

The City of Wichita Municipal Court Rules

RULE 1: PREFATORY RULE

(a) **Rules Adopted.** The following rules of the Municipal Court of the City of Wichita numbered 1 through 24 are hereby adopted effective January 18, 2018.

(b) **Repeal of Former Rules.** All rules of the Municipal Court of the City of Wichita numbered 1 through 25 which were in effect immediately prior to the effective date of these rules are hereby repealed as of January 18, 2018.

(c) **Statutory References.** In these rules, 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 or Supplement or amendment thereto unless a different statute is indicated.

(d) **Ordinance References.** In these rules, wherever there is a reference to an ordinance of the City of Wichita by number, it shall be deemed to be a reference to the section of the City Code of the City of Wichita or amendment thereto unless a different ordinance or charter ordinance is indicated.

(e) **Gender References.** In these rules, wherever by pronoun there is a reference to a male or a female, such reference shall be deemed to include either male or 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 K.S.A. 12-4113:

A. "Court" means any duly appointed Municipal Judge, sitting as a Division to hear such cases, of the Municipal Court of Wichita, Kansas, including any Judge Pro Tempore appointed for a particular case, docket, division or session of the municipal court.

B. "Court Clerk" means the duly appointed Clerk of the Municipal Court of Wichita, Kansas, or any duly designated deputy thereof as designated by the Municipal Court Administrator or by the City Council of the City of Wichita, Kansas.

C. "Criminal Offense" means any act or omission defined by City Code or City Ordinance and for which, upon conviction, imprisonment or fine, or both imprisonment and fine, is authorized, or in the case of a traffic infraction, a fine is authorized.

D. "Legal Holidays" shall be as provided by the City Council of the City of Wichita, Kansas.

E. "Prosecutor" shall mean any attorney duly designated by the City Attorney of Wichita, Kansas, to represent said City in the prosecution of a defendant for the violation of any duly adopted City Ordinance or who is authorized on behalf of the City of Wichita by the City Attorney to appear in any civil proceeding within the jurisdiction of the Municipal Court.

F. "Traffic Offense" means any criminal offense which relates 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 or in the case of a traffic infraction, a fine is authorized.

RULE 3: COURT HOURS

3.1 The court shall convene at City Hall at 8:00 a.m. until noon and reconvene at 1:00 p.m. until that day's business is concluded.

3.2 Other divisions and sessions of court shall meet as directed and scheduled by the Chief Judge pursuant to Rule No. 9.2, *infra*.

RULE 4: PRESIDING or CHIEF JUDGE

4.1 The Presiding or Chief Judge shall be in charge of the administration of the judicial functions of the Court pursuant to Charter Ordinance No. 223, Section 2. Such presiding or Chief Judge shall, by statute and within guidelines established by the Code of the City of Wichita and these Municipal Court Rules, represent the court in business, administrative and public relations matters. When appropriate, such Chief Judge shall meet with (or designate other municipal court judges to meet with) committees of the bench, bar, city staff and media to review matters of administration, the judiciary, and to promote understanding of the municipal court system.

4.2 The Presiding or Chief Judge shall have general control over the assignment of cases within the Municipal Court. Assignment of cases shall be designed to distribute as equally as is reasonably possible the judicial work of the Municipal Court.

4.3 The Presiding or Chief Judge shall issue Administrative Orders relating to policies of the municipal court regarding judicial functions and court operations. Such Administrative Orders shall supplement these Rules. Such Administrative 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 Orders

will be made available by the Municipal Court Administrator for distribution, (as needed), and upon request to interested parties.

RULE 5: JUDGES PRO TEMPORE

5.1 In the event one of the Municipal Judges is temporarily unable to preside due to absence, illness, or disqualification, or as may otherwise be required to preside at additional sessions of the municipal court docket as may be needed, the Presiding or Chief Judge or another Municipal Judge in his or her absence, shall designate an attorney to act as Judge Pro Tempore.

5.2 The Judges Pro Tempore shall have the same powers and duties as the duly appointed municipal court judges as to all cases appearing on the docket to which such Judge Pro Tempore is assigned. Whenever a defendant who is scheduled to appear upon a docket assigned to a Judge Pro Tempore also has other cases in which warrants or show cause orders have been issued, such Judge Pro Tempore may, take any of the following actions in such undocketed cases:

- (1) withdraw such warrants or serve show cause orders;
- (2) determine or review the amount of bond in such undocketed cases;
- (3) allow the defendant to set such matters for hearing on the appropriate docket of the court;
- (4) accept pleas of guilty or no contest;
- (5) order a pre-sentence investigation upon conviction;
- (6) impose sentence and judgment upon conviction; and
- (7) hear and decide oral requests for probation or parole upon any such case in which the defendant entered a plea of guilty or no contest before such Judge Pro Tempore.

5.3 On any court day during which none of the regularly appointed municipal court judges will be available due to judicial meetings or training, the Chief Judge may designate one or more Judges Pro Tempore to be delegated additional judicial powers of a municipal court judge beyond those specified in Rule No. 5.2, *supra*, during the absence of the other municipal court judges.

RULE 6: APPEARANCE BONDS

6.1 Any person arrested while operating or attempting to operate a motor vehicle while under the influence of alcohol may be held by the Sedgwick County Detention Facility 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. The arrestee may be detained only if an officer determines, based upon his/her personal observations, that the arrestee is intoxicated and a danger to him/herself or others and follows the procedures as set forth in Rule 6.2. Such individualized determination must be reasonable under the circumstances and the officer may not assume that all persons arrested for DUI are intoxicated and dangerous. In the event it is necessary for a defendant to post an appearance bond, the provisions of K.S.A. 12-4301 shall be followed.

