

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Case Type: Criminal

State of Minnesota,

Plaintiff,

vs.

**STATE'S RESPONSE TO  
DEFENDANT THAO'S MOTION FOR  
SANCTIONS REGARDING  
ALLEGED WITNESS COERCION**

J. Alexander Kueng,

Court File No.: 27-CR-20-12953

Thomas Kiernan Lane,

Court File No.: 27-CR-20-12951

Tou Thao,

Court File No.: 27-CR-20-12949

Defendants.

TO: The Honorable Peter A. Cahill, Judge of District Court, and counsel for Defendants, Robert Paule, 920 Second Avenue South, Suite 975, Minneapolis, MN 55402; Earl Gray, 1st Bank Building, 332 Minnesota Street, Suite W1610, St. Paul, MN 55101; Thomas Plunkett, U.S. Bank Center, 101 East Fifth Street, Suite 1500, St. Paul, MN 55101.

## INTRODUCTION

Defendant Thao has now filed his fourth motion for sanctions in this matter. This is yet another bad-faith attempt by Defendant Thao to debase the State, disqualify members of the prosecution team, and divert attention from his role in the death of George Floyd on May 25, 2020. This motion is part of an ongoing pattern by Defendant Thao of submitting requests for relief without any valid legal basis, in order to manipulate the narrative and influence public opinion.

On July 14, 2020, Defendant Thao filed a motion seeking sanctions against Attorney General Keith Ellison and asking the Court to find Attorney General Ellison in contempt. On December 11, 2020, Defendant Thao filed a motion for sanctions alleging discovery violations by the State, and renewed that motion for sanctions, again alleging discovery violations, on February

8, 2021. On February 15, 2021, Defendant Thao filed a motion for sanctions claiming the State leaked information about the federal government's role in plea negotiations with Chauvin's counsel. Then, on May 12, 2021, Defendant Thao filed the instant motion for sanctions, now claiming witness coercion.

In his latest motion, Defendant Thao accuses prosecutors and forensic pathologist Dr. Roger Mitchell of coercing the testimony of Dr. Andrew Baker, the Hennepin County Medical Examiner, and Dr. David Fowler, a medical expert witness retained by Defendants. These preposterous accusations are simply false, and Defendant Thao does not offer even a shred of evidence to support this baseless conspiracy theory. If anything, the very facts Defendant Thao offers disprove the accusations he makes. As Defendant Thao himself acknowledges, Dr. Baker testified under oath that no one involved in this case pressured him or influenced him to say anything other than the truth, and that no public statements about the case pressured him or influenced him to say anything other than the truth. (Def. Mot. at 4; Def. Ex. 4 at 58-59.) Dr. Baker's own sworn testimony makes clear that he was not coerced. He did not change his findings in this case, and there is no factual basis to claim otherwise.

The State also cannot, and did not, control or influence the response to Dr. Fowler's public testimony from the medical community at large. The State bears no responsibility for the fact—acknowledged even by Defendant Thao—that hundreds of medical professionals found Dr. Fowler's testimony to be so contrary to accepted medical standards that they publicly expressed concerns about the credibility of Dr. Fowler's work. The very fact that over 400 such professionals from across the land have repudiated Dr. Fowler's testimony is evidence against, not for, the wild accusations of defense counsel.

Defendant Thao's specious allegations are just the latest iteration of his desperate smear campaign against the State. Counsel's unprofessional motion practice is unbecoming of any attorney, let alone one with decades of experience. A criminal defense attorney's obligation to zealously advocate on behalf of his client does not give him carte blanche to harass prosecutors with frivolous filings, to repeatedly attempt to taint the jury pool, or to baselessly accuse the prosecution and other professionals of committing misconduct. Defense counsel should not be permitted to continue this pattern of harassment up to and through the trial in this case. The State therefore respectfully requests that this Court summarily deny Defendant Thao's motion, and asks that the Court admonish counsel to cease filing frivolous motions of this kind.

