, attach a copy of the court's decision.

**PART SEVEN: PENDING OR FUTURE STATE COURT ACTIONS**

Do you have any petition, motion or appeal now pending in any state court regarding the conviction or sentence challenged in your federal petition or do you plan to file one in the future? Yes  No . If "Yes," state the following:

1. Name of the court U.S. DISTRICT COURT
2. Case Number CV 08-0484-C-BLW
3. Type of Proceeding NEWLY DISCOVERED EVIDENCE
5. Claims Raised or to be Raised: NEWLY DISCOVERED EVIDENCE.

**PART EIGHT: PRAYER**

Wherefore, Petitioner prays that the court grant him/her such relief to which he/she may be entitled in this proceeding. My preferred relief is EVIDENTIARY HEARING, APPOINTMENT OF COUNSEL AND MONITARY DAMAGES.

**PART NINE: REQUEST FOR ATTORNEY**

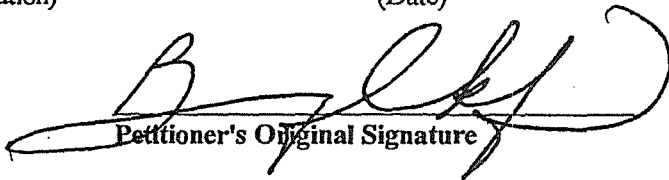
I do  do not  request that an attorney be appointed to represent me in this matter. I believe that I am in need of an attorney for these particular reasons which make it difficult for me to pursue this matter without an attorney: THIS IS VERY COMPLEX STUFF, AND WITHOUT A GOOD ATTORNEY I BELIEVE THEY WILL HAVE ME KILLED.

**PART TEN: DECLARATION UNDER PENALTY OF PERJURY AND SIGNATURE**

The undersigned declares under penalty of perjury:

- (1) that he/she is the petitioner in this action, that he/she has read this petition and that the information contained in the petition is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621; and
- (2) that he/she deposited this petition postage prepaid in a United States postal depository unit on 10-18-09 (date), OR that he/she gave the petition to prison officials for mailing and filing with the Clerk of Court under the indigent policy on \_\_\_\_\_ (date) OR (specify other) \_\_\_\_\_.

Executed at IMST. UNIT J2-53A on OCT. 18<sup>TH</sup> 2009.  
(Location) (Date)

  
Petitioner's Original Signature

**Note:** you need not send a copy to Respondent or Respondent's attorney, but, instead provide one copy to the Court. After filing, your petition will be reviewed by a federal judge to determine whether you can proceed. If your case is authorized to proceed, the Court will effect service of the copy upon Respondent's attorney. Thereafter, whenever you file anything in the case, a copy must be mailed to Respondent's attorney.

FEDERAL DEFENDER SERVICES OF IDAHO

CAPITAL HABEAS UNIT

BRANCH OFFICE  
702 W. IDAHO, SUITE 900  
BOISE, IDAHO 83702  
(208) 395-1600  
FAX (208) 395-1757

BOISE OFFICE  
350 N. NINTH STREET, SUITE 300  
BOISE, IDAHO 83702  
(208) 388-1600  
FAX (208) 388-1757

July 1, 2009

Bryan Stuart Lankford #20488  
ADC 238468 B-Kasson CB-6  
Arizona State Prison Complex  
Florence Unit Central Kasson CB-6 .  
1A-10  
P.O. Box 8200  
Florence AZ 85232

Re: Bryan Lankford-Copies of Case Files/Materials

Dear Bryan:

I write on behalf of Teresa Hampton regarding the transfer of your copies of the documents and paperwork generated by this office. As we are not permitted to store these materials any longer we need to know to whom you would like them sent, (i.e. a friend, family member, etc.) and whether they would prefer a paper copy or if they would prefer a copy of all of the documents and materials on a CD.

I am enclosing a Release of Property form which will need to be filled out and signed by you prior to us releasing said materials. Please complete and return this form to our office as soon as possible. If we do not here from you within two weeks we will have no choice but to destroy the documents.

I hope to hear from you soon.

Sincerely,

*LMA*

Lindsey M. Allen  
Legal Secretary

Enclosure

*They destroy the legal work because they didn't allow enough mailing time!*  
*Received: 7-6-09 @ 7:20 pm*  
*Wrote them 7-6-09 @ 8:00pm & sent families all to. BS & legal work.*  
*See memo 7/6/09*

FEDERAL DEFENDER SERVICES OF IDAHO

CAPITAL HABEAS UNIT

BRANCH OFFICE  
702 W. IDAHO, SUITE 900  
BOISE, IDAHO 83702  
(208) 395-1600  
FAX (208) 395-1757

BOISE OFFICE  
350 N. NINTH STREET, SUITE 300  
BOISE, IDAHO 83702  
(208) 388-1600  
FAX (208) 388-1757

October 14, 2009

Bryan S. Lankford  
Idaho Maximum Security Institution  
Unit J2-53  
P.O. Box 51  
Boise, Idaho 83707

RE: Federal Habeas Corpus Proceeding, 3:08-cv-00484-BLW.

Dear Mr. Lankford:

My name is Tricia Russell and I am an attorney with the capital habeas unit of the Federal Defender Services of Idaho. As you are aware, on September 22, 2009, Teresa Hampton was appointed to represent you in your federal habeas corpus proceedings, (docket number: 3:08-cv-00484-BLW). Ms. Hampton has assigned me to review the pleadings and related documents pertaining to your claims and I am currently doing so. I have scheduled an attorney client visit with you on October 22, 2009, at 9:00 a.m., to initially discuss with you the pending habeas petition and plans for going forward.

I have received and read your correspondence received, September 29, 2009 and October 13, 2009, and wanted to address your seeking our assistance in filing a pleading in Idaho state court. Unfortunately, our office has only been appointed to represent you in your federal habeas case and I am therefore only authorized to file documents on your behalf in that legal proceeding. I understand your concerns about getting your pleading timely filed. However, please be aware that our office will not file in Idaho County Court the "Civil Suit for Violations Under Color of Law," that you mailed to us and that we received in our office on October 13, 2009. I can only suggest seeking assistance through inmate services.

I look forward to meeting you next week.

Sincerely,



Tricia Russell

BRYAN STUART LANKFORD  
F. M. S. I. UNIT J2-53  
P.O. BOX 51  
BOISE, IDAHO 83707

COP

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

BRYAN STUART LANKFORD  
PLAINTIFF

CASE NO.

VS.

KIRK MCGREGOR, DENNIS  
ALBERS OF IDAHO COUNTY  
PROSECUTORS OFFICE, LARRY  
DASENBROCK, SKOOT MEALER,  
JOAN KENSHAW, MIKE QUINTAL,  
RICHARD SHIRA OF IDAHO COUNTY  
SHERIFFS DEPT. AND THE  
COMMISSIONERS OF IDAHO  
COUNTY.  
DEFENDANTS

CIVIL SUIT FOR  
VIOLATIONS UNDER  
COLOR OF LAW

COMES NOW, PLAINTIFF BRYAN STUART LANKFORD  
PRO. SE AND FILES THIS CIVIL SUIT AGAINST  
THE DEFENDANTS, AND REQUEST A HEARING INTO  
THE FOLLOWING CHARGES AND ALLEGATIONS OF  
VIOLATIONS OF PLAINTIFFS CIVIL RIGHTS,

CHARGES AND ALLEGATIONS

I.

KIRK MACGREGOR, DENNIS ALBERS AND



SKOOT MEACER ENTERED INTO AN AGREEMENT IN WRITING AND ORALLY, WHICH STATED AMONG OTHER THINGS THAT: KIRK MCGREGOR, AND SKOOT MEACER WOULD TESTIFY ON PLAINTIFFS BEHALF AT PLAINTIFFS PAROLE HEARING IN OCTOBER OF 2008, AND THEY WERE SUPPOSE TO TESTIFY IN SUCH A WAY AS TO PERSUADE THE PAROLE COMMISSIONERS TO PAROLE PLAINTIFF, BUT INSTEAD THEY TESTIFIED AGAINST PLAINTIFF, AND THEY PERSUADED THE VICTIMS FAMILY TO NOT ONLY BE PRESENT AT THE PAROLE HEARING IN FORCE, BUT TO ALSO TESTIFY STRONGLY AGAINST PLAINTIFF, AND THE VICTIMS FAMILY WERE TOLD LIES BY KIRK MCGREGOR, SKOOT MEACER AND OTHER SHERIFF'S DEPT EMPLOYEES SO THEY COULD TESTIFY REGARDING THE LIES - NOT KNOWING THEY WERE LIES. ALSO KIRK MCGREGOR AND SKOOT MEACER PAID PART OF THE VICTIMS FAMILY TRANSPORTATION TO THE PAROLE HEARING, ALL OF WHICH IS BREACH OF AGREEMENT.

ALSO, PLAINTIFF REQUESTED HIS NAME BE CHANGED IN ACCORDANCE WITH THE AGREEMENT, WHICH WAS DENIED BY KIRK MCGREGOR AND SKOOT MEALER, FURTHER BREACH OF AGREEMENT.

ALSO, PLAINTIFF WAS SUPPOSE TO BE MOVED OUT OF STATE TO A MEDIUM SECURITY PRISON WHERE IT IS SAFE AND HAS GOOD CONDITIONS, INSTEAD, PLAINTIFF WAS MOVED TO ONE OF THE HARSHTEST PRISONS IN THE UNITED STATES, FURTHER BREACH OF AGREEMENT.

ALSO, KIRK MCGREGOR AND DENNIS ALBERS AGREED TO HAVE SENATOR JAMES E. RISCH CALL, WRITE OR TESTIFY AT PLAINTIFFS PAROLE HEARING ON PLAINTIFFS BEHALF, PLAINTIFFS ATTORNEY OF RECORD GARY AMENDOLA AT THE TIME, WAS AWARE OF THAT AGREEMENT AND ALL OTHER AGREEMENTS WERE SEVERAL OTHER PEOPLE, BUT SENATOR JAMES E. RISCH NEVER CONTACTED THE PAROLE COMMISSION, BREACHING THE AGREEMENT FURTHER. HAD PLAINTIFF KNOWN THAT KIRK MCGREGOR, DENNIS ALBERS, SKOOT

MEALER AND SENATOR JAMES E. RISCH WERE GOING TO COMMIT FRAUD IN LYING TO PLAINTIFF, ATTORNEY'S, PLAINTIFFS FAMILY AND FRIENDS AND TO THE PEOPLE OF IDAHO, PLAINTIFF WOULD HAVE NEVER TESTIFIED IN CASE OF "STATE VS. MARK LANKFORD"

## II

KIRK MCGREGOR AND SKOTT MEALER HAD THEY'RE SHERIFFS DEPT. BUDDIES PHYSICALLY ASSAULT PLAINTIFF JUST ONE AND A HALF HOURS BEFORE PLAINTIFF WAS TO TESTIFY IN THE MURDER TRIAL OF "STATE VS. MARK LANKFORD." THE ASSAULTS HAPPENED IN THE COEUR D'ALENE IDAHO SHERIFFS DEPT. AND PLAINTIFFS ATTORNEY GARY AMENDOLA AND MOST OF THE IDAHO COUNTY SHERIFFS DEPT. WAS AWARE OF THE ASSAULTS AS WERE THE PLAINTIFFS FAMILY AND FRIENDS, THE ASSAULTS WERE CLEARLY DONE TO LET PLAINTIFF KNOW THAT IF PLAINTIFF DID NOT TESTIFY FOR THE STATE, THAT PLAINTIFF WOULD BE BEATEN TO DEATH. ALSO PLAINTIFF WAS

ASSAULTED BY SKOOT MEALER AND KIRK MCGREGOR AT THE SHEEP CREEK CAMPGROUND, AND SKOOT MEALER INJURED HIMSELF DURING ASSAULT AND WAS HELPED UP OFF GROUND BY PLAINTIFF. PLAINTIFF REQUESTED THAT HIS ATTORNEY BE PRESENT ON THAT TRIP INTO THE FOREST, BUT KIRK MCGREGOR DENIED PLAINTIFFS REQUEST, AND ALTHOUGH SKOOT MEALER RECEIVED MEDICAL ATTENTION FOR HIS INJURIES, PLAINTIFFS REQUEST FOR MEDICAL ATTENTION WAS DENIED BY BOTH SKOOT MEALER AND KIRK MCGREGOR. CLEARLY PLAINTIFFS ATTORNEY WAS DENIED SO THERE WOULD BE NO WITNESSES, AND MEDICAL WAS DENIED SO THERE WOULD BE NO EVIDENCE NOR QUESTIONS BY MEDICAL PEOPLE.

PLAINTIFF WAS ASSAULTED AGAIN AT THE IDAHO COUNTY JAIL THE NIGHT BEFORE THE SENTENCING, WHEN HE WAS TRANQUALIZED SO THAT HE


COULD NOT TALK TO THE DEFENCE ATTORNEYS IN STATE VS. MARK HENRY LANKFORD, IDAHO COUNTY CASE CR-83-20158, NOR TESTIFY THE VERY NEXT MORNING AT THE SENTENCING REGARDING THE COACHED AND FABRICATED TESTIMONY OF LANE THOMAS, AND CHARGES HEREIN.

III.

THE IDAHO COUNTY SHERIFFS DEPT. EMPLOYEES; RICHARD SHIRA, MIKE QUENTAL, JOAN RENSHAW LARRY DASENBROCK AND SKOOT MEALER STOLE ABOUT \$2,000.00 FROM PLAINTIFFS PROPERTY INCLUDING BUT NOT LIMITED TO; TWO \$325.00 EACH, VERIZON WIRELESS LG VOYAGER CELL PHONES, A NOKIA CELL PHONE, TWO CD PLAYERS ELECTRONIC GAMES, CD'S, BOOKS, 400 COLORED PENCILS & PENS THAT PLAINTIFF HAD IN CEE FOR ABOUT EIGHT MONTHS.

CONCLUSION:

PLAINTIFF RESPECTFULLY REQUEST AND PRAYS FOR MONITARY DAMAGES OF \$2,000.00, AND PAIN AND SUFFERING DAMAGES OF \$200,000.00 AND AN EVIDENTUARY HEARING INTO THESE MATTERS. FURTHER PLAINTIFF SAYETH NOT. DATED THIS 11<sup>TH</sup> DAY OF OCTOBER 2009.

  
BRYAN STUART LANKFORD

BRYAN STUART LANKFORD  
Full Name/Prisoner Name  
IDOC No. 20488  
IMSE, UNIT: E-14A  
P.O. BOX 51  
BOISE, ID 83707  
Complete Mailing Address

IN THE DISTRICT COURT OF THE  
SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO

State of Idaho, )  
Plaintiff/Petitioner, )  
vs. )  
Mark Henry Lankford, )  
Defendant/Respondent. )

Case No. CR 83-20158

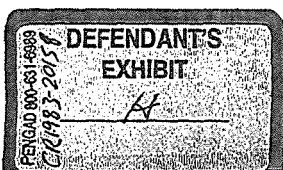
AFFIDAVIT OF

BRYAN S. LANKFORD

STATE OF IDAHO )  
County of IDAHO ) ss

BRYAN S. LANKFORD, after first being duly sworn upon his/her oath, deposes and says as follows: HAD THE IDAHO COUNTY PROSECUTORS OFFICE AND THE IDAHO COUNTY SHERIFFS DEPT. NOT ASSAULTED ME, AND THREATENED ME WITH DEATH, I WOULD NOT HAVE TESTIFIED FOR THE PROSECUTION, BUT WOULD HAVE INFACT TESTIFIED FOR THE DEFENDANT.

AFFIDAVIT OF BRYAN S. LANKFORD pg. 1 of 3



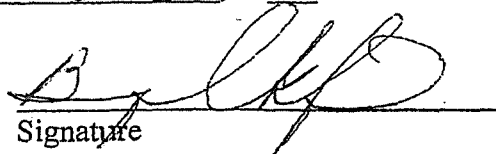
COPY

1/101

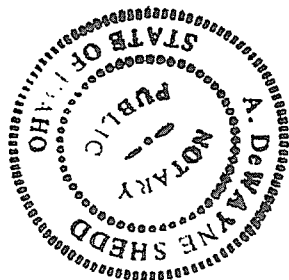
MARK H. LANKFORD. MANY PEOPLE KNEW ABOUT THE ASSUALTS AND MOST OF THE ILLEGAL ACTIONS PERPETRATED BY THE AFOREMENTIONED AGENTS AS WELL AS THE FEDERAL DEFENDERS OFFICE WHO HELPED THE PROSECUTORS AND SHERIFFS OFFICE COACH ME AND LANE THOMAS FOR ALMOST TWO AND A HALF MONTHS ON WHAT TO SAY AT TRIAL, EVEN THOUGH THEY KNEW THEY WERE VIOLATING STATE AND FEDERAL LAWS BY FORCING ME (AND LANE) TO TESTIFY DECEPTIVELY, JUST LIKE PROSECUTOR D. AUBERS, JUDGE REINHARDT & JOAN FISHER DID AT THE ORIGINAL TRIAL & SENTENCING IN 1984. BUT I'M JUST AS GUILTY AS THEY.

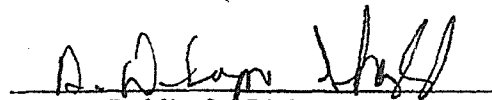
Further your affiant sayeth naught.

DATED This 30<sup>TH</sup> day of NOVEMBER, 2010.

  
Signature

SUBSCRIBED AND SWORN To before me this 30 day of Nov, 2010.

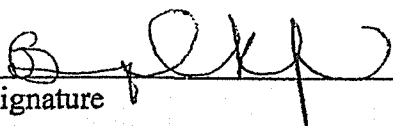


  
Notary Public for Idaho  
Commission expires: 11/06/13

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 30<sup>TH</sup> day of NOVEMBER 2010, I  
mailed a true and correct copy of BRYAN S. LANKFORD AFFIDAVIT via the U.S.  
mail system to:

MR. GREG C. DICKISON  
ATTY. AT LAW  
P.O. BOX 8846  
MOSCOW ID 83843

  
Signature





4. I have borne two children who were fathered by Lane Thomas; they are Jasmine Elliott and Alison Elliott-Thomas. These children are in my household and I have custody of them.
5. Lane Thomas has acknowledged to the State of Idaho that he is the father of Jasmine Elliott.
6. Neither ~~Jessica~~<sup>Ab - Jasmine</sup> nor Alison have nicknames which would cause confusion about their identity or name.
7. It appears that Lane Thomas did not name two of his children, both of whom are known to him, in his statement to the court during his testimony in February 2008.
8. This ends this affidavit.

Jessica Bonato  
Jessica Bonato

SUBSCRIBED AND SWORN to before me this 27th day of January, 2012.




Diana L. Kirkland  
Notary Public for Idaho  
Residing at Troy ID  
My commission expires 1-22-2013

**ORIGINAL**

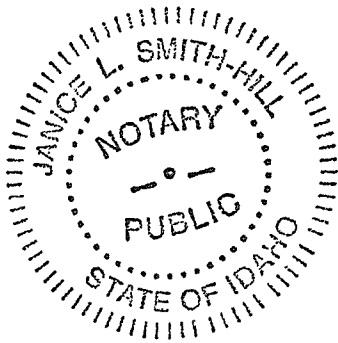
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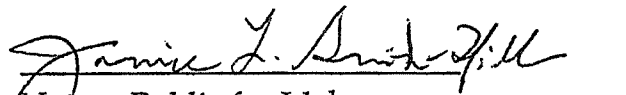


5. Lane Thomas has acknowledged to the State of Idaho that he is the father of Martha Gustin.
6. Martha Gustin does not have any nickname which would cause confusion about her identity or name.
7. It appears that Lane Thomas did not name one of his children, who is known to him, in his statement to the court during his testimony in February 2008.
8. This ends this affidavit.

  
Josephine L. Guernsey

SUBSCRIBED AND SWORN to before me this 26<sup>th</sup> day of January, 2012.



  
Notary Public for Idaho  
Residing at Moscow  
My commission expires 7/20/2013.

10107

S111  
Page 4 of 4

CO

IDAHO COUNTY PROSECUTING ATTORNEY'S OFFICE

416 W. Main  
PO Box 463  
Grangeville, Idaho 83530

Kirk A. MacGregor- Prosecutor  
Dennis L. Albers- Deputy Prosecutor

Telephone 208-983-0166  
Fax No: 208-983-3919  
Deputy Fax: 208-983-1401

February 4, 2008

Gary I. Amendola  
702 N. 4<sup>th</sup> Street  
Coeur d' Alene, ID 83814

Re: STATE V. MARK HENRY LANKFORD  
Idaho County Case CR-83-20158

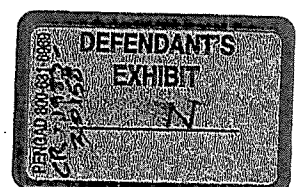
Dear Gary:

This letter is in regards to Bryan Stuart Lankford and the agreement which the State of Idaho has with him in relation to his testifying at the trial of Mark Henry Lankford.

The State of Idaho has promised Bryan that if he cooperates with law enforcement in the investigation concerning the trial of Mark Henry Lankford and the murders he committed and further if he testifies truthfully at the trial of Mark Henry Lankford the State will agree to the following:

1. The State, through Idaho County prosecutor Kirk MacGregor, will agree to write a letter of cooperation to the Idaho Board of Pardons and Parole and if requested Kirk MacGregor will also appear in person at the parole hearing. If Bryan fulfills his part of the agreement the letter and Kirk MacGregor at the hearing, will state that Bryan has fully cooperated with law enforcement authorities in the investigation of the murder trial of Mark Henry Lankford. Further, that Bryan testified truthfully at the trial of Mark Henry Lankford.
2. The State has agreed to obtain a parole hearing in the year 2008 for Bryan. In fact, this has already been accomplished as Bryan has received a Notice from the Idaho Board of Pardons and Parole that he will have a parole hearing in 2008.

1608



Gary Amendola  
Page Two  
February 4, 2008

- 3. ~~The State has agreed to move Bryan to a penitentiary outside the State of Idaho.~~  
The location of that penitentiary will remain confidential and will not have to be disclosed to Mark Lankford or his attorneys. The location of that penitentiary is yet to be determined.
- 4. Skott Mealer, a detective with the Idaho County Sheriff's office, has also agreed to write a letter of cooperation and appear at Bryan's parole hearing regarding Bryan. The letter and appearance would be similar to the letter and appearance by Kirk MacGregor.

This is the agreement between Bryan Stuart Lankford and the State of Idaho at this time. If you have any questions regarding the same, please contact me at your convenience.

Sincerely,



KIRK A. MacGREGOR  
Idaho County Prosecuting Attorney

2  
0

And don't forget to get unidentifiable  
Property Kirk said I could have  
after trial... ounce of gold, rings, necktie,  
wallet & contents, etc etc.

COPY

IDAHO COUNTY PROSECUTING ATTORNEY'S OFFICE

416 W. Main  
 PO Box 463  
 GRANGEVILLE, ID 83530

Kirk A. MacGregor - Prosecutor  
 Dennis L. Albers - Deputy Prosecutor

Telephone: 208-983-0166  
 Fax No.: 208-983-3919  
 Deputy Fax: 208-983-1401

February 7, 2008

Gary I. Amendola  
 702 N. 4<sup>th</sup> Street  
 Coeur d'Alene, ID 83814

Re: STATE V. BRYAN LANKFORD

Dear Gary:


I am hereby supplementing my previous letter to you regarding Bryan Lankford. This letter is to add certain additions to promises to Bryan Lankford in exchange for his testimony. My previous letter referred to Skott Mealer and I personally appearing at Bryan's parole hearing, if requested. The words, "if requested" were referring to being requested by Bryan. If Bryan does not request us to be at the hearing, of course, we would not be present. At the parole hearing I would agree to explain the differences what I perceive between Mark and Bryan. With Mark a much more violent and criminal minded individual than Bryan. Further, my comments to the parole board would include stating that Bryan was less culpable in the murders of Robert and Cheryl Bravence. Further, I would agree to state that I believe that Bryan is not a danger to society.

