No. 120997

IN THE

SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>SALIMAH COLE,<br><br>Defendant.<br><br>(In re AMY CAMPANELLI<br>Public Defender of Cook County,<br><br>Contemnor-Appellant). | ) | Illinois Appellate Court<br>First District, No. 1-16-1587<br><br>On appeal from the<br>Circuit Court of Cook County,<br>No. 16 CR 05089 (05)<br><br>Honorable<br>Michele Pitman,<br>Judge Presiding. |

**BRIEF AND ARGUMENT FOR PLAINTIFF-APPELLEE**

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## POINTS AND AUTHORITIES

**The Trial Court Properly Found Cook County Public Defender Amy Campanelli to be in Direct Civil Contempt after She Repeatedly Refused to Abide by a Valid Court Order and Accept Appointment to Represent an Indigent Defendant Given the Court's Ruling that no Conflict of Interest Existed.**

## ISSUE PRESENTED FOR REVIEW

Whether the trial court properly held Amy Campanelli, the Public Defender of Cook County, in direct civil contempt for disobeying a court order by refusing to accept an appointment to represent an indigent defendant (charged with first degree murder and other serious felony offenses) because her office represented co-defendants, even though the court had ruled that no disabling conflict of interest existed that would preclude the representation.

## STATEMENT OF FACTS

In March 2016, defendant Salimah Cole was charged by indictment with six counts of first degree murder, two counts of armed robbery, five counts of aggravated kidnapping, one count of aggravated arson, and two counts of possession of a stolen motor vehicle arising out of the September 30, 2015, shooting, robbery and kidnapping of La Prentis Cudjo, and the robbery and kidnapping of Charles Morgan. (C. 32-37, 74-75, 80-84, 89, 90-91)[1] Also charged were co-defendants Allen Whitehead, Zacchaeus Reed, Jr., Ashley Washington and Julian Morgan. (C. 38-73)[2]

On April 12, 2016, a Cook County Assistant Public Defender appeared as a "friend of the court as well as to Ms. Cole" and indicated that while defendant Cole

[1] "C. ___" denotes the Common Law Record. "R. ___" denotes the Report of Proceedings. "S.R. ___" denotes the Supplemental Record. However, the pages of transcripts contained in the Report of Proceedings have not been numbered consecutively as required by Supreme Court Rule 324, so the citations refer to the date of the proceedings.

[2] Co-defendant Whitehead is also charged with additional counts of first degree murder and armed robbery (C. 76-79), while co-defendant Brianna Sago was charged with one count of concealing or aiding a fugitive (Whitehead). (C. 92)

would be retaining private counsel to represent her in this matter, the attorney would need a short continuance. (R. 4/12/16 at 2)

On the next court date, defendant informed the court that she was unable to afford an attorney. (R. 5/10/16 at 2) Contemnor Amy Campanelli, the Cook County Public Defender, asked for leave to file a "Notice of Intent to Refuse Appointment and Request Appointment of Counsel Other than the Public Defender of Cook County." (R. 5/10/16 at 3) (C. 98-118) Ms. Campanelli explained that she could not represent defendant Cole because different assistant public defenders from her office already represented the other co-defendants in the case, and that such multiple representation in a single case was prohibited by Rules 1.7 and 1.10 of the Illinois Rules of Professional Conduct of 2010. (R. 5/10/16 at 3-9) Ms. Campanelli acknowledged that similar arguments had been previously rejected by another circuit court judge and that this Court had denied her predecessor's motion for mandamus or supervisory order challenging that ruling. (R. 5/10/16 at 9)[3]

The trial court rejected Ms. Campanelli's assertions and appointed the Cook County Public Defender to represent defendant Cole. (R. 5/10/16 at 18) In particular, the court noted that although some of the six co-defendants (Reed and Whitehead) were charged with intimidation of co-defendant Washington in addition to first degree murder, defendant Cole was "charged with first-degree murder under several counts in the indictment, [and] not any intimidation of another co-defendant." (R. 5/10/16 at 16) The court further stressed that defendant Cole was being held in custody and that because she and all co-defendants were facing serious charges, "[t]hey are all entitled as indigent

[3] See Order, A.C. Cunningham v. Hon. Marguerite Quinn, No. 118730 (Mar. 2, 2015).

defendants to be represented by counsel." (R. 5/10/16 at 16-17) Finally, the court stated that although it had previously allowed the Public Defender's Office to withdraw in other cases where there was "concrete evidence" of a conflict of interest, "[t]he 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." (R. 5/10/16 at 17-18)

Ms. Campanelli asked the court to hold her in "friendly contempt" and impose a "nominal sanction" so that she could seek appellate review to "get to the bottom of this issue" and "actually decide what [this Court meant] by the 2010 Illinois Rules of Professional Conduct." (R. 5/10/16 at 18-19) The court took the request under advisement and asked Ms. Campanelli to put the "basis for [her] refusal" in writing. (R. 5/10/16 at 19)