#### STATEMENT OF FACTS

George Perry Floyd died in Defendants' custody on May 25, 2020. Thereafter, the Hennepin County Medical Examiner's Office—which, “[u]nder Minnesota state law . . . is a neutral and independent office and is separate and distinct from any prosecutorial authority or law enforcement agency,”—investigated the cause and manner of Mr. Floyd's death. Press Release Report, May 28, 2020, <https://www.hennepin.us/ME>. While the medicolegal investigation was ongoing, the Medical Examiner's Office issued several press release reports, updating the public on the status of its autopsy and investigation of George Floyd's death. Those reports are available to the public and are posted on the medical examiner's website. “News Releases,” <https://www.hennepin.us/ME>. Press Release Reports related to Mr. Floyd were issued on May 26, 2020, May 28, 2020, and June 1, 2020, and the final autopsy report (dated June 1, 2020) was publicly posted on June 3, 2020. *Id.*

On May 26, 2020, Dr. Baker met with members of the Hennepin County Attorney's Office and law enforcement. (Def. Ex. 6, Bates #022941.) During that meeting, Dr. Baker noted that his

investigation was not complete and that he still needed to review additional materials, including video evidence and toxicology evidence before he could issue a final opinion and report. (*Id.*) Additionally, the Medical Examiner's May 26, 2020 Press Release Report noted that "[t]he cause and manner of death is currently pending further testing and investigation. . . ." Press Release Report, May 26, 2020, <https://www.hennepin.us/ME>. A May 28, 2020 press release further noted that the office was "awaiting final results from laboratory studies" and that "the autopsy alone cannot answer all questions germane to the cause and manner of death, and must be interpreted in the context of the pertinent investigative information and informed by the results of laboratory studies." Press Release Report, May 28, 2020, <https://www.hennepin.us/ME>. On May 29, 2020, the original complaint against Defendant Derek Chauvin was publicly filed in Hennepin County District Court. The complaint acknowledged that Dr. Baker had not completed his review, noting that "[t]he full report of the ME is pending." (Case No. 27-CR-20-12646, Compl. at 3.)

Dr. Baker did not finalize his autopsy report and did not issue an opinion as to cause and manner of death until after he had completed his full autopsy process, including receipt and review of video and toxicology evidence. Only thereafter, in a June 1, 2020 Press Release Report, did the Medical Examiner's Office note Dr. Baker's conclusion that the cause of George Floyd's death was "[c]ardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression" and the manner of death was "homicide." (Def. Ex. 2; *see also* Bates No. 026734.) The final autopsy report, dated June 1, 2020, was then posted to the Medical Examiner's website on June 3, 2020. Autopsy Report, June 1, 2020, <https://www.hennepin.us/ME>.

Dr. Baker has testified under oath regarding his autopsy report and findings in this matter on several occasions. On each occasion, he has affirmed his June 1, 2020 conclusions pertaining to cause and manner of death, which were also incorporated into Mr. Floyd's death certificate.

(See generally Def. Ex. 3; Def. Ex. 4; Testimony of Andrew Baker, Apr. 9, 2021, available at <https://www.youtube.com/watch?v=OQ9MspUIxVA>.) Dr. Baker has not changed those conclusions or altered any findings from his final autopsy report. (See generally Def. Ex. 3; Def. Ex. 4; Testimony of Andrew Baker, Apr. 9, 2021, available at <https://www.youtube.com/watch?v=OQ9MspUIxVA>.) In that regard, during his April 9, 2021 testimony at the trial of Defendant Chauvin, Dr. Baker affirmed his initial opinion as follows: “My opinion remains unchanged. It’s what I put on the death certificate last June. That’s cardiopulmonary arrest ... complicating law enforcement subdual, restraint and neck compression. That was my top line then. It would stay my top line now.” (Testimony of Andrew Baker, Apr. 9, 2021, available at <https://www.youtube.com/watch?v=OQ9MspUIxVA>.)

