

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST DISTRICT - DIVISION FIVE

MANOHAR RAJU, as Public
Defender, etc.,
Petitioner

v.

THE SUPERIOR COURT OF
THE CITY
AND COUNTY OF SAN
FRANCISCO,
Respondent

No. A176141

Superior Court of California
26000546; WRT-10138

**APPLICATION OF DEFENDER INITIATIVE AND
ALAMEDA COUNTY PUBLIC DEFENDER TO FILE
AMICUS CURIAE BRIEF; AND AMICUS BRIEF**

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Application of Defender Initiative and Alameda County Public Defender Office

Pursuant to California Rules of Court, Rule 8.847, the Defender Initiative, Seattle University School of Law, and the Alameda County Public Defender respectfully request leave to file the attached Amicus Brief in Support of Petitioner.

The Defender Initiative at Seattle University is a law school-based project aimed at providing better, effective representation for people accused of crimes and facing loss of their liberty and in the process increase fairness in and respect for the courts. The Initiative is part of the Center for Civil Rights and Critical Justice, whose mission is to advance justice and equality through a unified vision that combines research, advocacy, and education.

The Director of The Defender Initiative, Robert C. Boruchowitz, was Director of The Defender Association in King County for 28 years and is a Professor from Practice and has taught Criminal Procedure-Adjudicative, Right to Counsel, Law and Lawyering, and the Youth Advocacy Clinic. He was one of the expert witnesses who provided declarations in the trial court below.

The right to conflict-free and effective counsel is at the heart of this petition. The implementation of the state and federal constitutional right to counsel is a major focus of The Defender Initiative. The Initiative has filed amicus briefs in Washington courts, including a co-authored brief in *Matter of Det. of M.E.*, 586 P.3d 580 (Wash. 2026).

The Alameda County Public Defender provides legal representation to thousands of clients annually in Alameda County, California, a county with a population of approximately 1.67 million residents and the seventh most populous county in the state. The Office represents clients in more than 90 percent of criminal case filings in Alameda County. Under the leadership of Public Defender Brendon Woods, the Office has been a leading voice on issues affecting the right to counsel, indigent defense, and the fair administration of justice.

The mission of the Alameda County Public Defender's Office is to protect and defend the rights of its clients through compassionate, high-quality legal representation and to promote a fair and unbiased system of justice for all. The right to effective, conflict-free counsel is central to that mission and guides the Office's work on behalf of its clients.

The Office has filed amicus briefs in California courts, including *Cain v. Superior Court*, 110 Cal. App. 5th 639 (2025) [conflict-free representation, current and former client]; *J.O. v. Superior Ct. of San Joaquin Cnty.*, No. S287285, 2026 WL 1488791 (Cal. May 28, 2026) [blanket challenge pursuant to CCP 170.6]); *In re Kowalczyk*, 19 Cal. 5th 593 (2026) [bail].

The amicus brief will assist the Court in deciding this matter by addressing how long-standing national standards support defenders declaring unavailability when their workload raises conflict of interest issues, by recounting how other states' defenders are declaring unavailability, by explaining the role of expert witnesses in assisting judges in responding to declarations

of unavailability, and discussing how convening stakeholders to consider alternatives to traditional prosecution can assist the court in responding to excessive defender caseloads while protecting public safety.

Among the national standards the brief will address are the American Bar Association's Ten Principles of a Public Defense Delivery System. Both signed counsel below participated in the drafting and editing of the Ten Principles.

In accordance with California Rules of Court, Rule 8.200(c)(3), no party or counsel for any party in the pending appeal authored this brief in whole or in part, and no party or counsel for any party in the pending appeal made a monetary contribution intended to fund the letter's preparation or submission. No person or entity other than The Defender Initiative and the Alameda County Public Defender made any monetary contribution intended to fund the preparation or submission of this amicus brief.

The Initiative and the Alameda County Public Defender ask this Court to grant leave to file the attached amicus brief.

Alameda County Public
Defenders

Respectfully submitted,

Dated: June 10, 2026

By: /s/ Brendon D. Woods

Brendon D. Woods, SBN
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Attorney for Amicus Curiae

Defender Initiative

Respectfully submitted

Dated: June 10, 2026

By: /s/ Robert C. Boruchowitz

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On the Brief

Document received by the CA 1st District Court of Appeal.

Amicus Curiae Brief

Introduction

The superior court's order of contempt against the San Francisco Public Defender was unwarranted and interfered with the right to counsel of the Defender's clients. It ignored the conflict of interest the Defender has when he has too many clients to provide effective representation. The superior court misapprehended the ethical rules regarding conflict of interest. The court also interfered with the independence of the Defender.

