## No. 120997

# IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Illinois Appellate Court, First Judicial
Plaintiff-Appellee,	)	District, No. 1-16-1587;
	)	From the Circuit Court of Cook
v.	)	County, Criminal Division,
	)	No. 16CR0508905, related to
SALIMAH COLE,	)	Nos. 16CR0508903, 14CR1798701,
	)	16CR0508901, 15CR2025701,
Defendant,	)	16CR0508903, 15CR2025702,
	)	16CR0508904, 15CR2029901,
	)	and 16CR0508906);
(AMY P. CAMPANELLI,	Ś	
	ý	Hon. Michele Pitman,
Contemnor-Appellant).	)	Judge Presiding.

# NATIONAL ASSOCIATION FOR PUBLIC DEFENSE BRIEF AS AMICUS CURLAE IN SUPPORT OF CONTEMNOR-APPELLANT

Thomas F. Geselbracht **DLA PIPER LLP (US)** 203 No. LaSalle Street Suite 1900 Chicago, Illinois 60601 <u>Thomas.Geselbracht@DLAPiper.com</u> (312) 368-4094

Counsel for the National Association for Public Defense



FEB 1 4 2017 SUPREME COURT CLERK

# POINTS AND AUTHORITIES

I.

ARGUMENT
Turner v. State, 340 So.2d 132 (Fla. Dist. Ct. App. 1976)4
<u>Babb v. Edwards</u> , 412 So.2d 859 (Fla. 1982)4
<u>Allen v. Dist. Ct.</u> , 519 P.2d 351 (Colo. 1974)5
State App. Defender v. Saginaw Cir. Judge, 283 N.W.2d 810 (Mich. Ct. App. 1979)5
New York Rules of Professional Conduct, N.Y. App. Div. Part 1200, Rules of Professional Conduct Rule 1.0 (2013)5
New York State Bar Association Committee on Professional Ethics Opinion 862 (May 10, 2011)5
A. <u>Assigned Counsel Model</u>
ABA STANDARDS FOR CRIMINAL JUSTICE: Providing DEFENSE SERVICES, Standard 5-1.2, Systems for Legal Representation (3d ed. 1992)6
ABA STANDARDS FOR CRIMINAL JUSTICE: Providing DEFENSE SERVICES,
Standard 5-1.3, Systems for Legal Representation (3d ed. 1992)
Standard 5-1.3, Systems for Legal Representation (3d ed. 1992)6
Standard 5-1.3, Systems for Legal Representation (3d ed. 1992)
Standard 5-1.3, Systems for Legal Representation (3d ed. 1992)
Standard 5-1.3, Systems for Legal Representation (3d ed. 1992)
Standard 5-1.3, Systems for Legal Representation (3d ed. 1992)

Fla. Stat. § 27.60 (2016)9
NEW YORK STATE UNIFIED Court SYSTEM, APPELLATE DIVISION FIRST JUDICIAL DEPARTMENT, ASSIGNED COUNSEL PLAN (18B), <u>https://www.nycourts.gov/courts/AD1/Committees&amp;Programs/18B/index.shtml</u> (last visited Jan. 11, 2017)9, 10
Brendan Pierson, Defense Groups Take Conflict Cases Under City's New Plan, NEW YORK LAW JOURNAL (Sep. 6, 2013), http://www.newyorklawjournal.com/id=1202618253232/Defense-Groups-Take- Conflict-Cases-Under-Citys-New-Plan?mcode=0&curindex=0&curpage=ALL.10
Criminal Justice Act of 1964 (as amended), 18 U.S.C. § 306A10
Guidelines for the Administration of the Criminal Justice Act and Related Statues, Volume II, Guide to Judiciary Policies and Procedures 10-11
CRIMINAL JUSTICE ACT PLAN (S.D. Ohio February 21, 2014)11
B. <u>Contracted Counsel Model</u>
CAL. PENAL CODE § 987.2(d-e) (2003)12
Cal. Gov't. Code § 15422 (2003)12
Cal. Gov't. Code § 15402 (1998)12
IOWA ADMIN. CODE r. 493-11.3 (2016)
IOWA ADMIN. CODE r. 493-11.34(1) (2016)12
C. <u>Illinois</u>
55 ILCS 5/3-4000 (2017)13
55 ILCS 5/3-4006 (2017)13
ILL. RULES OF PROF. CONDUCT, Rule 1.7(a) (2010)
ILL. RULES OF PROF. CONDUCT, Rule 1.10(a) (2010)14
ILL. RULES OF PROF. CONDUCT, Rule 1.7(b) (2010)14
CONCLUSION

