IN THE SUPREME COURT OF IOWA
Supreme Court No. 25–0011
Scott County Nos. SRCR442688, SRCR443327, SRCR443437, SRCR443474, SRCR443481, and SRCR443595

STATE PUBLIC DEFENDER,

Plaintiff-Appellant,

vs.

IOWA DISTRICT COURT FOR SCOTT COUNTY,

Defendant-Appellee.

Certiorari to the Iowa District Court for Scott County
The Honorable Christine Dalton, District Associate Judge

BRIEF FOR DEFENDANT-APPELLEE

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STATEMENT OF THE ISSUES

1. When its motions to withdraw as counsel were denied, the State Public Defender did not seek appellate review. Over a month later, when the district court attached an attorney to those cases, the State Public Defender did not file a responsive pleading asserting error. Did the State Public Defender preserve error regarding its argument that the district court erred by denying its motions to withdraw?

2. Did the district court abuse its discretion by denying the State Public Defender's barebones motions to withdraw?

ROUTING STATEMENT

This certiorari proceeding should be transferred to the Court of Appeals because it can be decided by applying basic error-preservation rules. Iowa R. App. P. 6.1101(3); *see* Iowa R. App. P. 6.107(1)(*b*) (party must seek certiorari within 30 days of the challenged order); *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.").

NATURE OF THE CASE

This is a run-of-the-mill error-preservation case. Attorneys filed motions to withdraw as counsel, lost, and did not move to reconsider or seek appellate review. The attorneys continued to represent their clients. When the district court entered other administrative orders in the cases, the attorneys did not seek reconsideration or explain why those orders were erroneous. Instead, the attorneys skipped straight to appellate review. That does not preserve error.

Though this Court should not reach it, the underlying issue in this case touches upon the role of the public defender. Public defenders undoubtedly play a vital role in our adversarial system of justice. But it is ultimately the duty of the district court to determine whether the statutory prerequisite for withdrawal is met, not the public defender.

Shortly after the State Public Defender's Davenport Office was appointed to represent criminal defendants in six Scott County cases, it moved to withdraw due to a temporary overload of cases. Because the Davenport Office was fully staffed, and the motions failed to add any information supporting the temporary-overload claim, the district court denied the motions. The State Public Defender filed a second round of similarly barebones motions to withdraw. The district court denied those motions, too. The State Public Defender did not move for reconsideration or seek appellate review.

After its motions to withdraw were denied, the State Public Defender continued to represent the defendants, for example, by filing written arraignments. But the State Public Defender refused to sign the written arraignments or assign attorneys to the cases. So, on December 6, 2024, the district court ordered the State Public Defender to assign attorneys to the cases. When the State Public Defender ignored that order, the district court attached the Davenport Office's supervising attorney to the cases on December 19. Without first filing any responsive pleading asserting that the district court erred—and 56 days after the denial of the last withdrawal motion—the State Public Defender petitioned for a writ of certiorari regarding the two December orders. This Court granted the petition.

STATEMENT OF THE FACTS

This certiorari proceeding involves six Scott County criminal cases with substantially similar procedural histories.

A. The district court denies the State Public Defender's motions to withdraw, and the State Public Defender does not seek reconsideration or appellate review.

The cases began in September and October 2024 when criminal complaints were filed against each Defendant. D0001 (SRCR442688), Criminal Complaint (09/26/2024); D0001 (SRCR443327), Criminal Complaint (10/19/2024); D0001 (SRCR443437), Criminal Complaint (10/23/2024); D0001 (SRCR443474), Criminal Complaint (10/23/2024);

D0001 (SRCR443481), Criminal Complaint (10/23/2024); D0001 (SRCR443595), Criminal Complaint (10/29/2024).

Shortly afterward, the district court appointed the State Public Defender's Davenport Office to represent each defendant. D0005 (SRCR442688), Order on Initial Appearance (09/26/2024); D0007 (SRCR443327), Order on Initial Appearance (10/21/2024); D0003 (SRCR443437), Order on Initial Appearance (10/23/2024); D0003 (SRCR443474), Order on Initial Appearance (10/24/2024); D0004 (SRCR443481), Order on Initial Appearance (10/24/2024); D0003 (SRCR443595), Order on Initial Appearance (10/29/2024).

Almost immediately, Miguel Puentes, the supervising attorney for the Davenport Office, moved to withdraw the State Public Defender as counsel in each case. One motion stated that "[t]he State Public Defender is unable to continue representing Defendant" because of "__X__ Temporary overload." D0008 (SRCR442688), M.T.W. at 1 (10/03/2024). Other motions lacked any explanation, simply declaring that "[i]n accordance with Iowa Code Section 13B.9(4), the public defender is returning the case to the court." D0008 (SRCR443327), M.T.W. at ¶ 2 (10/23/2024); D0006 (SRCR443595), M.T.W. at ¶ 2 (10/29/2024); D0006 (SRCR443474), M.T.W. at ¶ 2 (10/24/2024); D0006 (SRCR443437), M.T.W. at ¶ 2 (10/23/2024); D0007 (SRCR443481), M.T.W. at ¶ 2 (10/24/2024).