6.2 Any person charged with any violation under the Domestic Violence ordinances of the City of Wichita shall be held a minimum of six (6) hours prior to being allowed to post a cash or surety bond if the officer:

- a.** Makes an individualized determination that the person held is a danger to himself/herself or to others; and
- b.** the individualized determination is based upon the personal observations of the officer and are reasonable under the circumstances; and

c. the officer completes a “Protective Custody” affidavit outlining the facts and circumstances upon which he/she relies to make their determination.

6.3 Any person charged with any violation under the Domestic Violence ordinances released to any appearance bond by the Sedgwick County Detention Facility or by the Warrant Office 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 persons, premises or workplace of the alleged victim in such case for a 72 hour period of time following their release. The 72 hour period shall not include weekends or holidays.

6.4 Except as otherwise provided in these Rules, and in addition to the provisions in Charter Ordinance No. 224, Section 4, and K.S.A. 12-4301 and 12-4302, the following procedures shall apply to the release of persons charged with a violation of a municipal ordinance upon their own recognizance:

A. A resident of the State of Kansas shall be allowed to be released upon their own recognizance, except:

- (1) When serving a sentence;
- (2) When there is a Municipal Court Commitment pursuant to conviction;
- (3) When there is an outstanding Bench Warrant;
- (4) When the accused has failed to meet the specific obligation of a bail or bond set by a municipal court judge as:

(a) “Cash Only”, meaning that the entire amount of the bail set must be posted by cash, money order or certified check with the clerk of the municipal court or his duly authorized designee. See K.S.A. 12-4301 (a).

(b) “No O.R.”, meaning that the face amount of the bail must be satisfied by the posting of a professional surety

bond, real property pledge bond as approved by a municipal court judge, or by cash, money order or certified check with the clerk of the municipal court or his duly authorized designee.

(5) The accused has been returned to the custody of the Sedgwick County Detention Facility on a “bond recall” by a professional or other surety financially responsible on a previously set bond in order to be relieved of such obligation by the court.

B. A non-resident of the State of Kansas shall be required to post a professional surety bond, or other bond secured by cash, money order, or certified check pursuant to the conditions of the bond set before being allowed release, unless otherwise specifically permitted an own recognizance or signature bond in that case by a municipal court judge.

6.5 Instructions to the Sedgwick County Detention Facility pertaining to the release of a prisoner serving a sentence, or otherwise in custody pursuant to any Municipal Court Commitment, Bench Warrant or bail set will be designated upon a Prisoner Commitment/Release Form signed by a municipal court judge and issued through the Court Clerk's Office, or by the Judge directly, to the Staff Duty Commander or the Booking Lieutenant at such facility.

6.6 An attorney practicing in the City of Wichita may be authorized by a municipal court judge to obtain the release of a client to his or her custody upon the client's recognizance regardless of the residence of the client. The attorney will assume responsibility for the appearance of such client on the date scheduled for hearing pursuant to these Rules. Such counsel will be deemed such client's attorney of record therein and will not be permitted to withdraw as attorney of record except as permitted pursuant to Rule 8, *infra*.

6.7 In the event it is necessary for a defendant to post an appearance bond, the provisions of K.S.A. 12-4301 shall be followed. In setting, modifying, or revoking bonds the Court shall consider the factors and guidelines found in K.S.A. Chapter 22, Article 28.

6.8 A cash bond can be returned to, and collected by, the person posting the bond upon disposition of the case upon proof of proper identification and the cash bond receipt. The Court may order that prior to the return of any such cash bond monies that the amount of any outstanding fines, costs and restitution owed by the Defendant, or which may be owed by the individual posting such bond on behalf of 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 such Defendant or other individual posting such bond. If the case is appealed, the cash bond cannot be collected by, or returned to, the person posting such bond 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 by the individual requesting such return. The cash bond will be forfeited if the defendant fails to appear in Court as directed, and a warrant for such defendant's arrest will be issued.

RULE 7: PROCEDURES INVOLVING NOTICES TO APPEAR

7.1 For any criminal or traffic offense where no court appearance is required or requested, and where a schedule of fines for criminal and traffic offenses has been promulgated and approved by the court, defendant or counsel for such defendant may obtain one (1) extension of time not to exceed thirty (30) days from the Court Clerk without setting the matter for an appearance before a judge.

7.2. After one (1) such clerk's extension of time has been given, the clerk may not again extend or delay a court appearance in such case except:

- A. upon the written authority of a judge; or
- B. as may otherwise be permitted by these Rules.

RULE 8: COUNSEL

8.1 All defendants may be represented by counsel before the Municipal Court of Wichita, 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 Court in writing or by phone. Upon receipt of such notification, the Municipal Court Clerk shall enter such attorney's name and bar number as attorney of record.

8.3 No limited entries of appearance will be permitted by counsel merely 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 without filing a motion to withdraw, notifying his or her client of such motion and scheduling the motion for hearing.

