

**In The
Supreme Court of the United States**

————— ◆ —————
CHRISTA GAIL PIKE,
Petitioner,

v.

TENNESSEE,
Respondent.

————— ◆ —————

**ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF TENNESSEE**

————— ◆ —————

**BRIEF OF AMICUS CURIAE
THE ETHICS BUREAU AT YALE
IN SUPPORT OF PETITIONER**

————— ◆ —————

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INTEREST OF *AMICUS CURIAE*¹

The Ethics Bureau at Yale—a group of fourteen law school students supervised by an experienced practicing lawyer and lecturer—provides professional responsibility advice to nonprofit legal services providers; drafts amicus briefs in cases concerning professional responsibility; assists defense counsel with ineffective assistance of counsel issues relating to professional responsibility matters; and offers ethics advice and counsel on a pro bono basis.

The Ethics Bureau at Yale respectfully submits this brief as *Amicus Curiae* for two reasons. First, because we have an interest in ensuring that the Rules of Professional Conduct and the Sixth Amendment right to counsel preserve the right of every criminal defendant to receive competent and conflict-free representation. Second, because when lawyers and judges ignore or tolerate conflicts of interest affecting the representation of criminal defendants, they jeopardize the integrity of the individual's representation as well as undermine public confidence in the fairness of the broader legal system.

¹ Pursuant to Rule 37.2 of the Rules of this Court, the parties have consented to the filing of this brief. The letters granting consent are filed herewith. This brief was not written in whole or in part by counsel for any party, and no person or entity other than *Amicus Curiae* and their counsel has made a monetary contribution to the preparation and submission of this brief.

QUESTION PRESENTED

Are the courts, when reviewing allegations of conflicts of interest of trial counsel as they adjudicate habeas corpus proceedings, obliged as a matter of due process to apply an objective standard—i.e., to ask what a reasonably informed lawyer in the situation would believe, rather than what the individual lawyer subjectively believed—in assessing the presence of a conflict of interest, whether it was properly addressed, and its prejudicial effect?

SUMMARY OF ARGUMENT

Amicus maintains that the failure of the habeas court to apply an objective test to the claim that Petitioner's counsel was laboring under a non-waivable conflict of interest caused by his felonious conduct reflects a fundamental assault on the proposition that the Sixth Amendment is violated when counsel, laboring under a conflict, is assigned by a Court, with full knowledge of the circumstances that gave rise to the conflict. The bench and bar need guidance in this important area of right-to-counsel jurisprudence to rectify this error and, more importantly, in future cases to adjudicate conflict of interest situations properly.

ARGUMENT

Both the Rules of Professional Conduct and the Restatement of the Law Governing Lawyers make clear that, when reviewing allegations that trial counsel labored under a conflict of interest, a habeas court must apply an objective standard. The court must ask what a reasonable lawyer would believe in the given situation, *not* what the individual lawyer subjectively believed. In this case, the habeas court incorrectly took at face value Mr. Talman's testimony—his subjective belief that he was not conflicted.

If the court had made any objective determination, it could only have concluded that Mr. Talman faced a conflict of interest by virtue of the fact that he had stolen over \$67,000 from the state's indigent defense fund, subjecting himself to both criminal and disciplinary proceedings; that the conflict could not be waived, because Mr. Talman could not possibly have provided competent and diligent representation; that, in any event, Mr. Talman did not secure the informed consent that would be required to waive the conflict; and that Ms. Pike was prejudiced by Mr. Talman's conflicted conduct. The subjective analysis that the Tennessee Court performed is inconsistent with the rules governing lawyers and would eviscerate in practice the constitutional guarantee that every criminal defendant is entitled to unconflicted counsel. *See Wood v. Georgia*, 450 U.S. 261, 271 (1981) ("Where a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of

interest.”); *see also* *Cuyler v. Sullivan*, 446 U.S. 335, 345 (1980); *Holloway v. Arkansas*, 435 U.S. 475, 481 (1978).

