

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY: CRIMINAL TERM, PART

-----X

THE PEOPLE OF THE STATE OF NEW YORK, :

-against- :

##, :

Defendant. :

-----X

NOTICE OF MOTION
UNDER C.P.L. §245.30(1)
TO PRESERVE EVIDENCE

Ind./Dkt. No. #####

PLEASE TAKE NOTICE that, upon the annexed affirmation of ##### and upon the accusatory instrument and all prior proceedings, the undersigned will move this Court at Part ##### at the courthouse located at #####, New York, on #####, at the opening of court on that day or as soon thereafter as counsel can be heard, for an order pursuant to C.P.L. §245.30(1):

1. Requiring [##### SPECIFY INDIVIDUAL, AGENCY OR ENTITY IN POSSESSION OR CONTROL] to preserve [##### SPECIFY ITEM(S)] until [##### SPECIFY DATE, OR OCCURRENCE OF SOME EVENT IN CASE]; and
2. Granting such other relief as this Court may deem proper.

Dated: #####
#####, New York

[IMPORTANT NOTE TO DEFENSE ATTORNEY – DELETE BEFORE FILING:
Filing a *written motion* for preservation of evidence likely will stop the C.P.L. §30.30 clock [see §§30.30(4)(a), 255.10(1)(c)]. So it may be better to promptly subpoena items not at risk of imminent erasure or loss, and to file the written motion only in selected cases. Preservation orders could be sought for – e.g. – perishable, disposable or changeable items like surveillance footage, online information, records that may be destroyed, etc.]

Yours, etc.

JANET E. SABEL
Attorney for the Defendant
The Legal Aid Society
Criminal Defense Practice

#####, ##### Floor
#####, New York #####

Of Counsel

Phone: #####
Email: #####

To: Hon. #####
District Attorney
County

#####, New York #####
Attn: ADA #####

Clerk of the Court
County

#####, New York #####

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY: CRIMINAL TERM, PART

-----X

THE PEOPLE OF THE STATE OF NEW YORK, :

-against- : AFFIRMATION

##, :
Ind./Dkt. No. #####

Defendant. :
-----X

##, an attorney admitted to practice law in the courts of this State, hereby affirms under penalty of perjury that the following statements are true, except for those made upon information and belief, which I believe to be true:

1. I am associated with JANET E. SABEL, the attorney of record for the defendant. I am familiar with the facts of this case and make this affirmation in support of defendant’s motion. Unless otherwise specified, all allegations of fact are based upon information and belief, the sources of which include inspection of the record of the case, conversations with Assistant District Attorneys, the defendant, and counsel’s own investigations.

2. The defendant respectfully requests an order for preservation of evidence pursuant to C.P.L. §245.30(1). That statute provides: “At any time, a party may move for a court order to any individual, agency or other entity in possession, custody or control of items which relate to the subject matter of the case or are otherwise relevant, requiring that such items be preserved for a specified period of time. The court shall hear and rule upon such motions expeditiously. The court may modify or vacate such an order upon a showing that preservation of particular evidence will create significant hardship to such individual, agency or entity, on condition that the probative value of that evidence is preserved by a specified alternative means.”

3. The defendant is charged with violating Penal Law §[##### CURRENT TOP CHARGE] and various other charges.

4. The defendant was arraigned in Criminal Court on [##### ARRAIGNMENT DATE].
5. The defendant requests an order directed to [##### SPECIFY INDIVIDUAL, AGENCY OR ENTITY IN POSSESSION OR CONTROL], requiring preservation of [##### SPECIFY ITEM(S)] until [##### SPECIFY DATE, OR OCCURRENCE OF SOME EVENT IN CASE]. The statute does not require advanced notice or service of this motion on the recipient prior to issuance of an order. *See* C.P.L. §245.30(1); *compare* C.P.L. §245.30(2)&(3).
6. The items sought to be preserved relate to the subject matter of the case or are otherwise relevant insofar as [##### EXPLAIN CONNECTION OF ITEMS TO CASE].
7. [##### IF APPLICABLE, ADD ANY PERTINENT FACTS RELATING TO PRIOR EFFORTS TO OBTAIN ITEMS (WHICH ARE NOT REQUIRED) OR NATURE OF RISKS OF LOSS/DELETION WITHOUT THE COURT’S PRESERVATION ORDER – BUT, OBVIOUSLY, ASSESS STRATEGIC RISKS OF FACTUAL STATEMENTS, COMMITTING TO A DEFENSE, ETC.]
8. The requested preservation order would not create significant hardship to its recipient. [##### COULD ELABORATE ON WHY IT IS NOT BURDENSOME, BASED ON THE NATURE OF THE EVIDENCE SOUGHT TO BE PRESERVED, THE NATURE OF AGENCY OR INDIVIDUAL, ETC.]
9. If the Court grants this application and issues the requested preservation order, the defendant will thereafter take the following steps to obtain the items. [##### SPECIFY WHETHER – *E.G.* – THE DEFENSE INTENDS TO ISSUE A SUBPOENA UNDER C.P.L. §610.20(3); OR TO MOVE FOR A DISCRETIONARY DISCOVERY ORDER UNDER C.P.L. §245.30(3); OR TO REQUEST THE PROSECUTION’S ASSISTANCE IN OBTAINING ITEMS UNDER C.P.L. §245.20(2); OR TO TAKE OTHER STEPS AS APPLICABLE, SUCH AS MOVING FOR OR REQUESTING AN ACCOUNT HOLDER’S AUTHORIZATION TO RELEASE ONLINE INFORMATION, ETC.].

10. Defendant therefore moves for an order requiring preservation of this evidence. We respectfully draw the Court's attention to the statutory directive in C.P.L. §245.30(1) that "[t]he court shall hear and rule upon such motions expeditiously."

11. Defendant also asks the Court to order such other and further relief as it may deem proper.

WHEREFORE, the affiant respectfully requests this Court to grant the relief sought herein and reserve to defendant the right to amend or supplement this motion and to grant such other and further relief as the Court may deem just and proper.

Dated: #####
#####, New York

Yours, etc.

JANET E. SABEL
Attorney for the Defendant
The Legal Aid Society
Criminal Defense Practice
#####, ##### Floor
#####, New York #####

Of Counsel

Phone: #####
Email: #####