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 and may participate in any particular case, but only if such attorney first associates with a local "attorney of record" licensed to practice in this state. The Kansas attorney of record shall be actively engaged in the conduct of the matter or litigation, shall sign all pleadings, documents, and briefs, and shall be present throughout all court appearances. Service may be had upon the associated Kansas attorney within this state in all matters connected with said action, hearing or proceeding, with the same

effect as if personally made on the out-of-state attorney. Any out-of-state attorney permitted to enter an appearance before the Court pursuant hereto shall be subject to the order of, and amenable to disciplinary action, by the courts, agencies, or tribunals of this state.

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 City Code Section 1.04.210 of the Code of the City of Wichita, and by these Rules, and by the policies of the Chief 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 the reasonable costs of legal services provided to the accused may be subsequently or ultimately assessed against him or her 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 or she may be convicted and sentenced, or may otherwise be collected by assessment or by separate civil action by the City of Wichita against the accused.

A. Whenever the City Attorney or City Prosecutor has at the time of arraignment, first appearance, or prior to the appointment of counsel, agreed in writing not to request any jail term 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's promise not to request any jail

time in such case, the Court will not appoint a public defender to represent such defendant solely in such case. See City Code Section 1.04.065.

B. Should the Court, in its sound discretion, refuse to accept and endorse the City Attorney's or City Prosecutor's promise made pursuant to City Code Section 1.04.065, and amendments thereto, not to request any jail time, because the Court 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 to promise that no jail sentence would be imposed, the Court may disregard such promise and advise the accused in open court that the Court will not accept the City's offer. In such cases the Court may appoint counsel to represent the accused, if otherwise permitted by these Rules, and notwithstanding any ordinance to the contrary. See K.S.A. 12- 4405 and City Code Section 1.04.210.

C. Should additional or new cases be docketed in the Municipal Court against the accused subsequent to the filing of the City's promise not to request the imposition of a jail sentence in an earlier case, the Court 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 An attorney of record may be permitted by the Court to withdraw when such request to withdraw is accompanied by a written "Entry of Appearance" of another attorney able and ready to proceed with the case as then scheduled, and where such

substitution of counsel is acknowledged by the defendant. Otherwise the withdrawal of an attorney of record will only be granted upon good cause shown as permitted by these Rules.

8.8 In the interests of justice, and with the consent of the defendant, the Court may permit a defendant to sign a "Waiver of Counsel" form in each docketed case and proceed forthwith in such case acting as his or her own attorney.

8.9 Should a defendant fail to appear as scheduled for any court appearance, and if in the interests of justice, the Court may grant an oral or 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 Rules 8.7 through 8.10, 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. served a notice of hearing on such motion upon the client at such client's last known address according to the records of the court and upon opposing counsel;
- C. filed copies of the motion, notice of hearing and proof of the service thereof with the clerk; and
- D. the judge has entered an order approving the withdrawal.

8.11 Motions to withdraw by counsel of record are not favored, particularly after such counsel has set the matter for trial. In such cases the court should be reluctant

to grant such motions in the absence of a good faith showing of an appearance of a conflict of interest or other ethical ground which would require such attorney to withdraw as counsel of record as a matter of law. The failure or inability of an attorney to collect a fee, or the mere failure of a defendant to contact such counsel between court hearings, will not, *per se*, constitute sufficient grounds to permit an attorney to withdraw as counsel of record in a case once the matter has been set for trial by such attorney.

8.12 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 Wichita 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.

8.13 The failure of counsel to appear at the hearing on a motion to withdraw will be deemed grounds for the denial of such motion.

8.14 Should counsel be engaged in courts of general jurisdiction, such cases shall take precedence upon conflicting appearances in the municipal court. Counsel shall be considered engaged in a court of general jurisdiction when he or she is physically present in such court and participating in, or awaiting imminent trial, hearing or appellate review. 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.

8.15 To avoid scheduling conflicts, a case may be scheduled for a “Trial Certain.” Such scheduling may be ordered by the judge or at the request of either party. If requested and approved by the judge, a specific date and time will be scheduled for the trial. All parties are expected to be present and ready to proceed at the specified time.

8.16 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, do 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 rules, or by ethical considerations.

RULE 9: DAILY DOCKET - SESSIONS

9.1 The divisions of the court shall be in session on each day of the year except Saturdays, Sundays, and legal holidays, except as otherwise provided herein. A designation of these days of court shall be made at the beginning of each calendar year, and a copy thereof shall be filed by the Clerk of the Municipal Court with the Clerk of the 18th Judicial District Court.

9.2 Each Division of the Court shall have a written docket sheet for the daily dockets, and said dockets may include special divisions or sessions for criminal, domestic violence, driving under the influence, drug, environmental, mental health, traffic, expungement or impound proceedings as the Chief Judge may prescribe.

9.3 Cases will be scheduled for arraignments, appearances, trials, disposition, sentencing and other hearings as may be required or authorized by City Ordinance or by the Chief Judge in accordance with a schedule, which is available in the Office of the Clerk of the Municipal Court.

With regard to the court dockets, the following classifications are used:

A. "Criminal Court Docket" refers to the municipal court docket session designated to include any violation(s) of criminal offense(s) as found within City Code Title 5, except Domestic Violence and Drug Cases.

B. "Domestic Violence Court Docket" refers to the municipal court docket session designated to include cases alleging any criminal offense(s) involving any harmful physical contact or the threat thereof between family or household members or unmarried couples, including the destruction of property or the threat thereof as a method of coercion, control, revenge or punishment, or any criminal offense(s) alleging failure to obey bond restrictions imposed in such case, and any separate criminal cases connected to any such case (see City Code Section 1.06.010 [c]).

