

No. 120997

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF	)	Illinois Appellate Court,
ILLINOIS,	)	First District, No. 1-16-1587
)	
Plaintiff -Appellee,	)	On appeal from the Circuit Court of
	)	Cook County, Hon. Michele Pitman,
v.	)	Judge presiding.
	)	(arising out of case numbers
SALIMAH COLE,	)	16CR0508905, related to cases
	)	16CR0508903, 14CR1798701,
Defendant,	)	16CR0508901, 15CR2025701,
	)	16CR0508903, 15CR2025702,
(AMY P. CAMPANELLI,	)	16CR0508904, 15CR2029901, and
Contemnor-Appellant).	)	16CR0508906)

**BRIEF AND SUPPORTING APPENDIX FOR
CONTEMNOR-APPELLANT AMY P. CAMPANELLI**

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NATURE OF THE CASE

In a 61-count, multiple-defendant indictment, Salimah Cole was charged with 16 criminal offenses. Although Ms. Cole indicated at her initial appearance that she intended to retain counsel, she informed the court several weeks later that she lacked the resources to retain a private lawyer. In response, the circuit court sought to appoint the Public Defender of Cook County, Illinois, Contemnor-Appellant Amy P. Campanelli, to represent Ms. Cole. Ms. Campanelli refused the appointment. She explained that because the Public Defender already represented Ms. Cole's codefendants, she had a concurrent conflict of interest under Illinois Rule of Professional Conduct 1.7 (she also explained that, for the same reason, she intended to withdraw from her appointed representation of all but one of those codefendants). For refusing the appointment, the circuit court held Ms. Campanelli in civil contempt of court and imposed monetary sanctions. Thereafter, this Court agreed to review that order of contempt. This is not an appeal from a jury verdict and no questions are raised on the pleadings.

QUESTIONS PRESENTED FOR APPEAL

I. Rule 1.7 of the Illinois Rules of Professional Conduct of 2010 states that “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest,” which exists any time “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[.]” Is there a “significant risk” that the Public Defender’s representation of one criminal defendant, when she already represents a codefendant in the same prosecution, will be materially limited by her responsibilities to her existing client?

II. The Sixth Amendment to the United States Constitution guarantees all defendants the effective assistance of legal counsel. So too does Article I, Section 8 of the Illinois Constitution. Does either the Federal Constitution or the Illinois Constitution forbid a trial court from appointing an attorney to represent an indigent defendant when that attorney already represents a codefendant?

JURISDICTIONAL STATEMENT

The circuit court held Ms. Campanelli in direct civil contempt of court and imposed monetary sanctions against her on June 15, 2016. C205–07 (A1–3).¹ Because an order of contempt is final and appealable, notwithstanding the pendency of the underlying proceeding, *see People ex rel. Scott v. Silverstein*, 87 Ill. 2d 167, 171–72 (1981), Ms. Campanelli filed her notice of appeal to the Illinois Appellate Court for the First Judicial District challenging the court’s contempt order the same day the circuit court ruled, C221 (A71). The People of the State of Illinois filed a motion with this Court pursuant to Illinois Supreme Court Rule 302(b), requesting that the Court accept Ms. Campanelli’s appeal to the appellate court as a direct appeal to the Supreme Court. This Court granted the State’s request on July 29, 2016. (A4). Accordingly, this Court has jurisdiction over this direct appeal from the circuit court’s order pursuant to Supreme Court Rule 302(b).

¹ References to the one volume common law record on appeal shall read “C__”; references to the one volume report of proceedings record on appeal shall be cited by date and page number; cross-references to materials appended to this brief shall read “(A__).”

CONSTITUTIONAL, STATUTORY, AND ETHICAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and have the Assistance of Counsel for his defence.

U.S. Const. amend VI.

Article I, Section 8 of the 1970 Illinois Constitution provides:

In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation and have a copy thereof; to be confronted with the witnesses against him or her and to have process to compel the attendance of witnesses in his behalf; and to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

Ill. Const. art. I, § 8.

Section 3-4006 of the Public Defender Act provides, in relevant part:

The Public Defender, as directed by the court, shall act as attorney, without fee, before any court within any county for all persons who are held in custody or who are charged with the commission of any criminal offense, and who the court finds are unable to employ counsel.

* * * *

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, except as otherwise provided in Section 113-3 of the “Code of Criminal Procedure of 1963”. That counsel shall be compensated as is provided by law. He shall also, in the case of the

conviction of any such person, prosecute any proceeding in review which in his judgment the interests of justice require.

55 ILCS 5/3-4006.

Rule 1.7 of the Illinois Rules of Professional Conduct of 2010 provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) 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.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by a lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent.

Ill. R. Prof'l Conduct 1.7.

Comment 23 to Rule 1.7 of the Illinois Rules of Professional Conduct of 2010 provides:

Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interest in litigation

may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

Ill. R. Prof'l Conduct 1.7 cmt. 23.

Rule 1.10 of the Illinois Rules of Professional Conduct of 2010 provides:

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11 and with former judges, arbitrators, mediators or other third-party neutrals is governed by Rule 1.12.

(e) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

Ill. R. Prof'l Conduct 1.10.

INTRODUCTION

Gideon v. Wainwright, 372 U.S. 335 (1963), established the State's bedrock, constitutional obligation to furnish indigent criminal defendants with legal counsel. The U.S. Supreme Court has established with equal conviction that the counsel to which criminal defendants are constitutionally entitled must be free of conflicts of interest. *E.g.*, *Cuyler v. Sullivan*, 446 U.S. 335 (1980). So too has this Court. *E.g.* *People v. Stoval*, 40 Ill. 2d 109, 111–12 (1968).

The issue here is whether an ethical rule giving life to that constitutional guarantee tolerates the involuntary assignment of legal counsel to represent an indigent defendant when that same counsel already represents another defendant in the same prosecution. This case illustrates why that must be improper. As the comments to Illinois Rule of Professional Conduct 1.7 explain, “[t]he potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant.” Ill. R. Prof'l Conduct 1.7 cmt. 23. It is manifestly unjust to require some criminal defendants to accept that grave risk merely because they lack the means to retain private counsel.

Accordingly, the circuit court's order holding the Cook County Public Defender in contempt of court for refusing a multiple-defendant appointment should be reversed. Regardless of the office she holds, Ms. Campanelli had a duty to shield against the "grave" risk that agreeing to represent Ms. Cole would trigger a conflict that would imperil not only Ms. Cole's constitutional right to counsel, but also the other defendants' constitutional right to counsel. She may not be sanctioned for fulfilling her ethical and constitutional duty.

STATEMENT OF THE FACTS

A. The Office Of The Cook County Public Defender

The General Assembly has created an "office of [the] Public Defender" for each county with more than 35,000 inhabitants. 55 ILCS 5/3-4001; *see also id.* at 5/3-4002 (permitting creation of public defender offices in counties with fewer than 35,000 residents). In Cook County, the Public Defender is appointed by the President of the Cook County Board of Commissioners with the Board's advice and consent. *See* 55 ILCS 5/3-4004.1. Amy P. Campanelli has been the Cook County Public Defender since April 2015. State law authorizes her to appoint assistant public defenders as she "deem[s] necessary for the proper discharge of the duties of the office, who shall serve at the pleasure of the Public Defender." *See* 55 ILCS 5/3-4008.1. The Cook County Public Defender, however, remains the ultimate decision-maker in her office. *See* C134–36.

The Public Defender represents clients "who are held in custody or who are charged with the commission of any criminal offense, and who the court finds are

unable to employ counsel.” 55 ILCS 5/3-4006. But when the “rights of the defendant would be prejudiced by the appointment of the public defender,” the General Assembly has authorized courts to appoint counsel other than the Public Defender. *Id.*; *see* 725 ILCS 5/113-3(c) (providing compensation for appointed counsel).² That includes “misdemeanor cases ... involv[ing] multiple defendants.” 725 ILCS 5/113-3; *see* 55 ILCS 5/3-4006.

B. The *Cole* Indictment And Prosecution

Allen Whitehead, Zacchaeus Reed, Jr., Ashley Washington, Julian Morgan, Brianna Sago, and Salimah Cole were charged together by grand jury indictment in March 2016 with a variety of criminal offenses. *See* C32–92. Ms. Cole is a named defendant in 16 of the indictment’s 61 counts. C32–37, 74–75, 80–84, 89–91 (A5–20). Whitehead, Reed, Washington, and Morgan are codefendants with Ms. Cole for each of those charges, all of which arise from events alleged to have occurred on the same day, September 30, 2015.

The Criminal Division of the Circuit Court of Cook County initially appointed Ms. Campanelli to represent Washington, Whitehead, Reed, Morgan,

² The funds to compensate appointed counsel are appropriated annually by the Cook County Board of Commissioners. *See* Vol. 2, Cook County Executive Budget Recommendation Fiscal Year 2016 at V4, *available at* https://www.cookcountyil.gov/file/2180/download?token=XULMvY_6 (noting that 2015 budget appropriated \$3,160,000 to compensate appointed counsel and expert witnesses, and as of September 26, 2016, \$2,090,548 had been spent); Vol. 2, Cook County Executive Budget Recommendation Fiscal Year 2016 at V4, *available at* <http://opendocs.cookcountyil.gov/budget/archive/16-Volume-II-PresRec.pdf> (noting that 2015 budget appropriated \$3,730,000 to compensate appointed counsel and expert witnesses, and as of September 23, 2015, \$1,889,548 had been spent).

and Sago, but not Ms. Cole, who expressed a desire during her initial appearance to retain private counsel. C98; *see* Tr. Apr. 12, 2016 at 2. Ms. Cole later informed the court that she could not afford a private attorney and would require appointed counsel. Tr. May 10, 2016 at 2 (A22).

Immediately, the circuit court declared that it would “appoint the public defender’s office to represent [Ms. Cole] in this matter.” *Id.* But Ms. Campanelli responded by asking the court “not to appoint the Office of the Public Defender.” *Id.* She explained that she could not “represent Miss Cole at this time. I am in conflict of interest ... because ... we already represent five defendants on this case who are co-defendants with Miss Cole....” *Id.* at 3 (A23). Ms. Campanelli also informed the court that she had moved to withdraw from her appointed representation of Whitehead, Reed, Morgan, and Sago due to the conflict created by her representation of Washington. C103.

The circuit court nonetheless appointed Ms. Campanelli to serve as Ms. Cole’s legal counsel, explaining:

The Public Defender of Cook County has filed this motion indicating that there is a potential for a conflict in that she represents—her office represents, she does not personally, as she stated, does not personally but her assistants will step up and represent the other defendants who are charged in this indictment.

The Court must take these motions, which I will do certainly, on a case-by-case basis, on a case-by-case examination.

What I hear from Miss Cole’s matter is that there is not a direct conflict. I have not heard from ... Miss Campanelli what I would consider concrete evidence of a direct conflict. And certainly when I’ve heard that in other cases, I have allowed the public defender’s office to withdraw. I have never had a notice of intent to refuse

appointment, but I have allowed the public defender's office to withdraw and certainly appointed other counsel when I have ... heard of a direct conflict.

A conflict of interest is not inherent in joint representation. That has been found by courts, and the Court finds that as well. The mere fact that there is representation of many of the co-defendants in this matter does not inherently mean that there is a conflict of interest.

Tr. May 10, 2016 at 17–18 (A37–38).

With respect to the remaining defendants, Ms. Campanelli, having been originally appointed to represent Whitehead, Reed, Morgan, and Sago in December 2015, had moved to withdraw from her representations of those four defendants on April 1, 2016. Motion Of Amy P. Campanelli, Public Defender Of Cook County, To Withdraw As Counsel, *People v. Whitehead, et al.*, Nos. 15CR2029401, 15CR2029402, 15CR2029404, 15CR2029405 (Cir. Ct. Ill. Apr. 1, 2016).³ Ms. Campanelli had agreed to continue representing Washington, as opposed to the other defendants, because the Public Defender was already representing Washington on a separate, unrelated charge. *See* Tr. May 10, 2016 at 4, 6 (A24, A26); Tr. May 19, 2016 at G8, G15 (A46, A53). The circuit court found that an actual conflict existed with respect to the representations of Whitehead and Reed, and the court therefore granted the motion to withdraw as to those defendants and appointed counsel on July 18, 2016. Report of Proceedings at 71–73, *Whitehead et al.*, Nos. 15CR2029401, 15CR2029402, 15CR2029404,

³ This Court may take judicial notice of these public documents. *Seymour v. Collins*, 2015 IL 118432 ¶ 6 n.1 (“[W]e may take judicial notice of public documents which are included in the records of other courts.”).

15CR2029405 (Cir. Ct. Ill. July 18, 2016). The court, however, ordered the Public Defender to continue representing Morgan and Sago (in addition to Washington). *Id.* at 70.

C. The Trial Court's Civil Contempt Ruling

Despite the circuit court's ruling that the Public Defender could withdraw from the court's appointment only by showing a direct conflict of interest, Ms. Campanelli refused the appointment. Tr. May 10, 2016 at 19 (A39). The court thus demanded that she file a further written submission justifying her refusal. *Id.*

In her written submission, Ms. Campanelli explained that there was "a conflict in representing Ms. Cole with respect to her co-defendants" and emphasized that "[m]ore detail [could] not be given without violating the attorney-client privilege[.]" C186. Nevertheless, the circuit court again appointed Ms. Campanelli to represent Ms. Cole at a status hearing the following day "based on th[e] Court's finding that [Ms. Cole] is an indigent defendant." Tr. May 19, 2016 at G4 (A42). Once again, Ms. Campanelli explained her ethical predicament:

I cannot represent Ms. Cole. I am in conflict. I am currently representing five other defendants on this case. Under the Rules of Professional Conduct, that I am bound to comply with, the rules that were adopted in July of 2010, the Rules tell me that I cannot represent more than one client on a case because of the potential conflict.

Id. The circuit court responded: "I am admonishing you that [for] your continued refusal to accept appointment and represent this defendant[,] you will be held in contempt of court." *Id.* at G18 (A56). The court then continued the matter until

June 15, 2016 to determine whether to hold Ms. Campanelli in contempt. *Id.* at G26.

At the June 15 hearing, the circuit court again ordered Ms. Campanelli to represent Ms. Cole. Tr. June 15, 2016 at H6–H7, H9 (A61–62, A64). Ms. Campanelli again refused. *Id.* at H9 (A64). In doing so, she explained that appointing different assistant public defenders to oversee the different cases would not sufficiently safeguard the client’s constitutional right to conflict-free counsel, both because the Public Defender’s Office functioned like a single law firm and because she, as the supervisor of every case, had a “right to know every strategy, every defense, what every lawyer is doing,” and that if she was “not allowed to know the confidences between the lawyers,” she was not discharging her duties as the Public Defender of Cook County. *Id.*

The trial court found that Ms. Campanelli “willfully and contemptuously refused to accept the appointment by this Court to represent Ms. Cole after being ordered to do so.” *Id.* at H10–H12 (A65–67). The court therefore held Ms. Campanelli in direct civil contempt, reasoning that her explanation for refusing to represent Ms. Cole lacked “any substantive basis.” *Id.* at H11 (A66). As a sanction, the court fined Ms. Campanelli \$250.00 per day until she accepted the appointment to represent Ms. Cole or was “otherwise discharged by due process of law.” C205–07 (A1–3).

Ms. Campanelli appealed the circuit court’s contempt order to the Illinois Appellate Court, C221 (A71), which stayed enforcement of the court’s sanction,

C224. Shortly thereafter, the State moved pursuant to Supreme Court Rule 302(b) to transfer that appeal to this Court, which this Court allowed on July 29, 2016. (A4).

STANDARD OF REVIEW

“Courts have the inherent power to enforce their orders by way of contempt.” *Central City Educ. Ass’n v. Ill. Educ. Labor Relations Bd.*, 149 Ill. 2d 496, 528 (1992). A “[d]irect contempt,” which the circuit court found in this case, is a “contumacious act[] committed in court in the presence of the judge[.]” *People v. Tomashevsky*, 48 Ill. 2d 559, 563 (1971). “The power to punish for contempt rests within the sound discretion of the trial court” *See Allen v. Duffie*, 127 Ill. App. 3d 820, 822 (3d Dist. 1984); *In re Estate of Wernick*, 176 Ill. App. 3d 153, 156 (1st Dist. 1988); *In re Estate of Maslowe*, 133 Ill. App. 3d 1043, 1047 (2d Dist. 1985). Often, therefore, appellate courts review an order of contempt only to determine whether there has been an abuse of that discretion and if the contempt order is supported by the manifest weight of the evidence. *In re Marriage of Logston*, 103 Ill. 2d 266, 286–87 (1984). But where, as here, the facts underlying the contempt order are undisputed and the validity of the order turns on a question of law, appellate review is *de novo*. *Norskog v. Pfiel*, 197 Ill. 2d 60, 71 (2001).

