No. 120997

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,

v.

SALIMAH COLE,
Defendant,

AMY P. CAMPANELLI,
Contemnor-Appellant.

Illinois Appellate Court, First Judicial District
No. 1-16-1587
On Appeal From The Circuit Court Of Cook County
No. 16 CR 05089 (05)
The Honorable Michele M. Pitman, Judge Presiding

BRIEF OF *AMICUS CURIAE* THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF CONTEMNOR-APPELLANT

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POINTS AND AUTHORITIES

INTEREST OF *AMICUS CURIAE*

The National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges. NACDL is the only nationwide professional bar association for both public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient and just administration of justice. NACDL files numerous *amicus* briefs each year in the U.S. Supreme Court and other federal and state courts, seeking to provide *amicus* assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers and the criminal justice system as a whole.

From its inception, NACDL has endeavored to promote the proper and fair administration of criminal justice and foster the integrity, independence and expertise of the criminal defense profession. Moreover, NACDL is committed to ensuring that every person who arrives before the criminal justice system, especially those who are poor or racially or ethnically diverse, receive competent and sufficiently resourced counsel.

For these reasons, NACDL has a particular interest in this case, because it believes the lower court's decision deprives poor people, and especially poor people of color who are clients of the Cook County Public Defender's Office, of their fundamental constitutional right to conflict-free counsel.

BACKGROUND

In the criminal case underlying this appeal, the Cook County Public Defender, Amy Campanelli, filed a notice of intent to refuse appointment as counsel for an indigent defendant (Salimah Cole). Ms. Campanelli refused this appointment because she already represented another indigent co-defendant in the action and such joint representation would create a conflict of interest in violation of the Illinois Rules of Professional Conduct ("Illinois Rules"). (Supporting Record For State's Motion To Transfer Appeal To This Court Pursuant To Supreme Court Rule 302(b) ("State's Supporting Record") at 3-4; see also id. at 46-48.) After several hearings on this issue, the circuit court held that Ms. Campanelli's representation of Ms. Cole would result in "no prejudice" to Ms. Cole and ordered Ms. Campanelli to accept the appointment. (Id. at 98-99.) Specifically, the circuit court held that Ms. Campanelli failed to provide "any substantive basis that a per se or a concurrent conflict of interest" existed. (Id. at 87.) The circuit court then held Ms. Campanelli in "direct civil contempt" after she continued to refuse such appointment. (Id. at 99.)

A further hearing was held on July 18, 2016 to adjudicate Ms. Campanelli's additional motions to withdraw as counsel for other indigent co-defendants in the underlying criminal action. (Rule 328 Supporting Record For Response To The State's Motion To Transfer Appeal To This Court Pursuant To Supreme Court Rule 302(b) ("Rule 328 Supporting Record") at 6.) At that hearing, the circuit court held that "the Public Defender's Office is not a law firm as outlined by the Rules of Professional Conduct" and therefore "is to be treated differently than a private law firm." (Id. at 70.) As such, the circuit court found that Ms. Campanelli's appointment presented no conflict of interest because she in turn appoints "separate attorneys in her office to represent []

separate defendants." (Id.) Consistent with these rulings, the circuit court denied several motions to withdraw on the grounds that no evidence of actual conflict of interest was presented. (Id.)

SUMMARY OF ARGUMENT

The right to counsel is fundamental to the American adversarial system and a critical constitutional value. The Illinois Rules safeguard a core component of this fundamental right by ensuring that clients represented by privately retained and publicly appointed counsel alike receive unconflicted legal representation. However, the circuit court's decision fails to interpret the Illinois Rules in an appropriate manner, so as to conform to fundamental constitutional principles. Instead, the circuit court required the Cook County Public Defender's Office to represent multiple defendants, despite Ms. Campanelli's statement that she had a conflict of interest, and declined to appropriately apply this Court's 2010 rules on imputation of conflicts governing private law firms and legal services organizations. A long line of U.S. Supreme Court cases has expressly and repeatedly held that fundamental rights may not be limited solely due to an individual's financial status. But that is exactly what is happening here: indigent individuals who cannot afford to pay an attorney must accept representation by the public defender and therefore receive (under the circuit court's rule) a lower ethical standard of conflicted representation. This second-tier treatment of indigent clients impermissibly encroaches on those individuals' fundamental right to be represented by unconflicted lawyers who have undivided loyalty to them and who are unconstrained to zealously advocate on their behalves.