~~Regarding moving Bryan to another penitentiary outside the State of Idaho, the State will agree to take all measures reasonably possible to insure the confidentiality of Bryan Lankford's move to new prison. This would include a possible name change.~~

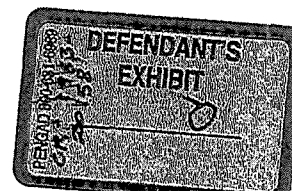
Lastly, the State would agree to grant Bryan immunity from any perjury charges regarding his testimony at Mark Lankford's trial.

Please contact me if you have any questions.

Sincerely,

  
 KIRK A. MacGREGOR  
 Idaho County Prosecuting Attorney

KAM:jak



1070

COI-2

02.08.08

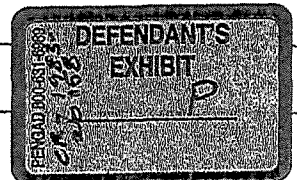
The agreement between the State of Idaho and Brian Lankford includes the following:

Bryan has the right to approve or veto any particular out of state facility to which his transfer is considered.

*[Signature]*  
Kurt MacGregor  
Prosecuting Attorney  
Idaho County  
State of Idaho

Idea:  
Jack heart?  
Minn.?

TX ?





233 P.3d 38 (Idaho 2009), 36175, Bradbury v. Idaho Judicial Council

Page 38

**233 P.3d 38 (Idaho 2009)**

**149 Idaho 107**

**John H. BRADBURY, Petitioner,**

**v.**

**IDAHO JUDICIAL COUNCIL, Respondent.**

**No. 36175.**

**Supreme Court of Idaho, Boise**

**September 10, 2009**

Page 39

[Copyrighted Material Omitted]

Page 40

[Copyrighted Material Omitted]

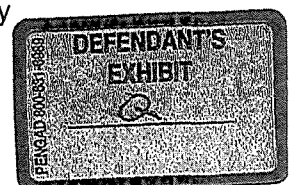
Page 41

[149 Idaho 110] Clements, Brown & McNichols, P.A., Lewiston; Runft & Steele Law Offices, PLLC, Boise; and M. Karl Shurtliff, Boise; for petitioner. Michael E. McNichols argued.

The Roark Law Firm, Hailey, for respondent. R. Keith Roark argued.

J. JONES, Justice.

District Judge John H. Bradbury (Petitioner) asks the Court to review a determination of the Idaho Judicial Council (Council) that he does not "actually reside" in Idaho County as required by Idaho Code sections 1-803 and 1-809. The Council recommended that Judge Bradbury be suspended from serving as a district judge until such time he actually resides in Idaho County and that he pay the costs incurred by the Council in this proceeding. Based upon our independent review of the facts in the record, the Court finds that Petitioner is not in compliance with such residency



672

requirement and orders that he take action to comply with the law.

## **I. BACKGROUND SETTING**

Petitioner was elected in 2002 for a district judge position with resident chambers in Idaho County. He took office in January 2003. Idaho Code section 1-809 requires that district judges actually reside at the place designated as their resident chambers. On December 20, 2002, Petitioner purchased a house in Grangeville, Idaho County, and on October 16, 2003, he changed his voter registration to Idaho County.

On May 2, 2006, the Council notified Petitioner that it was conducting an inquiry into whether he was actually residing in Idaho County. Petitioner responded by letter on May 4, 2006, stating that he owned a fully furnished home in Grangeville, that he had a homeowner's exemption on that home, and that he was registered to vote and did vote in Idaho County. He also stated that he had a fully furnished home in Lewiston and that the home at which he stayed depended upon where his work was. By letter dated April 17, 2007, the Council informed Petitioner that, based upon his response, the Council was closing the file. The Council noted in its subsequent findings that Petitioner had not informed the Council " that he spent practically none of his nights in Grangeville, or, that in the prior six (6) months he had spent fewer than ten (10) evenings in Grangeville."

On September 12, 2007, the Council sent Petitioner a letter stating that it had received additional information and was re-opening the inquiry into whether he was actually residing in Idaho County. On October 31, 2007, Robert G. Hamlin, the Executive Director of the Council, interviewed Petitioner regarding the issue of whether he actually resided in Idaho County. That interview was recorded and transcribed by a court reporter. During that interview, Petitioner stated, " And my Constitutional duty is to do my job, and I think it trumps whatever the

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[149 Idaho 111] statutory obligation might be." He continued, " And I want to do my job. And I want to comply with the law. But I can't do both, as much as I want to." When asked, " So do you spend most of your time in Lewiston?" Petitioner answered, " Yeah, I do." Hamlin followed up by asking, " How many days-let me rephrase that, how many evenings a week do you spend in Grangeville?" Petitioner answered, " Practically none." He said that he got most of his personal mail in Lewiston and had registered his vehicles in Nez Perce County. He told Hamlin he spent most of his weekends at his ranch in Clearwater County where he is building a house. He also stated, " I can tell you that I would live in Grangeville if I could do my work and live in Grangeville."

On January 22, 2008, the Council sent Petitioner a letter stating that it did not appear that he actually resided in Idaho County. The letter noted Petitioner's contention that he could not do his job efficiently if he lived in Grangeville, but stated that if the statute requires that he actually reside in Idaho County he must do so. The Council concluded by stating that unless he could show within

fourteen days that he actually resided in Idaho County, the Council would proceed with formal charges. Petitioner did not attempt to do so, and on July 22, 2008, the Council commenced formal proceedings.

The notice of formal proceedings alleged four counts: Counts One and Three alleged violations of Canons 1(A) and 2(A) of the Code of Judicial Conduct for failing to actually reside in Idaho County, and Counts Two and Four alleged violations of the same canons regarding travel expense vouchers. The Council held an evidentiary hearing on December 17, 2008, at which Petitioner, the Idaho County Deputy Clerk, and Hamlin testified. Petitioner testified that he only stays overnight in Grangeville when he has a trial there and absent a trial he spends less than one night per week in Grangeville.<sup>[1]</sup> He testified that during 2008, he had spent several nights in Grangeville because his workload there had increased. He also acknowledged his prior statements, " And my Constitutional duty is to do my job, and I think it trumps whatever the statutory obligation might be ... and I want to do my job, and I want to comply with the law, but I can't do both as much as I want to."

At the conclusion of the hearing, the Council issued written findings of fact, conclusions of law, and recommendations. It concluded that Petitioner did not actually reside in Idaho County in violation of Idaho Code sections 1-803 and 1-809, and that his failure to do so was a willful violation of Canons 1(A) and 2(A) pursuant to Idaho Code section 1-2103. It made no findings regarding Counts Two and Four regarding travel vouchers. It recommended that Petitioner be immediately suspended until he begins actually residing in Idaho County, that if he does move to Idaho County he be required to submit monthly affidavits certifying where he actually resides, and that he pay the costs of counsel hired by the Council. On March 27, 2009, Petitioner filed a verified petition in this Court seeking review of the Council's determination.

## II. PROCEDURES AND STANDARD OF REVIEW

The Idaho Supreme Court holds original jurisdiction over claims of judicial

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[149 Idaho 112] misconduct. Idaho Const. Art. V, 2; *Idaho Judicial Council v. Becker*, 122 Idaho 288, 292-93, 834 P.2d 290, 294-95 (1992). The Idaho Judicial Council is charged with investigating such claims. Idaho Code 1-2103. Section 1-2103 " provides the means by which the Council may initiate investigations of judicial conduct and make recommendations to the Court for discipline, removal, or disability retirement of judges." *Becker*, 122 Idaho at 293, 834 P.2d at 295. Although the Council may initiate such investigations and make recommendations, " this Court has the ultimate authority and responsibility to decide what should be done in each case based on our weighing of the evidence presented to the Council and any additional evidence the Court permits." *Id.* This Court does not review the findings or conclusions made by the Council to determine if they are supported by the evidence and the law. It makes its own findings and conclusions from the

evidence in the record. *Id.* When doing so, this Court applies a clear and convincing standard of proof. *Id.*

### III. MOTIONS TO DISQUALIFY

Before turning to the issues presented in the petition, the Court will consider the motions filed by Petitioner on August 21, 2009, seeking to disqualify Justices Roger S. Burdick, Jim Jones and Warren E. Jones. It does not appear that Petitioner seeks to disqualify Justice Pro Tern Wayne L. Kidwell. The briefs filed in support of the motions contend that the three Justices are biased and not impartial. The motions are not supported by affidavits. Some background is necessary in order to place the motions in context.

After two continuances-one at the behest of Petitioner and the other at the request of the Council-this matter was scheduled for oral argument on July 22, 2009. On July 17, 2009, Petitioner filed suit in the United States District Court for the District of Idaho against each of the Justices then sitting on this case-Chief Justice Daniel T. Eismann, Justices Roger Burdick, Jim Jones and Warren Jones, and Justice Pro Tern Wayne Kidwell. In his federal suit, Petitioner asserted a variety of claims against the individual Justices and sought, among other things, to have the federal judge vacate the July 22 argument. The federal judge declined to vacate the argument and it proceeded as scheduled. Central to the claims in the federal suit were allegations that Chief Justice Eismann, as Chairman of the Idaho Judicial Council, had participated in Council proceedings pertaining to this matter and, therefore, could not act objectively. Petitioner has admitted having no claim that the Chief Justice was actually biased against him.

On August 5, 2009, Petitioner filed a motion with this Court, seeking to disqualify Chief Justice Eismann. On August 7, 2009, Chief Justice Eismann filed a recusal based upon the claims in the federal lawsuit. The Chief Justice cited an affidavit filed by him in the federal lawsuit showing that he had not participated in the proceedings before the Council relating to Petitioner, that he had been in the hospital undergoing chemotherapy for lymphoma at the time the Council's hearing was conducted, and that he had not discussed the Council's findings and recommendations with other members of the Council.

The timing of the motions to disqualify three of the four remaining Justices presiding on the case is somewhat troubling. The case was argued on July 22 and fully submitted for decision. Although the Idaho Rules of Civil Procedure do not apply in appellate proceedings, Rule 40(d), pertaining to disqualification of trial court judges, is instructive. Where a party seeks to disqualify a trial judge without cause, the motion must be timely filed before contested matters are presented for consideration. *See Idaho R. Civ. P. 40(d)(1)(B)*. A motion for disqualification of a trial judge for cause may be made at any time but must be accompanied with an affidavit "stating distinctly the grounds upon which disqualification is based and the facts relied upon in support of the motion." *Idaho R. Civ. P. 40(d)(2)(B)*. Petitioner's motions were unaccompanied by affidavits spelling out why the three Justices should be disqualified for bias or lack of impartiality, so the motions are

more in the form of motions seeking to disqualify without

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[149 Idaho 113] cause. Should a party wish to file such a motion in order to call the attention of a Justice to a potential concern regarding participation on a particular case, the same should be filed in a timely manner before argument, not after the litigant has evaluated the tenor of questions asked by the particular Justice at the argument. It would be a dangerous precedent to allow a litigant to observe the questioning of the Justices at oral argument and, after the fact, seek to disqualify those Justices who appear to have reservations about aspects of the litigant's case.

Furthermore, there is nothing stated in Petitioner's motions indicating why an earlier suggestion of recusal could not have been made. From the commencement of this appeal, it was known to Petitioner that Idaho Code section 1-2101 provides that the Chief Justice of the Idaho Supreme Court is to serve as a member of the Council, as well as its chairman, and that Chief Justice Eismann was fulfilling that capacity when the appeal was filed. The identity of the other Justices who would preside over the matter was also known and it was known that all four would participate in all proceedings and deliberations. If any of those facts gave rise to concern on Petitioner's part, they should have been made known early on, at least prior to the argument. Nothing in Petitioner's motions or supporting briefs show any recently discovered facts that would cast doubt upon the ability of the three challenged Justices to perform their duties in an unbiased and impartial manner.

Regardless of whether the motions were timely, no grounds exist for any of the three Justices to recuse themselves under either the Code of Judicial Conduct or Idaho law. The Code of Judicial Conduct provides that " A judge shall disqualify himself or herself in a proceeding where the judge's impartiality might reasonably be questioned, including but not limited to instances where ... the judge has a personal bias or prejudice concerning a party or a party's lawyer, or has personal knowledge of disputed evidentiary facts that might reasonably affect the judge's impartiality in the proceedings." This appears to be the ground upon which Petitioner relies in his motions for disqualification.

Petitioner's argument is essentially that Chief Justice Eismann had knowledge of evidentiary facts outside of the record by virtue of his position on the Council, that the Chief Justice was biased against Petitioner, and that the bias is likely to have infected the impartiality of three of the other four Justices deliberating on the case. Petitioner has cited absolutely no facts that would support the contention that the three Justices targeted by the motions for disqualification hold any animus toward Petitioner or that any three of the four remaining Justices somehow obtained knowledge of pertinent facts not contained in the record. It should be noted that this opinion addresses two primary questions. The first question is the interpretation of the words " actually reside," which is a pure question of law. This question is not influenced in any manner by the facts of the case, whether they are contained in the record or elsewhere. The second question is a factual one-

whether Petitioner actually resides in the county designated by the Legislature. The three Justices who are the subject of the disqualification motions have no knowledge of facts pertaining to Petitioner's actual residency, except as contained in the record. As will be apparent from the reading of this opinion, almost all of the pertinent facts relevant to this factual determination are based on statements made by Petitioner to Hamlin, testimony given by Petitioner at the Council hearing, or documents signed by Petitioner. The Court specifically advised the parties in several orders issued prior to argument that the case would be decided only upon facts contained in the record and that is precisely what the Court has done.

Whether it is necessary for a judicial officer to disqualify himself in a given case is left to the sound discretion of the judicial officer himself. *Sivak v. State*, 112 Idaho 197, 206, 731 P.2d 192, 201 (1986). A statement of former U.S. Supreme Court Chief Justice William Rehnquist is instructive as to how an appellate judge might make a recusal decision. See

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[149 Idaho 114] *Microsoft Corp. v. United States*, 530 U.S. 1301, 121 S.Ct. 25, 147 L.Ed.2d 1048 (2000). There, the Chief Justice was considering whether he should recuse himself in an appeal where his son was a partner in a firm representing a party in the appeal. Chief Justice Rehnquist considered 28 U.S.C. 455, a federal statute that sets forth the legal criteria for the disqualification of federal judicial officers. Although the federal statute and its interpretation are not binding on this Court, Chief Justice Rehnquist's statement is instructive because of the similar purpose and language in Canon 3 of the Idaho Code of Judicial Conduct and 28 U.S.C. 455. Chief Justice Rehnquist stated:

Section 455(a) contains the more general declaration that a Justice " shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." As this Court has stated, what matters under 455(a) " is not the reality of bias or prejudice but its appearance." *Liteky v. United States*, 510 U.S. 540, 548, 114 S.Ct. 1147 [1154] 127 L.Ed.2d 474 [486] (1994). This inquiry is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances.

*Id.* at 1302, 121 S.Ct. at 26, 147 L.Ed.2d at 1049. According to the Chief Justice, the decision whether a judge's impartiality can " reasonably be questioned" is to be made in light of the facts as they existed, and not as they were surmised or reported. *Id.* Applying this standard to his situation, the Chief Justice declined to recuse himself, concluding that his participation in the case did not give rise to an appearance of partiality. *Id.*

Nor is such the case here. Petitioner has failed to present facts that a reasonable observer could consider in determining that recusal is appropriate. Petitioner merely speculates that Chief Justice Eismann had knowledge of facts outside of the record, which the Chief Justice denied in his sworn affidavit, and that somehow those facts were imparted to three of the four other Justices sitting on his case. He fails to disclose why the fourth Justice was not exposed to the same information. It is interesting to note that Petitioner is suing all four of the remaining Justices in his federal court

action, asserting individual claims against each and every one of the four.

Even had Petitioner carried his burden of showing bias or lack of impartiality, three-fourths of the panel need not have recused itself. In *Eismann v. Miller*, 101 Idaho 692, 619 P.2d 1145 (1980), the Court considered whether recusal was appropriate where the appellant in the case before the Court had filed a separate legal action against all members of the Court, as well as a number of trial court judges. The Justices declined to recuse themselves based on the "rule of necessity." According to the Court, "Ordinarily, a member or members of this court engaged in legal action with a party appearing before this court in regard to another matter would voluntarily disqualify themselves. However, this is far from an ordinary situation." *Id.* at 696, 619 P.2d at 1149. The Court continued: "As recognized in *Higer v. Hansen*, 67 Idaho 45, 170 P.2d 411 (1946), where disqualification results in an absence of judicial machinery capable of dealing with the matter, disqualification must yield to necessity. 67 Idaho at 50-51, 170 P.2d at 413-14." *Id.* To grant Petitioner's motions for disqualification, even if they had merit, would place the decision of this Court in the hands of five pro tern justices, would require reargument of the case, and would likely produce the same result because the determination of this case will be made strictly on the facts in the record and be based upon the interpretation of the applicable law. Neither the facts nor the law would change with new judicial officers.

#### IV. DISCOVERY ISSUES

Petitioner contends that the Council wrongfully failed to respond to his discovery requests. He sought: (a) the identity of the person(s) who prompted the Council investigations; (b) the additional information received by the Council that prompted it to re-open the investigation in 2007; (c) the internal report of the Council's preliminary investigation; (d) all complaints made to the Council against Petitioner; (e) all documents generated and reviewed by the Council in response to those complaints; and (f) the minutes of all Council meetings in which

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[149 Idaho 115] Petitioner's name appears. The Council refused to provide the requested information on the ground that it was confidential pursuant to its Rule 24. Petitioner renewed his request for discovery on a number of occasions before this Court.

We need not address the confidentiality issue because it is clear the discovery sought was not and is not relevant to the residency issue upon which this case turns. Rule 22(b) of the Rules of Idaho Judicial Council adopts the discovery rules of the Idaho Rules of Civil Procedure, including Rule 26. Rule 26(b)(1) of those rules limits discovery to "any matter, not privileged, which is relevant to the subject matter involved in the pending action ..." The discovery sought by Petitioner simply isn't relevant to the legal interpretation of the words "actually reside" nor to the factual determination regarding the location of Petitioner's actual residence. As previously pointed out, almost all of the factual evidence regarding Petitioner's residence was provided in this matter by

Petitioner.

Furthermore, Petitioner did conduct discovery in the proceedings before the Council and he had full opportunity to cross-examine witnesses in the Council hearing. If Petitioner believed that he had not been able to obtain and present additional relevant evidence to the Council, he had the option under Idaho Code section 1-2103 to request this Court to permit him to introduce additional evidence for our consideration. Petitioner failed to make such a request and, therefore, the Court's review was, pursuant to the statute, confined to the record of proceedings before the Council.

#### **V. RIGHT TO CONFRONT ACCUSERS**

Petitioner contends that he is entitled to know the identity of the person(s) who prompted the Council investigations because he has a right to confront his accusers. Even though the Executive Director of the Council testified twice under oath in the Council hearing that there was no original complaint or verified statement filed with the Council, Petitioner continues to request discovery of the identity of his accuser. He asserts, " Judge Bradbury has a basic right to know the identity of his accuser and the accusations made." Although he does not expressly state the source of this basic right, we assume that Petitioner is referring to the Sixth Amendment right to confront one's accusers. That Amendment applies to criminal prosecutions, and this is not a criminal prosecution.

Even if it were applicable and even if there were an " accuser," it would not give Petitioner the right to the identity of any such person. No such person testified at the hearing and no information from an informer was contained in the record before the Court. The witnesses at the hearing were Petitioner, the Idaho County Clerk, and Hamlin. Petitioner had ample opportunity to confront those witnesses. He was present when they testified, he questioned them, and he does not contend that he was in any way wrongfully limited in such questioning. If any person provided information that played a part in the Council's investigation, such person was not an " accuser" as that term is used in connection with the Sixth Amendment right " to be confronted with the witnesses against him." No such person was a witness nor was any information that any such person may have provided included in the record. Our findings are based upon the evidence in the record.

#### **VI. ALLEGED PREJUDICE OF THE JUDICIAL COUNCIL**

Petitioner contends that the Council was prejudiced against him. He contends that the alleged prejudice is shown by two facts.

First, the Council's notice of formal proceedings alleged two counts of violations of the Judicial Canons regarding travel expense vouchers when the Council had not previously given Petitioner notice of those allegations. The Council did not make any findings or recommendations regarding those counts. Therefore, that conduct does not indicate prejudice. It may have been different had the Council found violations that were clearly unsupported by the facts and law.



Second, Petitioner contends that the letter dated October 7, 2008, from the Special

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[149 Idaho 116] Examiner hired by the Council shows that the Council had pre-judged the disciplinary proceedings. Petitioner's counsel had inquired whether the Council would be willing to mediate the matter. In response, the Special Examiner wrote back:

I have passed your suggestion that we mediate the disciplinary case now pending against Judge Bradbury on to the Judicial Council for their review. The Council has authorized me to agree that, if your client admits to having violated I.C. 1-803 and 809 by not actually residing in Idaho County during the past two years (Count I) and agrees to immediately take up full-time residence in Idaho County, we will mediate the question of what sanction should be imposed and drop all other charges. The Council feels strongly that Judge Bradbury's refusal to obey the relevant statute, even after having been warned by the Executive Director of the need to do so, cannot be mediated away as if it had never occurred.

Petitioner argues that the second paragraph of the letter shows that the Council had already determined that he did not actually reside in Idaho County. When that paragraph is read in context with the preceding paragraph, it merely states that the Council would not mediate whether Petitioner was required to comply with Idaho Code 1-803 and 1-809. Any mediation would be limited to the sanction imposed if Petitioner admitted the violation.

#### **VII. THE MEANING OF THE WORDS " ACTUALLY RESIDE"**

Idaho Code section 1-803 provides that the resident chambers of one district judge in the Second Judicial District shall be in Idaho County. Idaho Code section 1-809 provides, " District judges shall actually reside at the place designated as resident chambers." Petitioner ran for and was elected to the district judge position that was required to establish resident chambers in Idaho County. The primary issue before us is whether Petitioner actually resides in Idaho County.

Petitioner contends that the term " actually reside" is ambiguous. It is Petitioner's position that he can actually reside in several different locations at the same time. In his testimony before the Council he indicated he was actually residing in Grangeville even though he spent six if not seven days per week in another house in another county. During oral argument it was argued on his behalf that the term only requires physical presence in Idaho County, as infrequently as once every ten years. He also argued that the word " actually" is mere surplusage and that he has no idea why the Legislature may have used the word " actually" to modify " reside."

In *Sweitzer v. Dean*, we stated the standard for interpreting the language of a statute as follows: When interpreting the meaning of the language contained in a statute, this Court's task is to give effect to the legislature's intent and purpose. In construing a statute, the Supreme Court may examine the language used, reasonableness of the proposed interpretations, and the policy behind the statutes. It is incumbent upon this Court to interpret a statute in a manner that will not

nullify it, and it is not to be presumed that the legislature performed an idle act of enacting a superfluous statute. The Supreme Court will not construe a statute in a way which makes mere surplusage of provisions included therein.

118 Idaho 568, 571-72, 798 P.2d 27, 30-31 (1990) (citations omitted). In addition, " Statutory interpretation begins with the ' literal words of the statute,' and those ' words must be given their plain, usual, and ordinary meaning, and the statute must be construed as a whole.' " *Cordova v. Bonneville County Joint Sch. Dist. No. 93*, 144 Idaho 637, 641, 167 P.3d 774, 778 (2007) (citations omitted).

