No. 120997

IN THE SUPREME COURT OF ILLINOIS

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

REPLY BRIEF FOR CONTEMNOR-APPELLANT AMY P. CAMPANELLI

MICHAEL A. SCODRO
SAMUEL D. BLOCK
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, Illinois 60606-4637
Tel: (312) 782-0600
mscodro@mayerbrown.com

CHARLES B. SKLARSKY
CLIFFORD W. BERLOW
RAMON VILLALPANDO
BRIANA T. SPRICK SCHUSTER
NATHANIEL K.S. WACKMAN
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, Illinois 60654-3456
Tel: (312) 840-7366
cberlow@jenner.com

Counsel for Amy P. Campanelli, Contemnor-Appellant

ORAL ARGUMENT REQUESTED

E-FILED
8/9/2017 3:52 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

POINTS & AUTHORITIES

REPLY BRIEF

Ms. Campanelli established in her opening brief that Rules 1.7 and 1.10 of the Illinois Rules of Professional Conduct ensure a guarantee at the heart of the constitutional right to counsel: the right to conflict-free representation. The State does not contest that showing. Nor does the State challenge virtually any of the claims Ms. Campanelli makes in light of that showing, including that conflicts can arise so easily between codefendants that the Rules effectively forbid private lawyers from representing codefendants. Instead, the State asks this Court to use Rule 1.11 to read an unwritten exception into the plain language of Rule 1.7, which would affect solely one vulnerable subclass—indigent criminal defendants.

The State musters only two weak doctrinal theories in support of that intolerable result, neither of which supplies the "express" support needed to rationalize its implausible reading of Rule 1.11. First, and contrary to the State's claim, the Public Defender Act says nothing about dispensing with Rules 1.7 and 1.10, and basic separation of powers principles preclude the General Assembly from preempting the Court's power to regulate legal ethics. Second, *People v. Robinson*, 79 Ill. 2d 147 (1979), gets the State nowhere, for it is incongruous and predates the existence of written ethical rules. So the State is left with one-sided policy arguments that are wrong on their own terms and fail to wrestle with the corresponding harm the State's position causes to indigent criminal defendants.

More fundamentally, the State's argument fails because it ignores that conflict-free representation is protected by the Constitution, *Holloway v.*

Arkansas, 435 U.S. 475, 481–82 (1978), and is crucial to achieving justice for all criminal defendants, not just those with means to retain private counsel, *People v. Lawson*, 163 Ill. 2d 187, 208–10 (1994). The State seeks to skirt that issue by asserting—incorrectly—that Ms. Campanelli never told the circuit court that her existing client, Ashley Washington, and her prospective client, Salimah Cole, had an actual conflict. But aside from being untrue, this misses the point. The circuit court held Ms. Campanelli in contempt for refusing to violate the constitutional rights of either Ms. Washington or Ms. Cole. Neither the Sixth Amendment nor Article I, Section 8 of the 1970 Illinois Constitution will tolerate such a broadside on the constitutional guarantee of conflict-free legal counsel.[1]

I. The Circuit Court Erred Because Ms. Campanelli Would Have To Violate The Rules Of Professional Conduct To Represent Ms. Cole.

A. Rule 1.7 Forbids Ms. Campanelli From Representing Codefendants Ms. Cole And Ms. Washington.

In her opening brief, Ms. Campanelli demonstrated that under Illinois law, she is counsel of record in every case in which she is appointed. Campanelli Br. at 21–23. That means Rule 1.7 applies each and every time Ms. Campanelli is appointed to represent a criminal defendant and, as a result, she cannot accept any appointment that creates "a significant risk that the representation of one or more

[1] The State contends that this Court should review the circuit court's order for an abuse of discretion, State Br. at 12–13, while Ms. Campanelli has demonstrated that "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*," Campanelli Br. at 14. These standards are two sides of the same coin. This Court has held that it is *always* an abuse of discretion to base an order on an erroneous legal conclusion. *See Seymour v. Collins*, 2015 IL 118432, ¶ 50 & n.6.

clients will be materially limited by [her] responsibilities to another client." Ill. R. Prof'l Conduct 1.7(a)(2). Comment 23 to the Rule further confirms that representing more than one codefendant in a criminal case carries a "grave" inherent risk of such a conflict. *Id.* at cmt. 23; *see* Campanelli Br. at 16–18.

The State does not deny that Ms. Campanelli is counsel in every case she supervises, that Rule 1.7 bars lawyers from accepting representations where there would be a "significant risk" of an actual conflict, or that the simultaneous representation of criminal codefendants creates such a "grave" risk.[2] The State also does not deny that Rule 1.7 would forbid a private lawyer from simultaneously representing both Ms. Cole and Ms. Washington, absent the knowing and voluntary consent of each. Instead, the State seeks to discard Rule 1.7 entirely on the theory that Rule 1.11 trumps Rule 1.7 when the Public Defender is involved. State Br. at 16–18. Specifically, the State isolates language in Rule 1.11(d) exempting a government attorney from Rule 1.7 where expressly permitted by law and reasons that because the Public Defender Act is silent as to Rule 1.7, it does not apply to the Public Defender. Were that so, indigent criminal defendants—and only indigent criminal defendants—would have no choice but to accept the "grave" risk of conflicted counsel described in Rule 1.7.