The district court denied Puentes's motions to withdraw. D0012 (SRCR443327), Order Denying M.T.W. (10/30/2024); D0007 (SRCR443437), Order Denying M.T.W. (10/30/2024); D0007 (SRCR443474), Order Denying M.T.W. (10/30/2024); D0009 (SRCR443481), Order Denying M.T.W. (10/30/2024); D0007 (SRCR443595), Order Denying M.T.W. (10/30/2024).

The orders recognized that "[t]he local state public defender's office recently became fully staffed," and faulted the Office for not giving the court any information regarding its temporary-overload determination. *Id.* at 1. And the orders denied the motion "due to a lack of information provided by the movant, and lack of attorneys to take the cases if the motions are granted." *Id.* Another order denied the motion "without prejudice" because "the local public defender office is fully staffed at this time." D0012 (SRCR442688), Order Denying M.T.W. (10/30/2024).

Soon after, Puentes filed a second motion to withdraw in each case. D0008 (SRCR443474), Second M.T.W. (10/30/2024); D0008 (SRCR443437), Second M.T.W. (10/30/2024); D0013 (SRCR443327), Second M.T.W. (11/01/2024); D0013 (SRCR442688), Second M.T.W. (10/23/2024); D0010 (SRCR443481), Second M.T.W. (10/31/2024); D0008 (SRCR443595), Second M.T.W. (11/01/2024). The motions stated that "after consideration of all applicable factors including the number of attorneys in the office and caseloads, [the public defender] has determined they are still ethically unable to handle this case." *Id.* at ¶ 2.

They declared that "[i]n accordance with Iowa Code Section 13B.9(4), the public defender is returning the case to the court." *Id.* at ¶ 3.

The district court denied the State Public Defender's second motions to withdraw. D0009 (SRCR443595), Order Denying 2nd M.T.W. (11/05/2024); D0013 (SRCR443474), Order Denying Second M.T.W. (11/04/2024); D0012 (SRCR443437), Order Denying Second M.T.W. (11/04/2024); D0014 (SRCR443327), Order Denying Second M.T.W. (11/04/2024). In some orders, the court reasoned that it had "utilized all available contract attorneys to grant motions by the state public defender's office" to withdraw. *Id.* at 1. It explained that its earlier order "specifically says if the Public Defender wishes to have the order reconsidered a hearing is to be scheduled," but that "[u]ntil a hearing is scheduled and heard, the motion remains denied." *Id.*

In other similar orders, the district court denied the motions for failure to ask for a hearing, D0012 (SRCR443481), Order Regarding Filed Motion (10/31/2024), or "due to a lack of information provided by the movant," D0014 (SRCR442688), Order Denying M.T.W. at 1 (10/30/2024).

The State Public Defender did not move for reconsideration. Nor did it seek appellate review.

B. The State Public Defender refuses to assign attorneys to the cases or sign written arraignments.

Rather than continue to seek withdrawal, the State Public Defender filed written arraignments and pleas of not guilty using the Davenport Office's EDMS account. For some, the Davenport Office refused to sign an attorney's name:

11-15-24
Date

Defendant's Signature

Date

Attorney Signature

D0013 (SRCR443595), Arraignment and Plea (12/02/2024).

For other written arraignments, the State Public Defender appears to have whited-out the attorney signature:

11/14/24
Date

James Doty
Defendant's Signature

11/14/24
Date

Attorney Signature

D0016 (SRCR443481), Arraignment and Plea (11/14/2024); *see also* D0013 (SRCR443437), Arraignment and Plea (11/14/2024); D0015 (SRCR443327), Arraignment and Plea (11/14/2024); D0022 (SRCR442688), Arraignment and Plea (11/14/2024).

And still for others, the State Public Defender signed "on behalf of defendant":

11/14/24	(verbal consent)
Date	Defendant's Signature
11/14/24	/on behalf of defendant
Date	Attorney Signature

D0014 (SRCR443474), Arraignment and Plea (11/14/2024).

No written arraignment and plea in any of the six cases involved in this certiorari proceeding contains an attorney's signature.

C. After the State Public Defender fails to comply with the district court's order to assign attorneys to the cases, the court attaches one.

Those missing signatures concerned the district court. So on December 6, it entered an order in all six cases. D0017 (SRCR443474), Order Re: Arraignment (12/06/2024); D0025 (SRCR442688), Order Re: Arraignment (12/06/2024); D0018 (SRCR443327), Order Re: Arraignment (12/06/2024); D0016 (SRCR443437), Order Re: Arraignment (12/06/2024); D0019 (SRCR443481), Order Re: Arraignment (12/06/2024); D0015 (SRCR443595), Order Re: Arraignment (12/06/2024).