The word " reside" means " to dwell for a long time; have one's residence; live ( *in or at* )." Webster's New World Dictionary 1142 (3rd College Ed. 1988). " Residence" is defined as the " place where one actually lives, as distinguished from a domicile." Black's Law Dictionary 1335 (8th Ed. 2004). The word " actually" means " as a

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[149 Idaho 117] matter of actual fact; really." Webster's at 14. Thus, in order to actually reside at his or her resident chambers, a judge is required to actually live in the designated county. In *Intermountain Health Care, Inc. v. Board of Commissioners of Blaine County*, we defined " residence" as " the place where one *actually lives* or has his home; a person's dwelling place or place of habitation; an abode; the house where one's home is; a dwelling house." 109 Idaho 412, 414, 707 P.2d 1051, 1053 (1985) (quoting *Perez v. Health & Social Services*, 91 N.M. 334, 573 P.2d 689, 692 (1977) (emphasis added)).

The words " actually reside" or derivatives thereof have long been used in Idaho's legal history. They appear in section 5 of the Organic Act of the Territory of Idaho, 12 Stat. L. 808, ch. 117(1863), which provided that every " free white male inhabitant" above the age of twenty-one years who was an " actual resident" of the Territory at the time of passage of the act was entitled to vote and eligible to hold office in the Territory. Upon statehood, article VI, section 2 of the Idaho Constitution provided the right to vote to twenty-one year old male citizens who had " actually resided in the state or territory" for six months. Idaho Const., art. VI, 2 (amended 1962). The words have also been written into a variety of statutes. In order to qualify for certain scholarship aid, students must " actually reside" in on-campus facilities. Idaho Code 33-4302 and 33-4032A. The majority of members of an insurer that operates only in the State of Idaho must " actually reside" in the state. I.C. 41-2835(4). Idaho Code section 50-102, which provides for the manner in which cities may be incorporated, restricts signatures on an initiating petition to qualified electors who are " actual residents" of the territory proposed to be incorporated. An earlier version of this statute was interpreted by the Court in *Village of Ilo v. Ramey*, 18 Idaho 642, 648, 112 P. 126, 128 (1910). There, we equated the words " actual resident" with " inhabitant." An " inhabitant" is " a person who dwells or resides permanently in a place as distinguished from a transient lodger or visitor." Webster's, at 1163.

Some legislative history is also pertinent to our inquiry. Prior to 1967, Chapter 8, Title 1, Idaho Code, divided the state into eleven judicial districts. In 1967, Chapter 8 was repealed and re-enacted to provide for the seven judicial districts the state now has. 1967 Idaho Sess. Laws, ch. 51. The legislation established the resident chambers for all district judge positions and enacted Idaho Code 1-809 in its present form. The short title of the legislation reads, in pertinent part, "PROVIDING FOR THE RESIDENT CHAMBERS OF DISTRICT JUDGES; REQUIRING A DISTRICT JUDGE RESIDE AT RESIDENT CHAMBERS." Former Idaho Code section 1-901, which was repealed in 1975 (1975 Sess. Laws, ch. 242), had provided that a district judge " may sit at chambers anywhere within his district." However, the new section 1-809 required district judges to " actually reside" at their resident chambers. It is rather clear the Legislature wanted district judges to live in the county where their resident chambers were located and to be a part of that community.

Virtually every district judge who has been appointed or elected since 1967 has understood that section 1-901 requires that him or her to really live in the county designated as resident chambers. Indeed, there is strong evidence in the record that Petitioner understood this to be the case when he ran for the Idaho County position. Petitioner testified that he bought a house in Grangeville, that he took out a homestead exemption on that house and still maintained the exemption as of the time of the Council hearing on December 17, 2008, and that he registered to vote in Idaho County. Petitioner would not have taken a homestead exemption and registered to vote in Idaho County unless he clearly understood that this county was to be his primary residence.

A district judge is " presumed to know the law." *State v. Leavitt*, 121 Idaho 4, 6, 822 P.2d 523, 525 (1991); *City of Lewiston v. Frary*, 91 Idaho 322, 327, 420 P.2d 805, 810 (1966). It necessarily follows that district judges must also comply with the law. Thus, we must assume that Petitioner understood the significance of obtaining and maintaining

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[149 Idaho 118] a homeowner's exemption and of voting in Idaho County.

Idaho Code section 63-602G(1) allows for the exemption of a person's homestead as that term is defined in Idaho Code section 63-701(2). A homestead is " the dwelling, owner-occupied by the claimant .... and used as the primary dwelling place of the claimant." I.C. 63-701(2). Idaho Code section 63-602G(2)(a) specifies that the exemption may be granted only if the homestead is owner-occupied and used as the primary dwelling place of the owner. Subsection 2(c)(ii) requires the owner to certify to the county assessor that the homestead is his " primary dwelling place." Subsection 2(f) states that the definition of " primary dwelling place" is the same as that in Idaho Code section 63-701(8). The latter provision says the primary dwelling place is: the claimant's dwelling place on January 1 or before April 15 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he

has the intention of returning. A claimant must establish the dwelling to which the claim relates to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 and:(i) At least six (6) months during the prior year; or(ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or(iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant for less than one (1) year.

Idaho Code section 63-701(6) defines "occupied" as meaning "actual use and possession." An owner need only apply once for homeowner's exemption, but must maintain eligibility on a yearly basis. I.C. 63-602G(3). The current version of the homeowner's exemption was enacted in 2006. The earlier versions of the statute did not use the word homestead, but did require that the property be the primary dwelling place of the owner. Being a judicial officer, with full knowledge of the law, Petitioner would certainly not have applied for a homeowner's exemption on the Idaho County house unless he clearly understood that it was to be his primary dwelling place and that he was to maintain it as such for each subsequent year. Although one could certainly question his subsequent compliance with the foregoing statutes, that is a matter for pursuit, if any, by county officials (see Idaho Code section 63-602G(5), which empowers county officials to seek recovery of tax revenues lost to improperly claimed homeowner's exemptions) and not the subject of our present inquiry.

Unless Petitioner understood that Idaho County was to be and remain the location of his primary residence, he would not have registered to vote and continued to vote in that county. According to Idaho Code section 34-107:

(1) Residence," for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence.\* \* \* (4) A qualified elector shall not be considered to have gained a residence in any county or city of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

Indeed, the registration form signed by Petitioner on October 16, 2003, states:

**UNDER PENALTY OF LAW:** By signing this card, I certify that I am a citizen of the United States and that I shall have been a resident of Idaho and the county for 30 days before the next election at which I vote ...

It is obvious that Petitioner would not have signed a false certificate and equally obvious

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[149 Idaho 119] that he understood Idaho County was to be his primary home and fixed habitation. Although the evidence indicates that his subsequent compliance with the voting requirements is less than ideal, that is a matter for other authorities.

One further fact demonstrates that Petitioner understood he was required to actually reside or

really live in Idaho County. During his testimony at the Council hearing, he acknowledged having asked the Legislature to amend Idaho Code section 1-803 so he could reside in Clearwater County. If, as Petitioner has contended, he can actually reside in several different counties at the same time, there would be no need to obtain such a change in the law.

While it is clear that Petitioner initially understood he was required to live in Idaho County, the record reflects that he was not doing so during the period preceding the time he was interviewed by Hamlin. It is not clear from the record when Petitioner began using his Lewiston house as his primary residence. What is clear is that he was not complying with the residence requirements of Idaho Code sections 1-803 and 1-809 when these proceedings were initiated because he was living in Nez Perce County.

At some point Petitioner actually claimed Nez Perce County as his principal residence. This occurred when he registered his vehicles in Nez Perce County. The record does not clearly reflect when this occurred. Petitioner testified that as of December 17, 2008, his vehicles were registered in Nez Perce County. Idaho Code section 49-401B(5) provides in pertinent part:

Every owner of a vehicle registered by a county assessor shall give his principal residence or domicile address to the assessor so that the proper county can be entered upon the registration. Failure to do so shall be unlawful.... For the purpose of vehicle registration, a person is an actual and permanent resident of the county in which he has his principal residence or domicile. A principal residence or domicile shall not be a person's workplace, vacation, or part-time residence. It is not entirely clear how one might reconcile this inconsistent certification but, again, this is a matter for consideration by other authorities and not particularly pertinent to the present inquiry.

In sum, Petitioner is required pursuant to Idaho Code sections 1-803 and 1-809 to actually reside in Idaho County. That means he must maintain his primary residence in Idaho County, that he must be an inhabitant of Idaho County, and that he must really live in Idaho County. The evidence in the record indicates that he has not been actually residing in Idaho County for some time and this must change.

#### **VIII. CONSTITUTIONAL DUTY**

A number of times during these proceedings, commencing with his interview by Hamlin, Petitioner has contended that living in Idaho County interferes with his ability to carry out his constitutional duty. He does not identify the constitutional provision that would trump the statutory requirement that he reside in Idaho County. The argument displays a fundamental misunderstanding of the pertinent constitutional provisions.

While Idaho's judicial system is a separate branch of government, it depends upon the Legislature for funding. Article V, section 11 of the Idaho Constitution divides the state into five judicial districts but provides that " the legislature may reduce or increase the number of districts, district judges and district attorneys." The Legislature may use its power over the purse strings to fund a

particular district judge position in a particular locale. It has chosen to do so by virtue of Idaho Code sections 1-803 and 1-809. For better or for worse, this is a political decision that is within the legislative prerogative. Those who are familiar with the political situation in the less populated counties of Idaho are aware of the jockeying that goes on when the Supreme Court notifies the Legislature of the need for an additional judge in a particular district and suggests where the same might be chambered. The Court certainly has the ability to suggest the proposed location where the district judge is most needed, but the Legislature takes the matter from there and the counties often enter into fierce competition to

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[149 Idaho 120] have the judge housed in their county, rather than the adjoining county. County residents have a strong interest in having a judge live and work in their community and the exact location where that will occur is a political decision conferred by the Constitution upon the Legislature. While the Legislature's decision as to which district judge position will be funded and where it will be located may not always coincide with what is ideal from an administrative standpoint, it is not for the courts to second guess or circumvent such decisions.

Once a district judge is appointed to live in a particular county, the Idaho Supreme Court exercises its constitutional responsibility to administer and supervise the work of the district judge. Art. V, 2 of the Idaho Constitution provides that, "The courts shall constitute a unified and integrated judicial system for administration and supervision by the Supreme Court." As we stated in *Eismann v. Miller*, this provision "places the obligation and power to administer and supervise the judicial system of this state squarely upon the shoulders of this court." 101 Idaho at 697, 619 P.2d at 1150. The Idaho Supreme Court, being vested with power to administer and supervise the entire court system, is responsible for delineating the duties of district judges and specifying how those duties will be performed. Nothing in our constitutional system allows an individual district judge to determine, on his own, what his duties are and how they will be performed. Our constitutional system does not allow any district judge of this State to ignore specific statutory provisions by claiming them to be trumped by some undefined constitutional duty. No judge is above the law.

#### **IX. VIOLATION OF CODE OF JUDICIAL CONDUCT AS GROUNDS FOR DISCIPLINE**

The Council concluded:

That District Judge John H. Bradbury's failure to actually reside in Idaho County, is wilful and is a violation of Idaho Code of Judicial Conduct Canon 1(A) and 2(A) and pursuant to Idaho Code 1-2103, is wilful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into dispute.

Petitioner contends that a violation of the Code of Judicial Conduct cannot be a basis for discipline. He argues that grounds for discipline are limited to a violation of Idaho Code section 1-2103. That statute provides, in part, that a justice or judge may be disciplined or removed " for

wilful misconduct in office ... or conduct prejudicial to the administration of justice that brings judicial office into disrepute." This Court adopted the Code of Judicial Conduct to establish standards for ethical conduct by Idaho judges. A violation of the Code may constitute wilful misconduct in office or conduct prejudicial to the administration of justice that brings judicial office into disrepute. *Becker*, 122 Idaho at 293-94, 834 P.2d at 295-96. We point out, however, that when a petition has been filed in this Court to review the Council's determination, this Court decides whether the judge's conduct constitutes grounds for discipline.

While the Council determined that Petitioner's actions were in violation of the Code of Judicial Conduct, it recommended little in the way of disciplinary action. It did not censure the Petitioner or recommend that he be unconditionally deprived of his office. Rather, the Council adopted a no harm, no foul approach, recommending that he be suspended from acting as a district judge until he changed his place of actual residency to Idaho County. The Council recognized that no such suspension would take place unless ordered by the Court. The Council also recommended that Petitioner be required to pay the costs incurred by the Council in investigating and litigating the proceeding.

We find that it is appropriate to adopt a no harm, no foul approach in order to accomplish the objective of enforcing the legislative decision to locate Petitioner's position in Idaho County. Having determined that a common sense interpretation of "actually reside" requires that Petitioner establish and maintain his primary residence in Idaho County, we need not take the additional step of determining whether Petitioner violated the Code of Judicial Conduct. It would serve no purpose.

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[149 Idaho 121] Petitioner stated in the Council hearing and his attorney reiterated in his presentation to this Court that Petitioner would comply with this Court's determination as to where the Legislature required that he live. So long as Petitioner carries through with these representations, the matter will be satisfactorily resolved.

#### **X. THE APPROPRIATE RESOLUTION**

We hereby order that within twenty-one (21) days of the release of this opinion, Petitioner must (1) establish his primary residence in Idaho County and (2) submit to the Court an affidavit stating that he is actually residing in Idaho County and will continue to actually reside in Idaho County so long as he is required to do so by law. Upon Petitioner's compliance with this Order, we will not require that he reimburse the Council for its costs incurred in this matter. A final Order will issue upon fulfillment of these compliance terms. If compliance is not forthcoming within said 21-day period, we will revisit this Order.

Justices BURDICK and W. JONES, concur.

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KIDWELL, J. Pro Tem, dissenting in part.

Respectfully, I disagree with the majority Opinion's resolution (section X) of this matter and the analysis of the words actual residence (section VII).

Actual residence when required by a statute is more readily subjectively discussed, than objectively defined. Whether utilizing "common sense" or "clear meaning of the statute" or "intent of the drafters," it seems apparent that there must be some period of physical presence at a specific physical location. Further narrowing of the definition or historical analogies includes subjective determinations not in the record before us.

Judge Bradbury has two residences or homes in Idaho; one in Idaho County (Grangeville) and one in Nez Perce County (Lewiston). The relevant statute requires actual residence in Idaho County. However, having two or more homes in Idaho is not precluded.

It is important to note before addressing the residence issue, that neither the record presented or the majority opinion suggests any shirking of his job. On the contrary it appears that Judge Bradbury is dutifully carrying out the responsibilities to which he has been constitutionally elected.

The controversy arises here because the Judicial Council raised the question of whether the judge actually resides in Grangeville because he spends approximately one or two days a week at his home there. Judge Bradbury testified in deposition that he spends more time on the road or at his home in Lewiston than at his home in Grangeville, because of the duties and demands of traveling throughout his judicial district.

The record indicates that Judge Bradbury, upon being elected as District Judge, purchased a home in Grangeville (he had owned a ranch in the county in previous years). Subsequently he took out a homeowner's exemption and signed the requisite forms indicating his intent to make that his primary home. He also began voting from Grangeville, and he pays taxes and gets his judicial mail in Grangeville.

Based on the conflicting and limited information presented, I am unable to conclude that Judge Bradbury is in violation of Idaho's residency requirement statute. This matter should be dismissed at this time, but without prejudice to the Judicial Council's right to proceed with additional information if it decides to do so.

-----  
Notes:

[1] When questioned about the amount of time he actually resides in Idaho County, Bradbury testified as follows:



Q. But as a practical matter, you are spending less than one night per week in Grangeville unless there's a trial?A. That's true.....Q. Which, again, is less than one night per week in Grangeville, Idaho?A. It's less than one night a week up until this year where I've had at least one night a week and sometimes two, because I've had more trials.....Q. In fact, you told Mr. Hamlin that in the six months preceding that interview, that is the six months prior to the 31st of October, 2007, you had spent less than ten evenings in Grangeville.....A. I don't know if that's what I said or not. I wouldn't say that I didn't say it. It's consistent with my experience. I don't deny that.....Q. And you spend practically none of you nights there [in Idaho County].A. Not this year. This year I've spent several nights there because I've had more cases there. The workload has increased.

-----

CASE NO. CR 07-3656

2008 JAN 11 AM 11:38

CLERK OF DISTRICT COURT  
LATAH COUNTY  
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, )  
 )  
 V. )  
 )  
 LANE FRANKLIN THOMAS, )  
 DOB [REDACTED] )  
 SSN: [REDACTED] )  
 )  
 Defendant. )

Case No. CR-2007-0003656

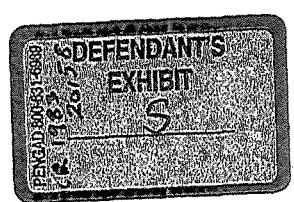
JUDGMENT OF CONVICTION AND  
ORDER RETAINING JURISDICTION  
PURSUANT TO I.C. 19-2601(4)

On the 14th day of December, 2007, the defendant, Lane Franklin Thomas, defendant's counsel, Sunil Ramalingam, and the State's attorney, Michael G. Cavanagh, appeared before this Court for pronouncement of judgment.

At that time the defendant was again advised that a Criminal Information had been filed charging the defendant with the felony offense of FLEEING OR ATTEMPTING TO ELUDE A PEACE OFFICER, Idaho Code 49-1404(2), committed on or about the 15th day of

JUDGMENT OF CONVICTION AND ORDER  
RETAINING JURISDICTION PURSUANT  
TO I.C. 19-2601(4) Page -1-

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August, 2007, and that on September 19, 2007, the defendant entered a plea of guilty to such charge which plea was accepted by the Court.

The Court, having considered the Pre-sentence Investigation Report, the evidence, if any, of circumstances in aggravation and in mitigation of punishment, the arguments of counsel and any statement of the defendant, asked the defendant if he had any legal cause to show why judgment should not be pronounced at this time to which defendant replied that there was none.

Good cause appearing,

The Court finds that the defendant, Lane Franklin Thomas, having pleaded guilty to the crime of FLEEING OR ATTEMPTING TO ELUDE A PEACE OFFICER, Idaho Code 49-1404(2), a felony, is guilty of that offense; and

**IT IS ORDERED ADJUDGED AND DECREED**, that Lane Franklin Thomas stands **CONVICTED OF RECORD** of the crime of FLEEING OR ATTEMPTING TO ELUDE A PEACE OFFICER, Idaho Code 49-1404(2), a felony, and that the defendant be committed to the custody of the Idaho State Board of Correction for a period of **THREE (3) YEARS**. Pursuant to Idaho Code 19-2513, the defendant shall serve a minimum period of confinement of not less than **EIGHTEEN (18) MONTHS**, during which the defendant shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct except for meritorious service. After that **EIGHTEEN (18) MONTHS** minimum period of confinement, the defendant shall subsequently be confined for a maximum indeterminate **JUDGMENT OF CONVICTION AND ORDER RETAINING JURISDICTION PURSUANT TO I.C. 19-2601(4)** Page -2-

CERTIFIED COPY

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period of time not to exceed **EIGHTEEN (18) MONTHS**. The defendant shall receive credit against such sentence for time served in the amount of ninety-seven (97) days. The defendant is further ordered to pay court costs the amount of \$100.50.

**FURTHER**, the Court elects to exercise its discretion pursuant to Idaho Code 19-2601(4) and retain jurisdiction over the defendant for a period of one hundred eighty (180) days from the date of this order. The defendant shall be transported to Latah County for the review hearing on May 12, 2008, at 4:00 p.m., or upon completion of programming, whichever is sooner.

**IT IS FURTHER ORDERED** that the Clerk of the Court, Latah County, deliver two (2) certified copies of the Judgment of Conviction to the Sheriff of Latah County, one to serve as a commitment of the defendant to the Idaho State Board of Correction, and that the Sheriff of Latah County shall deliver such copy to the appointed agents of the Idaho State Board of Correction when the defendant is delivered to such agents' custody.

It is recommended that the defendant participate in the New Direction program.

DATED this 11<sup>th</sup> day of January 2008, ~~December, 2007~~, *nunc pro tunc* to December 14, 2007.

  
\_\_\_\_\_  
John R. Stegner  
District Judge

JUDGMENT OF CONVICTION AND ORDER  
RETAINING JURISDICTION PURSUANT  
TO I.C. 19-2601(4) Page -3-

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CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete and correct copies of the foregoing JUDGMENT OF CONVICTION AND ORDER RETAINING JURISDICTION PURSUANT TO I.C. 19-2601(4) were served on the following in the manner indicated below:

Sunil Ramalingam  
Attorney at Law  
Latah County Courthouse  
Moscow, ID 83843

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

William W. Thompson, Jr.  
Latah County Prosecuting Attorney  
Latah County Courthouse  
Moscow, ID 83843

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

Sheriff Wayne Rausch (2 certified)  
Latah County Sheriff's Office  
Latah County Courthouse  
Moscow, ID 83843

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

Lt. Jim Loyd  
Latah County Jail  
Latah County Courthouse  
Moscow, ID 83843

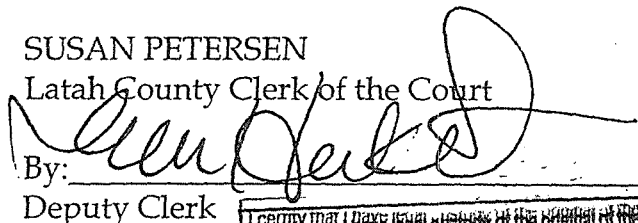
U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

Idaho DOC (certified)  
Central Records Office  
1299 North Orchard, Suite 110  
Boise, ID 83706

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

on this 11<sup>th</sup> day of January, 2008  
of December, 2007.

SUSAN PETERSEN  
Latah County Clerk of the Court

By:   
Deputy Clerk

JUDGMENT OF CONVICTION AND ORDER  
RETAINING JURISDICTION PURSUANT  
TO I.C. 19-2601(4) Page -4-

CERTIFIED COPY

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CERTIFICATE OF SERVICE FORM: Includes a box for the date (APR 24 2013) and a signature line for Susan R. Petersen, Deputy Clerk of District Court. The box contains the text: 'I certify that I have taken a true and correct copy of the original of the above record, that the above is a true and correct copy of that record and that I have a seal of office and that seal is affixed hereto.'

CASE NO. CR-07-3656

2008 MAR 18 PM 12:43

CLERK OF DISTRICT COURT  
LATAH COUNTY  
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, )

V. )

LANE FRANKLIN THOMAS, )

DOB [REDACTED] )

SSN: [REDACTED] )

Defendant. )

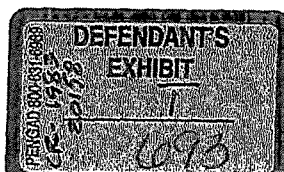
Case No. CR-2007-03656

ORDER SUSPENDING EXECUTION  
OF SENTENCE AND ORDER OF  
PROBATION

On the 29th day of February, 2008, the defendant LANE FRANKLIN THOMAS, defendant's counsel, Sunil Ramalingam, and the State's Attorney, William W. Thompson, Jr., appeared before this Court for review of retained jurisdiction.

The Court considered the submissions of the parties including C-notes from the

ORDER SUSPENDING EXECUTION  
OF SENTENCE AND ORDER  
OF PROBATION: Page -1-



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Idaho Department of Correction, any evidence of circumstances in aggravation and in mitigation, the arguments of counsel and any statement of the defendant.

