



**OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY**

**FRANK A. SEDITA, III**  
DISTRICT ATTORNEY

September 25, 2012

HON. DEBORAH A. HAENDIGES, J.S.C.  
INTEGRATED DOMESTIC VIOLENCE  
ERIE COUNTY COURTHOUSE PART 19  
25 DELAWARE AVENUE  
BUFFALO, NEW YORK 14202

Re: **People v MICHAEL IZZARD**  
IDV NO. 2012D0000142  
Docket No. 050001-2012

Your Honor:

Enclosed is an Affidavit in Opposition to Order to Appeal and Order to Show Cause and an affidavit of service in the above-referenced matter.

Very truly yours,

A large, stylized handwritten signature in blue ink, reading "Frank A. Sedita, III".

**FRANK A. SEDITA, III**  
Erie County District Attorney

FAS/dms  
Enclosures  
c: Michael A. Siragusa, Esq., Erie County Attorney

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE  
INTEGRATED DOMESTIC VIOLENCE PART

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THE PEOPLE OF THE STATE OF NEW YORK,

v

MICHAEL IZZARD

Defendant

**AFFIDAVIT IN OPPOSITION**  
**TO ORDER TO APPEAR**  
**AND ORDER TO SHOW CAUSE**

IDV No. 2012ID000142

Docket No: 050001-2012

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

FRANK A. SEDITA, III, being duly sworn, deposes and says:

1. I am an attorney duly admitted to the practice of law in the State of New York. I am the duly elected District Attorney of Erie County, appearing on behalf of the People of the State of New York.
2. This affidavit is submitted in opposition to the Order to Appear and Order to Show Cause granted *sua sponte* on September 20, 2012, received in the District Attorney's Office on September 20, 2012, directing the appearance of the District Attorney of Erie County on September 26, 2012 at 9:45 a.m. in Part 9 (also known as the "Integrated Domestic Violence" Part or "IDV" Part) , 25 Delaware Avenue, Buffalo, New York, to "explain his failure to appear to prosecute the above-captioned case and to show cause why an order should not be entered pursuant to County Law § 701 appointing a Special Prosecutor to prosecute the above-captioned case."
3. Unless otherwise stated herein, this affidavit is made upon information and belief, the sources of which include the following: review of my July 25, 2012 correspondence to Hon.

Sheila DiTullio, J.C.C. as well as review my August 27, 2012 and September 18, 2012 correspondence to Hon. Paula Feroletto, J.S.C. (all of which comprise Exhibit A); a reading of the order filed herein; conversations with the aforementioned jurists as well as with Hon. Deborah Haendiges and members of her court staff; and, conversations with members of my staff in the Office of the Erie County District Attorney.

### **THE COURT MUST RECUSE ITSELF**

4. This Court has no authority to issue the instant Order to Show Cause, because neither party, the District Attorney nor Michael Izzard, presented this Court with a proposed Order to Show Cause (*see* CPLR 2214). Accordingly, the Order to Show Cause is void from its inception. The Order to Show Cause has been issued *sua sponte* by this Court in an effort to coerce criminal prosecution of misdemeanor and violation level cases in the Integrated Domestic Violence Part. Although a court has wide discretion, it is not empowered to order a District Attorney to prosecute cases that the District Attorney believes he cannot lawfully prosecute or otherwise, in his discretion, declines to prosecute.
5. Neither the People nor Michael Izzard (the named parties) has brought the instant Order to Show Cause. Instead, it is this Court that has brought the Order to Show Cause against the People, thus making it a party adverse to the People for purposes of this motion. In other words, this Court seeks to preside over a matter in which it is the movant and a principal litigant.
6. Additionally, based on meetings on August 28, 2012 and September 6, 2012 during which I was present, this Court has demonstrated an interest in the participation by the Erie County District Attorney's office in the prosecution of misdemeanor and violation level cases in the Integrated Domestic Violence Court and is thus unable to serve with complete impartiality, in

fact or appearance. Indeed, this court has previously demanded that I supply two full-time prosecutors to staff it, regardless of its cost, regardless of its effect upon my limited resources, and regardless of its effect upon my ability to prosecute more serious cases, including sexual assaults and other violent felonies.

7. Based upon the foregoing, I respectfully submit that this Court is disqualified from ruling on an Order to Show Cause that it itself initiated and should recuse itself. Judiciary Law § 14 provides: “a judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree.” Recusal is mandated as well where the impartiality of the judge might reasonably be questioned (22 NYCRR § 100.3[E][1]).