The Defender's partial declaration of unavailability is supported by California and national standards. Defender Raju's actions are in line with ethical principles as explained in national standards and reports over many years. This amicus brief will focus on national standards and precedent in other states that can help guide a decision in this matter.

I. National Standards Support The Defender's Decision

The San Francisco Public Defender's declaration of unavailability is supported by American Bar Association standards. He was guided by the National Public Defense Workload Study (NPDWS).¹ That study was the product of a collaboration among the Rand Corporation, the American Bar

¹ National Public Defense Workload Study, at https://www.rand.org/pubs/research_reports/RRA2559-1.html.

Association, the National Center for State Courts, and veteran lawyer Steve Hanlon, who has extensive experience in defender workload studies. The NPDWS informed the California Public Defense Workloads Study that also guided Defender Raju.²

Beginning in 1992, the American Bar Association has issued standards and statements calling for defenders to refuse new cases when their workload does not permit quality representation. The ABA published Standards for Criminal Justice: Providing Defense Services (3d ed., 1992) that provided in part:

Whenever defender organizations, individual defenders, assigned counsel or contractors for services determine, in the exercise of their best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the defender organization, individual defender, assigned counsel, or contractor for services **must take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments.** Courts should not require individuals or programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations.

[Emphasis added.]

² Malia N Brink, Pamela R Metzger, Andrew L Davies & Cynthia G Lee, California Public Defense Workloads and Staffing (2025), <https://doi.org/10.25172/dc.14>

In 2004, the American Bar Association in GIDEON'S BROKEN PROMISE: AMERICA'S CONTINUING QUEST FOR EQUAL JUSTICE³ recommended:

Attorneys and defense programs **should refuse to continue indigent defense representation, or to accept new cases** for representation, when, in the exercise of their best professional judgment, workloads are so excessive that representation will interfere with the rendering of quality legal representation or lead to the breach of constitutional or professional obligations.

[Emphasis added.]

In 2006, the ABA Standing Committee on Ethics and Professional Responsibility (ABA Ethics Committee) issued Formal Opinion 06–441 dealing with excessive caseloads. It stated clearly:

If workload prevents a lawyer from providing competent and diligent representation to existing clients, **she must not accept new clients**. If the clients are being assigned through a court appointment system, the lawyer should request that the court not make any new appointments.

[Emphasis added.]⁴

³ Gideon's Broken Promise: America's Continuing Quest for Equal Justice, Available at <https://www.in.gov/ccaa/files/ABAGideonsBrokenPromise.pdf>.

⁴ ABA Formal Opinion 06-441, Available at chrome-

In 2009, the American Bar Association published its Eight Guidelines of Public Defense Related to Excessive Workloads that also provide support for the Defender's decision.⁵ Guideline 6 states that public defense providers should file motions to stop assignment of new cases when workloads are excessive and other adequate alternatives are unavailable. Guideline 7 states that when such motions are filed, defenders should resist judicial directions regarding the management of public defense programs that improperly interfere with their professional and ethical duties in representing their clients.

In 2022, the ABA president stated:

...ABA policy and well-established legal principles support public defenders in assertively seeking relief from excessive workloads. Courts, in turn, should provide relief when excessive caseloads threaten to lead to representation lacking in quality or to the breach of professional obligations. **To do otherwise, not only harms individual defendants but our entire justice system.**⁶ [Emphasis added.]

extension://efaidnbmnnnibpcajpcgclefindmkaj/<https://www.in.gov/ccaa/files/ABA.Ethics06-441.pdf>.

⁵ ABA Eight Guidelines of Public Defense Related to Excessive Workloads, available at [https://dids.nv.gov/uploadedFiles/didsnvgov/content/Resources/ABAEightGuidelinesofPublicDefenseRelatedtoExcessiveWorkloads\(1\).pdf](https://dids.nv.gov/uploadedFiles/didsnvgov/content/Resources/ABAEightGuidelinesofPublicDefenseRelatedtoExcessiveWorkloads(1).pdf)?TS=

⁶ "ABA SCLAID finds resource deficiencies in its workload study of New Mexico public defense system," January 14, 2022, available at <https://www.americanbar.org/news/abanews/aba-news-archives/2022/01/aba-sclaid-finds-deficiencies-in-its-workload-study-of-new-mexic/>.

In 2023, the ABA published a revised edition of Ten Principles of a Public Defense Delivery System which includes the following:

If workloads become excessive, Public Defense Providers are obligated to take steps necessary to address excessive workload, which can include notifying the court or other appointing authority that the Provider is unavailable to accept additional appointments, and if necessary, seeking to withdraw from current cases.⁷

In a footnote, the Ten Principles state: “Courts should not order public defenders to take a case, if doing so would result in an excessive caseload.”⁸

For at least 34 years, the ABA has supported the kind of action that Defender Raju took here.