[2] Nor does the State meaningfully respond to any of the arguments made in the three *amicus* briefs filed in support of Ms. Campanelli on behalf of the National Association of Criminal Defense Lawyers, the National Association for Public Defense, and three leading Illinois legal ethics scholars.

The State's position is meritless. Rule 1.11 does not supplant Rule 1.7 wholesale. Rather, Rule 1.11 targets the ethical issues that arise when attorneys move between government and private employment; it does not relax the ethical standards for attorneys who represent indigent criminal defendants.

1. Rule 1.11 Does Not Dispense With Rule 1.7 For All Public Employees Like Ms. Campanelli.

Rule 1.11 confirms that Rule 1.7 applies to the Public Defender. It provides that "[e]xcept as law may otherwise *expressly* permit, a lawyer currently serving as a public officer or employee is subject to Rules 1.7 and 1.9." Ill. R. Prof'l Conduct 1.11(d)(1) (emphasis added). There is no authority expressly stating that Rule 1.7 does not apply to the Public Defender. Indeed, the first comment to Rule 1.11 confirms that government attorneys cannot participate in representations that would present a conflict under Rule 1.7. Ill. R. Prof'l Conduct 1.11, cmt. 1. And this Court has held that Rule 1.7 is binding on government lawyers. *Ferguson v. Patton*, 2013 IL 112488, ¶ 34 (citing Rule 1.11(d)).

The State's reasoning to the contrary disregards the burden Rule 1.11(d)(1)'s plain language imposes on a party relying on its exception—to identify law *expressly* foreclosing application of Rule 1.7. In particular, although the State claims the Public Defender Act expressly exempts the Public Defender from Rule 1.7, it cites only the Public Defender Act's *general* instruction that the Public Defender serve as counsel to indigent criminal defendants. State Br. at 17. From that general provision, the State can only *infer* that because the Act lacks an explicit "exception" from the Public Defender's assignment, there is no room for

Rule 1.7 to apply. *Id.* (citing 55 ILCS 5/3-4006 (2016)). But the statutory language the State cites never mentions the Rules and comes nowhere close to expressly permitting conflicts under Rule 1.7.

In fact, the same section of the Act recognizes that the Public Defender may have conflicts and instructs that in such a case, the court must appoint counsel *other than* the Public Defender. 55 ILCS 5/3-4006 (2016). Far from expressly negating Rule 1.7, therefore, the Act accommodates the same interest that Rule 1.7 protects. The text of the Act thus supports Ms. Campanelli, not the State.

Further, even if the Public Defender Act could be read to *expressly* exempt the Public Defender from Rule 1.7, this Court should not construe its Rules as being subject to override by the General Assembly. That would raise serious separation-of-powers concerns. Time and again, this Court has rejected legislative attempts to interfere with the Court's constitutional authority to supervise the legal profession and the courts. *E.g.*, *Kunkel v. Walton*, 179 Ill. 2d 519, 528–29 (1997) ("[T]he separation of powers principle is violated when a legislative enactment unduly encroaches upon the inherent powers of the judiciary, or directly and irreconcilably conflicts with a rule of this court on a matter within the court's authority."); *People v. Joseph*, 113 Ill. 2d 36, 45 (1986) ("[T]he legislature is without authority to interfere with a product of this court's supervisory and administrative responsibility.") (internal quotation marks and citation omitted).

Moreover, the State's strained construction of Rule 1.11 requires the Court to ignore that when interpreting a statute (or as here, a Rule of Professional

Conduct), courts must "consider the rule in its entirety, keeping in mind the subject it addresses and the apparent intent of the drafters in enacting it." *People v. Dominguez*, 2012 IL 111336, ¶ 16 (citing *People v. Perry*, 224 Ill. 2d 312, 323 (2007)). "'Words and phrases should not be considered in isolation; rather, they must be interpreted in light of other relevant provisions and the statute as a whole.'" *People v. Tousignant*, 2014 IL 115329, ¶ 8 (quoting *Cty. of DuPage v. Ill. Labor Relations Bd.*, 231 Ill. 2d 593, 604 (2008)).

