CASE NO. A176141

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FIVE

MANOHAR RAJU, PUBLIC DEFENDER OF SAN FRANCISCO

Petitioner,

v.

THE SUPERIOR COURT OF SAN FRANCISCO COUNTY

Respondent.

AMICI CURIAE BRIEF OF LEGAL ETHICS SCHOLARS NORA FREEMAN ENGSTROM, STEPHEN BUNDY, SCOTT L. CUMMINGS, JOSHUA P. DAVIS, BARBARA S. GILLERS, STEPHEN GILLERS, ROBERT W. GORDON, BRUCE A. GREEN, PAMELA S. KARLAN, LAWRENCE C. MARSHALL, DOUGLAS NEJAIME, ANN SOUTHWORTH, NORMAN W. SPAULDING, AND W. BRADLEY WENDEL IN SUPPORT OF PETITIONER

Superior Court for the State of California,
County of San Francisco, Case No. 26000546, Hon. Harry Dorfman

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ROSEN BIEN GALVAN & GRUNFELD LLP
Van Swearingen – 259809
vswearingen@rbgg.com
Alexander Gourse – 321631
agourse@rbgg.com
101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
Telephone: (415) 433-6830
Facsimile: (415) 433-7104

Attorneys for Amici Curiae

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INTRODUCTION

The Superior Court held San Francisco Public Defender Manohar Raju in contempt for refusing to accept 26 new clients that he had determined his office could not ethically represent due to a conflict of interest stemming from his office's excessive caseloads. The court ordered Mr. Raju to pay $26,000 in fines and indicated that additional fines will be forthcoming if he continues to decline appointments. Moving forward, Mr. Raju faces an impossible choice: decline cases and incur additional fines, or take on clients his office cannot ethically represent.

The Superior Court's contempt judgment should be reversed because complying with the underlying orders ("Appointment Orders") would have required Mr. Raju to breach his ethical and constitutional duties of care and loyalty. The Superior Court's contrary conclusion ignores settled law establishing that a public defender's excessive caseload creates an ethical conflict of interest and that such a conflict *requires* the public defender to decline representation. It also ignores both the extensive objective evidence of excessive workloads Mr. Raju provided, as well as well-established principles favoring non-disclosure of certain categories of information and requiring deference to a public defender's good-faith judgment that a conflict exists or is likely to develop.

The contempt judgment should also be reversed because Mr. Raju's good faith decision to disobey the Appointment Orders was reasonably necessary to prevent irreparable harm to the fundamental constitutional rights of indigent criminal defendants. Mr. Raju demonstrated that compliance would have created a significant risk that his office would be unable to fulfill its ethical and constitutional obligations to provide effective assistance of counsel, both to existing clients and to the new clients the court ordered Mr. Raju to represent. Mr. Raju further demonstrated that these constitutional harms would have begun to occur

almost immediately upon his compliance with the Appointment Orders, and would have been irreparable because of the inherent difficulty of establishing the prejudice required for post-conviction ineffective assistance claims. Under the specific factual circumstances of this case, well-established California law permitted Mr. Raju to disobey the Appointment Orders and raise their constitutional invalidity as a defense to contempt.

Given the broad public interest in this dispute and the likelihood of its recurrence, this Court should decide the weighty ethical and constitutional issues raised by the Appointment Orders. Even if this Court determines the contempt judgment must be reversed because of its many procedural deficiencies, it should still clarify the governing standards to guide the court on remand.

I. THE APPOINTMENT ORDERS GAVE RISE TO AN ETHICAL CONFLICT OF INTEREST THAT REQUIRED MR. RAJU TO DECLINE THE COURT'S APPOINTMENTS.

A. Under Both Professional Ethics Rules and the Sixth Amendment, Criminal Defense Attorneys Owe Their Clients Duties of Care and Loyalty

All attorneys owe their clients a duty of care, which requires competent, diligent representation. Under the California Rules of Professional Conduct (CRPC), "competent" representation means a lawyer must "apply the (i) learning and skill …reasonably necessary" under the circumstances of the case. (CRPC Rule 1.1(b); see also ABA Model Rule 1.1, cmt. [5] [explaining that "[c]ompetent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem" and "also includes adequate preparation"].)

Competence includes diligence. The Rules of Professional Conduct mandate that attorneys act "with commitment and dedication to the interests of the client," and lawyers must not "neglect or disregard, or unduly delay a legal matter entrusted to the lawyer." (CRPC Rule 1.3(b); see also ABA

Model Rule 1.3 ["A lawyer shall act with reasonable diligence and promptness in representing a client."].) ABA Model Rule 1.3, comment [2] buttresses these requirements, establishing that workloads "must be controlled so that each matter may be handled competently."