**THERE ARE LEGITIMATE AND COMPELLING REASONS FOR REFUSING TO PROSECUTE CASES THAT ARE TRANSFERRED INTO THE IDV PART**

8. By Order to Appear, I have been directed to appear before this Court to explain my “failure to appear to prosecute this case.” While I will comply with this Court’s Order for my appearance, I have repeatedly, both in writing (see, Exhibit “A”) and in conversation, explained my position on the prosecution of misdemeanor and violation-level cases administratively transferred into the Integrated Domestic Violence part of Supreme Court.
9. Such prosecutions are a violation of the mandates of Criminal Procedure Law § 210.05, which allows for the prosecution of an offense in a superior court (the IDV Part is a superior court part) by only an indictment filed by a grand jury or by a superior court information filed by the District Attorney.

10. The IDV Court also places an undue burden on meager prosecution resources by diverting attention from the prosecution of violent offenders into staffing of this boutique Office of Court Administration (OCA) created part of Supreme Court. It traps prosecutors into spending inordinate time and resources on the handling of criminal complaints filed by disgruntled adversaries in matrimonial or custodial family law matters; indeed, my last two Domestic Violence Bureau Chiefs have characterized that IDV Part as a “disaster.” The minor offenses administratively transferred into the IDV Part should be prosecuted, if at all, by the Assistant District Attorneys or the Town or Village prosecutors already working in the local courts in which the charges were filed. Those local criminal courts are well-equipped by OCA to justly preside over those cases.
  
11. It is important to note that my refusal to prosecute cases that are administratively transferred into the IDV Part does not mean that I undervalue the importance of the prosecuting of domestic violence offenders; indeed, the opposite is true. In addition to staffing a dedicated Domestic Violence Bureau for the prosecution of felony level offenses, nearly every Assistant District Attorney hired under my administration has undergone domestic violence prosecution training and has been assigned to the Buffalo City Court Domestic Violence Part for the purpose of gaining experience in the field of domestic violence prosecution. The result of this unique and unprecedented initiative has been to supply all the local courts (there are 38 cities, towns, and villages in Erie County) with competent and seasoned domestic violence prosecutors.
  
12. I am not abrogating my duty to prosecute viable domestic violence cases. I have repeatedly and consistently maintained that I will prosecute any misdemeanor level domestic violence case filed in the local courts, and I have devoted substantial resources to do so. I have repeatedly and consistently maintained that I will prosecute felonies and misdemeanors in the Erie County Court Domestic Violence Part, as well as the IDV Part, provided those cases are

filed in accordance with the provisions of the Criminal Procedure Law (i.e. by indictment or by superior court information), and have devoted substantial resources to do so. I cannot, however, prosecute cases that are blindly transferred by unilateral administrative fiat into the IDV Part from the local courts, especially since the prosecutors assigned to those local courts can competently prosecute the cases there.

### **THE APPOINTMENT OF A SPECIAL DISTRICT ATTORNEY IS UNLAWFUL**

13. As previously observed, this Court does not have the authority to *sua sponte* appoint a Special District Attorney. Instead, a motion must be made by one of the parties (i.e. the People or the defendant). Additionally, pursuant to County Law § 701, the moving party must demonstrate that either (1) that the district attorney or one of his assistants is not in attendance at a term of court which he or she is required by law to attend, or (2) that the district attorney should be disqualified. Neither one of those prongs has been satisfied; consequently, the appointment of a Special District Attorney would be unlawful.

14. County Law § 701 was “designed narrowly by its terms and by its purpose to fulfill emergency gaps in an elected prosecutorial official’s responsibility” (*People v Leahy*, 72 NY2d 510 [1988]). This “exceptional superseder authority should not be expansively interpreted (*Id.* at 513, 514). It is well settled that “District Attorneys are members of the executive branch of government, constitutional officers charged with the responsibility for prosecuting offenders in the county they represent and possessing broad discretion in determining when and in what manner to do so (*Holtzman v Goldman*, 71 NY2d 564, 573 [1988]; see *Matter of Schumer v Holtzman*, 60 NY2d 46, 50 [1983]; *Matter of Haggerty v Himelein*, 89 NY2d 431, 436 [1997]). Indeed, a District Attorney enjoys wide latitude and discretion to allocate and utilize both the manpower and resources of his office in the manner

believed to be most effective in the discharge of his duties (*People v Peterson*, 91 Misc.2d 407, 411 [1977]; *People v Bowman*, 88 Misc.2d 50 [1976]).

15. Section 701 of the County Law was never intended to permit anything other than transitory relief for an incumbent District Attorney who is prevented by illness, disqualification, or other cause, from carrying out the performance of his or her normal duties (*Matter of Board of Supervisors of Montgomery County v Aulisi*, 62 AD2d 644 [3<sup>rd</sup> Dept 1978], *aff'd* 46 NY2d 731) and not, as here, a situation where the judge and the District Attorney have come to a stalemate (*see Cloke v Pulver*, 243 AD2d 185 [3<sup>rd</sup> Dept 1998]). While the Third Department in *Board of Supervisors v Aulisi*, did not define “other cause” for removal of a District Attorney and appointment of a Special District Attorney, the Court of Appeals in *Leahy* noted that County Law § 701 was “narrowly designed by its terms” and “should not be expansively interpreted” (*People v Leahy* at 513-514).