×

## **INTEREST OF AMICUS CURLAE**

The National Association for Public Defense is a national organization uniting nearly 7,000 public defense practitioners across the 50 states. As public defense experts, the NAPD's mission is to ensure strong criminal justice systems, policies and practices ensuring effective indigent defense; to advocate for system reform that increases fairness for indigent clients; and to educate and support public defenders and public defender leaders.

The NAPD plays an important role in advocating for public defense counsel and the clients they serve, and is uniquely situated to speak to issues of fairness and justice facing indigent criminal defendants. In this case, the organization does not take a position as to whether a conflict of interest exists, or a potential conflict of interest, nor does it submit to the Court a method for analyzing and determining the existence of such a conflict. Rather, the NAPD here provides practical suggestions as to how the Illinois judicial system can improve the standards and procedures for appointing or assigning alternative counsel when conflicts of interest or potential conflicts of interest do arise between a public defender's office and an indigent defendant. The NAPD submits this brief in an effort to ensure that, if court action because of conflicting interests is necessary, the defendant's Sixth Amendment right to effective counsel will be preserved.

#### SUMMARY OF ARGUMENT

Amicus Curiae the National Association for Public Defense urges the Illinois Supreme Court to consider the systems, methods and practices other jurisdictions have adopted to address conflicts of interest or potential conflicts of interest arising between public defenders and their clients. The NAPD recognizes that the constitutional right to effective counsel is fundamental and necessary, and client-centeredness is a foundational principle of the organization. Without independence of thought, the ability to provide high quality, ethical, and conflict-free advocacy is threatened. This case presents the Illinois Supreme Court with the opportunity to consider and address significant questions regarding professional responsibility, conflicts of interest and adequate representation of indigent defendants.

Nationally, defense of the indigent accused primarily conforms to one of three models: public defender programs, assigned counsel or contracted counsel. Public defender programs are comprised of either public or private non-profit organizations founded exclusively to provide representation to indigent defendants in a particular jurisdiction. In jurisdictions using the assigned counsel model, a court will assign private attorneys to represent a particular defendant on either an *ad hoc* or systematic basis. Finally, the contracted counsel model typically involves an agreement to provide representation between the public defender office and a private attorney, group of attorneys, bar association or non-profit organization.

As discussed in further detail below, many states utilize a combination of two or more of these models. Particularly where conflicts of interest or potential conflicts of

III.

interest threaten the ability of public defenders to provide effective counsel, states will often rely on assigned or contracted counsel. To date, Illinois has not adopted a formal statutory or judicial mechanism for addressing conflicts of interest arising in defense of the indigent. However, practices adopted in other states provide workable models that Illinois courts may readily adapt in order to ensure that the constitutional mandate for effective and independent representation is fulfilled. Each model possesses unique advantages and disadvantages, and the implementation of any particular model requires consideration of organizational, financial, logistical and personnel issues. The NAPD does not suggest that this Court or the State of Illinois adopt a particular model, but rather hopes to inform the Court as to the models used by other jurisdictions so as to initiate further dialogue to devise a practical solution to resolve conflicts of interest or potential conflicts of interest that public defenders may encounter in defending the indigent. Whatever model Illinois adopts should be structured to follow evidence-based best practices and should adequately fulfill the Sixth Amendment right to competent counsel.

#### ARGUMENT

The NAPD does not take a position as to whether a conflict of interest exists in this case, nor does it submit to the Court a method for analyzing and determining the existence of such a conflict. For the purposes of this *amicus curiae* brief, the NAPD assumes that this Court will find that a conflict exists, and then must turn to the related question of what should happen to preserve the defendant's Sixth Amendment right to counsel. The NAPD provides practical suggestions as to how the Illinois judicial system can improve the standards and procedures for appointing or assigning alternative counsel when conflicts of interest or potential conflicts of interest do arise or are found between a public defender's office and an indigent defendant.

