



CITY OF TOPEKA

MUNICIPAL COURT
Karan M. Thadani
Administrative Judge
214 SE 8th Avenue
Topeka, Kansas 66603-3907
Tel: (785) 368-3776

Fax: (785) 368-3782
www.topeka.org

Topeka Municipal
Court

214 SE 8th, 2nd Floor
Topeka, Kansas 66603

Hours:

7:30 am-4:30 pm
Monday-Friday

Telephone:

(785) 368-3776

Facsimile:

(785) 368-3782

Rules of the Municipal Court

Rule 1: Prefatory Rule

Rule 2: Definitions

Rule 3: Court Hours

Rule 4: Administrative Judge

Rule 5: Judges Pro Tempore

Rule 6: Appearance Bonds

Rule 7: Procedures Involving Notices
to Appear & Certain Fine Payments

Rule 8: Counsel

Rule 9: Daily Docket

Rule 10: General Rules of Court
Decorum and Safety

Rule 11: Court Appearances-Failure to Appear

Rule 12: General Practice and
Procedure

Rule 13: Diversion Practice

Rule 14: Discovery

Rule 15: Motion Practice

Rule 16: Docket Call, Arraignment
and Trial Practice

Rule 17: Restitution

Rule 18: Continuances

Rule 19: Dismissals

Rule 20: Costs, Fees and Conditions of
Release After Sentence

Rule 21: Post-Trial Matters

Rule 22: Appeals

Rule 23: Expungements and
Fingerprinting

Rule 24: Impound Hearings

Rule 25: Publication of Rules

The above and foregoing Rules of the
Municipal Court of the City of Topeka,
Kansas are hereby approved on
May 22, 2020.

IT IS SO ORDERED.

/s/
Karan M. Thadani
Administrative Judge

Rule 1: Prefatory Rule

- (a) Rules Adopted.** The following rules of the Municipal Court of the City of Topeka numbered 1 through 25 are hereby adopted effective February 1, 2011, pursuant to Topeka Municipal Code Section 2.110.070 and Kansas Supreme Court Rule 601B. If any rule contained herein is in conflict with those contained in Topeka Municipal Code Section 2.40.070 or Kansas Supreme Court Rule 601B or applicable statutes or case law, then the provisions of City of Topeka Municipal Code Section 2.40.070, Kansas Supreme Court Rule 601B, statute or case law shall prevail.
- (b) Repeal of Former Rules.** All rules of the Municipal Court of the City of Topeka, which were in effect immediately prior, are hereby repealed as of May 22, 2020.
- (c) Statutory References.** Wherever there is a reference to a section of a statute by number, it shall be deemed to be a reference to the Kansas Statutes Annotated (hereinafter "K.S.A.") as may be amended unless otherwise indicated.
- (d) Ordinance References.** Wherever there is a reference to an ordinance of the City of Topeka by number, it shall be deemed to be a reference to the section of the Topeka Municipal Code (hereinafter "TMC") as may be amended unless otherwise indicated.
- (e) Gender References:** Wherever by pronoun there is a reference to male or female, such reference shall be deemed to include both male and female genders, unless the language of such rule specifically indicates otherwise.

Rule 2: Definitions

- 2.1 As used in these rules, and unless the context requires otherwise, the following definitions shall supplement those definitions found in TMC §2.40.130 and/or K.S.A. 12-4113:
- A. “Administrative Judge” means the Municipal Court of Topeka presiding judge as referenced at TMC §20.40.060, et seq.
 - B. “Community Service” means work authorized by a Municipal Court Judge as provided in Topeka Municipal Code §2.40.610(e)(10), where the defendant is not compensated. Forms, processes and procedures for Community Service shall be established by the Administrative Judge.
 - C. “Court” means any duly authorized Municipal Judge, sitting to hear such cases of the Municipal Court of Topeka, Kansas, including any Judge Pro Tempore appointed for a particular case, docket, division or session(s) of the Municipal Court.
 - D. “Court Clerk” means any duly authorized Clerk of the Municipal Court of Topeka, Kansas, or any duly authorized deputy thereof as designated by the Administrative Judge.
 - E. “Criminal Offense” means any act or omission defined by Topeka Municipal Code or City Ordinance and for which, upon conviction, imprisonment or fine, or both imprisonment and fine, is authorized.
 - F. “Legal Holidays” shall be as provided by the governing body of the City of Topeka, Kansas.
 - G. “Prosecutor” shall mean the attorney(s) or authorized legal intern(s) duly designated by the City Attorney of Topeka, Kansas, to represent the City in the prosecution of a defendant for the violation of a criminal offense or any duly adopted City Ordinance.
 - H. “Traffic Offense” means any act or omission, which related to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or non-self-propelled vehicles of any kind and for which, upon conviction, imprisonment or fine, or both imprisonment and fine, is authorized.
 - I. “Court Costs” or “Costs” shall mean and include, but is not limited to, any amounts, fees, assessments, expenses and/or restitution, except fines, ordered or imposed by the Court at any time prior to, on or after the effective date of these rules.

Rule 3: Court Hours

- 3.1** Unless otherwise ordered, the Court shall be in regular session, open to the public, from 7:30 a.m. until 4:30 p.m. Monday through Friday. The Court shall be closed to the public on the first Friday of the month at noon to allow for staff training.
- 3.2** Session(s) of Court shall convene as directed and scheduled by the Administrative Judge or his/her designee.
- 3.3** Unless otherwise ordered, the Court Clerk's office hours shall be 7:30 a.m. until 4:30 p.m. Monday through Friday, except for legal holidays.
- 3.4** The first Friday of each month shall be reserved as a reduced docket day for the Judges and Municipal Court staff to utilize for non-courtroom business. Except as provided herein, no cases shall be set or docketed after 11 a.m. the first Friday of each month.

If the first Friday of a month is also a legal holiday, the Administrative Judge may designate another day to serve as the monthly Court day. The Administrative Judge may declare, as necessary, other days for a reduced or limited docket(s).

Rule 4: Administrative Judge

- 4.1** The Administrative Judge shall be responsible for carrying out functions of the Municipal Court pursuant to Ordinance No. 17666. When appropriate, the Administrative Judge shall meet with (or designate other Municipal Court Judges or staff members to meet with) committees of the bench, bar and city staff to review matters of administration and to promote understanding of the Municipal Court system.
- 4.2** The Administrative Judge may, at least once per month, call a meeting of all Municipal Court personnel as may be deemed appropriate for the purpose of reviewing the status of dockets and to discuss such other business as may affect the efficient operation of the Court.
- 4.3** The Administrative Judge shall have control over the assignment of cases with the Municipal Court. Assignment of cases shall be designed to distribute as equally as is reasonably possible the judicial work of the Municipal Court.
- 4.4** The Administrative Judge shall, with the assistance and cooperation of the Municipal Court Administrator and the City Manager, evaluate the effectiveness of the Court in administering justice and recommend changes.
- 4.5** The Administrative Judge may issue Administrative Policy Orders relating to policies of the Municipal Court regarding judicial functions. Such Administrative Policy Orders shall supplement these Rules. Such Administrative Policy Orders shall be signed and delivered to the Municipal Court Administrator for distribution as attachments to the Rules of the Municipal Court. Copies of such Administrative Policy Orders will be made available by the Municipal Court Administrator for distribution to Court staff, city staff (as needed), and upon request to other interested parties. The Municipal Court Administrator shall be responsible for the implementation of such Administrative Policy Orders.

