

District Court, Jefferson County, Colorado 100 Jefferson County Parkway, Golden, CO 80401	DATE FILED December 12, 2023 3:09 PM FILING ID: 6643D78CC4D0F CASE NUMBER: 2022CR3360  ◆ COURT USE ONLY ◆
<b>THE PEOPLE OF THE STATE OF COLORADO,</b> Plaintiff,  v.  <b>DESIREE GONZALEZ,</b> Accused.	
MEGAN A. RING, State Public Defender Chelsea Lauwereins, No. 55011 Deputy Public Defender Golden Regional Office 560 Golden Ridge Road, #100, Golden, CO 80401 Ph. (303) 279-7841      Fax. (303) 279-3082 Email: chelsea.lauwereins@coloradodefenders.us	Case Number: 22CR3360  Division: 7
<b>MOTION FOR APPOINTMENT OF A SPECIAL PROSECUTOR [D9]</b>	

**COMES NOW** the accused, Desiree Gonzalez, by and through counsel, motions this court to appoint a special prosecutor outside of the 1<sup>st</sup> Judicial District Attorney's Office:

1. Pursuant to C.R.S. § 20-1-107(2), a district attorney can only be disqualified upon their own motion or upon a showing that the district attorney has a personal or financial interest or the court finds special circumstances would render it unlikely that the defendant would receive a fair trial.
2. A motion made by the defense requesting the appointment of a special prosecutor must be supported by affidavits of witnesses who are competent to testify to the facts laid out in the affidavits. *Id.*
3. Requisite affidavits are attached to this motion and the motion for change of venue.
4. If the court disqualifies a district attorney, the court may appoint a special prosecutor from the full-time district attorneys, assistant district attorneys, deputy district attorneys who serve in judicial districts other than where the appointment is made. *Id.* at (4).
5. A district court has broad discretion in determining whether to disqualify a certain district attorney's office from prosecuting a case. *People v. Arellano*, 476 P.3d 364, 368 (Co. 2020).

6. “The nature of the impartiality required of the public prosecutor follows from the prosecutor’s role as representative of the People as a body, rather than as individuals.” *People v. Eubanks*, 927 P.2d 310, 315 (Ca 1996).
7. “He [a district attorney] is not disinterested if he has, or is under the influence of others who have, an axe to grind against the defendant, as distinguished from the appropriate interest that members of society have in bringing a defendant to justice with respect to the crime with which he is charged.” *Id.* at 316.
8. As laid out in *Eubanks*, an appearance of conflict is characterized and requires recusal of a prosecutor only if the conflict is so serious to render it unlikely that the defendant will receive fair treatment during all portions of the criminal proceedings. *Id.* at 317.
9. In *Stevens*, the court found that the circumstances were such that the defendant did not have to demonstrate prejudice or the lack of integrity, but instead the appointment of a special prosecutor was to avoid any appearance of impropriety. *People v. Stevens*, 642 P.2d 39, 41 (Colo. App. 1981).
10. The American Bar Association Standards for Criminal Justice has guidelines about prosecutorial function. Standard 3-1.1(c) states the duty of the prosecutor is to seek justice, not merely to convict. The commentary goes on to state that a prosecutor also has an obligation to guard the rights of the accused.
11. Standard 3-1.2 goes on to discuss that a prosecutor should avoid the appearance or reality of a conflict of interest.
12. A court analyzing whether there a district attorney’s office has a special “interest” in a case must focus on whether “the members of the district attorney’s office would stand to receive personal benefit or detriment from the outcome of the a case.” *People v. Palomo*, 31 P.3d 879, 882 (Colo. 2001).
13. As background for the Court, the elected district attorney, Alexis King, filed discovery regarding a donation she had made to one of the named victims in the case, Wendi Strom’s, mayoral campaign. The discovery indicates that she was made aware of this conflict during an in-person interaction between the two of them and subsequently requested a refund on that donation.
14. Further research by Benjamin Jacobs, an investigator with the Jefferson County Public Defender’s office, indicated that further monetary connections exist between Ms. King and another listed victim, Jeslin Shahrezaei, who contributed to Ms. King’s District Attorney campaign on two occasions.
15. What encompasses a fair trial is not just what occurs at trial and in front of the jury, but also the totality of how a case is handled and the process leading up to trial. Examples being position and presentation at a bond hearing; negotiations and making an offer in a case; VRA compliance; choices in litigation and motions to file; and ultimately the decision to pursue a trial or not.

16. Regardless if Ms. King herself handles this case, or it continues to be handled by Ms. Galvan, the decision making process of this case prior to trial and the means by which this case is prosecuted still means that Ms. Gonzalez is at risk of being treated differently than similarly situated defendants and is not going to get a fair trial.
17. The entire district attorney's office is the same position of making decisions or not making decisions based on how that will sit with the elected District Attorney and how that is going to affect their workplace in the future or how they themselves are going to be treated in the future by Ms. King.
18. It is unavoidable for employees of the district attorney's office to consider how this case will inevitably effect themselves or their coworkers regardless of whether that is a positive effect or a negative effect.
19. Given the uniqueness of the circumstances of his case, the financial contributions that have taken place between the District Attorney and witnesses, and the close relationship of the District Attorney and named witnesses in this case, Ms. Gonzalez requests the Court appoint a special prosecutor.

**WHEREFORE**, Ms. Gonzalez respectfully requests the Court appoint a special prosecutor in this matter. Ms. Gonzalez brings this motion under the Due Process, Right to Counsel, Confrontation, Right to Remain Silent, Compulsory Process, Equal Protection, Right to Appeal and Cruel and Unusual Punishment clauses of the Federal and Colorado constitutions, and Article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth and Fourteenth amendments to the United States Constitution.

Respectfully submitted,

/s/ Chelsea Lauwereins

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Chelsea Lauwereins, No. 55011  
Deputy State Public Defender

Dated: December 12, 2023

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#### CERTIFICATE OF SERVICE

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I hereby certify that on December 12, 2023, a true and correct copy of the foregoing document was served via ICCES on all parties who appear of record and have entered their appearance herein according to ICCES. //s// Chelsea Lauwereins