The National Association for Public Defense issued a statement, *NPD Policy Statement on Workloads*,⁹ that concludes:

Lawyers must have reasonable workloads which enable them to provide conflict-free representation of each of their clients consistent with their duty to

⁷ American Bar Association, Ten Principles of a Public Defense Delivery System, Principle 3, (August 2023) available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-ten-princ-pd-web.pdf.

⁸ *Id.*, fn. 21.

⁹ *NAPD Policy Statement on Workloads*, February 23, 2024. Available at:

<https://publicdefenders.us/app/uploads/2024/03/NAPD-Policy-Statement-on-Workloads-2024.pdf>.

furnish competent and effective assistance of counsel pursuant to rules of professional conduct and prevailing professional norms.

.....

When lawyers and/or providers determine that workloads are preventing or are about to prevent the delivery of defense services consistent with ethical and constitutional duties to clients, the lawyers and/or provider should be authorized to refer cases to another public defense provider participating in the jurisdiction's plan for representation. Alternatively, lawyers and/or the provider must take appropriate steps pursuant to their state's rules of professional conduct either to refuse additional cases and/or seek to withdraw from existing cases.¹⁰

II. Washington State Supreme Court Standards Support The Defender's Decision

Guided by the same NPDWS study relied on by Mr. Raju and by a study by the Washington State Bar Association, the Washington Supreme Court by court rule has set mandatory limits on defender caseloads. *Matter of Det. of M.E.*, 586 P.3d at 584.

The Washington Court's recognition of the importance of caseload limits is relevant here. The Court wrote:

Moreover, it is widely recognized that excessive caseloads carry many "potential ethical and

¹⁰ *Id.*, at p. 14.

constitutional pitfalls,” substantially increasing the risk of ethical violations and ineffective assistance. *Carrasquillo v. Hampden County Dist. Cts.*, 484 Mass. 367, 388, 142 N.E.3d 28 (2020).

Matter of Det. of M.E., 586 P.3d at 591.

In language apropos here, the Court addressed the ethical conflict of interest that arises from excessive caseload:

Yet, an attorney with excessive caseloads may not have enough time to become competent in a complex case, or they may be too busy to be diligent in responding to the needs of clients. “In addition, having too many clients and matters at once may create concurrent conflicts of interest ... if attorneys are then forced to pick and choose between clients who will receive their limited time and attention, and others who will necessarily be neglected.” *Carrasquillo*, 484 Mass. at 388, 142 N.E.3d 28. Thus, ordering an attorney to handle an excessive caseload “threatens to undermine the very right to counsel that the order seeks to protect.” *Id.* at 370, 142 N.E.3d 28.

Matter of Det. of M.E., 586 P.3d at 591. [Emphasis added.]

The Massachusetts Supreme Judicial Court, in the case cited by the Washington Court, was considering a situation similar to the case herein, in that the trial judge had ordered the defender attorneys to take cases even after the defender told the court that the lawyers “had exceeded their caseload capacity and they could

not provide effective assistance to any additional clients.”
Carrasquillo v. Hampden Cnty. Dist. Courts, 484 Mass. 367, 369,
142 N.E.3d 28, 35 (2020). The Court also considered statutory
considerations. Of relevance herein is the Court’s determination
that the trial judge’s appointment of defender staff attorneys

improperly infringed upon CPCS’s statutory
authority to control assignments and to limit
caseloads for its staff attorneys ... because the order
and the appointments overrode CPCS’s
determination that the staff attorneys in its
Springfield office had already reached their caseload
capacity and could not accept any more cases,
without any contrary findings by the court that put in
doubt the validity of that determination.

Carrasquillo v. Hampden Cnty. Dist. Courts, 484
Mass. 367, 370, 142 N.E.3d 28, 35 (2020).

Although the superior court judge herein found that the Defender
could take more cases, he made no findings that put in doubt the
validity of the Defender’s determination that he had reached
caseload capacity.

Setting caseload limits can make a difference not only to the
clients but also to the defender systems representing them. A
recent op-ed pointed out that lowering caseloads in Seattle
attracted experienced attorneys.

In King County, a targeted recruitment campaign
tied to early adoption of new caseload standards
brought in dozens of experienced attorneys over the

last two years. As a result, the King County Department of Public Defense ended 2025 with zero attorney vacancies — an unprecedented hiring achievement in the department’s history.¹¹

III. Other State Supreme Courts Have Recognized the Ethical Conflict When Lawyers Have Too Many Cases

In addition to the Washington and Massachusetts courts, the Alaska Supreme Court recently held that it is a conflict of interest under RPC 1.7 if the representation of a new client “will be materially limited by the lawyer’s responsibilities to another client....” *Office of Pub. Advocacy v. Superior Court, First Judicial Dist.*, 566 P.3d 235, 249 (Alaska 2025).