Good cause appearing,

**THE COURT HEREBY ORDERS** that the remainder of the sentence imposed by this Court on December 14, 2007, be **SUSPENDED**, and that the defendant be placed on **PROBATION** to the Idaho State Board of Correction for a **PERIOD OF THREE (3) YEARS COMMENCING FEBRUARY 29, 2008**, upon the following terms and conditions:

- (1) **Laws and Cooperation:** The defendant shall respect and obey all city, county, state and federal laws and have no law violations (other than a traffic infraction as defined by the State of Idaho), and shall comply with all lawful requests of his supervising probation officer including, but not limited to, participation in the intensive supervision caseload.
- (2) **Residence:** The defendant shall not change residence without first obtaining permission from defendant's supervising probation officer.
- (3) **Reports:** The defendant shall submit a written, truthful report to defendant's supervising probation officer each and every month and shall report in person on dates and at times specified by such probation officer.
- (4) **Travel:** The defendant shall not leave Idaho or defendant's assigned

probation district of Lewis, Idaho, Clearwater, Nez Perce, and Latah counties without first obtaining written permission of defendant's supervising probation officer.

- (5) **Employment:** The defendant shall seek and maintain gainful employment and, once such employment is secured, shall not change that employment or cause it to be terminated without first obtaining written permission from defendant's supervising probation officer; or, in the alternative, if defendant chooses to pursue education in a program approved by defendant's supervising probation officer, defendant shall enroll in such a program and not change his course of study or drop out without prior written permission of such probation officer.
- (6) **Alcohol:** The defendant shall not consume or possess alcoholic beverages in any form and will not enter upon any establishment where the sale of alcohol for consumption on the premises is a primary source of income; the defendant shall submit to tests of defendant's bodily fluids for traces of alcohol at the defendant's own expense whenever requested by defendant's supervising probation officer or any agent of the Division of Probation and Parole of the Idaho State Board of Correction. The defendant shall submit to



any testing deemed necessary by the defendant's probation officer to determine if the defendant has an alcohol abuse problem. The defendant shall also submit to any counseling for alcohol abuse deemed warranted by the defendant's probation officer.

(7) **Controlled Substances:** The defendant shall not use or possess any controlled substance unless lawfully prescribed for defendant's use by a licensed physician or dentist; the defendant shall submit to tests of defendant's bodily fluids for traces of controlled substances at the defendant's own expense whenever requested by defendant's supervising probation officer or any agent of the Division of Probation and Parole of the Idaho State Board of Correction. The defendant shall submit to any testing deemed necessary by the defendant's probation officer to determine if the defendant has a substance abuse problem. The defendant shall also submit to any counseling for substance abuse deemed warranted by the defendant's probation officer.

(8) **Weapons:** The defendant shall not purchase, carry, or have in his possession any firearms or weapons.

(9) **Search:** The defendant shall submit to a search of defendant's person,

vehicle, residence, and/or property conducted in a reasonable manner and at reasonable times by any agent of the Division of Probation and Parole of the Idaho State Board of Correction in order to determine whether or not the defendant is complying with the terms and conditions of his probation.

(10) **Payments:** The defendant shall pay court costs of \$100.50 to be paid to the clerk of this Court in such reasonable installments as may be agreed to by the defendant and the defendant's probation officer. To the extent that the defendant and the defendant's probation officer are unable to reach an agreement, the court will determine a reasonable amount of payments. In any event, all such sums shall be paid in full prior to the defendant's release from probation. All payments shall be made by cash, cashier's or certified check or money order, and no personal checks will be accepted. The defendant shall also be required to pay a \$2.00 processing fee with each installment.

(11) **Costs of Probation Supervision:** The defendant will comply with Idaho Code 20-225 by paying a fee of not more than \$50.00 per month to the Idaho Department of Correction to help defray the costs of defendant's probation

supervision at such times and in such amounts as his probation officer may direct.

- (12) **Association:** The defendant shall not associate with person(s) with whom defendant's supervising probation officer directs him not to associate.
- (13) **Duration:** Probation has been ordered for a specific length of time; however, probation shall not be terminated until the Court has both reviewed the performance of the probationer and has signed an order discharging the probationer. Probation is subject to extension for non-payment of costs, fines, and restitution or for unsatisfactory performance.

PROVIDED, HOWEVER, that the defendant shall be permitted to relocate from the state of Idaho upon providing his supervising probation officer with written notice of his relocation and specifying where the defendant will be residing. Following the giving of such notice, and once the defendant physically leaves the state of Idaho, he shall automatically transfer to unsupervised probation for the remaining period of his probation or until he physically re-enters either the state of Idaho. During any period of unsupervised probation, the following terms and conditions shall apply:

- (1) **Laws and Cooperation:** The defendant shall respect and obey all city, county,


state and federal laws and have no law violations (other than a traffic infraction as defined by the State of Idaho).

- (2) **Duration:** Probation has been ordered for a specific length of time; however, probation shall not be terminated until the court has both reviewed the performance of the probationer and has signed an order discharging the probationer. Probation is subject to extension for unsatisfactory performance.
- (3) **Payments:** The defendant shall pay court costs of \$100.50 to be paid to the clerk of this Court in full prior to the defendant's release from probation. All payments shall be made by cash, cashier's or certified check or money order, and no personal checks will be accepted. The defendant shall also be required to pay a \$2.00 processing fee with each installment.
- (4) **Notification:** The defendant shall notify the Latah County Prosecuting Attorney monthly of the defendant's current residence, employment and contact information (addresses, phone numbers, etc.). Each notification must be in writing and postmarked by the first Monday of each month.

If the defendant returns to the state of Idaho for any reason, this probation shall immediately revert to supervised status on the terms and conditions outlined above and

the defendant shall immediately notify the Lewiston Office of the Department of Correction, Probation and Parole, and comply with all of their directives.

DATED this 18<sup>th</sup> day of March, 2008, <sup>GRS</sup> *nunc pro tunc* to February 29, 2008.

  
\_\_\_\_\_  
John R. Stegner  
District Judge

ORDER SUSPENDING EXECUTION  
OF SENTENCE AND ORDER  
OF PROBATION: Page -8-

CERTIFIED COPY

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CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete and correct copies of the foregoing ORDER SUSPENDING EXECUTION OF SENTENCE AND ORDER OF PROBATION were delivered to the following as indicated:

Sunil Ramalingam  
Attorney at Law  
Courthouse Mail  
Moscow, ID 83843

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

William W. Thompson, Jr.  
Latah County Prosecuting Attorney  
Latah County Courthouse  
Moscow, ID 83843

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

Latah County Sheriff's Office  
Attn: Lt. Jim Loyd, Jail  
Latah County Courthouse  
Moscow, ID 83843

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

Latah County Sheriff's Office  
Attn: Karen Johnson, Records  
Latah County Courthouse  
Moscow, ID 83843

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

Probation and Parole  
Department of Correction  
P.O. Box 1408  
Lewiston, ID 83501

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

on this 19<sup>th</sup> day of March, 2008.

SUSAN PETERSEN  
Latah County Clerk of the Court  
By: [Signature]  
Deputy Clerk

ORDER SUSPENDING EXECUTION  
OF SENTENCE AND ORDER  
OF PROBATION: Page -9-

CERTIFIED COPY

701

I certify that I have used a true and correct copy of the original of the above record, that the above is a true and correct copy of that record and that I have a seal of office and that seal is affixed hereto.

Date APR 24 2013

Susan R. Petersen  
Clerk of District Court  
Latah County, Idaho

by [Signature] Deputy

Exhibit

U- sealed per order of  
the Court

Exhibit V - sealed per  
order of the court





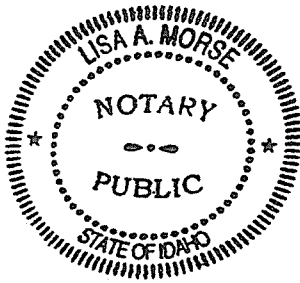
5. Trial was held in Feb.      y of 2008.
6. I believe that Mr. Hallin filed a motion for a new trial on February 27, 2008.
7. I believe that Mr. Hallin filed a Second Motion for a new trial on October 29, 2009.
8. At no time either before or after the 2008 State v. Mark Henry Lankford trial, was I aware that any payment was made by an agent of Idaho County to Lane Thomas.
9. This ends this affidavit.

Charles E. Kovis  
Charles E. Kovis

SUBSCRIBED AND SWORN to before me this 15<sup>th</sup> day of October, 2012.

[Signature]

Notary Public for Idaho  
Residing at Moscow, ID  
My commission expires 4/3/15



AFFIDAVIT OF CHARLES E. KOVIS

ORIGINAL 2



4. Prior to trial, Lane Thomas was disclosed by the State of Idaho as a possible trial witness. During trial, Mr. Thomas was called by the State of Idaho in its case-in-chief to testify against Mr. Lankford.

5. This month, I was first advised of allegations concerning payments tendered to Mr. Thomas by the State of Idaho in exchange for his cooperation in this matter. To the best of knowledge, I do not recall being advised prior/during trial of any payments to be made to Mr. Thomas by the State of Idaho. In addition, I have reviewed my notes and files pertaining to this matter and have not been able to locate anything regarding any payments to Mr. Thomas.

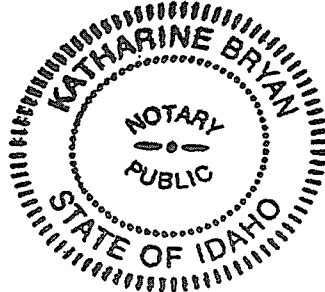
6. The reliability of Mr. Thomas' testimony was a critical concern for the defense in this matter. Prior to trial, Mr. Thomas was interviewed by Chuck Schoonover, a private investigator who assisted Mr. Kovis and I in this matter. During the interview, Mr. Thomas advised Mr. Schoonover that he had fabricated the statements he had previously made to the State's investigators concerning his knowledge of this matter. Additionally, shortly before trial, Mr. Thomas' attorney, Sunil Ramalingam, wrote a letter to the Idaho County Prosecuting Attorney stating that Mr. Thomas recanted the statements he previously made to investigators.

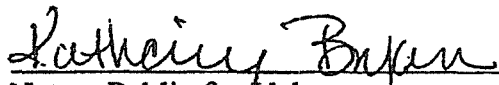
7. I was responsible for cross-examining Mr. Thomas during a trial of this matter in 2008. Had I been aware of any payment arrangements between Mr. Thomas and the State of Idaho, I would have assuredly impeached him on this matter during trial.

8. I was granted leave to withdraw as counsel of record in this matter on February 23, 2010. Had I been aware of any allegations regarding payments to Mr. Thomas prior to my withdrawal, I would have investigated the same, and if warranted, filed a motion for new trial based upon these concerns.

  
\_\_\_\_\_  
JONATHON D. HALLIN

SUBSCRIBED AND SWORN to before me this 10 day of October, 2012.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at: Coeur d'Alene  
Commission Expires: 9-2-2016

Jay Johnson  
attorney at law  
604 S. Washington Street, suite 3  
Moscow, Idaho 83843  
208 882 1357

October 11, 2012

Idaho County Auditor's Office  
attn: Records Custodian  
320 W. Main Street  
Grangeville, ID 83530  
sent by fax to 208 983 1428

Re: Check or county warrant issued to Skott Mealer, Winter or Spring of 2008  
Public records request  
Idaho Code § 9-342; access to records about a person by a person

Dear Custodian or Clerk:

I represent Mark Lankford in a pending motion hearing, in his case, CR-1983-20158. The purpose of this letter is to respectfully request that you supply a copy of an Idaho County check or warrant issued to Skott Mealer in late February, March or April of 2008. We believe the amount of the check was about \$1500, although it could be anywhere from \$500 to \$4000. It would have been an "even" amount.

I do not want any recorded information regarding wages or labor compensation to Mr. Mealer. However, if there were any checks or warrants issued to Mr. Mealer that were not for wages or compensation, I need to see copies of those.

The purpose of this request is to find out if Skott Mealer was provided funds to in turn give to a witness in this case. It is imperative that the Court understand the scope of the evidence in this case before making a final determination. I realize the statute allows for ten days for a response to this request. The hearing on this matter begins in seven days, so a faster response would be greatly appreciated. A faxed copy of the check or warrant would be great. If there is any statutorily prescribed cost for production, I will pay that.

Thank you for your time and attention to this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

  
Jay Johnson

Exhibit     D

CLAIM	<b>IDAHO COUNTY WARRANT</b> 320 WEST MAIN 208-885-2027	PAYABLE THROUGH STANDARD BANK GRANDVILLE, IDAHO 208-885-2027	CURRENT EXPENSE <b>2008-02902</b>
GRANDVILLE, IDAHO 83410		DATE 05/02/2008	AMOUNT \$1,500.00
PAY ..... ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS ..			
TO THE CREDIT OF	DEALER SCOTT SHERIFFS OFFICE	<i>Rose E. Helling</i>	
MICROFILMED			
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1 substantive testimony. If he gets -- if he gets on the  
2 stand and says I did say that this is what Mr. Lankford  
3 told me and I changed my mind about it, then it's up to  
4 the defense to impeach. And so it seems to me that how  
5 it comes in makes a difference of whether it's  
6 admissible or not, and we're not going to know that  
7 until we talk to Mr. Hathaway and find out what  
8 Mr. Thomas' intentions are.

9 MR. MACGREGOR: Your Honor, and I with Mr.  
10 Hathaway's permission, I talked to Lane Thomas last  
11 night, and he indicated to me that he intended to  
12 testify and that he wanted to testify. That he lied to  
13 their investigator because Mr. Lankford had threatened  
14 to kill him. And he's extremely scared right now.  
15 Very nervous. Is very afraid about his testimony and  
16 what kind of danger that puts his life. And -- but he  
17 wants to tell the truth, and he wants to come into  
18 court and do that.

19 THE COURT: Well, what I'm going to do, Mr.  
20 Hallin --

21 MR. HALLIN: Your Honor, I'm going to further  
22 object that the State did not provide any subsequent  
23 conversations with Mr. Thomas and his attorneys.  
24 They've never been provided to the defense. And these  
25 would be elicited in the case in chief, and they're

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1 statements of a witness and the State has known about  
2 it and substance was never provided and we haven't had  
3 a chance to investigate those or call rebuttal  
4 witnesses to rebut what Mr. Thomas may elicit today.

5 THE COURT: Well, it seems to me that -- and I'm  
6 not being really critical, but it could have been  
7 handled better by both sides in terms of being timely.  
8 Mr. Thomas has been listed as a witness for a long  
9 time -- and I'm not through. We had an in-limine  
10 motion regarding him. He was given to me, and I read  
11 his name to the jury, to the prospective jurors as one  
12 of the persons who would be testifying. I think that  
13 the fact that he was going to testify has been known  
14 for a long time. I do think that under the rules  
15 you're entitled to any exculpatory evidence they might  
16 have had and that would include a recantation by him,  
17 as indicated by Mr. Ramalingam to Mr. MacGregor. But  
18 we're not here -- I'm not here to assess what should  
19 have been done. We're here to decide where we are and  
20 whether it comes in. And I'm going to get Mr. Hathaway  
21 on the phone. He is Mr. Thomas' lawyer, and I want to  
22 hear from him. And then after I've heard from him --  
23 and the luck of getting a hold of him isn't always  
24 good, but we're going to take a short recess. And I'll  
25 see if I can get him on the phone, and I'll see what

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1 disclose that information to the defense.

2 THE COURT: Of where he'll be at?

3 MR. MACGREGOR: As far as where he'll be put,  
4 Your Honor.

5 THE COURT: I don't think it's properly  
6 discoverable. Doesn't have anything to do with the  
7 offense. I mean, the fact that -- you're entitled to  
8 know that the request has been made, and you've  
9 disclosed that. I think that's as far as it goes. No.  
10 10 is Mr. Kovis' former representation of Mr. Lane  
11 Thomas. I don't find anything in discovery rules that  
12 requires that disclosure. And I haven't found any  
13 cases that say it's ethically required.

14 MR. MACGREGOR: Your Honor, my problem with that  
15 is, if Lane Thomas testifies, he's up on the stand, Mr.  
16 Kovis is cross-examining him, Mr. Kovis has information  
17 that he got as his counsel that's confidential  
18 information, he's using -- he could use that  
19 information to cross-examine Mr. Thomas. He may not  
20 even use it, but he has knowledge of it. And he may  
21 use it in a roundabout way by not actually asking him  
22 specifically about it, but he knows probably a lot  
23 about Mr. Thomas.

24 THE COURT: He also is under an ethical  
25 obligation to confidentiality as to those offenses with

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1 Mr. Thomas, so he has professional constraints that I'm  
2 sure he'll observe.

3 MR. MACGREGOR: Well, and I think, you know, we  
4 may need to go and have some type of in-camera hearing.

5 THE COURT: Well, I'm happy to do that, but I  
6 simply tell you that I don't think that my review of  
7 the rules, and it's been a quick review, my review of  
8 the rules is that there was no obligation of Mr. Kovic  
9 to disclose his representation of the prior offenses,  
10 that is the eluding and the misdemeanor. I forgot what  
11 it was.

12 MR. MACGREGOR: Oh, I agree with that, Your  
13 Honor. The fact --

14 THE COURT: Let me finish.

15 MR. MACGREGOR: I'm sorry.

16 THE COURT: Mr. Kovic has his own professional  
17 relationship, past professional relationship, with all  
18 of the professional obligations that obtain in that  
19 relationship that he had with Mr. Thomas, and I comp  
20 him and I know he will observe those. And unless he  
21 has Mr. Lane's -- I mean, Mr. Thomas' consent not to,  
22 and if that becomes an issue I'll be happy to take it  
23 up in-camera. But I would suggest the two of you talk  
24 about that.

25 MR. KOVIS: Well, I can tell you right now, Your

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1 Honor, that I don't plan on cross-examining Mr. Thomas.  
2 I'm going to have Mr. Hallin do it, number one. And  
3 number two, I appreciate the fact that you said the  
4 rules of professional conduct apply in this case. And  
5 certainly as soon as I saw that he was disclosed,  
6 that's as far -- that's the first thing I thought of.  
7 And so, I think the rule says that if you represented  
8 somebody in the same or substantially related matter,  
9 and I don't. And quite frankly, I didn't really  
10 represent him. Somebody else in my office did. So,  
11 although technically I did, but I haven't gained any  
12 knowledge about Mr. Thomas. There's no surreptitious  
13 thing here. But Mr -- just to keep me one step away,  
14 Mr. Hallin is going to do the cross-examination.

15 MR. MACGREGOR: Your Honor, a couple of things.  
16 Number one, the defense served the State with a motion  
17 asking for just a huge amount of information on  
18 Mr. Thomas. Yet, they never informed me that Mr. Kovic  
19 had actually represented Mr. Thomas twice before.

20 THE COURT: I don't think he's required under the  
21 rule. I looked at the rules. I don't think he's  
22 required to.

23 MR. MACGREGOR: But, Your Honor, I've had -- and  
24 I guess I don't want to push this too far, because  
25 we're so close to trial, but I've had other cases where

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1 this situation has come up, and the defense attorneys  
2 have asked to be removed from the case because they  
3 feel they have a conflict of interest. That, they  
4 can't really go after the witness on the stand because  
5 they used to represent him. And that --

6 THE COURT: Mr. Kavis has said he's not going to  
7 do the questioning.

8 MR. MACGREGOR: Well --

9 THE COURT: And that he -- that he's going to  
10 observe --

11 MR. MACGREGOR: But I think the State is entitled  
12 to know, maybe that should be an in-camera hearing  
13 outside the presence of the public, of what Mr. Kavis  
14 knows and doesn't know.

15 THE COURT: I don't think Mr. Kavis is entitled  
16 to tell me. I think his confidentiality constraints  
17 preclude him from telling me or anyone else what his  
18 conversations were with Mr. Thomas.

19 MR. MACGREGOR: But, Your Honor, it's disturbing  
20 to me that he at one time represented a key state  
21 witness. Has information about him. I assume that --  
22 I don't know what he knows and doesn't know.

23 THE COURT: And you're not supposed to. And he's  
24 not supposed to use it, in this trial or any other  
25 trial, without Mr. Thomas' permission. And he's told

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1 you that he's not going to, and he's going to have Mr.  
2 Hallin do the examining. I think your concern has been  
3 addressed.

4 MR. MACGREGOR: How do we monitor that situation?  
5 There's no way to monitor what he knows and doesn't  
6 know and whether that's used against Mr. Thomas.

7 THE COURT: Well, Mr. Thomas will know. He's  
8 your witness. If there's something disclosed, he can  
9 tell you.

10 MR. MACGREGOR: Still, like I say, I don't want  
11 to push this too far because I don't want new counsel  
12 to come in.

13 THE COURT: I understand. I don't think there's  
14 much life left in the horse. I don't think that  
15 there's a problem.

16 MR. MACGREGOR: You don't see the conflict of  
17 interest of the defense --

18 THE COURT: I do not.

19 MR. MACGREGOR: -- co-counsel going after  
20 Mr. Thomas, where the other co-counsel represented  
21 Mr. Thomas?

22 THE COURT: No, because I assume that Mr. Kovic  
23 is going to observe the professional obligations that  
24 obtain, and that would be he not disclose it to  
25 anybody. And he said he's not going to. He's having

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1 Mr. Hallin doing the questioning, who won't have that  
2 knowledge. I don't see where the problem is.

3 MR. MACGREGOR: Well, one thing, Your Honor, they  
4 asked whether Mr. Thomas has ever worked as a  
5 confidential informant before, whether he's ever worked  
6 for law enforcement before. I don't know if Mr. Kovis  
7 knows that's or not.

8 THE COURT: Well, it doesn't matter. They're  
9 entitled to ask. That's legitimate discovery.

10 MR. MACGREGOR: But if he knows that, that's  
11 something I should know, so I don't have to provide it  
12 to him.

13 THE COURT: That is not how it works.

14 MR. MACGREGOR: Well, Your Honor, if he knows  
15 that, then that can't be used --

16 THE COURT: He can't tell you if he knows it. He  
17 cannot tell you if he knows it because he's not free to  
18 disclose --

19 MR. MACGREGOR: See, and that's --

20 THE COURT: He is not free to disclose to you or  
21 anybody else what Mr. Thomas has told him.

22 MR. MACGREGOR: That's the problem we have.

23 THE COURT: It is not a problem, because he can't  
24 disclose it, and he's not disclosing it.

25 MR. MACGREGOR: So, we're all supposed to trust

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1 Mr. Kovis?

2 THE COURT: Yes.

3 MR. MACGREGOR: That he doesn't cross-examine Mr.  
4 Thomas on things that he knows about?

5 THE COURT: You're supposed to trust him, and  
6 he's supposed to trust you, to follow the rules.  
7 That's exactly right.

8 MR. MACGREGOR: Well, I'm surprised at the  
9 position on that. It just seems that I have a right to  
10 know --

11 THE COURT: You do not have a right to know any  
12 confidential information that Mr. Thomas has given to  
13 his lawyer. That is fundamental to the practice of  
14 law. You do not disclose -- lawyers do not disclose  
15 information imparted to their lawyers, during a  
16 lawyer-client relationship. And Mr. Kovis is not free  
17 to disclose that to you or anybody else.

18 MR. MACGREGOR: So I have no way of knowing if  
19 Mr. Kovis is cross-examining Mr. Thomas on confidential  
20 information?

21 THE COURT: You don't have to worry about it  
22 because he isn't going to cross-examine him. He's  
23 already told you that.

24 MR. MACGREGOR: Well, but he's a co-counsel with  
25 Mr. Hallin. I assume they know everything about --

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1 MR. KOVIS: Your Honor, Mr. Hallin won't do that  
2 either. And if he wants to know what I know, ask  
3 Mr. Thomas.