Ms. Campanelli subsequently filed a pleading entitled "Basis for Refusing Appointment Where a Conflict of Interest in Representation Exists." (C. 182-87) Thereafter, when the matter was next called, the court confirmed that defendant Cole was indigent and unable to retain private counsel. (R. 5/19/16 at G3-4) The court then "appoint[ed] the Public Defender of Cook County to represent Ms. Cole based on the affidavit of assets and liabilities she submitted to this Court based on this Court's finding that she is an indigent defendant." (R. 5/19/16 at G4) In response, Ms. Campanelli told the court that she was rejecting the appointment because "the Rules of Professional Conduct . . . tell me that I cannot represent more than one client on a case because of the potential conflict." (R. 5/19/16 at G4) The following colloquy then occurred:

> THE COURT: So what you're indicating is that you are not going to follow the Public Defender Act. . . . You must follow this act as a sworn Public Defender of Cook County, and I haven't made the finding that your

client or your potential client's rights would be prejudiced. So it's not a motion to withdraw.

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

I must be loyal at every stage of the proceeding, pretrial, trial, and sentencing, and I can only be loyal to one client. Because I am the Public Defender and under the other parts of the Public Defender Statute, which I did cite in my second motion on file on behalf of Ms. Cole, I am the lawyer on every client.

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

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

And also, taking it from the point of view of Ms. Cole, she has the right to have loyal counsel who is 100 percent conflict free. She will not have conflict free counsel. She will not be able, and I cannot tell you the subliminal pressure, and they talk about this in the case law that I cite you, subliminal pressures the lawyers could have when they are trying to serve two masters when they are fighting against their colleague, when you have one Public Defender representing one client and another Public Defender representing another client who work in the same office, who everybody up the chain reports to me.

(R. 5/19/16 at G9-11)

The court then questioned Ms. Campanelli about the structure of the Cook County Public Defender's Office. Ms. Campanelli stated that there were more than 500 Assistant Public Defenders in the office, and that although she can assign different lawyers to co-defendants who do not share supervisors, ultimately, all the attorneys report to her. (R. 5/19/16 at G11) Ms. Campanelli further asserted that she believed that the Public Defender's Multiple Defendant Unit, which was formed in 1981 for "economic reasons," did not mitigate the conflict because "[t]he Rules of Professional Conduct . . . do not allow for . . . . a wall to eliminate conflicts of interest within the same law firm." (R. 5/19/16 at G14)

The court then found that Ms. Campanelli's actions were contemptuous because they infringed defendant Cole's Sixth Amendment right to counsel and contradicted her oath as the Public Defender of Cook County. (R. 5/19/16 at G15-16) However, the court gave Ms. Campanelli "an opportunity to not be found in contempt of court" by carefully considering her refusal to accept the appointment in light of the court's findings because not only was it contemptuous "to stand here and refuse representation and leave this young lady without legal representation," but it was also contemptuous to refuse an order from the Court. (R. 5/19/16 at G16) In response, Ms. Campanelli stated that based on her research and understanding of the Rules of Professional Conduct, she could not represent defendant Cole due to a conflict of interest and therefore, even though she knew it was contemptuous, she was refusing the appointment. (R. 5/19/16 at G17-18)

Accordingly, the court found "that the Public Defender of Cook County is disregarding her duties as the Public Defender of Cook County, and she is leaving an indigent defendant standing here in court charged with the most heinous offense known

to man, that being first degree murder, without legal representation." (R. 5/19/16 at G19) The court however did not enter a formal judgment of contempt at that time. Instead, it continued the matter for a "ruling on [Ms. Campanelli's] request for contempt" until the next court date when the Public Defender's motions to withdraw from representing four of the five co-defendants was scheduled to be heard. (R. 5/19/16 at G20) In the meantime, the court appointed a private attorney to represent defendant Cole. (R. 5/19/16 at G21)

On the next court date, defendant Cole appeared before the court along with appointed counsel and Ms. Campanelli. (R. 6/15/16 at H5) When the court told Ms. Campanelli that it was again "ordering [her] to represent Ms. Cole," and that it would vacate the private counsel's appointment if she accepted, Ms. Campanelli responded that she "disagree[d]" with the court's ruling and stated that "I am in conflict in representing this sixth defendant in a six-defendant murder when I already represent five of those defendants." (R. 6/15/16 at H6-7) Ms. Campanelli further stated:

> [U]nder the Public Defender Statute I am the attorney for every client that is appointed to this office. I am appointed, and then I delegate the duties to the assistant public defenders. I am a law firm, and I want to be treated like any other law firm in the state of Illinois. And when we are forced to represent multiple defendants in the same prosecution that brings forth unprofessionalism in the law office the Cook County Public Defender. We are not then treated the same as private counsel, and do not have the same respect, and the clients, more important than the law office of the Cook County Public Defender, the clients feel betrayed.
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> [I]t is almost like a law firm of one, Judge. 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, and I must supervise every lawyer. And if I am not allowed to know the confidences between the lawyers, I am not acting as the Public Defender of Cook County.