Rule 5: Judge Pro Tempore

- 5.1** In the event a Municipal Judge is temporarily unable to preside due to absence, illness, or disqualification, or may otherwise be required to preside at additional sessions of the Municipal Court docket as may be needed due to the caseload, the Administrative Judge may designate an attorney(s) to act as Judge Pro Tempore.
- 5.2** The Judge Pro Tempore shall have the same powers and duties as the duly authorized Municipal Court Judges to hear all cases appearing on the docket to which such Judge Pro Tempore is assigned.
- 5.3** All persons serving as Judge Pro Tempore shall meet the following criteria:
- a. Licensed and in good standing to practice law in the State of Kansas;
 - b. Complies with the Code of Judicial Conduct while serving the Court;
 - c. Exhibits professional habits of competence, judicial temperament, punctuality, timeliness, integrity and independence;
 - d. Enjoys the continuing approval of the Administrative Judge;
 - e. Is not a practicing attorney in Municipal Court or a prosecutor in any Court.

Rule 6: Appearance Bonds

- 6.1** Any person arrested while operating or attempting to operate a motor vehicle while under the influence of alcohol or drugs must be held by the Shawnee County Department of Corrections up to a maximum of six (6) hours (unless a responsible bonding party/agent receives a DUI release form from the Topeka Police Department) from the time of such offense before being eligible for bond to allow such individual sufficient time to become sober enough not to be a danger to himself or others and to be capable of understanding the obligations he or she has to the Court upon release from custody upon such charge.
- 6.2** Any person charged with any violation under the domestic battery and/or domestic violence ordinances released pursuant to any appearance bond by the Shawnee County Department of Corrections or by the Municipal Court must have included in the conditions of any appearance bond for his or her release a specific provision advising the accused to have no contact with the alleged victim(s) in such case.
- 6.3** Except as otherwise provided in these Rules, and in addition to the provisions of Topeka Municipal Code §2.40.290, the following procedures shall apply to the release of a person upon his own recognizance charged with a violation of a municipal ordinance:
- An accused person shall be allowed to be released upon his own recognizance, except:
1. When serving a sentence;
 2. When there is an outstanding Warrant;
 3. When the accused has previously failed to meet the specific obligations of a bail or bond set by a Municipal Court Judge;
 4. The accused has been returned to the custody of the Shawnee County Department of Corrections on a "bond recall" by a surety financially responsible on a previously set bond in order to be relieved of such obligation by the Court;
 5. Upon a bond amount being set by the Municipal Court Judge;
 6. The accused has insufficient identification to confirm his/her identity and address.
- 6.4** Instructions to the Shawnee County Department of Corrections pertaining to the release of a prisoner serving a sentence or otherwise in custody pursuant to any Municipal Court warrant or bail set will be designated upon an order or custody document signed by a Municipal Court Judge and issued by the Judge directly to the facility.
- 6.5** In the event it is necessary for the defendant to post an appearance bond, the provisions of Topeka Municipal Code sections 2.40.270, 2.40.290 and 2.40.300 shall be followed. In setting, modifying, or revoking bonds the Court shall consider the aforementioned ordinances and may consider the factors and guidelines found in K.S.A. Chapter 22, Article. 28, particularly the provisions of K.S.A. 22-2802(5).
- 6.6** A cash bond may be returned to the defendant at the discretion of a Municipal Court judge. The Court may order that the amount of any outstanding fines, costs and restitution owed by the defendant be deducted from the cash bond by the Clerk of the Municipal Court prior to returning the balance of such cash bond to the

defendant. If the case is appealed, then the cash bond cannot be returned until final disposition of the case in District Court, except by the specific approval of a Municipal Court Judge upon proof of proper identification and the cash bond receipt. The cash bond will be forfeited if the defendant fails to appear in Court as directed, and a bench warrant for such defendant's arrest will be issued.

- 6.7** Whenever any bond is permitted or required to be taken without being approved by the Court, it shall be sufficient if the surety thereon is a surety company currently admitted to do business within the State of Kansas. No corporation other than a surety company may be accepted as a surety unless so ordered and approved by the Administrative Judge. No attorney may act as a surety on a bond in any case in which the attorney is counsel. The principal on any bond may at his option, in lieu of providing a surety, deposit with the Clerk of the Municipal Court money in the full amount of the bond. The Clerk shall retain the deposit until the bond is fully discharged and released or the Court orders the disposition of the deposit.

Rule 7: Procedures Involving Fine Payments and Rescheduling of Incarceration

- 7.1** For every criminal or traffic offense where a defendant has been adjudicated guilty, the defendant or counsel for such defendant may obtain one (1) extension of time, not to exceed thirty (30) days, from the Court Clerk's office to extend a fine/fee payment and/or to reschedule a period of incarceration. However, requests for a payment extension or incarceration reschedule must be received by the Clerk's office prior to the day a payment is due or the incarceration period is to begin. However, in no circumstance shall a payment extension or incarceration reschedule alleviate a defendant's obligation to appear for any scheduled court appearance(s) unless approved in advance of the scheduled court appearance by a Judge.
- 7.2** After one (1) such Clerk's extension of time has been granted, the Clerk may not again extend or delay a payment or period of incarceration in such case except:
- A. Upon the written authority of a Judge; or
 - B. As may otherwise be permitted by these Rules.
- 7.3** Fine, cost and fee payments can be made to the Court through any form of valid, legal, United States currency as well as cashier's checks, money orders, credit cards, debit cards, personal checks (with the exception of payment via personal check for reinstatement fees). However, if fines are paid utilizing coins, the total of payments made via coins cannot exceed \$20.00.

Rule 8: Counsel

- 8.1** All defendants may be represented by counsel before the Municipal Court of Topeka, Kansas. Defendants may also represent themselves and appear without counsel.
- 8.2** Any attorney appearing for a defendant shall enter his or her appearance by notifying the Municipal Court Clerk in writing whereupon such attorney's name shall be entered as attorney of record.
- 8.3** No entries of appearance or limited entries of appearance will be permitted merely to allow counsel to apply for the defendant's release from custody, to reduce a bond, to withdraw a warrant, or to obtain a continuance of the case. Once an attorney has voluntarily entered his or her appearance on behalf of a defendant, such attorney may not withdraw from such representation except as permitted by these Rules, Kansas Supreme Court Rule 1.16 and 117, and by a Municipal Court Judge.
- 8.4** Any attorney not licensed to practice in the State of Kansas, but who is licensed as an attorney in good standing in another state, may be recognized as an attorney by this Court upon compliance with the procedures and obligations provided in Kansas Supreme Court Rule 116, as may be amended, pertaining to admission pro hac vice of out-of-state attorneys in Kansas District Courts.
- 8.5** If the Municipal Court Judge has reason to believe that, if found guilty, the accused person might be deprived of his or her liberty and such person is not financially able to employ counsel, the Judge shall appoint an attorney to represent the accused person. Financial inability to employ counsel shall be determined by the methods provided in Topeka Municipal Code §2.40.390 and by the policies of the Administrative Judge.
- 8.6** Persons requesting appointment of counsel shall be advised in writing that the appointment of counsel does not mean that such services will be provided free of charge; such notification shall specifically advise the accused that reasonable costs of legal services provided to the accused may be ultimately charged against him as part of the Court costs, or as a condition of any probation, parole or suspended sentence imposed in any of the cases upon which he may be convicted and sentenced, or may otherwise be collected by separate civil action by the City of Topeka against the accused.
- A. Whenever the City Attorney has at the time of arraignment, first appearance, or prior to the appointment of counsel, agreed not to request any jail time be imposed should the accused be convicted, even though the ordinance involved permits the imposition of a jail sentence, the Court may accept and endorse such agreement in writing and file the same in the case. Upon such Court's acceptance and endorsement of the City Attorney's promise not to request any jail time in such case, the Court will not appoint an attorney to represent such defendant in such case.
- B. If the Judge, in his/her sound discretion, refuses to accept and endorse the City Attorney's request for no jail time, because the Judge believes that upon conviction the Court would be required by law to impose a jail sentence, or otherwise finds that it would not be in the interests of justice that no jail sentence be imposed, the Judge may disregard such promise and advise the