C. "Driving Under Influence Court Docket" refers to the municipal court docket session designated to include any traffic or criminal offense(s) involving, or connected to, a charge of Driving Under the Influence or Alcohol, or Drugs, or both pursuant to City Code Sections 11.38.150 or 11.38.155.

D. "Drug Court Docket" refers to the municipal court docket session designated to include any criminal offense(s) involving, or connected with, the use, possession or control of any hallucinogen, depressant, stimulant, anabolic steroid, or other substance identified within the Uniform Controlled Substance Act, K.S.A. 65-4101 et seq., City Code Sections 5.26.010 et seq. or 5.28.010 et seq. and includes the use or possession with the intent to use any drug paraphernalia related to the possession or use of any such substance.

E. "Environmental Court Docket" refers to the municipal court docket session designated to include any criminal offense(s) relating to Animals (City Code Title 6); Public Health (City Code Title 7); Nuisances (City Code Title 8); Industries (City Code Title 14); Fire Protection (City Code Title 15); Sewers, Sewage Disposal and Drains (City Code Title 16); Water (City Code Title 17); Building Code (City Code Title 18); Electricity (City Code Title 19); Housing (City Code Title 20); Plumbing and Gas Fitting Code (City Code Title 21); Air Conditioning, Refrigeration and Warm Air Heating Code (City Code Title 22); Awnings, Canopies and Marquees (City Code Title 23); Billboards and Signs (City Code Title 24); Oil and Gas Wells (City Code Title 25); Trailer and Trailer Camps (City Code Title 26); Flood Damage Prevention (City Code Title 27); Wichita-Sedgwick County Unified Zoning Code (City Code Title 28); or Solar Energy Installation (City Code Title 29).

F. "Impound Court Docket" refers to the municipal court docket session designated to include any civil or administrative proceeding(s) authorized by City Code Section 11.97.040 relating to the assessment of towing and storage charges of vehicles impounded by the Wichita Police Department.

G. "Traffic Docket" refers to the municipal court docket session designated to include any violation(s) of traffic offense(s) as found within City Code Title 11, except Driving under the Influence of Alcohol and/or Drugs.

9.4 The first Friday of each month shall be reserved as a court day for the judges and municipal court staff to utilize for meetings and other non-courtroom business. Except as designated herein, no cases shall be set or docketed for the first Friday of each month except: Video

8:15 a.m. Arraignments and Appearances

10:15 a.m. Domestic Violence

Courtroom B

10:30 a.m. Bond-outs for Domestic Violence

If the first Friday of a month is also a legal holiday, the Chief Judge may designate another day to serve as the monthly court day.

9.5 The Chief Judge may declare as necessary other days for a reduced court docket, such as the American Bar Association Law Day activities, Wichita Bar Association Judges' Day activities, etc. The Chief Judge shall provide such dates to the Court Administrator, Court Clerk, Chief Probation Officer, and City Attorney's Office, and court activities on such designated dates will be limited to those court sessions as noted in Rule 9.4.

9.6 Cases may be transferred between divisions of the court by agreement of the judges for judicial economy. Otherwise, cases assigned to the docket to any municipal court judge should not be heard or handled by another municipal court judge absent compelling circumstances or pursuant to the agreement of the parties.

RULE 10: GENERAL RULES OF COURT DECORUM AND SAFETY

10.1 No person shall be permitted in the working area of the judges, clerks, bailiffs, service officers or probation officers unless so authorized by the Court, the Court Administrator, or the immediate supervisor of the particular department.

10.2 Any attorney desiring to confer with an incarcerated defendant being held in the Court's holding facility shall first obtain permission from the Court.

10.3 Law enforcement officers shall be subject to the rules enumerated in Rule No. 10.1 and shall further be subject to the following rules:

A. Law enforcement officers who are witnesses in Court shall be quietly seated in such places as may be permitted or designated by the Court.

B. Inquiries by law enforcement officers respecting those cases pending on the current day's dockets in which they are scheduled witnesses shall be made to the Prosecutor's Office or Police Liaison Officer 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 by law enforcement officers are not to be directed to the courtroom docket clerks while court is in session.

10.4 No weapons are permitted in court except as carried or possessed by law enforcement officers, or as needed for evidence in court.

10.5 At the discretion of the city security staff, the Court Bailiff, or the Court, and upon a reasonable suspicion that any person on the third floor of City Hall (or in any other place in which the municipal court and its staff may conduct business of the court) may be carrying or concealing drugs, a weapon, explosives, or other dangerous material, such person may be subjected to a more intrusive search or searches as may be permitted by federal and state constitutional and statutory law as may be appropriate for the safety of court personnel and visitors.

10.6 All persons on the third floor of City Hall are to 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 business or office areas of the court clerk, probation staff, city public defender staff or city prosecutors are to conduct their conversations and other activities in such a manner as not to disrupt the business and operations of the municipal court, the judges, the municipal court staff, and court personnel. Any such misconduct may be punishable by contempt of court and other criminal sanctions.

10.7 Persons bringing children to the third floor are to keep such children within adult supervision and reasonably quiet so as not to disrupt the business and operations of the municipal court, the judges, the municipal court staff, and court personnel.

10.8 While court is in session the bailiff of the court 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.

10.9 All personal or portable telephones, computers and other electronic devices brought into a courtroom must be turned off while court is in session. Any

audible electronic equipment creating noise in the court room 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.

