No. ____

IN THE

Supreme Court of the United States

AMY P. CAMPANELLI,

Petitioner,

v.

STATE OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Illinois

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Sixth Amendment right to conflict-free counsel forbid multiple attorneys in a single public defender's office from concurrently representing non-consenting, adverse co-defendants?

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PETITION FOR A WRIT OF CERTIORARI

Amy P. Campanelli petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of Illinois.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Illinois (Pet. App. 1a-31a) is not yet reported in a regional reporter and appears at 2017 IL 120997 in the Illinois state reporter. The order of the Circuit Court of Cook County (Pet. App. 32a-36a) is unreported.

JURISDICTION

The judgment of the Supreme Court of the State of Illinois was entered on November 30, 2017. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment to the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right … to have the Assistance of Counsel for his defense."

INTRODUCTION

The Sixth Amendment right to the assistance of counsel carries "a correlative right to representation that is free from conflicts of interest." *Wood* v. *Georgia*, 450 U.S. 261, 271 (1981). The Court has long held that this constitutional guarantee must "be untrammeled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests." *Glasser* v. *United States*, 315 U.S. 60, 70 (1942). As a result, where an attorney registers a "'timely objection[] to [a] joint representation'" based on a conflict of

interest, it is presumed "that the conflict … [will] undermine[] the adversarial process …. because joint representation of conflicting interests is inherently suspect, and because counsel's conflicting obligations to multiple defendants 'effectively seal his lips on crucial matters' and make it difficult to measure the precise harm arising from counsel's errors." *Mickens* v. *Taylor*, 535 U.S. 162, 168 (2002) (quoting *Holloway* v. *Arkansas*, 435 U.S. 475, 489-90 (1978)).

This case presents an important question of constitutional law over which there is a deep split of authority: whether requiring attorneys from the same centrally managed public defender's office to represent co-defendants with adverse interests violates the Sixth Amendment.

The facts are straightforward. In March 2016, the State of Illinois charged six co-defendants with murder, arson, armed robbery, kidnapping, and possession of a stolen vehicle. Having already been appointed to represent five of those defendants, and having determined based on confidential communications with them that they had conflicting interests, the Cook County Public Defender, Amy P. Campanelli, moved to withdraw from all but one of those representations and declined the appointment to represent the sixth co-defendant, Salimah Cole. When Ms. Campanelli refused either to agree to represent Ms. Cole or to disclose attorney-client communications in sufficient detail to provide the "concrete evidence of a direct conflict" that the trial court demanded, she was held in civil contempt of court. Report of Proceedings at 17, *People* v. *Cole*, No. 16 CR 05089-05 (Cir. Ct. Cook Cty. May 10, 2016).

The Illinois Supreme Court affirmed, holding that, absent highly unusual, fact-specific circumstances, it did not create a conflict of interest for purposes of the Sixth Amendment to require attorneys from the same centrally managed public defender's office to represent adverse co-defendants. The court reasoned that the risk that an assistant public defender's "'loyalty to his client would be diluted by a conflicting allegiance to a fellow lawyer'" was too remote, absent an atypically close professional relationship between the lawyers. Pet. App. 19a (quoting *People* v. *Spreitzer*, 525 N.E.2d 30, 37 (Ill. 1988)).

This case warrants the Court's review. There is a conflict among state high courts over the question presented. The Illinois Supreme Court's decision aligns with decisions from states including New Jersey, Colorado, and Idaho, which hold that there is no conflict of interest for purposes of the Sixth Amendment when multiple attorneys from the same public defender's office represent adverse co-defendants. But the decision below squarely conflicts with the Sixth Amendment rule applied in other states, including Florida, Pennsylvania, and Louisiana, where courts impute conflicts of interest throughout a public defender's office, just as courts everywhere impute such conflicts throughout a private law firm. Only this Court can resolve the open conflict on this fundamental constitutional question.

Further, the Illinois Supreme Court's ruling is at odds with this Court's precedent, chiefly *Holloway* v. *Arkansas*, 435 U.S. 475 (1978). Under *Holloway*, a court alerted to a potential conflict between co-defendants must either "appoint separate counsel or … take

adequate steps to ascertain whether the risk [of conflict is] too remote to warrant separate counsel" without requiring the disclosure of confidential information as part of that inquiry. 435 U.S. at 484. Here, informed by Ms. Campanelli of the prejudice inherent in her office simultaneously representing Ms. Cole and Ms. Cole's co-defendants, the trial court demanded "concrete evidence of a direct conflict," even when told that proffering such evidence would disclose privileged attorney-client communications. This is precisely what *Holloway* forbids.

It is impossible to reconcile the decision below with *Holloway*. The Illinois Supreme Court offered the following limiting principle: that when a single public defender's office represents co-defendants, a conflict exists only if the two designated assistant public defenders have an unusually close relationship based on the size of the office or the presence of a supervisory relationship. Neither *Holloway* nor its progeny suggests that indigent co-defendants risk prejudice only in these circumstances, even assuming that in practice courts could police an ill-defined line between constitutional intra-office relationships and atypical, unconstitutional ones.

The question presented is of great importance. Centrally managed public defender offices are ubiquitous in the Nation's criminal justice system. These offices represent millions of criminal defendants each year in both state and federal courts, frequently in multi-defendant prosecutions. Attorneys in these offices need clear guidance on the constitutional limits of their representation.

This case also presents an excellent vehicle to resolve the question presented. The Illinois courts have held a dedicated career public official, the Public Defender of Cook County, in civil contempt for concluding that her office could not simultaneously advocate zealously for co-defendants with adverse interests, consistent with the requirements of the Sixth Amendment. The personal harm she has suffered and will continue to suffer as a result of her principled defense of her clients' constitutional rights necessitates this Court's intervention.

Finally, the Illinois Supreme Court's decision is wrong on the merits. The Sixth Amendment right to conflict-free representation applies equally to those represented by private lawyers as it does to those represented by public defenders. There is universal recognition that under the Sixth Amendment, private lawyers sharing a common legal practice—a law firm—cannot represent adverse co-defendants absent their clients' knowing and voluntary waiver of the right to separate counsel. See Am. Bar Ass'n, Criminal Justice Standards for the Defense Function § 4-1.7(d) (4th ed. 2016); Fed. R. Crim. P. 44(c). For reasons both formal and practical, that rule must apply with equal force to lawyers working in a single public defender's office.

In short, certiorari should be granted. This case presents a significant and often-recurring question of constitutional law over which there is a clear conflict of authority, and the ruling below breaks from this Court's settled precedent.

STATEMENT OF THE CASE

Pursuant to *Gideon* v. *Wainwright*, 372 U.S. 335 (1963), Illinois authorizes each of its 102 counties to create an "office of [the] Public Defender." 55 ILCS 5/3-4001, 5/3-4002. The attorneys in these offices represent clients "who are held in custody or who are charged with the commission of any criminal offense, and who [a] court finds are unable to employ counsel." *Id.* at 5/3-4006. Cook County, which includes the City of Chicago, has a centrally managed public defender's office led by a single Public Defender who may appoint assistant public defenders as she "deem[s] necessary for the proper discharge of the duties of the office" and "who shall serve at the pleasure of the Public Defender." *Id.* at 5/3-4008.1; see *id.* at 5/3-4004.1. Ms. Campanelli has been the Cook County Public Defender since 2015.

In March 2016, an Illinois grand jury returned a 61-count indictment naming Allen Whitehead, Zacchaeus Reed, Jr., Ashley Washington, Julian Morgan, Brianna Sago, and Salimah Cole as co-defendants in crimes arising from the shooting, robbery, and kidnapping of La Prentis Cudjo and the robbery and kidnapping of Charles Morgan. Pet. App. 2a-3a. At an April 2016 hearing, an Illinois trial court appointed the Public Defender's office to represent all of the co-defendants other than Ms. Cole, who expressed a desire to retain private counsel. Pet. App. 3a. But at a status conference convened a month later, Ms. Cole indicated that she was not able to afford a private attorney. *Id.* As a result, the trial court announced that it would appoint Ms. Campanelli's office to represent Ms. Cole. *Id.* The court

did not seek or obtain Ms. Cole's consent for the appointment.

Ms. Campanelli declined the appointment. Pet. App. 3a-4a. She explained that her office had a conflict of interest because it already represented Ms. Cole's five co-defendants and, in fact, already had moved to withdraw from four of those representations. Pet. App. 3a-5a. In response, the court asked Ms. Campanelli for evidence of a direct conflict. Pet. App. 4a. Ms. Campanelli informed the court that she knew of a potential conflict between Ms. Cole and the other co-defendants, but that she could not describe the nature of that conflict in detail without divulging privileged attorney-client communications. *Id.*

The trial court deemed that explanation insufficient. In light of Ms. Campanelli's refusal to accept the appointment, the court instructed her to file a written explanation. Pet. App. 4a. The written submission again reported that simultaneously representing Ms. Cole and her co-defendants would create a conflict of interest within Ms. Campanelli's office, but that she could not provide further detail without violating attorney-client privilege. Pet. App. 4a-5a. After reviewing Ms. Campanelli's submission, the trial court admonished that if the Public Defender continued to refuse to accept the appointment, Ms. Campanelli would be held in contempt of court. Pet. App. 6a-7a; see also Pet. App. 34a-35a.

At a later hearing, the trial court again ordered Ms. Campanelli to represent Ms. Cole. Pet. App. 7a. Once more, Ms. Campanelli responded that she could not do so, explaining that as the Public Defender with supervisory responsibility for all the assistant public

defenders in her office she had "a right to know every fact, every strategy, and every defense of every case," a responsibility which she could not ethically do if her assistants represented adverse co-defendants. Pet. App. 8a.

Unpersuaded, the court found that Ms. Campanelli "willfully and contemptuously refused to accept the trial court's appointment to represent [Ms.] Cole after being ordered to do so" and held Ms. Campanelli in civil contempt. Pet App. 8a; see also Pet. App. 34a. The court then fined Ms. Campanelli $250 per day until she accepted the appointment. Pet. App. 9a; see also Pet. App. 35a.