accused in open court that the Court will not accept the City Attorney's agreement. In such cases the Judge may appoint counsel to represent the accused, if otherwise permitted by these Rules.

- C. If additional cases are docketed in Municipal Court against the accused after the filing of the City Attorney's agreement not to request the imposition of a jail sentence in an earlier case, the Judge may disregard such promise upon notice to the accused in open court so long as none of the substantive rights of the accused have been prejudiced, and if otherwise permitted by these Rules, appoint counsel to represent the accused in all such cases pending in Municipal Court.
- 8.7** No motion to withdraw as Counsel will be granted if made ten (10) days or less before a bench trial is set unless other counsel has entered an appearance or extraordinary circumstances are shown.
- 8.8** In the interest of justice and with the consent of the defendant, for those cases in which jail time might be a possible sentence if found guilty, the Judge may permit a defendant to waive counsel in each docketed case and proceed forthwith in such case acting as his or her own attorney. Any such waiver shall be in writing upon a form approved by the Court.
- 8.9** Should a defendant fail to appear as scheduled for any court appearance, and if the interest of justice so requires, the Judge may grant a written motion contemporaneously made by such defendant's attorney of record to withdraw in such case and issue a warrant for the arrest of such defendant.
- 8.10** Except as permitted by these Rules, or the Kansas Rules of Professional Conduct, an attorney who has appeared of record in any case may not be relieved of his duties to the Court, his client, and opposing counsel until such attorney of record has:
- A. Served a motion for withdrawal on the client and on opposing counsel;
 - B. States the reasons for the withdrawal, unless doing so would violate an applicable standard of professional conduct;
 - C. Provides evidence that the withdrawing attorney provided the client:
 - (i) an admonition that the client is personally responsible for complying with all orders of the court and time limitations established by the rules of procedure or by court order; and
 - (ii) notice of the date of any pending trial, hearing, conference, or deadline; and
 - (iii) provides the court with a current mailing address and telephone number for the client, if known;
 - D. Filed copies of the motion and proof of the service thereof with the Clerk; and
 - E. The Judge has entered an order approving the withdrawal.
- 8.11** Factors to be considered by the Court in granting or denying a motion by counsel to withdraw shall include:

- A. The grounds for the withdrawal request;
 - B. The existence of any possible conflict of interest;
 - C. The effect upon speedy trial issues if the motion is granted;
 - D. The inconvenience caused to the witnesses at any trial dates previously or presently scheduled;
 - E. The prejudice which may be suffered by the defendant if the motion is granted or denied;
 - F. The prejudice to the City of Topeka if the motion is granted or denied;
 - G. The absence or presence of written authority by the accused to the attorney of record to dispose of the charges in such case in the absence of the accused; and
 - H. Any other relevant factors.
- 8.12** The failure of counsel to appear at any hearing on a motion to withdraw will be deemed grounds for the denial of such motion.
- 8.13** If counsel practices in Courts of general jurisdiction, such cases may take precedence over conflicting appearances in the Municipal Court. Under such circumstances counsel is obligated to notify the Municipal Court and opposing counsel of the scheduling conflict and to make a good faith effort to resolve such conflict before the date of such scheduling conflict.
- 8.14** Once counsel for a defendant has set the matter for trial or other evidentiary hearing, such counsel is expected to appear on behalf of such defendant in person in the Municipal Court except as otherwise may be permitted by these Rules. The mere fact that such counsel may in good faith anticipate that the defendant will fail to appear, or the mere fact that such defendant may have failed to meet the contractual obligations to such attorney, or to keep in communication with such counsel, does not serve to excuse the failure of such counsel of the duties to appear in Court and to keep the Court and opposing counsel advised as required by law, by Court or ethical rules.

Rule 9: Daily Docket

- 9.1** The Court shall be in session on each day of the year except Saturdays, Sundays, legal holidays and except as otherwise provided herein.
- 9.2** In addition to the Court's computerized docket and calendaring system, the Court shall have disposition sheets for the daily dockets and may include special sessions as the Administrative Judge may prescribe.
- 9.3** Cases will be scheduled for appearances, arraignments, trials, sentencings and other hearings as may be required or authorized by City Ordinance or by the Administrative Judge in accordance with a schedule, which is available in the office of the Clerk of the Municipal Court.

Rule 10: General Rules of Court Decorum and Safety

- 10.1** No person shall be permitted in the working area of Court staff, Topeka Police Department Court Officers or probation officers unless so authorized by the Administrative Judge, except those city employees whose duties require their presence therein. Furthermore, no persons shall be allowed into judge's chambers unless they have first been authorized to be admitted by a judge or by personnel who office in judge's chambers. Judges chambers include all offices and conference rooms located behind the security door on the 2nd floor, southwest corner, of the Court facility.
- 10.2** Law enforcement, Animal Control and Code Enforcement officers and Zoning/Planning Inspectors shall be subject to the rules enumerated in rule 10.1 and shall further be subject to the following rules:
- A. Those officers or inspectors who are witnesses for the City of Topeka shall be quietly seated in such place(s) as may be permitted or designated by the Court.
 - B. Inquiries by officers or inspectors concerning those cases pending on the current day's dockets in which they are scheduled as City of Topeka witnesses shall be made to the Prosecutor or Court staff prior to the commencement of the docket call therein, or following the final disposition of such docket, or at such time the Court is not in session. Such inquiries are not to be directed to the courtroom docket clerks or Prosecutors while Court is in session.
- 10.3** No weapons are permitted in Court except as carried or possessed by law enforcement, Animal Control and Code Enforcement officers and Zoning/Planning Inspectors, or as needed for evidence in Court, without the permission of the Court. The Court may require that any firearm intended for introduction as an exhibit be presented to security staff for a safety check prior to its being brought into the Courthouse. However, none of the above-referenced authorized persons are permitted to bring a weapon to Court for any case in which he/she is the accused. Any employee wishing to carry or possess a firearm shall follow the procedure set forth in Personnel Manual Section 10.9.
- 10.4** Any person not identifiable as an employee of the Municipal Court, or as a uniformed or otherwise identifiable Topeka Police Officer, Code Enforcement or Animal Control Officer or Zoning/Planning Inspector or other recognizable law enforcement authority or as a Court Official displaying a City of Topeka photo identification card designating the person as such and who wishes to conduct business with or witness a proceeding of the Municipal Court, is subject to a magnetometer, wand, and personal search, as well as an x-ray scan and physical inspection of his/her personal belongings, before entry is permitted. Such search may include briefcases, parcels, purses, bags, or other containers carried by persons seeking admission. Any items discovered during the course of these searches which, in the judgment of the attending security personnel, might be considered a possible threat to the safety of others if used as a weapon, may be impounded for return to the relinquishing individual upon departure from the Court or as soon as practicable thereafter pending a decision as to its lawfulness. Persons refusing to relinquish weapons to Court Security may be prohibited from entering the Court facility. If any object so surrendered to the care of the Court is determined to be contraband under local, state or federal law or court rule or otherwise being

possessed illegally, it may be confiscated and ordered disposed of or held as evidence by the Administrative Judge and the person from whom it was obtained arrested and charged with appropriate statutory violations. Nothing in this section shall be construed to be other than a discretionary function of a duly-empowered Topeka Police Department Court Officer.

