

STATE OF NEW YORK  
ERIE COUNTY COURT

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IN THE MATTER OF AN APPLICATION  
FOR THE DISQUALIFICATION OF THE  
ERIE COUNTY DISTRICT ATTORNEY AND  
APPOINTMENT OF A SPECIAL DISTRICT  
ATTORNEY IN THE CASES OF  
*PEOPLE v.* [REDACTED]

**NOTICE OF MOTION**

[REDACTED]  
and [REDACTED]

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YOUR HONOR:

Please take notice that upon the attached affirmation of [REDACTED], ESQ. and [REDACTED], ESQ., the defendant will move at a term of Erie County Court, Part [REDACTED], held at [REDACTED] a.m. on [REDACTED] 2023 or as soon thereafter as counsel can be heard, for an order disqualifying the Erie County District Attorney and appointing a special District Attorney in the cases of *People v.* [REDACTED].

DATED: [REDACTED]  
Buffalo, New York

Respectfully yours,

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

TO:

Hon. Susan M. Eagan  
  
Erie County District Attorney  
25 Delaware Ave.  
Buffalo, New York 14202

Erie County Attorney  
92 Franklin St.  
Buffalo, New York 14202

IN THE MATTER OF AN APPLICATION  
FOR THE DISQUALIFICATION OF THE  
ERIE COUNTY DISTRICT ATTORNEY AND  
APPOINTMENT OF A SPECIAL DISTRICT  
ATTORNEY IN THE CASES OF  
*PEOPLE v.* ██████████

**SUPPORTING AFFIRMATION**

██████████,  
and ██████████

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STATE OF NEW YORK     )  
COUNTY OF ERIE        )     ss.  
CITY OF BUFFALO        )

██████████ ESQ. and ██████████ attorneys licensed to practice in the courts of this State, affirm the truth of the following statements under penalties of perjury.

1. We are the attorneys for ██████████ who is charged under IND-██████████ with attempted murder in the second degree (Penal Law §§ 110.00, 125.25[1]), aggravated assault upon a police officer or a peace officer (Penal Law § 120.11), two counts of assault in the first degree (Penal Law §§ 120.10[1], [4]), assault on a peace officer, police officer, firefighter or emergency medical services professional (Penal Law § 120.08), reckless endangerment in the first degree (Penal Law § 120.25), grand larceny in the third degree (Penal Law § 155.35[1]), criminal possession of stolen property in the third degree (Penal Law § 165.50), and unlawful fleeing a police officer in a motor vehicle in the second degree (Penal Law § 270.30).
2. Under ██████████, Mr. ██████ is charged with burglary in the second degree (Penal Law § 140.25[2]), petit larceny (Penal Law § 155.25), and conspiracy in the fifth degree (Penal Law § 105.05[1]). Under ██████████, he is charged with grand larceny in the fourth degree (Penal Law § 155.30[4]) and conspiracy in the

fifth degree (Penal Law § 105.05[1]). Only Mr. [REDACTED] represents him on these cases.

3. I make this affirmation in support of (i) the defendant's application for the disqualification of Erie County District Attorney John Flynn and appointment of a special prosecutor under [REDACTED] and (ii) the prosecution's application for disqualification and appointment under FYC-[REDACTED] and FYC-[REDACTED]
4. Unless otherwise stated, this affirmation is made upon information and belief, the sources of which are our review of the prosecution's motion papers and Mr. Flynn's press conference on [REDACTED] and radio interview with WBEN on [REDACTED]
5. "Whenever the district attorney of any county and such assistants as he or she may have shall not be in attendance at a term of any court of record, which he or she is by law required to attend, or are disqualified from acting in a particular case," the Court may appoint a special prosecutor (County Law § 701).
6. On [REDACTED], the prosecution filed an application for the disqualification of the Erie County District Attorney and the appointment of a special prosecutor under [REDACTED]. The basis for the application was the fact that Mr. [REDACTED], under an unrelated file, is alleged to have committed crimes against ADA [REDACTED].
7. Although there is no allegation that either [REDACTED] has anything to do with ADA [REDACTED] the prosecution has applied for disqualification and appointment because the incidents allegedly occurred on the same date and in the same general area as the incident with ADA [REDACTED].
8. Mr. [REDACTED] joins this application, but it does not go far enough. For two reasons, the Erie County District Attorney's Office must be disqualified from [REDACTED] as well.

9. First, from a conflict of interest standpoint, there is no principled distinction between the two Family Court cases and [REDACTED]. None of the cases has anything to do with ADA [REDACTED], and the date and location of the alleged crimes have no bearing on whether disqualification is required.
10. Second, Mr. Flynn's public comments on this case raise serious questions about his impartiality.
11. "The District Attorney's duties as a public officer are quasi-judicial in nature and in the performance of his duties he must not only be disinterested and impartial but must also appear to be so" (*People v. Bauza*, 78 Misc3d 1222[A] [Sup Ct Kings County 2023], slip op at 3).
12. At arraignment on the indictment, Hon. [REDACTED] set Mr. [REDACTED] bail at \$80,000. During a press conference announcing the indictment, Mr. Flynn publicly criticized Judge [REDACTED], saying "I am hopeful, going forward, that the court takes this as seriously as I do. The court, yesterday, gave him \$80,000 bail. And as far as I'm concerned, that is unacceptable."
13. In a radio interview a few days later, Mr. Flynn said that youths cannot be tried as adults unless "they kill someone, or they shoot someone, you know, they get involved in a car accident, like in Cheektowaga, you know, allegedly – in my opinion intentionally – run over a police officer." This reference to Mr. [REDACTED] came just after Mr. Flynn said that the general problem with sending youths to Family Court was that "there's no mindset that hey, this kid's a bad kid, we need to teach this kid a lesson."
14. These comments do not summon the image of a disinterested, impartial public officer. At a minimum, Mr. Flynn's continued prosecution of this case raises the appearance of partiality.

15. Coupled with the fact that Mr. [REDACTED] is alleged to have victimized one of his assistants, the only way to avoid undermining public confidence in the criminal justice system is to disqualify Mr. Flynn from all three cases.

\_\_\_\_\_  
[REDACTED].

\_\_\_\_\_  
[REDACTED]

[REDACTED]