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The highlighted portions are intended to facilitate the entry of facts pertinent to an individual case.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF [REDACTED]

[REDACTED],
Plaintiff,

Case No: [REDACTED]
Hon. [REDACTED]

vs.

[REDACTED],
Defendant.

[Attorneys Names] (Bar # [numbers]) [Addresses] [Phone Numbers] [Email addresses]

[Crime victim / Pseudonym]’S MOTION FOR ADMINISTRATIVE CLOSURE, STAY, OR SUSPENSION OF PROCEEDINGS PENDING OUTCOME OF CRIMINAL CASE

NOW COMES Defendant, by and through her attorneys, and for her Motion to Administratively Close or Stay Proceedings states as follows:

1. This lawsuit was filed against Defendant on _____, arising out of instances in which Defendant allegedly _____. The lawsuit alleges counts of _____.

2. *[Insert relevant facts, including the nature of the criminal case and its current status including future hearing and trial dates. If you choose to attach documentation to support this motion or submit such information in connection with a hearing, redact any information that compromises the victim's privacy or safety.]*

3. The criminal case arises out of the same events that are at issue in this civil case.

4. Awaiting the result of the criminal trial before proceeding in this civil action will facilitate the availability of evidence and ability of the court to achieve a speedy resolution.

5. Because the events at issue in this case arise directly out of the circumstances giving rise to Plaintiff's pending felony charges, litigation of this case may put Plaintiff in the unenviable position of having to assert his Fifth Amendment right against self-incrimination or risk the use of his statements being used against him in his pending criminal proceedings.

6. Relatedly, if Plaintiff asserted his Fifth Amendment rights, then Defendant would be hamstrung in any effort to defend herself. It will also be nearly impossible for Defendant to obtain all of the relevant evidence, which is currently in the hands of police, investigators, and prosecutors.

7. Both parties also face the possibility of exposing litigation strategies for the criminal case through the litigation of this civil action.

8. Moreover, the process of discovery in this civil action could run afoul of crime victim protections that should preserve Defendant's privacy as the victim in the underlying criminal action and create a backdoor to expanded discovery in the criminal trial.

9. *[Insert information about any no-contact or personal protection orders that are in place.]* Ongoing discovery and litigation in this case serves as a loophole through which Plaintiff indirectly continues to wreak havoc on Defendant's daily life.

10. Upon completion of the criminal case, the parties will be better situated to both prosecute and defend the claims and counterclaims in this case in a speedy and just manner.

WHEREFORE, Defendant respectfully requests that this Honorable Court grant her Motion and Administratively Close, Stay, or otherwise suspend the instant civil proceedings during the pendency of Plaintiff's criminal case, tailoring an order in the Court's discretion to that effect.

Dated: _____

Respectfully submitted,

By: _____

BRIEF IN SUPPORT

This Court has discretion to construe the Michigan Court Rules so as to “secure the just, speedy, and economical determination” of actions before it. MCR 1.105.

Administrative closure, a stay, or similar docket-management action is appropriate here in the interest of judicial economy, to secure a just determination by protecting Plaintiff against self-incrimination during the pendency of his serious felony charges, and to ensure the protection of Defendant’s rights under Michigan’s Constitution and the Crime Victim Rights Act. Const 1963, art 1, § 24; MCL 780.751 *et seq.*

The power to stay proceedings or otherwise administer its docket is “incidental to the power inherent in every court to control the disposition of the causes in its docket with economy of time and effort for itself, for counsel and for litigants.” *Ohio Env’tl Council v US Dist Court, S Dist of Ohio, E Div*, 565 F2d 393, 396 (CA6 1977). The Michigan Court of Appeals has underscored the importance of enhancing judicial economy. *Eg Hanley v Mazda Motor Corp*, 239 MichApp 596, 602; 609 NW2d 203 (2000). Awaiting the result of a criminal trial in this case will not only maintain the integrity of the justice system and prevent abuse of process, it will also facilitate the availability of evidence and ability of the court to achieve speedy resolution.

I. Awaiting the result of a criminal trial will facilitate a just and speedy resolution.

Where a criminal action is pending or impending, a stay issued in a court’s discretion can help preserve a party’s Fifth Amendment privilege against self-incrimination. See *Chao v Fleming*, 498 FSupp2d 1034, 1037 (WD Mich 2007) citing *Landis v No Am Co*, 299 US 248, 254–55 (1936). It is likely that Plaintiff will be put in the position of having to discuss

or respond to requests that touch on the issues that gave rise to his criminal case, which could implicate Plaintiff's Fifth Amendment rights against self-incrimination. *Id.* If Plaintiff asserted his Fifth Amendment rights to avoid any portion of discovery, then Defendant would be hamstrung in any effort to defend herself or further substantiate her counterclaims. In turn, this Court may be required to attend to numerous discovery motions and requests that could be avoided through a docketing action suspending this case.