In addition, this constitutional violation almost certainly will fall on the shoulders of racially and ethnically diverse individuals who have been historically

marginalized -- and remain disproportionately targeted -- in Cook County. Census data confirm that members of racial and ethnic minorities constitute a significant proportion of the individuals represented by the Cook County Public Defender's Office. The circuit court's failure to apply the conflicts rules equally will have the additional effect of exacerbating existing racial and ethnic disparities. This Court should reverse the circuit court and unequivocally state what the Illinois Rules already suggest: the right to conflict-free counsel is a fundamental constitutional right, and is identical whether applied to individuals represented by privately retained counsel or indigent individuals represented by appointed counsel from the Public Defender's Office. See Ill. R. Prof'l Conduct 1.10 & cmt. 1.

ARGUMENT

I. THE CIRCUIT COURT'S APPLICATION OF THE ILLINOIS RULES DEPRIVES INDIGENT CLIENTS OF THEIR FUNDAMENTAL RIGHT TO CONFLICT-FREE COUNSEL SOLELY ON THE BASIS OF FINANCIAL STATUS IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FEDERAL AND STATE CONSTITUTIONS

A. The Right To Conflict-Free Counsel Is A Fundamental Constitutional Right

A bedrock principle of the American criminal justice system is the right to a fair trial. See Strickland v. Washington, 466 U.S. 668, 684-85 (1984). One of the most important components of this fundamental right is the Sixth Amendment, which "recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results." Id. at 685; see U.S. Const. amend. VI.

The right to the assistance of counsel incorporates -- and depends on -- the right to conflict-free counsel. Holloway v. Arkansas, 435 U.S. 475, 490 (1978)

(reversing conviction where trial counsel timely moved for appointment of separate counsel based on conflict of interest, and trial court denied motion without taking adequate steps to inquire into conflict); Glasser v. United States, 315 U.S. 60, 70-72 (1942) (requiring joint representation of co-defendants whose interests were in conflict deprived defendant of effective assistance of counsel), superseded on other grounds by rule, Fed. R. Evid. 104(a), as recognized in Bourjaily v. United States, 483 U.S. 171 (1987). As the U.S. Supreme Court has recognized, "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 should simultaneously represent conflicting interests." Glasser, 315 U.S. at 70. Indeed, the Sixth Amendment right to counsel is a hollow guarantee if an attorney's hands are tied by conflicting obligations. Holloway, 435 U.S. at 490 ("The mere physical presence of an attorney does not fulfill the Sixth Amendment guarantee [to effective counsel] when the advocate's conflicting obligations have effectively sealed his lips on crucial matters.").

This Court, too, repeatedly has affirmed the constitutional right to conflict-free representation, declaring that "[t]he right to effective assistance of counsel is a fundamental right and entitles the person represented to the undivided loyalty of counsel." People v. Coslet, 364 N.E.2d 67, 70 (Ill. 1977) (holding that defendant, charged with murdering her husband, whose attorney also represented administrator of husband's estate was deprived of effective assistance of counsel); see also People v. Austin M., 975 N.E.2d 22, 46 (Ill. 2012) (reversing juvenile's conviction where counsel was conflicted by serving as both defense counsel and guardian ad litem). An accused's "right to counsel under the Constitution is more than a formality, and to allow him to be

represented by an attorney with [a cognizable] conflicting interest[] . . . without his knowledgeable consent is little better than allowing him no lawyer at all." People v. Hernandez, 896 N.E.2d 297, 307 (Ill. 2008) (internal quotation marks omitted) (quoting People v. Stoval, 239 N.E.2d 441, 443 (Ill. 1968)).[1]

As the above case law from both the U.S. Supreme Court and this Court hold, the right to conflict-free counsel is an essential component of the fundamental right to counsel.

B. Fundamental Constitutional Rights May Not Be Denied Based On An Inability To Pay

Both the Equal Protection and Due Process Clauses of the U.S. Constitution guard against the state's ability to limit the exercise of fundamental rights -- such as the right to counsel -- based on financial status. M.L.B. v. S.L.J., 519 U.S. 102, 120 (1996); see U.S. Const. amend. XIV, § 1. The U.S. Supreme Court has held that "lines drawn on the basis of wealth or property" are arbitrary and discriminatory, and "like those of race, are traditionally disfavored." Harper v. Va. State Bd. of Elections, 383 U.S. 663, 668 (1966) (internal citations omitted).