4 THE COURT: Yes. Sure.

5 MR. KOVIS: Mr. Hallin won't do that either.

6 MR. MACGREGOR: Well, they've asked me for a lot  
7 of information. Just a minute. This is something, a  
8 side issue, Your Honor. They've asked me for all kinds  
9 of information regarding Mr. Thomas that is irrelevant,  
10 is burdensome, and, you know, how am I supposed to know  
11 if they already have that information or not?

12 THE COURT: It doesn't matter. Doesn't matter.  
13 He's not free to disclose that. If he disclosed that  
14 information he would be violating his ethical  
15 obligation to Mr. Thomas. He's not free to do that.  
16 He would be subject to a bar complaint if he disclosed  
17 that information to you, to Mr. Hallin, or to anybody  
18 else.

19 MR. MACGREGOR: Well, one thing I did have on  
20 that is, on the information that Mr. Kovic has  
21 requested, why can't they just talk to Mr. Thomas and  
22 find these things --

23 THE COURT: He's not entitled to do that. He's  
24 not entitled to use any information he has with  
25 Mr. Thomas.

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3 MR. MACGREGOR: No, but additional things that's  
4 he has asked for from the State.

5 THE COURT: Because he's entitled to ask for it  
6 under the rules from the State.

7 MR. MACGREGOR: So I have to go everywhere in the  
8 country and find out about --

9 THE COURT: You have to do what you can, what is  
10 reasonably required. If you think it's oppressive,  
11 then you can oppose it.

12 MR. MACGREGOR: Well, the rule says that I'm only  
13 required to provide information from what -- from the  
14 law enforcement agencies that I work with on a regular  
15 basis. That's Rule 16A of discovery, and that's all  
16 I'm going to provide him.

17 THE COURT: Well, if you think it's overly broad,  
18 you can object to it, and I can rule on it.

19 MR. MACGREGOR: And I have done that already,  
20 Your Honor, four weeks ago. So, that's another one  
21 that you'll have to rule on.

22 THE COURT: Okay.

23 MR. MACGREGOR: Okay.

24 THE COURT: Did you get that, Kara? We will go  
25 and look at the extent to which that's beyond the scope

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1 of permissible discovery. If he's going beyond  
2 permissible discovery, we will stop that.

3 MR. MACGREGOR: I just wanted a ruling on that at  
4 some point so I know what I have to disclose and what I  
5 don't. What I have to attempt to obtain.

6 THE COURT: Okay. Any more with that horse?

7 MR. MACGREGOR: No, Your Honor.

8 THE COURT: Okay. Then, as I understand it, 11  
9 is the request that prior felony charges that were  
10 dropped not be allowed to be used to impeach Robert  
11 Baldwin, the former sheriff of Idaho County. Now, the  
12 same impeachment rule will apply there. If they're  
13 charges only and only thing allowed are convictions  
14 that go to credibility. Of course, unless there's a  
15 plan or something, which isn't at play in this context.  
16 And I think those rules apply. And what he was accused  
17 of is, in my judgment, not admissible.

18 MR. MACGREGOR: Thank you, Your Honor.

19 THE COURT: Mr. Kovis?

20 MR. KOVIS: I'm fine, Your Honor.

21 THE COURT: Okay. I'm coming to yours now.

22 MR. KOVIS: Pardon?

23 THE COURT: I'm coming to yours now.

24 MR. KOVIS: Oh, okay.

25 THE COURT: And they are few. I guess I'm asking

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IDAHO COUNTY DISTRICT COURT  
AT 7:50 FILED 8 O'CLOCK P.M.  
DEC 06 2007  
JUDGE: [REDACTED]  
CLERK OF DISTRICT COURT  
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Attorneys for Defendant

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

STATE OF IDAHO,	)	Case No. CR-1983-20158
	)	
Plaintiff,	)	<b>DEFENDANT'S MOTION FOR</b>
	)	<b>DISCOVERY CONCERNING</b>
vs.	)	<b>INFORMANT</b>
	)	
MARK HENRY LANKFORD,	)	
	)	
Defendant	)	

COMES NOW the Defendant, Mark Lankford, by and through his attorneys of record and moves this Court for an order compelling disclosure of the following material and information to Counsel for the Defendant unless the State commits itself to not calling Layne Franklin Thomas to testify against defendant at any proceeding herein. All of the requested material and information relates to Layne Franklin Thomas disclosed in the State's *Eighth Response To Request for Discovery*.

Exhibit   G   **COPY**

The specific items requested herein are as follows:

1. A listing of each criminal prosecution or investigation, including title of court, docket number, investigating police agency and identifying number of police report or other law enforcement report, and name of defendant, in which Layne Franklin Thomas has provided information to any law enforcement agency or law enforcement personnel, excluding those cases in which there was never any defendant or suspect other than Layne Franklin Thomas.
2. A listing of each law enforcement agent, personnel, and agency, including but not limited to, employees of police and sheriff's agencies, district attorneys' offices, departments of justice, departments of correction, parole departments, custodial institutions and other law enforcement agencies to whom Layne Franklin Thomas ever provided any information concerning, describing, or relating to any alleged criminal activity by any person other than Layne Franklin Thomas.
3. The specific information provided by Layne Franklin Thomas to any of the persons or agencies described in request number 2, above, together with the date(s) on which Layne Franklin Thomas provided such information.
4. The custodial status of Layne Franklin Thomas at each time he communicated with any person as described in request number 2, above, including the specific reason why Layne Franklin Thomas was in custody on any such occasion if, in fact, he was in custody on such occasion. In addition, if Layne Franklin Thomas was in custody because of an arrest, a complete description of the agency or agencies who were involved in such arrest, an away, including investigation of the allegations which resulted in the arrest of Layne Franklin Thomas, the docket numbers of all police or sheriff's department reports describing the investigation or report, the charges for which Mr. Thomas was arrested, the actual police or other law enforcement reports describing such arrest, investigation, or concerning the charges for which Mr. Thomas was arrested, and the specific charges for which Mr. Thomas was arrested.
5. A complete listing of all criminal charges pending against Layne Franklin Thomas at each time he communicated with any person as described in request number 2, above, including the title of the court in which said charges were pending and the docket number of the case in which such charges were pending.
6. The probation and parole status of Layne Franklin Thomas at each and every time he communicated with any person as described in request number 2, above, identifying the conviction(s) for which he was on probation or parole, including the title of the court in which such conviction occurred and the docket number of the action in which he was convicted, and the specific offenses for which he was convicted.
7. A complete description of the final disposition of any and all criminal charges, arrests, custody status, probationary status, and parole.

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Defendant's Motion for Discovery Concerning Informant

Page 2

status described in request numbers 4, 5, and 6, above.

8. Any and all promises, payments, benefits, rewards, or other consideration offered or given to or for Layne Franklin Thomas by any law enforcement agent or employee, including but not limited to employees of police and sheriff's agencies, district attorneys' offices, departments of justice, departments of correction, parole departments, custodial institutions and other law enforcement agencies, in exchange for any information provided by or sought from Layne Franklin Thomas as described in request number 2, above.

9. Any arrest ever suffered by Layne Franklin Thomas, including juvenile arrests; any misdemeanor or felony conviction ever suffered by Mr. Thomas; and any pending charges, any pending parole or probation, either at the time of the alleged offense or at any time during the pendency of the instant prosecution against defendant herein, and

10. Whether Layne Franklin Thomas ever had or required any psychiatric or psychological treatment and, if so, then a description of:

- (a) When and where the treatment occurred;
- (b) The exact nature of the condition treated;
- (c) Whether Mr. Thomas has ever been admitted to a hospital for mental health treatment and, if so, when and where, the diagnosis and prognosis; and
- (d) Whether Mr. Thomas is currently receiving mental health treatment and, if so, the nature of such treatment and the nature of the condition being treated.

This motion for discovery is based on the court records and files herein; the independent state and federal constitutional guarantees to due process of law, confrontation and cross-examination of adverse witnesses, the ability to present affirmative evidence in one's defense, the assistance of counsel, the privilege against self-incrimination; Article I, sections 6, 7 and 13 of the Idaho Constitution and the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

#### STATEMENT OF FACTS:

During the months of October and November 2007, Layne Franklin Thomas was a cellmate of the Defendant Mark Lankford. During the time they were housed together, Mr. Thomas claims that Mr. Lankford made several statements to him. Mr. Thomas relayed those

alleged statements to visitors he had at the jail and then, later, to Idaho County Sheriff's Detectives Skott Mealer and Joan Renshaw.

**ARGUMENT:**

In *Brady v. Maryland* (1963) 373 U.S. 83, 87, the United States Supreme Court held that due process forbids a prosecutor from suppressing "evidence favorable to an accused upon request where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (See, also, *Giglio v. United States* (1972) 405 U.S. 150, 164; *United States v. McCrane* (3d Cir. 1975) 527 F.2d 906, *aff'd after remand*, (3d Cir. 1976) 547 F.2d 205.) The United States Supreme Court has also emphasized that impeachment evidence, as well as exculpatory evidence, falls within the *Brady* rule. (*United States v. Bagley* (1985) 87 L.Ed.2d 481, 490.) Such evidence, if disclosed and used effectively, may be the difference between conviction and acquittal. (See *Napue v. Illinois* (1959) 360 U.S. 264: "The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.")

In acknowledging that the prosecution has a duty to disclose any favorable evidence that could be used at trial, it is frequently overlooked that the prosecution also has a duty to disclose any favorable evidence that could be used "in obtaining further evidence." (*Giles v. Maryland* (1967) 386 U.S. 66, 74.) Additionally, favorable evidence need not be competent evidence or evidence admissible at trial. (*United States v. Gleason* (S.D.N.Y. 1967) 265 F. Supp. 850, 886; *Sellers v. Estelle* (5th Cir. 1981) 651 F.2d 1074, 1077, fn. 6 (evidence suppressed was material to the preparation of petitioner's defense, regardless whether it was intended to be admitted into evidence).)

As observed by the California Supreme Court in *People v. Morris* (1988) 46 Cal.3d 1: It is well settled that the prosecution has a duty to disclose all substantial material evidence favorable to an accused. [Citations omitted.] That duty exists regardless of whether there has been a request for such evidence [citation omitted] and irrespective of whether the suppression was intentional or inadvertent. [Citation

omitted.] As the United States Supreme Court in the seminal case of *Brady v. Maryland* (1963) 373 U.S. 83, 87 [10 L.Ed.2d 215, 218-219, 83 S.Ct. 1194], succinctly stated: “[T]he suppression by the prosecution of evidence favorable to an accused . . . violates due process . . . irrespective of the good faith or bad faith of the prosecution. . . . [T]he duty to disclose evidence favorable to the accused extends not only to the substance of the testimony of a material witness, but also to any exculpatory or impeaching evidence.” [Citation omitted.] [C]al. 3d 291, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.] The suppression of substantial material evidence bearing on the credibility of a key prosecution witness is a denial of due process. . . . [Citation omitted.] [¶] The duty to disclose evidence bearing on the credibility of a prosecution witness manifestly includes any promises or inducements that have been made to obtain the witness’s testimony. As we recently explained in *People v. Phillips*, [(1985)] 41 Cal.3d [29,] 40: “[s]ince a witness’s credibility depends heavily on his motive for testifying, the prosecution must disclose to the defense and jury any inducements made to a prosecution witness to testify and must also correct any false or misleading testimony by the witness relating to any inducements.”

(Emphasis supplied by the court.)

Thus, it is well settled that the constitutional guarantees to due process of law require disclosure of evidence which reflects on the credibility of a prosecution witness; *a fortiori*, evidence which may demonstrate that the entire testimony of a prosecution witness is inadmissible because it was obtained in violation of defendant’s constitutional rights must also be disclosed to defendant. It is also clear that the federal due process clause requires the prosecution to disclose the witness’s history of being an informant in other cases; “his history of misconduct while acting as an informant”, including the negative opinions of his credibility held by the law enforcement officers who worked with the informant in previous cases; and any benefits or inducements provided to the informant. (*Benn v. Lambert* (9<sup>th</sup> Cir. 2002) 283 F.3d 1040, cert. den. 2002 U. S. Lexis 7363.

Mr. Thomas’s history as an informant is relevant and crucial to a determination of whether or not any statements he purportedly elicited from defendant are admissible or must be excluded as having been obtained in violation of defendant’s constitutional rights. In addition, Mr. Thomas’s history as an informant is important in order to assess his motivation for claiming that defendant allegedly made certain statements to him and to evaluate the credibility of any potential testimony by Mr. Thomas concerning defendant’s purported statements. “[W]hen the “reliability of a given witness may well be determinative of guilt or innocence,” nondisclosure of

evidence affecting credibility" may violate the federal constitutional guarantee to due process of law. *Giglio v. United States* (1972) 405 U.S. 150, 154 [31 L.Ed.2d 104, 108, 92 S.Ct. 763].) Therefore, disclosure of Mr. Thomas's history as an informant and as an incarcerated criminal is required.

Defendant recognizes that the Idaho County Prosecuting attorney may claim that he does not have personal knowledge of the information sought by the instant motion for discovery, or that such information may not be in the physical possession of the Idaho County Prosecuting Attorney. However, courts long have interpreted the prosecutorial obligation to disclose relevant materials in the possession of the prosecution to include information "within the possession or control of the prosecution." (*In re Littlefield* (1993) 5 Cal.4th 122, 135.) It is well settled "that materials discoverable by the defense include information in the possession of all agencies (to which the prosecution has access) that are part of the criminal justice system, and not solely information "in the hands of the prosecutor." (*Ibid.*) Information that must be disclosed by the prosecution includes information that is "readily available" to the prosecution and not accessible to the defense." (*Ibid.*)

The United States Supreme Court has never precisely pinpointed the time at which the disclosure under *Brady* must be made. It is abundantly clear, however, that disclosure by the prosecution "must be made at such a time as to allow the defense to use favorable material effectively in the preparation and presentation of its case, even if satisfaction of this criteria requires pre-trial disclosure." (*United States v. Pollock* (D.C. 1976) 534 F.2d 964, 973. Accord *United States v. Presser* (6th Cir. 1988) 844 F.2d 1275, 1283.) Manifestly a more lenient disclosure burden on the government would drain *Brady* of all vitality. (*United States v. Elmore* (5th Cir. 1970) 423 F.2d 775, 779.)

The disclosures requested herein should be made at least 30 days prior to trial so that appropriate defense preparation can be made. Failure of the prosecution to provide such information will deny defendant the opportunity to adequately prepare for trial which would constitute a denial of due process and effective assistance of counsel, and violate defendant's




rights to a fair trial, confrontation of adverse witnesses, and presentation of affirmative evidence in his defense.

**CONCLUSION:**

For all of the foregoing reasons, defendant must be provided with the discovery requested herein, unless the prosecution commits itself to not calling Layne Franklin Thomas as a witness at any stage of the proceedings against defendant.


DATED this 6<sup>th</sup> day of December 2007.

  
\_\_\_\_\_  
CHARLES E. KOVIS  
An Attorney for Mark H. Lankford

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of December, 2007, a true and correct copy of the foregoing instrument was hand delivered via courthouse basket to:

KIRK A. HANCOCK  
DEPUTY COUNTY PROSECUTOR  
410 W. MAIN  
P.O. BOX 452  
GRANDEVILLE, ID 83530

By   
\_\_\_\_\_  
Charles E. Kovis



1 an informant for them in any way whatsoever. This information that was discovered by the State was  
2 simply discovered by "luck".

3 Under Idaho Criminal Rule 16(b)(6) the State is required to disclose all State witnesses and the  
4 address along with any record of prior felony convictions. The State is also required to provide the  
5 statements made by the prosecution witnesses to the prosecuting attorney or the prosecuting attorney's  
6 agents. The State has complied with Idaho Criminal Rule 16(b)(6) by providing Lane F. Thomas as  
7 witness and providing copies of statements that he made to agents of the prosecuting attorney's office  
8 The State also will be providing a copy of Lane F. Thomas' entire criminal record.

9 Idaho Criminal Rule 16(a) also requires the State to disclose any exculpatory information in their  
10 possession or control. The prosecuting attorney's obligations under this paragraph extend to, "material  
11 and information in the possession or control of members of prosecuting attorney staff and of any others  
12 who have participated in the investigation or evaluation of the case who either regularly report or with  
13 reference to the particular case have reported to the office of the prosecuting attorney." The defendant  
14 has inquired whether Lane F. Thomas has worked as an informant for any law enforcement agency or  
15 law enforcement personnel. This is outside the scope of the Idaho Discovery Rules. The State in this  
16 case is required to contact the Idaho County Sheriff's office and the Grangeville Police Department who  
17 are agencies that the prosecuting attorney has worked with on a regular basis, to determine whether  
18 Lane F. Thomas has worked as an informant or provided information to them. The State also is making  
19 inquiry of the Latah County Prosecutor's office and Sheriff's Office regarding Lane F. Thomas and their  
20 knowledge as to whether Lane F. Thomas has worked as a confidential informant or provided  
21 information to law enforcement. However, anything beyond those inquiries the State believes is not  
22 required under Idaho Criminal Rule 16. As the Court knows the defense was given the services of a  
23 private investigator in this case. The private investigator certainly can contact Lane F. Thomas to  
24 discuss issues which the defendant is attempting to discover. In addition said investigator can contact  
25 any prosecutor's office in the Northwest for that matter. He also can contact any law enforcement  
26 agency regarding Lane F. Thomas. The State is not required to go on "wild goose chases" and spend  
27 its time prior to trial chasing information down on Lane F. Thomas. The State certainly intends to  
28 comply with Rule 16, but beyond that compliance the defendant certainly has the means with the

RESPONSE TO DEFENDANT'S MOTION  
FOR DISCOVERY CONCERNING INFORMANT - 2

1 services of a private investigator to track down certain information.

2 The defense in this case has not shown, or even argued, any undue hardship required for cou  
3 ordered discovery under Idaho Criminal Rule 16(b)(9). In other words the defense has not eve  
4 attempted to obtain this information themselves. Really, all they have done is make a bare, vagu  
5 allegation that the requested information is needed to prepare. This is not a showing of substantial nee  
6 under Idaho Criminal Rule 16(b)(9). How, for example, are misdemeanor and juvenile conviction  
7 necessary for preparation of their case. In addition, *State v. Pierce* makes it very clear and has been th  
8 law in the State of Idaho for substantial time that misdemeanor convictions can not be used fo  
9 impeachment purposes of any witness. Idaho Criminal Rule 16 and United States Supreme Court case:  
10 of *Strickler v. Greene*, 527 US 263 and *Kyles v. Whitley*, 514 US 419, indicate how extensive the State  
11 has to look for exculpatory evidence. It does not include every law enforcement agency or every  
12 prosecutor's office in the country. Idaho Criminal Rule 16(a) is consistent with the United States  
13 Supreme Court decisions. In *Strickler*, the Court held, "In order to comply with *Brady*, therefore, the  
14 individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the  
15 governments behalf in this case, including the police." And, in *Kyles v. Whitely*, the Court held, "On  
16 the one side, showing that the prosecuting knew of an item of favorable evidence unknown to the  
17 defense does not amount to a *Brady* violation without more. But the prosecution, which alone can know  
18 what is undisclosed, must be assigned the consequent responsibility to gauge the likely net effect of all  
19 such evidence and make disclosure when the point of 'reasonable probability' is reached. This in turn  
20 means that the individual prosecutor has a duty to learn of any favorable evidence known to the others  
21 acting on the government's behalf in the case, including the police."

22 The defendant relies heavily on *In re Littlefield*, 1993 (5 Cal. 4<sup>th</sup> 122, 135) However the  
23 *Littlefield* case was a California court deciding a question under a new California law. The quotation  
24 cited by the defendant was only dicta. The case was about whether a defense attorney could be held in  
25 contempt for failure to comply with discovery. In any event, to the extent *Littlefield* implies that an  
26 Idaho prosecutor is held to a different standard than Idaho Criminal Rule 16 and the US Supreme Court  
27 opinions it is simply not true. The defendant also failed to cite the following portions of *Littlefield*:  
28 "We find no basis for petitioner's assumption that by designating discoverable information under

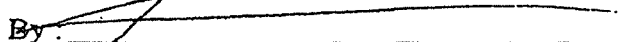
RESPONSE TO DEFENDANT'S MOTION  
FOR DISCOVERY CONCERNING INFORMANT - 3

1 Section 1054.1 as that 'in the possession of' the prosecution or its investigating agencies, Propositio  
2 115 was intended to abrogate this prior rule, precluding the prosecuting from withholding informatic  
3 that is 'reasonably accessible' to it, such as the address of a witness that readily could be obtaine  
4 through request of the witness. Rather the more likely purpose of including such language in the statuti  
5 was simply to clarify and confirm that the prosecution has no general duty to seek out, obtain an  
6 disclose all evidence that might be beneficial to the defense. (See *In re Koehne* [1960] 54 Cal. 2d 75  
7 759 [8 Cal. Rptr. 435] ['The law does not impose upon law enforcement agencies the requirement tha  
8 they take the initiative, or even any affirmative action in procuring the evidence deemed necessary to  
9 the defense of an accused.']) *People v. Hogan* (1982) 31 Cal. 815, 851 (183 Cal. Rptr. 817). [There i  
10 no general duty on the part of the police or the prosecution to obtain evidence, conduct any tests o  
11 gather up everything which might eventually prove useful to the defense.]"

12 Therefore, based upon the above the State intends to respond as outlined previously in this  
13 response.

14 DATED this 12 day of DEC., 2007.

15 IDAHO COUNTY PROSECUTING  
16 ATTORNEY'S OFFICE

17 By   
18 KIRK A. MACGREGOR, ISB #3880  
19 Idaho County Prosecuting Attorney

CERTIFICATE OF SERVICE

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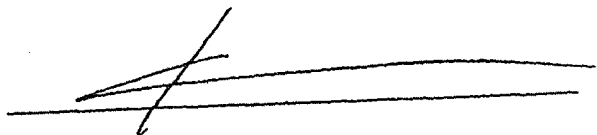
The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the following person(s) in the manner indicated below on the 12 day of December 2007:

Chuck Kovis  
Attorney at Law  
PO Box 9292  
Moscow, ID 83843  
FAX #: 208-882-5379

Courthouse Tray  
 Hand Delivered  
 US Mail  
 Fax

Todd Wilcox  
Jonathon Hallin  
WILCOX & HALLIN  
FAX #208-634-5880  
Attorneys at Law  
PO Box 947  
McCall, ID 83638

Courthouse Tray  
 Hand Delivered  
 US Mail  
 Fax



RESPONSE TO DEFENDANT'S MOTION  
FOR DISCOVERY CONCERNING INFORMANT - 5

JAN -7 2008

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

ROSE E. GEHRING  
DEPUTY

STATE of IDAHO ,

Plaintiffs,

v.

MARK HENRY LANKFORD,

Defendants.

Case No.: CR: 83-20158

MEMORANDUM DECISION AND ORDER

This case comes before on Mr. Lankford's motion to compel discovery concerning Lane Franklin Thomas, unless the State commits to not calling him as a witness.

I. BACKGROUND

Mr. Thomas was a cellmate with Mark Lankford during the months of October and November 2007. The Latah County Sheriff's Office recorded a conversation Mr. Thomas had with his girlfriend in which he shared information regarding confessions allegedly made by Mark Lankford during their time together as cellmates. Mr. Thomas was subsequently interviewed by State Prosecutor, Kirk MacGregor, and Idaho County Detective Skott Mealer regarding these alleged confessions by Mark Lankford. Mark Lankford now moves to compel the following discovery regarding Mr. Thomas:

1. A listing of each criminal prosecution or investigation, including title of court, docket number, investigating police agency and identifying number of police report or other law enforcement report, and name of defendant, in which Layne Franklin Thomas has provided information to any law enforcement agency or law enforcement personnel, excluding those cases in which there was never any defendant or suspect other than Layne Franklin Thomas.