The *sua sponte* December 6 order recognized that the Davenport Office remained counsel in the case and criticized the Office for refusing to "assign any specific attorney to the case." *Id.* at 1. The district court

detailed the State Public Defender's failure "to provide basic required representation of their clients." *Id.* Most relevantly:

> They refuse to advise these clients or inform these clients about their options and legal rights at arraignment. . . . It was reported that since a case is not opened in [the Davenport Office's recordkeeping system] and not assigned to a specific attorney, no attorney is responsible for requesting discovery, examining the police reports, negotiating plea agreements, or determining if a defense exists; all basic duties of a criminal defense attorney.

Id.

In particular, the district court zeroed in on the State Public Defender's refusal to sign written arraignments:

> The purpose of an attorney signature on the arraignment form is to assure the court that the Defendant was advised of their rights prior to entering a plea. Without a signature, that cannot be assured. . . . Refusal to sign the form indicates to the court the Defendant was in fact not advised of their rights by counsel prior to their plea of not guilty. . . . The local public defender office has again refused the order of the court and refused to sign the arraignment form.

Id. at 1–2.

The district court ordered the State Public Defender to enter the appearance of an attorney within 10 working days. *Id.* at 2. If it failed to comply, the district court stated that it would appoint the Davenport Office's supervising attorney, Mr. Puentes, to serve as counsel. *Id.* at 2.

The State Public Defender neither responded to nor complied with the district court's December 6 order. So on December 19, the district

court entered another *sua sponte* order reiterating that "the State Public Defender is responsible for providing indigent defense" and directing the clerk to "attach Mr. Puentes to this case unless and until another attorney files an appearance." D0018 (SRCR443474), Order Designating Attorney at 1 (12/19/2024); D0026 (SRCR442688), Order Designating Attorney (12/19/2024); D0019 (SRCR443327), Order Designating Attorney (12/19/2024); D0017 (SRCR443437), Order Designating Attorney (12/19/2024); D0021 (SRCR443481), Order Designating Attorney (12/19/2024); D0016 (SRCR443595), Order Designating Attorney (12/19/2024).

D. Without responding to the district court's orders, the State Public Defender seeks certiorari.

As before, the State Public Defender did not respond to the district court's orders. Instead, in all cases but one, the State Public Defender filed a "Notice of Return pursuant to Iowa Code Section 13B.9(4)(a)" informing the district court that "due to a temporary overload, this case is returned to the Court." D0019 (SRCR443474), Notice of Return (12/20/2024); D0020 (SRCR443327), Notice of Return (12/20/2024); D0018 (SRCR443437), Notice of Return (12/20/2024); D0022 (SRCR443481), Notice of Return (12/20/2024); D0017 (SRCR443595), Notice of Return (12/20/2024). The notice was signed "/S/ State Public Defender." *Id.*; *but see* Iowa R. Elec. P. 16.305(4); Iowa R. Civ. P. 1.411(1)

("Each . . . notice . . . shall bear the signature . . . of the party or attorney filing it.").

In response to the State Public Defender's unorthodox December 31 "notice," the district court entered an order explaining that "[t]here are no noncontract attorneys available" to appoint in the State Public Defender's place, noting that the State Public Defender's earlier motions to withdraw were denied, and concluding that the "notice fails to provide any additional basis to modify any of the Court's previous orders." D0020 (SRCR443474), Order Response to "Notice" (12/31/2024); D0021 (SRCR443327), Order Response to "Notice" (12/31/2024); D0019 (SRCR443437), Order Response to "Notice" (12/31/2024); D0023 (SRCR443481), Order Response to "Notice" (12/31/2024); D0018 (SRCR443595), Order Response to "Notice" (12/31/2024).

The same day, the State Public Defender petitioned this Court for a writ of certiorari, arguing that the district court acted illegally by not granting its motions to withdraw and by attaching Puentes to the cases. *See* Petition for Writ of Certiorari at 14–15 (12/31/2024). The petition sought review of only the district court's December 6 and December 19 orders attaching Puentes to the cases. *See id.* The petition did not seek this Court's untimely review of the October and November denials of the withdrawal motions nor of the district court's December 31 response orders.

This Court granted the petition. Order Granting Petition for Writ of Certiorari (01/16/2025).

ARGUMENT

This Court should annul the writ of certiorari. The crux of the State Public Defender's argument is that the district court erred by denying its motions to withdraw. But because the State Public Defender petitioned for a writ of certiorari more than 30 days after those orders, this Court lacks jurisdiction to review those orders.

Though this Court does have jurisdiction to review the district court's December orders attaching Puentes to the cases, the State Public Defender failed to preserve error. It never sought a ruling regarding those *sua sponte* orders or explained in a motion for reconsideration why it thought the district court erred. Instead, it skipped straight to appellate review. That does not preserve error.