II. This Court should prevent Defendant from circumventing victims' rights.

The Michigan Constitution provides crime victims with "[t]he right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process."¹ Const 1963, art 1, § 24. The process of criminal discovery is circumscribed and calculated to respect the privacy of crime victims. See MCR 6.201. Continued litigation of this civil matter during the pendency of the criminal trial would subject _____ [crime victim / pseudonym] _____, who is the victim in the criminal prosecution, to further discovery that is inconsistent with the design of Michigan's criminal justice process. *[Summarize facts of current case to demonstrate that the client is a "victim". Pursuant to statute this requires proving: client suffered a covered harm, the defendant's conduct is punishable by imprisonment for more than 1 year or is expressly labeled a felony, and defendant is charged*

¹ [practitioners may consider their court and the extent to which the federal citations here will be persuasive] All persons, including victims of crime, are also guaranteed a federal constitutional right to privacy. *See Roe v Wade*, 410 US 113, 152-153 (1973) (recognizing that "a right of personal privacy . . . does exist under the Constitution"); *see also Whalen v Roe*, 429 US 589, 599 (1977) (noting cases finding protected privacy interests include an "individual interest in avoiding disclosure of personal matters"). Protecting this right is critical. *See Ilene Seidman & Susan Vickers, The Second Wave: An Agenda for the Next Thirty Years of Rape Law Reform*, 38 Suffolk U.L. Rev. 467, 473 (2005) ("For most [victims], privacy is like oxygen; it is a pervasive, consistent need at every step of recovery. Within the context of the legal system, if a victim is without privacy, all other remedies are moot.").

with the crime. Further explain how the particular discovery right treads on the articulated victim's rights of fairness, privacy, protection and dignity.]

Invasive civil discovery by a criminal defendant is a substantial disincentive for victims to report the crimes perpetrated against them; a reality which negatively implicates the effective administration of justice and undermines the victims' constitutional right to access the courts.² In *Moldowan v City of Warren*, 578 F3d 351 (CA6 2009), a case arising out of Michigan, the criminal defendant sought damages through a civil action after being acquitted of a crime. The victim, a named defendant in the civil action, sought immunity, arguing that “[i]f a woman who has been sodomized, beaten and left permanently disabled can be sued and subjected to an endless retread of the brutalization against her through deposition and discovery, the entire criminal justice system is put at risk.” *Id.* at 373 (citation omitted). The court agreed. *Id.* This Court has a chance to prevent this same type of abuse of process and protect victims' rights.

This Court should hold that the protections afforded by victims' constitutional and statutory rights extend to this related civil proceeding and require quashing/staying the civil discovery. Case law across the country supports this approach, reflecting an understanding that, in order for crime victims' rights to be meaningful, their protections must extend to civil proceedings that share a substantial nexus to the crime. For instance, in *State v Lee*, 245 P3d 919 (Ariz Ct App 2011), a civil forfeiture proceeding with a parallel criminal case, the defendant obtained a court order compelling depositions of the named victims in the criminal proceeding.

² All individuals have a fundamental right to access the courts. See, eg, *Chappell v Rich*, 340 F3d 1279, 1282 (CA 11 2003) (“Access to the courts is clearly a constitutional right, grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and/or the Fourteenth Amendment.”); *Ryland v. Shapiro*, 708 F.2d 967, 971 (5th Cir. 1983) (noting that access to courts is a fundamental right).

On review, the court of appeals held that the trial court erred as a matter of law in denying the victims a protective order precluding the depositions. Relying on the victims’ constitutional rights “[t]o be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, through the criminal justice process,” the court held “that victims retain their constitutional right to refuse to be deposed by the defense in a civil proceeding where the subject matter of the proposed deposition is the criminal offense committed against those victims.” *Id.* at 920. *See also In re Doe*, 22 SW3d 601, 611-12 (Tex App 2000) (holding that the rape shield laws protected the victim from being asked questions about her past and present sexual history at a civil deposition even though Texas’ rape shield law explicitly applies only in criminal cases); *Tennessean v Metropolitan Government of Nashville*, 485 SW3d 857, 878,882 (Tenn 2016) (Wade, J., dissenting) (noting that in this civil proceeding—a public records request by media for police investigation file—the crime victim opposed releasing the information as it related to her victimization and that she had the right to be free from intimidation, harassment and abuse, and to be treated with dignity and compassion).

III. Courts have a duty to maintain the integrity of the justice system and prevent abuse of process.

Trial courts have a duty to prevent a defendant in a criminal case from exploiting the relaxed rules of civil discovery to gather evidence for the criminal case that is not otherwise available under criminal discovery rules.

Unlike the constitutionally enshrined rights afforded crime victims in the state of Michigan, the right to discovery by the defendant in a criminal case is not a constitutional one; instead it is “constrained by the limitations expressly set forth in the reciprocal criminal discovery rule promulgated by [the] Supreme Court, MCR 6.201.” *People v. Greenfield*, 271

Mich App 442, 447 (2006). *See also People v. Elston*, 462 Mich 751, 765-66 (2000) (“There is no general constitutional right to discovery in a criminal case.”). As explicitly set forth in the Rules, “[d]epositions and other discovery proceedings under [the civil rules of procedure] may not be taken for the purposes of discovery in cases governed by this chapter.” MCR 6.001(D). Thus, defendants’ right to discovery in criminal cases is far narrower than in civil cases and this has been recognized by this state’s courts. *See, eg, Greenfield*, 271 Mich App at 447 (“Unlike in civil litigation, in which the rules permit far-reaching discovery[,] . . . discovery in criminal cases is constrained by the limitations expressly set forth in the reciprocal criminal discovery rule promulgated by our Supreme Court, MCR 6.201”).

