STATE OF MICHIGAN

IN THE [INSERT COURT HERE]

PEOPLE OF THE STATE

OF MICHIGAN,

Plaintiff-,

Court of Appeals No**.** [#]

v

Case No.: [#]

[INSERT PARTY NAME**,**

Defendant-.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EMERGENCY MOTION FOR APPELLATE BOND**

[Client] asks this Court to grant him/her bond during the pendency of the state’s appeal. [insert case specific reasons to grant bond, consistent with MCR MCL 770.9a(2)].

Additionally, the urgent COVID-19 crisis makes it imperative to reduce jail populations. Eliminating unnecessary detention in cases such as this one is one vital step to protecting the community in our prisons and defendants like this one who was convicted a decade ago in a trial that was fundamentally unfair. The urgency of the current crisis makes it imperative that Mr. Ewing be granted cash bond in amount which he is capable of paying immediately. In support of this motion, Mr. Ewing states:

**Basic Factual and Procedural Background**

1. [Client] has been incarcerated on these charges since [DATE].
2. On [DATE] [CLIENT] was convicted.
3. On [DATE], [INSERT CASE SPECIFIC FACTS IN REGARDS TO APPELLATE PROCESS]
4. On [DATE], the state filed its [PLEADING]. On appeal, [INSERT SUMMARY OF STATE’S MAIN ARGUMENT(S)].
5. [CLIENT] has filed his RESPONSE/REPLY to the [STATE PLEADING].

**Appellate Bond Procedure and Argument**

1. This court has jurisdiction to grant this motion under MCL 770.9a and MCR 7.209.
2. MCL 770.9a(2). provides, in relevant part: “A defendant convicted of an assaultive crime . . . shall be detained and shall not be admitted to bail unless the trial court . . . finds by clear and convincing evidence that section 9b of this chapter does not apply and that both of the following exist:

(a) The defendant is not likely to pose a danger to other persons.

(b) The appeal or application raises a substantial question of law or fact

1. MCR 7.209(F)(2) sets forth six (6) requirements: “A criminal defendant for whom bond pending appeal is allowed after conviction shall promise in writing:

(a) to prosecute the appeal to decision;

(b) if the sentence is one of incarceration, to surrender himself or herself to the sheriff of the county . . . if the sentence is affirmed on appeal or if the appeal is dismissed;

(c) if the judgment or order appealed is other than a sentence of incarceration to perform and comply with the order of the trial court if it is affirmed on appeal or if the appeal is dismissed;

(d) to appear in the trial court if the case is remanded for retrial or further proceedings or if a conviction is reversed and retrial allowed;

(e) to notify the trial court clerk of a change of address.

1. This Court should grant [CLIENT] bond pending appeal.
2. Here very little evidence shows that [CLIENT] poses an identified and articulable danger to others. Although [CLIENT] was charged with first-degree murder and assault with intent to commit murder, the instant charges are not probative that Mr. Ewing might offend if released while awaiting decision on appeal and awaiting retrial. See, e.g., *United States v Demmler*, 532 F Supp 2d 677, 683 (SD Ohio, 2007) (observing that, in setting bail, a “Court will not assume that just because [a defendant] has been charged” with a particular crime that “he is likely to commit these same offenses again during the course of these proceedings”). [INSERT CASE-SPECIFIC FACTS TO SHOW CLIENT IS NOT LIKELY TO POSE A DANGER TO COMMUNITY].
3. The appeal in this case raises substantial questions of law and fact. [EXPLAIN] [DOES CLIENT MAINTAIN INNOCENCE?].
4. Finally, [CLIENT] will comply with the remainder of MCR 7.209(F)(2). In the Michigan Court of Appeals, he filed his answer to the prosecutor’s application for leave to appeal on March 24. Mr. Ewing moved for immediate consideration of the prosecutor’s application. [CLIENT] has longstanding family and social ties to [GEOGRPAHIC LOCATION], ensuring he will comply with this Court’s orders, appear for trial, and notify the clerk of any changes to address.

**Additional COVID-19-related Facts and Argument**

1. The COVID-19 pandemic that is currently affecting the entire state and nation presents a particularly severe risk to incarcerated persons and to the attorneys and court and jail staff who interact with them. The best available public health advice involves preventing the spread of COVID-19 by regularly washing hands, social distancing, and self-quarantining when necessary.[[1]](#footnote-1) All of these precautions are particularly difficult, if not impossible, in the carceral setting. Accordingly, [CLIENT] is at heightened risk of infection while they remain incarcerated.
2. On Tuesday, March 10 Governor Gretchen Whitmer declared a state of emergency in Michigan as a result of the COVID-19 crisis. President Donald J. Trump declared a national emergency on March 13. On March 15, the Michigan Supreme Court issued Administrative Order No. 2020-1, 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.” On March 23, 2020, Governor Whitmer issued a shelter at home order, and as this court is well aware the Michigan courts have also taken additional measures since March for public safety.

For these reasons, this Court should set a bond which [CLIENT] is capable of paying immediately.

**WHEREFORE** Mr. Ewing moves this Court to set a reasonable bond immediately.

Respectfully submitted,

**STATE APPELLATE DEFENDER OFFICE**

/s/ Christine A. Pagac

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Date: March 26, 2020

1. See Michigan Department of Health and Human Services, Community Mitigation Strategies, *available at* <https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98155-521467--,00.html> [↑](#footnote-ref-1)