At some point before Dr. Baker issued his findings and autopsy report on June 1, 2020, Dr. Roger Mitchell, who was acquainted with Dr. Baker professionally as a colleague and fellow forensic pathologist, reached out to Dr. Baker, and they discussed this case.<sup>1</sup> (Def. Ex. 1.) Dr. Mitchell was the Chief Medical Examiner for the District of Columbia and a national expert on deaths in custody, having authored a NAME position paper regarding the investigation and examination of such deaths.<sup>2</sup> The State did not know of, much less make contact with, Dr. Mitchell until the fall of 2020, during its routine search for potential experts. As part of that process, Dr.

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<sup>1</sup> It is commonplace for physicians to consult with one another about a case. The National Association of Medical Examiners (NAME) Accreditation Program “is a peer review system,” with the goal of improving performance “through objective evaluation and constructive criticism,” in which an “inspector,” who is the medical examiner’s peer, “serves as a guest consultant.” NAME, Inspection and Accreditation, <https://www.thename.org/inspection-accreditation>. Indeed, Dr. Baker’s final autopsy report “was reviewed by another board-certified forensic pathologist prior to release,” pursuant to the Medical Examiner’s Office policy. Autopsy Report, June 1, 2020, <https://www.hennepin.us/ME>.

<sup>2</sup> Roger Mitchell, et al., “National Association of Medical Examiners Position Paper: Recommendations for the Definition, Investigation, Postmortem Examination, and Reporting of Deaths in Custody,” 2017, available at [https://ocme.dc.gov/sites/default/files/dc/sites/ocme/release\\_content/attachments/Deaths%20in%20Custody\\_NAME\\_2017\\_0.pdf](https://ocme.dc.gov/sites/default/files/dc/sites/ocme/release_content/attachments/Deaths%20in%20Custody_NAME_2017_0.pdf).

Mitchell, like other potential experts, was provided with case materials to review. On November 5, 2020, the State discussed with Dr. Mitchell his review of those materials. (Def. Ex. 1.) The State had similar discussions with the other experts it engaged. During the November 5 meeting, in addition to discussing his review of the materials, Dr. Mitchell mentioned that he had spoken with Dr. Baker before Dr. Baker had issued his final autopsy report, and Dr. Mitchell provided a general overview of those discussions. (Def. Ex. 1.)

Ultimately, the State opted not to utilize Dr. Mitchell as a testifying expert witness. Nonetheless, the State included the summary of its November 5, 2020 conversation with Dr. Mitchell as part of its disclosures. (Def. Ex. 1.) The disclosures pertaining to the review of case materials by the State's potential experts, including the summary of the November 5, 2020 conference with Dr. Mitchell, were made to Defendants on February 2, 2021, in conjunction with the State's expert disclosures, following the Court's extension of the deadline for substantive expert disclosures. (Supp. Discl., Bates Pages 41363-42955, Feb. 2, 2021.) Defendants were free to follow up on the information provided in the summary with Dr. Baker or others as part of their own case preparation, and they remain free to do so.

On April 20, 2021, nearly one year after George Floyd's death, a jury found Defendant Chauvin guilty of all counts at trial. Thereafter, after having watched Dr. David Fowler's April 14, 2021 testimony for the defense, hundreds of physicians independently exercised their own professional judgment and signed on to an open letter seeking review of all in-custody death investigations conducted by the Maryland State Office of the Chief Medical Examiner under Dr. Fowler's supervision between 2003 and 2020. (Def. Ex. 5.) The State played no role whatsoever in the drafting of this letter. Nor did the State even know of the existence of this letter until after it was publicly circulated.