In reviewing the uncontested facts of the representation of Ms. Pike in this capital case, the only conclusions that one can reach are that Mr. Talman’s conflict of interest was profound, infecting every aspect of the representation, and that the trial courts’ handling of the conflict was so inconsistent with the Rules of Professional Conduct and their implementation that this case cries out for intervention by this Honorable Court. This Court must disapprove of what occurred and provide instructions to the legal profession and the courts on how these critical matters must be handled, particularly in the context of capital cases, where the consequences of compromised counsel are so devastating.

I. The Habeas Court Should Have Recognized a Conflict Because Mr. Talman Was Objectively Conflicted at the Time of His Appointment.

Courts are obliged by law to follow an approach akin to that in the Rules of Professional Conduct and the Restatement of the Law Governing Lawyers and apply an objective test to determine whether lawyers face conflicts of interest. Under an objective test, the lawyer’s own belief about the existence of a conflict is irrelevant: if the reasonably available facts suggest a significant risk that a countervailing interest will adversely affect a representation, the lawyer is conflicted. The

Tennessee habeas court erred in this case by disregarding the objective facts that plainly indicated that Mr. Talman was conflicted. It based its conclusion that no conflict existed solely on Mr. Talman's subjective appraisal of his own unethical conduct, but he would be the last person to be relied upon under an objective standard.

A. Courts Must Apply an Objective Test to Determine Whether Conflicts of Interest Exist

Authorities on legal ethics consistently evaluate possible conflicts of interest using an objective framework. Under Model Rule 1.7, a lawyer is conflicted if "there is a significant risk" that his interests will interfere with a representation: it is the objective existence of risk, not the lawyer's subjective appreciation of it, that infects the representation. Model R. Prof'l Conduct 1.7(a)(2). Rule 1.7 also grants lawyers an affirmative duty to adopt "reasonable procedures" to determine the "person and issues" involved in every representation. *Id.* cmt. 3. When ignorance of a conflict results from failure to follow such procedures, that ignorance will not excuse a violation of the Rule. *Id.*

The Restatement similarly insists on an objective, rather than subjective, determination of whether a conflict exists. Like Rule 1.7, Section 121 of the Restatement identifies a conflict whenever "there is a substantial risk" that a representation will be adversely affected by the lawyer's interests. Restatement (Third) of the Law Governing Lawyers § 121. A comment to Section 121 clarifies that the

propriety of a representation must be determined by reference to the “facts and circumstances that the lawyer knew or should have known” when he began or continued a representation. *Id.* cmt. c(iv). This framework creates an objective test. If the information reasonably available to a lawyer indicates that there is a substantial risk that his interests will interfere with his representation, then the lawyer is conflicted regardless of his subjective belief.

The objective test for identifying conflicts of interest exists for good reason. Lawyers jeopardize their clients whenever they ignore conflicts of interest, not only when they consciously acknowledge that they are doing so. Through wishful thinking or plain negligence, a lawyer might stumble unwittingly into a tremendously destructive conflict. The objective standard creates the essential incentive to avoid these situations.

Legal ethics rules also insist on an objective test because it facilitates review of lawyers’ ethical decisionmaking. If lawyers could absolve themselves of responsibility for conflicts of interest by simply denying that they believed they had been conflicted, professional responsibility would become effectively voluntary. Violators could—and surely many would—end disciplinary proceedings by refusing to acknowledge that they had recognized ethical defects in their conduct.

Courts considering whether conflicts of interest render counsel ineffective in violation of the Sixth Amendment right to counsel should likewise

implement an objective standard. Every criminal defendant has a right to unconflicted counsel, *see Wood v. Georgia*, 450 U.S. 261 (1981), and this right is violated whether or not his lawyer acknowledges the fact or the extent of a conflict. Moreover, habeas courts applying a subjective test would face the same evidentiary problem as their professional discipline counterparts. Lawyers could brazenly deny that they had recognized conflicts, and only petitioners with conscientious and contrite trial lawyers would have any hope of establishing ineffective assistance predicated on a conflict of interest. Courts reviewing other Sixth Amendment claims cannot rely on allegedly ineffective lawyers' own conclusions that they performed adequately. As long as they are obligated to "search for constitutional error with painstaking care," *Burger v. Kemp*, 483 U.S. 776, 785 (1987), courts should similarly insist on objective bases for determining whether conflicts of interest exist.