### **THE PEOPLE HAVE APPEARED**

16. Regarding the first prong of County Law § 701 (the district attorney or one of his assistants is not in attendance at a term of court which he or she is required by law to attend), the court has ordered me to explain “my failure to appear to prosecute this case.” Although I have not *personally* appeared in this case, I usually have Assistant District Attorneys appear in court on my behalf. This is common practice in a jurisdiction as large as Erie County and is specifically contemplated by the plain wording of the statute. In this case, Assistant District Attorney Rachel Newton, Chief of my Domestic Violence Bureau, personally appeared before this court on September 20, 2012. When the case was called, ADA Newton advised this court that the People would not prosecute it.

17. It appears that the court is equating the terms “failure to appear” with “refusal to prosecute.” This was precisely the argument advanced, and rejected, by the court in *Cloke v. Pulver* (243 AD2d 185).

18. In *Cloke, supra*, the court refused to accept a negotiated plea between District Attorney and defendant’s attorney and set the matter for trial. When the District Attorney declined to prosecute the indictment, the court appointed a Special District Attorney on the grounds that the District Attorney did not have the unilateral discretion to decline to prosecute an indicted case and that such conduct could be viewed as a dereliction of his duties. The Third Department held that the court had no authority to appoint a Special District Attorney and that the District Attorney’s refusal to go forward on the indictment was not the functional equivalent of “not being in attendance.” It further noted that the “shall not be in attendance” language was meant to cover an actual absence of the District Attorney from court (*see Matter of Murphy v Dwyer*, 101 AD2d 376 [3rd Dept 1984]), “and not, as here, where the judge and petitioner [the District Attorney] have come to a stalemate” (*Cloke* at 189; emphasis supplied). It concluded that the solution to the court’s dilemma “plainly should not entail the appointment of a Special District Attorney by court order through the invocation of a statute never designed to cover such a contingency” (*Cloke* at 190).

19. The apparent stalemate between me and this court (and apparently the State Office of Court Administration) is clearly less acute than that in *Cloke* (there, the defendant was indicted for a felony sexual assault) and is clearly not a basis to appoint a Special District Attorney. In short, this court does not have the authority to appoint a Special District Attorney simply because it disagrees with the plain language of the Criminal Procedure Law and disagrees with my decision regarding when an unindicted misdemeanor case will and will not be prosecuted.



20. Finally, regarding the first prong of the County Law § 701 (the district attorney or one of his assistants is not in attendance at a term of court which he or she is required by law to attend), it bears repeating that the District Attorney is not “required by law” to attend the Integrated Domestic Violence part of Supreme Court to prosecute misdemeanor and violation level offenses. CPL 210.05 states that “the *only* methods of prosecuting an offense in a superior court are by an indictment filed therewith by a grand jury or by a superior court information filed therewith by a district attorney.”

### **THERE IS NO PREJUDICE**

21. Regarding the second prong of County Law § 701 (disqualification from acting in a particular case), there has been no allegation, let alone demonstration, of prejudice justifying my disqualification from this case and thus appointment of a Special District Attorney.

22. As a general rule, courts “should remove a public prosecutor only to *protect a defendant* from actual prejudice arising from a demonstrated conflict of interest or a substantial risk of an abuse of confidence” (*Matter of Schumer v Holtzman* at 55; *People v Zimmer*, 51 NY2d 390 [1980]; emphasis supplied).

23. It is instructive to note that in cases where a District Attorney has been disqualified, the motion has been made by the defendant or the District Attorney, not by the court (*see People v Keeton*, 74 NY2d 903, 904 [1989] [defendant sought appointment of special prosecutor because he was a witness to an assault on his brother by the victim who was also simultaneously being prosecuted by the District Attorney]; *People v Schrager*, 74 Misc.2d 833 [1973] [ District Attorney made motion for appointment of special prosecutor on the ground that he should be disqualified from prosecution of Assistant District Attorney arrested for first degree sexual abuse]).