ARGUMENT

Holding Ms. Campanelli in contempt of court for refusing to represent multiple defendants in a single prosecution defies longstanding law. It disregards the Illinois Rules of Professional Conduct, which do not permit the Public

Defender to agree to such a representation. Worse, it sanctions the Public Defender for refusing to violate Ms. Cole's state and federal constitutional rights. Because appointing the Public Defender to concurrently represent Ms. Cole and her codefendants flouts these fundamental principles, the Court should reverse and vacate the circuit court's contempt order.

Initially, absent client consent, the Rules of Professional Conduct forbid the Public Defender from accepting an appointment to represent criminal codefendants. This blanket ban reflects that it is common for conflicts to arise among codefendants, and that these conflicts often are invisible or unformed at the outset of the representation. That undeniable reality, acknowledged explicitly by the Rules themselves, means that it is important that the Public Defender Act makes the Public Defender counsel for every defendant her office represents, with plenary supervisory authority over each case. Ms. Campanelli cannot fulfill her ethical duty by accepting a court appointment to represent codefendants.

Moreover, and in the alternative, even if the Act did not make Ms. Campanelli counsel in every case her office handles (as it does), the Public Defender's Office still is a "firm" within the meaning of Illinois' ethical rules. Accordingly, her office is treated as a single attorney for conflict purposes. So even assuming *arguendo* that the circuit court is correct and the Public Defender herself has no involvement in cases handled by her office involving codefendants, the ethical quandary is not resolved, as the circuit court assumed, by assigning

separate assistant public defenders to each codefendant. The imputed conflicts under the Rules warrant reversal of the circuit court's contempt order.

In all events, the circuit court's order cannot stand because it violates both the Sixth Amendment and Article I, Section 8 of the Illinois Constitution. Put simply, a court cannot force an indigent defendant to choose between accepting an attorney who already represents that defendant's codefendant and foregoing counsel entirely. Yet that is just what occurred here. The circuit court sought to appoint Ms. Campanelli to represent Ms. Cole, knowing only that Ms. Cole was an indigent defendant without the resources to obtain private counsel. Ms. Cole never consented to representation by an attorney who already represented her codefendants. Indeed, she was never even informed of her constitutional right to separate counsel. Because the state and federal constitutions recognize a right to separate, conflict-free counsel, it was error for the circuit court to hold Ms. Campanelli in contempt of court for refusing to violate Ms. Cole's constitutional rights.

I. Illinois Law Makes Clear That The Public Defender May Not Be Assigned To Represent Multiple Defendants In A Single Prosecution.

A. Representing Multiple Defendants In The Same Matter Creates A Significant Risk Of A Conflict Of Interest.

1. The Illinois Rules Of Professional Conduct Prohibit The Public Defender From Accepting An Appointment To Represent Codefendants.

“[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest.” Ill. R. Prof'l Conduct 1.7(a). A concurrent conflict

exists whenever “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.” *Id.* at 1.7(a)(2) (emphasis added). Representing codefendants in a single criminal matter necessarily creates a “significant risk” that a conflict will limit the Public Defender’s ability to represent her clients properly. *Id.*

The comment accompanying the rule makes this explicit. Comment 23 to Rule 1.7 states that “[t]he potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant.” Ill. R. Prof’l Conduct 1.7 cmt. 23.

This comment is significant. It “explains and illustrates the meaning and purpose” of Rule 1.7, *see* Ill. R. Prof’l Conduct, Scope cmt. 21, which the Court interprets like a statute, *see In re Estate of Rennick*, 181 Ill. 2d 395, 404 (1998) (“In interpreting a supreme court rule, we apply the same principles of construction that apply to a statute.”). Of course, the primary objective in construing a statute is to give effect to its underlying purpose, *e.g.*, *Sun Choi v. Indus. Comm’n*, 182 Ill. 2d 387, 396 (1998), and divining Rule 1.7’s purpose in the criminal context requires no speculation—Comment 23 confirms that representing more than one codefendant in a criminal case carries the “grave” potential for conflicts of interest, precisely the “significant risk” that the rule proscribes. *See* Ill. R. Prof’l Conduct 1.7(a)(2); *see also People v. Fiveash*, 2015 IL 117669 ¶ 34 (“When a statute is silent on a particular point, we focus on the legislature’s intent, and we will not interpret statutory silence in a way that defeats the purpose of that provision.”).

Rule 1.7 is in step with ethical principles nationally. The ABA Standards for Criminal Justice, which represent the “considered judgment of prosecutors, defense lawyers, judges, and academics”⁴—provide that “[e]xcept where necessary to secure counsel for preliminary matters such as initial hearings or applications for bail, a defense counsel (or multiple counsel associated in practice) should not undertake to represent more than one client in the same criminal case.” ABA Criminal Justice Standards for the Defense Function, Standard 4-1.7(d). Similarly, the Restatement of the Law Governing Lawyers states that “[u]nless all affected clients consent to the representation under the limitations and conditions provided in § 122, a lawyer in a criminal matter may not represent: (1) two or more defendants or potential defendants in the same matter[.]”⁵ Restatement (Third) of the Law Governing Lawyers § 129 (2000). This is so because the Sixth Amendment right to counsel “and its implied right to the effective assistance of counsel impose special constraints on the representation of multiple clients in criminal matters.” *Id.* cmt. b.

2. The Prohibitions On Multi-Defendant Representation In Criminal Cases Reflects A Number Of Practical Realities.

Rule 1.7 and Comment 23 reflect the undeniable fact that it is all but inevitable in a joint representation that a conflict of interest will arise. For

⁴ Martin Marcus, The Making of the ABA Criminal Justice Standards: Forty Years of Excellence, 23 Criminal Justice 10 (Winter 2009), *available at* http://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/makingofstandards_marcus.authcheckdam.pdf.

⁵ Section 122 outlines how a client may consent to a conflict of interest.

example, witness testimony can create a conflict among codefendants, as was true in *Holloway v. Arkansas*, where three codefendants all wanted to testify, but the attorney appointed to defend all three could not examine any of them because testimony from one might have incriminated the others. 435 U.S. 475, 483–84 (1978). Similarly, a codefendant’s defense might hinge on the successful cross-examination and impeachment of a jointly represented codefendant. *Edens v. Hannigan*, 87 F.3d 1109, 1116 (10th Cir. 1996). Or one codefendant might present an alibi witness whose testimony directly contradicts the testimony of his or her codefendant. *Amaya v. State*, 677 S.W.2d 159, 161–64 (Tex. App. 1984); see *Boykin v. Webb*, 541 F.3d 638, 644–47 (6th Cir. 2008) (finding conflict where one defendant’s best defense might shift blame to codefendant). If nothing else, conflicts are all but unavoidable during sentencing, when trial courts routinely must assess the relative culpability of each codefendant, a calculus that necessarily pits one defendant against another.

Further, conflicts can be difficult to discern at the outset of criminal litigation, which is when the Public Defender is appointed. The facts giving rise to a conflict may well be unknown to the attorney. See generally John Stewart Geer, *Representation of Multiple Criminal Defendants: Conflicts of Interest and the Professional Responsibilities of the Defense Attorney*, 62 Minn. L. Rev. 119, 145 (1978) (“[D]efendants are usually ill-equipped to assess which facts are relevant to their case and may fail to disclose vital information to their attorney. Unless the lawyer asks the right question initially, he may not discover material facts creating

a conflict among his clients until mid-trial.”). Or a conflict may manifest itself only in the series of small decisions the attorney makes not to pursue certain courses of action. Indeed, “in a case of joint representation of conflicting interests the evil ... is in what the advocate finds himself compelled to *refrain* from doing[.]” *Holloway*, 435 U.S. at 490 (emphasis in original).

Consequently, waiting to appoint conflict-free counsel until a conflict reveals itself—potentially as late as post-trial—is wasteful, and often prejudicial. The basis for any conflict of interest is most frequently learned through attorney-client communications. Indeed, unlike most private counsel, the Public Defender and her assistants do not discuss cases with prospective clients before an attorney-client relationship exists. This makes it all but inevitable that confidential, attorney-client communications will have occurred before the Public Defender can identify a conflict. As a result, some of the Public Defender’s clients may well have disclosed prejudicial information to her, even though she will represent an adverse codefendant at trial. And even when the conflict is obvious from communications with one client, the Public Defender will have formed an attorney-client relationship with that client’s adverse codefendants by operation of the court’s appointment. At a minimum, the Public Defender could only represent the codefendant that, through sheer happenstance, she communicated with first.

Moreover, the rule the circuit court applied—requiring the Public Defender to represent codefendants unless she affirmatively *proves* that a direct conflict exists—forces the Public Defender to divulge client confidences to demonstrate

the conflict. This in and of itself is an unworkable practice. There is a clear danger to the criminal defendant in disclosing confidential information to a judge “who may be called upon later to impose sentences on the attorney’s clients.” *See Holloway*, 435 U.S. at 487 n.11.

Lastly, conflicts that do not exist at the outset of a representation may arise later in the case, causing irreparable harm to one or more codefendants. Plea bargaining illustrates this problem. Codefendants united at the outset may see their interests diverge, particularly where, as commonly occurs in multi-defendant cases, a plea offer requires one codefendant to testify against another. As the Restatement recognizes, “if one defendant is offered favorable treatment in return for testimony against a co-defendant, a single lawyer could not give advice favorable to one defendant’s interests while adhering to the duty of loyalty to the other.” Restatement (Third) of the Law Governing Lawyers § 129 cmt. c (2000).

B. The Public Defender Is Counsel To Every Indigent Defendant Represented By The Public Defender’s Office.

One cannot trivialize Rule 1.7 by saying, as the circuit court did here, that only *assistant* public defenders represent clients. *See* Tr. May 10, 2016 at 17 (A37). Under the Public Defender Act, the Public Defender—currently Ms. Campanelli—is counsel to *all* of the defendants her office represents. It is “[t]he Public Defender”—not her assistants—who “shall act as attorney, without fee, before any court within any county for all persons who are held in custody or who are charged with the commission of any criminal offense, and who the court finds are unable to employ counsel.” 55 ILCS 5/3-4006.

This is not a mere legal technicality. As Ms. Campanelli explained: “I represent every client. I have a right to know every fact of every case. I have a right to know every strategy, every defense, what every lawyer is doing[.]” Tr. June 15, 2016 at H9 (A64). The Public Defender is accountable to the public, which requires her to “supervise every lawyer”; if she is “not allowed to know the confidences between the lawyers, [she] [is] not acting as the Public Defender of Cook County.” *Id.*

Accordingly, this Court has explained that a trial court “appoints the office of the public defender to act as the attorney for an indigent defendant. The court does not appoint an individual assistant public defender.” *Burnette v. Terrell*, 232 Ill. 2d 522, 538 (2009). The assistants serve only “at the pleasure of the public defender,” *id.* at 539 (citing 55 ILCS 5/3-4004), and “the public defender has the statutory authority and responsibility of assigning assistant public defenders to represent individual defendants whom the public defender’s office has been directed to represent,” *id.* at 538. That responsibility makes the Public Defender a critical part of each representation by her office.

In sum, the plain text of the Public Defender Act establishes, and this Court’s decision in *Burnette* reaffirms, that the circuit court appoints the Public Defender to represent indigent defendants, and she is counsel in every case handled by her office. That places Ms. Campanelli squarely within the scope of Rule 1.7, meaning she cannot represent criminal codefendants because of the

“grave” potential that doing so will result in a prejudicial conflict of interest. *See* Ill. R. Prof’l Conduct 1.7(a)(2).

C. The Public Defender Act Does Not Exempt The Public Defender Or Her Office From The Ethical Rules Governing Conflicts Of Interest.

The circuit court argued that the Public Defender Act did not permit Ms. Campanelli to refuse an appointment to represent Ms. Cole; the court conceded only that she could withdraw from representation once appointed, and then only if she could prove a direct conflict of interest to the court’s satisfaction. *See* Tr. May 10, 2016 at 17–18 (A37–38); Tr. May 19, 2016 at G16–G18 (A54–56). But that is not the law.

First, the Public Defender Act does not direct the Public Defender to accept an appointment unless she can prove a direct conflict at the time of appointment. On the contrary, the Act requires the court to appoint counsel *other* than the Public Defender whenever “the rights of the defendant would be prejudiced by the appointment of the public defender.” 55 ILCS 5/3-4006. As shown above, such prejudice arises anytime there is a “grave” potential or “significant risk” that the Public Defender’s representation of an indigent defendant “will be materially limited by the lawyer’s responsibilities to another client[.]” Ill. R. Prof’l Conduct 1.7(a)(2).

Indeed, if the Act did require the Public Defender to serve absent proof of a direct conflict, it would violate the Illinois Rules of Professional Conduct. The Rules are not suggestions—they have the “force of law.” *See Bright v. Dicke*, 166

Ill. 2d 204, 210 (1995). Regardless of what the Public Defender Act provides with respect to the appointment of alternative counsel, therefore, it did not authorize Ms. Campanelli license to violate Rule 1.7. As an attorney licensed in Illinois, she must adhere to this rule.

Second, even if the Public Defender Act required Ms. Campanelli to accept the appointment, it would not preclude her from immediately withdrawing from that representation, even if she could not prove the presence of a conflict. Supreme Court Rule 13(c)(3) provides that a court may deny a motion to withdraw only “if the granting of it would delay the trial of the case, or would otherwise be inequitable.” Ill. Sup. Ct. R. 13(c)(3) (eff. July 1, 2013). So as the Appellate Court has held, whether an actual conflict exists is “irrelevant” to a withdrawal motion. *In re Rose Lee Ann L.*, 307 Ill. App. 3d 907, 912 (1st Dist. 1999). In the context of a motion to withdraw filed by the Public Defender, all that matters is whether her withdrawal, and the appointment of private counsel pursuant to 55 ILCS 5/3-4006, would “prejudice” the criminal defendant. *See In re Rose Lee Ann L.*, 307 Ill. App. 3d at 912. When the Public Defender withdraws at the start of a prosecution, there can be no such prejudice.

D. The Trial Court Abused Its Discretion When It Ordered The Public Defender To Provide Conflicted Representation.

Moreover, even if Rule 1.7 somehow did not apply to the Public Defender, and she could refuse an appointment only by proving a direct conflict, it still was an abuse of discretion to hold Ms. Campanelli in contempt.

Ms. Campanelli twice informed the circuit court that a direct conflict of interest prevented her from zealously representing Ms. Cole. First, her May 18, 2016 submission stated that “[t]here is a conflict in representing Ms. Cole with respect to her co-defendants. More detail cannot be given without violating the attorney-client privilege, which is the very thing that the Public Defender is seeking to avoid via the appointment of counsel.” C186. Then, in court the following day, she repeated “I am in conflict. I cannot divulge attorney/client privilege information that I have learned about the other five co-defendants in this case in order to tell you what the conflicts are in this case.” Tr. May 19, 2016 at G7 (A45).

Therefore, even if the circuit court were correct that the Public Defender could withdraw from an appointment only if a conflict existed at the time of the withdrawal motion, the court abused its discretion by appointing Ms. Campanelli to represent Ms. Cole. An attorney representing multiple defendants in a criminal matter “is in the best position professionally and ethically to determine when a conflict” exists or will probably develop during the course of a representation. *See Holloway*, 435 U.S. at 485 (citation omitted); *see Smith v. Anderson*, 689 F.2d 59, 62 (6th Cir. 1982) (“Due to the attorney-client privilege, counsel for the defendant is normally the individual best able to evaluate whether he may represent more than one defendant with his effectiveness unimpaired by the duality of his trial allegiance.”). “[A]ttorneys are officers of the court, and when they address the judge solemnly upon a matter before the court, their declarations are virtually

made under oath.” *Holloway*, 435 U.S. at 486 (internal quotation marks and citation omitted). Surely Ms. Campanelli was not required to disclose the contents of privileged client communications to prove the existence of a direct conflict. *See generally* Gary T. Lowenthal, *Joint Representation in Criminal Cases: A Critical Appraisal*, 64 Va. L. Rev. 939, 981 (1978) (“[T]he court may not inquire too far into defense strategy without running afoul of the attorney-client privilege.”); *see also id.* at 976 n.133.