(R. 6/15/16 at H7-9)

The court noted that although Ms. Campanelli had been ordered by the court to either "accept appointment as counsel for Ms. Cole or to provide a legal basis for her refusal to accept appointment," she had done neither. (R. 6/15/16 at H10) As a result, the Court found Ms. Campanelli to be in direct civil contempt of court because she "willfully and contemptuously refused to accept the appointment by this Court to represent Ms. Cole after being ordered to do so" and because her continued refusal "impeded and obstructed this Court's ability to perform and administer justice in this matter." (R. 6/15/16 at H10, 12) The court further found that defendant Cole would not be prejudiced in any way "should Ms. Campanelli accept [the] appointment." (R. 6/15/16 at H10) The court then concluded:

> This Court previously found, and I continue to find, that Ms. Campanelli's refusal to accept appointment amounts to Ms. Campanelli disregarding her duties as the Public Defender of Cook County as set forth in the Public Defender Act[,] 55 ILCS 5/3-4006.
>
> This Court finds that Ms. Campanelli's continued refusal of the appointment of the defendant, Salima [sic] Cole, deprives Ms. Cole, an incarcerated defendant charged with the offense of first degree murder, of her Sixth Amendment right to counsel.

(R. 6/15/16 at H10)

Prior to imposing a sanction, the court offered Ms. Campanelli an opportunity to make a statement in allocution. She responded:

> Judge, not as a -- necessarily a statement of allocution, I actually thank your Honor for holding me in direct civil contempt of Court. The reason I need to be held in direct civil contempt of Court is because I need an answer from a Court above the Circuit Court of Cook County to tell me if I am a law firm, to tell me if the Rules of Professional Conduct that the Illinois Supreme Court handed down in 2010 finds that I am in conflict every time I represent more than one client on a case. Because that is exactly what comment 23 to Rule 1.7 says. It is as if in civil court I represent in a divorce case the husband and the wife. Obviously, everybody understands what kind conflict that is.

> Getting other Public Defenders from the same law firm to represent multiple defendants does not clear the conflict. It may mitigate a conflict of interest, but it does not get rid of the conflict of interest in any way.
>
> So under the Rules of Professional Conduct, which trump the Public Defender Act, as stated in my notice of intent, which is exactly what Professor Steven Lubet from Northwestern testified to in another case.
>
> Because the rules trump, and the rules tell me that I am in conflict representing multiple defendants, must come to your Honor and either refuse appointment, which I have done in this case, because Ms. Cole came in later than the other defendants and/or I must make a motion to withdraw which I have done in the other four of the five defendants. It is a proper avenue for me to get to the appellate court to be held in contempt. I am asking your Honor to obviously set a fee if your Honor must sanction me, so that I can make an immediate appeal to the appellate court, and now get an answer to tell me what I should do in these cases.

(R. 6/15/16 at H12-14)

The court then entered a formal "Order of Adjudication Direct Civil Contempt," imposing a fine of $250 per day or until such time as she purged herself of direct civil contempt by accepting appointment as counsel for defendant Cole, or until she is otherwise discharged by due process of law. (C. 205-07; R. 6/15/16 at H15) The court also admonished Ms. Campanelli:

> [This] is not the way to get it to the appellate court. The proper way to get this to the appellate court would be to take this issue up on appeal after a judgment on a finding of guilt, and you can certainly object to representation. This is not the proper way to take this to the appellate court, to stand before a Judge and refuse a direct order from a Judge.

(R. 6/15/16 at H14)[4]

Ms. Campanelli immediately filed a Notice of Appeal to the Illinois Appellate Court, First District, as well as an emergency motion to stay the fines imposed by the trial

[4] That same date, the court ordered the Cook County Treasurer to pay defendant Cole's appointed counsel $4,646.92 for services rendered during "the billing cycle of May 15, 2016 - June 15, 2016." (C. 216)

court. (C. 221, 224) The Appellate Court granted the motion to stay that same day. (C. 224) The People filed a motion asking that the instant appeal be taken as a direct appeal to this Court pursuant to Supreme Court Rule 302(b).