Public defenders often encounter conflicts of interest, generally in the context of representing adverse co-defendants or for reasons personal to the individual public defender. A number of states have analyzed such issues through the application of rules of professional conduct. For example, Florida courts have held that members of a public defender's office constitute a "firm" within the meaning of the Florida Code of Professional Responsibility. *See* <u>Turner v. State</u>, 340 So.2d 132 (Fla. Dist. Ct. App. 1976). Therefore, when the public defender makes a conflict of interest determination, the court must appoint other counsel and the entire public defender's office must be withdrawn. *See* <u>Babb v. Edwards</u>, 412 So.2d 859, 860 (Fla. 1982).

Colorado has similarly found that public defenders may be placed in an "untenable position" as a result of the potential exchange of information regarding a defendant, and that "the need for defense counsel to be free from a conflict of interest is

IV.

of great importance and has a direct bearing on the quality of our criminal justice system." See <u>Allen v. Dist. Ct.</u>, 519 P.2d 351, 352-53 (Colo. 1974). Other states permit the attorney to render the ultimate conclusion as to the existence of a conflict. In <u>State App. Defender v. Saginaw Cir. Judge</u>, 283 N.W.2d 810, 812 (Mich. Ct. App. 1979), the Michigan Court of Appeals held that the Model Code of Professional Responsibility "contemplates a great measure of self-government in the realm of providing independent judgment." As a result, the Michigan Court of Appeals deferred to the attorney's decision not to represent the defendant. *Id*.

The New York State Bar Association Committee on Professional Ethics issued a formal opinion on conflicts of interest in public defender offices in 2011. The committee found that public defender offices constitute a "firm" within the meaning of the New York Rules of Professional Conduct. *See* N.Y. App. Div. Part 1200, Rules of Professional Conduct Rule 1.0 (2013); New York State Bar Association Committee on Professional Ethics Opinion 862 (May 10, 2011). Thus, conflicts may be imputed to part-time assistant public defenders, even where the conflicted attorney was assigned to the Criminal Court and the assistant was assigned to the Family Court. *Id.* 

As discussed in Part A below, the New York committee noted that such conflicts are generally resolved by the appointment of assigned counsel pursuant to that state's Assigned Counsel Plans. Personal conflicts may be waived only if the client provides informed consent to waive the conflict, and the attorney assuming representation *reasonably believes* that he or she "will be able to provide *competent and diligent representation.*" *Id.* (emphasis added). As a result of the potential for conflicts of interest to interfere with the constitutional mandate for independent and zealous advocacy

of indigent defendants, many states have adopted the assigned counsel or contracted counsel models where the public defender is otherwise unable to provide representation.

#### A. Assigned Counsel Model

Courts using the assigned counsel model may assign cases on either an *ad hoc* or systematic basis. *Ad hoc* assignments occur without formal qualifications or lists of available attorneys. The assigned counsel are generally reimbursed hourly for their services. In comparison, systematic assigned counsel programs are characterized by administrative oversight, training, and support, as well as statutorily or judicially imposed qualification requirements to participate. Attorneys in such programs are generally assigned on a rotational basis according to their respective areas of expertise and case complexity.

The American Bar Association's Criminal Justice Standards specifically call for the use of coordinated assigned counsel systems. Specifically, Standard 5-1.2, Systems for Legal Representation, states that "[e]very system should include the active and substantial participation of the private bar. That participation should be through a coordinated assigned-counsel system and may also include contracts for services." ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES, 3 (3d ed. 1992). Additionally, Standard 5-1.3 states that "[t]he selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged for by the administrators of the defender, assigned-counsel and contract-for-service programs." *Id.* at 13.

Alabama and Arkansas are among the states that operate under the *ad hoc* appointment model. The Alabama Rules of Criminal Procedure provide that "the public

defender shall represent all persons entitled to appointed counsel whenever authorized by law and able to do so. If a public defender cannot represent the defendant, a private attorney shall be appointed." ALA. R. CRIM. PROC. § 6.4(b) (1992). According to the Alabama statutes, judges may appoint private counsel "where there is a conflict of interest involving the public defender." ALA. CODE § 15-12-46 (2011).