Lawyers are obligated to be competent and diligent. RPC 1.1 and 1.3. RPC 1.3 states in pertinent part: ... “‘reasonable diligence’ shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.” When a lawyer has too many cases, the lawyer is not able to be competent or diligent for all the clients.

The Missouri Supreme Court recognized “counsel’s ethical obligation not to accept work that counsel does not believe he or she can perform competently.” *State ex rel. Missouri Pub. Def.*

¹¹ WA Legislature left a vital task undone: funding public defenders, *Seattle Times*, March 31, 2026, available at <https://www.seattletimes.com/opinion/wa-legislature-left-a-vital-task-undone-funding-public-defenders/>.

Comm'n v. Waters, 370 S.W.3d 592, 607 (Mo. 2012). The Court added:

This Court holds and reaffirms that the Sixth Amendment and this Court's ethics rules require that a court consider the issue of counsel's competency, and that counsel consider whether accepting an appointment will cause counsel to violate the Sixth Amendment and ethical rules, before determining whether to accept or challenge an appointment. *Id.* at 609.

As the Court wrote:

Counsel violates these rules if she accepts a case that results in a caseload so high that it impairs her ability to provide competent representation, to act with reasonable diligence and to keep the client reasonably informed. *See* Rules 4–1.1, 4–1.3 and 4–1.4. *Id.* at 607.

California Rule of Professional Conduct 1.16 about declining representation provides in part:

...a lawyer shall not represent a client ... if: the lawyer knows* or reasonably should know* that the representation will result in violation of these rules or of the State Bar Act; ...

This rule requires declining representation if the lawyer knows accepting the case will result in violating the rules that the lawyer act with diligence and competence in all the lawyer's

cases.

The determination that a lack of capacity can amount to a conflict of interest is key to addressing the issues herein. Whether the issue arises because of a motion to withdraw when the defender has too many cases or because of the defender declining an appointment for the same reason, the ethical question is the same—when the lawyer is not able to be competent and diligent in a new case, other counsel should be appointed.

The ABA Eight Guidelines, *supra*, Comment to Guideline Six, explains that in both situations when the defender seeks relief,

a court should be asked to stop additional assignments in all or certain types of cases and, if necessary, that lawyers be permitted to withdraw from representation in certain cases. Continued representation in the face of excessive workloads imposes a mandatory duty to take corrective action in order to avoid furnishing legal services in violation of professional conduct rules.

Importantly, addressing the issue raised in the trial court's return memorandum to this Court on the question of withdrawal vs. declining appointment, the ABA states:

Because lawyers have as their primary obligation the responsibility to represent the interests of current clients, **withdrawals from representation is [sic] less preferable than seeking to halt the assignment of new appointments.**

[Emphasis added.]

IV. The Court Should Presume the Defender's Determination on Workload to be Correct

When the Defender in his professional judgment determines that his lawyers have reached their ethical limit, his determination that the caseload is excessive should be presumed to be correct. The Washington State Bar Council on Public Defense has advised:

Each attorney should evaluate and determine their capacity to provide quality representation to all clients within the typical numeric caseload limits. If an attorney determines that they are not able to provide quality representation within the typical caseload, they should be presumed to be correct, and the caseload should be adjusted.¹²

The Arizona Supreme Court held that a trial court

should give great weight to a representation by counsel that there is a conflict, particularly in the case where the counsel has been appointed by the court rather than retained by the defendants.

¹² Advisory Notice by WSBA Council on Public Defense, Implementation of the Standards for Indigent Defense During the Coronavirus Emergency, available at https://wsba-uat.azurewebsites.net/docs/default-source/legal-community/committees/council-on-public-defense/2021-5-25-responding-to-the-emergency-caused-by-pandemic-driven-increased-public-defense-workloads.pdf?sfvrsn=950e14f1_2.

State v. Davis, 110 Ariz. 29, 31, 514 P.2d 1025, 1027 (1973).

The Iowa Supreme Court, albeit interpreting a statute about a defender returning a case to court because of a temporary overload of cases, emphasized the need to defer to the defender's determination:

But the district court's role is limited when the condition is the local public defender's inability "to handle a case because of a temporary overload of cases." Unless the court has reason to believe that the local public defender misrepresented its office's caseload, district courts should be highly deferential to whether a temporary overload has been shown to allow the case to be returned to the district court.

State Pub. Def. v. Iowa Dist. Court for Scott Cnty., 31 N.W.3d 45, 51 (Iowa 2026) as amended (Apr. 7, 2026).