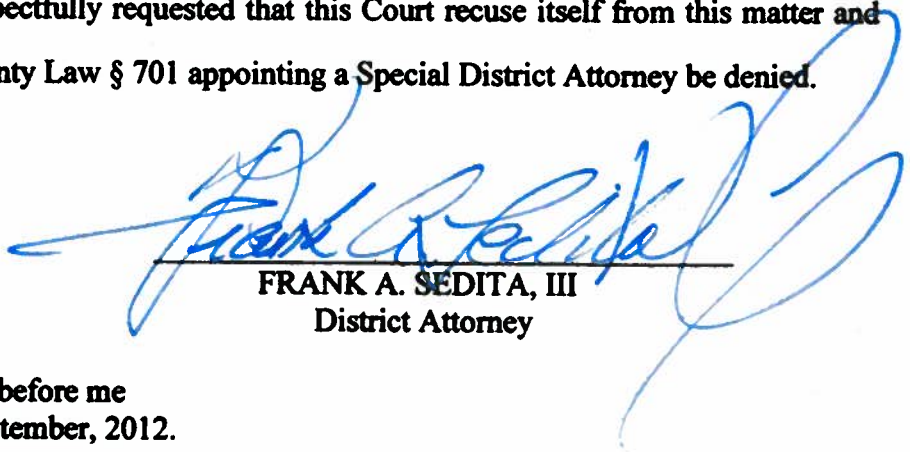
24. Even if this Court determines that it has the power on its own motion to appoint a Special District Attorney, the objector, to wit: this Court, must demonstrate actual prejudice or so substantial risk thereof as could not be ignored. There is no actual prejudice or any risk of prejudice to the defendant that could arise from the failure to appoint a Special District Attorney. In fact, the opposite is true: it is the defendant will be prejudiced by a prosecution that violates the mandates of the Criminal Procedure Law.

25. The plain wording of County Law § 701 also requires that a judicial appointment of a Special District Attorney be limited to a “particular case” (*Leahy* at 514). Should this Court appoint a Special District Attorney to prosecute the instant case, it would be compelled to do so with respect to each misdemeanor and violation level case administratively transferred into the IDV Part. In other words, this court’s decision would not be limited to this case but would instead apply to apply to hundreds more. The costs attendant with such a scheme would place an additional unfair burden on the taxpayers of Erie County. In laymen’s terms, the IDV Part, in addition to being an unnecessarily redundant court and failed experiment, would become an unfunded mandate foisted upon the County taxpayer.

### CONCLUSION

26. Because neither the District Attorney, defendant, nor the victim has requested the appointment of a Special District Attorney, and no prejudice has been demonstrated requiring such appointment, and this Court lacks the power to review or interfere with the District Attorney’s discretion whether to prosecute the case, no Order should be granted pursuant to County Law § 701 appointing a Special District Attorney.

WHEREFORE, it is respectfully requested that this Court recuse itself from this matter and an order pursuant to County Law § 701 appointing a Special District Attorney be denied.



FRANK A. SEDITA, III  
District Attorney

Subscribed and sworn to before me  
this 25<sup>th</sup> day of September, 2012.



Notary Public, State of New York  
Qualified in Erie County

My commission expires on 6/9/2015



## OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY

**FRANK A. SEDITA, III**  
DISTRICT ATTORNEY

July 25, 2012

**Hon. Sheila A. DiTullio, A.J.S.C.**  
**Chief Administrative Judge of the Criminal**  
**Courts for the 8<sup>th</sup> Judicial District**  
**Erie County Courthouse, Part 17**  
**Buffalo, New York 14202**

**Your Honor:**

**Pursuant to our previous discussions, please be advised that the Office of the Erie County District Attorney can no longer prosecute non-felony offenses in the Integrated Domestic Violence (IDV) Part of superior court.**

**I humbly submit that no other Erie County District Attorney has taken the prosecution of domestic violence offenders as seriously as I. We have a dedicated Domestic Violence Bureau which specializes in the prosecution of felony domestic violence cases in the superior courts (I.e. State Supreme Court and Erie County Court). Additionally, one of my most important initiatives upon taking office has been to require that every Assistant District Attorney prosecute domestic violence cases.**

**The first assignment of nearly every Assistant District Attorney is in the Buffalo City Court Bureau, our busiest local court. Before an Assistant District Attorney is promoted to the Justice Courts Bureau (which serves the remaining 37 local suburban courts in Erie County), he or she must serve a tour-of-duty in the Buffalo City Court Domestic Violence Part. This exposure provides every Assistant District Attorney with the necessary training and experience to properly assess and, when appropriate, vigorously prosecute domestic violence cases in the local courts.**

**The Criminal Procedure Law (CPL) mandates that less serious charges (i.e. misdemeanors and violation level offenses) are to be prosecuted in the local courts. Once a misdemeanor accusatory instrument is filed by a police department in the local courts, it remains there and is prosecuted there.**

**The CPL also mandates that more serious charges (i.e. felony offenses), are to be prosecuted in the superior courts. Pursuant to CPL 210.05, however, a felony cannot be prosecuted in superior court unless the defendant is indicted by a grand jury or a superior court information is filed by the district attorney. Cases must therefore be carefully evaluated and screened in order to determine whether there is enough evidence to support felony charges in superior court. That task is performed by a professional prosecutor.**

**Most felony level domestic violence cases, once carefully evaluated and screened by a professional prosecutor, are filed in superior court as either an indictment or superior court information, in accordance with CPL 210.05. Such cases have routinely been filed in the "regular" Domestic Violence Part of superior court for several years. The so called "integrated" Domestic Violence (IDV) Part and the "system" upon which it relies, is unique in that it circumvents the requirements of CPL 210.05, forcing the Assistant District Attorney to prosecute cases she would never think of filing in superior court.**