This Court has repeatedly turned to the rules governing the profession to inform its Sixth Amendment jurisprudence. *See, e.g., Swidler & Berlin v. United States*, 524 U.S. 399, 406-07 (1998); *Wheat v. United States*, 486 U.S. 153, 160 (1988); *Nix v. Whiteside*, 475 U.S. 157, 165-66 (1986); *Cuyler v. Sullivan*, 446 U.S. 335, 346 (1980); *see also Michigan v. Harvey*, 494 U.S. 344, 367 n.12 (1990) (Stevens, J. dissenting). Its reliance reflects both the time-tested virtues of the professional rules and the Court's independent interest in maintaining the legitimacy of the judicial system. Public confidence in the outcome of cases depends on confidence in the lawyers who argue them; this faith is predicated on a

conception of lawyers as zealous and independent advocates for their clients. Ensuring that lawyers avoid conflicted representations is one way for courts to protect their “independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.” *Wheat v. United States*, 486 U.S. at 160. As it has many times in the past, the Court should rely on the accumulated wisdom of the profession—wisdom distilled into guiding precepts—as it defines the contours of the Sixth Amendment right in this case.

B. Under An Objective Standard, Mr. Talman Was Conflicted When He Began His Representation of Ms. Pike

If the existence of a conflict of interest is an objective question for the purposes of the Sixth Amendment, as it should be, then the Tennessee courts clearly erred in their determination that Mr. Talman was not conflicted while he represented Ms. Pike. Two years prior to his appointment in this case, Mr. Talman overbilled the state’s indigent defense fund by over \$67,000, often billing more than 24 hours in a single day. In doing so, he committed felony theft. Tenn. Code Ann. § 39-14-105 (West 2011) (designating theft of more than \$60,000 Class

B felony). He also violated multiple Rules of Professional Conduct.²

More importantly, at the time of his appointment, Mr. Talman knew that the disciplinary proceedings and criminal investigation pending against him could result in either suspension, Tenn. Sup. Ct. R. 9, §§ 4.2, 4.3; *see, e.g., Milligan v. Bd. of Prof'l Responsibility*, 166 S.W.3d 665 (Tenn. 2005), or disbarment, Tenn. Sup. Ct. R. 9, § 4.1; *see, e.g., Rayburn v. Bd. of Prof'l Responsibility*, 300 S.W.3d 654 (Tenn. 2009), and eight to twelve years in prison, *see* Tenn. Code Ann. § 39-14-105, § 40-35-112 (West 2011).

The Tennessee habeas court discounted the objective circumstances surrounding Mr. Talman's representation of Ms. Pike. It instead focused on Mr. Talman's testimony that he had subjectively believed no conflict existed. Mr. Talman testified that he "considered the overbilling issue" before he began representing Ms. Pike. *Pike v. Tennessee*, Case No. 68280 at 48 (Tenn. Crim. Ct. Dec. 10, 2008). The matter was "resolved," and "in his opinion . . . the local DA's office was no longer involved." *Id.* at 49.

² *See, e.g.,* Tenn. R. Prof'l Conduct 1.5(a) (2011) ("A lawyer shall not make an agreement for, charge, or collect . . . an unreasonable amount for expenses."); *id.* R. 4.1(a) ("In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person."); *id.* R. 7.1 ("A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services."); *id.* R. 8.4(c) ("It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation . . ."); ABA Formal Opinion 93-379 (1993).

His certainty in this regard is remarkable. Five months earlier, the District Attorney General for Knox County had in fact stated that his office was evaluating Mr. Talman's case for prosecution. *See* Apr. 2008 Ex. 1, (December 8, 1994 letter from District Attorney General Torry Johnson to District Attorney General Randy Nichols). Mr. Talman, nonetheless, divined that this evaluation would not bear fruit even though he "had never spoken to anyone in the DA's office about [the overbilling] matter." *Pike*, Case No. 68280 at 48. And despite his serene assurance that the overbilling matter was resolved by May of 1995, Mr. Talman was suspended from the practice of law by the Tennessee Supreme Court in November of 1998.

