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FILED

MAR 17 2017

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT**

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF HUMBOLDT**

10 DOES 1 through 10.

11 Petitioners,

12 v.

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

15 Respondents.

Case No. CV 170183

**NOTICE OF MOTION AND MOTION
TO PERMIT SERVICE OF BUSINESS
RECORD SUBPOENA PRIOR TO 20
DAY HOLD**

DATE: March 24, 2017

TIME: 8:30 a.m.

DEPT: Six (6)

TRIAL DATE: None set.

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18 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

19
20 PLEASE TAKE NOTICE that on March 24, 2017, at 8:30 a.m., in Courtroom 6
21 of the above-entitled court, petitioners DOES 1 through 10, will move the Court for an
22 Order granting permission to serve a business record subpoena prior to the 20-day hold
23 that is imposed by CCP 2025.210.


24 Petitioners' Motion is based on the grounds that obtaining the discovery through
25 records that are being sought by Petitioners may prevent harm to many of the indigent
26 clients that Attorney Marcus is serving while in non-compliance with Government Code
27 Section 27701.

28
David V. RECEIVED
MAR 17 2017

1 Plaintiff's motion will be based on this Notice, the Memorandum of Points and
2 Authorities, the Declaration of Patrik Griego, the Declaration of Greg Elvine-Kreis, and
3 served and filed herewith, and on the pleadings, records and other papers on file in this
4 matter, and on such oral and documentary evidence as may be presented at the hearing
5 on this motion.

6 Dated: March 17, 2017

JANSSEN MALLOY LLP

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8 By: 
9 Patrik Griego
10 Attorneys for Petitioners

11 **POINTS AND AUTHORITIES**

12 **I.**

13 **INTRODUCTION**

14 This is a public interest lawsuit challenging the Board of Supervisor's
15 Appointment of David Marcus as Public Defender based on his failure to meet the
16 minimum requirements set forth in Government Code Section 27701.

17 As set forth in the Petition, Mr. Marcus did not practice law in the courts of
18 California for the year preceding appointment, as required in GC 27701. Mr. Marcus
19 was residing in Florida for approximately five (5) years before appointment and had not
20 been practicing criminal law. It is imperative that this matter be decided promptly.

21 While this case is pending, Mr. Marcus is currently serving as the Public
22 Defender. He is responsible for hundreds of ongoing cases involving indigent
23 defendants, including juvenile cases and homicide prosecutions, which will be litigated
24 in the courts during the next 20 days. He has appeared in court unprepared and has failed
25 to secure continuances for clients based on a failure to follow court rules.

26 Petitioner intends to promptly serve two business record subpoenas which seek
27 information calculated to lead to discovery of evidence that Mr. Marcus has not been
28 practicing in California courts during the year preceding appointment.

1 One subpoena is directed to Mr. Marcus himself asking for documents regarding
2 his alleged prior employment for a California firm while residing in Florida and seeking
3 proof that he has appeared in courts of California during the prior year. (Please see
4 **Exhibit 1** to Griego Declaration filed herewith).

5 The other subpoena is directed to his alleged employer, the civil law firm of
6 Cella, Lange, and Cella, LLP, requesting documentation regarding Mr. Marcus'
7 employment and information regarding the type of legal work performed and whether
8 it involved practicing in courts of California. (Please see **Exhibit 2** to Griego
9 Declaration.)

10 II.

11 LEGAL AUTHORITY

12 Under CCP 2025.210(b), Petitioner may serve a deposition notice without leave
13 of court on any date that is 20 days after the service of summons on, or appearance by,
14 any defendant. On motion with or without notice, the court, for good cause shown, may
15 grant to a plaintiff leave to serve a deposition notice on an earlier date.

16 III.

17 ARGUMENT

18 Petitioner respectfully requests an order permitting Petitioner to serve subpoenas
19 for business records forthwith without waiting 20 days after the service of the summons.
20 On March 10, 2017, Petitioner filed the summons and verified petition in this case, and
21 served defendants March 13, 2017. On March 15, 2017, Petitioner also served the
22 defendant's attorneys with copies of the subpoenas at issue. There is no prejudice to
23 defendants by permitting service of the subpoenas now. Permitting service of the
24 subpoenas simply starts the required time periods for response, which includes the
25 appropriate notices to consumer.

26 It is in the public interest that this matter be decided promptly. As set forth in
27 the accompanying declaration, attorneys working for Mr. Marcus are gravely concerned
28 about the well-being of the office and the indigent clients it serves.

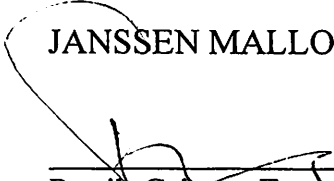
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IV.
CONCLUSION

Based on the foregoing, Petitioner respectfully requests that the Court permit service of business record subpoenas at this time based on the authority provided by CCP §2025.210(b).

DATED : 3/17/18

Respectfully submitted,
JANSSEN MALLOY LLP


Patrik Griego, Esq., Attorneys for
Petitioners