It was enough that Ms. Campanelli, as an officer of the court, represented that Ms. Cole would be prejudiced by her appointment and consented to the appointment of other counsel, in conformity with the requirements of 55 ILCS 5/3-4006. The trial court’s failure to do so was an abuse of discretion.

E. Assigning Different Assistant Public Defenders To Manage Each Representation In A Multi-Defendant Case Does Not Cure The Concurrent Conflict Of Interest.

Even if the Public Defender Act did not make the Public Defender personally responsible for every client represented by her office (as it does), an improper conflict of interest still would exist. Illinois Rule of Professional Conduct 1.10(a) provides that, “[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule[] 1.7” The Office of the Public Defender is a “firm,” which means its associated members—the assistant public defenders—may not represent clients with conflicting interests. *See* Ill. R. Prof’l Conduct 1.0(c) (defining “Firm” as “a lawyer or lawyers in a law partnership, professional

corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization”).

To be sure, *People v. Robinson*, 79 Ill. 2d 147 (1979), ruled that a public defender’s office is not a firm. But *Robinson* predates the drafting of written rules of professional conduct in Illinois,⁶ and thus did not resolve whether the Public Defender’s Office is a “Firm” within the newfound definition that the rules provide. *Robinson* did not resolve the textual question presented by the modern rules: whether the Public Defender’s Office is an “association authorized to practice law” or “a legal services organization.” Ill. R. Prof’l Conduct 1.0(c). As the Public Defender’s Office unquestionably fits either description, it is a “Firm” under the plain meaning of the text of the rules.

Additionally, *Robinson* does not apply here. The three consolidated cases in *Robinson* all involved claims based on actual conflicts arising during trial. *Robinson*, 79 Ill. 2d at 151–54. Overturning a conviction in these circumstances generally requires a showing of prejudice, depending on the nature of the conflict. *People v. Hernandez*, 231 Ill. 2d 134, 143–44 (2008). But even under *Robinson*, the rule is different if, as occurred here, counsel “brings the *potential* conflict to the attention of the trial court at an early stage.” *People v. Spreitzer*, 123 Ill. 2d 1, 18 (1988) (emphasis added). When that occurs, “a duty devolves upon the trial court

⁶ The Illinois Supreme Court adopted the former Illinois Code of Professional Responsibility on June 3, 1980. The Code was replaced in 1990 by the Illinois Rules of Professional Conduct, which the Court substantially amended in 2010.

to either appoint separate counsel or to take adequate steps to ascertain whether the risk of conflict was too remote to warrant separate counsel.” *Id.* (explaining that when a court breaches that duty, any conviction will be reversed without a “showing that the attorney’s actual performance was in any way affected by the purported conflict”). So even taking *Robinson* at face value, the circuit court still erred by failing to ascertain whether the risk of an actual conflict was too remote to warrant the assignment of separate counsel. *See Spreitzer*, 123 Ill. 2d at 18.

The Restatement likewise recognizes that “[i]n a public-defender office, conflict-of-interest questions commonly arise when the interests of two or more defendants so conflict that lawyers in a private-practice defense firm could not represent both or all the defendants,” and makes clear that “[t]he rules on imputed conflicts and screening of this Section apply to a public-defender organization as they do to a law firm in private practice in a similar situation.” *See* Restatement (Third) of the Law Governing Lawyers § 123 cmt. d(iv) (2000). Of course, in Illinois, as in most jurisdictions, screens do not resolve concurrent conflicts of interest. *See* Ill. R. Prof’l Conduct 1.10(e) (permitting use of screen for conflict of interest issues under Rule 1.9 only); *id.* at 1.11(b)(1), (c) (permitting screens for conflicts under Rule 1.11); *id.* at 1.12(c)(1) (permitting screens for conflicts under Rule 1.12); *id.* at 1.18(d)(2) (permitting screens for conflicts under Rule 1.18).

In short, with the enactment of the Illinois Rules and publication of the Restatement, “time has set its face” against *Robinson*, *see Mapp v. Ohio*, 367 U.S. 643, 653 (1961), and a fresh evaluation of that decision is warranted. Indeed, to the

extent it is relevant precedent, *Robinson* should be overruled. This Court has held that there is “good cause” to overrule precedent when the original decision was “badly reasoned” or has proved “unworkable.” *People v. Jones*, 207 Ill. 2d 122, 134 (2003) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)). Both are true of *Robinson*.

1. *Robinson* Is Poorly Reasoned.

In multiple respects, the Court’s decision in *Robinson* does not withstand scrutiny. *First*, it fails to provide reasoned analysis for the rule it adopts. Indeed, the sole explanation the opinion provided for not treating the Public Defender’s Office as a firm was an unsupported statement that doing so would lead to the appointment of inadequate and inexperienced private counsel. *Robinson*, 79 Ill. 2d at 158–59. Such speculation alone does not justify distorting the plain meaning of the modern text of Rule 1.10.

Second, the only authority the Court cited in support of that reasoning was commentary to the American Bar Association Standards Relating to the Defense Function that is irrelevant to the rule the Court adopted. *See Robinson*, 79 Ill. 2d at 159. Although the commentary states that the “inbred” adversarial nature of public defenders would protect defendants from conflicts of interest, it does so in response to an entirely different concern—the risk that a public defender will not vigorously press a client’s case to avoid damaging his or her relationship with the same *judge or prosecutor*. *See* ABA Standards Relating to the Defense Function § 3.5 commentary (1971). In fact, with respect to the issue presented here, the

ABA Standards take the *exact opposite* approach: “lawyers who are associated in practice should not undertake to defend more than one defendant in the same criminal case if the duty to one of the defendants may conflict with the duty to another.” *Id.* § 3.5(b).

Third, the vast majority of the analysis present in *Robinson* undermines the rule the Court ultimately adopted. 79 Ill. 2d at 155–57. The *Robinson* court uncritically cites cases and ABA Standards endorsing the view that a public defender’s office is a firm. *Id.* Likewise, *Robinson* itself rejects arguments that these offices were distinguishable in size or structure from private law firms. *Id.* at 157–58.

2. The Rule The Court Adopted In *Robinson* Has Been Shown To Be Unworkable.

“[E]xperience has pointed up” that the rule the Court adopted in *Robinson* suffers from at least two significant “shortcomings.” *See Pearson v. Callahan*, 555 U.S. 223, 233 (2009) (overturning the Court’s own recent decision). Most of all, *Robinson*’s sole justification—the supposed incompetence of the private counsel who would be appointed in the Public Defender’s stead—is inaccurate. Illinois has a highly competent criminal defense bar. In Cook County, the Chicago Bar Association, the Chicago Council of Lawyers, and the Women’s Bar Association all maintain lists of qualified attorneys available for appointment pursuant to 55 ILCS 5/3-4006. Additionally, there are Criminal Justice Act panels in each of the three federal districts in Illinois composed of attorneys competent to provide “adequate representation” for indigent defendants. *See* 18 U.S.C. § 3006A(a)(3). So there can

be no serious argument that appointed counsel in Illinois would be incompetent, as *Robinson* presumes.

Yet even if there were merit to the notion that Illinois lacks an adequate criminal defense bar, *Robinson* inaugurated a framework that, as this litigation illustrates, forces courts to engage in a case-by-case analysis of actual conflicts. That is in significant tension with fundamental tenets of attorney-client confidentiality. As explained above, identifying conflicts before they arise can be extraordinarily difficult. But *Robinson*, through its hostility to the appointment of outside private counsel and its call for a case-by-case evaluation of conflicts, forces counsel to identify and then describe the nature of any conflicts to the court, only for the court to then scrutinize the representations of counsel. Frequently, that process requires counsel to disclose client confidences.

A rule forcing lawyers to disclose client confidences is impossible to square with *Holloway*. See 3 Wayne R. LaFare et al., *Criminal Procedure* § 11.9(b) (4th ed. 2015) (describing how consensus has formed that court’s option of rejecting counsel’s representation that there is a conflict is “illusory” and most courts appoint separate counsel). As the Court recognized in *Holloway*, a case-by-case conflicts analysis in multi-defendant cases forces counsel to choose between: (1) standing silent and continuing the representation; and (2) revealing privileged information to a judge who may ultimately pronounce the defendant’s guilt or sentence or both—a choice fraught with strategic and ethical peril. See *Holloway*, 435 U.S. at 485–87 & n.11.

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Stare decisis interests are diminished when the rule at issue is “judge-made” or is addressed to evidentiary or “internal Judicial Branch operations.” *Pearson*, 555 U.S. at 233–34. Both are true of *Robinson*. Thus, traditional principles of *stare decisis* will not be offended if this Court overrules that decision. *Robinson* is a judge-made rule, not an interpretation of a constitution or statute (as Illinois did not have written ethical rules when *Robinson* was decided). Further, because *Robinson* rejected a *per se* rule in favor of “a case-by-case inquiry designed to determine whether the facts of a particular case indicate an actual conflict and therefore preclude representation,” *People v. Banks*, 121 Ill. 2d 36, 41 (1987), *Robinson* states only an internal judicial policy. Accordingly, this Court will not offend traditional *stare decisis* interests by overturning *Robinson*.

II. The State And Federal Constitutions Also Prohibit A Court From Requiring An Indigent Defendant To Accept Representation From Counsel Representing A Codefendant In The Same Case.

The Sixth Amendment right to counsel under the Federal Constitution “is a fundamental right of criminal defendants; it assures the fairness, and thus the legitimacy, of our adversary process.” *Kimmelman v. Morrison*, 477 U.S. 365, 374 (1986). To do so, the Amendment must do more than “require the States to appoint counsel for indigent defendants.” *Cuyler*, 446 U.S. at 344. It must “prevent[] the States from conducting trials at which persons who face incarceration must defend themselves without adequate legal assistance.” *Id.* And this right to adequate

legal assistance includes a “correlative right to representation that is free from conflicts of interest.” *Wood v. Georgia*, 450 U.S. 261, 271 (1981).

The right to counsel guaranteed by Article I, Section 8 of the Illinois Constitution is much the same.⁷ This Court, like its federal counterpart, has long recognized that under this State’s constitution “[t]he right to the effective assistance of counsel is a fundamental right and entitles an accused to the undivided loyalty of his counsel.” *People v. Lawson*, 163 Ill. 2d 187, 208–09 (1994) (citing *Stoval*, 40 Ill. 2d at 111). Indeed, the Court has long held that the Illinois constitutional right to the undivided loyalty of legal counsel is so fundamental that it “demands indulging every reasonable presumption against its waiver.” *People v. Fife*, 76 Ill. 2d 418, 423 (1979) (internal quotation marks and citation omitted).

Although these constitutional protections do not prohibit multiple representation under all circumstances, *see Holloway*, 435 U.S. at 482; *see also People v. Berland*, 74 Ill. 2d 286, 299–300 (1978), they do prohibit a court from forcing an indigent defendant to accept representation by an attorney who already represents his or her codefendants. As a matter of both state and federal constitutional law, “the right to counsel guaranteed by the Constitution contemplates the services of an attorney devoted *solely* to the interests of his

⁷ This Court has never held that the right to counsel under Article I, Section 8 of the Illinois Constitution is in lockstep with the Sixth Amendment, nor is there any basis for doing so. The two provisions may have a similar purpose, but they are textually distinct. Consequently, this Court must give effect to the added protections that follow from the text of the Illinois Constitution. *See People v. Caballes*, 221 Ill. 2d 282, 289–90 (2006).

client.” *Von Moltke v. Gillies*, 332 U.S. 708, 725 (1948) (plurality opinion) (emphasis added); accord *People v. Ash*, 102 Ill. 2d 485, 495 (1984). Plainly, that right is violated when an indigent defendant is *forced* to accept representation from an attorney who has already undertaken the professional obligation to protect the interests of a codefendant.

Indeed, the right to insist on separate counsel in multi-defendant cases is well established. Illinois courts have long recognized that, while waivable, there is a right to separate counsel. See *People v. Friedrich*, 20 Ill. 2d 240, 255 (1960); *People v. Taylor*, 165 Ill. App. 3d 1016, 1019–20 (1st Dist. 1988); *People v. Atkins*, 161 Ill. App. 3d 600, 608 (1st Dist. 1987). Although that right may be waivable, see *People v. Williams*, 92 Ill. 2d 109, 118–19 (1982), any waiver of that right must be “voluntary, knowing and intelligent,” see *People v. McCauley*, 163 Ill. 2d 414, 421 (1994). Certainly there cannot be an adequate waiver if an indigent defendant is never informed of the right to separate counsel.

Federal law accords with these principles. The Federal Rules of Criminal Procedure require federal trial courts confronted with a potential joint representation to advise each defendant “of the right to the effective assistance of counsel, *including separate representation*.” Fed. R. Crim. P. 44(c)(2) (emphasis added); see also 28 U.S.C. § 2072 (providing that Federal Rules of Criminal Procedure do not “abridge, enlarge or modify any substantive right”). Indeed, the plain language of the rule acknowledges that the right to effective assistance of counsel includes, as one component, the right to separate representation. Federal

case law is to the same effect. *See, e.g., Castillo v. United States*, 34 F.3d 443, 446 (7th Cir. 1994) (addressing whether defendant waived constitutional “right to separate counsel”); *Holland v. Henderson*, 460 F.2d 978, 981 (5th Cir. 1972) (stating that “right to separate counsel” is waivable only if defendant receives proper disclosures).

The trial court here disregarded these constitutional interests. It insisted on appointing Ms. Campanelli, who already had been appointed to represent Ms. Cole’s codefendants, without obtaining Ms. Cole’s consent, or even informing Ms. Cole of her right to have her own counsel. The trial court’s contempt ruling thus sanctioned Ms. Campanelli for refusing to violate Ms. Cole’s (and other codefendants’) state and federal constitutional rights. The ruling therefore was an abuse of discretion on this constitutional ground as well.

III. At A Minimum, The Court Should Vacate The Circuit Court’s Contempt Citation.

Even if this Court holds that the Rules of Professional Conduct, the Illinois Constitution, and the Federal Constitution all require Ms. Campanelli to accept the circuit court’s appointment to represent Ms. Cole, the Court still should vacate the circuit court’s contempt order. It “has been long recognized that exposing one’s self to contempt proceedings is an appropriate method of testing the validity of a court order.” *People v. Shukovsky*, 128 Ill. 2d 210, 219 (1988). As a result, when the refusal to comply with a court’s order constitutes a “good-faith effort” to secure review of an issue without direct precedent, it is appropriate to vacate a contempt order on appeal. *See Wisniewski v. Kownacki*, 221 Ill. 2d 453, 457 (2006).

That is unquestionably what occurred here. The record is clear that Ms. Campanelli refused the appointment to test the requirement that the Public Defender represent codefendants. Nor can there be any doubt that she did so in the good-faith belief that she could not ethically or constitutionally accept the representation of codefendants. Consequently, should the Court rule against Ms. Campanelli on the merits, it still should vacate the circuit court's contempt order.

CONCLUSION

For the foregoing reasons, Contemnor-Appellant Amy P. Campanelli respectfully requests that this Court reverse and vacate the circuit court's order of direct civil contempt and direct the trial court to allow the Public Defender to refuse appointment to represent Ms. Cole.

Dated: January 31, 2017

Respectfully submitted,

AMY P. CAMPANELLI

By: /s/ Michael A. Scodro
One of her attorneys

MICHAEL A. SCODRO
CHARLES B. SKLARSKY
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CERTIFICATE OF COMPLIANCE

I, Michael A. Scodro, hereby certify that this **Brief And Supporting Appendix For Contemnor-Appellant Amy P. Campanelli** conforms to the requirements of Illinois Supreme Court Rule 341(a) and (b). The length of this Brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the Rule 342 appendix is 36 pages.