Similarly, Arkansas provides that, in noncapital cases where the public defender's office encounters a conflict of interest, the court shall contact the state's Public Defender Commission to determine whether a public defender from another area may be appointed to represent the defendant, or, if time does not permit or no public defender from another part of the state is available, the court may appoint a private attorney. *See* ARK. CODE. ANN. § 16-87-205(c)(2) (2016). In capital murder cases in which the death penalty is sought and a conflict of interest arises, the trial court must appoint the Public Defender Commission, and the executive director of the Commission may assign the Capital, Conflicts, and Appellate Office, a trial public defender from another area, a private attorney maintained by the Commission on a list for such purposes, or a combination of private and public defender attorneys to represent the indigent defendant. *See* ARK. CODE. ANN. § 16-87-205(c)(1) (2016).

States using the systematic, or coordinated, appointed counsel model include, but are not limited to, California, Maryland, Florida and New York. In Los Angeles County, California, the Alternate Public Defender Office assumes cases where the Public Defender Office encounters a conflict of interest. *See* COUNTY OF LOS ANGELES ALTERNATE PUBLIC DEFENDER, About Us, http://apd.lacounty.gov/About%20Us.htm (last visited Dec. 28, 2016). If neither the Public Defender nor the Alternate Public

Defender are available, or if both have a conflict, a member of the Los Angeles County Bar Association's Indigent Criminal Defense Association may be appointed; in fact, such attorneys assume approximately ten percent of the indigent criminal caseload. *See* LOS ANGELES COUNTY BAR ASSOCIATION, Indigent Criminal Defense Appointments Program, https://www.lacba.org/benefits/indigent-criminal-defense-appointments (last visited Dec. 28, 2016). Similarly, San Diego County, California, established the Multiple Conflicts Office, an "independent and ethically separate" division of the Department of the Public Defender, to assume cases where both the Public Defender and the Alternate Public Defender encounter conflicts. *See* SAN DIEGO COUNTY MULTIPLE CONFLICTS OFFICE – MAJOR CASES, http://www.sandiegocounty.gov/content/sdc/MCO\_PD.html (last visited Jan. 11, 2017).

Maryland differs from most states in that its statutes expressly prefer the use of private attorneys to represent indigent defendants. The Maryland statutes mandate that each district public defender maintain a confidential list of private attorneys available to serve as appointed counsel for indigent defendants. Such attorneys may be placed on a particular panel depending on the nature and complexity of the offense, the attorney's criminal litigation experience, and other factors relevant to competent representation. *See* MD. CODE ANN., CRIM. PROC. § 16-208(a)(1) (West 2008). Unless the public defender assumes representation, an attorney will be appointed from the appropriate panel. *See* MD. CODE ANN., CRIM. PROC. § 16-208(b)(1) (West 2008). Such impaneled attorneys must be used "as often as practicable." MD. CODE ANN., CRIM. PROC. § 16-208(b)(2) (West 2008).

In Florida, an Office of Criminal Conflict and Civil Regional Counsel provides defense services to indigent defendants in each of the five state District Courts of Appeal regions; such offices are appointed as counsel where the public defender cannot provide representation due to a conflict of interest. *See* FLA. STAT. § 27.60(1) (2016). If the office also encounters a conflict of interest, the court may appoint on a rotational basis private counsel from a county registry of attorneys experienced in particular types of cases who meet minimum requirements established by the respective chief judge and general law. *See* FLA. STAT. § 27.60(2-3) (2016).

A number of New York counties operate Assigned Counsel Plans which compensate private attorneys who are appointed to represent indigent defendants where a conflict prevents the public defender or other institutional providers, such as the Legal Aid Society, from providing representation. *See* NEW YORK STATE UNIFIED COURT SYSTEM, APPELLATE DIVISION FIRST JUDICIAL DEPARTMENT, ASSIGNED COUNSEL PLAN (18B), https://www.nycourts.gov/courts/AD1/Committees&Programs/18B/index.shtml, (last visited Jan. 11, 2017). In the Bronx and New York County Criminal Courts, participating private counsel must apply for membership and meet specifically delineated relevant court experience requirements in order to join the misdemeanor, felony, homicide or appellate panels. *Id.* 