Here, when read as a whole, the four sections of Rule 1.11 compel the conclusion that the Rule addresses conflicts issues that arise when an attorney moves between private and public employment, and not the conflicts issues a government lawyer faces in the ordinary course of her practice. Section (a) of Rule 1.11 provides that a lawyer who previously was "a public officer or employee of the government" cannot represent a client in connection with a private matter the lawyer worked on as a government lawyer unless the government consents. Section (b) provides that a former government lawyer's conflicts under Section (a) are imputed to that lawyer's new private firm, with limited exceptions. Section (c) limits a former government lawyer's use of government information and provides that under certain circumstances, the former government lawyer's new private firm may represent clients on matters from which the former government lawyer is screened. And Section (d), the only section the State cites even in part, states in its entirety that "[e]xcept as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee is subject to Rules 1.7 and

1.9; *and* shall not participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment." (emphasis added).[3] Accordingly, all four sections of Rule 1.11 address so-called "revolving door" issues, rather than garden-variety conflicts a current government lawyer encounters in her practice. The State's expansive view of Rule 1.11 thus cannot be correct.[4]

Having failed to identify any statute or Court Rule that *expressly* permits the Public Defender to violate Rule 1.7, the State cites *People v. Robinson*, 79 Ill. 2d 147, for this purpose. State Br. at 17–18. This argument is nonsensical. *Robinson* could not expressly permit an exception to a rule that was not enacted until long after *Robinson* was decided. Worse, *Robinson* did not address the question here—whether the Public Defender suffers from a personal conflict due

---

[3] To the extent the exception in Rule 1.11(d) has any application outside the context of revolving door considerations, Paragraph 18 of Article VIII, which appears in the Rules' prefatory text, suggests that its purpose is to accommodate the Attorney General and the State's Attorneys. It provides that "lawyers under the supervision of [certain government] officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients." The need for the Rules to accommodate this narrow and well-recognized exception would account for any unique carve-out created by Rule 1.11(d).

[4] The comments to Rule 1.11 further confirm that the Rule addresses "revolving door" issues. *E.g.*, cmt. 2 (providing that the subsections of the Rule "restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government *toward a former government or private client*") (emphasis added); cmt. 3 ("a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service"); cmt. 4 ("the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government").

to her unique position as counsel in all cases her office handles. Rather, *Robinson* considered a distinct issue involving *imputed* conflicts within a government office. Nor does *Robinson* support the conclusion that an attorney may represent a client when there exists "a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client." *See* Ill. R. Prof'l Conduct Rule 1.7(a)(2). To the contrary, *Robinson* quoted guidance from the American Bar Association stressing the importance of avoiding conflicts and warning about the grave risk of such a conflict when one attorney represents codefendants. 79 Ill. 2d at 159, 168–69; *see* Campanelli Br. at 29–30.

2. The State's Policy Arguments Cannot Overcome The Text Of Rule 1.7.

Having failed to carry its burden of identifying an express exception to Ms. Campanelli's Rule 1.7 obligations, the State attempts to achieve the same result with a series of policy arguments. But those arguments also fail to justify the contempt order, a $250 per day fine, or the result reached by the court below—requiring an indigent criminal defendant to accept representation by an attorney who already represents one of her codefendants.

The State first suggests that if the Public Defender cannot represent codefendants, then some criminal defendants will receive incompetent counsel. State Br. at 16–17. That is simply untrue. There is no shortage of qualified Illinois attorneys to represent criminal defendants. As Ms. Campanelli pointed out in her opening brief, and the State does not dispute, "Illinois has a highly competent criminal defense bar," as evidenced by the "Criminal Justice Act panels in each of

the three federal districts in Illinois composed of attorneys competent to provide 'adequate representation' for indigent defendants." Campanelli Br. at 30 (citing 18 U.S.C. § 3006A(a)(3)). So the State presents the Court with a false choice between authorizing conflicted or incompetent counsel for indigent criminal defendants. The high-quality pool of available lawyers in Illinois will ensure that indigent criminal defendants receive what all other criminal defendants indisputably possess—a right to competent representation free of conflicts.

The State then argues that should not bear the added cost of obtaining conflict-free counsel for indigent criminal defendants. *See* State Br. at 21. Justice cannot be achieved, however, if conflict-free defense counsel is a luxury limited to those who can afford private representation. *Gideon v. Wainwright*, 372 U.S. 335, 343–45 (1963). The State also overestimates the cost of protecting a defendant's right to conflict-free counsel, for solutions are easily imaginable.[5] Nor does the State rebut the fact that Cook County already appropriates funds for the appointment of private counsel and that those funds often are not depleted at the end of the year. *See* Campanelli Br. at 9 n.2. Most importantly, however, this Court has long made clear that budgetary concerns do not trump constitutional principles. *See In re Pension Reform Litig.*, 2015 IL 118585, ¶¶ 87–89. As the U.S.

[5] For example, the General Assembly could authorize the assignment of codefendant representation to public defenders in neighboring counties, which would neither increase the cost nor decrease the quality of representation. *See* Nat'l Ass'n of Pub. Def. Br. as *Amicus Curiae* at 7 (noting states that allow for appointment of "a public defender from another area" to represent defendants when normally-assigned public defender's office has a conflict of interest).