## ARGUMENT

### I. **DEFENDANT THAO’S MOTION IS ENTIRELY, MERITLESS, AND WAS BROUGHT SIMPLY TO PERPETUATE AN UNFAIRLY PREJUDICIAL AND FALSE NARRATIVE IN THE PUBLIC DOMAIN.**

This is Defendant Thao’s fourth frivolous motion for sanctions. It is entirely meritless and aims to harass and discredit the State by perpetuating a false narrative in the public domain. Once again, Defendant Thao identifies no basis for the relief he seeks and merely casts aspersions on the prosecution and Dr. Mitchell. This Court should summarily deny Defendant Thao’s motion.

#### A. **No Criminal Coercion Occurred.**

Defendant Thao has accused the State and Dr. Mitchell of committing the crime of coercion. This is an extremely serious allegation without any evidentiary support. There is no evidence of criminal coercion because absolutely no coercion occurred.

Minnesota Statutes, section 609.27 provides, in relevant part, that:

Whoever orally or in writing makes any of the following threats and thereby causes another against the other's will to do any act or forbear doing a lawful act is guilty of coercion . . . :

. . .

(3) a threat to unlawfully injure a trade, business, profession, or calling; . . .

Minn. Stat. § 609.27, subd. 1(3).<sup>3</sup> To establish coercion on this basis requires proof of the following substantive elements: (1) that the accused communicated a threat to the victim to unlawfully injure the victim’s trade, business, profession or calling; (2) that the accused acted with the intent of causing the victim to do a particular act (or to refrain from doing a particular act); and

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<sup>3</sup> Notably, the Minnesota Supreme Court has held that Minnesota Statutes, Section 609.27, subd. 1(4), criminalizing “a threat to expose a secret or deformity, publish a defamatory statement, or otherwise to expose any person to disgrace or ridicule,” is unconstitutionally overbroad. *State v. Jorgenson*, 946 N.W.2d 596, 600 (Minn. 2020).

(3) that, as a result of the threat, the victim did the act against his will (or refrained from doing the act, which it was his legal right to do). Minn. Crim. JIG 13.104.

Defendant Thao has clearly not established any element of criminal coercion on the part of Dr. Mitchell, the State, or anyone else, and no such coercion took place.

**B. Dr. Baker's Opinions and Conclusions Were Not Coerced or Pressured by Anyone, and Dr. Baker Affirmed as Much Under Oath.**

Dr. Baker, the independent Medical Examiner, formed his own opinions and conclusions in this case. As discussed in the State's prior filings, Dr. Baker does not report to the Attorney General's Office, and he is not a part of the prosecution team. He is not beholden to the prosecution in any way; he is an independent public official, who operates "free from the influence of law enforcement and prosecutors." *See State v. Beecroft*, 813 N.W.2d 814, 833 (Minn. 2012). That has been the case throughout the investigation and litigation of this matter, and that remains the case now. The State has not, and would not, impede Dr. Baker's independence, and any claim to the contrary is baseless and false.

Defendant Thao's allegation that Dr. Baker was purportedly coerced by the prosecution is also directly contradicted by the evidence, including Dr. Baker's own sworn testimony in a February 2021 proceeding related to George Floyd's death. As Defendant Thao himself acknowledges, Dr. Baker testified "under oath in other proceedings" (Def. Mot. at 4) that no one involved in this case pressured Dr. Baker or influenced him to say anything other than the truth and that no public statements about the case pressured him or influenced him to say anything other than the truth. (Def. Ex. 4 at 58-59.)<sup>4</sup> In support of the purported "coercion," Defendant Thao also bizarrely focuses on a line from the State's disclosure summarizing Dr. Mitchell's conversation

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<sup>4</sup> Defendant Thao also cites to a "break" in the February 2021 proceedings from 10:12 am to 12:18 am in support of his motion. (Def. Ex. 4 at 58.) This is clearly a typographical error in the transcript. The break most likely ended at 10:18 am, as it is clear the entire proceedings in question concluded at 10:21 a.m. (Def. Ex. 4 at 59.)



with Dr. Baker, which emphasizes “telling the truth” with respect to Mr. Floyd’s cause and manner of death. (Def. Mot. at 3.) Put simply, there is absolutely no evidence of any criminal “threat to unlawfully injure Dr. Baker’s trade unless Dr. Baker changed his autopsy findings” as Defendant Thao alleges. (Def. Mot. at 5.) The record is clear that neither Dr. Baker’s findings nor later testimony were coerced.