- 10.5** All persons who wish to do business in Municipal Court will conduct themselves in a manner consistent with and appropriate to the operation of a court of law. All persons in or near any Courtroom or any of the office areas of the Court staff, probation staff or Topeka Police Department Court Officers will conduct their conversations and other activities in such a manner as not to disrupt the business and operation of the Municipal Court, the Judges, the Municipal Court staff and personnel. Any misconduct may be punishable by contempt of Court or other appropriate sanctions by the Court.
- 10.6** Persons bringing children to the Municipal Court offices will keep such children within adult supervision and reasonably quiet so as not to disrupt the business and operations of the Court, the Judges, the Municipal Court staff and Court personnel. Children are not permitted in Courtrooms unless specific permission is granted by a judge.
- 10.7** While Court is in session the Topeka Police Department Court Officer shall protect the Judge and Court staff from non-court personnel who may attempt to approach the bench, clerk station, witness stand, or attorney tables except as otherwise directed or permitted by the Judge, the Clerk, or by the attorneys involved in such person's case before the Court.
- 10.8** All personal or portable telephones, audible pagers and other electronic devices brought into a Courtroom shall be turned off or silenced while Court is in session. Any audible electronic equipment creating noise in the Courtroom, which is not authorized by the Court, is subject to confiscation, and the person who possessed such item may be subject to contempt of court or other appropriate sanctions by the Court.
- 10.9** All persons attending Court are expected to be dressed appropriately for the dignity and decorum of a court proceeding. All persons attending Court should wear, at a minimum, a shirt (or blouse, sweater, etc.), pants or skirt, and shoes. Shorts, tank tops and swimwear are not appropriate attire for Court proceedings. Hats and head wear shall be removed in the Courtroom. Persons dressed inappropriately may be required to exit the Courtroom and may be subject to contempt citations. Moreover, anyone ordered to exit the Court due to inappropriate attire may be required to post a cash bond of no less than \$100.00 and acquire a new court setting.

The conduct and demeanor of attorneys when present during any Court proceeding shall reflect respect for the dignity and authority of the Court. The proceedings conducted in Court shall be maintained by the Court as an objective search for the applicable facts and the correct principles of law. Attorneys should be dressed appropriately for the decorum of a courtroom proceeding. No shorts or jeans are permitted. Attorneys shall be seated in the Courtroom gallery until their case is called.

- 10.10** Food and drink will not be brought into the Courtroom except upon the express permission of the Judge. Spectators will not be permitted to engage in any activity which interferes with Court proceedings.
- 10.11** No spectator, counsel or party attending a Court proceeding shall carry a sign or display pins, buttons or other materials, which is designed to communicate a position or message to others while Court is in session.
- 10.12** Attorneys and pro se litigants shall rise when addressing the Court, and shall make all statements to the Court from the counsel table or the lectern facing the Court. They shall not approach the bench, except with the permission of the Judge. Unless the Judge specifically prescribes otherwise, an attorney must stand when questioning a witness and should refrain from moving about except as may be necessary for the presentation of exhibits or other assistance to the Court.
- 10.13** While questioning witnesses, attorneys or pro se litigants shall stand at the counsel table or at the lectern. They shall not approach the witness unless permitted by the Judge. Only one attorney for each party may participate in the examination or cross-examination of a witness.
- 10.14** Pro se defendants should be prepared to present their cases in a proper manner. It is not the Court's duty or responsibility to represent or instruct the pro se defendant on court procedure, evidence, rules, or how to defend a case.

Rule 11: Court Appearances

- 11.1** Other than in hearings on the termination of diversions, no defendant will be tried *in absentia*, except as permitted by the Judge upon first determining that:
- A. Such defendant appears by and through counsel at such trial; and
 - B. The defendant has, in writing, stipulated to, and otherwise waived all defenses relating to his identity as the accused in the charges pending before the Court; and
 - C. The defendant has, in writing, waived all objections and defenses relating to the admission of hearsay testimony and confrontation of witnesses; and
 - D. The defendant has, in writing, waived all objections and defenses concerning the Municipal Court's jurisdiction over the person of such defendant in the charges pending before the Court.
- 11.2** No defendant will be permitted to be sentenced *in absentia* following conviction for any traffic or criminal offense in which:
- A. Federal, state or local laws require the fingerprinting following conviction for such offense;
 - B. Federal, state or local laws require notification of the victim as to the sentencing date of the accused;
 - C. The defendant has outstanding warrants in the Municipal Court of the City of Topeka and remains a fugitive from justice upon such outstanding warrants; or
 - D. Where, in the discretion of the Court, the defendant's presence should be required at sentencing.
- 11.3** In all cases in which a defendant represents himself or herself, without the benefit of counsel, said defendant must appear before the Court in person, unless agreed to prior to arraignment by the defendant, Prosecution and Judge.
- 11.4** If a duly summoned defendant shall fail to appear before the Court at the time and place scheduled, or rescheduled, the Court may order a warrant for the defendant's arrest, note default on conditions of the defendant's bond and subject to applicable provisions of law governing sureties, forfeit said bond.
- 11.5** Each defendant charged in Municipal Court and his/her counsel are required to keep the Clerk of the Municipal Court advised of any change of such defendant's current address within seven (7) days of such change of address. Failure of a defendant or such defendant's counsel to comply with this rule may be deemed sufficient grounds to revoke or modify the accused's conditions of release.
- 11.6** Every defendant placed on any form of probation following conviction in the Municipal Court shall during the term of such probation keep the Clerk of the Municipal Court (or Municipal Court Probation Office if such defendant has been placed on a reporting probation following conviction) advised of any change of such

defendant's current address and telephone number within seven (7) days of such change of address or telephone number. Failure of a defendant to comply with this rule may be deemed sufficient grounds for the revocation or modification of the conditions of probation.

- 11.7** The failure of a defendant to appear at any appearance as ordered by the Court may be deemed by the Court to create a rebuttable presumption that the existing conditions of the defendant's bond, if any, are insufficient to secure his or her appearance for any future court date, and that the Court may modify the conditions of the defendant's bond before permitting the defendant to be released again prior to trial or prior to sentencing.
- 11.8** No "oral" entries of appearance by counsel/attorneys will be accepted by the Court. Any attorney desiring to represent an accused must file a written entry of appearance before such attorney-client relationship will be recognized by the Court.