This Court should not reach the question of whether the district court abused its discretion by denying the motions to withdraw. But if it does, there was no abuse of discretion. The district court has the authority to determine whether the circumstances presented by the State Public Defender are sufficient to constitute a "temporary overload of cases" meriting withdrawal. Iowa Code § 13B.9(4)(*a*). Because the State Public Defender's barebones motions to withdraw did not give the district court any relevant information, the district court was well within its discretion in denying them.

I. The State Public Defender failed to preserve error.

A. Error-preservation rules apply in certiorari proceedings.

"Error preservation rules are not legal bramble bush intended to serve no purpose other than ensnaring unwitting litigants." *Halbur v. Larson*, 14 N.W.3d 363, 373 (Iowa 2024). Those rules apply equally in certiorari proceedings like this one. *See Sorci v. Iowa Dist. Ct. for Polk Cnty.*, 671 N.W.2d 482, 490 (Iowa 2003); Iowa R. App. P. 6.107(1)(*e*)(4) (requiring a certiorari petition to "state whether the plaintiff raised the issue in the district court"). Three error-preservation rules are relevant here.

First, a "petition for writ of certiorari must be filed within 30 days after entry of the challenged decision." Iowa R. App. P. 6.107(1)(*b*). That requirement is jurisdictional, so "an untimely filing of a petition for a writ of certiorari deprives the reviewing court of subject matter jurisdiction." *O'Malley v. Gundermann*, 618 N.W.2d 286, 291 (Iowa 2000); *Dir. of Iowa Dep't of Hum. Servs. v. Iowa Dist. Ct. for Jefferson Cnty.*, 621 N.W.2d 189, 192 (Iowa 2001) (dismissing the State's certiorari petition as untimely for this reason).

When a party seeks review of multiple orders in a certiorari proceeding, each order must meet that jurisdictional requirement. *See, e.g.*, *Chrischilles v. Arnolds Park Zoning Bd. of Adjustment*, 505 N.W.2d 491, 494 (Iowa 1993) (holding that a party "[was] aggrieved by the board's

order of December 1990 and timely challenged it by certiorari," but the district court "erred when it permitted the [party] to use that action to challenge [a] variance order issued fifteen months earlier").

Second, the "fundamental doctrine of appellate review" that an issue must "be both raised and decided by the district court before [an appellate court] will decide them" applies equally in certiorari proceedings. *Meier*, 641 N.W.2d at 537; *see also State v. Iowa Dist. Ct. for Marshall Cnty.*, No. 06-1519, 2007 WL 2963673, at *4 (Iowa Ct. App. 2007) (explaining that it is "well established that in certiorari actions [appellate courts] will not review questions not presented to the so-called inferior tribunal"). That rule exists because "[i]t is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider." *Iowa Dist. Ct. for Marshall Cnty.*, 2007 WL 2963673, at *4.

Third, once this Court grants a petition for writ of certiorari, its review is limited to the orders listed in the petition. "Once this court exercises its discretionary power to grant certiorari, [it] engage[s] in review of the action of the inferior tribunal"—that is, what is described in the petition—"and either sustain or annul it. No other relief may be granted." *Crowell v. State Pub. Def.*, 845 N.W.2d 676, 682 (Iowa 2014); *see also State v. Cullison*, 227 N.W.2d 121, 126 (Iowa 1975) (similar). In other words, because this Court issues a thumbs-up or thumbs-down ruling based on the petition, a party cannot expand the scope of the

Court's review by raising more issues in its brief following the certiorari grant.

Applying those three error-preservation rules demonstrates that the State Public Defender failed to preserve error.

B. This Court lacks jurisdiction to review the district court's denial of the State Public Defender's motions to withdraw.

The State Public Defender first claims that this Court "granted the State Public Defender's petition for writ of certiorari to review the district court's order denying the withdrawal of the Davenport Office of the State Public Defender from several criminal cases." Appellant's Brief at 6.

That cannot be correct. In each case, the State Public Defender filed two motions to withdraw its Davenport office as counsel. *E.g.*, D0006 (SRCR443595) at ¶ 2; D0008 (SRCR443595) at ¶ 3. The district court entered orders denying each motion, the last of which was entered on November 5. *E.g.*, D0007 (SRCR443595) at 1; D0009 (SRCR443595) at 1.

The State Public Defender chose not to move for reconsideration. It also chose not to file a new motion to withdraw that addressed the district court's information concerns. *E.g.*, D0007 (SRCR443595) at 1 (district court explaining it "is unaware of the caseload of the public defender's office" and "does not know the ideal caseload per attorney nor the maximum caseload per attorney").

And more than mere forfeiture by declining to exhaust in the district court, there is likely waiver, too. The State Public Defender declined the district court's offer of a hearing to discuss the issue. *E.g.*, D0009 (SRCR443595) at 1 ("[I]f the Public Defender wishes to have the order reconsidered a hearing is to be scheduled. Until a hearing is scheduled and heard, the motion remains denied.").

Finally, the State Public Defender chose not to seek certiorari or an interlocutory appeal regarding the withdrawal denials.