Just as lawyers owe clients a duty of reasonable care and competence, lawyers owe clients a duty of reasonable communication. Pursuant to this duty, attorneys must consult with clients about how to accomplish their objectives; keep clients reasonably informed about significant developments; explain matters to permit clients to make informed decisions regarding the representation; and, in criminal matters, promptly communicate all terms and conditions of a proposed plea bargain or other dispositive offer. (CRPC Rules 1.2(a), 1.4(a)-(b), 1.4.1(a)(1).)

A lawyer who cannot fulfill these obligations cannot ethically represent a client. The California Rules of Professional Conduct state that "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." (CRPC Rule 1.16(a).) Accordingly, a lawyer who concludes that he or she cannot furnish competent representation to a client must not commence representation of that client. Consistent with this requirement, California courts have uniformly held that "[i]f an attorney lacks the time and resources to pursue a client's case with reasonable diligence, *he or she is obliged to decline representation*." (*Segal v. State Bar of Cal.* (1988) 44 Cal.3d 1077, 1084, emphasis added; see also *Lopez v. Larson* (1979) 91 Cal.App.3d 383, 400 [same]; *Brown v. Pacific Telephone & Telegraph Co.* (1980) 105 Cal.App.3d 482, 488 [same]; *House v. State of Cal.* (1981) 119 Cal.App.3d 861, 881 [same].)

Lawyers also owe their clients a duty of "undivided loyalty." (CRPC Rule 1.7, cmt. [1].) This duty precludes an attorney from representing a client if there is "a significant risk the lawyer's

representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client"—unless each affected client provides informed written consent *and* "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client." (CRPC Rule 1.7(b), (d)(1); see also ABA Model Rule 1.7 [similar].) Loyalty is an "essential element[] in the lawyer's relationship to a client." (CRPC Rule 1.7, cmt. [1].) This means, essentially, that an attorney cannot privilege the genuine needs of one client at the expense of another, or undertake representation where there is a significant risk that the lawyer may have to do so. (See *In re Edward S.* (2009) 173 Cal.App.4th 387, 414-15.)

The Rules of Professional Conduct and ABA Model Rules also require that lawyers who have managerial responsibilities over other attorneys or staff make reasonable efforts to ensure that the lawyers and staff they supervise comply with their ethical obligations. (CRPC Rule 5.1; ABA Model Rule 5.1.)

Compliance with these duties is also constitutionally required. Both the Sixth Amendment to the United States Constitution and Article I, Section 15 of the California Constitution provide criminal defendants with a right to counsel at all "critical stages" of a criminal proceeding. (See generally *Missouri v. Frye* (2012) 566 U.S. 134, 140; *Gardner v. Appellate Division* (2019) 6 Cal.5th 998, 1004-05.) The right to counsel includes the right to "effective assistance" of counsel, the "proper measure" of which "remains simply reasonableness under prevailing professional norms." (*Strickland v. Washington* (1984) 466 U.S. 668, 688.)[1] This standard

[1] The *Strickland* Court recognized that the right to effective assistance imposes "certain basic duties" upon criminal defense lawyers, including but not limited to: advocating for the client's cause; demonstrating loyalty to the client; avoiding conflicts of interest; consulting with the client about

necessarily entails compliance with "certain basic duties," including the duties of competence, diligence, communication, and loyalty. (*Id.* at pp. 687-91.) The California Supreme Court has held that the right to effective assistance under the California Constitution includes the "correlative right to representation that is free from conflicts of interest." (*People v. Bonin* (1989) 47 Cal.3d 808, 833-34.)

Both federal and California law recognize that national standards provide authoritative guidance in defining the scope and content of defense counsel's obligations of competence and loyalty.[2] Among other things, defense counsel must "control workload to permit the rendering of quality representation." (ABA Standing Committee on Legal Aid and Indigent Defense, *Gideon's Broken Promise* (2004), p. 15.) Defense counsel also must "attempt to secure pretrial release under conditions most favorable to the client," "secure relevant facts and background from the client as soon as possible," "conduct a prompt and thorough investigation of the circumstances of the case and all potentially available legal claims," and

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important decisions; keeping the client informed of critical developments; conducting reasonable factual and legal investigations—or making "a reasonable decision that makes particular investigations unnecessary"—and utilizing the necessary skills and knowledge required by the case. (466 U.S. at pp. 688-91.)

[2] The *Strickland* Court indicated that "[p]revailing norms of practice, as reflected in American Bar Association Standards and the like … are guides to determining what is reasonable" with respect to the assistance of counsel. (466 U.S. at p. 688; see also *Edward S.*, *supra*, 173 Cal.App.4th at p. 412 ["The conduct required of attorneys in this state is determined not just by the Rules of Professional Conduct, the State Bar Act (Bus. & Prof. Code, § 6000 et seq.) and judicial opinions, but also by consideration of '[e]thics opinions and rules and standards promulgated by other jurisdictions and bar associations,'" quoting former CRPC Rule 1-100(A), codified as amended at CRPC Rule 1.0, cmt. [4]].)