When laws make fundamental rights inaccessible based on an inability to pay, "equal protection and due process principles converge." M.L.B., 519 U.S. at 120. The Equal Protection inquiry considers "whether the State has invidiously denied one class of defendants a substantial benefit available to another class of defendants." Bearden v. Georgia, 461 U.S. 660, 665 (1983). "The due process concern homes in on

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[1] This Court also has identified the ethical implications of conflicted counsel, explaining that an attorney who "represent[s] conflicting interests or undertake[s] to discharge inconsistent duties" fails to uphold his duties of "fidelity, secrecy, diligence, and skill." People v. Gerold, 107 N.E. 165, 177 (Ill. 1914).

the essential fairness of the state-ordered proceedings anterior to adverse state action." M.L.B., 519 U.S. at 120.

"[W]here fundamental rights and liberties are asserted . . . classifications which might invade or restrain them must be closely scrutinized and carefully confined." Harper, 383 U.S. at 670. Restrictions on fundamental rights are analyzed by weighing the "character and intensity of the individual interest at stake" against the state's justification.[2] M.L.B., 519 U.S. at 120-21. Applying these considerations, the U.S. Supreme Court has struck down restrictions that draw lines based on financial status in a variety of contexts:

1. *Right To Counsel*

It is foundational that the fundamental right to counsel protected by the Sixth Amendment cannot be denied based on an accused's inability to afford an attorney. See Gideon v. Wainwright, 372 U.S. 335, 344 (1963). The state's appointment of counsel for indigent individuals effectuates the "procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law," and protects against the arbitrary denial of these fundamental rights on the basis of financial status. Id.

Both this Court and the Illinois Legislature have enshrined the teachings of Gideon. In People v. Watson, 221 N.E.2d 645, 648 (Ill. 1966), this Court extended Gideon when a defendant who was charged with forgery was denied funds to hire an expert witness, who would have provided crucial testimony. Because "the right to

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[2] "Equal protection analysis is identical under the United States and Illinois Constitutions." In re Adoption of K.L.P., 763 N.E.2d 741, 752 (Ill. 2002). Similarly, federal constitutional precedent guides due process analysis under the Illinois Constitution. Lewis E. v. Spagnolo, 710 N.E.2d 798, 812 (Ill. 1999).

summon witnesses is fundamental to our legal system," this Court held "that a right so fundamental should not be made to depend upon the financial circumstances of the defendant." Id. at 648. In so doing, this Court observed that Gideon has "gone far to achieve [the] goal" of "see[ing] that all persons charged with a crime stand on an equality before the bar of justice in every American court." Id. (internal quotation marks omitted).

The Illinois Legislature has codified Gideon's mandate, recognizing in the Public Defender and Appointed Counsel section of the Counties Code that "quality legal representation in criminal and related proceedings is a fundamental right of the people of the State of Illinois and that there should be no distinction in the availability of quality legal representation based upon a person's inability to pay." 55 Ill. Comp. Stat. 5/3-4000.

2. *Right To Effective Appellate Review In Criminal Cases*

The U.S. Supreme Court has held that the state may not grant appellate review in a manner that discriminates on the basis of financial ability, because the fundamental safeguards of the Due Process Clause would be "meaningless promises" if they were limited based on the ability to pay. Griffin v. Illinois, 351 U.S. 12, 17 (1956).

For example, in Griffin, an Illinois statute required appellants to provide the court with a record of proceedings in the lower court in order to pursue an appeal. Id. at 13. Two indigent individuals were unable to afford the costs to procure a trial transcript and were therefore unable to appeal their criminal convictions. Id. On appeal to the U.S. Supreme Court, they argued that Illinois's "refusal to afford full appellate review solely because of poverty was a denial of due process and equal protection." Id. at 15. The Court agreed, holding that appellate review -- "integral . . . for finally adjudicating the guilt or innocence of a defendant" -- is a proceeding at which the full

protections of the Equal Protection and Due Process Clauses apply. Id. at 18. As such, the Illinois statute invidiously "discriminat[ed] against some convicted defendants on account of their poverty." Id.