The Iowa Court found that the trial court "acted beyond its authority when it refused to accept the representation." *State Pub. Def.*, 31 N.W.3d 45, 51. Citing the Alaska case cited above, the Iowa court cautioned against trial judges becoming "micromanagers of the local public defender office in their county." *State Pub. Def.* 31 N.W.3d 45, 63.

The Iowa Court agreed with the Wyoming Court that determined under its statutes that "the public defender's assertion of unavailability would constitute good cause to appoint private counsel." *Lozano v. Circuit Court of Sixth Judicial Dist.*, 460 P.3d 721, 734 (Wyo. 2020).

The Wyoming Court deferred to the defender's judgment:

The public defender is in the best position to know its resources, including its attorneys, the skills and experience of its attorneys, and the weight and complexity of each office's caseload. We see little to be gained by requiring an evidentiary hearing for each individual case in which the public defender declares its unavailability based on those factors that are uniquely within its knowledge.

Lozano v. Circuit Court of Sixth Judicial Dist., 460 P.3d at 734.

The Wyoming Court also addressed the trial court's argument herein that the Defender had an obligation to accept appointments and then move to withdraw:

Moreover, we do not see that allowing the public defender to determine its availability before accepting an appointment will devolve into the chaos or shirking of responsibility that was predicted during oral argument. Just as the public defender has an ethical obligation to decline representation when it will result in a violation of the rules of professional conduct, it also has a countervailing obligation not to avoid an appointment except for good cause.

Lozano v. Circuit Court of Sixth Judicial Dist., 460 P.3d at 734–35.

The Wyoming Court reversed the trial court's holding the defender in contempt:

We have determined that the circuit court's order mandating that the public defender accept the two misdemeanor appointments was not lawful because it disregarded the public defender's determination that no public defender was available. Because there was no lawful order, the circuit court could not properly find Ms. Lozano in contempt.

Lozano v. Circuit Court of Sixth Judicial Dist., 460 P.3d at 738.

The trial court below made no finding that the defender had misrepresented his office's workload.

V. Other State Bar Ethics Opinions Support the Defender's Action

The Oregon and Washington State Bar Associations have issued ethics opinions that support Defender Raju's decision.

WSBA Advisory Opinion 1336 (1990) states:

... the Committee was of the opinion that RPCs 1.1, 1.3 and 6.2 require that a lawyer not accept case assignments that exceed the lawyer's ability to provide effective representation. The Committee was further of the opinion that the supervisor of a public defender office is obligated by those rules, as well as RPC 5.1(a) and (c)(1), to refuse to accept cases that would exceed the office's ability to provide effective representation (emphasis added).¹³

¹³ WSBA Advisory Opinion 1336 (1990). Available at: <https://ao.wsba.org/print.aspx?ID=416>

Similarly, WSBA Advisory Opinion 1713 (1997) (addressing appointed appellate counsel's ethical duties) provides:

If the problem with complying the (sic) RPC 1.2, 1.3, and 1.4 is the volume of cases the attorney accepts, then such cases should be declined. ... If the attorney cannot comply with RPC 1.2, then the attorney should not take the case. See ABA Committee on Ethics and Professional Responsibility and Formal Opinion 347 (1981) [addressing civil Legal Aid Services attorneys.]¹⁴

The Washington ethics opinions are consistent with the WSBA Board of Governors adoption of the *Council on Public Defense Statement on Workloads*.¹⁵

When defenders' workloads exceed their ability to provide effective representation, the attorneys should not be given, and should not accept, new clients until their workload has been reduced to a level that permits providing quality representation.

Oregon State Bar Formal Opinion No. 2007-178¹⁶ is similar to

¹⁴ WSBA Advisory Opinion 1713 (1997). Available at: <https://ao.wsba.org/print.aspx?ID=787>

¹⁵ Available at: https://www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/council-on-public-defense-statement-on-workloads.pdf?sfvrsn=7c0616f1_0

¹⁶ Oregon FORMAL OPINION NO 2007-178 [REVISED 2026] Competence and Diligence: Excessive Workloads of Indigent Defense Providers, available at <https://www.osbar.org/docs/ethics/2007-178.pdf>

ABA Formal Opinion 06–441. It adds the following with respect to the responsibilities of lawyers who are involved in the process of contracting for the provision of public defense services.