Then, on December 31, 2024—56 days after the district court's last withdrawal denial—the State Public Defender filed its certiorari petition. In its petition, the State Public Defender chose not to (untimely) seek certiorari regarding the district court's denials of its motions to withdraw. The petition sought review of only the district court's December 6 and December 19 orders attaching Puentes to the cases. *See* Petition for Writ of Certiorari at 15 (12/31/2024).

For good reason. This Court lacks jurisdiction to review the district court's denial of the motions to withdraw because more than 30 days have passed since their entry. *See* Iowa R. App. P. 6.107(1)(*b*) (requiring a certiorari petition be filed within 30 days of the challenged action); *O'Malley*, 618 N.W.2d at 291 (explaining that the 30-day filing requirement is jurisdictional). That is true even if the December orders mentioned in the petition are within the 30-day window. *See Chrischilles*, 505 N.W.2d at 494.

Accordingly, even if the State Public Defender requests that this Court "review the district court's order denying the withdrawal of the Davenport Office," Appellant's Brief at 6, this Court lacks jurisdiction to do so. Whether the district court erred by denying the State Public Defender's motions to withdraw is beyond the scope of this certiorari proceeding.

C. The State Public Defender failed to preserve error regarding the orders within the scope of this proceeding because it never asserted that the district court erred.

This Court does have jurisdiction to review the district court's December 6 and 19 orders assigning an attorney to the cases. *See* Attachments to Petition for Writ of Certiorari (12/31/2024).[1] Due to the State Public Defender's refusal to "assign any specific attorney to the cases[s]" after the district court's December 6 order, the court *sua sponte* attached Puentes to the cases in a December 19 order. *E.g.*, D0016 (SRCR443595) at 1. Importantly, the subject of those December orders was the attachment of Puentes to the cases in which the State Public

[1] Only the orders issued in *State v. Shepherd* were attached to the certiorari petition—and not the orders in the other five cases. *See* Attachments to Petition for Writ of Certiorari (12/31/2024). That practice is not consistent with the requirement that each order must be attached to the petition. *See* Iowa R. App. P. 6.1002(1)(*c*) (requiring attaching "a copy of any ruling from which a party seeks appellate review"); *id.* 6.107(1)(*e*)(3) (incorporating Rule 6.1002(1) into certiorari petition requirements).

Defender remained counsel of record—not whether the State Public Defender should be allowed to withdraw as counsel.

The State Public Defender failed to preserve error on the front and back end of the district court's December orders.

1. On the front end, the State Public Defender did not raise any issue that spurred the district court's December orders. To preserve error, a party must raise an issue and seek a ruling. *See Sorci*, 671 N.W.2d at 490 (explaining that certiorari is appropriate "only on issues presented in the district court on which the parties sought a ruling"); *Meier*, 641 N.W.2d at 537 (requiring issues "be both raised and decided by the district court").

But the State Public Defender never sought a ruling on the district court's December orders attaching an attorney to the cases. The district court issued its December orders assigning an attorney to the cases *after* the underlying issue of withdrawal had been twice litigated and—given no renewed motions, appeal, writ, or any other reason to revisit those orders—resolved. After all, the time for seeking certiorari had expired, and the State Public Defender continued to represent the Defendants by filing written arraignments.

The State Public Defender's previously resolved motions to withdraw do not preserve error regarding the district court's December orders attaching an attorney to the cases. Consider a party that moves to dismiss on an issue and loses. The party must re-raise the issue at

summary judgment to preserve error. *See UE Loc. 893/IUP v. State*, 928 N.W.2d 51, 61 (Iowa 2019) (holding that the State failed to preserve error when it failed to re-raise the issue). And if the case goes to trial, the party must move for a directed verdict to preserve error. *See Halbur*, 14 N.W.3d at 371 (holding that the State failed to preserve error by failing to re-raise the issue).

Just because a party raises an issue early on in a case does not mean that the error is preserved for the rest of the case—especially when the party's conduct in a case is inconsistent with its previous claim of error. So too here. Once the State Public Defender's motions to withdraw were denied, it was required to either (1) timely appeal or (2) re-raise the issue to preserve error regarding a future order.

The State Public Defender characterizes the December orders as "continuing the unlawful appointment of the local office," Appellant's Brief at 10, but that misses the point. If a motion to dismiss argues that a contract was not formed, and the motion is denied, error is not preserved for the rest of the case on any issue that touches upon the contract—even if the district court continues to rely on or apply the contract, for example at summary judgment. *See UE Loc. 893/IUP*, 928 N.W.2d at 56–57, 61 (involving that fact pattern); *see also Greene v. Iowa Dist. Ct. for Polk Cnty.*, 312 N.W.2d 915, 919–20 (Iowa 1981) (similar principle involving an initial contingent contempt sentence and later imposition of that sentence).