Rule 12: General Practice and Procedure

- 12.1** All pleadings, briefs, and other papers prepared by attorneys or pro se defendants for filing in the Court shall, unless the Administrative Judge specifically permits otherwise, be typed with black ink on one side only of standard size (8½" x 11") sheets and shall include the name, address and telephone number of the attorney (or of the defendant, if the defendant has no attorney) filing them. Typing shall be double-spaced except that single-spacing may be used for subparagraphs, legal descriptions of real estate, itemizations, quotations, and similar subsidiary portions of the instrument. The Municipal Court docket number (if available) or Topeka Police Department case number must be included with the caption upon each pleading to be filed.
- 12.2** All pleadings, briefs or other memorandum shall be filed with the Clerk of the Court. Copies of briefs, memoranda or communications shall be served on counsel of record. This rule does not supersede the requirement of any specific statute or ordinance as to the filing of documents.
- 12.3** The records of the Municipal Court Clerk's office may be subject to the Kansas Open Records Act. If so, copies of such records may be provided, where permitted by law or order of the Administrative Judge, at a reasonable reproduction cost to be set by the Administrative Judge. The Administrative Judge may also establish a reasonable cost for certified copies.
- 12.4** No Court file or record of the Court shall be permitted to be outside of the physical possession and control of the Clerk or Judge except to counsel of record in the case or other office of the Court with the permission of the Administrative Judge and subject to being returned immediately upon request. No Court file or record shall be taken outside the Municipal Court building or Probation offices except by order of the Administrative Judge.
- 12.5** Whenever the Judge shall make a ruling on a motion or application of any kind, and there are parties affected who have appeared in the action at a prior time, but who are not then present either in person or by their attorneys, the Judge shall cause written notice of such ruling to be mailed via U.S. mail, first class, to the parties or attorneys of record forthwith.
- 12.6** All matters taken under advisement by the Judge, including Motions as provided in Rule 15.7, shall be decided with dispatch. If, however, the matter is not decided within fourteen (14) days after final submission, within five (5) days thereafter the Judge shall file with the Administrative Judge a written report setting forth the title and the number of the case, the nature of the matter taken under advisement, and the reasons why a judgment, ruling or decision has not been entered.
- 12.7** The Judge is not required to give effect to stipulations between counsel, or oral admissions of counsel, which are not reduced to writing and signed by the counsel to be charged therewith, or which are not otherwise made a part of the record of the case.
- 12.8** In all contested matters, including pretrial motions submitted to a Judge, the Judge may state the controlling facts and the legal principles controlling the decision. If evidence was admitted over proper objections, and the Judge does not specifically

state in such decision that such evidence was not considered, then it shall be presumed in all subsequent proceedings that the evidence was considered by the Judge and entered into his/her decision.

- 12.9** Except as otherwise directed by the Administrative Judge, a Judge's notations and memoranda entered upon the disposition sheet in a docketed case, or entered into the Court's electronic docket and calendaring case management system shall serve as the journal entry of judgment and sentencing unless a formalized Journal of Judgment or other form of disposition documentation is utilized by the Court. In cases where there is a conflict, the Judge's notations shall prevail. In those cases in which the Court directs counsel to prepare a separate journal entry, such counsel preparing the journal entry shall, within ten (10) days (unless another time is specifically directed by the Judge) serve copies thereof on all other counsel involved who shall, within ten (10) days after service is made, serve on counsel preparing journal entry any objections in writing. At the expiration of the time for serving objections, counsel preparing the journal entry shall submit the original, together with any objections received, to the Judge for approval. If counsel cannot agree as to the form of the journal entry, the Judge shall settle the journal entry after a hearing. Orders or other documents containing rulings of the Judge other than judgments shall be prepared in accordance with the directions of the Judge, but in a format and process established by the Administrative Judge.
- 12.10** No photographic, audio or electronic recording shall be allowed on Court premises except upon prior permission by the Administrative Judge pursuant to the guidelines consistent with Supreme Court Rules governing the Code of Judicial Conduct.
- 12.11** No general index kept pursuant to statute or ordinance shall be destroyed.
- 12.12** No records, which are required by city, state or federal law to be preserved shall be destroyed.
- 12.13** Facsimile filing through the transmission of a document to the Court shall be permitted for the following pleadings:
- A. Entry of Appearance
 - B. Written requests for the Clerk of the Court to pull case files or records at the request of the attorney of record in such case
 - C. Motions to suppress evidence
 - D. Continuances
 - E. Motions to withdraw as counsel of record
- 12.14** Any person requesting withdrawal of a warrant, release from custody of any prisoner, modification of bond, or modification of conditions of probation or parole, must first take such request to the Administrative Judge. If the Administrative Judge is not available due to absence, illness or disqualification, the person making the request for relief may take the matter before another regularly appointed Municipal Court Judge. Violation of this rule is prohibited and will result in sanctions being imposed by the Court.

- 12.15** Once an original uniform citation and notice to appear is filed with the Court the only additional handwritten information which may be added to such citation shall be:
- A. A Court Clerk's notations relating to any oath given thereupon or relating to the filing and docketing of the charges alleged upon such citation;
 - B. A Judge's notations relating to the withdrawal of any warrant thereupon;
 - C. A Prosecutor's notations relating to the dismissal of one or more charges alleged within such citation; and
 - D. A Court Clerk's notations as authorized by statute relating to the disposition of all charges still pending by a plea of "guilty" or "no contest" after dismissals (if any) of other charges by the Prosecutor.

No other writing upon such citation, or amendments to charges originally alleged upon such citation, shall be allowed to be made upon the original citation itself once such original citation is filed with the Clerk of the Court.

- 12.16** All amendments to the charges alleged in a uniform citation and notice to appear shall be made on a disposition sheet after such charges alleged in such citation have been placed upon a disposition sheet for docketing, or by the filing of a separate citation or amended complaint. Prosecutors may also amend citations prior to filing and docket.

- 12.17** No Judge shall enter a sentence or other final disposition upon the original uniform citation and notice to appear as to the pending charges alleged in such citation. In the absence of a disposition sheet docketing the charges alleged in the uniform citation and notice to appear the only proper method for disposition of such charges will be either:
- A. By the Prosecutor's dismissal of all such pending charges on the face of such uniform citation and notice to appear; or
 - B. By the defendant's plea(s) of "guilty" or "no contest" to all pending charges alleged in such citation coupled with the contemporaneous payment of the scheduled fine and costs, where permitted by statute or Court rule.

- 12.18** No Judge shall extend the time in which a defendant may respond to the allegations in the uniform citation and notice to appear, nor extend the time in which a defendant may pay fines or costs by making any written notations upon such citation. All such extensions of time may only be effectuated by the appropriate entry of a Judge by a clerk into the Court's computerized docket and calendaring case management system.