Ms. Campanelli appealed to the Illinois Appellate Court but, on the State's motion, the Illinois Supreme Court agreed to review the case directly. Pet. App. 2a. The Illinois Supreme Court affirmed. Pet. App. 31a. Finding that Ms. Campanelli had "proffered only the bare allegations of a conflict, based on mere speculation[,]" Pet. App. 27a, the court held that she had not justified her refusal to represent Ms. Cole with an adequate showing "that potential conflicts imperiled [Ms.] Cole's right to a fair trial," Pet. App. 12a. Because the court also found Ms. Campanelli's contempt to be a good faith attempt to challenge the legality of the trial court's order, it vacated the "trial court's order adjudicating [Ms.] Campanelli in contempt and imposing sanctions," while nevertheless affirming the judgment finding Ms. Campanelli in contempt. Pet. App. 31a.

REASONS FOR GRANTING THE WRIT

"The right to counsel guaranteed by the Constitution contemplates the services of an attorney devoted solely to the interests of his client." *Von Moltke* v. *Gillies*, 332 U.S. 708, 725 (1948) (plurality opinion). This case asks the Court to clarify the scope of that guarantee. Ms. Campanelli has been held in civil contempt because the Illinois courts have rejected her view that under the Sixth Amendment, attorneys in a single, centrally managed public defender's office may not represent co-defendants likely to have adverse interests.

Like other courts, the Illinois Supreme Court acknowledges that the question of whether a single public defender's office may represent adverse co-defendants is ultimately a constitutional one: "Those accused of crime have *a sixth amendment right* to the effective assistance of counsel," which "means assistance by an attorney whose allegiance to his client is not diluted by conflicting interests or inconsistent obligations." Pet. App. 11a (emphasis added). Accordingly, the question presented warrants this Court's review because it bears upon the fundamental right under *Gideon* to legal counsel with undivided loyalties in cases where divided loyalties are most likely to prove prejudicial: multiple-defendant cases.

I. Courts Are Divided Over The Question Presented.

The Illinois Supreme Court's holding on the question presented—that forcing an indigent criminal defendant to be represented by an attorney from a single, centrally managed public defender's office that also represents

adverse co-defendants is consistent with the Sixth Amendment—puts Illinois, and other states in that camp, at odds with the law of at least three other states.[1] Specifically, the state supreme courts of Florida, Pennsylvania, and Louisiana have concluded that the Sixth Amendment does not permit a single public defender's office to represent adverse co-defendants. As a result, the outcome of this case would have been different had it arisen in one of those other jurisdictions.

A. Courts In Some States Have Held That The Constitution Forbids A Single, Centrally Managed Public Defender's Office From Representing Co-Defendants With Adverse Interests.

The Supreme Courts of Florida, Pennsylvania, and Louisiana have held, in direct conflict with the Illinois

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[1] The split of authority is rarely implicated by federal prosecutions because the Federal Rules of Criminal Procedure require judges alerted to a proposed joint representation to "inquire about the propriety of joint representation" and "advise each defendant of the right to the effective assistance of counsel, including separate representation." Fed. R. Crim. P. 44(c); see *id.* advisory committee's note to 1979 amendment ("Rule 44(c) establishes a procedure for avoiding the occurrence of events which might otherwise give rise to a plausible post-conviction claim that because of joint representation the defendants in a criminal case were deprived of their Sixth Amendment right to the effective assistance of counsel."); see *United States* v. *Garcia-Loya*, No. CR-10-2679-TUC-DCB (HCE), 2011 WL 2262917, at *2-3 (D. Ariz. June 9, 2011) (disqualifying Federal Defender's Office pursuant to Rule 44(c)). Nor is the question presented implicated in prosecutions in states that have adopted Rule 44(c). See N.D. R. Crim. P. 44(b)(2); Tenn. R. Crim. P. 44(d)(2); D.C. Super. Ct. R. Crim. P. 44(b)(2).

Supreme Court in this case, that the Sixth Amendment requires treating a public defender's office as a firm, meaning that a conflict of interest that one lawyer in the office would have if assigned to represent a prospective client is imputed to the office's other attorneys.

Perhaps the clearest refutation of the Illinois Supreme Court's position is from the Florida Supreme Court, which long has held that "[d]ifferent attorneys in the same public defender's office cannot represent defendants with conflicting interests." *Bouie* v. *State*, 559 So. 2d 1113, 1115 (Fla. 1990). In announcing that categorical rule, the court explained that "a lawyer representing clients with conflicting interests cannot provide the adequate assistance required by the [sixth] amendment." *Id.* It is specifically to protect criminal defendants' constitutional rights, therefore, that Florida treats a public defender's office as "the functional equivalent of a law firm." *Id.*

The Supreme Court of Pennsylvania has similarly held that because a public defender's office is a "law firm," attorneys from a single office cannot represent "multiple clients with inconsistent defenses." *Commonwealth* v. *Westbrook*, 400 A.2d 160, 162 (Pa. 1979). The case establishing the Pennsylvania rule involved a criminal defendant represented by one attorney from a public defender's office who had been convicted of a robbery he argued his brother had committed. The defendant's brother was reportedly set to confess to the robbery until a different attorney from the same public defender's office advised the brother not to confess. *Id.* The court ordered a new trial, finding that the public defender's office is a single firm for

purposes of "conflict of interest in multiple representations," *id.* at 162, 164 (citing *Commonwealth* v. *Via*, 316 A.2d 895 (Pa. 1974)), and that it is "clear that the 'assistance of counsel' guaranteed by the Sixth Amendment contemplates that such assistance be untrammeled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests," *id.* at 164.

The Supreme Court of Louisiana also reached the same constitutional conclusion in *State* v. *Connolly*, 930 So. 2d 951 (La. 2006). There, a judge recused himself from post-conviction proceedings because he had worked in the district attorney's office when the petitioner was indicted. In rejecting this as grounds for recusal, the trial court contrasted the district attorney's office, which is not treated as a firm for conflict purposes, with the public defender's office, which is a law firm under prior Louisiana precedent. *Id.* at 954 & n.1 (citing *State* v. *McNeal*, 594 So. 2d 876 (La. 1992) (mem.)). The court explained that the difference derives directly from the Sixth Amendment: "Indigent Defender Boards are … treated as the equivalent of private law firms to effectuate a defendant's Sixth Amendment right to effective assistance of conflict-free counsel." *Id.* at 954 n.1.

Other state high courts have reached similar legal conclusions, albeit in factually distinguishable circumstances. For example, the Georgia Supreme Court in *Williams* v. *State*, held that conflicts of interest are imputed among the attorneys in a single public defender's office for purposes of evaluating conflicts of interest in joint representations under the Sixth

Amendment. 807 S.E.2d 418, 423-25 & 424 n.7 (Ga. 2017); see also *In re Formal Advisory Op. 10-1*, 744 S.E.2d 798, 799 (Ga. 2013). Although the court in *Williams* ultimately concluded that there was no cognizable Sixth Amendment argument under the specific facts and procedural posture of that case, it nonetheless recognized that an attorney's representation that a conflict exists is afforded "near decisive weight." *Williams*, 807 S.E.2d at 423 (quoting *Smith* v. *Anderson*, 689 F.2d 59, 62-63 (6th Cir. 1982)). And the Maryland Court of Appeals has likewise held that under this Court's Sixth Amendment precedent regarding joint representation, "at a minimum, each district office of the public defender should be treated as a private law firm for conflict of interest purposes." *Duvall* v. *State*, 923 A.2d 81, 95 (Md. 2007).

Finally, some state courts have reached the same result as the Florida, Pennsylvania, and Louisiana high courts without explicitly acknowledging the Sixth Amendment implications of their decisions. For example, the Supreme Court of New Hampshire in *State* v. *Veale* examined the larger split among state high courts concerning whether conflict of interest rules applied equally to private law firms and to public defender organizations. 919 A.2d 794, 797 (N.H. 2007), *abrogated on other grounds by State* v. *Thompson*, 20 A.3d 242 (N.H. 2011). The court concluded that "the better rule is not to exempt the public defender and appellate defender from the operation of the conflict of interest rules for claims of ineffective assistance of counsel." *Id.*

In sum, at least three state high courts—those of Florida, Pennsylvania, and Louisiana—have directly rejected the legal position that the Illinois Supreme Court took in this case. Further, courts in several other states have reached results fundamentally at odds with the constitutional analysis of the Illinois Supreme Court. See also discussion *supra* note 1. As a result, there is a square split of authority on the question presented that only this Court can resolve.

B. Other States Read The Constitution To Allow A Single, Centrally Managed Public Defender's Office To Represent Adverse Co-Defendants.

That does not mean, however, that the Illinois Supreme Court is alone. Courts in other states follow the constitutional rule announced by the Illinois Supreme Court in this case. Like the Illinois high court, these courts frequently begin by acknowledging that the Sixth Amendment recognizes a right to conflict-free counsel, but contrary to the rule that prevails in Florida, Pennsylvania, and Louisiana, they ultimately conclude that there is no conflict when multiple attorneys from the same public defender's office represent adverse co-defendants.

For example, the Supreme Court of New Jersey has held that representation of co-defendants by lawyers from the same public defender's office does not offend the Sixth Amendment. *State* v. *Bell*, 447 A.2d 525 (N.J. 1982). Relying on earlier precedent from the Illinois Supreme Court, the New Jersey court held that although prejudice is assumed when associated private attorneys represent criminal co-defendants, "the same

potential [for conflict] does not exist"—and therefore prejudice is not assumed—when co-defendants are represented by attorneys from the same public defender's office. *Id.* at 527-28 (citing *People* v. *Robinson*, 402 N.E.2d 157 (Ill. 1980)).

The Colorado Supreme Court likewise refused to disqualify the state public defender's office based on the imputation of conflicts between lawyers within the office. *People* v. *Shari*, 204 P.3d 453, 456, 462 (Colo. 2009). Although the bulk of the opinion in *Shari* addressed state rules of professional conduct governing conflicts, the court framed its discussion in Sixth Amendment terms. That is, the court held that conflicts are not imputed within a single, centrally managed public defender's office despite acknowledging that criminal defendants have a constitutional right to conflict-free representation and warning that "representation that is intrinsically improper due to a conflict of interest" transgresses the Sixth Amendment. *Id.* at 457 (quoting *Dunlap* v. *People*, 173 P.3d 1054, 1070 (Colo. 2007)).