That the State Public Defender filed motions to withdraw earlier in the case does not preserve error for any subsequent order that might conceivably touch upon withdrawal. That is especially true given the Davenport Office's conduct of representing Defendants and filing in court following the denial of its motions to withdraw. *E.g.*, D0013 (SRCR443595) at 2.

2. On the back end, the State Public Defender also failed to preserve error. Because it did not file a motion initiating the district court's ruling, the State Public Defender needed to file a Rule 1.904(2) motion to enlarge or amend the December orders explaining why the district court erred by attaching an attorney from the Davenport Office to the cases. Iowa R. Civ. P. 1.904(2); *Homan v. Branstad*, 887 N.W.2d 153, 161 (Iowa 2016) ("[W]hen a party has presented an issue, claim, or legal theory and the district court has failed to rule on it, a rule 1.904(2) motion is proper means by which to preserve error and request a ruling from the district court."); *In re Marriage of Jennings*, No. 23-0850, 2024 WL 1551225, at *1 (Iowa Ct. App. 2024) (holding that a party did not preserve error because "he did not bring that error to the court's attention by moving to reconsider or enlarge the court's ruling").

As the Court of Appeals has recognized, "[i]t is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider." *Iowa Dist. Ct. for Marshall Cnty.*, 2007 WL 2963673, at *4. Yet the State Public Defender did just

that by filing its petition for certiorari without responding to the district court's *sua sponte* order attaching an attorney to the cases.

The State Public Defender may point to the "Notice of Return" it filed in each case except *State v. Stowers*. *E.g.*, D0017 (SRCR443595) at 1. But this Court's precedent is clear: "a rule 1.904(2) motion is proper means by which to preserve error and request a ruling from the district court"—not a "notice" that neither mentions a previous order nor explains why it was erroneous. *Homan*, 887 N.W.2d at 161. "Error preservation rules are not legal bramble bush" that can be cleared away when inconvenient for a party—they serve an important "utility." *Halbur*, 14 N.W.3d at 373.

* * *

This proceeding is more straightforward than the typical error-preservation dispute that courts see, where the parties dispute whether an issue was sufficiently raised or addressed in a motion. Here, the State Public Defender did not file any motion seeking a ruling from the district court regarding its order attaching an attorney to a case in which the Office was representing a defendant. And after the district court's December orders, the State Public Defender did not file any motion to reconsider or enlarge. Instead, it immediately sought appellate review. That is inconsistent with the "fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier*, 641 N.W.2d at 537.

D. No other orders are within this scope of this certiorari proceeding.

Finally, the State Public Defender's brief appears to also seek review of the district court's December 31 responses to the "Notice of Return" filed by the State Public Defender in five of the six cases. *See, e.g.*, Appellant's Brief at 10 ("A petition for writ of certiorari was filed on December 31, 2024, within 30 days of the orders entered on December 19 and December 31, 2024."); Attachments to Appellant's Brief (attaching several December 31, 2024 district court responses).

But the State Public Defender's petition for writ of certiorari did not seek review of the district court's December 31 responses. The petition did not mention them. Nor are the responses attached to the petition. *See generally* Petition for Writ of Certiorari (12/31/2024); Iowa R. App. P. 6.1002(1)(*c*) (requiring attaching "a copy of any ruling from which a party seeks appellate review"); *id.* 6.107(1)(*e*)(3) (incorporating Rule 6.1002(1) into certiorari petition requirements).

Because this Court's review is limited to the certiorari petition, it should reject the State Public Defender's attempt to enlarge their petition for writ of certiorari and decline to review the district court's December 31 responses. *See Crowell*, 845 N.W.2d at 682 (explaining that the Court may only "sustain or annul" the petition for writ of certiorari).

II. The district court did not abuse its discretion by denying the State Public Defender's motions to withdraw.

A. Preservation and Standard of Review.

As explained above, the State Public Defender failed to preserve error. If this Court concludes otherwise, "[t]he standard of review from a denial of a motion to withdraw . . . is abuse of discretion." *In re Marriage of Munger*, No. 06-1638, 2007 WL 1063048, at *2 (Iowa Ct. App. 2007); *Int. of A.M.*, No. 20-0480, 2020 WL 4814170, at *1 (Iowa Ct. App. 2020) ("Regarding the denial of the mother's attorney's motion to withdraw, we review for an abuse of discretion."); *accord State v. Brooks*, 540 N.W.2d 270, 272 (Iowa 1995) ("Appellate review [of a ruling on a motion to withdraw] is for abuse of discretion.").