Rule 13: Diversion Practice

- 13.1** Acceptance in the diversion program is presumed by the Court to be at the sole discretion of the Prosecution Division of the City Attorney's Office. Procedural information and forms are available in the City Attorney's Office. Copies shall also be posted in the lobby of the Topeka Municipal Court.
- 13.2** Strict adherence to the time limits established by the policies of the City Attorney's Office for filing such diversion applications will be required by the Court. The Court is not required to permit continuances of hearings or trials to allow the accused to qualify for diversion or to prepare or submit a diversion application out-of-time.
- 13.3** The Judge, in his/her sound discretion and subject to provisions of applicable law, may refuse to allow the parties to apply for, or enter into, a diversion program.
- 13.4** It is the duty of any defendant who applies for or who is granted diversion to keep the Municipal Court and the City Attorney's Office advised of current address, employment and telephone numbers. By submitting an application for diversion the defendant agrees to accept service by mail at such defendant's last known address of any hearings or other court proceedings in such case, including any motion by the prosecution to terminate the diversion previously granted.
- 13.5** Upon the defendant entering into a pretrial Diversion Agreement, the criminal proceeding shall be suspended by appropriate order of the Court. When the defendant successfully fulfills the terms and conditions of diversion, the City Prosecutor shall move to have the criminal charges dismissed with prejudice. If the Defendant fails to fulfill the terms and conditions of the Diversion Agreement, the City Prosecutor shall request that the diversion be terminated. After an appropriate hearing, the Court, upon finding the defendant has failed to fulfill the terms of the Diversion Agreement, shall order diversion terminated. There will be no other proceedings except a trial to the court on stipulated facts, as set forth in the Diversion Agreement.

Rule 14: Discovery

- 14.1** The Kansas Code of Criminal procedure shall govern, insofar as applicable, the procedure for discovery, except as may otherwise be provided within these rules or City Ordinance.
- 14.2** If a defendant is represented by counsel, then only such counsel is entitled to discovery. If a defendant is not represented by counsel, such pro se defendant may obtain discovery.
- 14.3** If a defendant is indigent, the Court may order that the duplication fee for discovery be waived in the interest of justice.
- 14.4** If discovery is requested by the defense pursuant to the provision of this rule, the defense shall thereafter disclose any reciprocal discovery as required by law, including notice of any defense of mental defect or disability affecting criminal intent, scientific reports, and notice of alibi defense.
- 14.5** Whenever either party refuses to approve a written request for discovery, the requesting party shall set a discovery motion for hearing pursuant to the Rules herein relating to Motion Practice.

Rule 15: Motion Practice

- 15.1** TMC §2.40.420 and the Kansas Code of Criminal Procedure shall govern, insofar as may be applicable, the procedure for filing, service and hearing of motions except as otherwise provided for by these rules. The provision of K.S.A. 60-206 shall govern when determining whether motions were filed in a timely manner, except as otherwise specified within these Rules or City Ordinance.
- 15.2** All motions, other than standard discovery matter not requiring argument or evidentiary hearings, shall be timely filed with the Court Clerk and copies sent to the adverse party. The party filing the motion is responsible for providing a timely written notice of hearing upon such motion to opposing counsel, or if none, to the adverse party fourteen (14) days in advance of hearing and disposition thereof.
- 15.3** All motions, other than a standard discovery request, are to be set for hearing unless an agreed and stipulated order can be approved by both the defendant and by the Prosecutor. Motions requiring hearing shall be set at such other time and date at the discretion of the Judge hearing such motion and with not less than fourteen (14) days notice to the parties. Typically, motions concerning the merits of a case are to be heard on the date of trial. If the matter is urgent, notice shall be given as is reasonable under the circumstances. Nothing in this rule shall be construed to prevent the parties, acting through their respective counsel, from agreeing on a date for hearing on a motion or trial of the action on its merits provided counsel first receives the approval of the date from the Judge to whom the action is assigned.
- 15.4** Every motion made in writing which seeks a ruling on some part of the merits of the action may be accompanied by a short memorandum setting forth (a) any reasons for the motion not fully stated in the motion itself, and (b) a list of the case(s) and statutory authorities which are necessary for the Judge to consider in ruling on the motion. The adverse party may serve and file a similar memorandum in opposition to the motion. In the absence of a request by either party for oral argument in accordance with this Rule, the Judge may set the matter for hearing or rule upon the motion forthwith and communicate the ruling to the parties.
- 15.5** Motions to suppress evidence in a given case must be made in writing, filed and served on opposing parties or counsel no less than fourteen (14) days before the scheduled trial on the merits of the case, unless evidence subject to suppression arises in the course of trial as a matter of legitimate surprise during such trial.
- 15.6** All motions for disqualification of a Judge shall be in writing, in affidavit form, certified by the defendant, and comply with the following guidelines:
- A. The affidavit may be filed no later than three (3) days prior to the commencement of trial and shall recite that the party cannot have a fair and impartial trial by reason of the interest or prejudice of the Judge, or for other grounds provided by law.
 - B. Only one affidavit shall be filed by the same party in the case.
 - C. Where the motion for disqualification of a Municipal Court Judge is filed, the Judge sought to be disqualified shall first be assigned to hear the request. The

Judge may, in his/her discretion, transfer said motion to another Municipal Judge for hearing or deny the application.

- D. Where the Municipal Judge refuses to recuse himself or herself from a case upon request of one of the parties, such party may then take such application to the Administrative Judge for further review of the denial of the disqualification application.
- E. The Judge to whom a case is assigned shall accept the case unless he/she voluntarily elects to recuse himself/herself, or within the sound discretion of the Administrative Judge, the interests of justice require that the case not be heard by that Judge.

Failure of the party requesting disqualification of a Judge to comply with this Rule shall be deemed to be sufficient grounds, in the discretion of the Judge, for overruling such request.

- 15.7** When a Judge is called upon to rule on a motion, the elapsed time between final submission of the motion and the ruling thereon shall not exceed fourteen (14) calendar days.

Rule 16: Docket Call, Arraignment, and Trial Practice

- 16.1** The procedures for the call of dockets of the Court shall be established by the Administrative Judge.
- 16.2** An accused person entering a plea of not guilty or for whom the Court entered a plea of not guilty shall be tried on the earliest practical day set by the Court, unless a trial is continued upon motion and for good cause.
- 16.3** Trials and the order of presentation at trial are governed by TMC §2.40.540 et. seq.
- 16.4** Exhibits offered and received in evidence by the Court shall, at the conclusion of hearing or trial, be returned to the offering party or his or her counsel unless otherwise ordered by the Court. Counsel withdrawing an exhibit shall have it available for use by either party at a subsequent trial or upon appeal. Exhibits not withdrawn within thirty (30) days after final determination (including expiration of time for appeal) may be destroyed or otherwise disposed of by the Court.
- 16.5** No defendant or attorney appearing on the defendant's behalf will be permitted to continue, to set for hearing, or to try any case before Municipal Court if the defendant is not personally present in Court and the defendant has outstanding Municipal Court warrants pending against him or when the defendant is otherwise a fugitive from justice in any other matter before the Municipal Court. No defendant will be permitted to be represented in absentia in any case while failing or refusing to submit to the jurisdiction of the Municipal Court in any other case pending before the Municipal Court. In such case the Municipal Court Judge shall note the appearance of the defendant's counsel (if any), the absence of the defendant, the fact of the outstanding warrants or other matters in which the defendant at that time has failed to submit to the jurisdiction of the Court, enter a bond forfeiture therein, and issue a bench warrant for the arrest of such defendant notwithstanding the appearance by his or her counsel in such scheduled case, until and unless all such outstanding warrant or show cause orders against such defendant are set aside by Court order.
- 16.6** No attorney shall be permitted to request the withdrawal of any warrant, or to continue any case, in which such attorney is not a counsel of record.
- 16.7** Subpoenas must comply with the provisions of TMC §2.40.450. No subpoena will be issued by the Topeka Municipal Court where a request for the same is made less than ten (10) business days before the scheduled trial or hearing for which the subpoena is sought. Moreover, no subpoena request will be considered unless the party seeking to compel attendance of a witness and/or materials fully completes any paperwork necessitated by the Court Clerk's Office.
- 16.8** Judges should refrain from taking any cases or decisions under advisement. If however, taking a case under advisement is necessitated, then the judge presiding over the case must render a decision on the matter within fourteen (14) calendar days unless prior approval to extend the review or advisement period has been approved in advance by the Administrative Judge. Time allotted to counsel or interested parties to submit legal memorandums, briefs or other documents or authority will not extend the fourteen (14) day timeframe. The judge presiding over the case must note on the Court disposition paperwork provided to the clerks the date upon which any supplemental materials from interested parties or counsel is