Mr. Talman's evaluation of his own situation was patently unreasonable. The only facts available to him were these: that he had confessed to felonious criminal conduct, that he was awaiting sanction by the state bar, and that he could be charged with a serious felony at any time.³ His professed belief—even if sincere—that he would avoid prosecution for overbilling was, by his own admission, completely uninformed. Nonetheless, the Tennessee habeas court chose to credit Mr. Talman's testimony. Under an objective standard, though, his plainly unreasonable subjective belief—even if described truthfully to the court—must have no bearing on the

³ The relevant statute of limitations was either 6 or 8 years from the date of the commission of the offense. *See* Tenn. Code Ann. §§ 40-2-101(b)(2) (felony theft) and 101(c)(1) (defrauding a state agency). The state could therefore have brought charges relating to Mr. Talman's 1993 overbilling until at least 1999.

determination of whether he labored under a conflict of interest of constitutional dimension.

The court should instead have relied on the objective facts surrounding Mr. Talman's representation of Ms. Pike. Those facts establish a plain conflict of interest. Rule 1.7 of the Tennessee Rules of Professional Conduct recognizes that a lawyer is conflicted whenever "the representation of [a] client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests" Tenn. R. Prof'l Conduct 1.7(b) (emphasis added). While he represented Ms. Pike, Mr. Talman might at any moment have been charged with a felony, and, if so, he would have been prosecuted by the same office that charged Ms. Pike. He had no information that suggested that he would not be prosecuted. As long as the threat of prosecution loomed over him, Mr. Talman was conflicted.

No lawyer in Mr. Talman's position could ignore the fact that he might soon be sitting in a prison cell; no lawyer in his position could be expected to place the zealous representation of his client before his own physical liberty. The conflict in this case thus arose from "the existence of this undeniable uncertainty regarding [the attorney's] own liberty and financial interests before and during [defendant's] trial and [the attorney's] knowledge of this uncertainty." *Rugiero v. United States*, 330 F. Supp. 2d 900, 907 (E.D. Mich. 2004); see also *United States v. Levy*, 25 F.3d 146 (2d Cir. 1994); *Thompkins v. Cohen*, 965 F.2d 330, 332 (7th Cir. 1992) ("[When] the criminal defendant's lawyer

himself [is] under criminal investigation . . . it may induce the lawyer to pull his punches in defending his client lest the prosecutor's office be angered by an acquittal and retaliate against the lawyer.”).

As long as Mr. Talman could be charged with a serious crime for overbilling the state of Tennessee in previous matters, he faced an actual conflict of interest in his representation of Ms. Pike. His professed belief—unsupported by objective evidence (and apparently motivated by his desire to tap into the fund from which he stole)—that he did not face a conflict is irrelevant. No criminal defendant should be represented by a lawyer laboring under threat of prosecution, and no lawyer may ignore the power that prosecutors wield over those whose criminal behavior they have discovered. Mr. Talman was clearly conflicted under Rule 1.7 and the standards of this Court. Just as it has in the past, the Court should hold that this egregious violation of the Rules of Professional Conduct also constitutes a violation of Ms. Pike’s Sixth Amendment right to effective assistance of counsel. *See, e.g., Holloway v. Arkansas*, 435 U.S. 475 (1981) (holding that the Sixth Amendment was violated where a judge required conflicted defense counsel to continue a representation.).

II. The Habeas Court Should Have Asked Whether Mr. Talman’s Conflict Was Waivable and Whether He Sought Informed Consent

If the Tennessee court had not erred and instead had correctly determined that Mr. Talman

faced a conflict of interest, its obligations would not have ended there. The Rules of Professional Conduct and the Restatement make clear that a lawyer must determine, after recognizing that a conflict exists, whether he may nonetheless proceed with the representation. Once the lawyer makes that determination, he may seek the informed consent of the client, and only *then* may he begin to represent her. Applying an objective standard, the habeas court here would have recognized that Mr. Talman's conflict was not waivable, and that, in any case, Mr. Talman neither sought nor received his client's informed consent. In proceeding with the representation in spite of these facts, Mr. Talman violated Ms. Pike's constitutional right to effective, conflict-free counsel.

