**

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Roster Attorneys

Macomb County Bar Association

RE: Clients at Macomb County Jail

 Those Possibly at Risk

REF: Identifying Individuals

 Possible Action

Dear Roster Attorneys:

I hope this letter finds you safe and following recommendations concerning COVID-19 and work activities.

As you know, it has been an unusual week with varied approaches to Court proceedings which seemed to differ from court to court. Accompanying this letter are the Michigan Supreme Court Administrative Orders. [MSC Administrative Order No. 2020-2; MSC Administrative Order No. 2020-1](https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2020-08_2020-03-15_FormattedOrder_AO2020-1.pdf) These Administrative Orders provide, among other things, guidelines for court operations during this state of emergency, and give some direction to trial courts about bond conditions.

Some of our clients who are most at risk of COVID-19 may be in the Macomb County Jail. Some approaches to reducing the number of our clients in the jail include the following motions:

**Motions Concerning Macomb County Jail Inmates With Health Concerns**

Important concerns that some of our clients may face are health issues while incarcerated at the Macomb County Jail. Some of our clients with health issues may be appropriate for release on bond for their health and reduce the number of persons in the jail. Such a reduction would reduce possible exposure to both inmates and employees in the concentrated jail population. I understand that the Jail has been diligent about screening inmates as they enter the jail and is doing all they can to avert any outbreak of COVID-19 at the Macomb County Jail. Despite these efforts, there remains the real possibility that inmates and employees will be exposed to an outbreak. This risk may include some of our client inmates who are most at risk. At risk groups may include inmates who are diabetic, have heart issues, have AIDS, have respiratory issues, or who have other autoimmune conditions or other health concerns. Motion for Bail, motion To Challenge Continued Pre-Trial Confinement of At-Risk Clients, Motion To modify Terms of Probation, and Motion for Compassionate Release or Medical Probation. See forms found at [**www.sado.org/go/coronavirus**](http://www.sado.org/go/coronavirus)

One step in addressing the concerns over inmates who are at health risk is to identify those individuals. Should you know of any inmate who is at risk due to health conditions, you are encouraged to file motions with the court seeking bond modification. Should you have your own health concern/condition reservations or be unable to prepare such a motion, you can forward their name and a brief description of their situation to my office. **tjtomkolaw@aol.com**

**Probation Modification**

You could consider a Motion to Modify Probation to obtain an early release for appropriate clients. As noted in the SADO website, there are opportunities for filing Motions in certain cases.

Most felony and many misdemeanor jail sentences are imposed as part of an order of probation. MCL 771.2(5) states the “court may amend the order [of probation] in form or substance at any time.” On March 15, the Michigan Supreme Court issued [Administrative Order No. 2020-1](https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2020-08_2020-03-15_FormattedOrder_AO2020-1.pdf), urging all state courts to “take any . . . reasonable measures to avoid exposing participants in court proceedings, court employees, and the general public to the COVID-19 crisis.” The order further instructs courts “to take into careful consideration public health factors arising out of the present state of emergency . . . b) in determining any conditions of probation.”

Once again, there are forms which can provide a start for drafting a Probation Modification Motion found on the SADO website. [**www.sado.org/go/coronavirus**](http://www.sado.org/go/coronavirus)

**Motion Concerning Inmates Who Can Be Released On Bond**

Another group of inmates may be eligible for release on bond. This group can include those current inmates who cannot post bond and are non-violent. This group of inmates could be eligible for release on modified bond conditions during the COVID-19 emergency. A bond modification motion can be filed, and a sample is available at [**www.sado.org/go/coronavirus**](http://www.sado.org/go/coronavirus)**.** Our Supreme Court encourages Trial Courts to take the state of emergency concerning COVID-19 into consideration when setting bonds:

“8 In addition to giving consideration to other obligations imposed by law, trial courts are urged to take into careful consideration public health factors arising out of the present state of emergency: a) in making pretrial release decisions, including in determining any conditions of release, b) in determining any conditions of probation;”

 **MSC Administrative Order No. 2020-1**

Again, you are encouraged to file appropriate motions such as Motion for Bail, Motion to Challenge Continued Pre-Trial Confinement of At-Risk Clients, Motion To Modify Terms of Probation. See forms at [**www.sado.org/go/coronavirus**](http://www.sado.org/go/coronavirus)

**Motion for 25% Reduction in Sentence (“Time Cut”)**

Another possibility for clients is early release through motion for sentence reduction. As you may know, persons sentenced to county jail time are eligible to seek a 25% reduction in sentence. Should you have a client who is serving a county sentence, and their behavior at the jail has been good, then an appropriate motion could be considered. You are encouraged to file a time-cut motion seeking early release from a county jail sentence. In some cases, this could result in immediate release. Should you be unfamiliar with this type of motion, or simply need a form to start, go to the website at [**www.sado.org/go/coronavirus**](http://www.sado.org/go/coronavirus)

**Arraignment Attorneys**

Attorneys who are currently covering arraignments should keep in mind the direction of the Supreme Court’s Administrative Orders and the materials supporting keeping our clients out on bond during this state of emergency. I urge attorneys to continue doing their great job during this time, and to enhance their bond arguments with the information and materials found at the SADO website and elsewhere.

**CALL TO ACTION**

I encourage everyone to consider options for their clients at this time of health concerns over COVID-19. Together, we may be able to help our clients and perhaps avert some of the concerns which can arise at the jail.

Should you know of any inmate who is at risk due to health conditions, or who may be able get released on bond or by modification of sentence or compassionate release or otherwise, you are encouraged to file motions as soon as possible. Should you have your own health concern/condition, reservations, or be unable to prepare such a motion, you can forward their name and a brief description of their situation to my office. **tjtomkolaw@aol.com.** Some attorney volunteers and Law Student Interns and others may be able to pitch in and assist in drafting and even arguing appropriate motions. However, it depends on us to identify those who can benefit from our efforts.

Thank you for you continued great work on behalf of your clients.

Contact this office with questions.

Sincerely,

Thomas J. Tomko

TJT/cjg

Enclosures