Supreme Court has held, "the cost of protecting a constitutional right cannot justify its total denial." *Bounds v. Smith*, 430 U.S. 817, 825 (1977).

In all events, the State ignores the other side of the ledger—the high probability that mandatory representation of codefendants will result in actual conflicts that violate the constitutional rights of indigent criminal defendants. Indeed, the State does not respond to the explanation in Ms. Campanelli's opening brief as to the risk the State's position would create for indigent criminal defendants. Campanelli Br. at 18–21. It does not respond because the State's position is indefensible.

B. Rule 1.10 Does Not Permit The Office Of The Cook County Public Defender To Represent Both Ms. Cole And Ms. Washington.

In arguing that the Public Defender's Office is not a "firm" under Rule 1.10, the State seeks to distract from the plain language of the Rule. Rule 1.0(c) defines a "firm" as an "association authorized to practice law" or "a legal services organization," a definition that fits the Public Defender's Office as a hand in glove. The State offers three arguments in response, but none has merit.

First, the State argues that "statutorily-created, government agencies whose primary responsibility is to provide legal representations to indigent persons charged with criminal offenses" are not firms. State Br. at 18. But that exclusion appears nowhere in the text of the Rule, and it is fundamental that a court cannot "depart from the plain language of [an Illinois Supreme Court] rule by reading into it exceptions, limitations, or conditions that conflict with the expressed intent." *Dominguez*, 2012 IL 111336, ¶ 16.

Second, the State claims that this Court resolved the question of Rule 1.10's application in *Robinson*. State Br. at 19. But as Ms. Campanelli pointed out in her opening brief, *Robinson*—decided in 1979—predates the existence of *any* written Illinois Rules of Professional Conduct and thus did not interpret or apply the text of any version of the Rules. Campanelli Br. at 27–28. Nor does the State account for the more analogous precedent, *People v. Spreitzer*, 123 Ill. 2d 1, 18 (1988), which holds that when any lawyer—public or private—brings the risk of a conflict to the court's attention "at an early stage . . . a duty devolves upon the trial court to either appoint separate counsel or to take adequate steps to ascertain whether the risk of conflict was too remote to warrant separate counsel." Lastly, *Robinson* acknowledged that "[l]awyers who practice their profession side-by-side, literally and figuratively, are subject to subtle influences that may well affect their professional judgment and loyalty to their clients," and the Court was reluctant to draw ethical distinctions between public and private lawyers. *Robinson*, 79 Ill. 2d at 156 (internal quotation marks and citation omitted).

Third, the State tries to divert attention from the plain language of Rule 1.10 by creating the illusion that a majority of other state courts hold that Public Defenders' Offices are not firms. This is incorrect. State Supreme Courts construing textually analogous rules to Illinois Rule 1.10 often begin and end with the plain language of their rules. *See, e.g.*, *In re Formal Advisory Op. 1-10*, 744 S.E.2d 798, 799–800 (Ga. 2013) ("[u]nder a plain reading of Rule 1.10(a) and the comments thereto, . . . each judicial circuit's public defender's office is a 'firm' as

the term is used in the rule"); *State v. Veale*, 919 A.2d 794, 796 (N.H. 2007), *abrogated on other grounds by State v. Thompson*, 20 A.3d 242, 257 (2011) ("We think it obvious that the appellate defender and the public defender are, individually, legal services organizations that qualify as firms").

Although the State creates the impression of majority support for its view, it does so only by failing to cite cases that found no distinction between Public Defenders' Offices and private law firms for the purpose of conflict imputation. State Br. at 21–22. Yet there is at least as much persuasive authority adopting a *per se* conflict imputation rule for Public Defenders' Offices, including two states with language identical to Illinois Rule 1.10(d) and 1.11(d)(1). *See, e.g.*, *State v. Garcia*, 2009-1578 (La. 11/16/12); 108 So. 3d 1, 28, (identical language); *Duvall v. State*, 923 A.2d 81, 95 (Md. 2007) (identical language); *Reynolds v. Chapman*, 253 F.3d 1337, 1343 (11th Cir. 2001); *State v. Hunsaker*, 873 P.2d 540, 542 (Wash. Ct. App. 1994); *Okeani v. Superior Ct.*, 871 P.2d 727, 729 (Ariz. Ct. App. 1993); *Bouie v. State*, 559 So. 2d 1113, 1115 (Fla. 1990); *In re Hoang*, 781 P.2d 731, 735–36 (Kan. 1989); *Commonwealth v. Westbrook*, 400 A.2d 160, 162–63 (Pa. 1979); *see also* Restatement (Third) of the Law Governing Lawyers § 123 cmt. d(iv).

C. Alternatively, Even If Rule 1.11 Governs, Ms. Campanelli Cannot Be Compelled To Represent Ms. Washington Because The Public Defender Stated There Was An Actual Conflict.