The Idaho Supreme Court also takes the same view as the Illinois Supreme Court. It made that clear in *State* v. *Severson* by holding that a single public defender's conflict of interest was not imputed to an entire public defender's office. 215 P.3d 414, 423-27 (Idaho 2009). In doing so, the court explicitly adopted the reasoning and analysis of the court in *State* v. *Cook*, 171 P.3d 1282 (Idaho Ct. App. 2007), which "declined to impute one public defender's conflict to the entire office" when analyzing a conflict of interest under the Sixth Amendment. *Severson*, 215 P.3d at 426-27; see also

Cook, 171 P.3d at 1291 (citing *Bell*, 447 A.2d 525). The Idaho Appellate Court has since relied on *Severson* and *Cook* to hold that concurrent representation of co-defendants by a single public defender's office does not violate the Constitution. See, *e.g.*, *Eby* v. *State*, No. 39301, 2013 WL 5488758, at *3-5 (Idaho Ct. App. Mar. 28, 2013) (unpublished).

The Illinois Supreme Court thus has joined other state courts, including the high courts of New Jersey, Colorado, and Idaho to hold that the Sixth Amendment does not forbid a single, centrally managed public defender's office from representing co-defendants with adverse interests. Because the Sixth Amendment rule in those jurisdictions conflicts with the rule in other jurisdictions, this Court's intervention is required.

II. The Decision Below Conflicts With This Court's Precedent.

The decision below also conflicts with this Court's holding in *Holloway* v. *Arkansas*, 435 U.S. 475. There, the Court held that when a court is alerted to a potential conflict between co-defendants represented by the same counsel, the court must either "appoint separate counsel or … take adequate steps to ascertain whether the risk [of conflict is] too remote to warrant separate counsel" without requiring counsel to disclose confidential information as part of that inquiry. *Id.* at 484. The decision below defies that rule.

1. In *Holloway*, a public defender leading a three-person office objected to an assignment to represent three co-defendants, explaining to the court "that there [was] a possibility of a conflict of interest in each of their

cases" and that he could not represent all three because he had "received confidential information from them." *Id.* at 477-78. The trial court nevertheless refused to appoint separate counsel and the Arkansas Supreme Court affirmed, faulting the public defender for "fail[ing] to outline to the trial court both the nature of the confidential information received from his clients and the manner in which knowledge of that information created conflicting loyalties." *Id.* at 481.

This Court reversed, rejecting Arkansas's claim that the public defender had to offer greater detail about the potential conflict. *Id.* at 485-86. The Court explained that "an attorney's request for the appointment of separate counsel, based on his representations as an officer of the court regarding a conflict of interests, should be granted." *Id.* at 485. The Court emphasized that the objecting attorney: (1) "'is in the best position professionally and ethically to determine when a conflict of interest exists or will probably develop in the course of a trial'"; (2) has an ethical obligation to bring the conflict to the court's attention; and (3) makes representations about the potential conflict that "'are virtually … under oath.'" *Id.* at 485-86 (citations omitted).

Furthermore, the Court in *Holloway* rejected the notion that a court may freely force a public defender to choose between disclosing client confidences and providing detail about the conflict needed to support the request for separate counsel. To be sure, *Holloway* allows courts to "explor[e] the adequacy of the basis of defense counsel's representations," but the Court admonished that it is "improper[]" to require counsel to

disclose confidential information as a part of that inquiry. *Id.* at 487.

2. It is impossible to square the Illinois Supreme Court's decision here with *Holloway*. In representing that a conflict of interest was likely, Ms. Campanelli offered an explanation that is indistinguishable from the one the public defender provided in *Holloway*. Compare Pet. App. 4a, with *Holloway*, 435 U.S. at 477-78. And much like the Arkansas Supreme Court's decision in *Holloway*, the Illinois Supreme Court faulted Ms. Campanelli for "fail[ing] to provide any substantive basis" for the conflict, labeling her representations "mere speculation" and "bare allegations."[2] Compare Pet. App. 26a-27a, with *Holloway*, 435 U.S. at 481.

The Illinois Supreme Court thus committed the same basic error that the Arkansas Supreme Court did in *Holloway*: it forced defense counsel to choose between

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[2] Given the nature of the underlying criminal case, Ms. Campanelli's explanation was far from speculative. The evidence here was "interlocking," meaning that if any co-defendant elected to plead guilty and cooperate, it would have had grave implications for the other co-defendants. See *Holloway*, 435 U.S. at 489-90 ("[I]n this case [the conflict of interest] may well have precluded defense counsel for [one defendant] from exploring possible plea negotiations and the possibility of an agreement to testify for the prosecution."); see also *United States* v. *Brock*, 501 F.3d 762, 772 (6th Cir. 2007) ("[A] case with interlocking proof [is] a classically 'suspect' situation because it 'tends to prevent' an attorney from vigorously representing each client.") (citation omitted), *abrogated on other grounds by Ocasio* v. *United States*, 136 S. Ct. 1423 (2016). Moreover, the co-defendants here would inevitably be of "varying stature" within the scheme, leading to critical differences in culpability. *Wheat* v. *United States*, 486 U.S. 153, 163-64 (1988).

disclosing confidential information and failing to provide the level of detail necessary to persuade the trial court of a direct conflict. This is precisely the choice that *Holloway* forbids.

To be sure, the Illinois Supreme Court purports to acknowledge that under *Holloway* "counsel cannot be ordered to divulge attorney-client privileged information." Pet. App. 24a. But the court effectively negated this rule by reasoning that no information public defenders could ever learn through such attorney-client communications—which may include an intent to plead guilty and testify against a co-defendant, to accuse the co-defendant of sole responsibility, or to testify that the co-defendant orchestrated the illegality—can ever establish a conflict of interest. See Pet. App. 25a-26a. According to the Illinois Supreme Court, the only factors relevant to determining whether representation of co-defendants by affiliated public defenders creates a conflict involve "'how the working relationship between the public defenders create[s] an appearance of impropriety.'" Pet. App. 25a (quoting *People* v. *Hardin*, 217 Ill. 2d 289, 303 (2005)).

This is no work-around to *Holloway*. A central teaching of *Holloway* is that "joint representation" over "express objections … prejudice[s] the accused in some degree" and that this "prejudice is presumed regardless of whether it was independently shown." *Holloway*, 435 U.S. at 489. The Illinois Supreme Court failed to explain why that prejudice, the substance of which frequently is revealed through attorney-client communications, is all but inevitable when colleagues from a single law firm represent adverse co-defendants, but unlikely to occur

when colleagues from a single public defender's office represent adverse co-defendants. See Pet. App. 19a, 25a-26a.

3. This Court has reaffirmed *Holloway* repeatedly. See, *e.g.*, *Mickens* 535 U.S. at 176 ("The purpose of our *Holloway* … exception[] … [is] to apply needed prophylaxis … to assure vindication of the defendant's Sixth Amendment right to counsel."); accord *Wheat* v. *United States*, 486 U.S. 153, 160 (1988); *Wood*, 450 U.S. at 271. Furthermore, *Holloway*'s instruction that courts must rely on the "good faith and good judgment" of defense counsel in raising potential conflicts is the foundation of this Court's subsequent conflict jurisprudence. *Cuyler* v. *Sullivan*, 446 U.S. 335, 347 (1980); see also *Mickens*, 535 U.S. at 167-68.

For example, *Cuyler* cited *Holloway* in holding that courts could trust that defense counsel would raise potential conflicts at the outset of proceedings, obviating the need to affirmatively inquire into conflicts prior to trial "[a]bsent special circumstances." 446 U.S. at 346-47. And courts and commentators alike agree that under *Holloway*, there are virtually no circumstances in which the risk of conflict is "too remote" to warrant appointment of alternative counsel. See 3 Wayne R. LaFave et al., *Criminal Procedure* § 11.9(b) (4th ed. 2015) ("Commentators analyzing *Holloway* have suggested … that th[e] option [to find a conflict 'too remote'] might prove largely illusory …. Lower court rulings since *Holloway* strongly support th[is] wisdom[.]"). So it makes little sense to reason, as the Illinois Supreme Court's decision does, that the possibility that a prejudicial conflict may result from

having colleagues from the same government office represent co-defendants will virtually never occur. See Pet. App. 25a-26a.

In sum, this Court's precedent is clear: "[A] court confronted with and alerted to possible conflicts of interest must take adequate steps to ascertain whether the conflicts warrant separate counsel." *Wheat*, 486 U.S. at 160. And *Holloway* teaches that those steps may not require the disclosure of confidential information and that counsel may not be faulted for failing to provide enough information about the conflict. 435 U.S. at 481-82, 487. Because the Illinois Supreme Court's decision directly contravenes this precedent, certiorari is warranted.

III. This Case Presents An Important Issue And Provides An Excellent Vehicle To Answer The Question Presented.

The Court should use this case to resolve the split over the question presented. The ubiquity of public defenders in our criminal justice system means that the Sixth Amendment rights of millions of Americans are affected by this issue. Cf. *Luis* v. *United States*, 136 S. Ct. 1083, 1110 (2016) (Kennedy, J., dissenting) (describing "the large volume of defendants in the criminal justice system who rely on public representation"). Forty-nine states and the District of Columbia have designated public defender's offices.[3] Many are organized like Cook County's, with a single

[3] See Donald J. Farole, Jr. & Lynn Langton, U.S. Dep't of Justice, NCJ 231175, *County-based & Local Public Defender Offices, 2007*, at 1 (Sept. 2010).

public defender responsible for every representation that his or her office undertakes.[4] And public defenders provide representation to an outsize percentage of the criminal matters adjudicated in the Nation's courts. In 2007 alone, public defender's offices received over 5.5 million cases.[5] Every corner of the Nation's federal, state, and local criminal justice system thus will be affected by the resolution of the split described in this Petition.