"adequately prepare for trial and develop and continually reassess a theory of the case." (*Id.*)

B. Excessive Public Defender Workloads Compromise the Duty of Care, Give Rise to Conflicts of Interest, and Harm Indigent Criminal Defendants

Unmanageable caseloads impair—and sometimes entirely defeat—lawyers' ability to carry out critical responsibilities and obligations. Juggling too many clients, some lawyers fall out of regular contact, meeting with clients only on the morning of trial or to finalize a plea bargain they negotiated without the client's involvement. (*Id.* at p. 16.) Others may fail to oppose pre-trial detention or secure the assistance of experts who might be critical to the client's defense. (*Id.* at pp. 18-19.) "In many cases," overburdened indigent defense lawyers "fail to fully conduct investigations, prepare their cases, or advocate vigorously for their clients at trial and sentencing." (*Id.* at p. 19; see also Norman Lefstein, ABA Standing Committee on Legal Aid and Indigent Defense, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* (2011), p. 258 [public defenders with excessive workloads "invariably" harm clients "in a variety of ways," including by failing to file pretrial motions, failing to conduct necessary investigations, and entering guilty pleas that "should not be" entered].) Public defender offices facing excessive caseloads are often forced into "triage behavior" whereby attorneys reduce overall effort on each case, skip certain tasks (like reviewing evidence or conducting legal research), and prioritize some clients over others by, for example, decreasing time spent on severe and violent felonies (as those cases carry mandatory minimums). (Zhihan Liu & Amy Mahler, *The Impact of Working Conditions on Productivity: Evidence from the U.S. Public Defense System* (2026) 257 J. PUB. ECON. 1, pp. 1-2.)

In light of these consequences, a lawyer with an excessive caseload who agrees to take on additional clients necessarily violates California Rule 1.7(b) by creating "a significant risk the lawyer's representation of" both new and existing clients "will be materially limited by the lawyer's responsibilities to" other clients. (CRPC Rule 1.7(b).) This Court has repeatedly found that a public defender has a conflict of interest where the lawyer's excessive caseload interferes with his or her ability to provide clients with diligent and competent representation.

In *Edward S.*, for example, this Court found a conflict based on a public defender's testimony that his caseload made it "impossible for [him] to thoroughly review and litigate [the appellant's] case." (*Edward S.*, *supra*, 173 Cal.App.4th at pp. 414-15.) "A conflict of interest is inevitably created," the Court explained, "when a public defender is compelled by his or her excessive caseload to choose between the rights of the various indigent defendants he or she is representing." (*Id.* at p. 414, internal citation omitted.)

The Court reached a similar conclusion in *People v. Jones*, which involved a public defender's office that rationed scarce investigative services and "prioritiz[ed]" investigations in cases involving certain charges. (*People v. Jones* (2010) 186 Cal.App.4th 216, 239.) Although "different from the more conventional conflicts created when defense counsel has a personal conflict or represents clients with conflicting interests," the zero-sum dynamic that resulted from these practices was "comparable to the situation in which a public defender is 'compelled by his or her excessive caseload to choose between the rights of the various indigent defendants he or she is representing.'" (*Id.* at pp. 241-42, quoting *Edward S.*, *supra*, 173 Cal.App.4th at p. 414.)

Courts in other jurisdictions have similarly concluded that a public defender's excessive workload gives rise to a conflict of interest when the

lawyer's divided loyalties undercut his or her ability to provide diligent and competent representation to each client. (See, e.g., *Carrasquillo v. Hampden County Dist. Courts* (2020) 484 Mass. 367, 388-89 ["[H]aving too many clients and matters at once may create concurrent conflicts of interest, implicating Mass. R. Prof. C. 1.7, 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."]; *Office of Public Advocate v. Superior Court* (Alaska 2025) 566 P.3d 235, 249 ["Rule 1.7(a)(2)'s plain language, when read in conjunction with the other professional rules' requirements, makes clear that a public defender agency's inability to provide effective assistance because of a lack of attorneys or hours can amount to a conflict of interest."]; *Public Defender, Eleventh Judicial Circuit of Fla. v. State* (Fla. 2013) 115 So.3d 261, 270 ["When excessive caseload forces the public defender to choose between the rights of the various indigent criminal defendants he represents, a conflict of interest is inevitably created," quoting *In Re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender* (Fla. 1990) 561 So.2d 1130, 1135].)

C. A Public Defender Who Determines That Excessive Workloads Have Given Rise to an Actual or Potential Conflict of Interest Must Decline Representation of New Clients

Rule 1.16(a) of the California Rules of Professional Conduct requires an attorney to withdraw from or decline further representation where the attorney "knows or reasonably should know that the representation will result in violation of these rules or of the State Bar Act." (See also ABA Model Rule 1.16(c) ["a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law"].) Under this rule, an

overstretched public defender who has determined that representing a new client will give rise to a rule violation, including an actual or potential conflict of interest under Rule 1.7(b), "shall not represent" that client. (See also ABA Standing Com. on Ethics and Prof. Resp., Formal Opinion 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation* (2006), p. 1 ["If a lawyer's workload is such that the lawyer is unable to provide competent and diligent representation to existing or potential clients, the lawyer should not accept new clients."].)