While that motion was pending before this Court, the trial court heard arguments on Ms. Campanelli's motions to withdraw from representation of co-defendants Whitehead, Reed, Morgan, and Sago. (S.R. at 6) The trial court granted the Public Defender's motions regarding Whitehead and Reed, but denied them regarding Morgan and Sago. (S.R. at 71) The court explained:

> The Court finds that there is -- for purposes of conflict of interest, it is not inherent in joint or multi-representation. The Public Defender's Office is to be treated differently than a private law firm. Ms. Campanelli, yes, she is assigned and she is appointed as the attorney. She is to appoint or assign separate attorneys in her office to represent these separate defendants.
>
> The Court does not see a basis to grant the motion with regards to two Defendants, that being Ms. Sago and Mr. Morgan. The Public Defender of Cook County has not shown this Court any basis to grant a motion to withdraw. I have in -- per se conflicts being argued. I don't have any basis to find that there's an actual conflict. And the Court is not asking the Public Defender of Cook County to violate any trust with her clients; however, you must give this Court a basis to appoint counsel other than the Public Defender's Office.
>
> With regards to those two clients [Morgan and Sago], the Court finds that the Supreme Court has not changed their own precedent and that the Court is bound by the precedent as it has been set forth. And with regards to those two Defendants, the motion to withdraw will be denied, and the Public Defender of Cook County is mandated to represent those two Defendants in that they are indigent Defendants, and she has been appointed.
>
> With regards to Mr. Whitehead and Mr. Reed, the Court finds based on the indictment brought forth by the State's Attorney of Cook County charging them with intimidation of one of the other Defendants in this indictment, I find there certainly is a risk, nevertheless a significant risk, that one of the attorney's ability to consider, recommend or carry out an appropriate course of action for his client could be materially limited as a

> result of that lawyer's other responsibilities or interests. Based on the Rule, I find certainly that that could be an adverse interest. And with that, I am going to grant the motion, over the State's objection, with regards to those two Defendants, in that the Public Defender has given this Court a reason in citing the potential conflict or even further an actual conflict in that those two Defendants are charged with intimidating another Defendant; and, therefore, Ms. Washington will be a witness for the State against those two Defendants. And I do find that a potential conflict could exist, and it's a significant risk that a conflict exists there. So with regards to those two Defendants, over the State's objection, the Public Defender will be granted leave to withdraw from Mr. Whitehead's cases and Mr. Reed's cases.

(S.R. at 69-71)

This Court subsequently granted the People's motion for a direct appeal on July 29, 2016. (Campanelli Appendix at A4)

## ARGUMENT

### The Trial Court Properly Found Cook County Public Defender Amy Campanelli to be in Direct Civil Contempt after She Repeatedly Refused to Abide by a Valid Court Order and Accept Appointment to Represent an Indigent Defendant Given the Court's Ruling that no Conflict of Interest Existed.

Ms. Campanelli claims that she was wrongly held in direct civil contempt of court for refusing to accept the appointment to represent indigent defendant Salimah Cole, because she was ethically barred from accepting the appointment under Rule 1.7 of the Illinois Rules of Professional Conduct of 2010 (RPC), which prohibits representation of co-defendants by a single attorney. (Opening Br. at 16-21) She notes that as the Public Defender of Cook County, she is personally appointed to represent every indigent defendant and, as a result, can never appear on behalf of co-defendants in the same case due to the "grave potential" for divergent interests and defenses. (Opening Br. at 21-23) She further asserts that regardless of whether she is personally appointed to every case,

the Cook County Public Defender's Office is a "law firm" under RPC 1.0(c) and that, therefore, a conflict of interest arising out of joint representation is necessarily imputed to every Assistant Public Defender under RPC 1.10. (Opening Br. at 26-27) Ms. Campanelli also objects to the trial court's requirement the she first demonstrate a conflict and to People v. Robinson, 79 Ill. 2d 147 (1979), which holds that Public Defender's Offices should be treated differently than private law firms for purposes of assessing conflicts of interest, citing defendant Cole's constitutional rights to conflict-free counsel. (Opening Br. at 24-35)

Contrary to Ms. Campanelli's arguments (and the similar arguments made by amici Legal Ethics Scholars Professors Vivien Gross, Steven Lubet and Robert Burns, as well as amici National Association of Criminal Defense Lawyers),[5] the trial court properly found Ms. Campanelli to be in direct civil contempt of court. Specifically, the trial court rightly concluded that under this Court's clear and binding precedent, Public Defenders' Offices are not law firms and different Assistant Public Defenders may represent co-defendants in a single case. Therefore, there was no lawful basis for Ms. Campanelli to refuse to accept appointment in defendant Cole's case. Likewise, it is well-settled that there is no constitutional prohibition against joint representation absent an indication of a conflict of interest based on the particular facts of the case. Therefore, because nothing in the 2010 amendments to the Rules of Professional Conduct undermines this Court's caselaw (or the similar rulings of other states' Supreme Courts),

[5] The amicus brief filed by the National Association for Public Defense (NAPD) "does not take a position as to whether a conflict of interest exists in this case, nor does it submit . . . a method for analyzing and determining the existence of such a conflict." (NAPD Br. at 4) Instead, the brief simply discusses various methods employed by other jurisdictions for appointing or assigning alternate counsel where a Public Defender is excluded due to a conflict of interest. (Id. at 4-13)

the trial court properly rejected Ms. Campanelli's arguments and appointed her to represent defendant Cole. Finally, it was only after Ms. Campanelli persisted in her refusal to accept the appointment and abide by the court's order that she was held in direct civil contempt. The contempt order was a proper exercise of discretion as it was intended to compel her to accept the appointment and represent defendant Cole. The trial court's ruling should be affirmed.