Further, given the importance of public defenders to the Nation's criminal justice system, it is essential that this Court draw clear lines when it comes to multiple representations by their offices. The Court has frequently recognized the value of bright-line rules for police and prosecutors. See *Arizona* v. *Roberson*, 486 U.S. 675, 681 (1988) (collecting cases). Unambiguous guidance is no less vital here: "overworked and underpaid public defenders," *Luis*, 136 S. Ct. at 1095, also need straightforward and administrable rules to ensure that they protect their clients' Sixth Amendment rights and adhere to their attendant ethical obligations.

This case also presents an excellent vehicle for resolving the question presented. Ms. Campanelli's statement to the trial court regarding the conflict in having her office represent adverse co-defendants was

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[4] See generally Stephen D. Owens *et al.*, U.S. Dep't of Justice, NCJ 246683, *Indigent Defense Services in the United States, FY 2008-2012* (July 2014).

[5] See Farole & Langton, *supra* note 3, at 3 tbl. 1.; see also Caroline Wolf Harlow, U.S. Dep't of Justice, NCJ 179023, *Defense Counsel in Criminal Cases*, at 1 (Nov. 2000).

indistinguishable from the representation made by the public defender to the trial court in *Holloway* regarding the conflict in having a single lawyer represent adverse co-defendants there. In light of that fact, this case squarely implicates the meaning of the Sixth Amendment. That is so notwithstanding the State's argument below that the Sixth Amendment is irrelevant to this case because determining whether a conflict of interest exists depends solely on each state's individual rules of legal ethics. Regardless of any specific provisions in a state's rules of ethics, there is a federal constitutional "right to representation that is *free from conflicts of interest*." *Wood*, 450 U.S. at 271 (emphasis added). Whether a conflict exists for purposes of the Sixth Amendment thus cannot vary from state to state depending on the vagaries of each state's rules of professional responsibility or the interpretation of those rules by state courts.

Also meritless is the State's contention below, which the Illinois Supreme Court rightly ignored, that the constitutional implications of this case are non-justiciable because only a criminal defendant may raise a Sixth Amendment argument. This Court has recognized that an appeal from a contempt order is a proper way to obtain review of an order directing the disclosure of attorney-client privileged information, which is also a context where the client, not the attorney, possesses the substantive right. *Mohawk Indus., Inc.* v. *Carpenter*, 558 U.S. 100, 111 (2009). Moreover, Ms. Campanelli was held in civil contempt of court for her refusal to accept the appointment to represent Ms. Cole. That caused her legally cognizable harm. See, *e.g.*, *Balt.*

City Dep't of Soc. Servs. v. *Bouknight*, 493 U.S. 549, 553-54 (1990); *In re Roche*, 448 U.S. 1312, 1314-15 (1980). The contempt order thus is based on the legal conclusion that Ms. Campanelli would not violate the rights of either her office's existing clients or its prospective client, Ms. Cole, if she accepted the appointment. Because the rationale for the contempt order therefore depends on a state court's resolution of a question of federal constitutional law, the resolution of that question is squarely before the Court.

Finally, Ms. Campanelli has a concrete interest in having the question presented resolved in her favor and her contempt vacated in its entirety, notwithstanding that the Illinois Supreme Court vacated the trial court's imposition of sanctions. Pet. App. 31a; see *Chafin* v. *Chafin*, 568 U.S. 165, 172 (2013). The Illinois Supreme Court affirmed the trial court's judgment finding Petitioner in contempt. Pet. App. 31a. That has consequences for Ms. Campanelli, both individually and professionally. Most tangibly, it will impact her practice of law in the future because any time she seeks admission to practice in a new court or jurisdiction, she will have to disclose that she has been held in contempt of court and that the contempt judgment was affirmed by the state's highest court.[6] In addition, it will cause her

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[6] For example, admission to the Bar of this Court requires the disclosure of whether a lawyer has ever previously been "sanctioned" by a state or federal court. See Supreme Court of the United States, Application for Admission to Practice, *available at* https://www.supremecourt.gov/bar/barapplication_new.pdf (last accessed Feb. 25, 2018). Many courts have similar requirements. *E.g.*, D.D.C. R. 83.8(b)(4) (requiring disclosure of whether

reputational harm among the bar and the judiciary, impairing her ability to effectively lead her office and represent her indigent clients. Cf. *Meese* v. *Keene*, 481 U.S. 465, 479 n.14 (1987) ("The risk of . . . reputational harm . . . is sufficient to establish . . . standing to litigate the claim on the merits."). And in all events, Ms. Campanelli and her office have a concrete stake in the resolution of the question presented. The decision below has a "prospective effect" on the way she discharges her office—she "must either change the way s[he] performs h[er] duties or risk a meritorious [contempt] action." *Camreta* v. *Greene*, 563 U.S. 692, 702-03 (2011).

Ms. Campanelli is a dedicated public servant whose indigent clients are among the most vulnerable members of society. To carry out her duty to them, she subjected herself to a contempt order in the only trial court where she regularly appears. She did so to challenge the constitutionality of requiring her and her assistants to represent adverse co-defendants. Because the Illinois courts' rejection of her Sixth Amendment claim formed the basis for that contempt, this case presents an excellent vehicle for this Court to resolve the question presented.

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applicants for admission to practice before the court have "been held in contempt of court and, if so, the nature of the contempt and final disposition thereof"); S.D.N.Y./E.D.N.Y. R. 1.3(a) (same); E.D. Mich. R. 83.20(c) (similar); see also United States District Court, Northern District of Illinois, Motion for Leave to Appear Pro Hac Vice, *available at* http://www.ilnd.uscourts.gov/_assets/_documents/_forms/_online/A%20Motion%20and%20application%20to%20Appear%20Pro%20Hac%20Vice.pdf (last accessed Feb. 25, 2018) (requiring applicant to disclose whether she has "ever been held in contempt of court").

IV. The Ruling Below Is Wrong On The Merits.

Finally, the Illinois Supreme Court erred in holding that multiple lawyers in the same public defender's office may represent potentially adverse co-defendants without jeopardizing the Sixth Amendment right to conflict-free counsel.

A settled rule of conflicts of interest is that "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so" because of a conflict. *E.g.*, Model Rules of Prof'l Conduct r. 1.10 (Am. Bar Ass'n 2016). This rule is the product of practical realities. Broadly, there is an obvious risk in allowing a single legal organization to see its institutional loyalties divided among clients facing criminal charges. See *Holloway*, 435 U.S. at 490. More narrowly, there are practical problems for the individual lawyers because "lawyers who practice together share professional … interests and are concerned with furthering each other's interest." Geoffrey C. Hazard, Jr., *The Law & Ethics of Lawyering* 705 (2d ed. 1994). And there is also the risk that when lawyers share office space, harmful confidential information can easily make its way from one affiliated lawyer to another. See *Westinghouse Elec. Corp.* v. *Kerr-McGee Corp.*, 580 F.2d 1311, 1321-22 (7th Cir. 1978).

For many of these same reasons, it is widely accepted that ethical screens do not ameliorate conflicts between current clients. Screens do not reduce the pull of divided loyalties between attorneys and clients—the driving force behind the imputation of conflicts. See Model Rules of Prof'l Conduct 1.10, cmt. 2. The duty of loyalty

to a client—as well as the more subtle duty to an attorney's professional colleagues—persists regardless of the strength of the wall erected.

These risks do not go away because lawyers work together in a public defender's office rather than a private law firm. That is why the only national ethical standards addressing the question presented recognize that "[i]n a public-defender office, conflict-of-interest questions commonly arise when the interests of two or more defendants so conflict that lawyers in a private-practice defense firm could not represent both or all the defendants," which is why "[t]he rules on imputed conflicts and screening of this Section apply to a public-defender organization as they do to a law firm in private practice in a similar situation." Restatement (Third) of the Law Governing Lawyers § 123 cmt. d(iv) (2000). The oft-cited standards from the American Bar Association are to the same effect: "Except where necessary to secure counsel for preliminary matters such as initial hearings or applications for bail, a defense counsel (or *multiple counsel associated in practice*) should not undertake to represent more than one client in the same criminal case." ABA, Criminal Justice Standards for the Defense Function § 4-1.7(d) (emphasis added) (as cited, in previous form, in *Holloway*, 435 U.S. at 486 n.8); see also *Padilla* v. *Kentucky*, 559 U.S. 356, 366-67 (2010) (collecting cases from this Court recognizing that ABA standards are often "valuable measures of the prevailing professional norms of effective representation").

Further, the Sixth Amendment guarantee that an indigent criminal defendant will have a "guiding hand" and "effective assistance" from legal counsel requires a

foundation of trust and confidence between attorney and client. See *Powell* v. *Alabama*, 287 U.S. 45, 69 (1932); *Strickland* v. *Washington*, 466 U.S. 668, 686 (1984). That follows from this Court's precedent, which not only trumpets that "faithful, devoted service to a client …. is th[e] kind of service for which the Sixth Amendment makes provision," *Von Moltke*, 332 U.S. at 725-26, but also allows a criminal defendant to go it alone if that trust is lacking, see *Faretta* v. *California*, 422 U.S. 806 (1975). Requiring an indigent defendant to accept a public defender from the same office as the attorney representing that defendant's adverse co-defendant undermines that relationship, making it all the more difficult for the defendant to aid in his or her own defense. "It is no secret that indigent clients often mistrust the lawyers appointed to represent them." *Jones* v. *Barnes*, 463 U.S. 745, 761 (1983) (Brennan, J., dissenting); see also *Upjohn Co.* v. *United States*, 449 U.S. 383, 389 (1981) (explaining that attorney-client privilege rests on both: (1) the attorney's need "'to know all that relates to the client's reasons for seeking representation'" and (2) the client's need to be "'free from the consequences or the apprehension of disclosure'") (citation omitted).

As this Court has explained, "in a case of joint representation of conflicting interests the evil—it bears repeating—is in what the advocate finds himself compelled to *refrain* from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process." *Holloway*, 435 U.S. at 490. In such circumstances, it is "virtually impossible" to "assess the impact of a conflict of interest on the attorney's options,

tactics, and decisions ...." *Id.* at 491; cf. *United States* v. *Gonzalez-Lopez*, 548 U.S. 140, 150 (2006) ("It is impossible to know what different choices [a different lawyer] would have made, and then to quantify the impact of those different choices on the outcome of the proceedings."); *Wheat*, 486 U.S. at 162-63. The Illinois Supreme Court's decision is incorrect because these concerns do not vanish when colleagues from the same public defender's office represent co-defendants. The Court thus should grant certiorari to make clear that the artificial distinction the Illinois Supreme Court embraced between private law firms and public defender offices falls far short of what the Sixth Amendment demands.