Moreover, as explained above, supervisory lawyers are responsible for monitoring the caseloads of the attorneys they supervise. If the subordinate lawyer's workload is excessive and the lawyer's cases come by assignment from the court, "it is obviously incumbent upon the supervisor … to support the [subordinate] lawyer's efforts to have no new cases assigned to her by the court until such time as she can adequately fulfill her ethical responsibilities to her existing clients." (*Id.* at p. 8.) Pursuant to Rule 5.1, a supervisory lawyer's failure to take such steps makes that lawyer responsible for the subordinate lawyer's violation of her ethical duties, including failing to provide effective assistance of counsel. (*Id.* at p. 9.) The ethical guidelines in the ABA Opinion are "fully consistent" with the California Rules of Professional Conduct. (*Edward S.*, *supra*, 173 Cal.App.4th at p. 414.)

D. The Trial Court Erred in Failing to Defer to Mr. Raju's Well-Supported Conclusion That Accepting the Appointments Would Give Rise to Conflicts of Interest

The record shows that, before he was sanctioned, Mr. Raju provided extensive evidence establishing that the San Francisco Public Defender's Office's (SFPDO's) workload was excessive and that this excessive workload created conflicts of interest. The evidence showed that SFPDO

lawyers, investigators, and social workers alike are (and were) buckling under a workload that materially limits their ability to provide competent and diligent representation and forces them to choose which of their clients' rights to protect. For example, one deputy public defender testified that, as a result of excessive workloads, "[w]e are forced to constantly prioritize not what our clients need, but who needs something the most. We have to choose. And when we choose, it means that we're not choosing to do something else for our client who deserves and needs that help." (18-ROA-5060; see also 19-ROA-5328; 20-ROA-5531-32, 5536.) An investigator similarly testified that his workload frequently (1) prevents him from "fully pursu[ing] investigative leads or mak[ing] repeated attempts to locate witnesses," (2) delays or entirely forecloses "necessary investigation[s]," and (3) leads to clients remaining in custody longer than they otherwise would due to his inability to complete investigations in a timely fashion. (18-ROA-5049-50; see also 18-ROA-5051-52 [social worker similarly testifying that clients often remain in custody solely because inadequate staffing delays or prevents pre-trial investigations]; 19-ROA-5153-54 [managing attorney explaining that SFPDO attorneys "often" advise clients "to not set cases for trial" and to remain in pre-trial detention because the attorneys' excessive workload prevent them from timely preparing for trial].)

Mr. Raju also demonstrated that workloads in his office far exceed both state and national standards designed to ensure that public defenders meet basic obligations to provide diligent, competent, and conflict-free representation. (See 2-ROA-375-78, 334-43.) Both sets of standards were developed by nationally recognized experts using sophisticated methodologies that account for variation in the amounts of work typically needed to represent misdemeanor and felony defendants. (See 2-ROA-127-42, 112-16.) Mr. Raju showed, for example, that as of February 2026, the

attorneys in his office's Felony Unit had an average of 60 open cases, or 150 percent of the 40-case maximum under the relevant California standards. (See 2-ROA-324, 328, 341-42.) He also showed that the average caseload for misdemeanor attorneys in his office was 135 open cases, or more than 170 percent of the maximum under the California standards. (*Id.*) These standards provide the kind of clear, "objective criteria" this Court has previously deemed essential for assessing whether a public defender's workload creates a conflict of interest. (*Edward S.*, *supra*, 173 Cal.App.4th at p. 414 n.10.) Together with the testimony of Mr. Raju and others in his office show that Mr. Raju had an ethical *duty* to decline the Appointment Orders pursuant to Rule 1.16(a).

Based upon this substantial showing, deference to Mr. Raju's professional judgment was warranted on the issue of whether his office's workload creates a conflict of interest. State and federal courts have long recognized that a criminal defense lawyer "is in the best position professionally and ethically to determine when a conflict exists or will probably develop." (*Holloway v. Arkansas* (1978) 435 U.S. 475, 485, quoting *State v. Davis* (1973) 110 Ariz. 29, 31; see also *Reid v. Superior Court* (1983) 140 Cal.App.3d 624, 631 ["The courts have accorded great deference to a defense attorney's opinion concerning the existence of a conflict of interest."].) As a result, "most courts have held that an attorney's request for appointment of separate counsel, based on his representation as an officer of the court regarding a conflict of interests, should be granted." (*Holloway*, *supra*, 435 U.S. at p. 485.)