A. The Conflict Was Not Waivable Under an Objective Standard

After recognizing that Mr. Talman faced a conflict of interest under an objective standard, the habeas court next should have considered whether Mr. Talman could have proceeded with the representation. Rule 1.7 of the Tennessee Rules of Professional Conduct provides that “[a] lawyer shall not represent a client if the representation of that client may be materially limited . . . by the lawyer’s own interest, unless” two requirements are met: “(1) the lawyer reasonably believes that the representation will not be adversely affected” and “(2) the client consents in writing after consultation.” Tenn. R. Prof'l Conduct 1.7(b). Once it becomes clear that a lawyer's representation of his client will be materially limited by his own interests—as was the

case here—the lawyer is then obliged to “decide whether the representation [could] be undertaken despite the existence of the conflict, i.e., whether the conflict [was consentable].” Model R. Prof'l Conduct 1.7, cmt. 2. “[S]ome conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client’s consent.” *Id.* R. 1.7, cmt. 14. Only after making the determination of whether waiver is possible may the lawyer seek informed consent from his client.

Like the standard for determining whether a conflict exists in the first place, the standard for determining whether a conflict of interest is waivable is an objective standard. The Rules of Professional Conduct make clear that courts must ask whether “the lawyer *reasonably believes*” that, despite the existence of the conflict of interest, he still will “be able to provide competent and diligent representation to [the] affected client.” *Id.* R. 1.7(b) (emphasis added). Section 122 of the Restatement echoes this language: “[A] lawyer [facing a conflict] may not represent a client if . . . in the circumstances, it is not *reasonably likely* that the lawyer will be able to provide adequate representation to one or more of the clients.” Restatement (Third) of the Law Governing Lawyers, § 122 (emphasis added). The determination of waivability asks what a reasonable lawyer would believe in the situation, not what the individual, self-interested lawyer would believe. Indeed, when considering whether trial counsel could have proceeded ethically with the representation, the

habeas court is obliged *not* to consider the lawyer's subjective beliefs at all.

In this case, Mr. Talman's conflict was so serious that no lawyer, and no court, could find it waivable. That Mr. Talman's conflict met the objective standard for non-waivability was manifest even before the appointment: no lawyer facing criminal prosecution and disciplinary charges for committing felony theft could focus adequately on his client's interests so as to provide the competent and diligent representation that is required of all lawyers. *See* Tenn. R. Prof'l Conduct 1.1 (competence); *id.* R. 1.3 (diligence). Moreover, even if Mr. Talman could have performed competently and diligently, his decision to continue with the representation despite the circumstances put a tremendous and unacceptable burden on his client. At any time during the representation, Mr. Talman could have been disciplined, prosecuted, or both for his criminal behavior, resulting in his forced withdrawal from the representation. No client, especially in a capital case, should be placed in this situation—knowing that she might be left without her lawyer and forced to begin a lawyer-client relationship anew at any moment, especially when she might need a knowledgeable and zealous advocate most. The fact that the state ultimately did not prosecute Mr. Talman and that the disciplinary board did not get around to suspending him until after the representation concluded does not erase his abject disregard for risks to his client.

***B. Even if the Conflict Were Waivable,
Mr. Talman Should Have Sought
Informed Consent***

Finally, even if the court had permissibly found that the lawyer's conflict was waivable, it still would have had to determine whether the lawyer sought and received informed consent from his client—which, in this case, Mr. Talman did not. When a conflict of interest exists before a representation is undertaken, as it did here, “the representation must be declined, unless the lawyer obtains the informed consent of each client.” Model R. Prof'l Conduct 1.7, cmt. 3. “In the absence of the informed consent of all the parties the lawyer is ethically prohibited from representing litigants.” Tenn. Formal Ethics Opinion no. 89-F-118; *see also State v. Tate*, 925 S.W.2d 548, 553 (Tenn. Crim. App. 1995) (“An attorney with an actual conflict of interest is subject to disqualification”); *King v. King*, 1989 WL 122981 (Tenn. Ct. App. 1989).