CONCLUSION

The petition for a writ of certiorari should be granted.

February 28, 2018

Respectfully submitted,

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APPENDIX

Appendix A

2017 IL 120997

In the Supreme Court Of The State Of Illinois

(Docket No. 120997)

PEOPLE OF THE STATE OF ILLINOIS,

Appellee,

v.

SALIMAH COLE (Amy P. Campanelli),

Appellant.

Opinion filed November 30, 2017.

JUSTICE THOMAS delivered the judgment of the court, with opinion.

Chief Justice Karmeier and Justices Freeman, Kilbride, Garman, Burke, and Theis concurred in the judgment and opinion.

OPINION

¶ 1. On June 15, 2016, the circuit court of Cook County entered an order of adjudication of direct civil contempt against contemnor, Amy P. Campanelli, the Cook County public defender, and sanctioned Campanelli $250 per day until she purged herself of direct civil contempt or was otherwise discharged by due process of law. Campanelli filed a notice of appeal to the Appellate Court, First District. Campanelli also filed an emergency motion to stay the fines imposed by the trial court. The appellate court granted Campanelli's motion to stay the fines.

¶ 2. The State then filed a motion for direct appeal to this court pursuant to Illinois Supreme Court Rule 302(b) (eff. Oct. 4, 2011). On July 29, 2016, this court allowed the State's motion for direct appeal and transferred the appeal of the case from the appellate court to this court. This court also allowed the National Association of Criminal Defense Lawyers, the National Association for Public Defense, and Professors Vivian Gross, Steven Lubet, and Robert Burns to file *amicus curiae* briefs in support of contemnor Campanelli. Ill. S. Ct. R. 345 (eff. Sept. 20, 2010).

¶ 3. BACKGROUND

¶ 4. Defendant Salimah Cole was charged in a 16-count indictment with 6 counts of first degree murder, 2

counts of armed robbery with a firearm, 5 counts of aggravated kidnapping, 1 count of aggravated arson, and 2 counts of possession of a stolen motor vehicle. The charges stemmed from the September 30, 2015, shooting, robbery, and kidnapping of La Prentis Cudjo and the robbery and kidnapping of Charles Morgan. Ashley Washington, Allen Whitehead, Zacchaeus Reed, Jr., Julian Morgan, and Brianna Sago were also charged in connection with those crimes.

¶ 5. Cole appeared in court on April 12, 2016. A Cook County assistant public defender appeared as a friend of the court, as well as to defendant Cole, and informed the court that Cole's mother had retained private counsel, who would need a continuance of a week or two. Accordingly, the trial court set the next court date for May 10, 2016.

¶ 6. At the May 10, 2016, court date, Cole informed the trial court that she was not able to afford private counsel. The trial court stated that it would appoint the public defender to represent Cole. Contemnor Amy P. Campanelli, the public defender of Cook County, then asked the court not to appoint the office of the public defender to represent Cole. Campanelli asked for leave of court to file a notice of intent to refuse appointment and to ask for appointment of counsel other than the public defender. When asked to explain her motion, Campanelli stated that she actually was refusing the appointment. Campanelli informed the court that the public defender could not represent Cole because there was a conflict of interest due to the codefendants in the case. Campanelli explained that four of Cole's five codefendants were charged with the exact same offenses

as Cole. In addition, codefendants Reed and Whitehouse were also charged with intimidation of codefendant Washington, for threatening to harm Washington and her family if she worked with the police on the murder case.

¶ 7. The trial court then asked Campanelli to explain the direct conflict to the court. Campanelli clarified that there was a potential for conflict. Campanelli asserted that she did not have to wait until a conflict developed, nor could she divulge attorney-client privileged information in order to inform the court of those conflicts. After considering the matter, the trial court appointed the public defender of Cook County to represent Cole, over Campanelli's objection. Campanelli asked the court to hold her in friendly contempt and to impose a nominal sanction so that she could seek appellate review of the court's decision. The trial court took the request under advisement and asked Campanelli to put the basis for her refusal to represent Cole in writing.

¶ 8. Campanelli then filed a notice of intent to refuse appointment and to request appointment of counsel other than the public defender of Cook County. In her notice, Campanelli argued that every client has a right to be represented by conflict-free counsel and that concurrent conflicts of interest are prohibited by Rule 1.7 of the Illinois Rules of Professional Conduct of 2010 (eff. Jan. 1, 2010). Campanelli noted that Rule 1.7 provided that conflicts arise whenever the interests of one client are directly adverse to the interests of another client or whenever the representation of a client is materially limited. Based upon Rule 1.7, Campanelli

stated that she could not accept appointment to represent Cole when she was already representing five other codefendants. Campanelli indicated that she also had moved to withdraw from representing codefendants Whitehead, Reed Jr., Morgan, and Sago, due to concurrent conflicts with one another and with codefendant Washington.[1] Because she was bringing the conflict of interest to the court's attention at an early stage, Campanelli claimed that it was incumbent on the court to take action and alleviate the conflict by appointing private counsel.

¶ 9. In addition to citing Rule 1.7, Campanelli contended that the office of the Cook County public defender had a conflict of interest in representing Cole because the office of the Cook County public defender is a law firm as set forth in Rule 1.10 of the Illinois Rules of Professional Conduct of 2010 (eff. Jan. 1, 2010). Consequently, Campanelli refused to accept appointment to represent Cole.

¶ 10. At a hearing on May 19, 2016, the trial court found that Cole was indigent and should be represented by the office of the Cook County public defender. Campanelli again told the court that she could not represent Cole because she was in conflict due to her representation of five other codefendants in the case. Campanelli stated that, pursuant to the Illinois Rules of

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[1] At a hearing on July 18, 2016, the trial court granted Campanelli's motion to withdraw from the representation of codefendants Whitehead and Reed, finding a conflict of interest existed where Whitehead and Reed had been charged with intimidating codefendant Washington.

Professional Conduct adopted in 2010, she could not represent more than one client on a case because of the potential conflict. Campanelli also noted that the Counties Code (55 ILCS 5/3-4006 (West 2016)) allows a court to appoint counsel other than the public defender if the appointment of the public defender would prejudice the defendant. The trial court pointed out that it had not made a finding that appointment of the public defender would prejudice the defendant. Campanelli conceded that the trial court had not made a finding of prejudice but stated she had given the trial court enough testimony that she would be in conflict of interest if forced to represent Cole.

¶ 11. In response to further questioning from the trial court, Campanelli stated that there were approximately 518 attorneys in the office of the Cook County public defender and that those 518 attorneys did not all share the same supervisors. With regard to the four other motions to withdraw that Campanelli had filed concerning Cole's codefendants, Campanelli acknowledged that she had four separate attorneys from different divisions in her office representing those defendants. In addition, those assistant public defenders each had a different supervisor, but those supervisors might report to the same deputy director. Campanelli conceded that she has a multiple defender division for multiple offender cases but contended that she was in conflict even in those cases.

¶ 12. The trial court then reiterated that defendant Cole was in custody without legal representation, that Cole was indigent and had a right to counsel, and that, as public defender of Cook County, Campanelli was

sworn to represent an indigent defendant unless the court finds that the defendant's rights would be prejudiced. The trial court observed that it had not found Cole's rights to be prejudiced, so that Campanelli's refusal to represent Cole was contemptuous. Campanelli continued to refuse to follow the order of the court to represent Cole, repeating that she could not represent Cole due to a conflict. Campanelli denied that she was violating the Counties Code in refusing to represent Cole, arguing that in fact she would be violating the Illinois Rules of Professional Conduct of 2010 in representing Cole.

¶ 13. The trial court again stated that Campanelli was sworn to represent an indigent defendant unless the court finds that the defendant's rights would be prejudiced. The trial court did not find Cole's rights to be prejudiced and asked Campanelli to carefully consider her refusal to represent Cole. The trial court then continued the case for ruling on Campanelli's request for contempt. The trial court also appointed private counsel to represent Cole in light of Campanelli's refusal.

¶ 14. Campanelli next appeared before the court on June 15, 2016. The trial court noted that it had appointed private counsel for Cole because she was an indigent defendant without representation of counsel. The trial court repeated that it had found there was no conflict in Campanelli representing Cole and again ordered Campanelli to represent Cole, indicating that it would vacate the appointment of private counsel upon Campanelli's acceptance of the appointment.

¶ 15. Campanelli again stated that she was in conflict in representing Cole, the sixth defendant in a six-defendant murder case, when she already represented five of those defendants. Campanelli indicated that she had filed motions to withdraw with regard to four of the five other defendants, as she was in conflict of interest with those defendants also. Campanelli conceded that she had separate attorneys assigned to those defendants but contended that, under the Counties Code (55 ILCS 5/3-4006 (West 2016)), she was the attorney for every client assigned to her office. Campanelli also asserted that her office was a law firm and wanted to be treated like any other law firm in the state of Illinois for purposes of conflict of interest. Campanelli stated that she represents every client in the public defender's office and had a right to know every fact, every strategy, and every defense of every case. If not allowed to know the confidences between lawyers, she would not be acting as the public defender of Cook County.

¶ 16. The trial court again ordered Campanelli to represent Cole and warned that her refusal to represent Cole would be in direct contempt of court. Campanelli responded that she continued to refuse to represent Cole. The trial court therefore found that Campanelli had willfully and contemptuously refused to accept the trial court's appointment to represent Cole after being ordered to do so. The trial court found Campanelli's refusal to be without basis, as there was no prejudice to Cole if Campanelli accepted the appointment. The trial court therefore ordered that Campanelli was in direct civil contempt for her willful failure to obey a direct

order of the court. The trial court imposed a sanction consisting of a fine of $250 per day until such time as Campanelli purged herself of direct civil contempt by accepting appointment as counsel for defendant Cole or until she was otherwise discharged by due process of law.