Deference is appropriate, courts explain, because a determination of whether a conflict exists or is likely to develop requires consideration of factors that are "uniquely within the public defender's knowledge," such as the "weight and complexity" of the defender's caseload and the skill and experience of its individual attorneys. (*Lozano v. Circuit Court of Sixth*

Jud. Dist. (Wyo. 2020) 460 P.3d 721, 734.) "Digging too deeply into a local public defender's caseload" may "encroach on attorney-client privileged information." (*State Public Defender v. Iowa Dist. Court for Scott County* (Iowa 2026) 31 N.W.3d 45, 62.) Scrutinizing the office's capacity and internal operations also risks "encroaching upon its personnel and hiring decisions," and could potentially lead to the disclosure of sensitive employee information regarding medical diagnoses and disability accommodations. (*Id.*) "Unless the court has reason to believe the public defender misrepresented its office's caseload"—a suspicion not present here—"[trial] courts should be highly deferential" to a public defender's declaration that a workload conflict requires the office to refuse further appointments. (*Id.* at p. 51; accord *Reid*, *supra*, 140 Cal.App.3d at p. 631 [distinguishing attorney declarations that a conflict exists, which "[are] to be accorded great deference," from "an attorney's failure to declare a conflict," which may simply "reflect unawareness of his or her legal obligation to declare a conflict" or a lack of investigation into the possibility of a conflict].)

Instead of deferring to Mr. Raju's declaration of a conflict of interest, however, the Superior Court assumed without explanation that no conflict existed (see 4-ROA-624, 638) and ruled that there was "insufficient evidence" to establish that SFPDO was "unavailable" within the meaning of Penal Code section 987.2(d). (4-ROA-621-22). In so doing, the Superior Court disregarded extensive evidence that SFPDO's current workloads already force them to prioritize the legal rights of some clients at the expense of others (see, e.g., 19-ROA-5328; 20-ROA-5531-32, 5536); dismissed the relevance of state and national workload standards on the ground that they are not "bind[ing]" on the court (4-ROA-629-30); and required Mr. Raju to prove, on a lawyer-by-lawyer basis, that "every felony-qualified lawyer" in the office, including supervisors and full-time

administrators, faced "an emergency brought on by a staggering workload that justifies refusing to accept more felony cases." (4-ROA-641).[3] This was plain error: Deference to Mr. Raju's well-supported conflict determination was warranted.

II. NON-COMPLIANCE WITH THE APPOINTMENT ORDERS WAS ETHICALLY PERMITTED UNDER THE CIRCUMSTANCES

Once issued, the Appointment Orders created a serious ethical dilemma for Mr. Raju. Compliance would have required him to take on dozens of additional clients he reasonably believed his office could not diligently and competently represent due to an excessive-workload conflict. (See Section I, *supra*.) Non-compliance, meanwhile, risked severe disciplinary consequences under the State Bar Act, which requires attorneys to comply with court orders in the vast majority of circumstances.

We agree that lawyers generally can and must obey court orders. Obedience is necessary both to preserve core rule-of-law values and to ensure the efficient use of judicial resources. (See, e.g., *Walker v. City of Birmingham* (1967) 388 U.S. 307, 321 ["[R]espect for judicial process is a small price to pay for the civilizing hand of law."]; *Halderman v. Pennhurst State School & Hospital* (3d Cir. 1982) 673 F.2d 628, 637 [warning that "perpetual relitigation" of merits questions at the contempt stage "destroys the finality of judgments"].) In this narrow instance, however, Mr. Raju's disobedience was justified because rote compliance would have immediately and irreversibly compromised the fundamental constitutional rights of the criminal defendants he was ordered to represent. (See *In re*

[3] The court based its adoption of this standard on language in *Ligda v. Superior Court* (1970) 5 Cal.App.3d 811, 827-28. But *Ligda* did not involve workload issues, conflict issues, or supervision and management issues, and the statement there was not necessary to the decision.

Berry (1968) 68 Cal.2d 137, 149 [explaining that "the exigencies of the situation or the magnitude of the rights involved" may "render immediate action worth the cost of peril"].)

A. Disobedience Was Reasonably Necessary to Prevent Irreparable Injury to the Constitutional Rights of Indigent Clients

The State Bar Act recognizes that, sometimes, lawyers can and must disobey court orders. The Act provides that an attorney may not willfully disobey a court order "requiring him to do or forbear an act connected with or in the course of his profession, *which he ought in good faith to do or forbear*." (Bus. & Prof. Code, § 6103, emphasis added.) Section 6103's good-faith clause "narrows the scope of the law" and "allows for an attorney to exercise his or her *right* to disobey a court order the attorney believes to be unconstitutional." (*Canatella v. Stovitz* (N.D. Cal. 2005) 365 F.Supp.2d 1064, 1073-74, emphasis added.)