**The IDV experiment is designed to place alleged domestic violence cases, regardless of the seriousness of the allegations or their prosecutorial viability, into superior court when the parties (usually spouses) have other matters (e.g. matrimonial, custodial, etc.) pending in the civil courts. The vast majority of cases transferred into the IDV court--which is a superior court--are not felonies which have been vetted by a professional prosecutor and presented to grand jury for its review. Instead, most IDV cases are misdemeanors and violations that would normally remain in the local court, and could be effectively prosecuted by the Assistant District Attorney already assigned to the local court, but for their civil component. In theory, the IDV Part is a so-called "problem solving court" that purportedly exists to better convenience the parties. In reality, the experience of**

**prosecutors and both the criminal defense and matrimonial bar demonstrate that the IDV court is an unnecessary and counter-productive problem creating court.**

**In a typical criminal case, the prosecutor is opposed by a criminal defense attorney and is called upon to prove whether a crime has been committed. In other words, an Assistant District Attorney deals with criminal law issues against a single opponent. In an IDV case, the prosecutor often must contend with the criminal defense attorney, the complainant's matrimonial attorney, the defendant's matrimonial attorney, and/or the child's law guardian. In an IDV case, the prosecutor must also contend with a myriad of non-criminal issues which directly and indirectly affect the criminal case.**

**An Assistant District Attorney should solely be concerned with criminal prosecution, and not matrimonial and quasi-matrimonial litigation and mediation. Having to deal with multiple advocates with competing agendas and multiple non-criminal issues often delays the case and obfuscates the criminal issues before the court, ironically resulting in more inconvenience to the parties. More importantly, the IDV experiment often affects the integrity of criminal justice process. It has been reported to me that it is not unusual for a complainant to file criminal charges to create leverage in a matrimonial dispute or for a criminal complainant to refuse to testify or to otherwise be suddenly afflicted with an acute bout of amnesia once he attains the desired civil settlement.**

**Under the CPL, the intended purpose of a superior court criminal part is to handle serious, felony level criminal cases that cannot and should not be handled in the local courts. The following chart sets forth key performance indicators for the first six months of 2012. The dispositions from Justice Haendiges' IDV part are compared with the dispositions from other representative superior court criminal parts, namely Justice Wolfgang (Part 24 of State Supreme Court) and Judge D'Amico (Part 7 of Erie County Court).**

	Haendiges (IDV Part)	Wolfgang (SC Part 24)	D'Amico (SC Part 7)
<b>Felony Convictions</b>	4	81	94
<b>Misdemeanor Convictions</b>	40	6	10
<b>Violation Convictions</b>	61	3	2
<b>Acquittals/Dismissals</b>	86	2	2
<b>Trials</b>	2	6	9

**Overall, the total number of criminal cases in the IDV Part of superior court exceeds the total number cases in the other parts of superior court; however, as is demonstrated by the following, the nature of the dispositions in the IDV Part are vastly different from those in the other superior court parts.**

- Most cases properly filed in superior court result in a felony conviction, except in the IDV Part. There were 81 felony convictions in Part 24. There were 94 felony convictions in Part 7. There were merely 4 felony convictions in the IDV Part.**
- Cases properly filed in superior court occasionally result in misdemeanor or violation level convictions. In the IDV Part, such low level dispositions are the norm. There were 6 misdemeanor convictions and 3 violation level convictions in Part 24. There were 10 misdemeanor convictions and 2 violation level convictions in Part 7. By contrast, there were 40 misdemeanor convictions and 61 violation level convictions in the IDV Part.**
- Perhaps there is no greater contrast than the cases that result in either a dismissal or acquittal. Only 2 cases resulted in a dismissal or acquittal in**

**Part 24. Similarly, only 2 cases resulted in a dismissal or acquittal in Part 7. By contrast, 86 cases resulted in a dismissal or acquittal in the IDV Part.**

**The last statistic is even more shocking when the IDV Part is compared to all other superior court parts. The IDV Part is responsible for 86% of the acquittals and/or dismissals amongst all of the superior court parts combined. Merely 2% of the cases filed in the ten non-IDV parts of superior court result in a dismissal or acquittal (98% result in a conviction), while 45% of the cases filed in the IDV Part result in a dismissal or acquittal.**

**I am not suggesting that the inordinately high number of dismissals and acquittals in the IDV Part are unwarranted. Rather, the inordinately high number of dismissals and acquittals suggests that many of these cases were unviable prosecutions that should never have been filed in superior court. Indeed, had these cases been properly evaluated and screened by a professional prosecutor, it is doubtful that any of them would have been filed in superior court.**