Courts have recognized the need to abide by the distinction:

A litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain documents he would not otherwise be entitled to for use in his criminal suit. Judicial discretion and procedural flexibility should be utilized to harmonize the conflicting rules and to prevent the rules and policies applicable to one suit from doing violence to those pertaining to the other.

Campbell v Eastland, 307 F2d 478, 487 (5th Cir 2009). *See also In re Kunstler*, 914 F2d 505 (CA4 1990) (imposing sanctions against criminal defendant who filed a Section 1983 complaint and moved for expedited discovery to depose state agents finding complaint was filed for improper purposes that included obtaining discovery for use in the criminal proceedings); *In re Film Recovery Sys, Inc*, 804 F2d 386, 389 (7th Cir 1986) (noting that a trial court should take caution “where a criminal litigant initiates a civil suit in order that he might circumvent the limitations on discovery imposed in criminal proceedings.”); **[unpublished case check court rules and potentially attach before citing]** *Lizarraga v City of Nogales*, No CV 06-44 TUC DCB, 2008 WL 4079991, at *3 (D Ariz, July 1, 2015) (granting the state’s motion to intervene and stay the civil proceedings where the victim’s medical records, obtained as part of the civil discovery,

were introduced into criminal case, thereby circumventing the Victim's Bill of Rights that protects victims from being forced to disclose records of medical treatment); *United States v Phillips*, 580 FSupp 517, 518-19 (ND Ill 1984) ("Judicial discretion and procedural flexibility should be utilized to harmonize the conflicting rules and to prevent the rules and policies applicable to one suit from doing violence to those pertaining to the other."); *Ledvina v Cerasani*, 146 P3d 70 (Ariz Ct App 2006) (holding that since the civil lawsuit arose directly from the crime victims' reports to police, this parallel civil lawsuit would vitiate the Victim's Bill of Rights and therefore the victims were entitled to absolute immunity when complaining to the police); *State v Deal*, 740 NW2d 755, 765 (Minn 2007) (finding that the public policy of "[m]aintaining the integrity of a criminal proceeding by preventing circumvention of the criminal discovery rules" can constitute "'good cause' to issue a protective order staying civil discovery"); **[unpublished case check court rules and potentially attach before citing]** *Doe v County of Milwaukee*, No 14-C-200, 2014 WL 3728078 (Wis July 29, 2014) (opining that to permit a defendant in a criminal case to use information obtained from discovery in a related civil action would undercut the important purposes of restrictive criminal discovery rules).

A court "can exercise its discretion to manage civil litigation to avoid interference with a criminal case." *Degen v United States*, 517 US 820, 827 (1996). The relief the court can provide to a crime victim when the perpetrator attempts to circumvent the crime victims' rights and the limited criminal discovery rules includes either a protective order prohibiting the deposition or subpoena, or a stay of the civil discovery altogether, until the criminal prosecution is resolved.⁴ In *United States v Kordel*, 397 US 1 (1970), the Court noted that courts have stayed civil proceedings until related criminal cases are completed "when the interests of justice seemed to require such action." *Id.* 12 n27; *see also Landis*, 299 US at 253 ("[T]he power to

stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket . . .”).

IV. Conclusion.

It is difficult to overstate the importance of protecting a crime victim’s right to be treated with fairness and respect for their dignity and privacy. Victims of crime in Michigan are granted constitutional and statutory rights that prohibit harassment and intimidation by criminal defendants. It is an abuse of process for a criminal defendant to use the relaxed rules of civil discovery to circumvent the crime victim’s rights and protections.

_____ [crime victim / pseudonym] _____ defers to this Court’s discretion to tailor the appropriate remedy that would suspend these proceedings while causing minimal administrative burden. [*note: Because Michigan courts do not have extensive case law initiating stays in this situation, there is no single approved procedural practice that is appropriate. However, as practitioners become familiar with judges’ preferences, the practitioner may style this as simply a stay or simply administrative closure.*]

WHEREFORE, _____ [crime victim / pseudonym] _____ respectfully requests that this Honorable Court grant this Motion and Administratively Close, Stay, or otherwise suspend the instant civil proceedings during the pendency of Plaintiff’s criminal case, tailoring an order in the Court’s discretion to that effect.

Dated: _____

Respectfully submitted,

By: _____

PROOF OF SERVICE

I hereby certify that on the , I served the foregoing Motion for Administrative Closure or Stay of Proceedings Pending Outcome of Criminal Case with the Clerk of the Court via overnight mail and all attorneys of record via first-class mail at their respective business addresses as disclosed by the pleadings of record herein.

Dated:

By: