**MOTION TO SET REASONABLE CONDITIONS OF RELEASE PURSUANT TO RULE 29.18(d)**

**COMES NOW** [Insert client’s name – i.e. Mr. Joe Scott,] Defendant, by and through the undersigned Defense Counsel, and respectfully requests this Court hold a release hearing pursuant to Missouri Supreme Court Rules 33.01, and 33.05. Defendant further requests this Court grant [client’s name] release upon a written promise to appear or, in the alternative, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, pursuant to Rule 33.01(c).

In support, [client’s name] states as follows:

Statement of Facts:

1. On \_\_\_\_\_\_\_, the State filed a complaint charging [client’s name] with \_\_\_\_\_\_\_\_\_\_.
2. [client’s name] ’s bond is currently set at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. [Or “[client’s name] is currently being held pending trial without the possibility of posting bond.”]
3. Relevant Information:

Practice Note: do not simply list factors. Write a narrative about your client and their circumstances. It should be individualized in each case. The laundry list method is not persuasive. We’ve included these factors, because many judges consider these. If you know your judge has a particular concern, be sure to address it.

* 1. Home Plan: If released, [client’s name] would reside at
  2. Family Ties and Length of Residence in the Community:
  3. Employment:
  4. Education:
  5. Mental Health:
  6. Physical Health:
  7. Record of Convictions:
  8. Record of Appearances in Court:
  9. Character:

1. [client’s name] is \_\_\_\_ years old.
2. [client’s name] is employed at \_\_\_\_\_\_\_\_\_\_\_\_\_
3. [client’s name] graduated \_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. [client’s name] has mental health issues, including: \_\_\_\_\_\_\_\_\_\_\_\_

Applicable Law

1. The Missouri Constitution guarantees: “That all persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.” Missouri Constitution, Article I, Section 20.
2. For non-capital offenses, the Court may only deny bail “upon a showing that the defendant poses a danger to a crime victim, the community, or any other person.” Missouri Constitution, Article I, Section 32. *See also* Section 544.676; Rule 33.01(d).
3. The procedure and rules for hearings regarding a Defendant’s right to pre-trial release are provide in Missouri Supreme Court Rule 33.
4. Under Rule 33.01, the Court must release the defendant on his own recognizance subject only the standard conditions listed in Rule 33.01(b)(1)-(4), unless the Court determines that additional conditions of release are necessary to “secure the appearance of the defendant at trial, or any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses.”
5. When determining what “additional conditions of release” to impose, “The court shall set and impose the least restrictive condition or combination of conditions of release, and the court shall not set or impose any condition or combination of conditions of release greater than necessary to secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses.” Rule 33.01(c).
6. When considering the least restrictive condition or combination of conditions of release to set and impose, the Court must first consider the non-monetary conditions listed in Rule 33.01(c)(1)-(16) before imposing a monetary condition of release. The court may only impose a monetary condition of release if no combination of non-monetary conditions would be sufficient, and “[a]fter considering the defendant’s ability to pay[.]” Rule 33.01(c).
7. Pursuant to Rule 33.01(d), the Court does not have authority to order a defendant to remain detained pending trial with no bond unless the Court “determine[s] upon clear and convincing evidence that no combination of non-monetary conditions and monetary conditions will secure the safety of the community or other person, including but not limited to the crime victims and witnesses.”
8. Evidence that a defendant is a flight risk can serve as the basis for imposing additional conditions of release under Rule 33.01(c), however it cannot serve as the basis for denying bail outright and ordering a defendant detained pending trial without bail under Rule 33.01(d).
9. On January 24, 2018, Chief Justice Zel Fischer of the Missouri Supreme Court said the following at his State of the Judiciary Address:  
   “It seems obvious and important that—before a trial is held and guilt or innocence is determined—we reserve our jail space for those who pose the most danger to the community or risk fleeing the jurisdiction, and not those who simply may be too poor to post bail. Studies show that even short stints in jail increase the likelihood of missing school or losing jobs and housing. And, of course, pretrial supervision costs a local community substantially less than pretrial incarceration.”  
   Honorable Zel Fischer, State of the Judiciary, Address before the Missouri General Assembly (January 24, 2018) (available at https://www.courts.mo.gov/page.jsp?id=121993).

Argument

1. [client’s name] is entitled to a release hearing under Rule 33.05 because [client’s name] has been ordered detained and has been unable to comply with any condition of release. *See* Rule 33.01(f).
2. [client’s name] is not a flight risk and there has been no showing that he poses a danger to a crime victim, the community or any other person.  
   a) Risk of Flight:   
   b) Danger to Others:   
   c) Ability to Pay:
3. Many of the relevant factors under Rule 33.01(e) weigh in favor of allowing [client’s name] to be released on bond pending the resolution of this case, including the following:

Practice tip – again, do not list facts, but create a story/narrative showing how this applies to your client  
a) Home plan:   
b) Consequences of prolonged detention on Defendant:   
c) Family Ties:   
d) Employment and Education:   
e) Character:   
f) Mental Condition:   
g) Length of Residence in Community:   
h) Availability of alternative conditions of release, especially due to inability to pay:

1. This Court’s order to detain [client’s name] prior to trial without bond violates Rule 33.01(d) as well as Section 544.676 RSMo and Article I, Sections 20, 21 and 32 of the Missouri Constitution because:
   1. There has been no finding upon clear and convincing evidence that no combination of [conditions of release] will secure the safety of the community or other persons,” which is the required finding before the Court has authority to order Defendant to remain detained pending trial without bond under Rule 33.01(d).
   2. The State has not produced “clear and convincing evidence that no combination of [conditions of release] will secure the safety of the community or other persons,” which is the required finding before the Court has authority to order Defendant to remain detained pending trial without bond under Rule 33.01(d).
2. Evidence that a defendant is a flight risk can serve as the basis for imposing additional conditions of release under Rule 33.01(c), however it cannot serve as the basis for denying bail outright and ordering a defendant detained pending trial without bail under Rule 33.01(d).
3. Continued detention also violates [client’s name] rights to due process, presumption of innocence, a fair hearing and trial, assistance of counsel, equal protection and imposes punishment under the 5th, 6th, 8th, and 14th Amendments to the United States Constitution and Articles I, Section 2, 10, 11, 18 (a), 20, 21 and 32 of the Missouri Constitution.

**WHEREFORE**, Defendant respectfully requests this Court hold a pre-trial release hearing, as required by Rule 29.18(d), and enter an order releasing [client’s name] on personal recognizance, or in the alternative \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. If the Court imposes EMASS monitoring, [client’s name] requests the Court make a finding that [client’s name] is indigent in the order imposing conditions of release, so the costs will be waived. Alternatively, should the Court deny this request, [client’s name] requests that any financial conditions not exceed $500.

(Add signature block and service to opposing counsel)

*Thank you to Bendan Kottenstette and Ryan Hehner for their help in developing this motion.*