Decision and Order I

Exhibit I

2. A listing of each law enforcement agent, personnel, and agency, including but not limited to employees of police and sheriff's agencies district attorneys' offices, departments of justice, departments of correction, parole departments, custodial institutions and other law enforcement agencies, to whom Layne Franklin Thomas ever provided any information concerning, describing, or relating to any alleged criminal activity by any person other than Layne Franklin Thomas.
3. The specific information provided by Layne Franklin Thomas to any of the persons or agencies described in request number 2, above, together with the date(s) on which Layne Franklin Thomas provided such information.
4. The custodial status of Layne Franklin Thomas at each time he communicated with any person as described in request number 2, above, including the specific reason why Layne Franklin Thomas was in custody on any such occasion if, in fact, he was in custody on such occasion. In addition, if Layne Franklin Thomas was in custody because of an arrest, a complete description of the agency or agencies who were involved in such arrest in any way, including investigation of the allegations which resulted in the arrest of Layne Franklin Thomas; the report numbers of all police or other law enforcement reports describing such arrest, investigation or concerning the charges for which Mr. Thomas was arrested; the actual police or other law enforcement reports describing such arrest, investigation, or concerning the charges for which Mr. Thomas was arrested; and the specific charges for which Mr. Thomas was arrested.
5. A complete listing of all criminal charges pending against Layne Franklin Thomas at each time he communicated with any person as described in request number 2, above.

Decision and Order 2



including the title of the court in which said charges were pending and the docket number of the case in which such charges were pending.

6. The probation and parole status of Layne Franklin Thomas at each and every time he communicated with any person as described in request number 2, above, identifying the conviction(s) for which he was on probation or parole, including the title of the court in which such conviction occurred and the docket number of the action in which he was convicted, and the specific offenses as to which he was convicted.
7. A complete description of the final disposition of any and all criminal charges, arrests, custody status, probationary status, and parole status described in request number 4, 5, and 6 above.
8. Any and all promises, benefits, inducements, rewards, or other consideration offered, discussed with or provided to Layne Franklin Thomas by any law enforcement agent or employee, including but not limited to employees of police and sheriff's agencies, district attorneys' offices, departments of justice, departments of correction, parole departments, custodial institutions and other law enforcement agencies, in exchange for any information provided by or sought from Layne Franklin Thomas as described in request number 2, above.
9. Any arrest ever suffered by Layne Franklin Thomas, including juvenile arrests; any misdemeanor or felony conviction ever suffered by Mr. Thomas; and any pending charges, any pending parole or probation, either at the time of the alleged offense or at any time during the pendency of the instant prosecution against defendant herein, and
10. Whether Layne Franklin Thomas ever had or required and psychiatric or psychological treatment and, if so, then a description of:

- a) When and where the treatment occurred
- b) The exact nature of the condition treated;
- c) Whether Mr. Thomas has ever been admitted to a hospital for mental health treatment, and, if so, when and where, the diagnosis and prognosis; and
- d) Whether Mr. Thomas is currently receiving mental health treatment and, if so, the nature of such treatment and the nature of the condition being treated.

Although the state has responded to several of these discovery requests it filed a brief on December 12, 2007, claiming that Mr. Lankford's requests were, in part, "extremely extensive and burdensome." *Response to Defendant's Motion for Discovery Concerning Informant 1*. The state explained that much of the information requested extended beyond the scope of discoverable material as described in Idaho Criminal Rule 16. The issue I must decide, therefore, is whether the State is excused from or compelled to respond to the allegedly extensive or burdensome discovery requests made by Mr. Lankford regarding Mr. Thomas.

## II. DISCUSSION

The discovery obligation of the State in criminal matters is established by Idaho Criminal Rule 16. Under this rule the State is automatically required to disclose "any material . . . which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefore." Idaho Criminal Rule 16(a). This applies to information possessed or controlled by members of the prosecuting attorney's staff or by those who report to the prosecuting attorney's office either regularly or in reference to the particular case. The State is also obliged under Idaho Criminal Rule 16(b)(6) to provide the defendant, upon request, the name and address of all State witnesses, a record of their prior felony convictions, as well as their statements to the prosecuting office or their agents. Finally Idaho Criminal Rule 16(b)(6)

allows a defendant to request any information substantially needed in the preparation of the defendant's case.

The State contends that Mr. Lankford's request for information involving any law enforcement agent, personnel, and agency, including but not limited to employees of police and sheriffs' agencies, district attorneys' offices, departments of justice, departments of correction, parole departments, custodial institution and other law enforcement agencies, extends beyond the proper scope of discovery. *Response to Defendant's Motion for Discovery Regarding Informant*, 2. It contends that it is required to disclose only that information held by its office and the agencies that have reported to it regularly or in regards to Mr. Lankford's case, which include the Idaho County Sheriff's office and Grangeville Police Department, the Latah County Prosecutor's office and the Latah County Sheriff's Office.

Rule 16(a) by its own language, clearly limits the scope of the State's discovery obligation to that information possessed or controlled by the prosecution office itself or by those agencies that report to it, either regularly or in regards to the particular case. This limit to the State's discovery obligation is well-recognized and established in the case law. *See e.g. Strickler v. Greene*, 527 U.S. 263, 281 (1999) (holding that "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police.") (quoting *Kyles v. Whitley*, 514 U.S. 419, 437 (1995)) (emphasis added)).

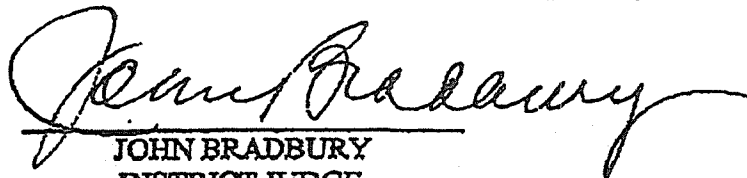
The State is not obligated to search every law enforcement agency or every prosecutor's office in the country for the information Mr. Lankford requested regarding Mr. Thomas. Rather, the State is obliged to disclose only that requested information which is held by its office and the agencies that have reported to it either directly or in regards to Mr. Lankford's case, which the

State has identified to be the Idaho County Sheriff's Office, the Grangeville Police Department, the Latah County Prosecutor's Office, and the Latah County Sheriff's Department.

III. ORDER

The State is compelled to answer all Mr. Lankford's discovery requests to the extent such information is held by itself or by others working on its behalf, including law enforcement other agencies that report to the Idaho County Prosecuting Attorney's Office either regularly or in regards to Mr. Lankford's case.

It is so ORDERED, this the 7<sup>th</sup> day of January, 2008

  
JOHN BRADBURY  
DISTRICT JUDGE

**SUNIL RAMALINGAM**

Attorney at Law  
P.O. Box 9109  
Moscow, ID 83843  
(208) 892-0387  
Fax: (208) 892-0397

January 25, 2008

Kirk MacGregor  
Idaho County Prosecuting Attorney  
P.O. Box 463  
Grangeville, ID 83530

RE: Lane Thomas

Dear Kirk,

I am writing to follow up on our telephone conversation a couple of weeks ago. You indicated to me at that time you intended on calling my client Lane Thomas to the stand in *State v. Lankford*. Lane is currently at North Idaho Correctional Institution in Cottonwood, Judge Stegner having retained jurisdiction in Lane's Latah County case.

Lane called me from Cottonwood after he was subpoenaed. I believe he had met with his prison counselor prior to calling me, and was in the presence of two Idaho Department of Corrections employees at the time of the call. He told me that Mark Lankford had not confessed anything to him, and that he had made up a story in order to try and get a deal out of the Latah County Prosecutor. He told me he did not want to persist in this lie, and could not truthfully testify in a manner consistent with what he told your investigator. He asked me to call you to see if you would release him from his subpoena, since he had admitted his original story was not true. I did call on his behalf as noted above, and was not able to dissuade you from calling Lane.

Subsequently Lane has informed me that he saw a document written by Lankford's brother containing details of the crime, and this is where he got the information he relayed to your investigator. He repeated that Mark Lankford did not confess to him that he had committed the murders.

Based on what he has told me, it appears that Lane cannot truthfully testify that Lankford confessed to him. If forced he would instead have to testify that he made up a story in order to try to avoid receiving a retained jurisdiction at his sentencing. Of course he has a Fifth Amendment right not to testify at all, as he has the right to remain silent rather than testify that he violated I.C. 18-705 by providing false information to an officer.

It is my understanding based on our phone conversation that should Lane refuse to testify at trial you will ask that he be held in contempt. However, he cannot be forced to commit perjury and he has now stated to me in front of two Department of Corrections employees that he

Exhibit 5

lied when he said Lankford had confessed to him. He also cannot be forced to testify that he lied to the investigator as he has the right to avail himself of his constitutional right to remain silent.

Therefore I am asking that you reconsider your decision to call Lane. If you do call him as a witness, I believe he should be appointed counsel to assist him with the decisions he must make.

Yours Truly,



Sunil Ramalingam

sr/me

cc: Charles Kovic

1 As I understand, I guess, this is an interview by the  
2 private investigator?

3 THE COURT: I guess the question -- the first  
4 question, I guess, was: Did you provide a copy of Mr.  
5 Ramalingam's letter to you to the defense?

6 MR. MACGREGOR: I don't think I did, Your Honor.  
7 What I was -- what I was told -- I actually went and  
8 met with Skott Mealer. Skott Mealer had met with Lane  
9 Thomas. Lane Thomas -- this is what we wanted to  
10 discuss with you -- he said that he changed his story  
11 because he was threatened by Mr. Lankford, his life was  
12 threatened. That Mr. Lankford threatened to kill him  
13 over the fact that he was going to testify as a witness  
14 against him. And I explained that to Mr. Ramalingam --  
15 is how I'm going to say it. I can't say it any other  
16 way -- and Mr. Ramalingam didn't really seem to be too  
17 interested in that explanation. But I asked him to  
18 talk to his client and explore that possibility, which  
19 apparently he did 10 days ago, 12 days ago, and then  
20 got back with me and said, you may be right, I didn't  
21 consider that. I may have jumped to conclusions here,  
22 but I want to protect -- I think -- I think Lane Thomas  
23 should be protected. And so, I would ask you to ask  
24 the Court for an attorney to be appointed for him,  
25 which I did on Tuesday morning. Apparently they're

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kkreport@mtida.net

Todd J. Wilcox  
Jonathon D. Hallin

Law Offices of  
**WILCOX & HALLIN, PLLC**  
200 Park Street  
P.O. Box 947  
McCall, Idaho 83638

Telephone: (208) 634-7118  
Facsimile: (208) 634-5880

February 8, 2008

*VIA HAND DELIVERY*

Kirk A. MacGregor  
Idaho County Prosecuting Attorney  
P.O. Box 463  
Grangeville, Idaho 83530

RE: State of Idaho v. Mark Henry Lankford, Idaho County Case No. CR-1983-20158  
Lane Thomas

Dear Kirk:

The purpose of writing this letter is to advise you of the existence of a recorded conversation between Mr. Lane Thomas and our private investigator, Mr. Chuck Schoonover. During the conversation recorded at the Latah County Jail on December 19, 2007, Mr. Thomas makes a complete recantation of all statements previously made to Ms. Debra Tanner, and Officers Skott Mealer and Joan Renshaw. The entire conversation was recorded and subsequently transcribed.

In the event that you introduce Mr. Thomas as a witness, I will seek to publish the entire taped conversation as impeachment evidence of anything that Mr. Thomas may testify to. Further, I will seek to admit the previous letter submitted by Mr. Sunil Ramalingam as substantive evidence. To assist your decision, I am hereby providing you a copy of the transcript of the conversation that I received Wednesday evening.

I have purposely refrained from advising you of the existence of the recorded recantation as I did not reasonably believe that you intended to sponsor Mr. Thomas as a witness. As you are aware, it was not until February 7, 2008 that Mr. Kovic or myself were advised of your intent to call Mr. Thomas as a witness on Friday, February 8, 2008. As the tape would only be used for rebuttal purposes, the disclosure requirements of I.C.R. do not apply. See *State v. Olsen*, 103 Idaho 278, 281 (1982).

Given Mr. Thomas multiple recantations, I am at a loss of what you hope to gain by his testimony. For the sake of argument, I acknowledge that the State may impeach its own witnesses. Assuming Mr. Thomas refuses to testify or states he previously lied, there would be nothing substantive to gain by his testimony. Eliciting such would do nothing more than confuse the issues and taint the Jury with otherwise inadmissible evidence. See *Bench Brief Re: Lane F. Thomas*, dated February 8, 2008.

Exhibit     L



I am further concerned by reports that I have received concerning a recent meeting between yourself, Skott Mealer, and Lane Thomas at the North Idaho Correctional Institution. I have been advised that during such meeting, Mr. Thomas confirmed that that he previously lied to Ms. Tanner, and Officers Mealer and Renshaw. It is my understanding that Mr. Thomas reiterated his unconditional desire to avoid any further involvement in this matter. If there is any veracity to this report, this is clearly exculpatory information, the substance of which has never been disclosed or made known to the defense.

I have given all of the foregoing matters great thought and consulted with other members of the Bar to maintain a certain level of objectivity. After analyzing the issues from multiple approaches and perspectives, I am left with one conclusion; the State's intended use of Mr. Thomas begs the appearance of suborning perjury, or the attempt thereof. See Idaho Code § 18-5410. Consequently, the State of Idaho is hereby on notice that in the event Mr. Thomas is called as a witness at a trial of this matter, the defense will deal with such a situation accordingly.

Sincerely,

JSI

JONATHON D. HALLIN

cc: Hon. John Bradbury, District Judge  
Sunil Ramalingam, Attorney at Law, *via facsimile*  
Jack Hathaway, Attorney at Law, *via facsimile*  
client

1 substantive testimony. If he gets -- if he gets on the  
2 stand and says I did say that this is what Mr. Lankford  
3 told me and I changed my mind about it, then it's up to  
4 the defense to impeach. And so it seems to me that how  
5 it comes in makes a difference of whether it's  
6 admissible or not, and we're not going to know that  
7 until we talk to Mr. Hathaway and find out what  
8 Mr. Thomas' intentions are.

9 MR. MACGREGOR: Your Honor, and I with Mr.  
10 Hathaway's permission, I talked to Lane Thomas last  
11 night, and he indicated to me that he intended to  
12 testify and that he wanted to testify. That he lied to  
13 their investigator because Mr. Lankford had threatened  
14 to kill him. And he's extremely scared right now.  
15 Very nervous. Is very afraid about his testimony and  
16 what kind of danger that puts his life. And -- but he  
17 wants to tell the truth, and he wants to come into  
18 court and do that.

19 THE COURT: Well, what I'm going to do, Mr.  
20 Hallin --

21 MR. HALLIN: Your Honor, I'm going to further  
22 object that the State did not provide any subsequent  
23 conversations with Mr. Thomas and his attorneys.  
24 They've never been provided to the defense. And these  
25 would be elicited in the case in chief, and they're

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1 statements of a witness and the State has known about  
2 it and substance was never provided and we haven't had  
3 a chance to investigate those or call rebuttal  
4 witnesses to rebut what Mr. Thomas may elicit today.

5 THE COURT: Well, it seems to me that -- and I'm  
6 not being really critical, but it could have been  
7 handled better by both sides in terms of being timely.  
8 Mr. Thomas has been listed as a witness for a long  
9 time -- and I'm not through. We had an in-limine  
10 motion regarding him. He was given to me, and I read  
11 his name to the jury, to the prospective jurors as one  
12 of the persons who would be testifying. I think that  
13 the fact that he was going to testify has been known  
14 for a long time. I do think that under the rules  
15 you're entitled to any exculpatory evidence they might  
16 have had and that would include a recantation by him,  
17 as indicated by Mr. Ramalingam to Mr. MacGregor. But  
18 we're not here -- I'm not here to assess what should  
19 have been done. We're here to decide where we are and  
20 whether it comes in. And I'm going to get Mr. Hathaway  
21 on the phone. He is Mr. Thomas' lawyer, and I want to  
22 hear from him. And then after I've heard from him --  
23 and the luck of getting a hold of him isn't always  
24 good, but we're going to take a short recess. And I'll  
25 see if I can get him on the phone, and I'll see what

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1 State to be leading him, did he tell you that, what did  
2 he say?

3 THE COURT: Did Mr -- I'm not --

4 MR. KOVIS: Okay, I understand.

5 THE COURT: I'm not framing the question, but did  
6 Mr. Lankford tell you anything about the offense for  
7 which he has been charged. Then he can answer either  
8 yeah, he did or he didn't.

9 MR. KOVIS: Okay, Your Honor.

10 THE COURT: I think that's admissible.

11 MR. KOVIS: I just get emotional about this, and  
12 it's Mr. Hallin's thing, because I'm not involved.

13 THE COURT: And you should be, and there's -- I  
14 expect advocates to be passionate both in their defense  
15 and the prosecution. I have been there. I understand  
16 that. But that's where we are. I guess the question  
17 is now the order of proof. Is there anybody that we  
18 can get -- who did you expect to have after this  
19 witness and Mr. Thomas, because I would like to hear  
20 from Mr. Hathaway first.

21 MR. MACGREGOR: Bryan Lankford, Your Honor.

22 THE COURT: Well, is he available?

23 MR. MACGREGOR: I believe so.

24 MR. ALBERS: That can be time sensitive with Mr.  
25 Ploeger's flight, if we can.

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Exhibit N

1 THE COURT: We'll go late if we have to.

2 MR. ALBERS: Could be rearranged, too.

3 THE COURT: Yeah. We'll go late if we have to.

4 MR. MACGREGOR: Mr. Dahlinger, too, he is a  
5 jailer so I just want to make sure. Would he be able  
6 to testify that Mark Lankford was in jail, Lane Thomas  
7 was in jail?

8 THE COURT: Yes.

9 MR. MACGREGOR: Okay.

10 MR. ALBERS: The final issue we need to talk  
11 about is if Mr. Thomas is asked why he recanted, can he  
12 be permitted to say why? And that is he was  
13 threatened. Exactly a quote.

14 THE COURT: It's up to him as to whether or not  
15 he recanted it, whether -- and if he says he didn't  
16 recant it then he's subject to cross-examination on the  
17 fact of the recantation. If he recants his recantation  
18 I assume he can give his motive for doing that.

19 MR. HALLIN: Your Honor, the defense will state  
20 its objections to any statements that were subsequently  
21 obtained were not disclosed to the defense that the  
22 State intends to use in its case in chief.

23 THE COURT: Okay. That's fine. Well, I'll  
24 handle that when we get to it. That's down the road.  
25 We'll tell the jury we're continuing our break, and

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1 Q. Did he say anything about what he did  
2 previously as a job?

3 A. He said that he was a Texas oil worker, high  
4 executive to a Texas oil worker, something of that  
5 nature. I don't remember how he put it.

6 Q. Did you ask him any questions about that?

7 A. I asked him where at. He said, well, I was  
8 in Texas. I was a top oil executive. And when I would  
9 ask him again, well, for who --

10 MR. HALLIN: And I would object. This is  
11 nonresponsive.

12 THE COURT: I'll overrule that. I think it is.

13 A. When I would ask him, you know, for who, on  
14 shore, offshore, he would never answer. He just said  
15 he worked in oil.

16 Q. Now, are you receiving a plea bargain for  
17 your testimony?

18 A. No, sir.

19 Q. Is the Idaho County Prosecutor's Office doing  
20 anything for you in exchange for your testimony?

21 A. They did nothing to get me here to testify.

22 Q. Is there anything about protecting you with  
23 the Prosecutor's office?

24 A. I'm concerned about my safety in this, but I  
25 don't know if the Prosecutor's Office is doing

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1 that.

2 MR. ALBERS: We respectfully resist that motion.

3 THE COURT: No surprise there. Well, the  
4 standard is, is there substantial and competent  
5 evidence to convict. And stated another way, is there  
6 evidence, as I understand the law, is there evidence on  
7 which a rational trier of fact, that is a rational  
8 juror could find the defendant guilty beyond a  
9 reasonable doubt. And that's Criminal Rule 29. I have  
10 to say that if it were just Bryan Lankford this would  
11 be a lot tougher decision. But with the testimony of  
12 Lane Thomas I find it much easier to deny the motion.  
13 So, I'm going to deny the motion. Are we ready for the  
14 jury? Got your witnesses ready, Mr. Kovis?

15 MR. KOVIS: Yes, Your Honor.

16 MR. ALBERS: Your Honor --

17 THE COURT: Yeah, Mr. Albers.

18 MR. ALBERS: May it please the Court, I know the  
19 Court talked the other day about were there others that  
20 we wanted -- given us the packet of proposed ones. I  
21 would comment that I know the judiciary comments  
22 suggest that the statute is not be given.

23 THE COURT: Right.

24 MR. ALBERS: We have put in Exhibit No. 16, which  
25 is robbery defined. Again, in my experience -- and

**Anderson, LaMont**

---

From: Bill Thompson [bthompson@latah.id.us]  
Sent: Thursday, August 21, 2008 12:06 PM  
To: 'Jackye Squire'  
Cc: 'Sunil Ramalingam'  
Subject: Lane Thomas

Good Morning,

Lane is back on supervised probation as of this morning. Standard terms plus mental health evaluations/counseling per his PO, 30 days discretionary jail, 65 days actual jail with credit for 65 served, and no release from jail until the \$100 Interstate Transfer application fee is paid. I just spoke with his wife, Diana, who advises that her sister-in-law will be coming up this afternoon to pay you the \$100 so Lane can get out of jail. I assume that you'll want him to report to you right away so you can make sign-up arrangements and give him a travel permit to go live with Diana in Clarkston pending Compact approval. You may also want to order him to not come back into Idaho without first getting your or his Washington PO's permission - I suggested that Judge Stegner order this as a special probation condition but he preferred to defer to you.

Please let me know if there are any questions. Thanks.

Bill

William W. Thompson, Jr.  
Latah County Prosecuting Attorney  
P.O. Box 8068  
Moscow, ID 83843  
208-883-2246  
<pa@latah.id.us>

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Exhibit CC



**Anderson, LaMont**

---

**From:** Kirk MacGregor [KMacGregor@Connectwireless.US]  
**Sent:** Wednesday, August 20, 2008 3:11 PM  
**To:** 'Bill Thompson'  
**Subject:** RE:

Thanks Bill

---

**From:** Bill Thompson [mailto:bthompson@latah.id.us]  
**Sent:** Wednesday, August 20, 2008 2:06 PM  
**To:** 'Kirk MacGregor'  
**Subject:** RE:

he's scheduled for tomorrow morning. I'm awaiting a call-back from P&P on disposition options. bt

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---

**From:** Kirk MacGregor [mailto:KMacGregor@Connectwireless.US]  
**Sent:** Wednesday, August 20, 2008 1:46 PM  
**To:** 'Bill Thompson'  
**Subject:**

Bill,  
Just curious as to whether Lane Thomas admitted or denied violating probation. Also hope you take my last e-mail into consideration. Kirk

**Anderson, LaMont**

---

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**Sent:** Wednesday, August 20, 2008 3:06 PM  
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**Subject:** RE:

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Anderson, LaMont

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Sent: Wednesday, August 20, 2008 2:46 PM  
To: 'Bill Thompson'

Bill,  
Just curious as to whether Lane Thomas admitted or denied violating probation. Also hope you take my last e-mail into consideration. Kirk

**Anderson, LaMont**

---

**From:** Kirk MacGregor [KMacGregor@Connectwireless.US]  
**Sent:** Tuesday, August 19, 2008 3:21 PM  
**To:** 'Bill Thompson'  
**Subject:** Lane Thomas

Bill,

Just making one last plea to not send Lane to prison. I understand he has been in jail for just over 60 days. He informed me that his Asotin County case was dismissed. I believe he still has a DWP and possession of marijuana in Nez Perce county. I don't want to beat a dead horse but Dennis and I hope you can structure a sentence that would keep Lane out of prison this time. We totally understand one more screw up and he is gone. Just hoping he won't be sent away this time. We are very afraid for Lane and what will probably happen to him by Mark Lankford if he is sent to prison. Please consider our plea. Sincerely, Kirk MacGregor and Dennis Albers

Anderson, LaMont

---

From: Bill Thompson [bthompson@latah.id.us]  
Sent: Friday, August 08, 2008 11:00 AM  
To: 'Mike Cavanagh'; 'Adrienne'  
Cc: 'Jackye Squire'  
Subject: FW: Lane Thomas

FYI - I've printed it for the file. Hopefully JRS will hold off on disposition until I get back. If not, our recommendation is revoke (i.e. I concur with Jackye). bt

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-----Original Message-----

From: Janice Becker [<mailto:jbecker@latah.id.us>]  
Sent: Friday, August 08, 2008 9:56 AM  
To: 'Bill Thompson'  
Subject: FW: Lane Thomas

-----Original Message-----

From: Jackye Squire [<mailto:JSQUIRE@idoc.idaho.gov>]  
Sent: Friday, August 08, 2008 09:52 AM  
To: [pa@latah.id.us](mailto:pa@latah.id.us)  
Subject: Lane Thomas

Hi Bill,

My initial thought is that Lane got a super-plum deal for his cooperation in the Lankford case. He messed that up. He knew what the potential consequences could be if he messed up, yet he still did it in a big way. I don't think he can continue doing exactly what he wants, including breaking the law, with the "get out of jail free" card of prior cooperation.