The possibility of informed consent does not mean that it is sufficient for the conflicted lawyer to say that he told the client about the conflict. Informed consent carries with it a host of obligations for the lawyer. “Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client.” Model R. Prof'l Conduct 1.7, cmt. 18; *see also* Restatement (Third) of the Law Governing Lawyers, § 122 (“Informed consent requires that the client or former client have reasonably adequate information about the material

risks of such representation to that client or former client.”). In order to ensure that the client understands the way in which a conflict may infect the entire representation, the lawyer must “talk with the client, . . . explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns.” Model R. Prof’l Conduct 1.7, cmt. 20. In some cases, it may also be appropriate for the lawyer to give his client the opportunity “to seek the advice of independent counsel,” who may assist the client in understanding and evaluating the conflict. Tenn. R. Prof’l Conduct 1.8(a)(2).

Here, the evidence does not exist to prove that Mr. Talman sought any consent, let alone informed consent, from Ms. Pike. The trial court findings indicate that Mr. Talman testified that “while his recollection of specifics has faded over 12 years, he had some recollection of having mentioned the over-billing issue to the petitioner and the fact that it had been resolved.” *Pike*, Case No. 68280 at 49. Ms. Pike neither confirmed nor denied this testimony. From Mr. Talman’s statement, the court concluded that he “had informed the petitioner of the issue and that she actually liked him more because of it.” *Id.* at 48. Surely the habeas court should not have been bound by the trial court’s incredible leap of logic; and surely a lawyer’s statement that “he had some recollection of having mentioned” the conflict to his client is not enough to show that he actually informed his client. Under the Rules of Professional Conduct, informed consent requires communication of “adequate

information and explanation about the material risks and reasonably available alternatives” to a proposed decision. Model R. Prof'l Conduct 1.0. To conclude that Mr. Talman's nonchalant, ill-remembered, and unrecorded “mention” satisfied this standard would be to gut the informed consent requirement entirely.

And the lawyer must not only seek informed consent—he must receive an affirmative waiver from his client. To be considered effective, the client's waiver must demonstrate: that “the client fully understands the nature of the conflict and how it might affect him or her; that the client understands his or her right to the appointment of other counsel if necessary; and that, notwithstanding the potential ill effects, the client desires to proceed with his or her lawyer.” *McCullough v. State*, 144 S.W.3d 382 (Tenn. Crim. App. 2003). Both the lawyer and the trial court must have warned the defendant of the “potential hazards posed by the conflict of interest.” *United States v. Rodriguez*, 929 F.2d 747, 750 (1st Cir. 1991). In addition, the lawyer must record the client's consent in writing “in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.” Model R. Prof'l Conduct 1.7, cmt. 20. When the lawyer does not follow these procedures, he is subject to disqualification. *See McCullough*, 144 S.W.3d at 389 (holding that trial court did not abuse its discretion in “refusing to accept [a] purported waiver” and disqualifying counsel when “Defendant did not have a thorough understanding of the nature

of the conflict of interest that the [lawyer's] representation created").

Mr. Talman followed none of these procedures. He did not discuss the conflict of interest with Ms. Pike; he did not explain to her the risks of his representation; he did not suggest to her alternatives to his representation; he did not recommend that she discuss her options with independent counsel; and he did not record any waiver in writing. Mr. Talman followed neither the requirements of the Rules of Professional Conduct, the standard of care for all lawyers, nor the standards set out in Tennessee courts, nor the longstanding principles articulated by this Court. Accordingly, his behavior violated Ms. Pike's constitutional right to unconflicted counsel and should not be condoned by this Court. The Court should grant the petition and instruct both bench and bar that conflicts of interest must be identified under an objective standard if the constitutional mandate is to be fulfilled.

CONCLUSION

Conflict-free counsel is at the heart of the Sixth Amendment's right to due process. Proper analysis of whether a conflict exists is, in turn, essential to determining whether that right has been fulfilled. Proper analysis is also critical to determining whether the conflict was addressed in the required manner. This case presents an excellent opportunity for this Honorable Court to grant certiorari to answer the question that arises in so many cases of how conflicts of interest should be

identified and addressed prior to lawyers being permitted to undertake conflicted representations.

Respectfully Submitted,

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