

1 Patrik Griego, Esq. CSB#194216
2 JANSSEN MALLOY LLP
3 730 Fifth Street
4 Eureka, CA 95501
5 Telephone: (707) 445-2071
6 Facsimile: (707) 445-8305

7 Attorneys for Petitioners

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF HUMBOLDT**

10 DOES 1 through 10,

11 Petitioners,

12 v.

13 COUNTY OF HUMBOLDT; HUMBOLDT
14 COUNTY BOARD OF SUPERVISORS; and
DOES 1 through 50,

15 Respondents.

Case No.

CV 170183

VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF AND
ATTORNEY'S FEES

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18 **INTRODUCTION**

19 1. This is a public interest lawsuit to protect the public's right to a qualified
20 Public Defender who has, at a minimum, practiced in the courts of California for the
21 year prior to appointment. As set forth by the California Supreme Court with respect to
22 Public Defenders, "It is essential that the public have absolute confidence in the integrity
23 and impartiality of our system of criminal justice. This requires that public officials not
24 only in fact properly discharge their responsibilities, but also that such officials avoid,
25 as much as possible, the appearance of impropriety." As detailed herein, the Humboldt
26 County Board of Supervisor's appointment of an unqualified Public Defender, under a
27 highly unusual hiring process, undermines public confidence in our system of criminal
28 justice.

1 prior to appointment and had qualified to serve as lead counsel in capital cases, pursuant
2 to the stringent requirements of California Rule of Court 4.117(d). Prior to his
3 appointment, Mr. Robinson continuously practiced in California's juvenile courts,
4 conservatorship courts, contempt courts, criminal courts, and appellate courts.

5 10. The Board of Supervisors was tasked with appointing a replacement for
6 Mr. Robinson. Mr. Robinson assisted the Board by recommending a supervising
7 attorney from his office who also had continuously practiced in all the courts of
8 California, including juvenile courts, conservatorship courts, criminal courts, and
9 appellate courts, and was qualified to serve as lead counsel in capital cases pursuant to
10 California Rule of Court 4.117(d).

11 11. The Humboldt County Board of Supervisors made the highly unusual
12 decision of choosing to consult with a law enforcement hiring panel for the Public
13 Defender position, which included the District Attorney of Humboldt County, the
14 Undersheriff of Humboldt County, and the Chief Probation Officer of Humboldt
15 County. On information and belief, the Law Enforcement Hiring Panel was not in favor
16 of hiring the qualified attorney recommended by Mr. Robinson. The hiring panel did
17 not include any criminal defense attorney, representatives from the Public Defender's
18 Office, advocate on behalf of indigent criminal defendants, or any retired criminal
19 justice professional, such as a retired judge, who could have offered a neutral
20 perspective on the hiring of the Public Defender.

21 12. After consulting with the Law Enforcement Hiring Panel, the Humboldt
22 County Board of Supervisors appointed David Marcus to act as the Public Defender.

23 13. David Marcus had not practiced in all of the Courts of California for the
24 year prior to his appointment, as required by Government Code §27701.

25 14. Indeed, Mr. Marcus had not practiced in any California criminal court for
26 at least five years prior to the Board's decision to appoint him to be the Public Defender
27 and was not qualified to serve as lead counsel in capital cases pursuant to California
28 Rule of Court 4.117(d).

1 15. Likewise, Mr. Marcus had not practiced in a California Juvenile court for
2 at least five years prior to the Board's decision to appoint him to be the Public Defender
3 and is unqualified to do so.

4 16. Mr. Marcus also had not practiced in a Family Law Court regarding
5 contempt for at least five years prior to the Board's decision to appoint him to be the
6 Public Defender.

7 17. Similarly, Mr. Marcus had not practiced in a California Conservatorship
8 court for at least five years prior to the Board's decision to appoint him to be the Public
9 Defender even though Public Defenders are responsible for handling a conservatorship
10 caseload.

11 18. Mr. Marcus had not practiced in any courts in California for at least five
12 years prior to the Board's decision to appoint him to be the Public Defender.

13 19. Mr. Marcus did not practice in the courts of California for the year
14 preceding appointment in part because he had not even been residing in California for
15 at least five years prior to the Board's decision to appointment him to be the Public
16 Defender.

17 20. The last time Mr. Marcus was practicing in the courts in California was
18 many years ago, in approximately August of 2011, when he left the Lassen County
19 Public Defender's Office.

20 21. As of approximately May of 2012, Mr. Marcus was residing in New
21 Jersey, where, according to his federal bankruptcy filings, he had been laid off and was
22 getting unemployment benefits.

23 22. On information and belief, Mr. Marcus relocated to various locations on
24 the East Coast from 2012 through 2017 working at a dental company and practicing real
25 estate, but at no time practiced in any California court.

26 23. According to the County, while living in Florida Mr. Marcus performed
27 some unknown amount and unspecified type of contract work for a civil law firm based
28 in Walnut Creek, California between 2012 and 2017.