Members of the panel are compensated \$60 per hour for misdemeanor cases and \$75 per hour for felonies. *Id.* Assignments may be made in one of three ways: (1) through Primary Day shifts, (2) by the Administrator of the Assigned Counsel Plan when requested by a court, or (3) by judges of the criminal court and Justices of the New York State Supreme Court. *Id.* Judges and Justices may make immediate assignments on days

other than Primary Days in order to protect the interests of the client. *Id.* Primary Days are determined by the electronically submitted availability of the attorney. *Id.* Day shift assignments are 9:00 a.m. to 5:00 p.m. and night shifts assignments are 5:00 p.m. to 1:00 a.m., or such other times as are designated by the court. *Id.* Attorneys must provide representation on all cases arising during their Primary Day shifts unless the client is not eligible for representation, the attorney is not on the appropriate panel, or a conflict of interest precludes representation. *Id.* 

Aside from these county 18B panel programs, the Legal Aid Society provides legal services for all five counties of New York City. *See* Brendan Pierson, *Defense Groups Take Conflict Cases Under City's New Plan*, NEW YORK LAW JOURNAL (Sep. 6, 2013), http://www.newyorklawjournal.com/id=1202618253232/Defense-Groups-Take-Conflict-Cases-Under-Citys-New-Plan?mcode=0&curindex=0&curpage=ALL. Legal Aid provides representation for approximately two thirds of all indigent defendants in the five boroughs, while the public defender's offices in each of the respective boroughs handle the remainder. Id. Beginning in 2013, 18B attorney panels became used primarily for arraignments, homicides, and in cases where both Legal Aid and the borough defender encountered conflicts. Id. The use of Legal Aid to rotate with borough defenders as primary and conflict defenders, and the resulting reduction in the use of 18B attorney panels, was estimated to save New York City \$6 million or more each year through 2017. *Id.* 

Federal courts have also engaged in the use of the private bar to provide representation to indigent defendants. For example, pursuant to the Criminal Justice Act of 1964 as amended, 18 U.S.C. § 306A (the "CJA"), and the *Guidelines for the* 

Administration of the Criminal Justice Act and Related Statues, Volume II, Guide to Judiciary Policies and Procedures, the U.S. District Court for the Southern District of Ohio adopted its Criminal Justice Plan, which was amended in 2013 and approved by the Sixth Circuit Judicial Council on February 21, 2014. The primary objective of the Criminal Justice Plan is:

... to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible under the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO CRIMINAL JUSTICE ACT PLAN 1 (S.D. Ohio 2014). The Plan establishes a panel of private attorneys who are in good standing with the federal bar, possess federal and/or state criminal trial experience, and have demonstrated proficiency with the Sentencing Guidelines, federal sentencing procedure, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence. *Id.* at 5. These voluntary participants must also serve as mentors and complete six hours of continuing legal education on federal criminal procedure, court procedures and sentencing procedures. *Id.* The Plan requires that a "substantial" proportion of all appointments for representation – expressly stated as approximately twenty-five percent (25%) – must be assigned to members of the panel. *Id.* at 6.

## B. <u>Contracted Counsel Model</u>

In jurisdictions using the contracted counsel model, the applicable court enters into contracts with attorneys or attorney entities to provide representation to indigent defendants. These contracts may delineate specific circumstances in which the

contracted counsel will assume representation, such as where the public defender encounters a conflict of interest. Often, the fees for contracted services will either be fixed for a certain period or per case.

The California Penal Code provides that, in counties maintaining a public defender, the court shall first use the services of such public defender. If the public defender is unavailable, the court may appoint county-contracted private attorneys. However, the Code expressly states: "nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest." CAL. PENAL CODE § 987.2(d-e) (2003). If the county public defender refuses, or is unable to represent a defendant charged with any contempt or offense triable in the superior court due to a conflict or otherwise, the state public defender may assume representation pursuant to a contract with the county providing reimbursement of costs. CAL. GOV'T. CODE § 15422 (2003). The state public defender may also contract with county public defenders, private attorneys, and non-profit corporations to provide legal services to indigent defendants. CAL. GOV'T. CODE § 15402 (1998).