¶ 17. ANALYSIS

¶ 18. This case comes before this court on appeal of the trial court's order finding Campanelli to be in direct civil contempt and imposing sanctions. A court is vested with the inherent power to enforce its orders and to preserve the dignity of the court by the use of contempt proceedings. *In re Baker*, 71 Ill. 2d 480, 484 (1978). An order cast in terms of a contempt proceeding imposing sanctions is a final and appealable order. *People ex rel. Scott v. Silverstein*, 87 Ill. 2d 167, 171-72 (1981). This is because the imposition of a sanction for contempt, while occurring within the context of another proceeding, "is an original special proceeding, collateral to and independent of, the case in which the contempt arises." *Id.* at 172. In reviewing the contempt order, we must examine the propriety of the trial court's order directing Campanelli to accept appointment as counsel for Cole. If the order was invalid, the contempt order must be reversed. *People v. Shukovsky*, 128 Ill. 2d 210, 222 (1988).

¶ 19. Whether a party is guilty of contempt is a question of fact for the trial court. *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984). *Logston* held that a reviewing court will not disturb the trial court's finding unless it is against the manifest weight of the evidence

or the record reflects an abuse of discretion. *Id.* at 287. *In Norskog v. Pfiel*, 197 Ill. 2d 60, 70-71 (2001), the court clarified that the proper standard of review depends on the question that was answered in the trial court. Thus, if the facts are uncontroverted and the issue is the trial court's application of the law to the facts, a reviewing court may apply *de novo review*. *Id.*

¶ 20. In this case, to the extent our review concerns application of this court's rules, we find that *de novo* review is appropriate. When interpreting supreme court rules, this court is guided by the same principles applicable to construction of statutes. *People v. Salem*, 2016 IL 118693, ¶ 11. The construction of a statute is a question of law that is reviewed *de novo*. *People v. Smith*, 236 Ill. 2d 162, 167 (2010). To the extent our review concerns the trial court's adjudication of contempt, we find it is appropriate to apply an abuse of discretion standard.

¶ 21. In this court, as in the trial court, Campanelli argues that she is barred from representing Cole due to a conflict of interest between Cole and her codefendants. Campanelli asserts that any representation of more than one defendant in a multiple defendant case presents a conflict of interest for the office of the public defender. Campanelli claims a conflict based upon the sixth amendment to the United States Constitution (U.S. Const., amend. VI), article I, section 8, of the Illinois Constitution (Ill. Const. 1970, art. I, § 8), and Rules 1.10 and 1.7 of the Illinois Rules of Professional Conduct of 2010 (eff. Jan. 1, 2010).

¶ 22. Those accused of crime have a sixth amendment right to the effective assistance of counsel. *People v. Spreitzer*, 123 Ill. 2d 1, 13 (1988) (citing *Cuyler v. Sullivan*, 446 U.S. 335, 343 (1980), and *Glasser v. United States*, 315 U.S. 60, 70 (1942)). Effective assistance of counsel means assistance by an attorney whose allegiance to his client is not diluted by conflicting interests or inconsistent obligations. *Spreitzer*, 123 Ill. 2d at 13-14. The United States Supreme Court has held that requiring or permitting a single attorney to represent codefendants is not *per se* violative of the constitutional guarantee of the effective assistance of counsel. *Holloway v. Arkansas*, 435 U.S. 475, 482 (1978). The court in *Spreitzer* also recognized that treating multiple representation of codefendants as creating a *per se* conflict would put an end to multiple representation altogether, "since a 'possible conflict inheres in almost every instance of multiple representation,' and a *per se* rule would 'preclude multiple representation even in cases where "[a] common defense *** gives strength against a common attack." ' " *Spreitzer*, 123 Ill. 2d at 17 (quoting *Cuyler*, 446 U.S. at 348, quoting *Glasser*, 315 U.S. at 92). *Cuyler* recognized, however, that since a possible conflict of interest inheres in almost every instance of multiple representation, a defendant who objects to multiple representation must have the opportunity to show that potential conflicts imperil his right to a fair trial. *Cuyler*, 446 U.S. at 348.

¶ 23. Campanelli maintains that she did show that potential conflicts imperiled Cole's right to a fair trial, so that the trial court erred in finding her in direct

contempt of court. In making this argument, Campanelli contends that representation by the office of the Cook County public defender is tantamount to representation by a single attorney for purposes of conflict of interest analysis. Consequently, before we address whether Campanelli established that potential conflicts imperiled Cole's right to a fair trial, we first must address Campanelli's claim that representation by the public defender constitutes representation by a single attorney.

¶ 24. In support of this argument, Campanelli points to Rule 1.10 of the Illinois Rules of Professional Conduct of 2010. Rule 1.10(a) provides:

> "While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm." Ill. R. Prof'l Conduct (2010) R. 1.10(a) (eff. Jan. 1, 2010).

Comment 1 to Rule 1.10 explains:

> "For purposes of the Rules of Professional Conduct, the term 'firm' denotes 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. See Rule 1.0(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts." Ill. R. Prof'l Conduct (2010) R. 1.10 cmt. 1 (eff. Jan. 1, 2010).

¶ 25. Campanelli argues that the office of the public defender is a "firm," which means that its associated members—the assistant public defenders—may not represent clients with conflicting interests. In making this argument, Campanelli acknowledges that *People v. Robinson*, 79 Ill. 2d 147 (1979), held that a public defender's office is not a firm. However, Campanelli maintains that *Robinson* did not resolve the question of whether the office of the public defender is a firm within the definition of Rule 1.10 because the *Robinson* decision predated the drafting of the written rules of professional conduct in Illinois.

¶ 26. The *Robinson* decision was filed in 1979. Campanelli points out that the Illinois Code of Professional Responsibility was adopted on June 3, 1980, and was replaced by the Illinois Rules of Professional Conduct in 1990, which then were substantially amended in 2010. Therefore, *Robinson* could not have resolved whether, under the current rules, the office of the public defender is an "association authorized to practice law" or "a legal services organization" because *Robinson* did not construe the language of Rule 1.10. Campanelli contends that, under the plain language of Rule 1.10, the office of the public defender fits either description, so that it is a "firm" within the plain meaning of Rule 1.10.

¶ 27. As Campanelli concedes, *Robinson* considered "whether the individual attorneys employed in the office of a public defender are members of an entity subject to the generally recognized rule that if an attorney is disqualified by reason of a conflict of interest that no other partner or associate of his firm may continue with the representation." *Id.* at 154. *Robinson* held that "the avoidance of conflicts of interest which result in failure to provide effective assistance of counsel does not require us to hold that the individual attorneys who comprise the staff of a public defender are members of an entity which should be subject to the rule that if one attorney is disqualified by reason of a conflict of interest then no other member of the entity may continue with the representation." *Id.* at 158-59.

¶ 28. Following *Robinson*, in *People v. Miller*, 79 Ill. 2d 454 (1980), the court reiterated that it had rejected the claim that a public defender's office is to be treated as a law firm or an "entity" in considering a conflict of interest claim. *Miller* explained that where one assistant public defender might not effectively represent two competing interests, "two assistants might be able to do so, and in determining whether separate assistants can properly represent competing interests, we are to apply the general guidelines enunciated in our prior cases and those of the United States Supreme Court on the subject of conflicts of interest." *Id.* at 461.

¶ 29. As noted, Campanelli claims that *Robinson* does not control on the issue of whether the office of the Cook County public defender is a firm for purposes of Rule 1.10 because *Robinson* was decided before the

rules were adopted. Campanelli argues that the *Robinson* decision cannot be used to construe the plain language in Rule 1.10 defining "firm" because the *Robinson* court never addressed the language in the rule. In making this argument, however, Campanelli misunderstands this court's case law concerning the interpretation of statutes and court rules.

¶ 30. It is well settled that when statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law. *People v. Hickman*, 163 Ill. 2d 250, 262 (1994). As set forth *supra*, this court is guided by the same principles applicable to the construction of statutes when interpreting supreme court rules. *Salem*, 2016 IL 118693, ¶ 11. Consequently, in enacting the Illinois Code of Professional Responsibility, and later the Illinois Rules of Professional Conduct and the 2010 amendments to those rules, we presume that the court was well aware of its own case law holding that the office of the public defender is not a law firm for purposes of conflict of interest. This court has never departed from its precedent to expressly include the office of the public defender within the definition of a law firm, "association authorized to practice law," or "a legal services organization" in its Code of Professional Responsibility or Rules of Professional Conduct. Absent an express repudiation of the *Robinson* holding in this court's Rules of Professional Conduct, we find no basis to declare that *Robinson* is no longer good law or that Rule 1.10 now includes the office of public defender within its definition of law firms for purposes of a conflict of interest.

¶ 31. Campanelli then urges this court to overrule *Robinson*. Campanelli contends that *Robinson* failed to provide a reasoned analysis for its holding, relying as its sole explanation on "an unsupported statement" that treating the office of the public defender as a firm "would lead to the appointment of inadequate and inexperienced private counsel." Campanelli asserts that such speculation alone does not justify distortion of the plain meaning of Rule 1.10.

¶ 32. We again point out that the plain meaning of "firm" in Rule 1.10 necessarily excludes public defender offices from its definition. Moreover, the risk of appointing inadequate and inexperienced private counsel was not the basis for the *Robinson* decision. *Robinson* did consider case law from other jurisdictions, as well as the American Bar Association Standards Relating to the Administration of Criminal Justice, which found that a public defender's office is a firm for purposes of conflict of interest analysis. *Robinson* also considered the size and organization of the state's public defender offices. *Robinson* then concluded that, "[u]pon review of the authorities and consideration of the diversity of organization of the offices of public defenders," the avoidance of conflicts of interest did not require the court to hold that the public defender's office was analogous to a law firm. *Robinson*, 79 Ill. 2d at 158-59.

¶ 33. In reaching that conclusion, the court did note that, "[i]n 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." *Id.* at 159. Although the court noted that application of a *per se* rule might have such consequences, this was not the basis for the court's decision. Rather, *Robinson* balanced that possibility against the remote possibility that an experienced member of the public defender's staff might labor under a conflict of interest because another member of the staff was so burdened and found that the decisions of the United States Supreme Court, as well as its own decisions, furnished adequate guidance to avoid conflicts of interest which would impede the furnishing of effective assistance of counsel. *Id.* at 159-60.