The State concedes that courts may not require an attorney to represent codefendants if an actual conflict exists between them. State Br. at 15, 18, 21. That

means the State's argument depends upon its claim that Ms. Campanelli did not notify the circuit court that she faced an actual conflict. State Br. at 15.

But she did. As demonstrated in her opening brief, Ms. Campanelli *twice* notified the court of a direct conflict, while explaining that she could not disclose further details without violating the attorney-client privilege. Campanelli Br. at 24–26. First, she informed the circuit court in a brief explaining her refusal to accept the appointment 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[.]" C186. One day later, Ms. Campanelli told the judge in open court "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).

The circuit court improperly refused to acknowledge the actual conflict, and the State now repeats the error. Having conceded that an attorney cannot proceed with representation in the face of a conflict of interest, the State must agree—based on Ms. Campanelli's assertion as an officer of the court that an actual conflict exists—that she could not ethically represent both Ms. Washington and Ms. Cole. On that basis alone, the circuit court's contempt order should be vacated.

II. The Contempt Order Violated The Illinois And Federal Constitutions.

Gideon v. Wainwright declared that the "noble ideal" at the heart of the constitutional right to counsel in a criminal case is that the scope of the right is no different for those "too poor to hire a lawyer" than it is for the rich. 372 U.S. at

344. Regardless of whether a criminal defendant is affluent or indigent, this constitutional guarantee must "be untrammeled and unimpaired by a court order requiring that one lawyer should simultaneously represent conflicting interests." *Glasser v. United States*, 315 U.S. 60, 70 (1942). Every defendant—no matter how poor—must be afforded "the services of an attorney devoted *solely* to [their] interests." *Von Moltke v. Gillies*, 332 U.S. 708, 725 (1948) (plurality opinion) (emphasis added). The State offers no response to Ms. Campanelli's showing that this right encompasses a right to separate counsel that a defendant must affirmatively waive, which is an opportunity the circuit court did not afford either Ms. Cole or Ms. Washington. *Compare* Campanelli Br. at 34, *with* State Br. at 23.

Notwithstanding the State's implied concession that the circuit court should have obtained consent from both Ms. Cole and Ms. Washington before appointing the same lawyer to represent them, Ms. Campanelli has demonstrated that the circuit court violated the State and Federal Constitutions in two additional respects. First, the circuit court held Ms. Campanelli in contempt for refusing to accept a representation that posed a "serious risk" of a conflict as the case proceeded, not only for Ms. Cole but for Ms. Campanelli's existing client, Ms. Washington. Second, the circuit court held Ms. Campanelli in contempt for refusing to prove that an actual conflict already existed between Ms. Washington and Ms. Cole by disclosing client confidences in open court to the judge assigned to preside over both defendants' criminal trials. In short, the court punished Ms. Campanelli for refusing to violate the State and Federal Constitutions.

The State tries to wish away these constitutional implications in a short, three-sentence paragraph. State Br. at 23. And even this pithy analysis is wrong three times over. It is wrong on the facts of this case. It misstates black-letter constitutional law. And it advances a meritless standing argument in the hopes of dodging the issue entirely.

A. The State Applies The Wrong Law By Starting With The Wrong Facts.

According to the State, the circuit court did not violate the constitutional right to counsel because "it is well-established that joint representation of co-defendants does not automatically violate a defendant's rights under the Federal or State Constitutions." State Br. at 23. Elsewhere, the State claims that to establish a constitutional violation, there must be "some 'concrete evidence' of a conflict" between Ms. Washington and Ms. Cole because "'[h]ypothetical or speculative conflicts will not suffice.'" *Id.* at 14–15 (citations omitted). The response is wrong on both the facts of this case and controlling law.

The State misstates the facts. It asserts that "Ms. Campanelli cited nothing beyond the mere fact of simultaneous representation of co-defendants," State Br. at 15, but as explained, she twice represented to the court that there was an actual conflict between Ms. Washington and Ms. Cole, and the attorney-client privilege prevented her from disclosing any further details. *See* discussion *supra* at 13–14 (citing C186; Tr. May 19, 2016 at G7 (A45)); *see also* Campanelli Br. at 24–26.

That factual error also accounts for the State's legal error. Because Ms. Campanelli raised a conflict immediately and well before any trial proceeding or

conviction, there did not need to be "actual antagonism" between Ms. Cole and Ms. Washington. As this Court has explained in the very case on which the State relies, "[t]he Supreme Court has applied two distinct approaches to the problem of joint representation of codefendants." *People v. Jones*, 121 Ill. 2d 21, 28 (1988). A defendant must show an actual, concrete conflict *only* when raising a conflict for the *first time following a conviction*. *See id.*; *see also People v. Durley*, 53 Ill. 2d 156, 160 (1972). But where the conflict is raised before trial—as it was here—the standard is entirely different: the defendant need only show a "*potential* or *possible*" conflict. *Jones*, 121 Ill. 2d at 28 (emphasis in original). So by identifying even a "potential or possible" conflict before trial (and as noted above, Ms. Campanelli in fact identified an *actual* conflict), Ms. Campanelli established a constitutional violation.