10.10 All persons attending court while court is in session 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, dress or skirt, and shoes. Excessively short dresses or shorts, sagging pants, tank tops, sleepwear and swimwear are not deemed to be appropriate attire for court proceedings. Anyone entering the courtroom in such attire may be asked to adorn clothing supplied by the court or to wait in a designated area until they can be seen in court. Hats should be removed in the courtroom.

10.11 Food and drink should not be brought into the courtroom except upon the express permission of the Court.

RULE 11: COURT APPEARANCES - FAILURE TO APPEAR

11.1 The Court may compel the appearance of an accused person at every court appearance. The Court may permit appearance, pleas and judgment (including sentencing where state law does not mandate fingerprinting or victim rights notification) of a defendant through the appearance of his or her counsel in the absence of the accused as to any misdemeanor or traffic infraction which does not carry any possibility of incarceration.

11.2 Other than in hearings on the termination of diversions and deferred judgments, no defendant will be tried *in absentia*, except as permitted by the municipal court judge upon first determining that:

- A. Such defendant appears by and through counsel at such trial; and
- B. The defendant has stipulated to, and otherwise waived all defenses relating to, his or her identity as the accused in the charges before the court for trial; and
- C. The defendant has waived all objections and defenses relating to hearsay and confrontation issues concerning the admissibility of statements purported by a witness at such trial to have been made by such defendant out-of-court; and
- D. The defendant has waived all objections and defenses concerning the municipal court's jurisdiction over the person of such defendant in the matter at trial.

11.3 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. where such defendant has any outstanding warrants in the Municipal Court of the City of Wichita and remains a fugitive from justice upon such outstanding warrants; or

11.4 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.

11.5 Every defendant must appear in person for every hearing, trial and sentencing date scheduled in his or her case except when (1) given specific permission by the court prior to such hearing, trial or sentencing date to be absent and (2) such defendant is represented by counsel appearing for said defendant with a written waiver of appearance and grant of authority to dispose of all charges in such case executed by the accused.

11.6 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 forfeit said bond.

11.7 If a defendant fails to appear, he/she may appear on the Pro-se Walk-In Docket the next available business day to see a judge about the missed appearance and request the warrant be lifted and the case be rescheduled for court.

11.8 Every defendant placed on any form of probation or parole following conviction in the municipal court shall during the term of such probation or parole keep the Clerk of the Municipal Court (or Municipal Court Probation Officer if such defendant has been placed upon a reporting probation following conviction) advised of any change of such defendant's current address and telephone number within two (2) 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 or parole.

11.9 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 are insufficient to secure his or her appearance for any future court date, and that the Court should modify the conditions of

the accused's bond before permitting the accused to be released again prior to trial or prior to sentencing.

11.10 The failure of a defendant to appear for trial or sentencing may be deemed by the Court to create a rebuttable presumption that the defendant will not again appear for a subsequent trial or sentencing date unless a sufficient surety, or cash only, bond is satisfied by the accused.

RULE 12: GENERAL PRACTICE AND PROCEDURE

12.1 For any legal proceeding, the court may determine that an interpreter is needed upon the request of the Limited English Proficient Person or his or her attorney or other advocate. If no such request is made, but if the court reasonably believes that an individual is a Limited English Proficient Person, the court shall examine this individual in open court. This examination shall consist of open-ended questions that will provide the court with the information necessary to determine whether the individual has a limited ability to speak or understand English. The court should appoint an interpreter if it determines that the individual is a Limited English Proficient Person. The court shall also provide a qualified sign language interpreter for deaf or hard of hearing persons who are involved in any legal proceeding as a litigant, witness, or victim.

12.2 All pleadings, briefs, and other papers prepared by attorneys or litigants for filing in the courts shall, unless the judge specifically permits otherwise, be typed with black ink on one side only of standard size (8 ½" 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) and the Wichita Police Department case number must be included with the caption upon each pleading to be filed.

12.3 In the absence of a specific directive by the court, the original of a pleading, brief or memorandum shall be filed with the Clerk of the Municipal Court and a copy shall be mailed or delivered to the judge handling the matter at his or her chambers. Copies of briefs, memoranda or communications shall be forwarded to other counsel of record. This rule does not supersede the requirement of any specific statute, ordinance or rule as to the filing of documents.

12.4 The records of the Clerk's Office are open to the public as provided in K.S.A. 45-215 through 45-223. Copies of such records may be provided, where permitted by law or by order of the Court, at a reasonable reproduction cost to be set by the Court Administrator. Non-court personnel or other persons not employed by the municipal court who request access to, or copies of, such records may be required to wait a reasonable time for such access or copies of court records per the administrative discretion of the Court Administrator based upon the other duties and responsibilities of the court staff.

12.5 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 officer of the court with the permission of the court clerk or a judge and subject to being returned immediately upon request.

12.6 No court file or record shall be taken outside of City Hall.

12.7 Whenever a 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 to the parties or attorneys forthwith.

12.8 All matters taken under advisement by a judge shall be decided with dispatch. If, however, the matter is not decided within thirty (30) days after final submission, within five (5) days thereafter the judge shall file with the Chief 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.

12.9 In all contested matters submitted to a judge including pretrial motions, the judge shall 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 did enter into his or her decision.

12.10 Except as otherwise directed by the municipal court judge, the court's notations and memoranda upon the disposition sheet in a docketed case, or upon the citation in a case not yet docketed for a court appearance, shall serve as the journal entry of judgment and sentencing. In those cases in which the court directs counsel to prepare a formal 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 the counsel preparing said journal entry any objections in writing. At the expiration of the time for serving objections, counsel preparing said 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.