Similarly, in Iowa the state public defender may enter into contracts with private attorneys who satisfy minimum statutory requirements for experience and who complete certain continuing legal education courses depending on the type of case to which they are contracted. *See* IOWA ADMIN. CODE r. 493-11.3 (2016). The state public defender may also confer with judges, attorneys, and others to determine the respective contract counsel's competence, trustworthiness, and ability to render legal services. *See* IOWA ADMIN. CODE r. 493-11.34(1) (2016). The Iowa Administrative Code does not specifically provide for any judicial oversight of the contracted counsel system, and the

state public defender appears to have exclusive authority to determine whether to enter into such contracts.

## C. <u>Illinois</u>

Although no formal system for designating alternative counsel exists, Illinois courts may use the private bar as a resource in public defense. The Illinois statute specifically states ". . . it is the intent of the General Assembly to provide for effective county public defender systems throughout the State and encourage the active and substantial participation of the private bar in the representation of indigent defendants." 55 ILCS 5/3-4000 (2017). Additionally, "Every court shall, with the consent of the defendant and where the court finds that the rights of the defendant would be prejudiced by the appointment of the public defender, appoint counsel other than the public defender . . ." 55 ILCS 5/3-4006 (2017).

Further, the Illinois Supreme Court Rules of Professional Conduct prohibit a lawyer from representing a client where a concurrent conflict of interest exists. *See* ILL. RULES OF PROF. CONDUCT, Rule 1.7(a) (2010). Concurrent conflicts exist where there is "a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a *personal interest* of the lawyer." *Id.* (emphasis added). Here, the mutual responsibilities that members of the Cook County Office of the Public Defender owe to fellow members, as well as their individual personal interests, may materially limit the quality and competency of representation that they provide. This holds true for all similar situations public defenders face. Likely for this very reason, the Illinois Rules of Professional Conduct also prohibit all lawyers associated in a law firm from representing a client where only one lawyer within the firm encounters the type of conflict discussed above. *See* ILL. RULES OF PROF. CONDUCT, Rule 1.10(a) (2010).

As in New York, an Illinois lawyer may only represent a client in the presence of a conflict if, among other requirements, "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation." *See* ILL. RULES OF PROF. CONDUCT, Rule 1.7(b) (2010). The first comment to this rule also states: "Loyalty and independent judgment are essential elements in the lawyer's relationship to a client." *Id.* If the Court finds that a conflict of interest exists in the present case, the Cook County Public Defender will not be able to provide the loyal and independent judgment mandated by the Rules of Professional Conduct. On a broader scale, without judicial intervention, indigent defendants faced with similar circumstances will be left without adequate alternative representation where a public defender's office encounters a conflict.

#### CONCLUSION

For decades, practitioners have recognized the inherent danger that conflicts of interest pose to effective legal representation. Any effective attorney-client relationship is dependent upon open communication and trust. Particularly in the criminal context, where the client often faces a loss of liberty, the avoidance of such conflicts proves essential to zealous advocacy of the accused. Indigent defendants reliant on the public defender system may be stripped of their constitutional right to effective representation where a conflict of interest arises and no alternative form of representation is available. Many states have addressed this issue by adopting, in varying degrees of formality, either the appointed counsel or contracted counsel models. Such models allow impaneled, appointed, or contracted private attorneys or attorney groups to assume representation of indigent defendants where the public defender's office is conflicted out.

The NAPD, in its mission to address systemic failures to provide the constitutional right to counsel, and to bring meaningful access to justice for the poor, respectfully requests that the Illinois Supreme Court consider the adoption of a systematic method of addressing conflicts of interest that do arise between indigent defendants and their public defenders, which may include some variation of the appointed or contracted attorney models discussed above. The Illinois General Assembly "encourage[s] the active and substantial participation of the private bar," and particularly where conflicts of interest threaten the ability of a public defender to provide adequate counsel, the use of such resources is vital to protect the inalienable right of the accused to effective representation.

V.

As demonstrated above, many states have effectively utilized the *ad hoc* or systematically appointed counsel and contracted counsel models to resolve conflicts of interest that arise in public defender's offices. Such systems prove not only workable, but also help to ensure that the indigent accused receives the independent and loyal counsel guaranteed by the Sixth Amendment. Therefore, the NAPD respectfully requests that the Illinois Supreme Court look to alternative legal resources, guided by the experience of other jurisdictions, when resolving conflicts of interest that threaten public defenders' ability and duty to provide zealous representation to the defendants they are sworn to serve.