Another thought is that Diana is showing herself to be a fairly erratic historian where Lane is concerned. She had contacted me early on after Lane's sentencing to report that he had indeed headed down to Texas without reporting in to me. She provided his address and phone number, hoping, I believe, he would get into trouble for not following the procedure he was instructed to do. She was mad at him and filing for divorce. She also indicated she was afraid of him, and she didn't want him to know she had given me his contact info. Now, since he is "drinking less," although he should be "drinking NONE," she's happy to have him around.

Lane's history and his continuing illegal behavior are plenty enough indicators for me to believe he is a train wreck waiting to happen. The allegation of sexual and/or physical abuse involving his children is the second one made against him in Asotin County. Neither case has been pursued, but in my experience it's pretty unusual for two allegations against the same person to be made by separate victims.

I think if Lane is found to be in violation of the terms of his probation, his sentence should be imposed. He can be placed in protective custody, and/or placed in a facility out of state. He was already given a break when he left Idaho and moved to Texas without informing me of his whereabouts. I don't know the status of his letters to the prosecutor or fines/restitution.

Jackye

Jackye Squire Leonard  
Sr. PPO, D2  
316 N. Main  
Moscow, Idaho 83843  
Office: 208-883-3547  
Fax: 208-882-0428  
Cell: 208-669-1660

ALL CLAIMS MUST BE FILED BY THE  
FIRST AND THIRD MONDAY OF EACH MONTH  
COUNTY OF IDAHO - STATE OF IDAHO

Warrant No. 08-2902 3-3-08  
3190 Scott M. Mealer  
(Name of Claimant)

Address \_\_\_\_\_  
(To which Warrant should be mailed)

Amount \$ 1500.00

3-3-08

Frankford - informant  
Franklin Lane Thomas

O.K. \_\_\_\_\_

Disallowed \$ \_\_\_\_\_ Additional \$ \_\_\_\_\_

Reason \_\_\_\_\_

Allowed on current exp Fund

in the sum of \$ \_\_\_\_\_ this \_\_\_\_\_

day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Chairman of the Board

01-07-023

PA witness fees

VERIFICATION

STATE OF IDAHO.)  
County of Idaho ) ss.

The undersigned, being duly sworn, says that  
this account is correct, justly due and that no  
part thereof has been paid

Randy K. [Signature]  
(Sign here)

Filed 3-3-08

**ROSE E. GEHRING**

Clerk

By [Signature], Deputy

Exhibit DD

IDAHO DEPARTMENT OF CORRECTIONS  
**DISCIPLINARY OFFENSE REPORT**

1. Log Number  
 12-87-M-180

SECTION 1 - REPORT

Institution Name <b>Idaho State Correctional Institution</b>		3. Date of Offense <b>Report received by Dep. Wardens Office 12-11-87</b>	
Name <b>Bankford, Mark</b>	6. Register Number <b># 20489</b>	7. Assignment <b>Unit Eight Death Row</b>	8. Quarters <b>8-C-54-a</b>
Place of Offense <b>Unit Eight C-Tier</b>		10. Offense Category <b>Disobedience of Orders</b>	11. Offense Code <b>12-A</b>
Description of Offense (To Include Any Unusual Inmate Behavior) <del>and threatened other inmates on the tiers which you have been assigned. On 4-22-86 you were involved in a incident where the inmates were so angry with you they screamed and yelled until the power was shut off to that tier. On 8-6-86 you made comments concerning another inmate and advised the cellhouse officer that you were going to get him. ( officer understood this to be a threat ) On 10-09-86 you involved in problems concerning the tier janitor job. You had a verbal altercation with Inmate Creech where you called his mother a " one eyed whore," this is documented on 1-26-87. On numerous occasions you have written or talked with department officials complaining about</del> <b>Since April 1986 you have continually harassed</b>			
Description of Physical Evidence (If Any) <b>N/A</b>		14. Disposition of Evidence <b>Held by Dep. Wardens Office</b>	
Immediate Action Taken (To include the Use of Force and Prehearing Detention) <b>Officer Friebles info. report rec. 12-11-87</b>			
Name and Title of Reporting Employee <b>Brewer, W.F. Lieutenant</b>		17. Signature of Reporting Employee <i>W.F. Brewer</i>	18. Date/Time to Shift Supervisor <b>12-88 2234 L-108</b>

SECTION 2 - DELIVERY

To Be Completed By Inmate Upon Receipt of Disciplinary Offense Report

I waive my right to twenty-four (24) hours preparation time prior to the hearing.

I waive my right to a hearing. I do this of my own choice, with full knowledge that this is to be considered a guilty plea, that allowable sanctions may be imposed, and that in doing so I waive my right to an appeal.

By My Signature, I Hereby Acknowledge Receipt of This Disciplinary Offense Report

21. Date/Time of Receipt  
**12-09-88 0930**

To Be Completed by Officer Upon Delivery of Disciplinary Offense Report

Inmate refused to sign for his copy of the Disciplinary Offense Report.

You will appear at a Disciplinary Hearing, at a place TBA, on or before **1-13-88**

By My Signature, I Hereby Acknowledge Delivery of This Disciplinary Offense Report

24. Date/Time of Delivery  
**01-09-88 0930**

SECTION 3 - HEARING

Inmate Pleads: <input type="checkbox"/> Guilty <input checked="" type="checkbox"/> Not Guilty <input type="checkbox"/> No Plea		26. Hearing Officer's Findings: <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Dismiss		
Evidence Relied Upon For Finding of Guilt <b>See attached</b>				

1. Sanction Code <b>12A-B1</b>	29. Sanction <b>30 Days Detention</b>	30. Suspended For:
2. _____	_____	_____
3. _____	_____	_____

1. Suspended Sentence Invoked		2. Hearing Officer's Signature <i>[Signature]</i>		33. Date/Time of Hearing <b>1-14-88 1345</b>	
3. Warden's Review <input checked="" type="checkbox"/> Affirm <input type="checkbox"/> Dismiss <input type="checkbox"/> Modify:		4. Warden's Signature <i>[Signature]</i>		36. Date of Review <b>19 Jan 88</b>	

Exhibit E.E



IDAHO DEPARTMENT OF CORRECTIONS - DISCIPLINARY OFFENSE REPORT

D.O.R. CONTINUATION

PAGE <u>2</u> OF <u>2</u> PAGES		1. LOG NUMBER: 12-87-M-180	
2. FACILITY NAME: ISCI		3. DATE OF OFFENSE: Report rec. 12-11-87	4. TIME OF OFFENSE: Report rec. 12-11-87
5. INMATE NAME: Lankford, Mark	6. REGISTER NUMBER: # 20489	7. ASSIGNMENT: Unit Eight	8. QUARTERS: 8-C-54-a
9. PLACE OF OFFENSE: Unit Eight C-Tier		10. OFFENSE CATEGORY: Disobedience of Orders	11. OFFENSE CODE: 12-A

12. DESCRIPTION OF OFFENSE:  
 other inmates and have gone as far as informing on their activities. This problem concerned Warden Arave so much that he came to the unit himself to discuss and settle the problem with all parties involved. He advised all inmates at that time to stop the activity and all agreed, you later stated you did not trust Inmate Creech and he would not keep his word. Mr. Al Murphy, Director of the Idaho Department of Corrections has voiced his concern. You recieved a direct order from Sgt. Rentie concerning the harassment and advised that if there was anymore type of this activity you would recieve a disciplinary offence report. On 12-11-87 the Deputy Warden of Security recieved a report that stated you were overheard talking to your brother making the following statement, You were going to get Inmates Creech, Paridis, Leavitt, and Gibson into trouble anyway possible. Again you area instigator. Your behavior is causing a real security concern in Unit Eight. Therefore I am charging you with disobedience of orders because of this behavior.

\* THESE LINES MUST BE COMPLETED IF THIS PAGE IS A CONTINUATION SHEET FOR OFFENSE REPORT.

13. SIGNATURE OF REPORTING EMPLOYEE: <i>W.F. Brewer Lt</i>	14. DATE/TIME TO SHIFT SUPERVISOR:
*15. SIGNATURE OF INMATE RECEIVING OFFENSE:	16. DATE/TIME OF RECEIPT 01-09-88 0930
*17. SIGNATURE OF OFFICER DELIVERING REPORT: <i>Bob Clark</i>	18. DATE/TIME OF DELIVERY: 01-09-88 0930

760

FINDINGS OF FACT AND REASONS FOR SANCTIONS IMPOSED

ID LANKFORD	Number 20489	Log Number 12-8777-180
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Based Upon Evidence From the Following Sources:

1- Brewer's DOA  
 2-10 Pribbles testimony  
 Written ORDER By Sgt Rentic

Those Credibility / Found To Be / Based Upon:

Good There is no motive to falsify facts by Lt Brewer.

Relied Upon the Following Facts For The Finding of Guilt:


1) Sgt Rentic issues ORDERS in writing to cease harrassing fellow inmates on Death Row & TO DO your own time.  
 2) Pribbles overheard a conversation between Mark Britain & another inmate where Mark SAID TO BRITAIN that he was going to get Inmates Curced, Pounded, Leased & All D & B's into trouble anyway possible.  
 3) This violates the order to leave the other inmates alone

The Sanctions Were Imposed For the Following Reasons:

Punitive

Denied The Following Witness(es) Because

N/A

Signature:  Date and Time of Hearing: 1-14-88 1246

761

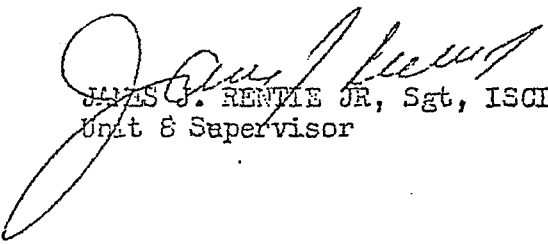
✓  
From: Sgt J. J. Rennie Jr

9-10-87

To: "B" Tier: Inmate Population

Subject: Harrassement of Inmates

Certain inmates have made it an habitual practice of harrassing other inmates through verbal or physical abuse. This type of practice should be refrained from. Inmate continuing this practice will be issued DORs for Disobedience to Orders. My staff and I have the responsibility of protecting you as well as other inmates from this type of action against you. My staff and I intend to be in full compliance of that responsibility. This notice serves as a backup to the verbal warning issued by C/O Gilmore, a member of my staff, on 9-7-87, to inmates of "B" Tier.

  
JAMES J. RENNIE JR, Sgt, ISCI  
Unit 8 Supervisor

MARK H. LAUKFORD  
#20489 8-C-5  
DEATH ROW

MR. CASTIGLIONE/MR. JOHNSON  
D.H.C. OFFICE  
F.S.C.I.

1/10/88

SIRS,

IN REGARD TO A DOR. ISSUED TO ME FOR  
ALLEGED DISOBEDIENCE TO ORDERS (LOG #12-87-M-180),  
AND THE ENSUING HEARINGS TO TAKE PLACE ON  
OR BEFORE 1/13/88, I WOULD LIKE TO FORMALLY  
REQUEST, AS PER POLICY, THE FOLLOWING  
PERSONS TO BE PRESENT:

- ① LAW CLERK
- ② MS. FURHMAN (ADMIN. REP./MEDIATOR)
- ③ BRYAN LAUKFORD (WITNESS, INMATE)
- ④ SGT. J.J. RENTIE (WITNESS)

SINCERELY,

Mark H. Laukford  
#20489



# STATE OF IDAHO

## BOARD OF CORRECTION Idaho State Correctional Institution

BOX 14  
Boise, Idaho 83707  
(208) 336-0740

### M E M O R A N D U M

TO: INMATE LANKFORD #20489  
FROM: DEPARTMENTAL HEARING OFFICE  
SUBJECT: DOR #12-87-M-180

Due to institutional requirements and the hearing officer's inability to enter Unit 8 before 10:00 a.m., your hearing has been postponed. The 72 hour time limits have been extended and your hearing will be held as soon as possible.

*Cyndy Fuhrman*

CYNDY FUHRMAN  
DEPARTMENTAL HEARING OFFICE

IDAHO DEPARTMENT OF CORRECTIONS  
**DISCIPLINARY OFFENSE REPORT**

1. Log Number  
 6-88-M-002

**SECTION 1 - REPORT**

Facility Name ISCI		3. Date of Offense 06-02-88	4. Time of Offense 0901
Employee Name LANKFORD	6. Register Number 20.489	7. Assignment Death Row	8. Quarters Cell 67
Place of Offense Outer foyer Unit 8		10. Offense Category Ind. Disruptive Behavior	11. Offense Code 02P

Description of Offense (To include Any Unusual Inmate Behavior)  
 At 0901, above date, Sgt Henry and me were waiting in Unit 8 outer foyer with inmates PAZ and LANKFORD after escorting them back from Bldg 20. At this time LANKFORD did commit the following violation of Department of Corrections rules; to wit: verbally harassed PAZ, an act intended to inflame PAZ and therefore disrupt and/or distract staff while in performance of their duties. LANKFORD interjected a disparaging remark about PAZ's crime. Although I do not

13. Description of Physical Evidence (If Any) None	14. Disposition of Evidence n/a
---	------------------------------------

Immediate Action Taken (To include The Use of Force and Prehearing Detention)  
 Took "s" to outer foyer office

16. Name and Title of Reporting Employee L.D. Jeffries, Sgt.	17. Signature of Reporting Employee <i>[Signature]</i>	18. Date/Time to Shift Supervisor 06-02-88 1425 L.D.J.
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**SECTION 2 - DELIVERY**

19. To Be Completed By Inmate Upon Receipt of Disciplinary Offense Report

I waive my right to twenty-four (24) hours preparation time prior to the hearing.

I waive my right to a hearing. I do this of my own choice, with full knowledge that this is to be considered a guilty plea, that allowable sanctions may be imposed, and that in doing so I waive my right to an appeal.

20. By My Signature, I Hereby Acknowledge Receipt of This Disciplinary Offense Report <i>[Signature]</i>	21. Date/Time of Receipt 6-3-88 0840
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22. To Be Completed by Officer Upon Delivery of Disciplinary Offense Report

Inmate refused to sign for his copy of the Disciplinary Offense Report.

You will appear at a Disciplinary Hearing, at a place TBA, on or before 6-8-88

23. By My Signature, I Hereby Acknowledge Delivery of This Disciplinary Offense Report <i>[Signature]</i>	24. Date/Time of Delivery 0840 6-3-88
--	--

**SECTION 3 - HEARING**

25. Inmate Pleads: <input type="checkbox"/> Guilty <input checked="" type="checkbox"/> Not Guilty <input type="checkbox"/> No Plea	26. Hearing Officer's Findings: <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Dismiss
---	--

27. Evidence Relied Upon For Finding of Guilt  
*[Signature]*

28. Sanction Code 1. 02P-D	29. Sanction Formal Reprimand	30. Suspended For:
2.		
3.		

31. Suspended Sentence Invoked

32. Hearing Officer's Signature  
*[Signature]*

33. Date/Time of Hearing  
6-7-88 0900

34. Warden's Review  
 Affirm     Dismiss     Modify:

35. Warden's Signature  
*[Signature]*

36. Date of Review  
13 June 88



# FINDINGS OF GUILT AND REASONS FOR SANCTIONS IMPOSED

ms LANKFORD	Number #20489	Log Number 6-88-M002
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Upon Evidence From the Following Sources:

Sgt. Jefferies' DOR  
Lankford's testimony

Witness Credibility / Found To Be / Based Upon:

Good-No motive to lie, Lankford corroborated the facts in the DOR in part.

Based Upon the Following Facts For The Finding of Guilt:

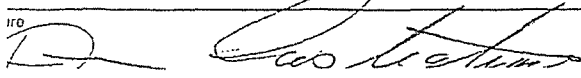
Lankford and Paz were aggravating each other while in close proximity to each other, which caused the Sgt. concern because of their death row status and disrupted the orderly operation of the unit.

Sanctions Were Imposed For the Following Reasons:

To get his attention

Based Upon The Following Witness(es) Because

N/ A

 7107	Date and Time of Hearing 6-7-88 0800
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IDAHO DEPARTMENT OF CORRECTIONS  
**DISCIPLINARY OFFENSE REPORT**

1. Log Number  
 3-89-M-013

**SECTION 1 - REPORT**

Facility Name <u>C.I.</u>		3. Date of Offense <u>3-3-89</u>	4. Time of Offense <u>approx. 1440 hrs.</u>
Name <u>LANKFORD</u>	6. Register Number <u>20.489</u>	7. Assignment <u>DEATH ROW</u>	8. Quarters <u>8-70</u>
Place of Offense <u>JUNIT 8</u>		10. Offense Category <u>FALSE STATEMENT</u>	11. Offense Code <u>13-A (C)</u>

Description of Offense (To Include Any Unusual Inmate Behavior) On the above date and time I received a letter from Sgt. Griggs that had been made out by Inmate Lankford #20.489. In this letter Inmate Lankford #20.489 stated that on 2-26-89 I had called him a "OLD, BALD-HEADED ASSHOLE" while I was on the tier. This Statment from Inmate Lankford #20.489 is false. I have never made a statement as "OLD, BALD-HEADED ASSHOLE" to Inmate Lankford #20.489 and it would have been impossible for me to nake such a statement to Inmate Lankford #20.489 on 2-26-89 due to I was working in the unit #8 control room on 2-26-89 and had no contact with any Inmate in unit #8 on 2-26-89

Description of Physical Evidence (If Any) <u>LETTER FROM MARK LANKFORD TO SSGT. J.J. RENTIE DATED 2-27-89</u>	14. Disposition of Evidence <u>PLACED IN EVIDENCE VAULT 2-C</u>
Immediate Action Taken (To Include The Use of Force and Prehearing Detention) <u>THIS D.O.R.</u>	

Name and Title of Reporting Employee <u>W/O JAMES M. SAGHT</u>	17. Signature of Reporting Employee <i>[Signature]</i>	18. Date/Time to Shift Supervisor <u>3-3-89 at 2036 hrs.</u>
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**SECTION 2 - DELIVERY**

To Be Completed By Inmate Upon Receipt of Disciplinary Offense Report

I waive my right to twenty-four (24) hours preparation time prior to the hearing.

I waive my right to a hearing. I do this of my own choice, with full knowledge that this is to be considered a guilty plea, that allowable sanctions may be imposed, and that in doing so I waive my right to an appeal.

By My Signature, I Hereby Acknowledge Receipt of This Disciplinary Offense Report <i>[Signature]</i>	20.489	21. Date/Time of Receipt <u>2055 HRS / 3/3/89</u>
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To Be Completed by Officer Upon Delivery of Disciplinary Offense Report

Inmate refused to sign for his copy of the Disciplinary Offense Report.

You will appear at a Disciplinary Hearing, at a place TBA, on or before 3-8-89

By My Signature, I Hereby Acknowledge Delivery of This Disciplinary Offense Report <i>[Signature]</i>	24. Date/Time of Delivery <u>2055 HRS 3-3-89</u>
--	---

**SECTION 3 - HEARING**

Inmate Pleads: <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> No Plea	28. Hearing Officer's Findings: <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Dismiss
Evidence Relied Upon For Finding of Guilt <u>same as Phil C... [Signature]</u>	

Sanction Code <u>13A-C6</u>	29. Sanction <u>Formal Reprimand</u>	30. Suspended For:
1.		
2.		
3.		

Suspended Sentence Invoked

Invoked By: [Signature]

Warden's Review <input checked="" type="checkbox"/> Affirm <input type="checkbox"/> Dismiss <input type="checkbox"/> Modify:	33. Date/Time of Hearing <u>3-7-89 0930</u>
Warden's Signature <i>[Signature]</i>	36. Date of Review <u>3-8-89</u>

MARK H. LANKFORD  
#20489 8-C-70

D.H.O. CASTIGLIONE

3/3/89

D.H.O. OFFICE

I.S.C.I.

RE: D.O.R. 3-89-M-013 AND HEARING WITNESSES

SIR,

REGARDING THE ABOVE NUMBERED D.O.R.  
AND THE HEARING ON SAID D.O.R., I  
RESPECTFULLY REQUEST THE FOLLOWING INMATE  
WITNESSES ON MY BEHALF:

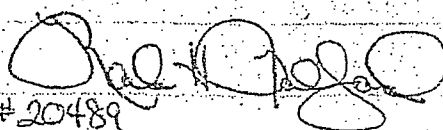
- ① BRYAN S. LANKFORD #20488 8-C-67
- ② FRED CLARK #21689 8-C-71
- ③ DAVID DEAN #26666 8-C-63
- ④ GARY BLACK #28375 8-C-62
- ⑤ LEROY BACA #24385 8-C-64
- ⑥ KOREY B. TAYLOR #-? UNIT 10 (FORMERLY 8-C-69)

ARE THEY ALLOWED AT THE HEARING?

THESE INDIVIDUALS ALL HEARD Y/O JAMES  
M. SACHT CALL ME THE NAME LISTED  
ON THE D.O.R.

I APPRECIATE GREATLY ANY ASSISTANCE  
YOU COULD RENDER IN THIS MATTER

RESPECTFULLY,

  
#20489

IDAHO DEPARTMENT OF CORRECTIONS  
**DISCIPLINARY OFFENSE REPORT**

1. Log Number  
**4-89-M-037**

**SECTION 1 - REPORT**

2. Facility Name <b>KCI</b>		3. Date of Offense <b>4-9-89</b>	4. Time of Offense <b>19:50</b>
5. Inmate Name <b>Linkford M,</b>	6. Register Number <b>20489</b>	7. Assignment <b>Death Row</b>	8. Quarters <b>Unit 8 cell 70</b>
9. Place of Offense <b>4-8-cell 70-cell 63-c tier hallway</b>		10. Offense Category <b>Bartering</b>	11. Offense Code <b>15 A (c)</b>
12. Description of Offense (To Include Any Unusual Inmate Behavior) <b>While checking on a fire alarm setoff on "C" tier I saw a large envelope being passed across the tier by a string. Hurrying down the tier I saw the envelope coming from cell 70 going to cell 63. After Sgt Shayne recovered the envelope from Inmate Den we found in it 3 magazines 1 of which had cell 70 printed on the front of it. Cell 70 is inmate Linkford's cell of which he is the sole occupant</b>			
13. Description of Physical Evidence (If Any) <b>3 magazines - 2 Penthouse 1 Cadillac style 1 TV guide</b>		14. Disposition of Evidence <b>Retained in unit 8 evidence safe 2-B</b>	
15. Immediate Action Taken (To Include The Use of Force and Prehearing Detention) <b>This P.O.R.</b>			
16. Name and Title of Reporting Employee <b>C/O J. Taylor</b>		17. Signature of Reporting Employee <i>C/O J. Taylor</i>	18. Date/Time to Shift Supervisor <b>2021-4-9-89 505</b>

**SECTION 2 - DELIVERY**

19. To Be Completed By Inmate Upon Receipt of Disciplinary Offense Report

I waive my right to twenty-four (24) hours preparation time prior to the hearing.