The State was not involved with Dr. Mitchell in any way at the time of his conversation with Dr. Baker following George Floyd’s death, and there was no collusion in any way, shape or form. The State was not even aware of any interaction between Dr. Baker and Dr. Mitchell until Dr. Mitchell mentioned their conversation in the fall of 2020. Should Defendant Thao have any questions for Dr. Baker about his findings in this matter, defense counsel has been, and continues to be, free and able to interview Dr. Baker himself at any time. *See Beecroft*, 813 N.W.2d at 834; Minn. R. Crim. P. 9.03, subd. 1. Indeed, Defendants could have followed-up on the information provided in the summary as soon as they received it. Instead, Defendant Thao chose to wait to file this motion until May 12, 2021, several weeks *after* Defendant Chauvin’s conviction. Defendant Thao now insinuates, without even a modicum of support, that the State engaged in an elaborate conspiracy in May or June 2020—almost a year ago, and at least nine months before Defendant Chauvin’s trial—to elicit coerced testimony from Dr. Baker and did so by enlisting Dr. Mitchell—someone the State spoke to for the first time *months later*—to act as a government agent to threaten and coerce Dr. Baker into testifying falsely on behalf of the State. This false and specious assertion is as nonsensical as it sounds. It is a shameless attempt to unfairly prejudice and sully the prosecution, and to misuse the court processes to launder a false narrative into the public domain. The Court should not entertain such tactics or repeated misconduct by the defense.

**C. Dr. Fowler’s Testimony Was Clearly Not Coerced, and Defendant Thao’s Allegation Belies the Record Evidence.**

Likewise, Dr. Fowler’s testimony was not coerced by the State or Dr. Mitchell, nor could it have been. Dr. Fowler was hired by Defendants and testified on behalf of Defendant Chauvin at trial. He was called by *Defendant Chauvin*. The State did not retain Dr. Fowler, did not consult Dr. Fowler, and had no control over Dr. Fowler’s testimony in any way.

Nonetheless, Defendant Thao alleges that Dr. Fowler’s testimony was coerced by a public letter from a group of physicians dated April 20, 2021—six days *after* Dr. Fowler testified at Defendant Chauvin’s trial on April 14, 2021. That theory is absurd. It goes without saying that a letter that postdated Dr. Fowler’s testimony could not have threatened or influenced that same testimony. The letter clearly did not cause Dr. Fowler to “do any act” against his will, as he had already testified at the time it was drafted. Minn. Stat. § 609.27.

Equally absurd is Defendant Thao’s suggestion that the State orchestrated a plan to intimidate and coerce Dr. Fowler (or to stonewall any other medical professional) through Dr. Mitchell or anyone else. Prosecuting attorneys played no role in drafting the letter or assembling the more than 400 physicians who signed onto it. Defendant Thao blames the prosecution for a reaction that only Dr. Fowler himself could have inspired. That Defendant Thao may now be experiencing difficulty locating an expert who is willing to espouse Dr. Fowler’s views may be simply a reflection of the realities of the medical issues in this case and professional standards, expectations, and ethics in the field of medicine. It is undoubtedly not the grand conspiracy he has alleged. Notwithstanding Defendant Thao’s concerns, none of the conduct alleged amounts to a threat “to unlawfully injure [the] trade, business, profession, or calling” of any witness or potential witness in order to cause any such witness “to do any act or forbear doing a lawful act.” Minn. Stat. § 609.27, subd. 1(3).