The U.S. Supreme Court has applied the Griffin principle in Burns v. Ohio, 360 U.S. 252, 257 (1959), holding that an individual cannot be precluded from prosecuting an appeal solely because of an inability to afford appellate filing fees. The Court has extended that principle further and held that a California rule that provided appellate counsel for indigent defendants only if the court determined, after reviewing the record, that counsel would be helpful, constituted "an unconstitutional line . . . drawn between rich and poor." Douglas v. California, 372 U.S. 353, 357 (1963). Moreover, the Court has held that the state's proffered "fiscal and other interests in not burdening the appellate process" do not justify making transcripts available only to defendants who have been convicted of felonies, rather than misdemeanors:

> Griffin does not represent a balance between the needs of the accused and the interests of society; its principle is a flat prohibition against pricing indigent defendants out of as effective an appeal as would be available to others able to pay their own way. The invidiousness of the discrimination that exists when criminal procedures are made available only to those who can pay is not erased by any differences in the sentences that may be imposed. The State's fiscal interest is, therefore, irrelevant.

Mayer v. City of Chicago, 404 U.S. 189, 196-97 (1971).

Thus, because the right to an effective first appeal is fundamental, if an indigent defendant cannot afford to hire an attorney or to pay court fees, states must appoint counsel, waive filing fees and provide a trial transcript to ensure that a meaningful appeal is available. See id.; Douglas, 372 U.S. at 357; Burns, 360 U.S. at 258; Griffin, 351 U.S. at 18.

3. *Right To Liberty*

The U.S. Supreme Court has consistently held that a state violates the Equal Protection Clause when it imprisons an indigent individual solely because he cannot afford to pay a fine. In Williams v. Illinois, 399 U.S. 235, 236-37 (1970), the defendant had served his prison sentence, but remained incarcerated pursuant to an Illinois statute because of his inability to pay the monetary penalty of his sentence. The Court invalidated the statute, holding that "the Equal Protection Clause of the Fourteenth Amendment requires that the statutory ceiling placed on imprisonment for any substantive offense be the same for all defendants irrespective of their economic status." Id. at 244. The Court reasoned that, "[s]ince only a convicted person with access to funds can avoid the increased imprisonment, the Illinois statute in operative effect exposes only indigents to the risk of imprisonment beyond the statutory maximum," and that "[b]y making the maximum confinement contingent upon one's ability to pay, the State has visited different consequences on two categories of persons." Id.[3] See also Smith v. Bennett, 365 U.S. 708, 709 (1961) (holding that the State denied indigent prisoners equal protection of the laws by making writ of habeas corpus available only to those prisoners who could pay necessary filing fees).

The Court has similarly held that the state impermissibly discriminates on the basis of financial status when it automatically revokes an individual's probation when he or she has failed to pay a fine, without inquiring into why. Bearden, 461 U.S. at 672-73. "To do [so] would deprive the probationer of his conditional freedom simply

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[3] See also Tate v. Short, 401 U.S. 395, 398-99 (1971) (extending Williams to hold that the State violated the Equal Protection Clause when it imprisoned defendant convicted under fine-only statute solely because defendant was indigent and unable to immediately pay fine in full).

because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment." Id.

4. ***Right To Familial Relationships***

The U.S. Supreme Court has protected individuals' fundamental interests such as divorce and parental rights against laws purporting to restrict them in quasi-criminal proceedings on the basis of financial status. For example, in Boddie v. Connecticut, 401 U.S. 371, 383 (1971), the Court struck down a law that required individuals to pay court fees and costs in order to bring an action for divorce. In that case, a class of women who received public assistance attempted to file for divorce, but were unsuccessful in doing so because they could not afford the court fees and costs of services of process. Id. at 372-73. The Court held that, because "marriage involves interests of basic importance in our society," the State could not "pre-empt the right to dissolve this legal relationship without affording all citizens access to the means it has prescribed for doing so." Id. at 376, 383.

Similarly, in M.L.B., the petitioner's parental rights were terminated but she was unable to afford the advance payment of $2,352 in court fees to appeal the termination decision. 519 U.S. at 108-09. The Court held that, owing to "the [fundamental] interest of parents in their relationship with their children," requiring individuals to pay court fees in advance in order to appeal a parental termination decree violated the Due Process and Equal Protection Clauses. Id. at 119, 124.