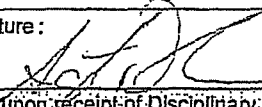
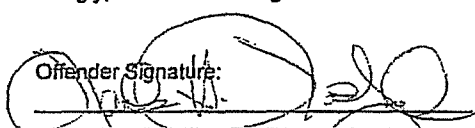
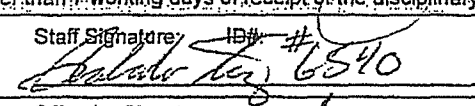
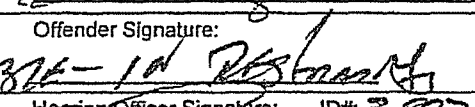
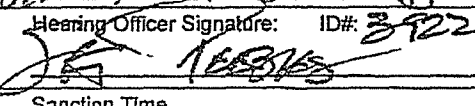
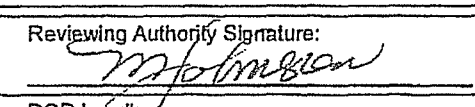
I waive my right to a hearing. I do this of my own choice, with full knowledge that this is to be considered a guilty plea, that allowable sanctions may be imposed, and that in doing so I waive my right to an appeal.

20. Inmate Signature, I hereby acknowledge receipt of this Disciplinary Offense Report <i>[Signature]</i>	21. Date/Time of Receipt <b>4-9-89 2050</b>
22. To Be Completed by Officer Upon Delivery of Disciplinary Offense Report	
<input type="checkbox"/> Inmate refused to sign for his copy of the Disciplinary Offense Report.	
You will appear at a Disciplinary Hearing, at a place TBA, on or before <b>4-12-89</b>	
23. By My Signature, I hereby acknowledge delivery of this Disciplinary Offense Report <i>C/O M Reynolds</i>	24. Date/Time of Delivery <b>4-9-89 2050</b>

**SECTION 3 - HEARING**

Inmate Pleads: <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> No Plea		25. Hearing Officer's Findings: <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Dismiss	
Evidence Relied Upon For Finding of Guilt <i>same as Phil Buckley</i>			
Sanction Code 1. <b>15A-c6</b>	29. Sanction <b>Formal Reprimand</b>	30. Suspended For:	
2. <b>Detention</b>			
3. <b></b>			
Suspended Sentence Invoked			
Date Invoked: Hearing Officer's Signature <i>[Signature]</i>		Invoked By: 33. Date/Time of Hearing <b>4-11-89 0850</b>	
Warden's Review <input checked="" type="checkbox"/> Affirm <input type="checkbox"/> Dismiss <input type="checkbox"/> Modify:			
Warden's Signature <i>[Signature]</i>		35. Date of Review <b>4-14-89</b>	

**IDAHO DEPARTMENT OF CORRECTION**

Facility: <b>IMSI</b>		<b>DISCIPLINARY OFFENSE REPORT</b>		2. DOR Log # <b>040162</b>
3. Offender Name: <b>_ankford</b>		4. IDOC #: <b>20489</b>	5. Living Unit: <b>J 59A</b>	6. Report Date: <b>03/22/04</b>
7. Date / Time of Offense: <b>03/22/04 1419</b>	8. Place of Offense: <b>J blk tier 2</b>	9. Offense Category: <b>Discretionary---Disruption/Violence</b>		10. Offense Code: <b>804-802</b>
Description of offense, including any unusual offender behavior: On the above date at 1416 hrs, I let Lankford on tier 2. I turned to my log book and then to let other officers in the unit. When I turned back, I saw arms flailing between inmates Lankford and Farrant. I immediately called "Fight on tier 2" on the unit radio. I ran across to the tier 2 control panel. I observed Lankford 20489 standing just inside and to the left on tier 2. I observed Farrant 51253 facing Lankford, about 10 feet away from Lankford moving left and right with his hands at his side closed in fists.				
11. Past alternative sanctions to date: # of verbal warnings <b>0</b> # of written warnings <b>0</b> Other: <b>0</b>				
13. Description/disposition of evidence: <b>none IR Attached</b>				
14. Offender placed in segregation?		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Date: <b>22 Mar 04</b>
15. Name / Title of reporting employee: <b>Mathis 4328</b>		ID #		
16. Name / Title of reviewing supervisor: <b>Sgt. Donohue</b>		ID #		Signature:  Date / Time reviewed: <b>3/24/04 1430</b>
To be completed by offender upon receipt of Disciplinary Offense Report				
<b>17. OFFENDER ACKNOWLEDGEMENT: MAY ONLY CHECK 1 BOX</b>				
<input checked="" type="checkbox"/> <b>DO</b> I waive my option for twenty-four-(24) hour preparation time prior to the meeting.				
<input type="checkbox"/> I request or need a Witness / Staff-hearing Assistant request form.				
<input type="checkbox"/> I waive my option to have a hearing. I do this willingly, with full knowledge this is to be considered a Guilty Plea, and maximum allowable sanctions may be imposed.				
I hereby acknowledge receipt of this DOR		Offender Signature: 		Date: <b>3/22/04</b>
Offender should receive disciplinary hearing no later than 7 working days of receipt of the disciplinary offense report, unless extended.				
18. <input type="checkbox"/> Offender refused to sign for a copy of this DOR		Staff Signature:  ID# <b>6540</b>		Date: <b>3-23-04</b>
<input checked="" type="checkbox"/> I hereby acknowledge delivery of this DOR				
19. Offender Plea:		Offender Signature: 		Date / Time: <b>3/22/04 @ 16:24</b>
<input type="checkbox"/> Guilty <input checked="" type="checkbox"/> Not Guilty				
20. Hearing Officer's finding: (Tape # <b>0403-2A</b> )		Hearing Officer Signature:  ID# <b>3922</b>		Date / Time: <b>3/24/04 @ 16:</b>
<input type="checkbox"/> Guilty <input checked="" type="checkbox"/> Not Guilty <input type="checkbox"/> Dismissed				
21. Sanction Category		Sanction Time		Probation End Date
A. <b>Lack of evidence to support that offender did</b>				
B. <b>anything more than defend him self.</b>				
C. _____				
22. Review Authority's finding:		Reviewing Authority Signature: 		Dated: <b>3/26/04</b>
<input checked="" type="checkbox"/> Affirm <input type="checkbox"/> Modify <input type="checkbox"/> Dismiss				
23. Probationary Sanction Invoked		DOR Log #:		Report Date:
Sanction: _____		Invoked by: _____		Date Invoked: _____

Serving Distribution:  Disciplinary Hearing Officer  Offender  
 Post Hearing Distribution:  Central File  Offender

IDAHO DEPARTMENT OF CORRECTIONS  
IDAHO MAXIMUM SECURITY INSTITUTION  
STAFF INCIDENT / INFORMATION REPORT

IR#: 0403 -35- 135 PAGE: 1 OF 1  
DATE: 22/Mar/04 TIME: 1419 HRS.  
LOCATION: Boise J blk tier 2 TYPE OF INCIDENT: Inmate Fight

INDIVIDUALS INVOLVED

NAME: Lankford IDOC#: 20489  
NAME: Farrant IDOC#: 51253

REPORT (WHO, WHAT, WHEN, WHERE, HOW, AND WHY)

On the above date at 1416 hrs, I let two laundry workers into the unit corridor. I then called on the unit radio announcing the same and then let them into the foyer area. The laundry workers put the carts by the tiers and then stood by tier 2 E door to go to cell 59. I let them onto the tier. I turned to my log book and then to let other officers in. When I turned back, I saw arms flailing toward each other. I immediately called "Fight on tier 2" on the unit radio. I ran across to the tier 2 control panel. I observed Lankford 20489 standing just inside and to the left on tier 2. I observed Farrant 51253 facing Lankford, about 10 feet away from Lankford moving left and right with his hands at his side closed in fists. CMS Calahan inspected the inmates.

REPORTING STAFF: C/O M. H. DATE: 23/Mar/04  
SIGNATURE: *[Signature]*  
\*\*\*\*\*

ACTION TAKEN BY SHIFT COMMANDER

REPORT REVIEW

ASSISTANT SHIFT COMMANDER: \_\_\_\_\_ DATE: \_\_\_\_\_  
SHIFT COMMANDER: \_\_\_\_\_ DATE: \_\_\_\_\_  
CAPTAIN: \_\_\_\_\_ DATE: \_\_\_\_\_

ADMINISTRATIVE REVIEW

DEPUTY WARDEN OF SECURITY: \_\_\_\_\_ DATE: \_\_\_\_\_  
DEPUTY WARDEN OF OPERATIONS: \_\_\_\_\_ DATE: \_\_\_\_\_

\*\*\*\*\*  
\*\*ORIGINAL I.R. MUST IS SUBMITTED TO THE SHIFT COMMANDER\*\*  
\*\*RETURN TO THE CAPTAIN FOR FINAL ROUTING AND FILING\*\*



RESPONSE TO REQUEST TO EXAMINE AND/OR COPY PUBLIC RECORDS

Date: December 20, 2012 Date of Request: December 19, 2012

Name of Requestor: Jay Johnson Nature of Request: Idaho County Payments to Lee John Lankford or Robert Lankford

1.  Your request has been approved. See attached documents.
2.  No records found.
3.  It has been determined that additional time is required to locate or retrieve the records you have requested. Said records shall be available on \_\_\_\_\_, or further information will be provided regarding your request. (No longer than 10 days from request.)
4.  Your request has been denied as the following records are exempt from public disclosure for the stated reason.

	Idaho Code Section
_____	_____
_____	_____
_____	_____
5.  The attorney for the entity has reviewed your request and this response.

Kathy M Ackerman  
Signature of Person Completing Request

Exhibit FF

**Specific questions:**

1. **What person authorized any such payment?** Authorized by the Idaho County Commissioners via the routine process for paying claims.
2. **When was it authorized?** See attached documentation—February 29, 2008 and August 15, 2008
3. **Who participated in the discussion, if any, regarding the issuance of the payment?** Paid through routine claims process-no specific discussion of these claims was noted.
4. **Was it discussed by the Board of County Commissioners at any time, including in executive session?** See response to #3 above.
5. **For what purpose was any such payment issued?** Witness fees and reimbursement of travel expenses
6. **Was supporting documentation for reimbursement provided?** Yes, see attached documentation
7. **Was compensation for purported lost wages?** No
8. **If compensation was for lost wages, were appropriate notices sent to the IRS or Idaho Tax Commission?**  
N/A
9. **Was there any discussion or communication of any sort regarding the disclosure or non-disclosure of the issuance of the warrant or funds?** No known discussions-paid through routine claims process
10. **Which county fund was payment allocated to?** Paid out of District Court Fund and Prosecutor's Fund as noted on Vendor Payment History



**RESPONSE TO REQUEST TO EXAMINE AND/OR COPY PUBLIC RECORDS**

Date: October 23, 2012 Date of Request: October 19, 2012

Name of Requestor: Jay Johnson Nature of Request: County Warrant 08-2902

1.  Your request has been approved. See attached documents. Additionally, the image of the check was provided by Sterling Bank. There is no clearer image available.
2.  No records found.
3.  It has been determined that additional time is required to locate or retrieve the records you have requested. Said records shall be available on \_\_\_\_\_, or further information will be provided regarding your request. *(No longer than 10 days from request.)*
4.  Your request has been denied as the following records are exempt from public disclosure for the stated reason.

Idaho Code Section

_____	_____
_____	_____
_____	_____

5.  The attorney for the entity has reviewed your request and this response.

Kathryn A. Ackerman  
Signature of Person Completing Response

Exhibit 66

When was it authorized? **March 3, 2**

Who participated in the discussion, if any, regarding the issuance of the warrant? **Those known are Syd Fuzzell (Idaho County Auditor's Office), Commissioner Randy Doman, Skott Mealer**

Was it discussed by the Board of County Commissioners at any time, including in executive session?

**This is not known. There were two Executive Sessions held on March 3, 2008, both for personnel matters (a copy of the minutes provided). Executive Sessions are not recorded, therefore, it is not known whether this matter was discussed.**

For what purpose was it issued? **The claim form (a copy is provided) indicates that the check was issued to Skott Mealer for State witness, Franklin Lane Thomas.**

Where appropriate notices sent to the Internal Revenue Service/U.S. Treasury or the Idaho Tax Commission, regarding any such payment to Mr. Mealer? **NO**

Was there any discussion or communication of any sort regarding the disclosure or non-disclosure of the issuance of the warrant or funds? **This is not known.**

Which county fund was the warrant payment allocated to? **Prosecuting Attorney witness fees**

Did any Idaho County employee, or anyone else known, make inquiries to any person or state agency regarding any child support payments owned by Lane Thomas, either to a mother of his child or to the Idaho Department of Health and Welfare, prior to issuing the warrant to Skott Mealer? **NO**

Were appropriate notices made to the Internal Revenue Service/U.S. Treasury or the Idaho Tax Commission regarding any payment made to Lane Thomas? **NO**

Did any Idaho County personnel research into any possible liens filed against Lane Thomas, as registered with the Idaho Secretary of State? **NO**

**Kirk MacGregor**

**From:** Francoise-Marie LANKFORD [littleflowerbig@yahoo.fr]  
**Sent:** Thursday, December 06, 2007 2:15 AM  
**To:** Kirk MacGregor  
**Subject:** RE : RE: surgery

Thank you for everything! I'm so happy and grateful! All is well for me even if I walk with crutches right now starting back to get up: but I'm okay. I'm sending Mealer the wedding ring for my husband ..... and a little present for you, as well as for him (Mealer), for Christmas, by gratefulness for all your efforts. I'm awaiting news when you can. Yours respectfully; Francoise-Marie

*Kirk MacGregor <KMacGregor@Connectwireless.us> a écrit :*

Bryan is in the Idaho County jail!!!! He is doing well. His spirits are up! I've been talking to Lee John a lot. He was able to call Bryan. I arranged the call. Lee John is going to try and convince Bryan to testify. I think all is well. Bryan sends his love and hopes you are well. I will try and arrange a call for you and him. Talk to you later. Sincerely, Kirk

*and  
Joan  
first meet  
up & see  
present  
it in  
grayer*

**From:** Francoise-Marie LANKFORD [mailto:littleflowerbig@yahoo.fr]  
**Sent:** Wednesday, December 05, 2007 11:02 AM  
**To:** Kirk MacGregor  
**Subject:** RE : surgery

Hello, yeah my surgery went well; I just feel very tired and uncomfortable to put my body in the bed.... I feel no pain. I'm very touched by your good wishes for recovering: you can reassure Bryan! I hope this answer goes with no problem by the cellphone for it's not an evidence! (And it's usually forbidden to use a cellular while in hospital) Thank you again. Francoise-Marie

*Kirk MacGregor <KMacGregor@Connectwireless.us> a écrit :*

Hello,  
How did your surgery go? I hope all went well. Good luck on your recovery. Sincerely, Kirk MacGregor

Ne gardez plus qu'une seule adresse mail ! Copiez vos mails vers Yahoo! Mail

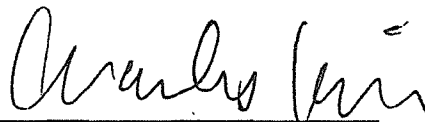
Ne gardez plus qu'une seule adresse mail ! Copiez vos mails vers Yahoo! Mail

Exhibit HH



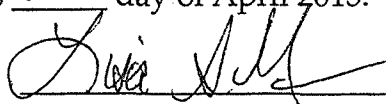
4. At no time either before or after the 2008 State v. Mark Henry Lankford trial, did the State of Idaho or the Idaho County Prosecutor's Office inform me that any payment was made to Lee John Lankford as purported compensation for lost wages or any sales commission.

5. This ends this affidavit.



Charles E. Kovis

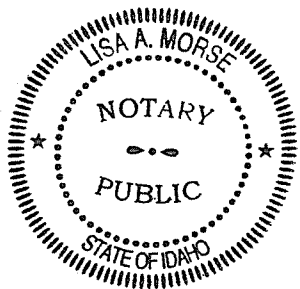
SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of April 2013.



Notary Public for Idaho

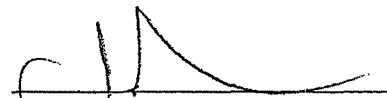
Residing at Moscow, ID

My commission expires 4/3/15



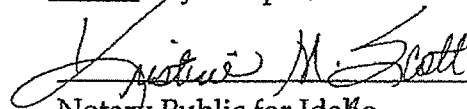


6. At no time either before or after the 2008 *State v. Mark Henry Lankford* trial, or the subsequent filings of motions for new trials, did the Idaho County Prosecutor's Office inform me of payments, particularly payments made as wage compensation or for a lost sales commission, made to Lee John Lankford.
7. This ends this affidavit.

  
Jonathon David Hallin

SUBSCRIBED AND SWORN to before me this 22nd day of April, 2013.

**Kristine M. Scott  
Notary Public  
State of Idaho**

  
Notary Public for Idaho  
Residing at Post Falls  
My commission expires 12/21/2016

## IDAHO COUNTY PROSECUTING ATTORNEY'S OFFICE

416 WEST MAIN  
PO BOX 463  
GRANGEVILLE, ID 83530

Kirk A. MacGregor - Prosecutor  
Dennis L. Albers - Deputy Prosecutor

Telephone: 208-983-0166  
Fax No.: 208-983-3919

August 15, 2008

Randy Doman, Chair  
Idaho County Commissioner  
320 West Main  
Grangeville, ID 83530

Skip Brandt  
Idaho County Commissioner  
320 West Main  
Grangeville, ID 83530

Jim Rehder  
Idaho County Commissioner  
320 West Main  
Grangeville, ID 83530

Re: Lee Lankford

Dear Commissioners:

I have received letters from Lee Lankford regarding compensation for lost wages and a lost commission.

Lee Lankford is Mark Lankford's brother. Please understand that his testimony was very important at both the trial of Mark Lankford and Mark's sentencing. Lee did not ask for any compensation for lost wages or lost sales commission when he testified at the trial. However, he is requesting lost wages and lost sales commission for being present at the sentencing hearing. Lee Lankford missed a week of work due to his testifying at Mark Lankford's sentencing hearing in July, 2008. He was gone from work from July 14<sup>th</sup> through July 18, 2008. He has calculated his rate of lost wages at \$32.00 per hour for 40 hours which equals a total of \$1,280.00. I would request that the commissioners pay this amount in lost wages. He further states that he has lost a commission rate of \$1500.00 for the month of July, 2008. However, he is only requesting reimbursement of \$872.06 for lost commissions for July. This would be a total of \$2,152.06 due to Mr. Lankford. I would respectfully request that the commissioners approve the payment of \$2,152.06 to Lee Lankford for lost wages and lost commission. I feel that this is reasonable and necessary. He indicated to me prior to testifying that he would not come unless we paid his reasonable wages and lost commission. I know that he definitely helped as he was the only family member of Mark Lankford's to testify at the sentencing hearing. Mark's brother Robert Lankford died earlier this year. Robert Lankford was a key witness at the trial of Mark Lankford. Not all witnesses require their lost wages and commissions be paid, but where Lee Lankford had testified before at the trial he has been inconvenienced a considerable amount.

Again, I would request that you approve the payment of this amount to Lee Lankford as Lee was very important to the case.

Exhibit KK



James E. Johnson  
604 S. Washington Street, suite 3  
Moscow, ID 83843  
208 882 1357, fax 208 567 0551  
ISBN 6383

Attorney for Mr. Mark Lankford

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

STATE OF IDAHO,	)	CR 83-20158
	)	
Plaintiff,	)	
	)	
V.	)	AFFIDAVIT OF
	)	LEE JOHN LANKFORD
MARK HENRY LANKFORD,	)	
Defendant.	)	
_____	)	

STATE OF TEXAS )  
 : ss.  
County of \_\_\_\_\_)

I, Lee John Lankford, being duly sworn, do hereby state the following information is true and correct to the best of my knowledge and belief:

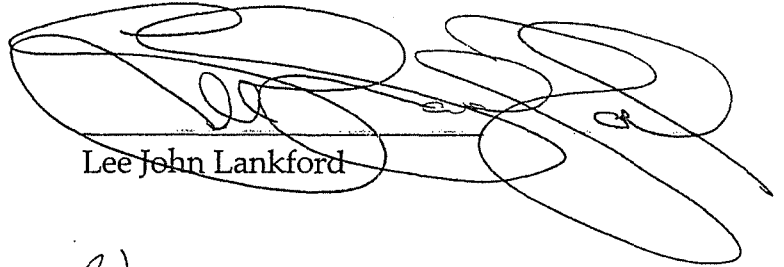
1. I am a brother of Mark Henry Lankford, the defendant in this case.
2. I currently reside in Round Rock, Texas, and resided in Round Rock, Texas in 2008.
3. I testified at both the trial in February 2008 and at the sentencing hearing in July 2008 in this case.
4. Idaho County paid for my travel expenses, lodging, and meals for both the trial in February 2008 and the hearing in July 2008.

Exhibit 4-4

5. In addition, I received payment from Idaho County in August or September 2008 to compensate me for wages and a sales commission which I lost because of my attendance at court for the sentencing hearing in July 2008. The payment was in the form of a county-issued check.

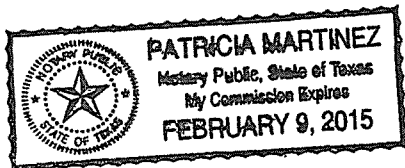
6. The amount of the county-issued check to compensate my lost income was over \$2000.00.

7. This ends this affidavit.



Lee John Lankford

SUBSCRIBED AND SWORN to before me this 21 day of January, 2013.



Patricia Martinez  
Notary Public for Texas  
Residing at Williamson County  
My commission expires 2-9-15

CONFIDENTIAL

ALL CLAIMS MUST BE FILED BY THE  
FIRST AND THIRD MONDAY OF EACH MONTH  
COUNTY OF IDAHO - STATE OF IDAHO

Warrant No. 08-6805

103100 Leo Lankford  
(Name of Claimant)

Address 2550 Cedar Cove  
(To which Warrant should be mailed)  
Round Rock, Texas  
78164

Amount \$ 2152.06

8-15-08  
St. Mark Lankford  
Witness fee

O.K. \_\_\_\_\_

Disallowed \$ \_\_\_\_\_ Additional \$ \_\_\_\_\_

Reason \_\_\_\_\_

Allowed on Current Expense Fund

In the sum of \$ \_\_\_\_\_ this \_\_\_\_\_

day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Chairman of the Board

Paul Atty witness fees

01-07-623

STATE OF IDAHO. )  
County of Idaho ) ss. The undersigned, being duly sworn, says that this  
account is correct, justly due and that no part  
thereof has been paid

[Signature]  
(Sign here)

Filed AUG 15 2008

ROSE E. GEHRING, Clerk

By [Signature], Deputy

Exhibit MM