B. The State Fails To Analyze The Controlling U.S. Supreme Court Decision.

The State also fails to analyze the single, dispositive Sixth Amendment decision from the U.S. Supreme Court that governs this case—*Holloway v. Arkansas*, 435 U.S. 475 (1978)— and dooms the State's argument.

In *Holloway*, a single Arkansas public defender was appointed to represent a group of codefendants. *Id.* at 477. As here, before trial, the attorney objected to the joint representation, explaining that he believed based on confidential information he received from his clients that a conflict would arise at trial. *Id.* at 477–78. Because of concerns rooted in privilege, the attorney did not "outline to the trial court [either] the nature of the confidential information received from his

clients [or] the manner in which knowledge of that information created conflicting loyalties." *Id.* at 481.

On direct review from the defendants' convictions, the Arkansas Supreme Court rejected the Sixth Amendment claim, holding that the attorney's refusal to share the privileged information was fatal to any right-to-counsel theory. *Id.* The U.S. Supreme Court reversed. It held that the attorney's "representations, made as an officer of the court, focused explicitly on the *probable risk of a conflict of interests*. The judge then failed either to appoint separate counsel or to take adequate steps to ascertain whether the risk was too remote to warrant separate counsel," which "deprived petitioners of the guarantee of 'assistance of counsel.'" *Id.* at 484 (emphasis added). By focusing on the "probable risk of a conflict of interests," the Court explicitly rejected the argument that a defendant must prove an actual conflict for the Sixth Amendment to apply. *Id.* Rather, it held that trial courts should defer to the judgment of counsel. *Id.* at 485–86. Finally, as the Court rightly recognized, it would be "improper[]" to "requir[e] disclosure of the confidential communications of the client" to prove a potential conflict. *Id.* at 487.

This case is the same in every way that matters. Ms. Washington was indicted and, because she could not afford a private lawyer, Ms. Campanelli was appointed to represent her. When the court later appointed Ms. Campanelli to represent one of Ms. Washington's codefendants, Ms. Cole, Ms. Campanelli immediately told the court that a conflict prevented her from simultaneously representing both clients. Tr. May 19, 2016 at G7 (A45); C186. Ms. Campanelli

also informed the court that client confidences prohibited her from disclosing anything further about that conflict. *Id.* The circuit court, like the trial court in *Holloway*, refused to defer to Ms. Campanelli's judgment, faulting her for not providing "what I would consider concrete evidence of a direct conflict." Tr. May 10, 2016 at 17 (A37); *see also* Campanelli Br. at 10. When Ms. Campanelli continued to resist the fraught choice between undertaking conflicted representation or disclosing client confidences, the court held her in contempt.

Under *Holloway*, the circuit court violated the Sixth Amendment. First, *Holloway* holds that Ms. Campanelli did not have to provide "concrete evidence of a direct conflict" when raising the conflict before trial. *See* 435 U.S. at 482–84. Instead, it holds that Ms. Campanelli needed only to point to "a *potential* or *possible* conflict." *Jones*, 121 Ill. 2d at 28 (emphasis in original) (citing *Holloway*, 435 U.S. at 475). Second, *Holloway* shows when Ms. Campanelli represented to the court that there was such a conflict, the court improperly demanded that she choose between undertaking a conflicted representation or divulging client confidences. The court's decision to hold Ms. Campanelli in contempt for refusing to make that ethically impossible choice simply cannot be squared with *Holloway*.

C. Ms. Campanelli Has Standing To Mount Her Constitutional Defense.

Likely recognizing that *Holloway* resolves this case as a constitutional matter, the State resorts to arguing that "Ms. Campanelli does not have standing to assert defendant Cole's constitutional rights in this proceeding." State Br. at 23. That is simply untenable. This case involves a contempt order *entered against*

Ms. Campanelli. Because she is "appealing the contempt order," that "brings the propriety of the underlying … order," including its constitutionality, before this Court. *See In re Marriage of Newton*, 2011 IL App (1st) 090683, ¶ 27.

The State nonetheless depicts Ms. Campanelli's constitutional argument as invoking the constitutional rights of Ms. Washington or Ms. Cole on her own behalf. State Br. at 23. Yet the State ignores that the harm to Ms. Campanelli is predicated entirely on her refusal to violate the constitutional rights of either Ms. Washington or Ms. Cole. "[S]tanding in Illinois requires only some injury in fact to a legally cognizable interest." *Greer v. Ill. Hous. Dev. Auth.*, 122 Ill. 2d 462, 492 (1988). Ms. Campanelli meets that requirement with ease. The circuit court ordered that she pay $250 a day as a sanction for safeguarding the constitutional rights of her current and prospective clients. Campanelli Br. at 13; *see Brunton v. Kruger*, 2015 IL 117663; *Cesena v. Du Page Cty.*, 145 Ill. 2d 32 (1991); *People v. Boclair*, 119 Ill. 2d 368 (1987). That gives her standing

The State musters a citation to only a single authority in support of its argument against standing. State Br. at 23 (citing *People v. James*, 118 Ill. 2d 214 (1987)). But even that single case does not support the State's standing argument: *James* is a Fourth Amendment case, and this Court has noted that it "no longer uses the rubric of 'standing' when analyzing fourth amendment claims." *People v. Johnson*, 237 Ill. 2d 81, 89–90 (2010). Here, the traditional rubric of standing applies, and Ms. Campanelli has standing if she suffered some legally cognizable injury. *See Greer*, 122 Ill. 2d at 492.