**A. The Trial Court Properly Exercised its Discretion by Holding Ms. Campanelli in Direct Civil Contempt for Willfully Refusing to Abide by a Lawful Court Order.**

Although it is well-settled that "[a] court is vested with inherent power to enforce its orders and preserve its dignity by the use of contempt proceedings" (Vision Point of Sale, Inc. v. Haas, 226 Ill. 2d 334, 352 (2007)), such power should be used sparingly. As a result, a finding of contempt must be based on willful conduct by the alleged contemnor. People v. Ernest, 141 Ill. 2d 412, 424 (1990); In re Marriage of Logston, 103 Ill. 2d 266, 285 (1984). Here, it is undisputed that Ms. Campanelli's refusal to abide by the court's order and accept the appointment was both knowing and willful. In fact, she specifically asked the court to hold her in contempt while repeatedly acknowledging that her conduct was contemptuous. (R. 5/10/16 at 18-19; 5/19/16 at G17-18; 6/15/16 at H12-14).

Moreover, unlike criminal contempt, which is intended to punish the contemnor for past conduct, civil contempt is "a sanction or penalty designed to compel future compliance with a court order." People v. Warren, 173 Ill. 2d 348, 368 (1996). Thus, a civil contemnor must be given the "keys to [her] cell" so that she is able to purge the civil contempt by doing that which the court has ordered her to do. Felzak v. Hruby, 226 Ill.

2d 382, 391 (2007). Here, the trial court's contempt order gave Ms. Campanelli the opportunity to purge herself of the contempt by accepting appointment as counsel for defendant Cole. (C. 205-07; R. 6/15/16 at H15) As such, it was a facially valid order.

Furthermore, a reviewing court will not disturb a trial court's civil contempt finding unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. Logston, 103 Ill. 2d at 286-287. Ms. Campanelli does not dispute that she intentionally ignored the trial court's order, so the contempt finding is not against the manifest weight of the evidence. See Vancura v. Katris, 238 Ill. 2d 352, 374 (2010) (finding is against the manifest weight when "an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence"). Also, as the record fully demonstrates that the trial court was highly reluctant to hold Ms. Campanelli in contempt and instead repeatedly implored her to reconsider her position, it cannot be said that the court's contempt order was an abuse of discretion. See People v. McDonald, 2016 IL 118882, ¶ 32 ("an abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it").

Here, the trial court took pain-staking efforts to ensure that defendant Cole's rights to conflict-free counsel were protected and that she would be properly represented because she faced first degree murder and other serious felony charges. Ms. Campanelli disagreed, but as the trial court correctly observed (R. 6/15/16 at H14), the proper mechanism to challenge that ruling was through the appellate process, not a willful refusal to abide by the court's order appointing the Public Defender's Office to represent defendant Cole. See, e.g., People v. Williams, 139 Ill. 2d 1, 9 (1990).

Moreover, despite her disagreement with the court's ruling, Ms. Campanelli could have accepted the appointment without fear of any ethical consequences for herself or her assistants. Under the Rules of Professional Conduct, a lawyer may continue to represent a person even if she has a good-faith belief that a trial court has erroneously denied a motion to withdraw due to a conflict of interest. See RPC 1.16(c) ("When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.").

Finally, because Ms. Campanelli persisted in her refusal to accept the appointment knowing that her arguments had been consistently rejected by the courts (including this Court), she "interfere[d] with the orderly administration of justice" (People v. Miller, 51 Ill. 2d 76, 78 (1972)), and continued to delay the proceedings even after the trial court formally rejected her arguments. As such, this Court should affirm the contempt finding.