/s/ Michael A. Scodro
MICHAEL A. SCODRO

*Counsel for Contemnor-Appellant
Amy P. Campanelli*

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***** Electronically Filed *****

120997

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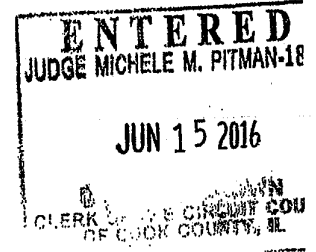
Supreme Court Clerk

Coley
708-232-4217
Direct

or ask for Ellie
708-232-4451

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT- SIXTH MUNICIPAL DISTRICT

ACC16014901



PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff

Vs.

SALIMAH COLE,
Defendant

No. 16R05089-05

ORDER OF ADJUDICATION
DIRECT CIVIL CONTEMPT

THIS MATTER coming on for hearing in the matter of direct civil contempt against the Cook County Public Defender Amy P. Campanelli, Contemnor, and the Contemnor, appearing in open court, the court, being fully advised in the premises, this court finds:

1. That the court has jurisdiction over the subject matter and the parties.
2. That during the proceedings in the above captioned cause on May 19, 2016 and June 15, 2016, all parties and the Contemnor being present, this court made a finding based on an affidavit of assets and liabilities that the Defendant, Salimah Cole who is currently incarcerated and charged with First Degree Murder in the above captioned cause, is an indigent defendant and should therefore be represented by the Public Defender of Cook County, Amy P. Campanelli. The Contemnor, was directed to **ACCEPT APPOINTMENT AS COUNSEL FOR SALIMAH COLE OR TO PROVIDE A LEGAL BASIS FOR HER REFUSAL TO ACCEPT THE APPOINTMENT.**
3. That the Contemnor willfully and contemptuously refused to accept appointment as counsel for Salimah Cole after being ordered to do so by this court.
 - a. This court found that the Contemnor's refusal to accept appointment was without basis and that there was no prejudice that the Defendant, Salimah

C: 00205

ACC#014901

Cole would suffer should the Contemnor, Amy P. Campanelli accept appointment to represent the Defendant.

- b. This court also found that the Contemnor's refusal to accept appointment amounted to the Public Defender of Cook County, Amy P. Campanelli, disregarding her duties as set forth in The Public Defender Act, 55ILCS 5/3-4006.
- c. This court also found that the refusal of the appointment of counsel deprived the Defendant, Salimah Cole, an incarcerated defendant, of her Sixth Amendment right to counsel. And that due to the Contemnor's refusal to accept appointment, this court was forced to appoint private counsel for an indigent defendant who should be represented by the Public Defender of Cook County, Amy P. Campanelli.
- d. As such, this court ruled that the Contemnor's refusal of appointment in this case was contemptuous. This court admonished the Contemnor that her continued refusal to accept appointment for the representation of the Defendant, Salimah Cole would force this court to hold the Contemnor in contempt of court.
- e. The Contemnor continued to state that she has a conflict of interest if she represents the defendant, Salimah Cole and asked this court to hold her in contempt of court.
- f. The Contemnor failed to provide any substantial basis that a per se or a concurrent conflict of interest exist as defined by the Illinois Rules of Professional Conduct (Rule 1.7) which would therefore prohibit the Contemnor from providing legal representation to the Defendant, Salimah Cole.

4. That the court admonished the Contemnor that should she continue to refuse to accept the court's appointment, she would be held in direct contempt of court and would be sanctioned by this court until she has purged herself by accepting the court's appointment and providing legal representation to the defendant, Salimah Cole.
5. That the Contemnor continued to refuse to accept appointment, which has impaired the rights and interests of the Defendant, Salimah Cole and has impeded and obstructed the court in its administration of justice;
6. That the Contemnor is hereby found to be in **DIRECT CIVIL CONTEMPT**; and
7. That prior to sanctions being imposed, the Contemnor was given an opportunity to provide the court with information showing the reasoning behind her refusal to accept appointment and to make a statement in allocution to the court.

C : 00206

1. Is found and adjudicated in direct civil contempt for her willful failure to obey a direct order of this Court; and
2. Is sanctioned by the Court and hereby fined a sum of \$250.00 per day or until such time as the Contemnor shall purge herself of direct civil contempt by accepting appointment as counsel for defendant Salimah Cole in the presence of the Court, or until she is otherwise discharged by due process of law.

The Clerk of the Court is directed to prepare a certified copy of this order and submit it to the Sheriff of Cook County to be served upon the Respondent Contemnor.

Enter:

Judge:

Miller W. Pitman
1832



No. 120997

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE STATE OF ILLINOIS,)	
)	
Appellee,)	
)	
vs.	)	Direct Appeal
)	
SALIMAH COLE)	
(Amy P. Campanelli, etc.,)	
)	
Contemnor-Appellant.))	

ORDER

This cause coming to be heard on the motion of appellee, People of the State of Illinois, a response having been filed by appellant, Amy Campanelli, and the Court being fully advised in the premises;

IT IS ORDERED that the motion for direct appeal to this Court pursuant to Supreme Court Rule 302(b) is allowed. Pursuant to Supreme Court Rule 302(b), People State of Illinois, appellee, v. Salimah Cole (Amy P. Campanelli, etc., contemnor-appellant), No. 1-16-1587, is transferred from the Appellate Court, First District, to this Court.

Order entered by the Court.

FILED

JUL 29 2016

SUPREME COURT
CLERK

STATE OF ILLINOIS)

) SS.

COUNTY OF COOK)

The MARCH 2016 Grand Jury of the
Circuit Court of Cook County,

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of FIRST DEGREE MURDER

in that THEY, WITHOUT LAWFUL JUSTIFICATION, INTENTIONALLY OR KNOWINGLY SHOT AND KILLED LA PRENTIS CUDJO WHILE ARMED WITH A FIREARM,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 9-1(a)(1)
OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

THE STATE SHALL SEEK AN EXTENDED TERM SENTENCE IN THAT THE MURDER WAS COMMITTED IN A COLD, CALCULATED AND PREMEDITATED MANNER PURSUANT TO A PRECONCEIVED PLAN, SCHEME OR DESIGN TO TAKE A HUMAN LIFE BY UNLAWFUL MEANS, AND THE CONDUCT OF THE DEFENDANTS CREATED A REASONABLE EXPECTATION THAT THE DEATH OF A HUMAN BEING WOULD RESULT THEREFROM,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 1
CASE NUMBER 16CR-5089
CHARGE ID CODE: 0735000

C: 000032

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the ~~People of the State of Illinois, upon their oaths present that on or about~~ September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of FIRST DEGREE MURDER

in that THEY, WITHOUT LAWFUL JUSTIFICATION, SHOT AND KILLED LA PRENTIS CUDJO WHILE ARMED WITH A FIREARM, KNOWING THAT SUCH ACT CREATED A STRONG PROBABILITY OF DEATH OR GREAT BODILY HARM TO LA PRENTIS CUDJO,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 9-1(a)(2)
OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

THE STATE SHALL SEEK AN EXTENDED TERM SENTENCE IN THAT THE MURDER WAS COMMITTED IN A COLD, CALCULATED AND PREMEDITATED MANNER PURSUANT TO A PRECONCEIVED PLAN, SCHEME OR DESIGN TO TAKE A HUMAN LIFE BY UNLAWFUL MEANS, AND THE CONDUCT OF THE DEFENDANTS CREATED A REASONABLE EXPECTATION THAT THE DEATH OF A HUMAN BEING WOULD RESULT THEREFROM,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 2
CASE NUMBER 16CR-5089
CHARGE ID CODE: 0735100

C: 000000

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the ~~People of the State of Illinois, upon their oaths present that on or about~~ September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of FIRST DEGREE MURDER

in that THEY, WITHOUT LAWFUL JUSTIFICATION, SHOT AND KILLED LA PRENTIS CUDJO WHILE ARMED WITH A FIREARM DURING THE COMMISSION OF A FORCIBLE FELONY, TO WIT: ARMED ROBBERY OF LA PRENTIS CUDJO,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 9-1(a)(3)
OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

THE STATE SHALL SEEK AN EXTENDED TERM SENTENCE IN THAT THE MURDER WAS COMMITTED IN A COLD, CALCULATED AND PREMEDITATED MANNER PURSUANT TO A PRECONCEIVED PLAN, SCHEME OR DESIGN TO TAKE A HUMAN LIFE BY UNLAWFUL MEANS, AND THE CONDUCT OF THE DEFENDANTS CREATED A REASONABLE EXPECTATION THAT THE DEATH OF A HUMAN BEING WOULD RESULT THEREFROM,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 3
CASE NUMBER 16CR-5089
CHARGE ID CODE: 0735200

C: 000034

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the ~~People of the State of Illinois, upon their oaths present that on or about~~ September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of FIRST DEGREE MURDER

in that THEY, WITHOUT LAWFUL JUSTIFICATION, SHOT AND KILLED LA PRENTIS CUDJO WHILE ARMED WITH A FIREARM DURING THE COMMISSION OF A FORCIBLE FELONY, TO WIT: AGGRAVATED KIDNAPPING OF LA PRENTIS CUDJO,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 9-1(a)(3)
OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

THE STATE SHALL SEEK AN EXTENDED TERM SENTENCE IN THAT THE MURDER WAS COMMITTED IN A COLD, CALCULATED AND PREMEDITATED MANNER PURSUANT TO A PRECONCEIVED PLAN, SCHEME OR DESIGN TO TAKE A HUMAN LIFE BY UNLAWFUL MEANS, AND THE CONDUCT OF THE DEFENDANTS CREATED A REASONABLE EXPECTATION THAT THE DEATH OF A HUMAN BEING WOULD RESULT THEREFROM,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 4
CASE NUMBER 16CR-5089
CHARGE ID CODE: 0735200

C: 000035

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, ~~upon their oaths present that on or about~~ September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of FIRST DEGREE MURDER

in that THEY, WITHOUT LAWFUL JUSTIFICATION, SHOT AND KILLED LA PRENTIS CUDJO WHILE ARMED WITH A FIREARM DURING THE COMMISSION OF A FORCIBLE FELONY, TO WIT: ARMED ROBBERY OF CHARLES MORGAN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 9-1(a) (3)
OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

THE STATE SHALL SEEK AN EXTENDED TERM SENTENCE IN THAT THE MURDER WAS COMMITTED IN A COLD, CALCULATED AND PREMEDITATED MANNER PURSUANT TO A PRECONCEIVED PLAN, SCHEME OR DESIGN TO TAKE A HUMAN LIFE BY UNLAWFUL MEANS, AND THE CONDUCT OF THE DEFENDANTS CREATED A REASONABLE EXPECTATION THAT THE DEATH OF A HUMAN BEING WOULD RESULT THEREFROM,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 5
CASE NUMBER 16CR-5089
CHARGE ID CODE: 0735200

C: 000036

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the ~~People of the State of Illinois, upon their oaths present that on or about~~ September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of FIRST DEGREE MURDER

in that THEY, WITHOUT LAWFUL JUSTIFICATION, SHOT AND KILLED LA PRENTIS CUDJO WHILE ARMED WITH A FIREARM DURING THE COMMISSION OF A FORCIBLE FELONY, TO WIT: AGGRAVATED KIDNAPPING OF CHARLES MORGAN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 9-1(a)(3)
OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

THE STATE SHALL SEEK AN EXTENDED TERM SENTENCE IN THAT THE MURDER WAS COMMITTED IN A COLD, CALCULATED AND PREMEDITATED MANNER PURSUANT TO A PRECONCEIVED PLAN, SCHEME OR DESIGN TO TAKE A HUMAN LIFE BY UNLAWFUL MEANS, AND THE CONDUCT OF THE DEFENDANTS CREATED A REASONABLE EXPECTATION THAT THE DEATH OF A HUMAN BEING WOULD RESULT THEREFROM,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 6
CASE NUMBER 16CR-5089
CHARGE ID CODE: 0735200

C: 000037

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of ARMED ROBBERY

in that THEY, KNOWINGLY TOOK PROPERTY, TO WIT: A CELLULAR TELEPHONE, UNITED STATES CURRENCY, AND CAR KEYS, FROM THE PERSON OR PRESENCE OF CHARLES MORGAN, BY THE USE OF FORCE OR BY THREATENING THE IMMINENT USE OF FORCE AND THEY CARRIED ON OR ABOUT THEIR PERSON OR WAS OTHERWISE ARMED WITH A FIREARM,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 18-2(a)(2)
OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 43
CASE NUMBER 16CR-5089
CHARGE ID CODE: 0012366

C: 00074

A11

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of ARMED ROBBERY

in that THEY, KNOWINGLY TOOK PROPERTY, TO WIT: A WALLET, CELLULAR TELEPHONE AND CAR KEYS, FROM THE PERSON OR PRESENCE OF LA PRENTIS CUDJO, BY THE USE OF FORCE OR BY THREATENING THE IMMINENT USE OF FORCE AND THEY CARRIED ON OR ABOUT THEIR PERSON OR WAS OTHERWISE ARMED WITH A FIREARM,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 18-2(a) (2)
OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 44
CASE NUMBER 16CR-5089
CHARGE ID CODE: 0012366

C: 00075

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the ~~People of the State of Illinois, upon their oaths present that on or about~~ September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of AGGRAVATED KIDNAPPING

in that THEY, KNOWINGLY BY FORCE OR THREAT OF IMMINENT FORCE CARRIED LA PRENTIS CUDJO FROM ONE PLACE TO ANOTHER WITH INTENT SECRETLY TO CONFINED LA PRENTIS CUDJO AGAINST HIS WILL, AND COMMITTED ANOTHER FELONY UPON LA PRENTIS CUDJO, TO WIT: FIRST DEGREE MURDER,

IN VIOLATION OF CHAPTER 720 ACT 5, SECTION 10-2(a)(3)
OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND

contrary to the Statute and against the peace and dignity of the same
People of the State of Illinois.

COUNT NUMBER 49
CASE NUMBER 16CR-5089
CHARGE ID CODE: 0011389

C: 000000

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of AGGRAVATED KIDNAPPING

in that THEY, KNOWINGLY BY FORCE OR THREAT OF IMMINENT FORCE CARRIED LA PRENTIS CUDJO FROM ONE PLACE TO ANOTHER WITH INTENT SECRETLY TO CONFINED LA PRENTIS CUDJO AGAINST HIS WILL, AND COMMITTED ANOTHER FELONY UPON LA PRENTIS CUDJO, TO WIT: ARMED ROBBERY OF LA PRENTIS CUDJO,

IN VIOLATION OF CHAPTER 720 ACT 5, SECTION 10-2(a)(3)
OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 50
CASE NUMBER 16CR-5089
CHARGE ID CODE: 0011389

C: 000081

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the ~~People of the State of Illinois, upon their oaths present that on or about~~ September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of AGGRAVATED KIDNAPING

in that THEY, KNOWINGLY BY FORCE OR THREAT OF IMMINENT FORCE CARRIED LA PRENTIS CUDJO FROM ONE PLACE TO ANOTHER WITH INTENT SECRETLY TO CONFINED LA PRENTIS CUDJO AGAINST HIS WILL, WHILE ARMED WITH A FIREARM,

IN VIOLATION OF CHAPTER 720 ACT 5, SECTION 10-2(a)(6)
OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND

contrary to the Statute and against the peace and dignity of the same
People of the State of Illinois.

