

STATE OF NEW YORK
_____ COURT : COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff

**NOTICE OF MOTION TO
DISMISS IN FURTHERANCE
OF JUSTICE**

-VS-

Ind. No.

CLIENT'S NAME

Defendant

SIRS:

PLEASE TAKE NOTICE that upon the annexed duly verified affidavit of NAME OF DEFENDANT'S ATTORNEY, ESQ., and upon the *[information/simplified information/prosecutor's information/misdemeanor complaint]* filed against the above-named defendant in this Court on DATE, and upon the arraignment had herein, the undersigned will move this Court at a Part _____ thereof, to be held at the Courthouse located at ADDRESS, Erie County, State of New York on DATE at _____ o'clock in the forenoon/afternoon or as soon thereafter as counsel can be heard for an order dismissing the *[information/simplified information/prosecutor's information/misdemeanor complaint/count thereof]* herein, pursuant to [N.Y. Crim. Proc. Law §§ 170.30\(1\)\(g\), 170.40](#) upon the ground that the conviction or prosecution of the above-named defendant by such accusatory instrument would constitute or result in injustice [**OPTIONAL:** *and upon the further ground that _____ [specification of all grounds for dismissal]*] and for [**OPTIONAL:** *An order for [specification of any other motions which may have to be included*

herewith pursuant to single omnibus pretrial motion requirements of N.Y. Crim. Proc. Law art. 255], and for]

Such other and further relief as to the Court seems just and proper.

Dated:

Yours, etc.,

_____, **ESQ.**,
Attorney for Defendant, _____
Office and P.O. Address
ADDRESS
Tel. No.

TO: **HON.** _____
NAME OF COURT
ADDRESS OF COURT

FRANK A. SEDITA, III., ESQ.
Erie County District Attorney
25 Delaware Avenue
Buffalo, NY 14202
ATTN: NAME OF ADA, ESQ.

STATE OF NEW YORK
_____ COURT : COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff

-vs-

**AFFIRMATION IN SUPPORT
OF MOTION TO DISMISS IN
THE FURTHERANCE OF
JUSTICE**

Ind. No.

CLIENT'S NAME

Defendant

_____, ESQ., an attorney admitted to practice before the courts of this state,
affirms the following as true under the penalties of perjury:

1. That I am the attorney for the defendant above named, and am personally familiar with the facts hereinafter stated.

2. The said defendant was arrested and charged with the offense of NAME OF OFFENSE, in violation of section _____ of the New York Penal Law in the County of Erie on DATE, a copy of the [*information/simplified information/prosecutor's information/misdemeanor complaint*] is annexed hereto as DESIGNATION OF EXHIBIT Arraignment of the defendant on the above-mentioned charge took place in this Court on the DATE; to this date no plea of guilty has been entered by said defendant nor has a trial been commenced as to the aforementioned charge.

3. This affidavit is made in support of the defendant's motion for:

I. An order pursuant to [N.Y. Crim. Proc. Law § 170.30\(1\)\(f\)](#) dismissing the [*information/simplified information/prosecutor's information/misdemeanor complaint/count thereof*] on the ground that dismissal is required in the furtherance of justice, within the meaning of [N.Y. Crim. Proc. Law § 170.40](#), in that there exists a

compelling [*factor/consideration/circumstance*] clearly demonstrating that conviction or prosecution of the defendant upon the aforesaid [*accusatory instrument/count*] would constitute or result in injustice, in that [*elaboration of factors enumerated in [N.Y. Crim. Proc. Law § 170.40\(1\)](#)*].

a- *The Serious and Circumstances of the Offense.*

b- *The Extent of Harm Caused by the Offense.*

c- *The Evidence of Guilt, Whether Admissible or Inadmissible at Trial.*

d- *The History, Character and Condition of the Defendant.*

e. *Any Exceptionally Serious Misconduct of Law Enforcement Personnel in the Investigation, Arrest and Prosecution of the Defendant.*

f. *The Purpose on Effect of Imposing Upon the Defendant a Sentence Authorized for the Offense.*

g. *The Impact of a Dismissal on the Safety or Welfare of the Community.*

h. *The Impact of a Dismissal Upon the Confidence of the Public and the Criminal Justice System.*

i. *Where the Court Deems it Appropriate, the Attitude of the Complainant or Victim with Respect to the Motion.*

j. *Any Other Relevant Fact Indicating that a Judgment of Conviction Would Serve No Useful Purpose.*

[OPTIONAL: Specification of any other ground for dismissal which should be raised on the motion as subsequent motion on ground not so raised may be summarily denied. [N.Y. Crim. Proc. Law § 170.30\(3\).](#)]

II. *[OPTIONAL: Specification of any other motion which may have to be included herewith pursuant to single omnibus pretrial motion requirements under N.Y. Crim. Proc. Law art. 255]*

4. No other application for the relief sought herein has been made to this or to any other court.

WHEREFORE, your deponent respectfully requests that this motion be granted in all respects, together with such other and further relief as to the Court may seem just and proper.

DATED:

_____, **ESQ.**,
Attorney for Defendant,
Office and P.O. Address
ADDRESS
Tel. No.