12.11 Neither photographic, audio nor electronic recording shall be allowed on the third floor of City Hall except upon prior notice being given to the court administrator and as permitted by the Chief Judge pursuant to guidelines consistent with Supreme Court Rule 1001.

12.12 No records which are required by city, state or federal law to be preserved shall be destroyed.

12.13 Electronic 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. Notice and Order for Continuance with defendant's approval
- D. 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 municipal court judge entering the order from which such relief is requested, or wait to address such matter before the municipal court judge scheduled to hear the next regularly scheduled docket appearance, hearing or trial in such matter. If such municipal court judge is not available due to absence, illness, or disqualification, the person making the request for relief may take the matter before the Chief Judge or another regularly appointed municipal court judge if he/she is not

available. Violation of this rule for any reason is prohibited and may result in sanctions being imposed by the Court.

12.15 Once a 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; or
- B. A prosecutor's notations relating to the dismissal or amendment of one or more charges alleged within such citation.

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

12.16 No judge shall enter a sentence or other final disposition upon the citation form of a uniform citation and notice to appear as to any 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 ordinance or court rule.

RULE 13: DIVERSIONS AND DEFERRED JUDGMENT PRACTICE

13.1 Diversion and deferred judgment applications must be submitted to the Court in accordance with the procedures set up for each specific program. Acceptance on the Diversion Program is at the discretion of the City Law Department as prescribed by Kansas State Statute 12-4412 through 12-4418 and by city ordinance. Acceptance upon the Deferred Judgment Program is at the discretion of the City Law Department as prescribed by City Code Section 1.06.010 *et seq.* Procedural information and application forms are available in the Municipal Court Clerk's Office; in the City Prosecutor's Office and the City of Wichita website.

13.2 Strict adherence to the time limits established by the policies of the City Prosecutor's Office for filing such diversion or deferred judgment applications will be required by the Court. The Court is not required to permit continuances of hearings or trials to allow the accused to prepare or submit a diversion or deferred judgment application out-of-time.

13.3 The Court, in its sound discretion, may refuse to allow the parties at trial to apply for, or enter into, a diversion or deferred judgment program. On the day of a scheduled trial in such matter the Court will be reluctant to grant a continuance for the purposes of applying for diversion unless the defendant waives his right to a trial in municipal court in the matter whether or not the application for diversion or deferred judgment is granted or denied. The defendant will be required to sign a written Order of Disposition or Apply for Diversion out of Time form at the time the continuance is granted.

13.4 It is the duty of any defendant who applies for, or who is granted, diversion or deferred judgment, to keep the City Prosecutor's Office and the Diversion or Deferred Judgment Coordinator advised of his or her current address, employment

and telephone numbers. By submitting an application for diversion or deferred judgment 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 or deferred judgment previously granted.

13.5 The failure of a defendant to appear for hearing on a motion for termination of a diversion or deferred judgment program upon notification by mail to his or her last known address shall be deemed sufficient grounds: (1) for the granting of such termination motion by the Court in the defendant's absence; (2) for the entry of conviction pursuant to the accused's prior plea of guilty or no contest; (3) for the entry of conviction pursuant to any diversion or deferred judgment agreement for a stipulation of fact; and (4) for the issuance of a bench warrant for the defendant's arrest. However, no defendant shall thereupon be sentenced *in absentia* until the defendant has been returned to the Court, except in cases involving diversion or deferred judgment for only traffic infractions.

RULE 14: DISCOVERY

14.1 The Code of Criminal Procedure, including the provisions of K.S.A. 22-22-3212, and as amended, and Charter Ordinance No. 224, Section 6, shall govern, insofar as applicable, the procedure for discovery, except as may otherwise be provided within these Rules.

14.2 Prior to trial the defendant shall have the right to examine all relevant materials in the possession of the prosecution and the Wichita Police Department by making a written request to the City Prosecutor, upon approval by a municipal court

judge, and upon payment of the prescribed fee by the Wichita Police Department for the cost of reproduction of any written reports, videos, tests or other materials. The parties should be aware that a request for discovery filed with the Wichita Police Department Records Divisions will produce only those written materials available in the WPD Case file jacket at the time of such request. It remains incumbent upon the parties to check and to confer prior to trial or disposition of the case for any additional written reports, memoranda or other materials which (1) may be transcribed or filed in the WPD case jacket subsequent to the request for discovery; and (2) may be located outside the WPD case jacket (*i.e.*, police officer personal notes, police dispatcher tapes, video tapes, breathalyzer logs, radar certification, and items held in the WPD Property and Evidence Division, *etc.*).

14.3 If a defendant is represented by counsel, then only such counsel is entitled to discovery pursuant to Rule No. 14.2. If a defendant is not represented by counsel, and has executed a waiver of counsel form approved by a municipal court judge, such pro se defendant may obtain discovery pursuant to Rule No. 14.2.

14.4 If a defendant is indigent, the court may order that the reproduction or duplication fees for discovery under Rule No. 14.2 be waived in the interests of justice.

14.5 If discovery is requested by the defense pursuant to the provisions 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.

14.6 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 and to Pre-Trial Conference and Motion Dockets.