COUNT NUMBER 51
CASE NUMBER 16CR-5089
CHARGE ID CODE: 0012350

C: 000002

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of AGGRAVATED KIDNAPPING

in that THEY, KNOWINGLY BY FORCE OR THREAT OF IMMINENT FORCE CARRIED CHARLES MORGAN FROM ONE PLACE TO ANOTHER WITH INTENT SECRETLY TO CONFINED CHARLES MORGAN AGAINST HIS WILL, AND COMMITTED ANOTHER FELONY UPON CHARLES MORGAN, TO WIT: ARMED ROBBERY OF CHARLES MORGAN,

IN VIOLATION OF CHAPTER 720 ACT 5, SECTION 10-2(a)(3)
OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 52
CASE NUMBER 16CR-5089
CHARGE ID CODE: 0011389

C: 000083

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of AGGRAVATED KIDNAPING

in that THEY, KNOWINGLY BY FORCE OR THREAT OF IMMINENT FORCE CARRIED CHARLES MORGAN FROM ONE PLACE TO ANOTHER WITH INTENT SECRETLY TO CONFINED CHARLES MORGAN AGAINST HIS WILL, WHILE ARMED WITH A FIREARM,

IN VIOLATION OF CHAPTER 720 ACT 5, SECTION 10-2(a)(6)
OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 53
CASE NUMBER 16CR-5089
CHARGE ID CODE: 0012350

C: 000004

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of AGGRAVATED ARSON

in that THEY, WHEN IN THE COURSE OF COMMITTING ARSON, BY MEANS OF FIRE, KNOWINGLY DAMAGED A MOTOR VEHICLE, TO WIT: A 2009 NISSAN, AND KNEW OR REASONABLY SHOULD HAVE KNOWN THAT ONE OR MORE PERSONS WERE PRESENT THEREIN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 20-1.1(a)(1)
OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 58
CASE NUMBER 16CR-5089
CHARGE ID CODE: 1130000

C: 000089

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of POSSESSION OF A STOLEN MOTOR VEHICLE

in that THEY, NOT BEING ENTITLED TO THE POSSESSION OF A MOTOR VEHICLE, TO WIT: A 2009 NISSAN, PROPERTY OF CHARLES MORGAN, POSSESSED SAID VEHICLE KNOWING IT TO HAVE BEEN STOLEN OR CONVERTED,

IN VIOLATION OF CHAPTER 625 ACT 5 SECTION 4-103(a) (1)
OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 59
CASE NUMBER 16CR-5089
CHARGE ID CODE: 5710001

C: 00090

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about September 30, 2015 at and within the County of Cook

Allen A Whitehead
Zacchaeus Reed, Jr
Ashley M Washington
Julian L Morgan
Salimah Cole

committed the offense of POSSESSION OF A STOLEN MOTOR VEHICLE

in that THEY, NOT BEING ENTITLED TO THE POSSESSION OF A MOTOR VEHICLE, TO WIT: A 2004 PONTIAC GRAND PRIX, PROPERTY OF PAMELA CUDJO-KELLY, POSSESSED SAID VEHICLE KNOWING IT TO HAVE BEEN STOLEN OR CONVERTED,

IN VIOLATION OF CHAPTER 625 ACT 5 SECTION 4-103(a)(1)
OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 60
CASE NUMBER 16CR-5089
CHARGE ID CODE: 5710001

C: 000091

1 STATE OF ILLINOIS)
 2) SS.
 3 COUNTY OF C O O K)

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 5 COUNTY DEPARTMENT - CRIMINAL DIVISION

6 THE PEOPLE OF THE STATE)
 7 OF ILLINOIS,)

8 Plaintiff,)

9 vs.)

10 No. 16 CR 05089-05

11 CHARGE: MURDER

12 SALIMAH COLE,)

13 Defendant.)

14 REPORT OF PROCEEDINGS had at the hearing
 15 in the above-entitled cause before the HONORABLE MICHELE
 16 PITMAN, Judge of said court, on the 10th day of May,
 17 2016.

18 PRESENT:

19 HONORABLE ANITA M. ALVAREZ,
 20 STATE'S ATTORNEY OF COOK COUNTY, by:
 21 MS. SUSAN CARAHER,
 22 ASSISTANT STATE'S ATTORNEY,
 23 appeared on behalf of the People;

24 MS. AMY P. CAMPANELLI,
 PUBLIC DEFENDER OF COOK COUNTY,
 appeared on behalf of the Defendant;
 MS. BETH MINER, ASSISTANT PUBLIC DEFENDER,
 appeared on behalf of the Defendant.

Faye A. Montgomery
 Official Court Reporter
 Circuit Court of Cook County
 County Department - Criminal Division

1 THE CLERK: Salimah Cole. In custody.

2 THE COURT: Are there any family members here for
3 Miss Cole?

4 (Defendant present.)

5 THE COURT: State your name for me, ma'am.

6 THE DEFENDANT: Salimah Cole.

7 THE COURT: Salimah Cole is before the Court. She
8 is in custody. She's charged with first-degree murder.

9 You were here April 12, Miss Cole, and your
10 family indicated they were going to be hiring private
11 counsel for you. I don't see a private attorney here.
12 Are you going to be able to afford private counsel?

13 THE DEFENDANT: No.

14 THE COURT: No. With that, she's in custody. The
15 Court would be looking to appoint the public defender's
16 office to represent her in this matter.

17 MS. CAMPANELLI: Judge, at this time Amy
18 Campanelli --

19 THE COURT: Good morning.

20 MS. CAMPANELLI: -- the Public Defender of Cook
21 County. Thank you, Judge.

22 And I would ask your Honor at this time not to
23 appoint the Office of the Public Defender.

24 THE COURT: Why don't you step up, Miss Campanelli.

1 MS. CAMPANELLI: Sure.

2 MS. MINER: I would also ask leave of court to file
3 at this time a notice of intent to refuse appointment
4 and ask for appointment of counsel other than the public
5 defender.

6 THE COURT: Let me ask you what does that mean,
7 refuse appointment? The title in your motion is very
8 interesting.

9 You are the Public Defender of Cook County.
10 What do you mean, notice of intent to refuse
11 appointment? Well, you can explain that to me.

12 MS. CAMPANELLI: Okay, Judge, what I mean by that
13 is that actually I am refusing appointment. Your Honor
14 just did appoint the public defender, and at this time
15 I'm asking your Honor to consider the motion. If your
16 Honor wants detail, I can, but we cannot represent Miss
17 Cole at this time. I am in conflict of interest as you
18 know because the case presently before you, your Honor,
19 we already represent five defendants on this case who
20 are co-defendants with Miss Cole and under the Public
21 Defender Act, your Honor, it specifically says that your
22 Honor, with the consent of the defendant, and Miss Miner
23 can speak about the consent, she spoke to Miss Cole, and
24 where this Court finds that the rights of the defendant

1 would be prejudiced by the appointment of the public
2 defender, your Honor has the statutory authority to
3 appoint counsel other than the public defender. And
4 pursuant to the Public Defender Act, that statute, I'm
5 asking your Honor to appoint someone other than my
6 office to represent Miss Cole.

7 THE COURT: How are her rights going to be
8 infringed upon in any way, counsel? Explain that to me.

9 MS. CAMPANELLI: Well, Judge, because we are in
10 conflict of interest because of the co-defendant
11 situation in this case.

12 THE COURT: Counsel?

13 MS. MINER: Your Honor, as you are aware that there
14 are five co-defendants with Miss Cole. Four of those
15 co-defendants are charged with the exact same offenses
16 as Miss Cole; first-degree murder, armed robbery with a
17 handgun or with a firearm, aggravated kidnapping,
18 aggravated arson, and possession of a stolen motor
19 vehicle. Additionally there are two defendants, that
20 would be Mr. Reed and Mr. Whitehouse, who are charged
21 with intimidation, and that would be of a defendant that
22 the public defender's office currently represents,
23 Ashley Washington. That representation is a direct
24 conflict and it's a direct conflict because the public

1 defender is viewed as -- their office is viewed as a law
2 firm.

3 According to the case law and the statute, the
4 public defender is the attorney who gets appointed to
5 represent, not the assistants who gets appointed, but it
6 is the public defender who gets appointed to represent
7 and it's the assistants who work through her. So if
8 there is a conflict with Miss Campanelli, there is a
9 conflict that is imputed on the assistants as well.

10 When you look at the Rules of Professional
11 Conduct you can see that and with the Committee Notes
12 and the Comments that we have tendered to you previously
13 that when there are multiple defendants, there is a
14 grave potential for there to be a conflict. Okay. And
15 that conflict is whenever there would be divergent
16 arguments or trying to put the blame on one person
17 versus another and it can happen at any part of the
18 proceedings. This can happen simply at a bond hearing,
19 which is something that my understanding from speaking
20 with Miss Cole's mother is that they're going to be
21 asking for a bond review at some point in time.

22 The attorney, they would not be zealously
23 advocating for Miss Cole if they didn't then turn and
24 point the fingers to the other co-defendants and say,

1 you know, they're much more involved or this person is
2 culpable, give her a different file. That can play out
3 to every stage of the procedures. It can be through
4 negotiations. It might be a matter of one witness
5 testifying against another witness.

6 In the instance of the intimidation there is a
7 direct conflict because the public defender's office
8 represents Miss Washington, who is the complaining
9 witness in that case, as well as Mr. Reed and Mr.
10 Whitehead.

11 Now, we would ask those arguments actually, we
12 know that that's coming up on a later date to go in and
13 flush out --

14 THE COURT: Well, what's in direct conflict of Miss
15 Cole? I haven't heard any direct conflict. And I
16 understand you don't want to represent all defendants.
17 I've heard this motion. You filed it on each of them.
18 But what's in direct conflict with your office
19 representing Miss Cole?

20 MS. CAMPANELLI: Judge, it's the potential for a
21 conflict.

22 THE COURT: A potential for a conflict.

23 MS. CAMPANELLI: And since I'm coming pre-trial,
24 your Honor has the duty and I actually have the duty

1 under the Rules of Professional Conduct to bring these
2 issues to your Honor and to ask your Honor to not
3 appoint us because of the potential conflict.

4 And, you know, here we have six defendants. I
5 mean, there are some many serious, grave potential
6 conflicts that can happen in this case, this very
7 serious case.

8 I don't have to wait until a conflict develops.
9 I'm coming to you, telling you, and I can't divulge
10 attorney-client privilege, and the reason I can't
11 divulge attorney-client privilege to you, to tell you
12 what those conflicts are, is because it's privileged
13 material. That's part of the Rules of Professional
14 Conduct. And in the Comments they talk about how
15 unfortunate it is that a lawyer can't even divulge the
16 information because I represent all six clients or all
17 five at this time.

18 I can't even tell you that one client might be
19 pointing the finger at another. I can't tell you which
20 client might be helping the State out in this case.

21 Actually Ashley Washington is a victim of the
22 prosecution. I mean, she's a victim in one of these
23 cases. She is a victim of the intimidation charge
24 for -- is it Zakrious Reed, am I saying that correct?

1 And Allen Whitehead. They allegedly, who I also
2 represent, they allegedly threatened to harm her and her
3 family if she worked with the police on the murder case.

4 So it doesn't matter that Miss Cole doesn't
5 have an intimidation charge or she wasn't threatened by
6 them. It's the potential that Miss Cole might testify
7 against another client.

8 The interest, my interest has to be just for
9 Miss Cole. And they can't because I'm already
10 representing Mr. Whitehead, Mr. Reed, Miss Washington,
11 and Miss Saugo. So I can only represent one client on
12 any criminal case. And that's what Rule 1.7 tells your
13 Honor.

14 And unfortunately it seems that over the years,
15 since the new Rules of Professional Conduct came down in
16 2010, the courts have sort of ignored those rules or
17 maybe not been educated on the new rules.

18 In 2010 the Rules of Professional Conduct were
19 changed. It took seven thousand man -- seven thousand
20 hours, according to the press release, and several
21 experts in the field of legal professional
22 responsibility, legal ethics, conflicts of interest, to
23 work these new rules.

24 The Supreme Court of Illinois adopted the new

1 rules. They have the force of law. For the first time
2 ever the new Rules of Professional Conduct in 2010
3 adopted all the comments to the rules. There are
4 approximately 38 comments to Rule 1.7 alone. That's a
5 conflict of interest.

6 THE COURT: You've already dealt with this issue,
7 correct, before Judge Quinn with the issue of --

8 MS. MINER: Yes, five defendant --

9 THE COURT: Five defendant armed robbery. Exactly.

10 MS. CAMPANELLI: Yes. Nothing was resolved, Judge.

11 THE COURT: Right. She denied your motion.

12 MS. CAMPANELLI: She did.

13 THE COURT: You took an appeal -- no, supervisory
14 order, is that correct?

15 MS. CAMPANELLI: That's correct.

16 THE COURT: And so where are you on that?

17 MS. CAMPANELLI: Well, they just didn't take it.

18 THE COURT: Correct.

19 MS. CAMPANELLI: The Supreme Court hasn't told me
20 why they didn't take it. I don't know why they didn't
21 take it. But the rules still stand. The Rules of
22 Professional Conduct are now the law. In fact, the case
23 of People versus Banks, the case of Harden, the case of
24 Robinson, those cases don't apply.

1 First of all, all those cases were before the
2 new rules were adopted and when we had the Canons of
3 Ethics and we had the Code of Professional
4 Responsibility, then we had the Rules of Professional
5 Responsibility from 1990, now we have the 2010 rules.

6 I am the Public Defender. Every person I
7 represent must feel that I'm worthy, every client. I
8 have a right to know every single client's defense. I
9 have a right to know what her (indicating) defense is
10 going to be, what Zakrious Reed's defense is going to
11 be, what Miss Washington's defense. I can't. I can't
12 know their confidences. I can't supervise my lawyers in
13 these cases because everybody reports up the chain to me
14 because I'm a law firm. And I know that Banks and
15 Harden and Robinson argued that we weren't a law firm --

16 THE COURT: Correct.

17 MS. CAMPANELLI: -- for conflicts of interest. But
18 they only looked at cases post-conviction on appeal.

19 THE COURT: Let me stop you right there.

20 MS. CAMPANELLI: Yes.

21 THE COURT: You're jumping the gun at this.

22 MS. CAMPANELLI: Okay.

23 THE COURT: All right. Right now you are filing a
24 motion refuse appointment.

1 MS. CAMPANELLI: Right. Which I have a right to
2 do.

3 THE COURT: That's a different -- Under what right
4 do you have to refuse appointment?

5 MS. CAMPANELLI: Under the public --

6 THE COURT: That's the first thing I want to deal
7 with. We can deal with the motion to withdraw and the
8 reasons on the other matters. But you're filing a
9 motion to refuse appointment. Tell me under what
10 authority you can refuse appointment as the Public
11 Defender of Cook County.

12 MS. CAMPANELLI: Under the Public Defender Act.

13 THE COURT: Okay.

14 MS. CAMPANELLI: The Public Defender Statute that I
15 cited to your Honor, at the beginning it says, "The
16 Public Defender shall be the attorney, without feed,
17 when so appointed by the court under Section 120," et
18 cetera, et cetera. "Every court shall, with the consent
19 of the defendant and where the court finds that the
20 rights of the defendant would be prejudiced by the
21 appointment of the public defender, appoint counsel
22 other than the public defender." So you have the duty.
23 I am bringing this duty to your Honor, which I must do
24 because of my ethical obligations.

1 THE COURT: You're saying her rights will be
2 prejudiced --

3 MS. CAMPANELLI: Absolutely.

4 THE COURT: -- because you represent -- not a
5 direct conflict.

6 MS. CAMPANELLI: Right.

7 THE COURT: But the perceived conflict with the
8 other five defendants.

9 MS. CAMPANELLI: Yes.

10 MS. MINER: We would be representing more than one
11 client, Judge.

12 THE COURT: Anything you wish to add?

13 MS. CARAHER: No, your Honor. I do not have a copy
14 of counsel's motion.

15 THE COURT: I think I just have a courtesy copy in
16 the file.

17 MS. MINER: Your Honor, I can provide the State
18 with a courtesy copy as well.

19 THE COURT: Yes. Was it actually filed today?

20 MS. MINER: No, your Honor. I was asking leave to
21 file it.

22 THE COURT: Leave to file it.

23 MS. MINER: That's when you asked about the title,
24 so I didn't file it without your permission.

1 And, Judge, it would also be our position that
2 the state's attorney, while we're providing them with a
3 courtesy copy, really doesn't have any standing because
4 it's a matter of appointment that's between the court as
5 well as the public defender's office.

6 THE COURT: Sure.

7 MS. MINER: Your Honor, what makes this motion be
8 different than the other motions is what was just stated
9 about the Public Defender Act, and what we are doing is
10 standing before you as officers of the court telling you
11 that there would be a prejudice to Miss Cole. To rely
12 to any information would be to the detriment of the
13 other co-defendants.

14 If we were to go into discovery or possible
15 conversations that have taken place between the
16 attorneys and the clients, then we would be revealing
17 something that the Court should be aware of.

18 We're asking that you take us at our word, that
19 there is prejudice for the public defender's office to
20 be representing Miss Cole. That is not in her best
21 interest for there to be the public defender's office to
22 be representing her. And asking for appointment of
23 somebody outside of the public defender's office.

