

NEW YORK
CITY BAR

COMMITTEE ON STATE COURTS
OF SUPERIOR JURISDICTION

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February 16, 2011

The Hon. Ann Pfau
Chief Administrative Judge of the
State of New York
25 Beaver Street
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Re: Proposed Rule on Preservation of Evidence

Dear Judge Pfau:

I write as the Chair the Committee on State Courts of Superior Jurisdiction of the New York City Bar Association. The Committee is concerned that many litigants are not aware of their obligation to preserve evidence relevant to litigation. As a result, evidence is sometimes destroyed prior to litigants either seeking legal advice or attending a preliminary court conference at which the issue is addressed. It is the view of the Committee that litigants should receive notice of their obligation to preserve relevant evidence, including electronic evidence, at the earliest possible moment so that motions and disputes over spoliation can be avoided. Such discovery disputes can be avoided in many cases by a simple notice because there are times when litigants are unaware of their obligations, including preserving electronic evidence, and consequently continue business practices of routinely deleting electronic files and/or allowing employees to select files for deletion without supervision.

After careful study and discussion concerning this problem, we believe that the interests of justice will be promoted by requiring that a notice of the obligation to preserve evidence be attached to and served with the Summons in civil actions and proceedings in the Supreme Courts and the County Courts. We propose that, pursuant to Judiciary Law 211(1)(b) and 212(2)(b), Your Honor, as the Chief Administrator of the Courts, promulgate a rule requiring that the following notice be attached to all Summonses filed and served in civil actions:


NOTICE OF OBLIGATION TO PRESERVE EVIDENCE

Please take notice that all litigants have legal obligations regarding the preservation of evidence relating to legal disputes. Thus, for the relevant periods relating to the issues in this litigation, parties are required to maintain and preserve evidence including, without limitation, electronically stored information, relating to their claims and/or defenses.

We believe that such a notice does not in any way alter the substantive law of the State of New York which already requires the preservation of evidence by all parties involved in litigation. Rather, the proposed new rule will give notice to parties of their obligations under New York law.

We thank you in advance for your time and consideration of this important issue.

Respectfully,



Cynthia B. Rubin,

cc: Alan Rothstein, Esq., General Counsel, New York City Bar Association