**One of the most important duties of a professional prosecutor is to evaluate and screen a case for its prosecutorial viability. Once an accusatory instrument is filed by the police (who rarely consult us before arresting the defendant), prosecutors will typically interview the investigators and witnesses, and carefully review the other evidence before prosecuting a case, especially one to be prosecuted in superior court. An Assistant District Attorney is ethically required to critically and candidly assess a case for its prosecutorial viability; she is also uniquely motivated to do so, as she or one of her colleagues will be the one responsible for prosecuting it. In large measure, this is why only 2% of the cases filed in the non-IDV parts of superior court results in a dismissal or acquittal.**

**The incredibly high IDV dismissal/acquittal rate is directly attributable to the lack of professional case evaluation and screening. Instead of being carefully screened by a professional prosecutor, cases are perfunctorily screened to the IDV Part by IDV court staff, none of whom has any prosecutorial experience. Instead of critically evaluating the case as a prosecutor would, the court-appointed staff**



member merely reviews the paperwork from the local court (where the charges are initially filed by the police) to determine whether the case will be transferred to superior court. Not surprisingly, such an inadequate screening process repeatedly results in overcharged, unsustainable, and bogus cases being filed in superior court. To add insult to injury, the prosecutor, and not the court staff member, is left with the responsibility to prosecute the so-called case.

The inordinately high number of dismissals and acquittals, as well as the disproportionately high number of misdemeanor and violation level dispositions in the IDV Part, has led me to conclude that the IDV Part is a failed experiment. It is a duplicative local court whose principal purpose is to perpetuate the continued existence of its swollen bureaucracy. Indeed, while a superior court part is typically staffed by a judge, her confidential law clerk, her confidential secretary and a court clerk, the IDV Part, in addition to these positions, has two more court clerks, a court coordinator, a resource coordinator, and a courts project coordinator. The IDV Part has more than double the staff of a superior court part and costs the taxpayers approximately \$900,000 per year in staff salaries (excluding the court security officers and prosecutors assigned there) despite the fact that few genuine felony cases are litigated there.

Earlier this year I doubled the number of prosecutors exclusively assigned to the IDV Part in an effort to work more cooperatively with the court system. As you might recall, I expressed my fear that devoting additional prosecutorial resources to the IDV Part (which results in other bureaus in my office becoming short-staffed) would have the opposite of the intended effect; i.e. rather than alleviating the caseload (which was artificially high), it would serve to encourage the IDV bureaucracy to dramatically increase its caseload. There has been a 67% increase in the number of cases assigned to the IDV Part since I doubled the number of prosecutors exclusively assigned to it. I would also note that the Office of Court Administration, despite our request to do so, refuses to provide any funding for prosecutors assigned to the IDV Part.

My office can no longer afford to subsidize the IDV experiment, especially given our limited resources. Nor can my office continue to assign Assistant District

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Attorneys to prosecute misdemeanor cases transferred from the local courts into the IDV Part, especially when the prosecutors already assigned to the local courts have the training and experience necessary to effectively prosecute domestic violence misdemeanors in the local courts. The Office of the Erie County District Attorney will, of course, continue to prosecute viable felonies in the superior courts, regardless of whether the case is assigned to the IDV Part of superior court, the regular Domestic Violence Part of superior court, and/or any other part of superior court. We will not, however, continue to be forced to prosecute non-felony cases in the IDV Part. Accordingly, any misdemeanor or violation level offense transferred to the IDV Part after August 24, 2012 will not be prosecuted by the Office of the Erie County District Attorney in the IDV Part.

Very truly yours,



FRANK A. SEDITA, III

Erie County District Attorney

FAS/dms



**OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY**

**FRANK A. SEDITA, III**  
DISTRICT ATTORNEY

**August 27, 2012**

**VIA HAND DELIVERY**

**Hon. Paula L. Feroletto**  
**District Administrative Judge**  
**Unified Court System**  
**Eighth Judicial District**  
**92 Franklin Street**  
**Buffalo, New York 14202-3902**

**Your Honor:**

**I am in receipt of your correspondence of August 24, 2012 and I am, of course, willing to meet with you.**

**Your correspondence appears to be prompted by a correspondence (a copy of which is attached) that I wrote over a month ago. Specifically, on July 25, 2012 I advised Judge Sheila DiTullio, supervising judge of the criminal courts, that the Office of the Erie County District Attorney could no longer prosecute misdemeanor and violation level offenses administratively transferred into the Integrated Domestic Violence ("IDV") part of superior court after August 24, 2012.**

**I regret that my letter has caused such unexpected, albeit delayed, consternation. From everything I have heard, Justice Haendiges (who presides in the IDV part) has earned the respect of all of the prosecutors who have appeared before her. I was, however, under the apparently mistaken impression that you wished to eliminate the IDV part.**

**Hon. Paula L. Feroletto  
August 27, 2012  
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**As I have asserted many times, and as has been demonstrated by our actions, the Office of the Erie County District Attorney is firmly committed to prosecuting those offenders who commit acts of violence upon members of their family, and we will continue our efforts to promote both public safety and safety within the home. There is no excuse for causing injury to a family member.**