RULE 15: MOTION PRACTICE

15.1 The Code of Criminal Procedure (K.S.A. 22-3208 et seq.) shall govern, insofar as applicable, the procedure for the filing, service and hearing of motions except as otherwise specified within the Rules of the Municipal Court. Time computation standards in K.S.A. 60-206 shall govern when determining whether motions were filed in a timely manner, except as otherwise specified within the Rules of the Municipal Court.

15.2 All motions, other than standard discovery matters not requiring argument or evidentiary hearings, shall be timely filed with the Court Clerk and copies sent to the adverse party and delivered to the judge assigned to hear the case. 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 seven (7) 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 seven (7) days' notice to the parties affected. If the matter is urgent, notice shall be given as is reasonable and possible 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 a 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) the citation, without extended elaboration, of any authorities which it is necessary for the judge to consider

in ruling upon the motion. An adverse party may serve and file a similar memorandum in opposition to the motion. In the absence of any 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 With the consent of the Court all pre-trial motions and matters requiring a ruling prior to a trial on the merits, and after prior notice to opposing parties or counsel, may be oral and informal, and heard on the day of trial.

15.6 Motions to suppress evidence in a given case must be made in writing, filed and served on opposing parties or counsel no less than seven (7) 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.

15.7 All applications for disqualification of a judge shall be in writing, in affidavit form and certified by the defendant, and comply with the following guidelines:

A. Such 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 such affidavit shall be filed by the same party in the case.

C. Where such application for disqualification of a municipal court judge is filed, the judge sought to be disqualified shall first be assigned to hear the request; such judge may, in his or her discretion, transfer said motion or cause to another municipal judge for hearing, or deny the application.

D. Where a municipal court 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 Chief Judge for further review of the denial of the disqualification application.

E. A judge to whom a case is assigned shall accept that case unless he or she voluntarily elects to recuse himself or herself, or within the sound discretion of the chief 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 ground, in the discretion of the Court, for overruling such request.

15.8 When a court is called upon to rule on a motion, the elapsed time between final submission of the motion and the ruling thereon shall not exceed thirty (30) days, except that the ruling time on the constitutionality of a city ordinance shall not exceed sixty (60) days.

RULE 16: DOCKET CALL, ARRAIGNMENT, AND TRIAL PRACTICE

16.1 The procedures for the call of dockets of the courts shall be established by the judges handling such dockets and pursuant to the policies and procedures of the court.

16.2 The conduct and demeanor of attorneys when present during any court proceeding shall reflect respect for the dignity and authority of the court, and 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 at law should be dressed appropriately for the dignity and decorum of a courtroom proceeding for any appearance, hearing or trial scheduled for any courtroom on the court's docket.

16.3 An attorney must stand when addressed by the judge or when speaking to the judge, unless leave is granted to counsel to remain seated. Unless the judge specifically prescribes otherwise, an attorney must stand when interrogating a witness and should refrain from moving about except as may be necessary for the presentation of exhibits or other assistance to the court.

16.4 Except as the judge may specifically permit otherwise, only one attorney may examine or cross-examine a witness on behalf of all parties united in interest.

16.5 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 six (6) months after final determination (including expiration of time for appeal) may be destroyed or otherwise disposed of as the court directs after notice to counsel.

16.6 No defendant or attorney appearing will be permitted to continue, to set for hearing, or to try any case before the municipal court if such defendant is not personally present in court when such defendant has outstanding municipal court warrants pending against him or her or when such 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 cases the municipal court judge shall note the appearance of the defendant's counsel (if any) in 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 warrants or show cause orders against such defendant are set aside by court order.

16.7 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.

16.8 Whenever any defendant has an outstanding municipal court bench warrant for failure to appear in court on any case, and where such defendant has failed or refused to surrender in person on such warrant and submit to the jurisdiction of the municipal court in such case, none of the time from the date such warrant is ordered by the Court (regardless of the date such warrant may be issued or served) until the defendant appears personally in municipal court to surrender on such warrants will be chargeable to the City of Wichita for the purposes of statutory speedy trial in that case or in any other pending case in which such defendant is charged. So long as a defendant remains a fugitive from justice in any municipal court case for failure to appear as directed as a condition of bond or release from custody, such defendant may not take advantage of the protections of the statutory speedy trial protections provided by K.S.A. 22- 3402, and as amended.

RULE 17: CONTINUANCES

17.1 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 for good cause; provided that an accused person in custody shall be tried on the earliest day that the Municipal Court convenes unless trial is continued upon motion of the accused person and for good cause.

17.2 Requests for continuances of a trial date, may be granted only in exceptional circumstances and for good cause shown after a hearing is held upon the request, or with no objection by the opposing party, and upon a judge's approval. Parties requesting a continuance must provide prior notice to opposing counsel. If such request is being made by the defense, a written Notice and Order of Defendant's approval of continuance must be filed with the court prior to or at the time of the trial setting.

17.3 Where no request for a continuance has been made by the defendant, and where the defendant fails to appear for trial, or should the defendant appear but is unable to proceed at trial for any reason, then the court costs incurred to that point, including the costs of subpoenaing witnesses, may be assessed against the defendant.

17.4 The Court may, in its discretion, when continuances are requested because of illness of any party, require that the evidence of such illness be provided to the court.

17.5 Except as otherwise permitted within these rules, a first appearance or arraignment date in a criminal, drug or traffic case may be extended once by the clerk of the municipal court for a period of not to exceed thirty (30) additional days at the request of the attorney of record in the case. No such extension will be granted by any court clerk without a judge's consent in cases in which a defendant is charged with a violation of Driving under the Influence of Alcohol and/or Drugs or where such defendant is charged with any criminal offense filed pursuant to the Domestic Violence ordinances of the City of Wichita.