As noted, the ABA opinion does not address the ethical responsibilities of lawyers involved in the process of contracting for the provision of public defense services. For the reasons discussed above, Lawyer *C*, who heads a public defender office, and Lawyer *E*, who negotiates the contract for a consortium, may be responsible for the misconduct of other lawyers if they contract for caseloads knowing that they do not have adequate lawyer and other support staff to provide competent representation to each client. Likewise, managers who knowingly ‘induce’ other lawyers to violate the RPCs by knowingly contracting for excessive caseloads may violate Oregon RPC 8.4(a)(1), which makes it ‘professional misconduct for a lawyer to ... violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.’¹⁷

The Oregon ethical opinion states: “Supervisory lawyers, including a firm director or manager, may violate ethical responsibilities when subordinate lawyers have excessive workloads.”¹⁸

California Rule on Professional Conduct 8.4 Misconduct

¹⁷ Oregon State Bar Formal Opinion No 2007-178 (2007) (2016 Revision), at p. 7. Available at: https://www.osbar.org/_docs/ethics/2007-178.pdf

¹⁸ Id.

provides:

It is professional misconduct for a lawyer to: (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another; ...

The San Francisco Public Defender is elected and not a negotiator for a consortium of lawyers. But he is a manager who is responsible for the ethical conduct of his lawyers. California RPC Rule 5.1 Responsibilities of Managerial and Supervisory Lawyers provides in part:

A lawyer who individually or together with other lawyers possesses managerial authority in a law firm, * shall make reasonable* efforts to ensure that the firm* has in effect measures giving reasonable* assurance that all lawyers in the firm* comply with these rules and the State Bar Act.

The California Guidelines for Indigent Defense Services provide in part: “Great care should be exercised by Chief Defenders to cause continuous monitoring of workload and to arrange for workload adjustments where necessary.”¹⁹

The Oregon ethical opinion concludes:

Lawyers representing indigent clients must refuse to accept a workload that prevents them from meeting their ethical obligation to each client. Lawyers who work in public defense organizations should seek the

¹⁹ The State Bar of California Guidelines for Indigent Defense Services Delivery System (2006) at 29.

assistance of supervisors and managers in achieving manageable workloads. When those supervisors and managers have knowledge of excessive workloads among firm lawyers, they must make reasonable efforts to remedy the problem.²⁰

As outlined in his Petition, Defender Raju made reasonable efforts. He complied with his ethical requirement to decline to accept a workload that prevented his lawyers from meeting their ethical obligations to each client.

VI. The Trial Court Asserted Its Own Analysis of Defender Capacity Despite Expert Declarations to the Contrary

The trial court recognized that any inquiry about the Defender's determination must respect his/her independence.²¹ Yet the court chose to assert its own analysis of the Defender's staffing capacity despite expert witness declarations supporting the Defender's position. As the Court's Order After Evidentiary Hearing reflects, the Defender presented evidence of the heavy caseload carried by its staff attorneys and the heavy workload of its supervisor managers, some of whom also carry significant caseloads in addition to their supervisory duties. Expert witness declarations supported the Defender's declaration of partial unavailability.²² The judge cited no facts to support his contrary

²⁰ Id.

²¹ Order after evidentiary hearing, at 8.

²² Expert declarations noted in PETITION FOR WRIT OF

conclusion about capacity. He did note in a footnote that neither the California Legislature nor California appellate courts had addressed the Deason California workload study or the Washington Supreme Court standards.²³

The New York appellate court in *Hurrell-Harring v. State*, 119 A.D.3d 1052, 1053, 990 N.Y.S.2d 286, 288 (N.Y. App. Div. 2014) reversed the decision of the trial court that had excluded expert testimony, noting that the trial court had ruled that the average trial judge

possesses the requisite knowledge and/or experience to comprehend the evidence and decide the issues presented. If this case were simply about individualized claims of denial of counsel at a critical stage of a criminal proceeding, we might agree.

But the appellate court noted that the case was not about individualized claims:

At its core, this litigation is about system-wide conditions relating to and affecting the delivery of public defense—such as caseloads, funding and oversight, among others—and whether these conditions in the defendant counties are such that “the basic constitutional mandate for the provision of counsel to indigent defendants at all critical stages is at risk of being left unmet”By virtue of their extensive experience, the experts possess specialized

PROHIBITION OR CERTIORARI OR OTHER APPROPRIATE RELIEF, at 38-39.

²³ Order after evidentiary hearing, fn. 10.

knowledge with respect to the operation of public defense systems, the professional standards applicable to such systems, and the impact of systemic shortcomings on the provision of counsel to indigent criminal defendants at all critical stages. Such particularized knowledge is, manifestly, beyond that of a typical Supreme Court Justice, whose experience is oft confined to case-by-case determinations ...

Hurrell-Harring v. State, 119 A.D.3d at 1053–54 citations omitted.

Similarly, here, the San Francisco Superior Court judge is not expected to have particularized knowledge with respect to the operation of public defense systems and the professional standards applicable to such systems. The San Francisco Public Defender, on the other hand, does have such knowledge, as do the expert witnesses whose declarations he provided to the judge. In this case, a combination of deference to the Defender's analysis and recognition of the import of the expert witness declarations should have persuaded the judge not to impose a contempt sanction.