**It is not my intention to dictate to the court or to the New York Office of Court Administration ("OCA"), and I would never presume to tell you or OCA how to rule upon a case or administer the court system. I would similarly expect that neither you nor OCA would presume to tell me how to prosecute a case and administer the Office of the Erie County District Attorney. I think it is important to mention this because the issues before us do not concern Justice Haendiges' reputation, your wishes, or the administrative dictates of OCA. In my view, the issues are the mandates of Criminal Procedure Law ("CPL") and my role as the Chief Law Enforcement Officer in Erie County.**

**As has been made clear to me by many well-respected judges, the law provides to a District Attorney wide discretion regarding whether a case will be prosecuted and how a case will be prosecuted. As to where a case will be prosecuted, the CPL directs: "The only methods of prosecuting an offense in superior court are by an indictment filed therewith by the grand jury or by a superior court information filed therewith by the district attorney" (CPL 210.05).**

**The IDV part is a superior court part. The CPL makes it clear that offenses, regardless of whether they are misdemeanors or felonies, cannot be prosecuted in a superior court part unless they are by way of an indictment or superior court information ("SCI"). Certainly, if a defendant is indicted for an offense or the**

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defendant agrees to be prosecuted by an SCI, my office will appear in whatever superior court part the case is assigned, including the IDV Part.

Nearly all of the cases in the IDV part are misdemeanor or violation-level offenses that were initially filed in a local court to be prosecuted by the Assistant District Attorney already assigned to work in that local criminal court. Most cases do not arrive in the IDV part as the result of an indictment or an SCI, but are instead transferred by unilateral administrative fiat. In other words, an IDV court staff member, rather than a district attorney or a grand jury, decides when a case will be filed in the IDV part of superior court. It has been reported to me that the choice regarding whether a case will be transferred into the IDV part usually has nothing to do with whether the case is a viable prosecution. I find that troubling, especially given my ethical duties as a prosecutor.

You have cited People v. Correa (15 NY3d 213) and People v. Ford (32 Misc.3d 674) for the proposition that a superior court judge sitting in the IDV part has jurisdiction to preside over matters initially filed in the local courts. I recognize that a Supreme Court Justice can hear a case anywhere she wishes pursuant to the Judiciary Law; however, a District Attorney cannot prosecute a case anywhere he wishes pursuant to the Criminal Procedure Law.

The Court of Appeals in People v. Correa made it clear that it was solely addressing the issue of jurisdiction, stating: "In these appeals, we are concerned *only* with whether Supreme Court had trial jurisdiction..." (15 NY3d 213, 230, emphasis supplied). Neither People v. Correa nor People v. Ford addresses the issue of prosecution. In the absence of any countermanding and controlling legal authority, I must abide by the CPL, which clearly and unequivocally states that the only method of prosecuting an offense in superior court is by an indictment or an SCI.

**Hon. Paula L. Feroletto**  
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**The most recent precedents concerning trial jurisdiction do not grant me, or anyone else for that matter, license to ignore the clear and unequivocal mandates of a controlling statute, especially when that statute works to insure that only legitimate and viable prosecutions are filed in the superior courts. My reluctance to prosecute non-felony cases in the IDV part is premised upon the statutory mandates of the CPL and the reasons set forth in my July 25th correspondence. With respect to the latter, I wish to emphasize the following:**

**First, I can no longer continue to devote precious prosecutorial resources to a redundant court. My office is already responsible for providing prosecutors to ten (10) parts of superior court, ten (10) parts of Buffalo City Court, and thirty-seven (37) local suburban courts in Erie County. In addition to these "regular" criminal courts, my office has been called upon by OCA to staff "specialty" courts. Four (4) of these specialty courts are devoted to domestic violence prosecution. OCA (with an annual budget of approximately \$2 billion) provides no funding for my office to staff any of the specialty courts. Limited prosecutorial resources cannot keep pace with the demands of OCA in the absence of such funding.**

**So long as I have the resources, I will continue to supply prosecutors to all of the local courts and to the superior courts. I will also continue to assign prosecutors to the specialty courts, including three (3) of the domestic violence specialty courts. I cannot, however, continue to supply prosecutors to the IDV part. In this regard, it is important to reiterate that because there are prosecutors already assigned to each and every local criminal court, there is no need to administratively transfer any criminal case from that local court into the IDV part.**

**Second, I can no longer appear in a combination civil-criminal-family-matrimonial court that essentially uses the threat of criminal sanction (i.e. the prosecutor as a boogeyman) to resolve non-criminal disputes. Nor**

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can I appear in a forum where members of the court's staff--none of whom have any law enforcement or prosecutorial experience--decide when criminal charges will be filed there.