24 The case that is also cited in there, Spritzer,

1 talks about when these conflicts come up and how you,
2 the Court, should -- the way that you review them.

3 If they're brought in early in the proceedings,
4 we don't have to show you that there's this actual
5 prejudice or there's this actual detriment. If we wait
6 until later in the proceedings and now we're talking
7 about an appeal, then the standard changes.

8 What we are doing at this juncture is bringing
9 to the Court the earliest possible opportunity to inform
10 the Court that there is a conflict, that there would be
11 a prejudice with the public defender's office to
12 represent Miss Cole and that we're seeking this Court to
13 appoint somebody other than the public defender's office
14 to represent her.

15 THE COURT: And you don't have any discovery with
16 regards to Miss Cole.

17 MS. MINER: As of this point, we don't have --

18 THE COURT: You haven't reviewed anything to tell
19 me if there even exists a conflict, but you're saying
20 the appearance of it because you don't have anything as
21 of yet.

22 MS. MINER: Your Honor, have we received on behalf
23 of Miss Cole? No. Have members of the public
24 defender's office received discovery that contains

1 information about Miss Cole? Absolutely.

2 THE COURT: Okay. Let me have your motion,
3 counsel. I believe I have these attachments already.

4 MS. MINER: That's for the court file.

5 THE COURT: Do you want it in the court file, the
6 attachments, with this?

7 MS. MINER: Yes.

8 THE COURT: Let me do this. She's here without any
9 representation. She's charged with first-degree murder.
10 I'm going to pass the matter for a few minutes, review
11 what you filed today, and I will give you a ruling on it
12 today.

13 MS. CAMPANELLI: Thank you.

14 MS. MINER: Thank you, your Honor. Your Honor, may
15 I file stamp that?

16 THE COURT: Yes. Thank you.

17 (Case passed and later recalled.)

18 THE COURT: Salimah Cole. In custody. Recall.

19 (Defendant present.)

20 THE COURT: Miss Cole can go to the podium.

21 Recalling the matter of Salimah Cole. State your name
22 for me, Miss Cole.

23 THE DEFENDANT: Salimah Cole.

24 THE COURT: Miss Cole is back before the Court.

1 She is in custody.

2 As indicated earlier when the matter was
3 called, she is one of now six co-defendants in this
4 matter. They are all charged with first-degree murder.
5 Some are charged with first-degree murder and
6 intimidation of another co-defendant. However, Miss
7 Cole is not in that position. She is charged with
8 first-degree murder under several counts in the
9 indictment, not any intimidation of another
10 co-defendant.

11 The Public Defender of Cook County has filed
12 what's entitled a Notice of Intent to Refuse Appointment
13 and Request Appointment of Counsel Other Than The Public
14 Defender of Cook County. Basically stating that there's
15 a potential conflict in this matter in that the Public
16 Defender of Cook County has been appointed to represent
17 the five other co-defendants in this matter.

18 It has just come to the Court's attention that
19 all of the co-defendants are indigent defendants. I
20 have asked each and every one of them if they can afford
21 private counsel. All of them have indicated they
22 cannot.

23 These are serious charges. They are all
24 entitled as indigent defendants to be represented by

1 counsel.

2 The Public Defender of Cook County has filed
3 this motion indicating that there is a potential for a
4 conflict in that she represents -- her office
5 represents, she does not personally, as she stated, does
6 not personally but her assistants will step up and
7 represent the other defendants who are charged in this
8 indictment.

9 The Court must take these motions, which I will
10 do certainly, on a case-by-case basis, on a case-by-case
11 examination.

12 What I hear from Miss Cole's matter is that
13 there is not a direct conflict. I have not heard from
14 Miss Miner or from Miss Campanelli what I would consider
15 concrete evidence of a direct conflict. And certainly
16 when I've heard that in other cases, I have allowed the
17 public defender's office to withdraw. I have never had
18 a notice of intent to refuse appointment, but I have
19 allowed the public defender's office to withdraw and
20 certainly appointed other counsel when I have heard of
21 a direct conflict.

22 A conflict of interest is not inherent in joint
23 representation. That has been found by courts, and the
24 Court finds that as well. The mere fact that there is

1 representation of many of the co-defendants in this
2 matter does not inherently mean that there is a conflict
3 of interest.

4 Therefore, Miss Campanelli, respectfully, over
5 your objection, the Public Defender of Cook County is
6 appointed to represent Miss Cole in this matter.

7 MS. CAMPANELLI: Judge, at this time, upon the
8 denial of my notice of intent to refuse appointment, I
9 have a good-faith basis in challenging your finding that
10 I cannot refuse appointment pursuant to the Rules of
11 Professional Conduct and the Public Defender Statute and
12 that I am not conflicted in my representation of Miss
13 Cole.

14 I would like the opportunity, your Honor, to
15 challenge these issues. I have a good-faith basis that
16 I am representing Miss Cole, that if I am appointed I
17 would be representing Miss Cole under a conflict of
18 interest.

19 Therefore, Judge, I'm asking that you issue a
20 friendly contempt upon myself and set a sanction of a
21 very nominal fine. This is routinely done in civil
22 cases, your Honor, when there is a dispute on the law.
23 So that I can then appeal this sanction, I must be
24 sanctioned, immediately to the Illinois Appellate Court

1 and the Appellate Court will then review your Honor's
2 finding and the notice of intent. And perhaps we can
3 actually get to the bottom of this issue and have the
4 Illinois Supreme Court, if it goes up to the Appellate
5 Court, to actually decide what they mean by the 2010
6 Illinois Rules of Professional Conduct.

7 THE COURT: I won't do that today. But you're
8 indicating on the record that you are refusing to
9 represent the defendant?

10 MS. CAMPANELLI: Yes.

11 THE COURT: Then I'm going to take that under
12 advisement certainly before there is any contempt that
13 the Court will proceed with. I take that very
14 seriously, as I should.

15 MS. CAMPANELLI: Thank you.

16 THE COURT: But I'd like for you to file in
17 writing, please, your basis for your refusal. I have
18 your notice of intent. But I'd like for you to file in
19 writing so I can review and have it for appellate review
20 as well with regards to your basis for refusal.

21 MS. CAMPANELLI: Absolutely, Judge.

22 THE COURT: How much time do you need to file that,
23 Miss Campanelli?

24 MS. CAMPANELLI: Judge, is Monday, the 16th

1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF C O O K)
 4
 5 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 6 MUNICIPAL DEPARTMENT -SIXTH MUNICIPAL DISTRICT
 7
 8 THE PEOPLE OF THE)
 9 STATE OF ILLINOIS)
 10) No. 16 CR 5089 (05)
 11 Plaintiff,))
 12 -vs-)
 13)
 14 SALIMAH COLE,)
 15 Defendant.)

16 REPORT OF PROCEEDINGS had of the above-entitled
 17 cause, before the HONORABLE MICHELE PITMAN, Judge of said
 18 Court, on the 19th day of May 2016, in Markham, Illinois.

19 APPEARANCES:

20 HON. ANITA M. ALVAREZ,
 21 Attorney of Cook County,
 22 by: MS. SUE CARAHER,
 23 Assistant State's Attorney,
 24 Appeared for the People;

MR. MICHAEL OPPENHEIMER,
 Appeared for the Defendant.

Also Appeared:
 MS. AMY CAMPANELLI,
 Public Defender of Cook County;
 MS. BETH MINER,
 Assistant Public Defender.

Yhana Wilkinson, CSR, Official Court Reporter
 Circuit Court of Cook County
 Municipal Department-Sixth Municipal District
 License No. 084-003666

1 (The above-entitled cause was
2 passed and later recalled.)

3 THE COURT: Recalling Salimah Cole in custody.

4 Recalling the matter of Salimah Cole. Ms. Cole,
5 have you had an opportunity to fill out the affidavit of
6 assets and liabilities?

7 THE DEFENDANT: It's right here.

8 THE COURT: Please raise your right hand.

9 (Defendant sworn.)

10 THE COURT: You are charged with the offense of
11 first degree murder, armed robbery, aggravated
12 kidnapping, aggravated arson, possession of a stolen
13 motor vehicle. You're aware of your charges, Ms. Cole,
14 correct?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: You have indicated on here that you do
17 not have any source of income; is that correct?

18 THE DEFENDANT: Can you repeat that?

19 THE COURT: You don't have any source of income?

20 THE DEFENDANT: No.

21 THE COURT: Do you have any money to hire private
22 counsel?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: I am looking at your affidavit of assets

1 and liabilities. Based on the affidavit of assets and
2 liabilities, the Court finds that the defendant is an
3 indigent defendant and that therefore she should be
4 represented by the Public Defender's Officer.

5 Therefore, the Court is appointing the Public
6 Defender of Cook County to represent Ms. Cole based on
7 the affidavit of assets and liabilities she submitted to
8 this Court based on this Court's finding that she is an
9 indigent defendant.

10 The defendant is in custody. Clearly she is
11 indigent; she cannot afford to bond out. She is being
12 held on a significant D-bond. At one point it was no
13 bail. I believe it now may be \$1,000,000 D, and she is
14 to be represented by counsel pursuant to her Sixth
15 Amendment Right.

16 Ms. Campanelli, do you have a response to this
17 court?

18 MS. CAMPANELLI: Yes, Judge. At this point I cannot
19 represent Ms. Cole. I am in conflict. I am currently
20 representing five other defendants on this case. Under
21 the Rules of Professional Conduct, that I am bound to
22 comply with, the rules that were adopted in July of 2010,
23 the Rules tell me that I cannot represent more than one
24 client on a case because of the potential conflict.

1 I am coming to this Court pretrial. I am not
2 causing this Court any delay in trial or any inequities
3 and under Supreme Court Rule 13 (C)(3), which talks about
4 motion to withdraw, your Honor, but I believe we are in
5 the same status, whether it's a right to refuse
6 appointment or if I filed a motion to withdraw. If you
7 did appoint me and argue it, it's the same rule, Judge.

8 Again, the only time that the Court should allow
9 me not to be appointed and not to withdraw would be if
10 there was a delay of trial or if it was inequitable. At
11 this stage, Judge, she is coming before you just being
12 arraigned and just getting a lawyer. There are no
13 inequities at this time.

14 Also, Judge, pursuant to the Public Defender
15 Statute, specifically 5 ILCS 5/3-4006, the statute gives
16 you the authority to appoint counsel other than the
17 Public Defender when the defendant would be prejudiced by
18 the appointment of the Public Defender.

19 THE COURT: Ms. Campanelli, you can stop right
20 there.

21 What basis do you have -- first, give me the
22 legal basis, this is not a motion to withdraw.

23 MS. CAMPANELLI: It is not.

24 THE COURT: It is a -- this is a notice of refusal.

1 Please tell me as the sworn Public Defender of Cook
2 County. This Court has just found the defendant to be
3 indigent. You have an oath to represent indigent
4 defendants in the County of Cook.

5 Please give me your basis for refusing that
6 appointment, Ms. Campanelli. This is not a motion to
7 withdraw.

8 MS. CAMPANELLI: I understand, Judge. My basis for
9 refusing appointment is the Illinois Rules of
10 Professional Conduct 2010 and the Public Defender
11 Statute, which specifically says that your Honor may
12 appoint counsel other than the Public Defender if the
13 appointment of the Public Defender would prejudice the
14 defendant.

15 THE COURT: Correct. I have not made that finding.
16 The Court must make that finding, Ms. Campanelli. Do you
17 concur with that?

18 MS. CAMPANELLI: I do not actually concur with that,
19 Judge.

20 THE COURT: Every Court shall, with the consent of
21 the defendant and where the Court finds that the rights
22 of the defendant would be prejudiced by the appointment
23 of the Public Defender, appoint counsel other than the
24 Public Defender except as otherwise provided in Section

1 113-3 of the Code of Criminal Procedure of 1963.

2 So, please tell me, the Court must make that
3 finding, and I have not made that finding. You're pretty
4 much jumping the gun here, for lack of a better legal
5 term, and you don't have discovery on this matter. You
6 are not citing to me any actual conflicts, and I haven't
7 made the finding. Even if we deal with the Public
8 Defender's Act at this point, I have not made that
9 finding. So tell me, please, how you are able to refuse
10 appointment?

11 MS. CAMPANELLI: Judge, I do believe you do have to
12 make the finding that I am prejudiced. But what I am
13 telling you, your Honor, is that as I stand here as an
14 officer of the court, I am telling you I am in conflict.
15 I cannot divulge attorney/client privilege information
16 that I have learned about the other five co-defendants in
17 this case in order to tell you what the conflicts are in
18 this case. Specifically, as you know, which we stated in
19 our motion that we filed today, the basis for refusing
20 appointment is where a conflict of interest
21 representation exists.

22 We represent Ashley Washington in this case. We
23 represent Zacchaeus Reed and Allen Whitehead, and both
24 Zacchaeus Reed and Allen Whitehead also have charges of

1 intimidation against them in that they, for lack of a
2 better word I think, are alleged to have intimidated
3 Ashley Washington, threatened to harm her and her family
4 if she aided the police in the murder case against them.

5 So I have defendants on the case who are
6 already, you can see just from the indictments
7 themselves, in conflict with each other.

8 THE COURT: Well, let me address that. I'm going to
9 go back to the Public Defender Act. Oddly enough you
10 have not filed a motion to withdraw on Ashley Washington,
11 which, if any, you are not citing an actual conflict on
12 her in that the other -- two other defendants are charged
13 with intimidation of Ashley Washington.

14 Why haven't you filed the motion to withdraw on
15 Ms. Ashley Washington?

16 MS. CAMPANELLI: Because if I only represent Ms.
17 Washington, your Honor, only her on this case, that I am
18 not in conflict. If I am allowed to withdraw on the
19 other four individuals and Ms. Cole, I am not in conflict
20 with Ms. Washington. I can be loyal to one person in
21 this case.

22 THE COURT: Let me go back to the Public Defender
23 Act. Again, the Court hasn't made the finding, you
24 concur with that, correct?

1 MS. CAMPANELLI: Yes.

2 THE COURT: So what you're indicating is that you
3 are not going to follow the Public Defender Act. Because
4 you must, counsel, as an attorney, as the Public Defender
5 of Cook County, looking at this legally, I had not made
6 that finding, so what basis do you have to stand here and
7 refuse the appointment?

8 You must follow this act as a sworn Public
9 Defender of Cook County, and I haven't made the finding
10 that your client or your potential client's rights would
11 be prejudiced. So it's not a motion to withdraw.

12 MS. CAMPANELLI: If your Honor does find that I am
13 not prejudiced, albeit I don't think there is -- there
14 are facts before your Honor to find that I am not
15 prejudiced, considering not only our experience here in
16 court, Judge, but your experience as a Judge, for several
17 years, in cases such as this. And this is a very serious
18 case, first degree murder, and your Honor knows that in
19 any case there is always the potential for one client to
20 point the finger at another client. For one client to
21 claim less culpability than another client at a 402
22 conference, at the sentencing hearing.

23 I must be loyal at every stage of the
24 proceeding, pretrial, trial, and sentencing, and I can

1 only be loyal to one client. Because I am the Public
2 Defender and under the other parts of the Public Defender
3 Statute, which I did cite in my second motion on file on
4 behalf Ms. Cole, I am the lawyer on every client.

5 THE COURT: Respectfully, Ms. Campanelli, you are
6 not answering this Court's question. I asked you simply
7 how are you -- and you realize you are violating the
8 Public Defender Act, and you are the Public Defender of
9 Cook County?

10 MS. CAMPANELLI: Judge, I will not agree with you
11 that I am violating the Public Defender's Act. I
12 understand your Honor could make that finding. I am not
13 going to agree on the record that I am. I feel that I
14 have given your Honor enough testimony today and on last
15 court date that I would be in conflict of interest, and
16 that if you force me to represent Ms. Cole, I would be
17 violating the Rules of Professional Conduct, that I could
18 be disciplined for violating those rules, and I could
19 potentially be disbarred.

20 And also, taking it from the point of view of
21 Ms. Cole, she has the right to have loyal counsel who is
22 100 percent conflict free. She will not have conflict
23 free counsel. She will not be able, and I cannot tell
24 you the subliminal pressure, and they talk about this in

1 the case law that I cite you, subliminal pressures the
2 lawyers could have when they are trying to serve two
3 masters when they are fighting against their colleague,
4 when you have one Public Defender representing one client
5 and another Public Defender representing another client
6 who work in the same office, who everybody up the chain
7 reports to me.