In both cases, the Court found that the State's countervailing financial interest did not outweigh the indigent individual's fundamental interest at stake. In Boddie, the court held that "the State's asserted interest in its fee and cost requirements as

a mechanism of resource allocation or cost recoupment" could not justify the imposition of a financial barrier to the exercise of a fundamental right. 401 U.S. at 382. Similarly, in M.L.B., the court rejected the State's reliance on its purported "legitimate interest in offsetting the costs of its court system," reasoning that the State's need for revenue is not a sufficient justification in cases involving fundamental rights, because "access to judicial processes in cases criminal or quasi criminal in nature [cannot] turn on ability to pay." Id. at 122, 124 (internal quotation marks and citation omitted).

* * *

These four examples demonstrate the U.S. Supreme Court's and this Court's long history of solicitude for fundamental rights, and protection of those rights in the face of policies that discriminate on the basis of financial status.

C. The Failure To Apply Similar Conflict Of Interest Standards To Clients Of Privately Retained Attorneys And Clients Of The Cook County Public Defender's Office Deprives The Public Defender's Clients Of Their Fundamental Right To Conflict-Free Counsel

The logic and holdings of the above cases are clear: fundamental rights -- whether the right to be represented by counsel in a criminal proceeding, to appeal, to divorce, to enjoy familial relationships or to enjoy one's liberty -- may not be denied on the basis of an individual's financial status.[4]

Both the U.S. Supreme Court and this Court firmly establish the right to conflict-free counsel as fundamental. See, e.g., Glasser, 315 U.S. at 70; Hernandez, 896

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[4] See M.L.B., 519 U.S. at 119, 124; Bearden, 461 U.S. at 672-73; Mayer, 404 U.S. at 196-97; Tate, 401 U.S. at 398-99; Boddie, 401 U.S. at 376, 383; Harper, 383 U.S. at 667-68; Douglas, 372 U.S. at 357; Gideon, 372 U.S. at 344; Burns, 360 U.S. at 258; Griffin, 351 U.S. at 18.

N.E.2d at 303. Accordingly, like the fundamental rights discussed above, the right to conflict-free counsel may not be denied based on an inability to pay.

Consistent with U.S. Supreme Court and this Court's authority, the operative Illinois Rules (updated in 2010) safeguard the right to conflict-free counsel for all clients -- whether clients of privately retained or publicly appointed counsel. Specifically, Rule 1.10(a), governing imputation of conflicts of interest, provides that, "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so . . . , 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."[5] Ill. R. Prof'l Conduct 1.10 (emphasis added). The official comment to Rule 1.10 defines "firm" for the purposes of the Rules to include "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." Ill. R. Prof'l Conduct 1.10 cmt. 1. This definition suggests that just as a private attorney will be disqualified based on the conflict of interest of another attorney practicing at her firm, so, too, should an assistant public defender be disqualified on the basis of the conflict of another attorney within the

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[5] See also Am. Bar Ass'n, ABA Standards for Criminal Justice: Prosecution and Defense Function, at Standard 4-1.7(d) (4th ed. 2015) (providing that, with certain limited exceptions, "a defense counsel (or multiple counsel associated in practice) should not undertake to represent more than one client in the same criminal case" (emphasis added)). The commentary to the Illinois Rules similarly cautions that "[t]he potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant." Ill. R. Prof'l Conduct 1.7, cmt. 23.

same legal services or other organization -- here, the Cook County Public Defender's Office.

The circuit court's application of the Illinois Rules in this case does not accord with this principle. While the new Illinois Rules impute a private attorney's conflict of interest to all members of her law firm, the circuit court here refused to similarly impute an assistant public defender's conflict of interest to all members of the Cook County Public Defender's Office, even though that office meets the definition of a law firm under the Illinois Rules. (See id.; Rule 328 Supporting Record at 70.) This failure to apply equivalent standards to private and public law firms effectively creates a second tier of clients, for whom conflicted representation is tolerated instead of prohibited. In practice, whether an individual falls into the first or second tier is solely determined by financial status, because an individual only will be represented by the Public Defender's Office if he cannot afford to hire a private attorney. See Nat'l Ass'n of Criminal Defense Lawyers, *Gideon* at 50: A Three-Part Examination of Indigent Defense in America, Part 2 -- Redefining Indigence: Financial Eligibility Guidelines for Assigned Counsel, at 28 (Mar. 2014), https://www.nacdl.org/reports/ (stating that individuals are eligible for appointed counsel when they "lack [ ] financial resources on a practical basis to retain counsel" (citing People v. Adams, 903 N.E.2d 892 (Ill. App. Ct. 2009)).