due and the date upon which the decision of the presiding judge will be rendered so that the clerks can input said information into the Court's electronic docket and calendaring system. Because the Municipal Court is a Court of limited record and jurisdiction, judges are encouraged to limit factual recitations in written opinions. All written opinions are to be submitted to the Administrative Judge for review prior to issuance by the presiding judge.

Rule 17: Restitution

- 17.1** When a case may qualify for the payment of restitution, the Prosecutor's Office shall communicate with any victim wherein it is possible the victim might seek restitution.
- A. The Prosecutor's Office will gather all information and documentation regarding the restitution to be sought.
 - B. In communicating with the victim, in addition to seeking information regarding restitution, the Prosecutor's Office will provide to victims information on how they may seek payment through the use of the Kansas Attorney General's Crime Victim's Compensation Board, Shawnee County District Court and the Small Claims/Limited Action dockets, and through them, garnishment and aid in execution dockets at the Expocentre.
- 17.2** The Prosecutor's Office shall identify cases with the potential for a request of restitution and advise the court so the court may avoid any entry of a plea and sentencing prior to the prosecutor determining the desire of the victim regarding restitution. If such a case arises and is ready for entry of a plea prior to communication with the victim, the prosecutor shall request the matter be set for sentencing at a specially set docket that will allow time for communication with the victim or victims.
- 17.3** Restitution shall only be considered upon the filing of a written motion for restitution. The Motion for Restitution shall include documentation to support the request, including but not limited to proof of payment of said costs being sought for reimbursement. A confidential sheet containing the name, date of birth (if applicable), and address of the victim shall be attached to the Motion for Restitution.
- 17.4** When restitution is ordered, it shall be paid first with the exception of payment of fines and fees that are impeding the issue of a driver's license.
- 17.5** Restitution shall be included in any efforts to collect that are instituted with any collection agency or state setoff program.

Rule 18: Continuances

- 18.1** Requests for continuances of a trial date made within ten (10 days) of trial may be granted only in exceptional circumstances and for good cause shown with no objection by the opposing party and upon a Judge's approval. Parties requesting a continuance must provide prior notice to opposing counsel, or if the defendant is pro se, then to the defendant personally at the last known address of record with the Court before making such request to the Judge.
- 18.2** Any party requesting a continuance shall complete a Motion for Continuance which format shall be approved by the Administrative Judge. The motion shall be fully completed, specifically including the position of (1) the written waiver of speedy trial by the defendant, if the request is to continue a trial setting; (2) the position of other counsel requesting the continuance, including counsel representing any co-defendants, and (3) any other requested information. Upon completion of the motion, the motion shall be provided to opposing counsel, allowing opportunity for opposing counsel to object and then filing with the Court.
- 18.3** All other continuances or extensions of time shall only be granted by order of a Judge.
- 18.4** The defendant who wishes to retain counsel may be given, at his/her request, one continuance for such purpose.
- 18.5** The defendant who wishes to apply for diversion, or desires additional time to produce documentation pursuant to potential plea negotiations, may be given one continuance or such purpose.
- 18.6** If after sixty (60) days from arraignment the defendant has not disposed of the charges in the case, has not obtained appointed counsel or retained counsel or waived counsel, the Judge shall make appropriate inquiries and enter appropriate orders to resolve such issues. In such circumstance, and if none of the violations charged carry any possibility of incarceration, then the Judge may set the matter for trial and direct the defendant to appear for trial and be ready to try the case at the time and date specified either with or without counsel. If any of the charges alleged against the accused carry any possibility of the imposition of a jail sentence, the Judge should resolve the issue of counsel by obtaining a written waiver of counsel from the defendant, assigning court-appointed counsel, or by entry of appearance by retained counsel, and such case should be set for trial absent the entry of a plea of guilty or no contest.
- 18.7** Continuances requested on the day of trial are not favored by the Court. Subject to judicial discretion, no continuances shall be granted the day of a trial except in an extreme emergency or where a subpoena has been personally served but the witness fails to appear. Both prosecution and defense should be fully prepared to dispose of any and all charges on the trial docket at the time of the scheduled trial. Charges on the trial docket should be disposed of by trial, plea, or dismissal, on the day of trial unless a bond forfeiture is at the time ordered for the accused's failure to appear. Any other method of continuing or delaying of the disposition of the charges from the trial date is not favored.
- 18.8** Motions for continuances on the day of trial based on the failure of a witness to appear will be considered in light of the following factors:

- A. The good faith efforts of the party requesting the continuance to obtain the attendance of the witness for the scheduled trial date;
 - B. Whether a legally sufficient subpoena was timely issued in compliance with TMC §2.40.450, and amendments thereto, at the request of the party requesting the continuance;
 - C. Whether the party requesting the continuance made any good faith effort to serve such subpoena in a timely and legal manner upon the absent witness in compliance with TMC §2.40.450;
 - D. Whether the absent witness was properly served with a subpoena or otherwise indicated to the party requesting the continuance that he or she would voluntarily comply with the subpoena without formal service of the subpoena;
 - E. Whether the party requesting the continuance was misled by the absent witness regarding the willingness to appear in Court without a subpoena;
 - F. The good faith proffer of the party requesting the continuance as to the testimony which would be given by such absent witness;
 - G. Whether the absent witness would be allowed as a matter of law to assert any privileges against giving such proffered testimony in the present case;
 - H. Whether the reason for the absence of the witness can be ascertained, and such reason was based upon an unexpected emergency or illness;
 - I. Whether the absence of the witness could, or should, have been known to the requesting party by due diligence prior to the date of trial;
 - J. The pre-trial efforts, if any, of the party requesting the continuance at the time of trial to advise opposing counsel and the Court of the problem relating to the attendance of the witness subpoenaed at the scheduled trial;
 - K. The prejudice and inconvenience which would be suffered by the parties, by the victim(s) and by the witnesses, if the motion for continuance is granted or denied by the Court;
 - L. The delay of the party requesting the continuance in notifying the Court and opposing counsel until trial or during the trial docket while other witnesses are present or available for trial;
 - M. Any other relevant circumstances made known to the Court at the time of the request for continuance.
- 18.9** Once all charges set for trial in a case have been disposed of by plea or trial, the Judge may, within discretion, continue the matter for the preparation of a pre-sentence report, the sending of victim notification of a sentencing date, or for determination of restitution prior to sentencing or otherwise continue the matter for sentencing.