B. The district court has a role in determining whether a temporary overload exists.

The State Public Defender moved to withdraw from the six cases claiming a temporary overload of cases. *See* Appellant's Brief at 6 (stating it "filed a motion to withdraw stating the office was overloaded, could not take the case, and the case was being returned to the court"); *e.g.*, D0008 (SRCR443595) at 1. In each motion, the State Public Defender invoked Section 13B.9(4), which states that "if the local public defender is unable to handle a case because of a temporary overload of cases, the local public

defender shall return the case to the court." Iowa Code § 13B.9(4)(*a*).[2] When a case is returned, the district court will appoint a successor attorney. *See id.*

As the State Public Defender points out, if one condition is present—a "temporary overload of cases"—the statute requires that the State Public Defender "shall" be withdrawn from the case, and the district court "shall" appoint a contract attorney, if one is available. Appellant's Brief at 12–13; Iowa Code § 815.10(2). But the key question in this case is not whether that instruction is mandatory. Rather, the key question is who decides whether there is a "temporary overload of cases—the district court or the State Public Defender?

The answer is that the district court must have a role in determining whether the statutory requirement of "a temporary overload" exists. Contrary to the State Public Defender's assertion, the State Public Defender does not wield unilateral power to make this decision.

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[2] The statute also allows withdrawal if there is a "conflict of interest," but the State Public Defender has never claimed that it has a conflict of interest in any of the six cases. Iowa Code § 13B.9(4)(*a*). Another subsection states that the "public defender shall handle every case to which the local public defender is appointed if the local public defender can reasonably handle the case." *Id.* § 13B.9(3). The State Public Defender never claimed in any of its motions or notices that it was unable to reasonably handle the case or cited that subsection, so that provision is irrelevant here, too.

To start, "[c]ourts have inherent power to protect a defendant's rights from being violated in a criminal proceeding." *State v. Folkerts*, 703 N.W.2d 761, 765 (Iowa 2005) (collecting examples); *State v. Johnson*, 183 N.W.2d 194, 197 (Iowa 1971) ("It is the trial court's duty to insure a fair and just trial to each litigant."). That includes power to ensure that indigent defendants receive adequate representation. *See Hall v. Washington County*, 2 Greene 473, 476–78 (Iowa 1850) (holding that courts have inherent authority to compel compensation for an attorney appointed to represent an indigent defendant). Criminal defense attorneys are thus "essential to the performance of [the court's] constitutional functions." *Webster Cnty. Bd. of Sup'rs v. Flattery*, 268 N.W.2d 869, 874 (Iowa 1978) (explaining that courts have "inherent power" in this circumstance).

Given these duties, the district court must have power to evaluate whether the State Public Defender's motions to withdraw meet the statutory prerequisite for withdrawal. Indeed, if the district court failed to conduct that analysis and granted motions to withdraw when the statutory prerequisite of a "temporary overload" did not exist, the court would be failing to discharge its duty to protect criminal defendants. The power to ensure the statutory prerequisites are met is essential to ensuring that indigent defendants are provided with adequate representation, and that cases proceed through an adversarial process. *See State v. Hoegh*, 632 N.W.2d 885, 887 (Iowa 2001) (explaining that

courts have "inherent power" based on "the necessity for the courts to perform their basic function of administering justice").

That is especially true in Scott County, where there are currently no alternatives to the State Public Defender. Section 815.10(2) states that the district court's first alternative to the State Public Defender is contract attorneys. Iowa Code § 815.10(2). But the district court "has utilized all available contract attorneys to grant motions by the state public defender's office." D0003 (SRCR443595) at 1. The district court's only other alternative is "a noncontract attorney." Iowa Code § 815.10(2). But "for well over a year," there has been "insufficient [noncontract] attorneys available to take appointments." D0003 (SRCR443595) at 1. In this context, the district court's role in ensuring that Section 13B.9(4)(*a*)'s prerequisites to withdrawal are met is absolutely essential to securing representation for indigent defendants.

Consider an extreme scenario not present here, which illustrates the flaw in the State Public Defender's argument. In this hypothetical, the State Public Defender files motions to withdraw from many cases in August claiming a "temporary overload of cases." The motion explains that its attorneys can only handle a couple of cases during that month due to an 11-day-long work-sponsored outing to the Iowa State Fair.

Nobody would say that situation involves a "temporary overload of cases" under Section 13B.9(4)(*a*). Yet according to the State Public Defender, those motions must be granted because the State Public

Defender possesses unilateral authority to determine whether the statutory prerequisite to withdrawal exists. *See* Appellant's Brief at 15 ("Once the office provides notice to the court that the case is being returned, the court 'shall', or has the duty to, appoint a substitute attorney."). That cannot be the rule.

When the State Public Defender seeks to withdraw under Section 13B.9(4)(*a*), the role of the district court is to evaluate whether the situation presented by the State Public Defender constitutes a "temporary overload of cases," as that term is used in Section 13B.9(4)(*a*). In doing so, the district court would typically give deference to the State Public Defender's conclusions, especially given the local court's familiarity with the local office. But there may be circumstances where the State Public Defender's "history of seeking withdrawal, the sheer number of cases affected . . . , and the substantial financial burden . . . all mandate[] careful scrutiny of the motions to withdraw." *In re Certification of Conflict in Motions to Withdraw Filed by Pub. Def. of Tenth Jud. Cir.*, 636 So. 2d 18, 22 (Fla. 1994) (scrutinizing a public defender's motion to withdraw for these reasons).