Thus, the circuit court's ruling limits the right of the Public Defender's indigent clients to conflict-free counsel "solely because of an inability to pay." Boddie, 401 U.S. at 371. Similarly, the application of a lower ethical conflicts standard to public defenders' offices "in operative effect exposes only indigents to the risk" of representation

by conflicted attorneys who are unable to zealously advocate for their clients. Williams, 399 U.S. at 242. By making the right to conflict-free counsel "contingent upon one's ability to pay, the State has visited different consequences on two categories of persons" in violation of the Equal Protection Clause. Id. The U.S. Supreme Court has, time and again, rejected such "impermissible discrimination that rests on ability to pay." Id. at 241; see also supra note 4. The Court has similarly affirmed that it is "settled law that an indigent defendant has the same right to effective representation by an active advocate as a defendant who can afford to retain counsel of his or her choice." McCoy v. Court of Appeals of Wis., Dist. 1, 486 U.S. 429, 435 (1988).

To the extent that Illinois argues in this case that such discrimination is justified on the basis of financial or administrative concerns, the U.S. Supreme Court has held that such considerations cannot override fundamental constitutional rights: "the constitutional imperatives of the Equal Protection Clause must have priority over the comfortable convenience of the status quo." Williams, 399 U.S. at 245. This Court recently issued a similar reminder, when it rejected the claim that "dire" financial circumstances justified the Illinois Pension Code amendment's violation of the Illinois Constitution:

> The financial challenges facing state and local governments in Illinois are well known and significant. . . . It is our obligation, however, just as it is [the legislature's], to ensure that the law is followed. . . . It is especially important in times of crisis when, as this case demonstrates, even clear principles and long-standing precedent are threatened. Crisis is not an excuse to abandon the rule of law. It is a summons to defend it.

In re Pension Reform Litig., 32 N.E.3d 1, 18, 28 (Ill. 2015) (emphasis added). Any proffered financial or administrative justifications for the differential treatment of

indigent clients, then, should not and cannot outweigh the constitutional imperatives at stake.

Both the U.S. Supreme Court and this Court have firmly established the right to conflict-free counsel as fundamental to protecting all other trial rights. Equal Protection and Due Process considerations bar states from restricting access to this fundamental right solely on the basis of financial status; doing so constitutes impermissible discrimination based on an inability to pay. Because the Illinois Rules already establish that the same ethical rules concerning conflicts of interest protect clients of public and private attorneys alike, this Court should reverse the decision of the circuit court.

D. African-American And Latino Individuals Are Likely To Bear The Brunt Of The Constitutional Violation At Issue Here

As set forth above, Illinois's infringement of indigent clients' fundamental rights to conflict-free counsel constitutes "impermissible discrimination that rests on ability to pay." See Williams, 399 U.S. at 241. Although this deprivation does not necessarily amount to intentional discrimination, there is no denying that the individuals who bear the brunt of this constitutional violation are most likely to be African-American and Latino.

The most recent statistical data available show that African-Americans and Latinos comprise a significant portion of individuals who qualify for representation by the Cook County Public Defender's Office. For example, in 2015, individuals who identified as African-American alone and individuals who identified as Hispanic of any race respectively accounted for 28% and 20% of the population who live under the

poverty line in Cook County.[6] Moreover, members of these groups are disproportionately represented in the criminal justice system:

- In 2014, 61.8% of all individuals arrested in Cook County identified as non-white.[7]
- In 2014, 89% of all individuals newly admitted to the Cook County prison were Black or Hispanic.[8]
- As of June 30, 2015, 70.1% of the Illinois Department of Corrections population identified as Black or Hispanic.[9]

Such rates of arrests and incarcerations are disproportionate to these groups' relative population size.[10]

Further, at this crucial time in the governance of our County, where the Chicago Police Accountability Task Force has found that "people of color -- particularly African-Americans -- have had disproportionately negative experiences with the police over an extended period of time. There is also evidence that these experiences continue

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6 Poverty Status in the Past 12 Months: Cook County, United States Census Bureau (2015), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_1YR_S1701&prodType=table; see also U.S. Dep't of Justice Civil Rights Div. and U.S. Attorney Office N. Dist. of Ill., Investigation of the Chicago Police Department (Jan. 13, 2017) at 17, https://www.justice.gov/opa/file/925846/download [hereinafter "DOJ Report"] (noting that "[a]pproximately 35% of black residents and 25% of Latinos live below the poverty line, compared to less than 11% of white residents").