18.10 No continuances should be considered by a judge for a jail release or show cause docket (i.e., 3PM) unless the defendant has retained counsel, verified through a written entry of appearance filed with the Court, for the case upon which the continuance is sought.

Rule 19: Dismissals

- 19.1** Prior to trial the dismissal of a complaint or notice to appear shall be at the sole discretion of the Prosecutor unless the Judge finds:
- A. That the complaint fails to allege a criminal offense; or
 - B. The dismissal is otherwise permitted by ordinance, statute, common law, or constitution or as a sanction for pre-trial delay or serious misconduct attributable to the prosecution prejudicing the defendant's right to a fair and/or speedy trial; or
 - C. Such dismissal is the result of the Prosecutor's failure or inability to proceed on the scheduled day of trial, and in the discretion of the Court, such failure or inability to proceed is not excusable.
- 19.2** Dismissals prior to the commencement of trial are generally deemed to be dismissals without prejudice, allowing leave to the prosecution to re-file the matter within the applicable time standards relating to the statute of limitations and speedy trial.
- 19.3** A Judge will not dismiss a case with prejudice unless jeopardy has attached by the commencement of trial and where required by law or where the totality of the facts and circumstances giving rise to such dismissal make such a remedy or sanction appropriate under the law.

Rule 20: Fines, Costs, Fees and Conditions of Release After Sentence

- 20.1** In any case resulting in a conviction, the Judge shall assess costs against the defendant as provided by city ordinance and as provided herein by these Rules.
- 20.2** The imposition of court costs against a defendant following conviction is mandatory and the Court shall not waive, remit, suspend or parole or otherwise excuse the payment of costs except as may be specified by city ordinance.
- 20.3** Community Service work may be authorized by a judge to satisfy fines at the rate of \$5.00 per hour actually worked. However, Community Service cannot be utilized to satisfy costs, fees, restitution or amounts owed to third parties resulting from a conviction in the City of Topeka Municipal Court.
- 20.4** Such costs as imposed shall be collected by the Clerk of the Municipal Court with the assistance of the City Attorney's Office or such other agency as may be approved by the Administrative Judge.
- 20.5** Whenever any defendant convicted and sentenced by the Municipal Court is ordered to pay fines, costs, restitution or to obey specific conditions or probation or parole which require such defendant to provide proof of completion of some program or treatment, or of possession of valid driver's license or insurance, or such other proof of completion of some task given to the defendant as a condition of probation or parole, and such defendant is not placed upon a formal reporting probation, the Court may require the defendant to appear in Court for purpose of review of such conditions. If the defendant has paid all monies due, and completed all such tasks assigned to him by the Court, and provided proof to the Clerk of the Court of completion of all such tasks assigned to the defendant by the Court, the defendant, at the Court's discretion, shall be excused from attendance at the review date, and such case will be closed by the Clerk. If the defendant has not paid all such monies due and/or provided such proof of completion to the Clerk of the Court as required by the Court, such defendant must appear in person before the Judge on the review date at the time designated to request an extension of time in which to complete payments and to provide such proof and to avoid the issuance of a warrant for his or her failure to appear in Court as ordered.
- 20.6** No defendant still owing restitution or reimbursements shall be released from the reporting requirements of any reporting probation or reporting parole imposed in a case except at the discretion of the Judge hearing the case or the Administrative Judge.
- 20.7** The failure of a probationer or parolee to conform to the conditions of his reporting probation or parole should be first addressed by the probation officer personally with the defendant, if possible. If a defendant fails to report to the probation officer as required or violates the conditions of his probation or parole, and for good cause shown under oath or affirmation, the Municipal Court shall issue a warrant for the forthwith arrest of the accused pending hearing on the allegations contained in the probation revocation request.
- 20.8** If a defendant's drivers license is ordered suspended by the Court, then all fines and court costs imposed must be paid in full via cash, approved vendor credit or debit card, cashier's check or money order before the court will provide said defendant

and/or the State of Kansas with any license reinstatement or notification documentation.

Rule 21: Post-Trial Matters

- 21.1** All post-trial motions may be made orally to the Court at the conclusion of the trial of a case. Any post-trial motion made thereafter must be in writing, accompanied by reasonable notice to the Court and adverse parties, evidence of which shall be filed with the Court Clerk. Copies of post-trial motions must be duly served upon adverse parties. All post-trial motions challenging a conviction or sentence imposed in a Municipal Court case must be filed no later than ten (10) days from the date of sentence.
- 21.2** Once the Judge has made a determination of guilt following a plea or trial and has ordered a pre-sentence investigation, imposed a sentence or granted a parole or probation, such Judge entering such order(s) may determine all matters concerning such case to the exclusion of another Judge. Any case in which a defendant is convicted at trial, or by plea of guilty or no contest, before a Pro Tempore Judge may be transferred by the Administrative Judge to any other Municipal Court Judge, or Judge pro tempore, for the determination of any post-trial motions and sentencing as may be appropriate or necessary.

Rule 22: Appeals

- 22.1** An appeal must be taken within fourteen (14) days after sentence is imposed. If the fourteenth day ends on a Saturday, Sunday, or a day the district court clerk's office is not legally accessible, then the time period extends until the close of business the next day that is not a Saturday, Sunday or legal holiday. Persons seeking to appeal a Municipal Court conviction shall file Notice of Appeal with the Shawnee County District Court Clerk's office along with any appearance bond required by the Municipal Court. Persons appealing from a Municipal Court conviction may be required to sign appearance bonds and may also be required to post an appeal bond. However, the posting of an appeal bond ordered by a Municipal Court Judge is not required to perfect an appeal to Shawnee County District Court.

Rule 23: Expungement and Fingerprinting

- 23.1** The expungement of Municipal Court convictions and police arrest records shall be conducted in conformance with TMC §2.40.660 and §2.40.670 as amended. Procedural information is available in the Municipal Court Clerk's office.
- 23.2** Filing fees in expungement cases shall be \$100.00, per case, to be paid to the Court Clerk at the time of the filing of the motion or petition seeking expungement.
- 23.3** In any case requiring the fingerprinting of the defendant following conviction, an additional cost of \$10.00 shall be assessed in each case in which such fingerprints are required as permitted by TMC §2.40.680 and K.S.A. 12-4517(b).
- 23.4** Unless specifically authorized in advance by the Administrative Judge, no Agreed Orders containing charges requiring fingerprinting will be accepted by the Court unless the defendant is present at Court to be fingerprinted and processed at the time the Agreed Order is filed. Moreover, unless specifically authorized in advance by the Administrative Judge, no pleas or sentencings in absentia will be allowed where, if the defendant were adjudged guilty, fingerprinting and processing would be required – in these instances, the defendant must appear.

Rule 24: Impound Hearings

- 24.1** Only impound hearings, concerning the validity of towing an alleged abandoned vehicle, will be set and held in accordance with the provisions of TMC §10.25.040.
- 24.2** Refunds for accumulated and paid towing and storage fees for traffic violations may be ordered by a judge as provided under TMC §10.25.040(c).

Rule 25: Publication of Rules

- 25.1** These Rules of Practice shall be printed and published by the Court Administrator on the City of Topeka website and made available for distribution via email to all members of the Bar and other interested parties upon request. The Court Clerk shall maintain a copy for inspection by interested parties during regular business hours.