In fact, Ms. Campanelli would have standing to make her constitutional arguments even under the more restrictive standing requirements of federal law. *See Greer*, 122 Ill. 2d at 491 ("[T]o the extent that the State law of standing varies from Federal law, it tends to vary in the direction of greater liberality[.]"). In *United States Department of Labor v. Triplett*, the Supreme Court held that an attorney had standing to challenge a statute that violated his clients' due process rights where, when he accepted fees in a manner prohibited by the statute, he was disciplined by the State Bar. 494 U.S. 715, 720 (1990). This case is no different. The circuit court disciplined Ms. Campanelli because she would violated a court order that prevented her existing and prospective clients from enjoying a conflict-free relationship with Ms. Campanelli—a relationship to which both had a constitutional entitlement. Under *Triplett*, the State's standing argument is meritless.

D. The Court's Orders Also Violated The Illinois Constitution.

The court's appointment and contempt orders also violated Article I, Section 8 of the 1970 Illinois Constitution. Like its federal counterpart, our State Constitution "gives an accused the right of representation free from conflicting interests and entitles him to the undivided loyalty of his counsel." *People v. Ash*, 102 Ill. 2d 485, 495 (1984). But the state right to conflict-free counsel is textually distinct, and this Court has never held that it is in lockstep with the Federal Constitution. Consequently, as explained in Ms. Campanelli's opening brief, this Court must give effect to the added protections that follow from the text of the

Illinois Constitution. Campanelli Br. at 33; *see People v. Caballes*, 221 Ill. 2d 282, 289–90 (2006). To do so, the scope of the State Constitution must be *broader* than its federal counterpart, particularly given its post-*Gideon* vintage. *See, e.g.*, *People v. Clemons*, 2012 IL 107821, ¶ 39. That broader scope indicates that even if the circuit court did not run afoul of the Sixth Amendment, it nonetheless violated the Illinois Constitution.

III. At A Minimum, The Court Should Vacate The Circuit Court's Contempt Order.

The State devotes its lead argument, occupying more than two of the argument section's thirteen pages, to the question of whether, if this Court rejects all of Ms. Campanelli's other arguments, Ms. Campanelli proceeded in bad faith and the contempt sanction—a fine of $250 per day—should remain in place. Not only is that a collateral issue the Court need not ever reach—Ms. Campanelli plainly acted in accordance with her ethical duties, and the court unquestionably violated the State and Federal Constitutions—it is wrong.

"It of course 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) (citing *People ex rel. General Motors Corp. v. Bua*, 37 Ill. 2d 180, 189 (1967)). Because Ms. Campanelli sought the contempt order "to facilitate [an] appeal in good faith" and she did not hold "the trial court up to scorn or ridicule" in the process, the order should be vacated. *SK Handtool Corp. v. Dresser Indus., Inc.*, 246 Ill. App. 3d 979, 1001 (1993) (reversing contempt citation).

As Ms. Campanelli's opening brief shows, the contempt finding against her stemmed from a good faith effort to raise the grave ethical and constitutional consequences of the circuit court's command. Ms. Campanelli had solid legal bases—grounded in both the Illinois Rules of Professional Conduct and settled state and federal constitutional law—to challenge the circuit court's order. The record also demonstrates that Ms. Campanelli dealt with the court respectfully, explaining her dilemma to the judge and asking for the contempt finding as a vehicle for challenging the order. *See* Tr. May 10, 2016 at 18–19 (A38–39). In short, the law and facts both support vacating Ms. Campanelli's contempt sanction.

In arguing that Ms. Campanelli should nonetheless be punished, the State cites authorities that bear no resemblance to this case. In one of them, *People v. Miller*, 51 Ill. 2d 76, 77–78 (1972), this Court *vacated* a contempt sanction, although the attorney had been "injudicious" and "improperly sarcastic" by making "grimaces" and "gratuitous comments" "in the presence of the jury," because even this conduct "constituted a good faith attempt to represent his clients without hindering the court's functions or dignity." *Id.* at 79. If the behavior in *Miller* did not "interfere[] with the orderly administration of justice," *id.* at 78, then surely Ms. Campanelli's good-faith and respectful refusal to accept the appointment to represent Ms. Cole did not. The other authority the State cites is wholly irrelevant—it is a straightforward case about conflicted representation and does not mention contempt once. *See People v. Williams*, 139 Ill. 2d 1 (1990).