Canatella's interpretation of the State Bar Act is consistent with the well-established California rule permitting contemnors—including contemnors who are attorneys—to raise the constitutional invalidity of a judicial order as a defense in a contempt proceeding. In *Berry*, for example, the California Supreme Court squarely rejected the collateral-bar rule applied by federal courts and held that, under California law, "a person affected by an injunctive order" may challenge the order's validity either by direct appeal *or* by "disobey[ing] the order" and raising its constitutional invalidity as a defense to contempt. (*Berry*, *supra*, 68 Cal.2d at pp. 148-49; see also *People v. Gonzalez* (1996) 12 Cal.4th 804, 818 [reaffirming that "the defendant in a contempt proceeding in this state may challenge the validity of an injunction, the violation of which is the basis for the contempt prosecution, even if no such claim was made when the injunction issued"]; *Hughes v. Superior Court* (1980) 106 Cal.App.3d 1, 5 [reversing contempt

judgment of public defender who refused court order to participate in jury selection, because disobedience was "reasonably necessary to protect his client's Sixth Amendment rights"].) Interpreting the State Bar Act so as to permit disciplinary action for non-compliance with a court order, irrespective of the order's validity or real-world consequences, would undermine the California Supreme Court's stated goal of "protect[ing] the constitutional rights of those affected by invalid injunctive orders" any time such an order is directed at an attorney. (*Gonzalez*, *supra*, 12 Cal.4th at p. 818.)

Here, Mr. Raju's non-compliance with the Appointment Orders was premised on what even the trial court described as Mr. Raju's "good-faith" judgment that compliance would irretrievably compromise the fundamental rights of his clients to effective assistance of counsel. (4-ROA-639.) As discussed in Section I, *supra*, the California Supreme Court has held that the right to effective assistance under the California Constitution includes the "correlative right to representation that is free from conflicts of interest." (*Bonin*, *supra*, 47 Cal.3d at pp. 833-34.) This Court has held on at least two occasions that a concurrent conflict of interest is "inevitably created when a public defender is compelled by his or her excessive caseload to choose between the rights of the various indigent defendants he or she is representing." (*Edward S.*, *supra*, 173 Cal.App.4th at p. 414; *Jones*, *supra*, 186 Cal.App.4th at pp. 241-42.)

Claims of ineffective assistance are typically asserted after a person is convicted of a crime and seek a new trial based on a showing that "but for counsel's unprofessional errors, the result of the proceeding would have been different." (*People v. Ledesma* (1987) 43 Cal.3d 171, 218, quoting *Strickland*, *supra*, 466 U.S. at pp. 693-94.) In a limited class of cases, however, where a court order *itself* creates an ethical conflict of interest or otherwise interferes with the right to counsel, a constitutional violation can

be established independent of any particularized showing of prejudice to a specific defendant. (See *Jones*, *supra*, 186 Cal.App.4th at p. 244 n.12.) In these circumstances, prejudice is "so likely" that "litigating their effect in a particular case is unjustified" (*United States v. Cronic* (1984) 466 U.S. 648, 658), and prospective injunctive relief is available to *prevent* irreparable harm before it occurs (see, e.g., *Luckey v. Harris* (11th Cir. 1988) 860 F.2d 1012, 1017; *State ex rel. Missouri Pub. Def. Comm'n v. Waters* (Mo. 2012) 370 S.W.3d 592, 607; *Lavallee v. Justices In Hampden Superior Court* (2004) 442 Mass. 228, 238.). In one such case, the Washington Supreme Court recently confirmed that an actionable constitutional violation occurs the moment a court orders a public defender to take on additional clients despite an excessive-workload conflict. (See *Matter of Detention of M.E.* (Wash. 2026) 586 P.3d 580, 591 ["[A] defense attorney cannot be forced to commit ethical violations or violate a client's constitutional rights before obtaining relief from excessive caseloads ordered by the trial court."].)

This Court's decision in *Hughes v. Superior Court* confirms that the likelihood of irreparable harm in these circumstances is also sufficient to justify disobeying the order. *Hughes* involved an assistant public defender who had disobeyed a court order requiring him to proceed with his client's trial, even though, through no fault of his own, the attorney had been unable to interview the psychiatrist the court had appointed to examine the attorney's client. (*Hughes*, *supra*, 106 Cal.App.3d at pp. 2-3, 4.) The trial court held the attorney in contempt and ordered him to pay a $250 fine or serve five days in jail. (*Id.* at p. 3.)

Reviewing the contempt order, this Court acknowledged that "[a]n attorney is in a distinctive relationship to the court" and therefore "[o]rdinarily … must yield to a ruling of the court and await the orderly disposal of his objection through the appellate courts." (*Id.*) But the Court found the case distinguishable from the ordinary rule based on "the nature

of [the attorney's] dilemma and the inadequacy of normal procedures to ultimately vindicate his client's rights." (*Id.* at p. 4.) Not only would "forc[ing] an unprepared counsel to proceed to trial … result in a violation of constitutional rights," the particular violation would be "difficult for appellate courts to assess after the fact" because it "stem[med] from counsel's failure to investigate." (*Id.*) The attorney's decision to disobey the trial court's order and raise its invalidity as a defense to contempt "was thus reasonably necessary protect his client's Sixth Amendment rights." (*Id.* at p. 5; accord *State v. Jones* (Ohio Ct. App. Dec. 31, 2008) No. 2008-P-0018, 2008 WL 5428009, *4 ["Defense counsel should not be required to violate his [ethical and constitutional duties] to his client as the price of avoiding punishment for contempt."].)