On the contrary, criminal charges have arisen under Minnesota Statutes section 609.27, subdivision 1(3), from clear threatening behavior and egregious conduct. In *State v. Erickson*, for example, the defendant, Erickson, was the executive director of the labor union that represented the victim. 362 N.W.2d 398, 399 (Minn. Ct. App. 1985). The victim, Mainella, was a city employee with little formal education. *Id.* Mainella owned 160 acres of land with a gravel pit, which Erickson wanted the first opportunity to purchase. *Id.* After Mainella told Erickson that four other individuals were interested in buying the land, Erickson paid a visit to Mainella. *Id.* Erickson insisted Mainella get in his car and told Mainella he would “make it hard for him” if Mainella did not sell Erickson the land. *Id.* Erickson then showed Mainella a gun in his glove compartment, which caused Mainella to be “scared and uncomfortable.” *Id.* Mainella then proceeded to sell his property to Erickson. *Id.* Thereafter, Erickson asked Mainella for money on multiple occasions, which Mainella provided. *Id.* at 399-400. Erickson also told Mainella that he thought Mainella was in trouble for “padding his overtime,” that there would be a grand jury investigation, and that Mainella would lose his pension. *Id.* Erickson proceeded to tell Mainella that “he could take care of the matter if Mainella would pay him \$1,600 that day.” *Id.* Erickson was ultimately convicted of two counts of coercion under Minn. Stat. § 609.27, subd. 1(3) and (5), which the Minnesota Court of Appeals affirmed.

None of the conduct alleged in this case is even remotely similar. There have been no explicit or implicit threats of any kind. No one has been made to act against his will. There has been no coercion whatsoever.

**D. There is No Basis for the Relief Sought or the Factual Findings Requested.**

Defendant Thao has asked the Court to make “factual findings” that Dr. Mitchell coerced Dr. Baker and Dr. Fowler and that the State “ratified the coercion.” (Def. Mot. at 8.) There is

absolutely no basis in fact or law upon which to make such factual findings. The wild and sweeping accusations by Defendant Thao, which are contradicted and unsupported by the record evidence, are wholly insufficient to grant relief. Dr. Baker's sworn testimony in a related proceeding in February 2021, on its own, clearly establishes that Dr. Baker's opinions and conclusions regarding George Floyd's death were not coerced by Dr. Mitchell, the State, or anyone else. (Def. Ex. 4 at 58-59.) Moreover, there is no evidence that Dr. Mitchell influenced Dr. Fowler's testimony at the trial of Defendant Chauvin in any way, let alone that Dr. Mitchell ever even spoke with Dr. Fowler about this case. *Contra Erickson*, 362 N.W.2d at 399.

Defendant Thao has also asked for an order "requiring the State to disclose all materials relevant to the hiring/contracting of Dr. Mitchell, any and all audio recordings of Dr. Mitchell, [and] any and all communication with Dr. Baker on his reasoning for changing his factual findings after speaking with Dr. Mitchell." (Def. Mot. at 8.) He has offered no basis, however, for the production of such materials. There is no evidence that Dr. Baker "changed" his "factual findings," as his review and report were not complete at the time he spoke with Dr. Mitchell. *See e.g., Ertl v. Ertl*, 871 N.W.2d 410, 417 (Minn. Ct. App. 2015) ("A district court's factual findings must be supported by evidence in the record," and a district court's findings will be reversed "when they are not reasonably supported by the evidence as a whole."); *State v. McCormick*, 835 N.W.2d 498, 509 (Minn. Ct. App. 2013) ("A finding of fact is clearly erroneous when it "is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole"). Dr. Baker issued his final conclusions and autopsy report on June 1, 2020, and he has repeatedly affirmed the opinions therein, including at the trial of Defendant Chauvin.

The State has disclosed the reports of its interviews with Dr. Baker in this matter. The State has also disclosed its summary of the November 5, 2020, meeting with Dr. Mitchell

pertaining to Dr. Mitchell's review of case materials. The State has met its obligations and has made its disclosures in that respect. No audio recordings of any discussions with Dr. Mitchell exist.