VII. The Trial Judge Could Have Taken the Opportunity to Convene Stakeholders to Consider Alternatives

While how the trial court could address systemic issues relating to public defense resources does not need to be resolved in this petition, there are alternatives the court could have

pursued and could pursue now.

Instead of holding the Defender in contempt, the Superior Court should have taken the opportunity to convene stakeholders to consider what alternatives could be implemented. The petitioner noted that no accused person whom the Defender could not represent has gone unrepresented.²⁴

The ABA Eight Guidelines, in the comment to Guideline 5, recommends the following:

One of the most straightforward ways to address excessive lawyer workloads is for the Provider and judges or other officials to negotiate informal arrangements to suspend or reduce new court assignments, with the understanding that additional cases will be represented by assigned counsel, contract lawyers, or other Provider program.

This practice of assigning private counsel is what happened here, with clients receiving counsel.

The ABA Eight Guidelines also recommends pretrial diversion:

Another alternative that can serve to reduce public defense caseloads is for cases to be diverted from the criminal justice system during the pretrial stage. Depending on the jurisdiction, implementation will require legislation, a change in court rules, or approval of prosecutors.

²⁴ San Francisco Public Defender SUPPLEMENTAL BRIEF ON REAL PARTY IN INTEREST ISSUE, footnote 3 at p. 8.

There are successful pre-trial diversion programs, including the LEAD program developed in Seattle, a prebooking, prefiling law enforcement assisted diversion (LEAD) program. An evaluation concluded that “LEAD was associated with statistically significant reductions in criminal justice and legal system utilization and associated costs”²⁵

The court can convene stakeholders to consider what alternatives can be developed, including additional informal pre-trial diversion programs. The Missouri Supreme Court wrote that judges inherently have authority to manage their dockets in such a way as to give priority to certain cases “even if it means that other categories of cases are continued or delayed....”. *State ex rel. Missouri Pub. Def. Comm’n v. Waters*, 370 S.W.3d at 598, 609. The Court urged that the court meet with defenders, prosecutors, and the bar association to develop strategies to avoid the defender having to declare unavailability. *Id.* at 611, *et seq.*

The American Constitution Society issued a report on diversion that noted the following:

In the recent report by the National Association of Criminal Defense Lawyers (NACDL), *Minor Crimes, Massive Waste: The Terrible Toll of America’s Broken*

²⁵ Susan E. Collins, & Heather S. Lonczak1 & Seema L. Clifasefi, “Seattle’s law enforcement assisted diversion (LEAD): program effects on criminal justice and legal system utilization and costs”, *Journal of Experimental Criminology* (2019) 15:201–211 (2019), available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://leadingcounty.org/wp-content/uploads/2024...>

Misdemeanor Courts, the first recommendation was to divert offenses that do not threaten public safety to violations with penalties that are less costly to taxpayers....²⁶

The Missouri Court's convening approach is consistent with the Council on Public Defense (CPD) Statement on Workloads endorsed by the Washington State Bar Association in 2022:

When workload exceeds an attorney's capacity, then public defense attorneys and offices can request funding to hire additional attorneys, decline appointment to new cases, and work with others in the legal system to divert and/or reduce the number of cases in the system.²⁷

The Washington Bar statement supports Defender Raju's declaration of unavailability.

²⁶ Robert C. Boruchowitz, *Diverting and Reclassifying Misdemeanors Could Save \$1 Billion per Year: Reducing the Need For and Cost of Appointed Counsel* (2010), American Constitution Society, available at <https://www.acslaw.org/wp-content/uploads/old-uploads/originals/documents/Boruchowitz%20-%20Misdemeanors.pdf>.

²⁷ Council on Public Defense Statement on Workloads (2022), Available at https://www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/council-on-public-defense-statement-on-workloads.pdf?sfvrsn=7c0616f1_0. See also, *Lavallee v. Justices In Hampden Superior Court*, 442 Mass. 228, 244, 812 N.E.2d 895, 909 (2004), in which the Court fashioned remedies for the unavailability of counsel. The Court noted: "Potential remedies that are available and that have been discussed with the parties include the dismissal of criminal charges and orders to stay criminal proceedings."

VIII. Defender Raju’s Declaration of Unavailability Follows a Long History of Defenders Declaring Unavailability

The commentary to ABA Eight Guidelines, published in 2009, noted: “A declaration of ‘unavailability’ has sometimes been used successfully, such as in some counties in California.”²⁸

The declaration of unavailability became routine in some California counties after *Ligda v. Superior Court*, 5 Cal. App. 3d 811, 827–28, 85 Cal. Rptr. 744, 754 (Cal. Ct. App. 1970). The Court there wrote:

When a public defender reels under a staggering workload, he need not animate the competitive instinct of a trial judge by resistance to or defiance of his assignment orders to the public defender. ... The public defender should proceed to place the situation before the judge, who upon a satisfactory showing can relieve him, and order the employment of private counsel (Pen. Code, § 987a) at public expense.