Mr. Raju's refusal to comply with the Appointment Orders in this case was justified for essentially the same reasons this Court identified in *Hughes*.[4] Mr. Raju presented extensive evidence that, as a result of

[4] Because Mr. Raju's claim implicates fundamentally prospective concerns about *preventing* irreparable harm to a group of criminal defendants—rather than retrospective concerns about correcting specific past harm to a particular individual—this Court does not need to decide what standard of prejudice would govern individual, post-conviction claims of ineffective assistance premised on SFPDO's excessive-workload conflict. All that must be shown in these circumstances is a "likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law." (*Luckey*, *supra*, 860 F.2d at 1017-18, quoting *O'Shea v. Littleton* (1974) 414 U.S. 488, 502.) Regardless, an individual seeking retrospective relief in these circumstances would be likely to satisfy either potentially applicable standard of prejudice. (Compare *Holloway*, *supra*, 435 U.S. at p. 488 [reversal "automatic" where court "improperly requires joint representation" of multiple clients with directly adverse interests, over counsel's timely objection], with *Cuyler v. Sullivan* (1980) 446 U.S. 335, 348 ["[A] defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance."].)

excessive workloads and his duties to existing clients, there was a significant risk that SFPDO would be forced to prioritize some clients' needs at the expense of others' during one or more critical stages of their criminal proceedings. (See, e.g., 18-ROA-5049-60; 20-ROA-5531-32, 5536.) The harms that were likely to follow from this prioritization would have begun to occur almost immediately upon SFPDO's acceptance of the appointments. (See 20-ROA-5534-35, 5537-38; see generally *Jones*, *supra*, 186 Cal.App.4th at p. 239; *Lavallee*, *supra*, 442 Mass. at p. 235 ["The effects of the passage of time on memory or the preservation of physical evidence are so familiar that the importance of *prompt* pretrial preparation cannot be overstated," emphasis added].) And the effects of these deficiencies would have been extraordinarily difficult for appellate courts to identify and correct after the fact, because "the evil" in these circumstances "is in what the advocate finds himself compelled to *refrain* from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process." (Holloway, *supra*, 435 U.S. at pp. 490-91; accord *Hughes*, *supra*, 106 Cal.App.3d at p. 4; *Lavallee*, *supra*, 442 Mass. at pp. 240-41; *State v. Jones*, *supra*, 2008 WL 5428009, *6.)

Recent empirical research confirms that excessive-workload conflicts have serious, irreversible consequences for indigent criminal defendants. This research finds clear links between the size of a public-defender's caseload, the likelihood of pre-trial detention, and the average length of sentences following conviction. (See Liu & Mahler, *supra*, pp. 18-19; Aviv Caspi, *Overworking Public Defenders* (forthcoming, AM. ECON. J.: ECON. POLICY).) One recent study finds that defendants represented by a public defender with a caseload at the 75th percentile receive, on average, sentences that are more than *70 percent longer* than those represented by a public defender with a caseload at the 25th percentile. (See Caspi, *Overworking Public Defenders*, *supra*, pp. 15-16.)

Given the likelihood of irreparable harm to his clients' fundamental constitutional rights, Mr. Raju's non-compliance with the Appointment Orders was justified under the specific circumstances of this case.

B. Disobedience Was Reasonably Necessary to Avoid Prejudicing the Administration of Justice

Mr. Raju's non-compliance with the Appointment Orders was also justified by his good-faith belief that compliance would prejudice the administration of justice within the meaning of Rule 8.4(d) of the California Rules of Professional Conduct.

The right to counsel in criminal proceedings is essential to the "achieve[ment] of a fair system of justice," characterized by "fair trials before impartial tribunals in which every defendant stands equal before the law." (*Gideon v. Wainwright* (1963) 372 U.S. 335, 344; see also *Powell v. Alabama* (1932) 287 U.S. 45, 68-69.) Public defenders play a critical role in this system, which "disperse[s] the functions of the judicial process among many adverse participants in the hope that the institutions of our legal system will bear a collective capacity for justice and righteousness." (*Geiler v. Comm'n on Judicial Qualifications* (1973) 10 Cal.3d 270, 288; see also *Carrasquillo*, *supra*, 484 Mass. at p. 395 [explaining that "a robust public defender system not only protects the rights of indigent defendants, but also helps to increase public safety" and "avoid the costs of wrongful convictions"].) Actions that threaten "public esteem" for the indigent-defense system can prejudice the administration of justice, even if undertaken in good faith. (*Geiler*, *supra*, 10 Cal.3d at p. 284.)