¶ 34. The court later explained, in *People v. Lewis*, 88 Ill. 2d 429, 438 (1981), that the *Robinson* court "did not deem a personal allegiance or loyalty to the public defender's office sufficient to justify a rule that if one attorney employed by such an office were disqualified by reason of a conflict of interest, no other attorney employed by that office could undertake the representation." The basis for the *Robinson* rule again was repeated in *People v. Banks*, 121 Ill. 2d 36, 42 (1987), where the court stated that "*Robinson* rejected a *per se* conflicts rule precisely because it finds that an assistant public defender's loyalty towards his office is not great enough to impute to him the conflicts of other assistants."

¶ 35. *Robinson*, then, based its holding on the fact that the adversary tendency of lawyers within the public defender's office was sufficient protection against a conflict of interest between assistant public defenders. This court and our appellate court have consistently applied *Robinson* for nearly 40 years. Consequently, we

find no merit to Campanelli's claim that the decision was poorly reasoned and unworkable.

¶ 36. Having found that the office of the public defender is not a "firm" for purposes of Rule 1.10, we next address Campanelli's claim that Rule 1.7 bars the public defender from representing multiple defendants in a single prosecution. Rule 1.7 provides:

> "(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." Ill. R. Prof'l Conduct (2010) R. 1.7 (eff. Jan. 1, 2010).

Campanelli also points to comment 23 to Rule 1.7, which explains that:

> "[S]imultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties'

> testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant." Ill. R. Prof'l Conduct (2010) R. 1.7 cmt. 23 (eff. Jan. 1, 2010).

Campanelli argues that Rule 1.7 and comment 23 establish that conflicts are inevitable in cases of joint representation of codefendants.

¶ 37. While Rule 1.7 and comment 23 warn of the risk of joint representation of codefendants, the rule and comment address the representation of multiple defendants by one attorney. The issue here, in contrast, is whether representation of codefendants by different assistant public defenders presents a conflict of interest. *Spreitzer* explained that "[t]he asserted danger in the *Banks-Robinson-Spicer* line of cases was not so much that a single lawyer would attempt to represent the conflicting interests of two defendants as that a lawyer's loyalty to his client would be diluted by a conflicting allegiance to a fellow lawyer." *Spreitzer*, 123 Ill. 2d at 21.

¶ 38. As discussed, with regard to the public defender's office, this court has declined to adopt a *per se* rule finding a conflict of interest where different assistant public defenders represent codefendants in a case. Consequently, with regard to the public defender's

office, a case-by-case inquiry "is contemplated whereby it is determined whether any facts peculiar to the case preclude the representation of competing interests by separate members of the public defender's office." *Miller*, 79 Ill. 2d at 462. The mere fact that codefendants in a case are represented by separate members of the public defender's office does not violate Rule 1.7.

¶ 39. Campanelli then argues that appointing the office of the public defender to represent codefendants always presents a conflict of interest under Rule 1.7 because Campanelli, as the Cook County public defender, is counsel to all the defendants her office represents. Campanelli cites the Counties Code, as well as *Burnette v. Terrell*, 232 Ill. 2d 522 (2009), in support of her argument.

¶ 40. Campanelli points out that the Counties Code provides:

> "The Public Defender, as directed by the court, shall act as attorney, without fee *** for all persons who are held in custody or who are charged with the commission of any criminal offense ***." 55 ILCS 5/3-4006 (West 2016).

In addition, *Burnette* held that the circuit court under the Counties Code "appoints the office of the public defender to act as the attorney for an indigent defendant" and "does not appoint an individual assistant public defender." *Burnette*, 232 Ill. 2d at 538. Campanelli seizes upon the preceding language from *Burnette* to support her claim that she is the attorney for all defendants represented by her office.

¶ 41. We find Campanelli's reliance on *Burnette* to be misplaced. At issue in *Burnette* was whether a circuit court judge had the authority to refuse to allow an assistant public defender to represent clients in his courtroom, to remove an assistant public defender from representation of a defendant, or to assign a specific assistant public defender to represent a defendant in an individual case. The court held that the public defender has the sole authority to make work assignments for the assistant public defenders. *Id.* at 538-39. In so holding, the court noted that, under the Counties Code, the circuit court has the authority to direct the public defender to represent an indigent defendant but the circuit court does not appoint the individual assistant public defender. *Id.* at 538.

¶ 42. The fact that the trial court appoints the office of public defender to represent an indigent defendant, rather than appointing specific assistant public defenders, does not thereby transform the office of the public defender into a single entity for purposes of conflict of interest analysis. Similarly, the fact that the appointed public defender has supervisory authority over his or her assistant public defenders does not override an assistant public defender's undivided loyalty to his client.

¶ 43. In *Banks*, the court declined to find a *per se* conflict of interest where one assistant public defender argued the ineffective assistance of another assistant public defender. *Banks*, 121 Ill. 2d 36. *Banks* held that it would be erroneous to assume that public defenders have such an allegiance to their office that they would be unable to subordinate that allegiance to the interests of

their clients. *Id.* at 43. Pursuant to Campanelli's argument, an assistant public defender would never be able to argue the ineffective assistance of another assistant public defender where they were both were under the supervision of the public defender, as the public defender then would be arguing her own ineffectiveness. *Banks* implicitly rejected such an analysis in finding that an assistant public defender's loyalty to his client supersedes his allegiance to the office of the public defender.

¶ 44. The same analysis applies when different assistant public defenders are appointed to represent codefendants in a case. While Campanelli has oversight of the approximately 518 assistant public defenders in her office, it is the assistant public defender appointed to represent a defendant who provides the legal services to that defendant. The assistant public defender's loyalty to his office has not been deemed great enough to impute to him the conflicts of other assistant public defenders. *Id.* at 42. As in *Banks*, the fact that Campanelli has supervisory authority over all the assistant public defenders in the office of the Cook County public defender is not sufficient grounds, in and of itself, to disqualify the entire office from representing codefendants.

¶ 45. Campanelli next argues that, in any event, the trial court abused its discretion in appointing her to represent Cole because she twice informed the court that a direct conflict of interest prevented her from zealously representing Cole. Campanelli points to her written submission to the court stating that there was a conflict in representing Cole with respect to her

codefendants, but that "more detail cannot be given without violating the attorney-client privilege, which is the very thing the Public Defender is seeking to avoid via the appointment of counsel." When she appeared in court on the issue, Campanelli again told the court she was in conflict and could not "divulge attorney-client privilege information that I have learned about the other five codefendants in this case in order to tell you what the conflicts in this case are." Citing *Holloway*, Campanelli contends that it was enough to prove a conflict when she, as an officer of the court, represented that Cole would be prejudiced by her appointment.

¶ 46. *Holloway* held that if a potential conflict is brought to the attention of the trial court by counsel at an early stage, a duty devolves upon the trial court to either appoint separate counsel or take adequate steps to ascertain whether the risk of conflict was too remote to warrant separate counsel. *Holloway*, 435 U.S. at 484; accord *Spreitzer*, 123 Ill. 2d at 18. *Holloway* found persuasive decisions holding that an attorney's request for the appointment of separate counsel, based upon his representations as an officer of the court regarding a conflict of interest, generally should be granted. *Holloway*, 435 U.S. at 485. *Holloway* observed that those courts had considered that an attorney representing two defendants in a criminal matter is in the best position professionally and ethically to determine when a conflict of interest exists or will develop during the course of a trial, that defense attorneys have an obligation upon discovering a conflict of interest to advise the court of the problem, and that attorneys, as officers of the court, address the judge

virtually under oath in making their declarations. *Id.* at 485-86.

¶ 47. Campanelli argues that the trial court abused its discretion in ordering her to represent Cole in light of Campanelli's assertion that a conflict of interest prevented her from doing so. Campanelli contends that she cannot be ordered to divulge attorney-client privileged information in order to establish a conflict.

¶ 48. Campanelli is correct that counsel cannot be ordered to divulge attorney-client privileged information. However, *Holloway* explained that its holding did not preclude a trial court from exploring the adequacy of the basis of defense counsel's representations regarding a conflict of interest without improperly requiring disclosure of the confidential communications of the client. *Id.* at 487. The trial court in this case never ordered Campanelli to divulge confidential communications in attempting to ascertain the basis for Campanelli's refusal to accept the appointment to represent Cole.

¶ 49. Campanelli then argues that the trial court erred in asking her to explain the direct conflict regarding the representation of Cole to the court. At oral argument, counsel for Campanelli argued that Campanelli need only allege a conflict of interest, without more, in order to withdraw from representation. Campanelli cites *People v. Jones*, 121 Ill. 2d 21, 28 (1988), in arguing she need only allege a potential or possible conflict in order to withdraw from representation.

¶ 50. Although *Jones* referenced a potential or possible conflict that might deprive a defendant of the effective assistance of counsel, *Jones* discussed a potential or possible conflict in the context of the proper procedure when a conflict is brought to the attention of the trial court. *Jones* noted that in *Holloway*, when a potential conflict is brought to the attention of the trial court by counsel before trial or at an early stage of trial, the trial court must take "adequate steps" to deal with it. *Id.* *Jones* then stated that if "adequate steps" are not taken, the fact of a potential or possible conflict might deprive the defendant of the guaranteed assistance of counsel. *Id.* *Spreitzer* explained that adequate steps require a court to "ascertain whether the risk of conflict was too remote to warrant separate counsel." *Spreitzer*, 123 Ill. 2d at 18. The question in this case, then, is whether the trial court properly found that the risk of conflict in the representation of Cole was too remote to warrant separate counsel.

¶ 51. A defendant raising a potential conflict between two public defenders need only present the gist of such a conflict. *People v. Hardin*, 217 Ill. 2d 289, 303 (2005). "The defendant must sketch, in limited detail, a picture of how the working relationship between the public defenders created an appearance of impropriety." *Id.* However, bare allegations of a conflict are not enough, and in the absence of an evidentiary record of conflict, a conflict should not be created based on mere speculation. *Id.* at 302. Relevant factors to consider include whether the two public defenders were trial partners in the defendant's case; whether the public defenders where in hierarchical positions where one

supervised or was supervised by the other; or whether the size, structure, and organization of the office in which they worked affected the closeness of any supervision. *Id.* at 303.

