

STATE OF NEW YORK
ERIE COUNTY COURT

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

NOTICE OF MOTION
IND. [REDACTED] 1

YOUR HONOR:

Please take notice that upon the attached affirmation of [REDACTED] ESQ., the defendant will move at a term of Erie County Court, Part 18, held at 2:00 p.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. Johnathan Rzoska*.

DATED: [REDACTED] 2023
Amherst, New York

Respectfully yours,

[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
IND. ██████████

STATE OF NEW YORK)
COUNTY OF ERIE) ss.

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

1. I am the attorney for ██████████, who is charged under IND. ██████████ with two counts of making a terroristic threat (Penal Law § 490.20[1]), criminal contempt in the first degree (Penal Law § 215.51[b][iii]), tampering with a witness in the third degree (Penal Law § 215.11[1]), and aggravated harassment in the second degree (Penal Law § 240.30[1][a]). The first two counts of the indictment arise from alleged bomb threats made to the Erie County Clerk’s Office and Williamsville Village Hall.
2. I make this affirmation in support of the defendant’s application for the disqualification of Erie County District Attorney John Flynn and appointment of a special District Attorney.
3. Unless otherwise stated, this affirmation is made upon information and belief, the sources of which are my review of the discovery and a WIVB news article dated ██████████ 2022, titled “██████████ of Erie County Court, Old County Hall” (<https://www.wivb.com/news/local-ne-██████████> ██████████).
██████████.

4. “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).
5. According to the WIVB article, the alleged bomb threat to the Erie County Clerk’s Office caused the evacuation of the Erie County District Attorney’s Office, which is in the same building.
6. “A person is guilty of making a terroristic threat when with intent to intimidate or coerce a civilian population, influence the policy of a unit of government by intimidation or coercion, or affect the conduct of a unit of government by murder, assassination or kidnapping, he or she threatens to commit or cause to be committed a specified offense ***and thereby causes a reasonable expectation or fear of the imminent commission of such offense***” (Penal Law § 490.20[1], emphasis added).
7. For the emphasized element – causing a reasonable expectation or fear of the imminent commission of the specified offense – every person who was evacuated from the buildings is a potential witness. This includes every employee of the Erie County District Attorney’s Office who was present that morning.
8. “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).
9. In order to maintain public confidence in the criminal justice system, the Erie County District Attorney must be disqualified from this case.

██████████, ESQ.

██████████ 2023