**B. The Rules of Professional Conduct Do Not Prohibit Different Lawyers from a Public Defender's Office from Representing Co-Defendants in a Single Case.**

Ms. Campanelli refused to accept the appointment because she believed that her office's representation of co-defendants in a single case is automatically improper in every case. (See R. 5/19/16 at G4 – "I cannot represent more than one client on a case because of the potential conflict"). However, the trial court properly rejected such a claim because this Court has made clear that the lone fact of joint representation of multiple defendants does not create a per se conflict of interest. People v. Nelson, 2017 IL 120198, ¶ 29. See also People v. Orange, 168 Ill. 2d 138, 156 (1995); People v. Vriner, 74 Ill. 2d 329, 340-41 (1978); People v. Berland, 74 Ill. 2d 286, 299-300 (1978);

People v. Durley, 53 Ill. 2d 156, 160 (1972). As Durley recognized, "[i]t is unquestioned that co-defendants should have a right to separate counsel *if their positions are antagonistic*. But such antagonism is not necessarily present in every instance where the same attorney represents two or more co-defendants merely by virtue of such representation." 53 Ill. 2d at 160 (emphasis added and internal citation omitted).

Furthermore, because "[h]ypothetical or speculative conflicts will not suffice" to disqualify an attorney (see People v. Jones, 121 Ill. 2d 21, 29 (1988)), the trial court properly asked Ms. Campanelli to point to some "concrete evidence" of a conflict between defendant Cole and her co-defendants to support Campanelli's refusal to accept the appointment. See People v. Coates, 109 Ill. 2d 431, 438-39 (1985) ("a case-by-case examination is necessary to determine whether any facts peculiar to the case preclude the representation of the individuals whose interests were allegedly in conflict"). Because Ms. Campanelli cited nothing beyond the mere fact of simultaneous representation of co-defendants, the court properly rebuffed her assertion that both she and the entire the Cook County Public Defender's Office were incapable of ethically representing defendant Cole.

Also, contrary to Ms. Campanelli's belief (Opening Br. at 16-17), the necessity of identifying a conflict under the "peculiar" facts of the case is wholly consistent with Rule 1.7, which prohibits the simultaneous representation of co-defendants only where "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client." RPC 1.7(a)(2). Ms. Campanelli cites Comment 23 to the Rule ("[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") as making the prohibition against joint representation "explicit." (Opening Br. at 17) But both the rule and the comment fall short of adopting a categorical prohibition. Most importantly, Rule 1.7 requires a case-by-case examination of whether the particular facts reflect a "significant risk" of conflicting loyalties under the circumstances.

But even if Ms. Campanelli were correct about the general meaning of Rule 1.7, it does not apply to government lawyers like her in the same manner that it applies to private attorneys. In Illinois, Public Defenders' Offices are government agencies. See 55 ILCS 5/3-4001 et seq. Rule 1.10(a) imputes a conflict to all lawyers in a law firm. RPC 1.10(a)("[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 Rules 1.7"). But Rule 1.10 specifies that a different rule applies to government attorneys. See RPC 1.10(d) ("The disqualification of lawyers associated in a firm with former or *current government lawyers* is governed by Rule 1.11.") (emphasis added). Under that rule, Rule 1.11(d)(1), "a lawyer currently serving as a public officer or employee" is relieved of the conflict of interest restrictions found in Rule 1.7 where the law "otherwise expressly permit[s]" the lawyer's involvement in the matter. See also Comment 2 to RPC 1.11 ("Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers."). Courts in other states have held that because Public Defender Offices are government agencies rather than private law firms, conflicts are not imputed to attorneys in such offices. See

People v. Shari, 204 P.3d 453, 459-60 (Colo. 2009); Anderson v. Comm'r of Corr., 15 A.3d 658 (Conn. App. Ct. 2011).

Here, there can be no dispute that Ms. Campanelli is a "public officer." Her position was created by the legislature (see 55 ILCS 5/3-4001), and her sworn duty to "act as attorney, without fee . . . for all persons . . . who are charged with the commission of any criminal offense, and . . . who are unable to employ counsel" (55 ILCS 5/3-4006) is imposed by statute. Likewise, it is clear that all Assistant Public Defenders are "public employees," as they are appointed by the Public Defender and serve at her pleasure. See 55 ILCS 5/3-4008 & 55 ILCS 5/3-4008.1. Under these statutes, Public Defenders like Ms. Campanelli and her assistants must provide representation "for all persons" who are charged with a crime and unable to retain private counsel. No automatic exception was made for co-defendants.

Furthermore, for nearly 40 years, this Court's caselaw has "expressly permit[ted]" representation of co-defendants by different Assistant Public Defenders from the same office. Specifically, in Robinson, this Court held that representation of co-defendants in a single case by different members of the Public Defender's staff in and of itself does not amount to an impermissible conflict of interest, even if they ultimately develop antagonistic defenses. 79 Ill. 2d at 168-69. Robinson, consolidated three cases from across the State to resolve the question of whether the conflicts of interest rules applied to Public Defender's Offices. Id. at 154. In particular, in two of the cases, the Public Defender of the respective county personally represented one defendant while Assistant Public Defenders from the same office represented the other co-defendants. Id. at 152, 153. While recognizing that such joint representation would be prohibited for a private

law firm, this Court stressed that no disqualifying conflict of interest was present in the cases because the individual defendants were "represented by different members of the public defender's staff." Id. at 169, 172. This Court noted that while such joint representation might involve an actual conflict in a particular case, hypothetical or speculative conflicts will not suffice. Id. at 169-70.