The word “relieve” is not limited to granting a motion to withdraw. It also covers relieving the Defender of appointments when the Defender has advised the court of a staggering workload.

Former Los Angeles County Public Defender Michael Judge at a California State Bar hearing in 2006 on proposed ethics rules testified about his declining to take cases when his caseload was excessive:

²⁸ ABA Eight Guidelines, *supra*, at 11.

So I think that the Bar should focus on me and what I'm doing, because I have the resources to ensure that the service is proper, or to decline work if we have an excessive workload, or to decline a case if we lack the competence. And I've done both.²⁹

According to a 2022 article, "In 2007, Judge said his unavailable policy meant his office turned away between 2,000 and 19,000 cases a year."³⁰

Defender Judge had instituted a "protocol" for determining when to declare unavailability as early as 1995.³¹

Defenders in other states have declared unavailability because of excessive workloads. In Yakima County, Washington, the public defender set a limit on cases per month.³² In April 2026 in

²⁹ PUBLIC HEARING PROPOSED NEW AND AMENDED RULES OF PROFESSIONAL CONDUCT, October 7, 2006, transcript at 10. Available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.calbar.ca.gov/sites/default/files/agenda/agendaitem1000005441.pdf>, last checked June 2, 2026.

³⁰ 'Our Office Is In Crisis': LA Public Defenders Pen Plea To Reduce Workload, LAist, March 8, 2022, available at <https://laist.com/news/criminal-justice/public-defenders-workload-cases>.

³¹ Albert-Goldberg, Nancy (2009) "Los Angeles County Public Defender Office in Perspective," California Western Law Review: Vol. 45: No. 2, Article 5, at 19. Available at: <https://scholarlycommons.law.cwsl.edu/cwlr/vol45/iss2/5>. The author suggested that the trigger caseload level for declaring unavailability, particularly in misdemeanor cases, was far too high.

³² See, Washington's Yakima County represents breaking point in state's public defender crisis, April 13, 2025, InvestigateWest,

the City of Spokane, Washington:

Spokane's chief public defender Nick Anthos told city leaders this week his office already filed more than 160 notices of unavailability this year, signaling it could not take on additional cases without exceeding legal caseload limits.³³

The Mohave County, Arizona, public defender successfully moved to stop taking cases because of excessive caseload. Following an evidentiary hearing, the trial court judge ruled in favor of the public defender, permitting the office to withdraw from 39 cases and further declaring that the court would grant future motions to withdraw “until the court is convinced that the reasons for doing so no longer exist.”³⁴ The judge said he would grant such motions “based upon the briefest possible reference to this Order,

available at <https://www.opb.org/article/2025/04/13/washington-public-defender-crisis/>.

³³ More to Every Story: Spokane municipal courts strained as public defender limits tighten, KREM2, April 2, 2026, available at <https://www.krem.com/article/news/politics/spokane-municipal-courts-public-defender-limits-tighten/293-08a7a38f-d41d-4981-82ad-85e781e0cb03>.

³⁴ Securing Reasonable Caseloads, Ethics and Law in Public Defense, Norman Lefstein, Executive Summary and Recommendations (2012), at p. 24. Available at: https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/publications/case_guidebook/https://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads_supplement.pdf.

not to exceed one sentence in length.”³⁵

CONCLUSION

The Wyoming Court defined “available” as used in the public defense context:

we interpret the term “available,” as used in section 105(b), to mean that the public defender is present and ready, meaning ready and able to provide effective assistance of counsel.

Lozano v. Circuit Court of Sixth Judicial Dist., 460 P.3d at 736.

³⁵ *State v Arizona v. Lopez, et.al.*, No. CR-2007-1544, Superior Court for County of Mohave, Order Dec. 17, 2007, on file with author.

Public Defender Raju, following his ethical obligations and guided by a recent California study, a national workload study, and national association standards, declared that his office was not available for all cases for which the court sought to assign his office. He provided evidence and expert opinion supporting his decision. The trial court should not have found him in contempt and this Court should reverse the contempt order.

Alameda County Public
Defenders

Respectfully submitted,

Dated: June 10, 2026

By: /s/ Brendon D. Woods

Brendon D. Woods, SBN
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Defender Initiative

Respectfully submitted,

Dated: June 10, 2026

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On the brief

Document received by the CA 1st District Court of Appeal.

CERTIFICATE OF COMPLIANCE

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Dated: June 10, 2026

By: /s/ Brendon D. Woods

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Document received by the CA 1st District Court of Appeal.