The State insinuates that Ms. Campanelli acted in bad faith because Rule 1.16(c) allowed her to accept the court's appointment, regardless of the ethical and constitutional consequences. But Rule 1.16(c) addresses the termination of an ongoing representation, and thus does not apply here because Ms. Campanelli never undertook a representation of Ms. Cole. More importantly, however, Rule 1.16 supports Ms. Campanelli's actions. Rule 1.16(a)(1) instructs that "a lawyer shall not represent a client" if "the representation will result in violation of the Rules of Professional Conduct or other law." So even if Ms. Campanelli had accepted the appointment, she still would have been required to withdraw once it became clear that representing Ms. Cole would violate Rule 1.7. *See* Ill. R. Prof'l Conduct 1.11(d)(1).

Furthermore, the supporting commentary to Rule 1.16 further confirms that Ms. Campanelli did exactly what was required of her. The comment provides that when an attorney withdraws, a "court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient." Ill. R. Prof'l Conduct 1.16, cmt. 3. That is just what Ms. Campanelli attempted to do.

Because Ms. Campanelli acted in good faith to test the validity of the circuit court's order, at a minimum this Court should vacate the contempt citation and the $250 per day fine against her.

CONCLUSION

For these reasons, and those stated in her opening brief, 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.

August 9, 2017

Respectfully Submitted,

/s/ Clifford W. Berlow
CLIFFORD W. BERLOW

CHARLES B. SKLARSKY
CLIFFORD W. BERLOW
RAMON VILLALPANDO
BRIANA T. SPRICK SCHUSTER
NATHANIEL K.S. WACKMAN
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, Illinois 60654-3456
Tel: (312) 840-7366
cberlow@jenner.com

MICHAEL A. SCODRO
SAMUEL D. BLOCK
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, Illinois 60606-4637
Tel: (312) 782-0600
mscodro@mayerbrown.com

Counsel for Amy P. Campanelli, Contemnor-Appellant

CERTIFICATE OF COMPLIANCE

I, Clifford W. Berlow, hereby certify that this **Reply Brief For Contemnor-Appellant Amy P. Campanelli** conforms to the requirements of Illinois Supreme Court Rule 341(a) and (b). The length of this Reply Brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, and the Rule 341(c) certificate of compliance is 6,474 words.

/s/ *Clifford W. Berlow*
Clifford W. Berlow

Counsel for Amy P. Campanelli,
Contemnor-Appellant

No. 120997

IN THE SUPREME COURT OF ILLINOIS

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

NOTICE OF FILING

To: See attached Certificate of Service

PLEASE TAKE NOTICE that on August 9, 2017, I caused the foregoing **Reply Brief For Contemnor-Appellant Amy P. Campanelli** to be electronically submitted with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system.

August 9, 2017

Respectfully Submitted,

/s/Clifford W. Berlow
Clifford W. Berlow
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, Illinois 60654-3456
Tel: (312) 840-7366
cberlow@jenner.com

CERTIFICATE OF SERVICE

Clifford W. Berlow, an attorney, hereby certify that on August 9, 2017, I caused the foregoing **Notice of Filing** and **Reply Brief For Contemnor-Appellant Amy P. Campanelli** to be submitted to the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system. Upon acceptance of the above-named reply brief for filing, and within five days of that acceptance date, I will cause thirteen (13) copies of the file-stamped version of the filing to be transmitted to the Clerk of the Court in Springfield, Illinois via UPS overnight delivery, postage prepaid.

I further certify that I will cause one copy of the Notice of Filing and one (1) copy of the above named brief to be served upon the counsel listed below via UPS overnight delivery:

Kimberly M. Foxx
Alan J. Spellberg
Cook County State's Attorney
Richard J. Daley Center, 3rd Floor
50 West Washington St.
Chicago, Illinois 60602

Lisa Madigan
Illinois Attorney General
100 West Randolph St., 12th Floor
Chicago, Illinois 60601
Attn: Michael Glick

Thomas F. Geselbracht
DLA Piper (U.S.), LLP
444 West Lake St., Suite 900
Chicago, Illinois 60606

Kimberly Jansen
Hinshaw & Culbertson LLP
222 N. LaSalle St.
Chicago, Illinois 60601

Martin V. Sinclair, Jr.
155 N. Wacker Drive, Suite 2700
Chicago, Illinois 60606

Carol A. Brook
Executive Director
Federal Defender Program
55 E. Monroe, Suite 2800
Chicago, Illinois 60603

Sarah L. Rosenbluth
Natalie Feigenbaum
Skadden, Arps, Slate,
Meagher & Flom LLP
500 Boylston St., 23d Floor
Boston, Massachusetts 02116

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.

/s/Clifford W. Berlow
Clifford W. Berlow