Given these dynamics, it should come as no surprise that nearly half of the so-called criminal cases administratively transferred to the IDV part result in a dismissal. Indeed, the rate of dismissals in the IDV part is more than *twenty (20)* times that of any other superior court part. If this were not troubling enough, viable prosecutions against genuine domestic violence offenders typically result in a conditional discharge or similarly non-punitive sentence. These results have left me to conclude that victims of misdemeanor-level domestic violence offenses are better served with the prosecution of the offender in the local court from which the case originated.

Having been a professional prosecutor for over twenty-four years, I am keenly aware that one of my chief responsibilities is to protect and promote the rights and interests of crime victims. That is why I will continue to aggressively prosecute domestic violence offenders in the appropriate forum and within the bounds of the law. I cannot, however, continue in good conscience to support and subsidize the IDV experiment.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'Frank A. Sedita, III'. The signature is written over the typed name and title.

By: FRANK A. SEDITA, III  
DISTRICT ATTORNEY

FAS/nkd



**OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY**

**FRANK A. SEDITA, III**  
**DISTRICT ATTORNEY**

**September 18, 2012**

**Hand Delivered**

**Hon. Paula L. Feroletto**  
**District Administrative Judge**  
**Unified Court System**  
**Eighth Judicial District**  
**92 Franklin Street**  
**Buffalo, New York 14202**

**Re: Integrated Domestic Violence (IDV) Part of Superior Court**

**Your Honor:**

**Thank you for your September 17, 2012 correspondence advising that the court administration intends to resume administratively transferring cases that are pending in the local courts into the IDV Part. Pursuant to the reasons set forth in my previous correspondence, the Office of the Erie County District Attorney will not prosecute cases that are administratively transferred into the IDV Part after August 24, 2012.**

**I would note that in addition to my previous correspondence, I have met with and exchanged electronic mailings with you, Judge Sheila DiTullio, and Justice Deborah Haendiges in an effort to accommodate the court administration. I have proposed the following alternatives: that a professional prosecutor, instead of a member of the IDV court staff, make the screening/transfer decisions; or, that the New York State Office of Court Administration (OCA) provide us with funding so that we could continue staffing the IDV Part at the levels demanded by the court administration; or, that I would designate attorneys, selected by and compensated**



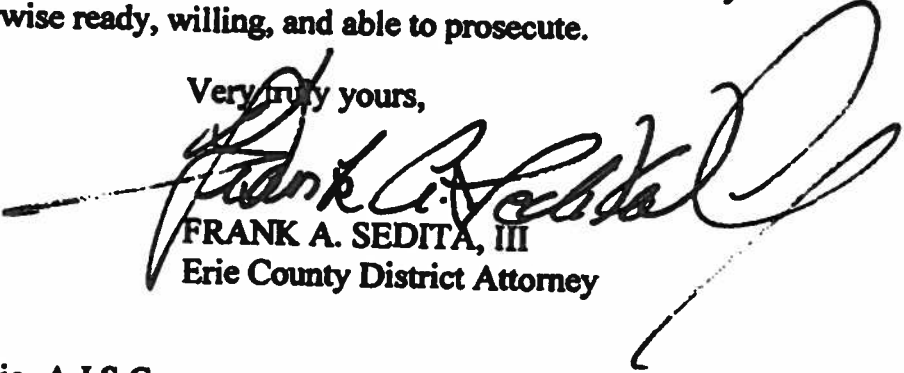
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District Administrative Judge – Eighth Judicial District  
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by OCA, to serve as prosecutors in the IDV Part; or, that a single prosecutor, instead of two prosecutors, staff the IDV Part two days per week, provided those cases are prosecuted by way of an indictment or superior court information. The court administration has rejected all of these proposals and has offered no alternative other than continuation of the overly burdensome status quo.

My duty is not to resolve inappropriate instances of domestic discord but to prosecute illegal acts of domestic violence. Accordingly, I will continue to send prosecutors to all of the regular superior court and local court parts, as well as the Erie County Domestic Violence Part, the Buffalo City Court Domestic Violence Part and the Tonawanda Domestic Violence Part. I cannot, however, agree to continue subsidizing the IDV experiment, especially given the limited resources of the Erie County District Attorney's Office. Nor can I agree to prosecute misdemeanor cases that could remain in the local courts or the three other specialized domestic violence courts--and be competently prosecuted by the Assistant District Attorneys already assigned there--but that are administratively transferred into the so-called "problem-solving" IDV Part.

Based upon the foregoing I must respectfully advise the court administration that the act of administratively transferring a viable local court criminal case into the IDV Part is tantamount to dismissing a case that the Office of the Erie County District Attorney is otherwise ready, willing, and able to prosecute.

Very truly yours,



FRANK A. SEDITA, III  
Erie County District Attorney

cc: Hon. Sheila A. DiTullio, A.J.S.C.  
Chief Administrative Judge of the Criminal Courts – 8<sup>th</sup> Judicial District  
Hon. Deborah A. Haendiges, J.S.C.