7 ICJIA Criminal Justice Data Profiles, Cook County, Illinois Criminal Justice Information Authority, http://www.icjia.state.il.us/sac/tools/DataProfiles/CriminalJusticeDataProfiles.cfm (last visited Nov. 29, 2016).

8 Id.

9 Illinois Department of Corrections, Fiscal Year 2015 Annual Report, at 76 (June 2016), https://www.illinois.gov/idoc/reportsandstatistics/Documents/FY2015%20Annual%20Report.pdf.

10 As U.S. Supreme Court Justice Sonia Sotomayor has observed, writing in dissent in a case concerning the constitutionality of police stops under the Fourth Amendment, "it is no secret that people of color are disproportionate victims of this type of scrutiny." Utah v. Strieff, -- U.S. --, 136. S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting).

today through enforcement and other practices that disproportionately affect and often show little respect for people of color."[11]

For example, research shows that:

- Between May and August 2014, Black Chicagoans made up just 32% of the city's population, but were subjected to 72% of all investigatory stops.[12] During this time period, more than 250,000 of these encounters did not lead to arrests.[13]
- In 2013, the Chicago Police Department was over four times more likely to search with consent the vehicles of Black and Hispanic motorists compared to white motorists.[14] They were 3.42 and 4.82 times respectively more likely to search without consent the vehicles of Black and Hispanic motorists compared to white motorists.[15] But, officers were more likely to find contraband in the vehicles of white motorists.[16]
- In 2012, after Chicago police officers were given the option to either arrest individuals or issue citations for marijuana possession, only the neighborhoods that were at least 96% non-white experienced increased arrest rates for that offense.[17]

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[11] Police Accountability Task Force, Recommendations for Reform: Restoring Trust Between the Chicago Police and the Communities They Serve, at 32 (2016), https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf.

[12] ACLU of Illinois, Stop and Frisk in Chicago, at 9 (Mar. 2015), http://www.aclu-il.org/wp-content/uploads/2015/03/ACLU_StopandFrisk_6.pdf.

[13] Id. at 11.

[14] ACLU of Illinois, CPD Traffic Stops and Resulting Searches in 2013, at 1 (Dec. 2014), http://www.aclu-il.org/wp-content/uploads/2014/12/Report-re-CPD-traffic-stops-in-2013.pdf.

[15] Id. at 5.

[16] Id. at 4-5 (finding that the "hit rates" in searches with consent were "12% for black motorists, 13% for Hispanic motorists, and 24% for white motorists" and in searches without consent they were "17% for black motorists, 20% for Hispanic motorists and 30% for white motorists").

[17] Patchwork Policy: An Evaluation of Arrests and Tickets for Marijuana Misdemeanors in Illinois, at 9, 19 (May 2014), https://www.roosevelt.edu/~/media/Files/pdfs/college-cas/IMA/IDCP/PatchworkPolicyFullReport.ashx?la=en.

- Between January 2011 through March 2016, misconduct complaints against Chicago police officers brought by white individuals were two-and-a-half times more likely to be sustained than those filed by Blacks, and nearly two times as likely to be sustained as those filed by Latino individuals.[18] When such complaints involved allegations of excessive force, white individuals were three times more likely than Black individuals and six times more likely than Latino individuals, to have their allegations sustained.[19]

These statistical data, from multiple independent sources, powerfully suggest that African-Americans and Latinos represented by the Cook County Public Defender's Office will bear a disproportionate share of the effects of the circuit court's ruling if allowed to stand. The trust these individuals have in our system of government already has been badly eroded. For example, after a thirteen-month investigation, on January 13, 2017, the U.S. Department of Justice released a report describing failures within the Chicago Police Department that "have deeply eroded community trust, particularly in African-American and Latino communities suffering the most from gun violence on Chicago's South and West Sides."[20]

This trust, an essential element in the attorney-client relationship, will be further undermined if this Court allows the circuit court's ruling to stand. As a matter of public policy and in recognition of the "systemic deficiencies that disproportionally impact" African-American and Latino communities, this Court should not allow clients of the Cook County Public Defender -- a substantial portion of whom are members of

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18 DOJ Report, supra note 6 at 68.