Defendant Thao has also attempted to use this motion as a platform to disassemble the prosecution team without any legal support whatsoever. There is absolutely no basis for barring attorneys for the prosecution from participating in this matter, and there is absolutely no basis for any allegation of prosecutorial misconduct. The State disclosed its summary of the November 5, 2020 conference with Dr. Mitchell and provided the information it learned to Defendants. For all of the reasons described, any suggestion of coercion on the part of the State or "ratification" thereof belies fact and common sense.

While criminal defense attorneys generally have greater leeway than civil attorneys in zealously advocating on behalf of their clients, that leeway does not give them carte blanche to file with impunity repeated frivolous and disparaging motions with no good faith basis in fact or law. *Cf. Wisconsin v. Glick*, 782 F.2d 670, 673 (7th Cir. 1986) ("An argument in the teeth of the law is vexatious, and a criminal defendant who chooses to harass his prosecutor may not do so with impunity."). Notably, in extreme cases, courts have imposed sanctions on attorneys for launching "gratuitous and public personal attack[s] on" the prosecution, *United States v. Kouri-Perez*, 8 F. Supp. 2d 133, 138 (D.P.R. 1998), for filing baseless motions of prosecutorial misconduct based on "innuendo," "juxtaposition of inferences and attenuated circumstantial evidence," *Young v. Ninth Jud. Dist. Ct., In & For Cty. Of Douglas*, 818 P.2d 844, 847 (Nev. 1991), as well as for "senseless, burdensome, purposeless motion practice," *United States v. Jeffords*, 647 F. Supp. 906, 907 (D. Me. 1986); *cf. United States v. Akers*, 740 F. App'x 633, 634 (10th Cir. 2018) (affirming sanctions on criminal defendant for filing frivolous motions). State bar disciplinary committees

have likewise imposed sanctions in extreme cases for attorneys' misconduct in criminal cases. *See, e.g., In re Yelverton*, 105 A.3d 413, 428 (D.C. 2014) (“[R]espondent’s numerous meritless, repetitive, and at times vexatious motions and other filings, considered in their totality, caused more than de minimis harm to the judicial process.”); *Disciplinary Couns. v. LoDico*, 833 N.E.2d 1235, 1241 (Ohio 2005) (“Although criminal cases bring the responsibility and necessity of a vigorous defense, an attorney is not endowed with a concomitant right to denigrate the court in discharging that responsibility.”).

Accordingly, at a minimum, this Court should admonish defense counsel for frivolous motion practice under the professional rules. *See In re Becraft*, 885 F.2d 547, 550 (9th Cir. 1989) (While “courts generally tolerate arguments on behalf of criminal defendants that would likely be met with sanctions if advanced in a civil proceeding,” a court need “not stand by silently when an attorney repeatedly breaches his professional responsibility to the court.”); *see also* Minn. R. Prof. Conduct 3.1 (“A lawyer shall not . . . assert or controvert an issue[], unless there is a basis in law and fact for doing so that is not frivolous.”).

### CONCLUSION

Defendant Thao is entitled to no relief because there is no harm to remedy. The State has done nothing wrong. Nor has Defendant Thao offered any factual basis or legal authority to support his conspiracy theory. Trial is now scheduled to occur on March 7, 2022. Should Defendant Thao wish to conduct any type of investigation in preparation for trial, he has plenty of time to do so. Instead, however, he has launched a frivolous motion practice campaign to unfairly prejudice this prosecution in the public domain, replete with gratuitous and unfounded personal attacks on the prosecution. To make false accusations of coercion against the State in an attempt to tarnish professional reputations, taint the jury pool, and advance Defendants' interests in the

public eye is beyond the pale. The Court should not condone the tactics employed by Defendant Thao, let alone grant any relief.

For the foregoing reasons, the Court should summarily deny Defendant Thao's motion for sanctions regarding alleged witness coercion and should remind defense counsel of his obligation to refrain from frivolous motion practice.

Dated: May 20, 2021

Respectfully submitted,

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