NATIONAL ASSOCIATION FOR PUBLIC DEFENSE Its Attorney

Thomas F. Geselbracht – ARDC #3124348 **DLA PIPER LLP (US)** 203 No. LaSalle Street Suite 1900 Chicago, Illinois 60601 <u>Thomas.Geselbracht@DLAPiper.com</u> (312) 368-4094

EAST\138665111.9

## No. 120997

# IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	) )	On Appeal from the Illinois Appellate Court, First Judicial District, No. 1-16-1587;
Plaintiff-Appellee,	)	
	)	From the Circuit Court of Cook
V.	)	County, Criminal Division,
	)	No. 16CR0508905, related to
SALIMAH COLE,	)	Nos. 16CR0508903, 14CR1798701,
	)	16CR0508901, 15CR2025701,
Defendant,	)	16CR0508903, 15CR2025702,
	)	16CR0508904, 15CR2029901,
	)	and 16CR0508906);
(AMY P. CAMPANELLI,	)	
	)	Hon. Michele Pitman,
Contemnor-Appellant).	)	Judge Presiding.

# **CERTIFICATE OF COMPLIANCE**

I, Thomas F. Geselbracht, attorney for the National Association for Public Defense, hereby certify pursuant to Illinois Supreme Court Rule 341(c) that the foregoing Brief as *Amicus Curiae* In Support of Contemnor-Appellant conforms to the requirements of Rules 341(a), 341(b) and 345. The length of the brief is 16 pages.

January 31, 2017

-

Thomas F. Geselbracht **DLA PIPER LLP (US)** 203 No. LaSalle Street Suite 1900 Chicago, Illinois 60601 <u>Thomas.Geselbracht@DLAPiper.com</u> (312) 368-4094

#### No. 120997

# IN THE SUPREME COURT **OF ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS,	) )	On Appeal from the Illinois Appellate Court, First Judicial District, No. 1-16-1587;
Plaintiff-Appellee,	)	
	)	From the Circuit Court of Cook
V.	)	County, Criminal Division,
	)	No. 16CR0508905, related to
SALIMAH COLE,	)	Nos. 16CR0508903, 14CR1798701,
	)	16CR0508901, 15CR2025701,
Defendant,	)	16CR0508903, 15CR2025702,
	)	16CR0508904, 15CR2029901,
	)	and 16CR0508906);
(AMY P. CAMPANELLI,	)	
	)	Hon. Michele Pitman,
Contemnor-Appellant).	)	Judge Presiding.

#### NOTICE OF FILING AND PROOF OF SERVICE

TO: All counsel of record on attached service list

PLEASE TAKE NOTICE that, on the 31<sup>st</sup> day of January, 2017, an original and 19 copies of the BRIEF AS AMICUS CURIAE IN SUPPORT OF CONTEMNOR-APPELLANT of the National Association for Public Defense were sent for filing to the Clerk of the Illinois Supreme Court pursuant to Rules 345, 361, and 373.

On January 31, 2017, I caused the BRIEF AS AMICUS CURIAE IN SUPPORT OF CONTEMNOR-APPELLANT of the National Association for Public Defense to be served by depositing three copies, addressed to each counsel of record, in the United States Postal Service mail drop at 203 No. LaSalle Street, Chicago, Minois, before 5:00 p.m., with proper postage prepaid.

Thomas F. Geselbracht - ARDC #3124348 **DLA PIPER LLP (US)** 203 No. LaSalle Street, Suite 1900 Chicago, Illinois 60601 Thomas.Geselbracht@DLAPiper.com (312) 368-4094

## SERVICE LIST

Michael A. Scodro Clifford W. Berlow JENNER & BLOCK LLP 353 No. Clark Street Chicago, Illinois 60654-3456

Kimberly M. Foxx Alan Jay Spellberg STATES ATTORNEY OF COOK COUNTY 69 West Washington Chicago, Illinois 60602

Lisa Madigan ILLINOIS ATTORNEY GENERAL 100 West Randolph Street Suite 12th Floor Chicago, Illinois 60601