8 Your Honor has the chart of the hierarchy of my
9 office. I am appointed to represent every client. I
10 must be able to know the facts of every client that I am
11 appointed, and I cannot know.

12 THE COURT: How many attorneys are in your office,
13 Ms. Campanelli?

14 MS. CAMPANELLI: Approximately today 518.

15 THE COURT: 518. They do not share the same
16 supervisors, correct?

17 MS. CAMPANELLI: Some of them do, Judge, absolutely.
18 Here in Markham we have one chief and three supervisors,
19 but specifically one of the supervisors here in Markham
20 only supervises Juvenile. So there are two supervisors
21 and one chief who supervise the felony trial division
22 here in Markham.

23 THE COURT: Again, they do not share the same
24 supervisor, some do, of course.

1 MS. CAMPANELLI: Right.

2 THE COURT: Everyone in your office doesn't share
3 the same supervisor, correct?

4 MS. CAMPANELLI: That's correct.

5 THE COURT: The four cases where you have motions to
6 withdraw on --

7 MS. CAMPANELLI: Yes.

8 THE COURT: You have four separate attorneys on
9 those defendants, correct?

10 MS. CAMPANELLI: I do, your Honor.

11 THE COURT: They are from different divisions in
12 your office; is that correct?

13 MS. CAMPANELLI: Yes, that's correct.

14 THE COURT: And certainly there is case law stating
15 you must put a wall up to insure conflict free
16 representation. I assume you put lawyers on those cases
17 who do not share supervisors; is that correct?

18 MS. CAMPANELLI: That's correct, Judge, but I have
19 not -- those lawyers are not conflict free. The only
20 thing I have --

21 THE COURT: My question is did you put lawyers on
22 those cases who do not share supervisors?

23 MS. CAMPANELLI: Yes. The deputy director, Crystal
24 Gray, Beth Minor just reminded me, Deputy Director

1 Crystal Gray does supervise two of those lawyers as the
2 deputy over Bridgeview and Markham.

3 So I have one deputy who the chief reports to
4 the same deputy from Markham, Bridgeview, Skokie, Rolling
5 Meadows and Maywood, that supervise and all report to one
6 deputy. And Beth Minor, who is the chief here in
7 Markham, currently we have two Markham lawyers on the
8 defendants, two of the defendants here, and both of those
9 supervisors report to Ms. Minor. She has the right to
10 know and strategize with those lawyers about each of
11 those defendants, but she is not able to.

12 THE COURT: So you put lawyers on who share
13 supervisors, is that what you're telling me?

14 MS. CAMPANELLI: No. What I am saying is they might
15 have a different supervisor. I can have one supervisor
16 supervise one defendant and another supervisor supervise
17 a second defendant, but both those supervisors report to
18 the same person.

19 THE COURT: I see, so the chief higher up is the
20 chief for those supervisors?

21 MS. CAMPANELLI: Yes, and then the deputy chief is
22 even higher than the chief.

23 THE COURT: I see, so as they go up the hierarchy --

24 MS. CAMPANELLI: Yes.

1 THE COURT: I see.

2 MS. CAMPANELLI: I just want to say, Judge, all we
3 have done is mitigate the conflicts. The conflicts
4 exist. They exist the minute I am appointed to more than
5 one client.

6 THE COURT: You have a Multiple Defendant Unit,
7 however, that your office has for multiple offender
8 cases.

9 MS. CAMPANELLI: Yes.

10 THE COURT: So are you indicating you have a
11 conflict with all multiple offender cases where you have
12 your multiple offender unit on?

13 MS. CAMPANELLI: Yes. The Rules of Professional
14 Conduct, Judge, do not allow for, as you said, a wall to
15 eliminate conflicts of interest within the same law firm.

16 So I have mitigated the conflicts which happened
17 in 1981, when the Multiple Defendants Unit was brought
18 about for economic reasons I believe back then and still
19 exists, and we are appointed to approximately, I would
20 say, 800 clients a year for the Multiple Defendants Unit.

21 I am in conflict in the Multiple Defendants
22 Unit. I believe we do an excellent job of representing
23 clients in containing confidential information, but the
24 conflict remains. And that is why pursuant to the new

1 rules of 2010 that I filed a motion to withdraw on
2 everyone except one client who we can be loyal to, and
3 make sure that that client has conflict free
4 representation under the Sixth Amendment.

5 Now, if there is some discussion later on after
6 perhaps this case gets appealed or goes up to the
7 Illinois Supreme Court, there could be discussions about
8 how to further mitigate cases in the Circuit Court of
9 Cook County. Certainly I would discuss that, but legally
10 I must ask to withdraw on five of the six defendants.

11 THE COURT: That is not what you are doing on this
12 case.

13 MS. CAMPANELLI: I am just asking to refuse
14 appointment so I don't wait. I am trying to do it even
15 earlier than to withdraw.

16 THE COURT: I realize that. It's not just asking.
17 This young lady is standing here charged with murder
18 without legal representation, so you're -- number 1, you
19 are affecting her Sixth Amendment right to counsel
20 clearly, and you are delaying this case, absolutely you
21 are, because she is in custody without legal
22 representation with the Court having made finding, which
23 I just did, that she is indigent in need of counsel, has
24 a right to counsel, and you are the Public Defender of

1 Cook County, and you are under oath. You are sworn to
2 represent an indigent defendant unless the Court finds
3 that her rights would be prejudiced. I have not found
4 her rights to be prejudiced.

5 So your behavior and your response to this
6 Court, and you have asked me to hold you in contempt of
7 court. This is contemptuous, you realize that, correct?

8 MS. CAMPANELLI: I do, your Honor.

9 THE COURT: I'm going to give you an opportunity to
10 not be found in contempt of court by this Court in that I
11 am ordering you, as the Public Defender of Cook County,
12 to represent the defendant.

13 You have many things you can do, Ms. Campanelli.
14 You can certainly represent this defendant, take your
15 issue up to the appellate court, if, in fact, this case
16 goes that far. You can certainly -- that is the way this
17 should be proceed. To stand here and refuse
18 representation and leave this young lady without legal
19 representation, this Court finds is contemptuous, is a
20 contemptuous response to an order from the Court.

21 And I would caution you very carefully you are a
22 sworn attorney, you are the attorney who is sworn to
23 represent indigent defendants, and you are standing here
24 refusing, number 1, to do your job under the oath that

1 you took as the Public Defender of Cook County, as well
2 as you are an attorney yourself licensed.

3 So I'm asking you, number 1, to carefully
4 consider refusing this order of this Court to represent
5 the defendant.

6 MS. CAMPANELLI: Judge, I obviously have seriously
7 considered that your Honor would be in this position
8 today. I have thought about it long and hard. You are
9 the very first Judge I appeared in front of refusing
10 appointment. I have made motions to withdraw and argued
11 in Skokie, in domestic violence court this week, and will
12 be arguing one motion to withdraw in front of your Honor
13 in June, hopefully.

14 But I have read the Rules of Professional
15 Conduct, I have researched this issue for five years. I
16 have read 75 cases. I have sought the guidance of legal
17 ethics scholars Robert Burns and Steven Lubet from
18 Northwestern. I have called them to testify in this
19 issue in Skokie. I have read the rules of Professional
20 Conduct. I have looked at the hierarchy chart of my
21 office. I have gotten the advice from an advisory
22 council that I put together when I became the Public
23 Defender. I have looked at the history of my Multiple
24 Defendant Unit, and at this time, your Honor, I believe

1 that I cannot represent Ms. Cole because of a conflict of
2 interest. And that I do have a right, albeit it is
3 contemptuous of me to refuse appointment, I believe that
4 it is the only way that I can do justice to Ms. Cole at
5 this time so that she has counsel appointed that is
6 conflict free and has 100 percent loyalty to Ms. Cole.

7 THE COURT: Therefore you are continuing to refuse
8 the order of this Court; is that correct, Ms. Campanelli?

9 MS. CAMPANELLI: I am, your Honor. I am asking your
10 Honor --

11 THE COURT: One second, we will deal with one thing
12 at a time.

13 You are refusing to follow the order of this
14 Court; is that correct?

15 MS. CAMPANELLI: That is correct.

16 THE COURT: I am admonishing you that your continued
17 refusal to accept appointment and represent this
18 defendant you will be held in contempt of court.

19 MS. CAMPANELLI: I understand that, Judge. And,
20 like I said, I seriously considered this issue, and I
21 believe that the only way to get this resolved by a
22 higher court to answer the question about the new rules
23 of professional conduct what is happening on these
24 multiple defendant cases and on other cases around this

1 jurisdiction, is for you to hold me in contempt, to set a
2 sanction --

3 THE COURT: The Court will determine the sanction.
4 Go ahead.

5 MS. CAMPANELLI: Obviously your Honor has a choice.
6 You can set a fine, you could take me into custody, and
7 that is an appealable order, directly appealable to the
8 appellate court. The contempt order itself is not, the
9 sanction is what is appealable.

10 I have put a few cases in the basis for refusal
11 to your Honor, and I am asking your Honor to set a
12 sanction of a fine and also and/or to appoint private
13 counsel in this matter.

14 THE COURT: This is what I'm going to do with your
15 refusal to follow this Court's order ordering you to
16 represent the defendant, I will deal with the
17 representation of Ms. Cole myself since I find that the
18 Public Defender of Cook County is disregarding her duties
19 as the Public Defender of Cook County, and she is leaving
20 an indigent defendant standing here in court charged with
21 the most heinous offense known to man, that being first
22 degree murder, without legal representation.

23 With regards to the other four defendants that
24 you have in front of the Court that you have motions to

1 withdraw on, I believe you are going to be asking for a
2 hearing on those. What date, Ms. Campanelli?

3 MS. CAMPANELLI: June 15th.

4 THE COURT: Okay. The Court is going to do this,
5 I'm going to continue this matter for a ruling on your
6 request for contempt, and I will continue it for the
7 Court's findings on Ms. Cole's matter for June 15th. The
8 other defendants will be here on that day in that
9 indictment.

10 So that matter with regards only to the
11 contempt, I am ordering you to be back here. You will be
12 here that day on the other defendants anyway.

13 MS. CAMPANELLI: Yes, I will.

14 THE COURT: I have selected that day in that I know
15 you will be here on the other four defendants. I will
16 issue my ruling on that day with regards to the Court's
17 findings in your refusal today.

18 So with regards to your representation on the
19 defendant, you are continued. I am ordering you to be
20 here in this courtroom June 15th on Ms. Cole's matter,
21 first thing. It will be set for the 9:30 call. Make
22 sure you are here on that day, and I will issue my
23 finding with regard to your refusal to accept
24 appointment, Ms. Campanelli.

1 STATE OF ILLINOIS)
) SS:
 2 COUNTY OF C O O K)

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 4 MUNICIPAL DEPARTMENT -SIXTH MUNICIPAL DISTRICT

5 THE PEOPLE OF THE)
 STATE OF ILLINOIS)
) No. 16 CR 5089 (05)
 6 Plaintiff,)
 -vs-)
 7)
 SALIMAH COLE,)
 8 Defendant.)

9 REPORT OF PROCEEDINGS had of the above-entitled
 10 cause, before the HONORABLE MICHELE PITMAN, Judge of said
 11 Court, on the 15th day of June 2016, in Markham,
 12 Illinois.

13 APPEARANCES:

14 HON. ANITA M. ALVAREZ,
 Attorney of Cook County, by:
 15 MS. SUE CARAHER,
 Assistant State's Attorney,
 16 Appeared for the People;

17 MR. SAM ADAM JR.,
 Appeared for the Defendant.

18
 19 ALSO PRESENT:

20 Amy P. Campanelli.
 Beth Minor.
 21 Lester Finkle

22 Yhana Wilkinson, CSR, Official Court Reporter
 23 Circuit Court of Cook County
 Municipal Department-Sixth Municipal District
 24 License No. 084-003666

1 back with a motion for an order to order them to turn
2 over all the photographs.

3 THE COURT: State?

4 MS. CARAHER: Your Honor, I don't have my complete
5 file down here, but I believe that I did subpoena the
6 medical examiner on this case, so whatever I receive from
7 them I will turn over to all of the attorneys.

8 THE COURT: All right. I do need to turn to another
9 issue at this time.

10 Mr. Adam, and that being, the Court on a
11 previous court date appointed the Public Defender's
12 office to represent Mr. Cole. The Public Defender is
13 present in open court. Ms. Campanelli, good morning. I
14 need you to state your name for the record, please.

15 MS. CAMPANELLI: Amy Campanelli, Public Defender of
16 Cook County. I am here with --

17 MS. MINOR: Beth Minor.

18 THE COURT: Stand at the podium, please.

19 Ms. Cole, move over. I realize you are in
20 between two people. If you could move over a little bit
21 and let Ms. Campanelli stand there.

22 Ms. Campanelli, the Court took an affidavit of
23 assets and liabilities from Ms. Cole on a previous court
24 date. Prior to that you filed a notice of intent to

1 refuse appointment and request appointment of counsel
2 other than the Public Defender of Cook County on May 10th
3 of 2016; is that correct, Ms. Campanelli?

4 MS. CAMPANELLI: That's correct, Judge.

5 THE COURT: The Court denied that notice of intent,
6 denied your request to not be appointed. A notice of
7 intent to refuse, the Court denied your refusal. I
8 continued it for May 19, 2016, for you to give this Court
9 a basis for refusing the appointment that I have ordered
10 of Ms. Cole.

11 We did proceed to that, and you filed a basis
12 for refusal. At that point you indicated you had a
13 conflict of interest. I indicated that I would be
14 holding you in contempt of Court. You indicated that you
15 wished for this Court to hold you in contempt of Court.
16 I believe you characterized it as friendly contempt with
17 a nominal fine.

18 The Court at that point had to appoint private
19 counsel to represent Ms. Cole in that she is a jailed
20 defendant charged with first degree murder, and she was
21 without representation of counsel. She is indigent, Ms.
22 Campanelli. The Court has already found there is no
23 conflict for you representing Ms. Cole. I am ordering
24 you to represent Ms. Cole, and I'll be looking to vacate

1 any appointment of Mr. Adam with you accepting
2 appointment of Ms. Cole.

3 Ms. Campanelli?

4 MS. CAMPANELLI: Judge, with respect to this Court
5 and your order finding that I am not in conflict, I
6 disagree with this Court based on the Rules of
7 Professional Conduct, based on legal scholars who have
8 advised me in these matters, and some of that information
9 was in my memorandum to your Honor in my motion of
10 intent. Based on the Public Defender Statute, based on
11 People versus -- excuse me, Burnett versus Terrell,
12 Burnett versus Stroger, I am in conflict in representing
13 this sixth defendant in a six-defendant murder when I
14 already represent five of those defendants.

15 As your Honor knows, I have motions to withdraw
16 on four of those five. I am in conflict of interest with
17 them also.

18 THE COURT: You have separate attorneys on those,
19 correct?

20 MS. CAMPANELLI: I do, your Honor, but under the
21 Public Defender Statute I am the attorney for every
22 client that is appointed to this office. I am appointed,
23 and then I delegate the duties to the assistant public
24 defenders. I am a law firm, and I want to be treated

1 like any other law firm in the state of Illinois. And
2 when we are forced to represent multiple defendants in
3 the same prosecution that brings forth unprofessionalism
4 in the law office the Cook County Public Defender. We
5 are not then treated the same as private counsel, and do
6 not have the same respect, and the clients, more
7 important than the law office of the Cook County Public
8 Defender, the clients feel betrayed. They distrust, and
9 I do not -- at this point, Judge, I am coming to you
10 early on, and the United States Supreme Court in Holloway
11 versus Arkansas says when a public defender is
12 representing -- it is one Public Defender in that case
13 who represented three co-defendants, and the Court found
14 in Holloway versus Arkansas that the Judge erred because
15 the Judge refused to appoint separate counsel when it was
16 brought to the Judge's attention early on, and that case
17 was reversed. The only time that the judiciary should
18 not appoint counsel is if it's too remote. It is not
19 remote, Judge. We have six defendants here who are
20 presently charged with first degree murder.