Indeed, district courts are not "obligated to permit the withdrawal automatically upon the filing of a certificate by the public defender reflecting a backlog." *Skitka v. State*, 579 So. 2d 102, 104 (Fla. 1991).

That the district court has a role in deciding whether an appointed attorney meets the statutory requisite for withdrawal is unsurprising.

District courts routinely evaluate whether an attorney's or party's request for withdrawal is sufficient. In doing so, "[d]istrict courts have substantial discretion when ruling on motions to withdraw counsel." *State v. Cooke*, No. 16-0237, 2017 WL 108575, at *2 (Iowa Ct. App. 2017).

For example, a criminal defendant or his attorney may not unilaterally withdraw the attorney from the case by claiming a conflict, such as a breakdown in communication. Far from taking their word for it, "[j]udges who receive from a defendant a request for substitute counsel on account of an alleged breakdown in communication have a duty of inquiry." *State v. Wells*, 738 N.W.2d 214, 219 (Iowa 2007) (quotation marks omitted); *see also Cooke*, 2017 WL 108575, at *2 (holding that "the district court did not abuse its discretion in denying [the defendant's] counsel's motion to withdraw"). The State Public Defender's request to withdraw based on temporary overload is no different.

Finally, allowing the district court to evaluate whether the statutory prerequisite of "temporary overload" exists ensures that appellate review is possible. If the State Public Defender disagrees with the district court's decision, it can seek appellate review. But if the State Public Defender is the sole arbiter of whether its situation constitutes a "temporary overload of cases," as the term is used in the statute, there is no avenue of review.

C. The district court did not abuse its discretion by denying the State Public Defender's barebones motions to withdraw.

Start with the State Public Defender's first round of motions to withdraw. One motion simply placed an "X" next to "Temporary overload." D0008 (SRCR442688) at 1. The others vaguely declared that "[i]n accordance with Iowa Code Section 13B.9(4), the public defender is returning the case to the court," without mentioning a reason. *E.g.*, D0006 (SRCR443595) at 1.

Given the lack of information or explanation provided by the State Public Defender, the district court explained:

> The Court is unaware of the caseload of the public defender's office, per attorney, prior to the being fully staffed as compared to the current caseload now that full staffing has occurred. The Court does not know the ideal caseload per attorney nor the maximum caseload per attorney. The Court is unaware of the methodology for arriving at the ideal or maximum caseload.

D0007 (SRCR443595) at 1. Especially since the "local state public defender's office recently became fully staffed," the court was well within its discretion when it denied the motions "due to a lack of information provided by the movant." *Id.*

The State Public Defender's second motions to withdraw fare no better. They simply stated that "after consideration of all applicable factors including the number of attorneys in the office and caseloads, has determined they are still ethically unable to handle this case," and so

"[i]n accordance with Iowa Code Section 13B.9(4), the public defender is returning the case to the court." *E.g.*, D0008 (SRCR443595) at ¶ 3.

The motions provided none of the details the district court had asked for, and still did not explain why, despite being fully staffed, the State Public Defender was experiencing a temporary overload of cases. The district court did not abuse its discretion when it denied the motions for failure to ask for a hearing, D0012 (SRCR443481) at 1, or "due to a lack of information provided by the movant," D0014 (SRCR442688) at 1.

D. Because Puentes had already made an appearance in each case, attaching him to the dockets was not error.

Other than its argument that the State Public Defender should be able to withdraw from the case, the State Public Defender does not meaningfully challenge the district court's decision to attach Puentes to the cases. In any event, the court's decision to do so was not error.

In each case, Puentes's motion to withdraw bore his signature: "/s/ Miguel Puentes." D0008 (SRCR443474) at 2; D0008 (SRCR443437) at 2; D0013 (SRCR443327) at 2; D0013 (SRCR442688) at 2; D0010 (SRCR443481) at 2; D0008 (SRCR443595) at 2.

By filing a motion and signing it, Puentes made an appearance in the case. *See* Iowa R. Civ. P. 1.404(1) ("An attorney making an appearance shall, either by filing written appearance or *by signature to the first pleading or motion filed by the attorney*, clearly indicate the attorney or attorneys in charge of the case and shall not sign in the name

of the firm only. *Such appearance* shall entitle the attorney to service as provided in rule 1.442." (emphases added)). Accordingly, the district court's administrative action of attaching Puentes to the docket was well within its authority to ensure that the contact information of attorneys who have appeared in a case is listed on the docket.

CONCLUSION

This Court should annul the writ of certiorari.

REQUEST FOR NON-ORAL SUBMISSION

Oral argument is not necessary because the error-preservation rules that decide this case are well-settled. But if the Court grants oral argument, Defendant requests time equal to Plaintiff.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*g*) and 6.903(1)(*i*)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 6,698 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1).

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 4th day of April, 2025, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

/s/William C. Admussen
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