19 Id. at 69.

20 Vanita Gupta, Head of the Civil Rights Division Vanita Gupta Delivers Remarks at Press Conference Announcing Findings of Investigation into Chicago Police Department (Jan. 13, 2017), https://www.justice.gov/opa/speech/head-civil-rights-division-vanita-gupta-delivers-remarks-press-conference-announcing-3.

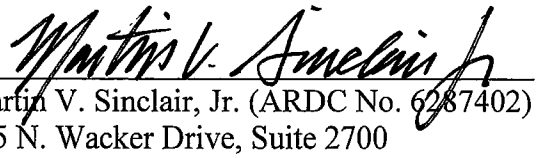
diverse racial and ethnic groups -- to be subjected to a systematically lower standard for conflicted representation.[21] Instead, this Court should apply the Illinois Rules as written, which will not only meet the longstanding requirement that fundamental rights may not be limited solely due to an individual's financial status but will be a step towards restoring trust in the County's marginalized communities.[22]

CONCLUSION

Amicus Curiae respectfully requests that this Court reverse the decision of the circuit court and remand the case for further proceedings consistent with the Court's instructions.

Dated: February 1, 2017

Respectfully submitted,



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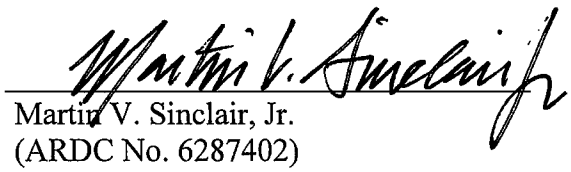
21 See U.S. Dep't of Justice Civil Rights Div. and U.S. Attorney Office N. Dist. of Ill., Investigation of the Chicago Police Department (Jan. 13, 2017) at 4, https://www.justice.gov/opa/file/925846/download.

22 See id.

RULE 341(c) CERTIFICATE OF COMPLIANCE

I, Martin V. Sinclair, Jr., certify that this brief conforms to the requirements of Supreme Court Rules 345(b) and 341(a) and (b). The length of this brief, excluding pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service and those matters to be appended to the brief under Rule 342(a), is 20 pages.



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NOTICE OF FILING

The undersigned, an attorney, certifies that on February 1, 2017, he caused the foregoing Brief Of *Amicus Curiae* The National Association Of Criminal Defense Lawyers In Support Of Contemnor-Appellant to be filed with the Supreme Court of Illinois, by hand delivering the original and one copy of the Motion for Leave to File as *Amicus Curiae*, one copy of the proposed order and one copy of the brief, at:

Illinois Supreme Court
20th Floor
Michael A. Bilandic Building
160 N. LaSalle Street
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and by simultaneously sending the original brief plus nineteen copies via Federal Express, overnight delivery to:

Illinois Supreme Court
Supreme Court Building
200 E. Capital Avenue
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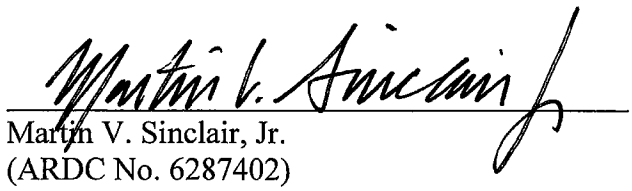

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PROOF OF SERVICE

On February 1, 2017, the undersigned, an attorney, caused three copies of the foregoing brief, a copy of the motion and a copy of the proposed order to be served upon counsel for Plaintiff-Appellee and Contemnor-Appellant by sending said copies via Federal Express, overnight delivery to:

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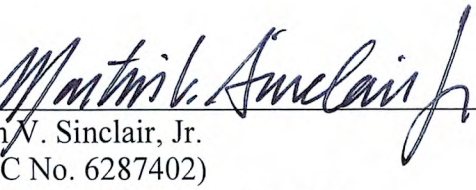

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