1 24. The County provided no evidence regarding the nature of the contract
2 work or any evidence that Mr. Marcus had actually practiced criminal law or practiced
3 law in the California courts for the year preceding his appointment.

4 25. Petitioners notified County Counsel of the Board's violation of §27701 of
5 the Government Code and requested that the Board appoint a qualified Public Defender
6 to protect the rights of indigent defendants.

7 26. Petitioners informed County Counsel that the Public Defender must have
8 been practicing in the courts in California for the year prior to appointment. Petitioners
9 also informed County Counsel that it was not sufficient that Mr. Marcus had practiced
10 criminal law many years ago. Petitioners informed County Counsel that in 2011 the
11 California Legislature rejected an attempt to broaden the strict requirements of §27701
12 of the Government Code to let judges in Los Angeles apply for Public Defender even
13 though they had not actually practiced criminal law the year immediately prior to
14 appointment.

15 27. That bill, §27701.5 of the Government Code, was defeated after receiving
16 opposition by the California Public Defender's Association, which stated: "While each
17 Office of the Public Defender in California is unique, two things are consistent. Entry
18 level deputy public defenders are not assigned cases for which more senior public
19 defenders are more adequately qualified **and every chief public defender has at a**
20 **minimum several years of practice in criminal cases immediately prior to being**
21 **appointed or elected chief public defender. These consistencies are not**
22 **coincidental, but rather necessary to ensure that indigent defendants we are tasked**
23 **with representing are provided zealous advocacy required by the**
24 **Constitution."**

25 28. The requirements that the Public Defender be practicing in the California
26 Courts the year immediately preceding appointment, as set forth by the California Public
27 Defender's Association, helps assure attorney competency because criminal law and
28 courtroom practice is a dynamic endeavor. Indigent defendants deserve an attorney in

1 charge of the Public Defender's office who is current in criminal law and courtroom
2 practice and not simply trying to come up to speed.

3 29. Petitioners urged the County to reconsider their hiring decision in the
4 interest of protecting indigent defendants in Humboldt County and agreed not to seek
5 any attorney fees under the catalyst theory of recovery if the Board took corrective
6 action after discussing the matter with County Counsel at the Board meeting scheduled
7 for March 7, 2017.

8 30. Just prior to the March 7, 2017 Board meeting, the Board also received a
9 letter from a whistleblower at the Public Defender's Office, stating that he discovered
10 that Mr. Marcus was not qualified for his position and that in addition to not practicing
11 in California courts for the past five years, he was not qualified to handle capital or
12 juvenile cases and had shown himself to be lacking sufficient knowledge for the job.

13 31. After the Board meeting on March 7, 2017, the County issued a press
14 release defending the Law Enforcement Hiring Panel it had used and stating that in
15 addition to working as a Public Defender prior to 2012, Mr. Marcus had been working
16 as a contract attorney for a California civil law firm while residing in Florida for the
17 past five years and therefore met the qualifications for appointment as the Public
18 Defender under the Statute.

19 32. The County's press release did not state whether Mr. Marcus had
20 practiced in any California courts while working as a contract attorney for a civil firm
21 when residing in Florida and never produced any proof that he had done so.

22 33. Before filing the instant petition, Petitioners confirmed with County
23 Counsel that the Board was refusing to appoint a Public Defender who had actually been
24 practicing in California courts for the year prior to appointment absent a court ordering
25 it to do so by way of this petition.

26 34. Unless the Board is compelled to comply with the provisions of §27701
27 of the Government Code, Petitioners will be deprived of their due process rights under
28 the 14th Amendment, Section 1, under the U.S. Constitution and their 6th Amendment

1 Rights to Counsel, and their right to counsel pursuant to Article I, Section 15 of the
2 California Constitution.

3 35. "A party may seek a writ of mandate 'to compel the performance of an act
4 which the law specially enjoins, as a duty resulting from an office, trust, or station....'"
5 Code Civ. Proc., §1085, subd. (a). In other words, even where a statute does not create
6 an explicit private right of action (depriving an individual plaintiff of statutory standing),
7 the statute may still be the basis of a petition for writ of mandate to compel compliance.
8 *Doe v. Albany Unified School District* (2010) 190 Cal.App.4th 668, at 681. (internal
9 citations omitted.)

10 36. Petitioners have performed any and all conditions precedent to the filing
11 of this Verified Petition and to the extent that administrative remedies exist, pursuit of
12 such remedies would be futile or impossible through the actions of Respondents.

13 37. Petitioner has no plain, speedy, and adequate remedy in the ordinary
14 course of law, within the meaning of Code of Civil Procedure §1086. Unless this Court
15 issues a writ of mandate setting aside respondents' hiring of an unqualified Public
16 Defender, the interests of petitioners and the public will be substantially and irreparably
17 harmed. No monetary damages or other legal remedy could adequately compensate for
18 the harms to petitioner and the public that would arise if respondents' unlawful conduct
19 were allowed to stand.