Robinson's holding has never been questioned, by this Court, much less overruled. Likewise, nothing in the language of the Rules or their comments indicates that this Court intended to undermine Robinson when it adopted the Illinois Rules of Professional Conduct of 2010. Thus, Rule 1.11(d)(1) applies to Public Defender's Offices and the trial court's order appointing the Public Defender's Office to represent defendant Cole was proper.

### C. Public Defenders' Offices are not "Firms" under the Rules of Professional Conduct.

Even if Rule 1.11(d)(1) did not control, Ms. Campanelli's argument that the Public Defender's Office should be treated as a "firm" under the Rules of Professional Conduct should be rejected. Rule 1.0(c) provides that "'[f]irm' or 'law firm' denotes 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." However, Public Defender's Offices are unlike private law firms because they are statutorily-created, government agencies whose primary responsibility is to provide legal representation to indigent persons charged with criminal offenses.

More importantly, however, this Court has explicitly held that a Public Defender's Office is not a "firm" under "the generally recognized canon which directs that if an attorney is disqualified by reason of conflict of interest no member of his firm may continue in the representation." Robinson, 79 Ill. 2d at 156. This Court has expressly reaffirmed Robinson's holding. See People v. Banks, 121 Ill. 2d 36, 41 (1987) ("[p]ublic defender's offices . . . are unlike private law firms for purposes of conflicts of interest. While a conflict of interest among any member of a private law firm will disqualify the entire firm, the disqualification of an assistant public defender will not necessarily disqualify all members of that office"); People v. Miller, 79 Ill. 2d 454, 461 (1980) ("reject[ing] the notion that a public defender's office is to be treated as a law firm or an 'entity' in considering a conflict of interest claim").

Although Ms. Campanelli recognizes this unbroken chain of precedent, she claims that Robinson should be revisited because it is both "poorly reasoned" and "unworkable." (Opening Br. at 29-31) However, Ms. Campanelli has not established that this is the case. Robinson understood that Public Defender's Offices are unlike private law firms, because the lawyers who make up such offices (i.e., Assistant Public Defenders) have no shared financial interest in the individual cases and are instead motivated by their commitment to providing the high quality advocacy on behalf of indigent defendants. 79 Ill. 2d at 159 (noting that "the inbred adversary tendencies of the lawyers are sufficient protection" against the risk of conflicts in multiple representation by Public Defender's Offices) (internal quotation marks and citation omitted). See also State v. Severson, 147 Idaho 694, 707, 215 P.3d 414, 427 (2009) (distinguishing Public Defender's Offices from private law firms because "[u]nlike lawyers in a firm, public defenders do not have a

financial incentive to represent clients with conflicts of interest because they do not share legal fees").

Moreover, by rejecting automatic exclusion of Public Defender's Offices for the "quite remote" possibility that an Assistant Public Defender would "labor under a conflict of interest [simply] because another member of the staff was so burdened," Robinson ensures that highly qualified counsel is available for all defendants, regardless of means. 79 Ill. 2d at 159 ("In many instances the application of such a *per se* rule would require the appointment of counsel with virtually no experience in the trial of criminal matters, thus raising, with justification, the question of competency of counsel.").

To the contrary, Ms. Campanelli's interpretation would have far reaching consequences that confirm the wisdom of Robinson. Beyond the multiple defendant context, treating Public Defender's Offices as law firms would require prohibiting them any defendant in a case the Public Defender's Office contemporaneously represents one of the prosecution witnesses in the case (see People v. Thomas, 131 Ill. 2d 104, 111-12 (1989)), or in which it previously represented the victim in the matter, no matter how long ago or how brief the representation may have been. See People v. Hernandez, 231 Ill. 2d 134, 151-52 (2008). Because such a rule would require the disqualification of the Public Defender and all of her assistants from many cases, the pool of qualified lawyers available to represent an indigent defendant in any particular case — particularly in the more rural parts of the State — would necessarily grow smaller. While this might not be an insurmountable problem in the larger counties of the State, it would certainly pose a difficulty in smaller counties.

Moreover, Ms. Campanelli's argument ignores the fact that there are limited resources available to pay for appointed private counsel, and overlooks the fact that due to economies of scale, Public Defender's Offices can provide high quality representation (and very often *higher* quality representation) to indigent defendants at a significantly lower cost to the taxpayers than appointed private counsel. The record on appeal bears this out, where it shows that the court ordered defendant Cole's appointed counsel to be paid nearly $5,000 for services rendered in just the first month after his appointment to represent defendant Cole. (C. 216) Thus, the Robinson rule is not "poorly reasoned."