Here, compliance with the Appointment Orders would have threatened public trust in the indigent defense system in multiple ways. First, it would have significantly increased the likelihood of criminal convictions being reversed for ineffective assistance of counsel. This Court has on at least two occasions found that a public defender's excessive

workload deprived a criminal defendant of effective assistance of counsel. (See *Edward S.*, *supra*, 173 Cal.App.4th at pp. 414-15, 418; *Jones*, *supra*, 186 Cal.App.4th at pp. 241-44.) In both cases, the public defenders' inability to conduct adequate pre-trial investigations were sufficiently prejudicial to the defense to justify reversal on appeal. (*Id.*) And in *Edward S.*, this Court sharply criticized the trial court's failure to take seriously the public defender's own representations about his excessive workload and inability to conduct thorough investigations. (See 173 Cal.App.4th at pp. 411.) Given the similar representations from Mr. Raju and his staff in this case (see, e.g., 18-ROA-5049-50), compliance with the Appointment Orders would have put multiple convictions at a substantial risk of reversal.

Compliance with the Appointment Orders would have further prejudiced the administration of justice by increasing the likelihood that Mr. Raju's clients would remain in custody before trial and increasing the length of their sentences upon conviction. (See Section II.A, *supra*.) By increasing the likelihood of pretrial detention and increasing the length of average sentences for reasons unrelated to the defendants' underlying offenses, compliance with the Appointment Orders would have been unusually cruel and wasted large sums of taxpayer money. (See Caspi, *Overworking Public Defenders*, *supra*, pp. 22-23.) It also would have contributed to persistent overcrowding in California's prison and jail systems and worsened the ongoing Eighth Amendment violations that result from the State's inability to provide constitutionally adequate medical and mental health care to "spiking patient populations." (*Coleman v. Newsom* (9th Cir. 2025) 131 F.4th 948, 952; see also *Brown v. Plata* (2011) 563 U.S. 493, 502 ["Overcrowding has overtaken the limited resources of prison staff … mak[ing] progress in the provision of care difficult or impossible to achieve"]; San Francisco Civil Grand Jury Report,

When Making Do Doesn't Work: San Francisco Jails in Crisis (June 9, 2026), pp. 4, 6-7, 12-13, 16, 19, 31, 33-34, 38, 45 [discussing the effects of overcrowding in the San Francisco County jail system].)

CONCLUSION

The Court should reverse the contempt judgment because compliance with the underlying Appointment Orders would have required Mr. Raju to violate his ethical and constitutional duties to his clients and the criminal justice system alike.

DATED: June 10, 2026

Respectfully submitted,

ROSEN BIEN
GALVAN & GRUNFELD LLP

By: */s/ Alexander Gourse*
Alexander Gourse

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA RULES OF COURT RULE 8.204(c)(1)

Pursuant to California Rules of Court Rule 8.204(c)(1), I certify that according to Microsoft Word the attached brief is proportionally spaced, has a typeface of 13 points and contains 6,154 words.

DATED: June 10, 2026

Respectfully submitted,

ROSEN BIEN
GALVAN & GRUNFELD LLP

By: */s/ Alexander Gourse*
Alexander Gourse

Attorneys for Amici Curiae

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 101 Mission Street, Sixth Floor, San Francisco, CA 94105-1738.

On June 10, 2026, I served true copies of the following document(s) described as:

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF OF LEGAL ETHICS SCHOLARS NORA FREEMAN ENGSTROM, STEPHEN BUNDY, SCOTT L. CUMMINGS, JOSHUA P. DAVIS, BARBARA S. GILLERS, STEPHEN GILLERS, ROBERT W. GORDON, BRUCE A. GREEN, PAMELA S. KARLAN, LAWRENCE C. MARSHALL, DOUGLAS NEJAIME, ANN SOUTHWORTH, NORMAN W. SPAULDING, AND W. BRADLEY WENDEL IN SUPPORT OF PETITIONER

AMICI CURIAE BRIEF OF LEGAL ETHICS SCHOLARS NORA FREEMAN ENGSTROM, STEPHEN BUNDY, SCOTT L. CUMMINGS, JOSHUA P. DAVIS, BARBARA S. GILLERS, STEPHEN GILLERS, ROBERT W. GORDON, BRUCE A. GREEN, PAMELA S. KARLAN, LAWRENCE C. MARSHALL, DOUGLAS NEJAIME, ANN SOUTHWORTH, NORMAN W. SPAULDING, AND W. BRADLEY WENDEL IN SUPPORT OF PETITIONER

on the interested parties in this action as follows:

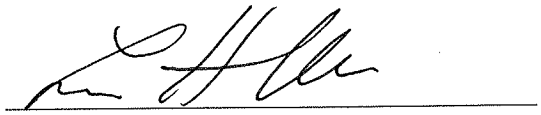
The Superior Court of San Francisco
850 Bryant St. Rm. 101
Hall of Justice (HOJ)
San Francisco, CA 94103

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Rosen Bien Galvan & Grunfeld LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and

mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 10, 2026, at San Francisco, California.



Linda H. Woo