21 There are all types of conflicts of interest.
22 Some are already in the indictment that are laid out
23 which we explained on the last court date.

24 THE COURT: That's pertaining to different

1 defendants, however.

2 MS. CAMPANELLI: I understand.

3 THE COURT: We are only dealing with Ms. Cole at
4 this point.

5 MS. CAMPANELLI: Ms. Cole is like -- it is almost
6 like a law firm of one, Judge. I represent every client.
7 I have a right to know every fact of every case. I have
8 a right to know every strategy, every defense, what every
9 lawyer is doing, and I must supervise every lawyer. And
10 if I am not allowed to know the confidences between the
11 lawyers, I am not acting as the Public Defender of Cook
12 County.

13 THE COURT: Ms. Campanelli, I am ordering you to
14 represent Ms. Cole, and I am warning you that your
15 refusal to represent Ms. Cole will be direct contempt of
16 this Court.

17 Are you continuing to refuse to represent Ms.
18 Cole?

19 MS. CAMPANELLI: Yes.

20 THE COURT: This Court, having presided over the
21 proceedings, and per the Court having jurisdiction over
22 the matters that are in front of this Court, that during
23 the proceedings on a previous date as well as today's
24 date, June 15, 2016, as well as May 19, 2016, the Public

1 Defender of Cook County, Amy P. Campanelli, was ordered
2 by this Court to represent an indigent defendant, that
3 being Salimah Cole. She was directed to accept
4 appointment as counsel for Ms. Cole or to provide a legal
5 basis for her refusal to accept appointment. She has
6 done neither.

7 The Court finds also that Ms. Campanelli has
8 willfully and contemptuously refused to accept the
9 appointment by this Court to represent Ms. Cole after
10 being ordered to do so.

11 This Court finds that her refusal to accept
12 appointment is without basis, and there is no prejudice
13 to Ms. Cole that she would suffer should Ms. Campanelli
14 accept appointment and represent the defendant.

15 This Court previously found, and I continue to
16 find, that Ms. Campanelli's refusal to accept appointment
17 amounts to Ms. Campanelli disregarding her duties as the
18 Public Defender of Cook County as set forth in the Public
19 Defender Act 55 ILCS 578/3-4006.

20 This Court finds that Ms. Campanelli's
21 continued refusal of the appointment of the defendant,
22 Salima Cole, deprives Ms. Cole, an incarcerated defendant
23 charged with the offense of first degree murder, of her
24 Sixth Amendment right to counsel.

1 That due to Ms. Campanelli's refusal to accept
2 appointment this Court has had to appoint private counsel
3 to represent an indigent defendant in Cook County who
4 should be represented by the Public Defender's Office of
5 Cook County.

6 As such, the refusal by Ms. Campanelli to accept
7 this appointment the Court finds is contemptuous. This
8 Court has admonished Ms. Campanelli by her continued
9 refusal to accept appointment and represent Ms. Cole
10 would force this Court to hold her in contempt of Court
11 as she has requested to be held in contempt of Court.

12 The Court also finds that Ms. Campanelli's
13 failure to provide any substantive basis that a per se or
14 a concurrent conflict of interest as defined by the
15 Illinois Rules of Professional Conduct, and in particular
16 Rule 1.7, she has failed to provide any basis for any
17 conflict, and that would, if she did, prohibit her from
18 providing legal representation to the defendant, but Ms.
19 Campanelli has failed to do so.

20 This Court has admonished Ms. Campanelli that
21 should she continue to refuse to accept appointment, and
22 I am admonishing you further, Ms. Campanelli, that you
23 will be held in direct contempt of this Court, and you
24 will be sanctioned by this Court until you purge yourself

1 of accepting this appointment. Do you understand that,
2 Ms. Campanelli?

3 MS. CAMPANELLI: Yes, your Honor.

4 THE COURT: And are you still refusing to accept
5 appointment of Ms. Cole?

6 MS. CAMPANELLI: Yes, Judge, specifically based upon
7 Rule 1.7 of the conflict.

8 THE COURT: The Court finds the continued refusal to
9 accept appointment has impaired the rights and interests
10 of the defendant Salimah Cole. It has also impeded and
11 obstructed this Court's ability to perform and administer
12 justice in this matter.

13 The Public Defender of Cook County, Ms.
14 Campanelli, is hereby found to be in direct civil
15 contempt of Court.

16 Ms. Campanelli, prior to sanctions being
17 imposed, I will give you an opportunity to provide this
18 Court with any information showing the reasoning behind
19 your refusal, which you are indicating you have, and to
20 make a statement of allocution to this Court.

21 MS. CAMPANELLI: Judge, not as a -- necessarily a
22 statement of allocution, I actually thank your Honor for
23 holding me in direct civil contempt of Court. The reason
24 I need to be held in direct civil contempt of Court is

1 because I need an answer from a Court above the Circuit
2 Court of Cook County to tell me if I am a law firm, to
3 tell me if the Rules of Professional Conduct that the
4 Illinois Supreme Courts handed down in 2010 finds that I
5 am in conflict every time I represent more than one
6 client on a case. Because that is exactly what comment
7 23 to Rule 1.7 says. It is as if in civil court I
8 represent in a divorce case the husband and the wife.
9 Obviously, everybody understands what kind conflict that
10 is.

11 Getting other Public Defenders from the same law
12 firm to represent multiple defendants does not clear the
13 conflict. It may mitigate a conflict of interest, but it
14 does not get rid of the conflict of interest in any way.

15 So under the Rules of Professional Conduct which
16 trump the Public Defender Act, as stated in my notice of
17 intent, which is exactly what Professor Steven Lubet from
18 Northwestern testified to in another case.

19 Because the rules trump, and the rules tell me
20 that I am in conflict representing multiple defendants, I
21 must come to your Honor and either refuse appointment,
22 which I have done in this case, because Ms. Cole came in
23 later than the other defendants and/or I must make A
24 motion to withdraw which I have done in the other four of

1 the five defendants. It is a proper avenue for me to get
2 to the appellate court to be held in contempt. I am
3 asking your Honor to obviously set a fee if your Honor
4 must sanction me, so that I can make an immediate appeal
5 to the appellate court, and now get an answer to tell me
6 what I should do in these cases.

7 THE COURT: Well, first, it is not the way to get it
8 to the appellate court. The proper way to get this to
9 the appellate court would be to take this issue up on
10 appeal after a judgment on a finding of guilt, and you
11 can certainly object to representation. This is not the
12 proper way to take this to the appellate court, to stand
13 before a Judge and refuse a direct order from a Judge.

14 So I take exception with that, Ms. Campanelli.
15 This is absolutely the wrong way to proceed for this
16 issue, and there is no conflicts of interest. You have
17 not shown this Court. Multi-defendant representation is
18 not a conflict of interest. That is this Court's ruling.
19 That's why I have continued to appoint you counsel. You
20 have stood on your refusal, so at this point I am
21 ordering an adjudgment Ms. Campanelli to be in contempt
22 of Court.

23 The Court hereby orders Ms. Campanelli is found
24 in adjudicated in direct civil contempt for her willful

1 failure to obey a direct order of this Court. The Court
2 is sanctioning Ms. Campanelli in the following manner.

3 Ms. Campanelli will be sanctioned by this Court
4 and hereby fined a sum of \$250 per day or until such time
5 as Ms. Campanelli shall purge herself of direct civil
6 contempt by accepting appointment as counsel for
7 Defendant Salimah Cole in the presence of this Court, or
8 until she is otherwise discharged by due process of law.

9 This Court is directing the Clerk of the Court
10 to prepare a certified copy of this order and to submit
11 it to the Sheriff of Cook County to be served upon the
12 respondent contem.law.

13 Ms. Campanelli?

14 MS. CAMPANELLI: Thank you, Judge. I will be able
15 to pay that \$250 today, and then I guess it will be
16 immediately appealed and probably be held in accordance
17 until Lester Finkle puts this together.

18 MR. FINKLE: Your Honor, may I speak?

19 THE COURT: Yes, Mr. Finkle.

20 MR. FINKLE: Lester Finkle, F-i-n-k-l-e. First I'd
21 like to clarify one point, your Honor. Under the case
22 law, specifically Garvey versus Sauron Shaw, this Court
23 has the authority to hold an attorney in contempt of
24 court, but also has the authority to hold a law office in

TO THE APPELLATE COURT OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

People of the State of Illinois
Plaintiff-Appellee

-VS-

SALIMAH COLE,

Defendant.

(Amy P. Campanelli,
Contemnor-Appellant)

Honorable
Michele Pitman,
Judge Presiding.

(arising out of cases numbers
16CR0508905, related to cases
16CR0508903, 14CR1798701,
16CR0508901, 15CR2025701,
16CR0508903, 15CR2025702,
16CR0508904, 15CR2029901,
and 16CR0508906)

NOTICE OF APPEAL

An appeal is taken from the order or judgment described below:

APPELLANT'S NAME: Amy P. Campanelli

APPELLANT'S ADDRESS: 69 W. Washington, 16th Floor
Chicago, IL 60602

APPELLANT'S ATTORNEY: Cook County Public Defender

ADDRESS: 69 W. Washington, 16th Floor, Chicago, IL 60602

OFFENSE: Direct Civil Contempt of Court for declining representation

JUDGMENT: Direct Civil Contempt of Court

DATE OF JUDGMENT: June 15, 2016

SENTENCE : \$250 fine per day until Public Defender agrees to represent sixth co-defendant

Date: 6/15/2016

Cristen Finkle
Appellant by her Attorney

**VERIFIED PETITION FOR REPORT OF PROCEEDINGS COMMON LAW RECORD
AND FOR THE APPOINTMENT OF COUNSEL ON APPEAL**

Under Supreme Court Rules 605-608, appellant asks the Court to order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the appellant; order the Clerk to prepare the Record on Appeal and to Appoint the **Cook County Public Defender** on appeal.

Cristen Finkle
Appellant's Attorney

ORDER

IT IS ORDERED the **Cook County Public Defender** be appointed as counsel on appeal and the record and report of proceedings be furnished appellant without cost.

Dates to be transcribed: April 5 and 12, 2016; May 10 and 18 and 19, 2016; and June 15, 2016

DATE: June 15, 2016

ENTER: _____

Judge

By: Amy P. Campanelli, Cook County Public Defender
69 W. Washington, 16th Floor, Chicago, IL 60602
LRD.PD@cookcountyil.gov

C : 00221

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3/12/16	Public Safety Assessment – Court Report – Pretrial Services	C00012- C00013
3/12/16	Prisoner Data Sheet, Salimah S. Cole	C00014
3/12/16	Criminal Disposition Sheet	C00015
	Prisoner Data Sheet, Salimah S. Cole	C00016
	Disposition Sheet	C00017
3/15/16	Order re DNA sample	C00018- C00020 (copies)
3/15/16	Motion to Preserve	C00021

3/15/16	Prisoner Data Sheet, Salimah S. Cole	C00022
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4/1/16	Order setting next court date at 4/12/16	C00024
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	Docket 2016	C00026-
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2016	Certification of Indictment	C00028
4/5/16	Grand Jury Indictment for First Degree Murder	C00029- C00092
4/12/16	Order setting next court date at 5/10/2016	C00093
	Criminal Disposition Sheet	C00094- C00097
5/10/16	Notice of Intent to Refuse Appointment and Request Appointment of Counsel Other Than the Public Defender of Cook County w/exhibits	C00098- C00181
5/18/16	Basis for Refusing Appointment Where a Conflict of Interest in Representation Exists	C00182- C00187
5/10/16	Order setting next court date at 5/19/2016	C00188
5/19/16	Motion for Pre-Trial Discovery Pursuant to Illinois Supreme Court Rule 413	C00189- C00190
5/19/16	Criminal disposition Sheet (motion of intent to refuse appointment, denied)	C00191- C00192
5/19/16	Affidavit of Assets and Liabilities Salimah Cole	C00193- C00194
5/19/16	Order setting next court date at 6/15/16	C00195
6/15/16	Criminal Disposition Sheet	C00196- C00197

6/15/16	Petition for Attorney Fees Pursuant to 725 ILCS 5/113-3(c) by appointed counsel Samuel Adams	C00198- C00204
6/15/16	Order of Adjudication Direct Civil Contempt	C00205- C00207
6/15/16	Defendant's Motion for Discovery	C00208- C00211
6/15/16	Defendant's First Answer to Discovery	C00212
6/15/16	Motion for All Statements/Confessions of Defendant	C00213- C00214
6/15/16	Defendant's Motion for Discovery Regarding State Offers, Agreements, Contracts, Deals and/or Covenants to Any Persons, Witnesses and/or Codefendants	C00215
6/15/16	Order of Court re payment of attorney fees	C00216- C00217 (copy)
6/15/16	Order setting next court date at 6/28/16	C00218
6/15/16	Criminal Disposition Sheet	C00219- C00220
6/15/16	Notice of Appeal	C00221
7/7/16	Notice of Notice of Appeal	C00222- C00223
6/15/16	Order from Illinois Appellate Court, No. 16-1587 allowing stay of enforcement of daily \$250 fine	C00224
6/28/16	Order setting next court date at 7/14/2016	C00225
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8/31/16	Certification of Circuit Court Clerk	

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6/22/16	Affidavit of Official Court Reporter re no record of report of proceedings before the Hon. Leroy Martin on April 5, 2016	A-1
6/22/16	Affidavit of Official Court Reporter re no record of report of proceedings before the Hon. Leroy Martin on April 12, 2016	D-1
4/12/16	Report of Proceedings before the Hon. Brian Flaherty	1-3
4/12/16	Report of Proceedings before the Hon. Michele Pitman	1-3
6/22/16	Affidavit of Official Court Reporter re no record of report of proceedings before the Hon. Michele Pitman for May 18, 2016	1
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6/15/16	Report of Proceedings before the Hon. Michele Pitman	H1-H21
6/27/16	Report of Compliance by Court Reporters	
8/31/16	Certification of Circuit Court Clerk	

No. 120997

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF	) Illinois Appellate Court,
ILLINOIS,	) First District, No. 1-16-1587
)
Plaintiff -Appellee,	) On appeal from the Circuit Court of
	) Cook County, Hon. Michele Pitman,
v.	) Judge presiding.
	) (arising out of case numbers
SALIMAH COLE,	) 16CR0508905, related to cases
	) 16CR0508903, 14CR1798701,
Defendant,	) 16CR0508901, 15CR2025701,
	) 16CR0508903, 15CR2025702,
(AMY P. CAMPANELLI,	) 16CR0508904, 15CR2029901, and
Contemnor-Appellant).	16CR0508906)

NOTICE OF FILING

To: Kimberly M. Foxx	Lisa Madigan
Cook County State's Attorney	Illinois Attorney General
69 West Washington St.	100 West Randolph Street, 12th Floor
Chicago, Illinois 60602	Chicago, Illinois 60601

PLEASE TAKE NOTICE that on January 31, 2017, I caused the foregoing **Brief And Supporting Appendix For Contemnor-Appellant Amy P. Campanelli** to be electronically submitted with the Clerk of the Supreme Court of Illinois by using the i2File system.

January 31, 2017

Respectfully Submitted,

***** Electronically Filed *****

120997

01/31/2017

Supreme Court Clerk

/s/Michael A. Scodro

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CERTIFICATE OF SERVICE

Michael A. Scodro, an attorney, hereby certify that on January 31, 2017, I caused the foregoing **Notice of Filing** and **Brief And Supporting Appendix For Contemnor-Appellant Amy P. Campanelli** to be submitted to the Clerk of the Supreme Court of Illinois by using the i2File system. Pursuant to the "Supreme Court of Illinois Electronic Filing User Manual," upon acceptance of the electronic notice for filing, I certify that I will cause an original **Notice of Filing** and an original and twelve copies of the **Brief And Supporting Appendix For Contemnor-Appellant Amy P. Campanelli** to be transmitted to the Court via UPS overnight delivery within 5 days of that notice date.

I further certify that I will cause one copy of the Notice of Filing and three copies of the above named brief to be served upon the counsel listed below via UPS overnight delivery:

Kimberly M. Foxx
Cook County State's Attorney
69 West Washington
Chicago, Illinois 60602

Lisa Madigan
Illinois Attorney General
100 West Randolph Street, 12th Floor
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/s/Michael A. Scodro

Michael A. Scodro