Similarly, the record refutes Ms. Campanelli's claim that the Robinson rule has proven "unworkable." In particular, the trial court here was able to carefully apply this Court's precedent and determine that although there was no basis to grant Ms. Campanelli's motion to withdraw from representing co-defendants Morgan and Sago, she made a sufficient demonstration of an actual conflict of interest as it related to co-defendants Whitehead and Reed. (S.R. 71) Importantly, the trial court stressed that it was "not asking the Public Defender of Cook County to violate any trust with her clients" and instead agreed with the Assistant Public Defender that the risk of a potential of a potential conflict of interest between those co-defendants was substantial based on the particular charges and the publicly known facts. (S.R. at 69-71) As such, this Court should reject Ms. Campanelli's request to overrule Robinson.

### D. Robinson is Consistent With Decisions of the Majority of State Supreme Courts that Have Addressed the Issue.

Moreover, although not mentioned in either Ms. Campanelli's brief or the amicus briefs filed on her behalf, state supreme courts across the country have repeatedly

recognized the distinction between Public Defender's Offices and private law firms for purposes of imputing conflicts of interest from one lawyer to another. See State v. St. Dennis, 2010 MT 229, ¶¶ 28-32, 244 P.3d 292, 297-98 (2010); State v. Mark, 123 Haw. 205, 245-246, 231 P.3d 478, 518-19 (2010); Severson, 147 Idaho at 706-07, 215 P.3d at 426-27 (2009); People v. Shari, 204 P.3d 453, 459 (Colo. 2009); Bolin v. State, 2006 WY 77, ¶¶ 23-28, 137 P.3d 136, 144-46 (2006); Burns v. State, 281 Ga. 338, 340, 638 S.E.2d 299, 301 (2006); State v. Webb, 238 Conn. 389, 420, 680 A.2d 147, 167 (1996); People v. Perez, 70 N.Y.2d 773, 774, 515 N.E.2d 901, 901 (1987); State ex rel. Public Defender Comm'n. v. Bonacker, 706 S.W.2d 449, 451 (Mo. 1986); State v. Bell, 90 N.J. 163, 167-71, 447 A.2d 525, 527-28 (1982). But see Duvall v. State, 399 Md. 210, 232, 923 A.2d 81, 95 (2007), Bouie v. State, 559 So. 2d 1113, 1115 (Fla. 1990); Commonwealth v. Westbrook, 484 Pa. 534, 540, 400 A.2d 160, 162 (1979); Restatement (Third) of the Law Governing Lawyers § 123, cmt. d(iv) (explaining that "rules on imputed conflicts and screening of [the] Section apply to a public-defender organization as they do to a law firm in private practice in a similar situation").

The fact that the majority of courts that have addressed this issue (and in particular the most recent decisions) have reached the same conclusion as Robinson demonstrates that Robinson was neither poorly reasoned nor unworkable. As such, this Court should reaffirm Robinson, reject Ms. Campanelli's arguments, and affirm the trial court's ruling.

**E. The Contempt Finding Should Be Affirmed Where Neither Ms. Campanelli's Nor Defendant Cole's Constitutional Rights Were Infringed by the Trial Court's Order Appointing the Cook County Public Defender and Ms. Campanelli's Actions Interfered with the Orderly Administration of Justice.**

Ms. Campanelli claims that the trial court's contempt ruling wrongly "sanctioned Ms. Campanelli for refusing to violate Ms. Cole's (and other codefendants') state and federal constitutional rights." (Opening Br. at 35) However, aside from the fact that it is well-established that joint representation of co-defendants does not automatically violate a defendant's rights under the Federal or State constitutions (see Holloway v. Arkansas, 435 U.S. 475, 481-82 (1978); Nelson, 2017 IL 120198, ¶ 29), Ms. Campanelli does not have standing to assert defendant Cole's constitutional rights in this proceeding (that appeals her contempt citation). See, e.g., People v. James, 118 Ill. 2d 214, 226 (1987) (recognizing the "fundamental principle that a claim to suppress the product of a fourth amendment violation can be asserted only by those whose rights were violated by the search or seizure itself") (internal quotation marks omitted). As such, her arguments should be rejected and the trial court's ruling affirmed.

## CONCLUSION

The People respectfully request that this Honorable Court affirm the judgment of the Circuit Court of Cook County.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 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, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 24 pages.

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PLEASE TAKE NOTICE that on July 12, 2017, the foregoing Brief and Argument for Plaintiff-Appellee was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system.

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**CERTIFICATE OF SERVICE**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. I further certify that on July 12, 2017, I caused the foregoing Brief and Argument for Plaintiff-Appellee to be served on the above mentioned persons at the above email addresses and also by having courtesy copies of the documents placed in the United States mail, with proper postage affixed.

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