20 38. Petitioner is also entitled to injunctive relief under Code of Civil
21 Procedure §526 because the practice threatens irreparable harm. Unless enjoined,
22 respondents will subject persons in Humboldt County to an unqualified Public Defender
23 to protect their liberty interests. Injunctive relief is thus warranted under Code of Civil
24 Procedure §525 *et seq.*

25 39. An actual controversy exists between petitioner and respondents under
26 Code of Civil Procedure §1060. Petitioner contends that respondents have acted in
27 violation of the Government Code, as alleged herein, and must therefore vacate and set
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1 aside the hiring of an unqualified Public Defender. A judicial resolution of this
2 controversy is therefore necessary and appropriate.

3 PARTIES

4 40. Petitioners DOES are persons currently represented by the Public
5 Defender's Office.

6 41. Respondent COUNTY OF HUMBOLDT ("County") is the entity
7 required by law, including, without limitation, the Government Code to provide
8 potential defendants with a qualified Public Defender.

9 42. Respondent HUMBOLDT COUNTY Board of Supervisors ("Board") is
10 an entity comprised of elected officials tasked with the hiring of the Public Defender.
11 The Board has a clear and present ministerial duty to hire a qualified Public Defender.
12 Unless and until the Board is compelled to comply with such provisions, Petitioners will
13 be deprived of their substantive due process rights under the Fourteenth Amendment to
14 the United States Constitution.

15 43. Petitioners have authorized their attorneys to file this lawsuit on their
16 behalf to vindicate their own, and the public's, substantial beneficial interest in securing
17 respondents' compliance with the Government Code in connection with the County's
18 hiring practice.

19 44. The true names and capacities of respondents DOES 1-50, inclusive, are
20 unknown to petitioner who therefore sues said respondents by such fictitious names
21 pursuant to Code of Civil Procedure §474. Petitioner will seek leave of Court to amend
22 this Verified Petition when the true names and capacities of said DOE respondents have
23 been ascertained

24 45. Petitioner is unaware of the true names and capacities of real parties in
25 interest DOES 1-50, inclusive, and sues such real parties herein by fictitious names.
26 Petitioner is informed and believes, and based on such information and belief alleges,
27 that the fictitiously named real parties are entities or individuals who have a direct and
28 substantial role or interest in Respondents' violations of the law as alleged herein. When

1 the true identities and capacities of these real parties have been determined, petitioner
2 will, with leave of the Court if necessary, amend this Petition to insert such identities
3 and capacities.

4 46. Petitioner brings this Petition pursuant to the Government Code, on the
5 grounds that respondents failed to act in accordance with law.

6 47. Respondent County is a "legal agency" and therefore subject to the
7 requirements of Government Code §66499.36.

8 48. Wherefore, Petitioners pray for relief as further set forth below.

9 **RELIEF REQUESTED**

10 WHEREFORE, petitioner prays for judgment and further relief as follows:

11 1. For interlocutory and permanent injunctive relief restraining respondents
12 from continuing with the appointment of an unqualified Public Defender, and following,
13 the hearing of this matter.

14 2. For declaratory relief declaring the County's hiring practices to be
15 unlawful as it currently exists.

16 3. For a peremptory writ of mandate directing respondent County to hire
17 persons in compliance with Government Code §27701.

18 4. For an award to petitioners of their attorney's fees and costs of suit
19 (including reasonable witness and consultant fees) as authorized by Code of Civil
20 Procedure §1021.5.

21 5. For such other equitable or legal relief as the Court deems appropriate.

22 Dated: March 10, 2017

JANSSEN MALLOY LLP

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24 By: 

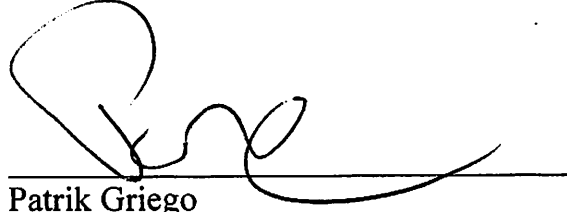
25 Patrik Griego
26 Attorneys for Petitioners
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VERIFICATION

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I, Patrik Griego, as attorney for petitioners DOES 1 through 10 in the above-entitled action, have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and Attorney's Fees and know its contents. The facts therein alleged are true and correct to the best of my knowledge and belief. The evidence of the facts, other than those made under information and belief, are solely within the attorney's personal knowledge. Additionally, petitioner sues under a fictitious name to protect legitimate privacy interests. See *Doe v. Lincoln Unified School Dist.* (2010) 188 Cal.App.4th 758, 765.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed in Eureka, California on March 10, 2017.



Patrik Griego
Attorney for Petitioners
DOES 1 through 10