¶ 52. Here, the trial court found that Campanelli failed to provide any substantive basis that a conflict of interest prohibited her from providing legal representation to Cole. Upon review, we find no abuse of discretion in the trial court's finding. None of the factors deemed relevant in *Hardin* are set forth in the record in this case with regard to the representation of Cole. Campanelli conceded that Cole's codefendants were represented by attorneys from the public defender's multiple defendant division. The office of the Cook County public defender describes the multiple defendant division as follows:

> "Attorneys assigned to the Multiple Defendant Division (MDD) of the Law Office of the Cook County Public Defender represent clients in felony and first degree murder cases where more than one person is accused. These attorneys are very experienced and represent indigent accused throughout the county. They act independently of other divisions in the office to prevent any effects from a conflict between Public Defender clients." *Divisions of the Public Defender's Office*, Cook County Gov't, http://cookcountyil.gov/service/ divisions-public-defenders-office (last visited Nov. 8, 2017).

Although Campanelli contends that the multiple defendant division itself is always in conflict, that

assertion is based upon her argument that the office of the Cook County public defender is a law firm, as well as her argument that she is the appointed counsel to all the defendants her office represents. As discussed *supra*, we have rejected these arguments.

¶ 53. Campanelli also acknowledged that there were approximately 518 attorneys employed by the office of the Cook County public defender and those 518 attorneys did not all share the same supervisors. Further, the attorneys assigned to represent Cole's codefendants were from different divisions of the public defender's office, and each had a different supervisor. These facts mitigate against a finding of conflict of interest in Campanelli's representation of Cole.

¶ 54. Although a defendant need only present the gist of a conflict, we find that Campanelli proffered only the bare allegations of a conflict, based on mere speculation. In the court hearing on May 10, 2016, when asked to explain the direct conflict to the court, Campanelli clarified that there was a potential for conflict and asserted that she did not have to wait until a conflict developed. In her written submission to the court, Campanelli claimed that there was a conflict of interest whenever she was appointed to represent multiple defendants. Again, at the May 19, 2016, hearing, Campanelli stated that she could not represent more than one defendant because of the potential conflict, although she acknowledged that each codefendant was represented by separate attorneys from different divisions of her office, with different supervisors. At the June 15, 2016, hearing, Campanelli

repeated that she was in conflict representing Cole because she already represented five other defendants.

¶ 55. Despite Campanelli's attempt to assert a conflict in the public defender's representation of Cole, it is clear that basis for Campanelli's conflict or potential conflict in representing of Cole arises solely from the fact that the office of public defender was appointed to represent more than one defendant in this multiple defendant case. *Robinson* and its progeny have consistently rejected that claim.

¶ 56. We note that even in her brief on appeal, Campanelli's argument concerning her conflict centers on a remote potential for conflict. She argues that it is all but inevitable in a joint representation that a conflict of interest will arise and that conflicts are difficult to discern at the outset of criminal litigation. Campanelli also argues that waiting to appoint conflict-free counsel until a conflict reveals itself is wasteful and often prejudicial. In addition, Campanelli asserts that conflicts that do not exist at the outset of a representation may arise later in the case.

¶ 57. These "potential conflicts," however, are the type that may exist in every case involving multiple representation of codefendants. *Cuyler* recognized that "a possible conflict inheres in almost every instance of multiple representation." *Cuyler*, 446 U.S. at 348. Nonetheless, the United States Supreme Court and this court have declined to find a *per se* conflict of interest simply because multiple representation may involve a conflict of interest.

¶ 58. At best, Campanelli's claims of conflict are based upon mere speculation that joint representation of codefendants by assistant public defenders will, at some point, result in conflict. These claims fail to provide an evidentiary record of conflict, and a conflict cannot be created on mere speculation.

¶ 59. As noted, under *Holloway* and *Spreitzer*, when a potential conflict is brought to the attention of the trial court 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. Here, the trial court took adequate steps to ascertain that the risk of conflict was too remote to warrant separate counsel. Under the circumstances, then, the trial court did not abuse its discretion in finding that there would be no prejudice to Cole in appointing the office of the Cook County public defender to represent her.

¶ 60. Having found that the trial court did not abuse its discretion in ordering Campanelli to represent Cole, it follows that the trial court did not err in adjudicating Campanelli to be in direct civil contempt of court. Section 3-4006 of the Counties Code provides that "[t]he Public Defender, as directed by the court, *shall act* as attorney, without fee, before any court within any county for all persons who are held in custody or who are charged with the commission of any criminal offense, and who the court finds are unable to employ counsel." (Emphasis added.) 55 ILCS 5/3-4006 (West 2016). Here, the trial court directed Campanelli, the public defender, to act as attorney for Cole. Campanelli refused the trial

court's direction. The trial court therefore properly invoked its inherent power to enforce its order and preserve the dignity of the court by use of contempt proceedings.

¶ 61. Accordingly, we affirm the trial court's judgment finding Campanelli to be in direct civil contempt and imposing sanctions for that contempt. We note, however, that the record is clear that the trial court understood Campanelli's contempt was purely a formal one and that the motivation for the contempt was solely to permit an appeal of the issue of multiple representation of defendants in light of the 2010 revisions to the Illinois Rules of Professional Conduct. Given these circumstances, we vacate the order of the trial court holding Campanelli in contempt and vacate the award of sanctions, despite our finding that the contempt order and award of sanctions were valid. See *Shukovsky*, 128 Ill. 2d at 231 (vacating contempt order where contempt was purely formal and motivation was to permit examination of a question through appeal); *Jiotis v. Burr Ridge Park District*, 2014 IL App (2d) 121293, ¶ 57 (where contemnor refuses to comply with court order in good-faith effort to secure an interpretation of an issue without direct precedent, it is appropriate to vacate the contempt on appeal).

¶ 62. Moreover, because the underlying case against Cole has continued to proceed with appointed counsel since May 19, 2016, we find, for purposes of judicial economy, that appointed counsel shall continue to represent Cole in the underlying case. We decline to order Campanelli to now accept representation of Cole.

¶ 63. For all the preceding reasons, we affirm the judgment of the circuit court of Cook County finding contemnor Amy Campanelli to be in direct civil contempt and imposing sanctions for that contempt. Nonetheless, we vacate the trial court's order adjudicating Campanelli in contempt and imposing sanctions.

¶ 64. Circuit court judgment affirmed.

¶ 65. Adjudication of direct civil contempt vacated.

Appendix B

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

PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	No. 16R05089-05
SALIMAH COLE,	)	
Defendant.	)	

ORDER OF ADJUDICATION DIRECT CIVIL CONTEMPT

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

1. That the court has jurisdiction over the subject matter and the parties.

2. That during the proceedings in the above captioned cause on May 19, 2016 and June 15, 2016, all parties and the Contemnor being present, this court made a finding based on an affidavit of assets and liabilities that the Defendant, Salimah Cole who is currently incarcerated and charged with First Degree

Murder in the above captioned cause, is an indigent defendant and should therefore be represented by the Public Defender of Cook County, Amy P. Campanelli. The Contemnor, was directed to **ACCEPT APPOINTMENT AS COUNSEL FOR SALIMAH COLE OR TO PROVIDE A LEGAL BASIS FOR HER REFUSAL TO ACCEPT THE APPOINTMENT**.

3. That the Contemnor willfully and contemptuously refused to accept appointment as counsel for Salimah Cole after being ordered to do so by this court.

    a. This court found that the Contemnor's refusal to accept appointment was without basis and that there was no prejudice that the Defendant, Salimah Cole would suffer should the Contemnor, Amy P. Campanelli accept appointment to represent the Defendant.

    b. This court also found that the Contemnor's refusal to accept appointment amounted to the Public Defender of Cook County, Amy P. Campanelli, disregarding her duties as set forth in The Public Defender Act, 55 ILCS 5/3-4006.

    c. This court also found that the refusal of the appointment of counsel deprived the Defendant, Salimah Cole, an incarcerated defendant, of her Sixth Amendment right to counsel. And that due to the Contemnor's

refusal to accept appointment, this court was forced to appoint private counsel for an indigent defendant who should be represented by the Public Defender of Cook County, Amy P. Campanelli.

d. As such, this court ruled that the Contemnor's refusal of appointment in this case was contemptuous. This court admonished the Contemnor that her continued refusal to accept appointment for the representation of the Defendant, Salimah Cole would force this court to hold the Contemnor in contempt of court.

e. The Contemnor continued to state that she has a conflict of interest if she represents the defendant, Salimah Cole and asked this court to hold her in contempt of court.

f. The Contemnor failed to provide any substantial basis that a per se or a concurrent conflict of interest exist as defined by the Illinois Rules of Professional Conduct (Rule 1.7) which would therefore prohibit the Contemnor from providing legal representation to the Defendant, Salimah Cole.

4. That the court admonished the Contemnor that should she continue to refuse to accept the court's appointment, she would be held in direct contempt of court and would be sanctioned by this court until she has purged herself by accepting

the court's appointment and providing legal representation to the defendant, Salimah Cole.

5. That the Contemnor continued to refuse to accept appointment, which has impaired the rights and interests of the Defendant, Salimah Cole and has impeded and obstructed the court in its administration of justice;

6. That the Contemnor is hereby found to be in **DIRECT CIVIL CONTEMPT**; and

7. That prior to sanctions being imposed, the Contemnor was given an opportunity to provide the court with information showing the reasoning behind her refusal to accept appointment and to make a statement in allocution to the court.

IT IS THEREFORE ORDERED AND ADJUDGED that the Contemnor:

1. Is found and adjudicated in direct civil contempt for her willful failure to obey a direct order of this Court; and

2. Is sanctioned by the Court and hereby fined a sum of $250.00 per day or until such time as the Contemnor shall purge herself of direct civil contempt by accepting appointment as counsel for defendant Salimah Cole in the presence of the Court, or until she is otherwise discharged by due process of law.

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

Enter: 6/15/16

Judge: Michele M. Pitman 1832