17.6 Upon any first appearance or arraignment a defendant may request the court for a continuance of up to thirty (30) days, within the discretion of the court, without setting the matter for trial.

17.7 All other continuances or extensions of time shall only be granted by order of the judge.

17.8 Defendants at arraignment or first appearance wishing to retain counsel shall be given at their request one continuance not to exceed thirty (30) days for such purposes; the privilege of requesting a continuance shall not be abused once the accused has been given reasonable opportunity to contact and retain counsel of his or her choice.

17.9 Defendants at arraignment or first appearance wishing to apply for diversion, deferred judgment, or desiring additional time to produce documentation or credentials pursuant to potential plea negotiations, shall be given one continuance not to exceed thirty (30) days for such purpose. The privilege of requesting a continuance shall not be abused by the accused once given a reasonable opportunity to file such diversion or deferred judgment application or to produce such documentation or credentials.

17.10 If after sixty days from the first appearance the accused has not disposed of the charges in the case without trial, and has not yet obtained appointed or retained counsel or waived counsel, the Court shall make appropriate inquiries and enter appropriate orders to resolve such issues. In such circumstances, and if none of the charges alleged carry any possibility of jail time being imposed, the Court 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 Court should resolve the issue of counsel by obtaining a written waiver of counsel from the defendant, by the appointment of counsel for the defendant, 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.

17.11 Additional continuances requested more than sixty (60) days following first appearance or arraignment should not be granted by the Court following the entry of appearance simply to obtain proof of insurance, a valid driver's license, or other documentation which the defendant wishes to obtain before trial or disposition of the case. In such circumstances the Court should resolve the issue of counsel for the defendant and thereafter set the matter for trial.

17.12 The court, in its discretion, may use a telephone conference call or other electronic means of communication to conduct any emergency request for a continuance, or where the prosecutor and the defense have agreed to a continuance prior to the trial or sentencing date.

17.13 Continuances requested more than sixty (60) days following first appearance or arraignment for any reason other than for trial, or disposition following waiver of trial, are not favored by the court. Such continuances should only be granted under exceptional circumstances involving medical emergencies or other compelling circumstances.

17.14 Continuances requested on the day of trial are not favored by the court, and both the prosecution and defense should be fully prepared to dispose of any and all cases on the trial docket at the time of the scheduled trial. Cases 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.

17.15 Motions for continuances on the day of trial based upon the failure of a witness to appear will be determined upon 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 and served in compliance with K.S.A. 60-245, and amendments thereto, at the request of the party requesting the continuance (see Charter Ordinance No. 224, Section 7 [a]);
- C. whether the party requesting the continuance was misled by the absent witness regarding the willingness to appear in court without a subpoena;
- D. whether the reason for the absence of the witness can be ascertained, and such reason was based upon an unexpected emergency or illness;
- E. 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;
- F. 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 the scheduled trial;
- G. 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;

H. 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; and

I. any other relevant circumstances made known to the Court at the time of the request for continuance.

17.16 Cases on the trial docket may not be continued pursuant to request made for the first time on the day of trial except upon exceptional circumstances, whether or not the parties in such case have agreed to the requested continuance. Neither the failure nor neglect of an attorney to give actual notice of a trial to a defendant, nor the failure of the defendant or his counsel to prepare for a scheduled trial date, nor the failure of a defendant to meet the financial obligations of his contract with defense counsel, shall ordinarily be deemed to be “exceptional circumstances” justifying a continuance on the day of trial. The Court is ethically obligated to report any neglect or failure of counsel in such circumstances to the attention of the disciplinary administrator.

17.17 Once all charges set for trial in a case have been disposed of by plea or trial, the court may, within its 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.

RULE 18: DISMISSALS

18.1 Prior to trial the dismissal of a traffic charge, complaint or notice to appear shall be at the sole discretion of the prosecutor unless the Court 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 as a sanction for pre-trial delay or serious misconduct attributable to the prosecution prejudicing the defendant's right to a fair and 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.

18.2 Dismissals prior to the commencement of trial are generally deemed to be dismissals without prejudice, allowing leave to the prosecution to refile the matter within the applicable time standards relating to the statute of limitations and speedy trial.

18.3 The Court should 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 drastic remedy or sanction appropriate due to prosecution or police misconduct so gross as to irretrievably violate the substantial rights of the defendant.

RULE 19: COSTS, FEES AND CONDITIONS OF RELEASE AFTER SENTENCE

19.1 In any case resulting in a conviction the Municipal Court shall assess costs against the defendant as provided by Charter Ordinance No. 224, Section 2, City Code Section 1.04.070, and as provided herein in these Rules.

19.2 The assessment and imposition of court costs against a defendant following conviction is mandatory, and the Court shall not waive, remit, suspend, parole

or otherwise excuse the payment of costs except as permitted by City Code Section 1.04.070.

19.3 Such costs as assessed shall be collected by the Clerk of the Municipal Court with the assistance of such other agency as may be approved by the court, by the court administrator or by the City of Wichita.

19.4 Whenever any defendant convicted and sentenced by the municipal court is ordered to pay fines, costs, restitution or reparations, or to obey specific conditions of probation or parole which will 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 shall require said defendant to appear in court for purpose of review of such conditions. If such defendant has paid all monies due, and completed all such tasks assigned to him by the court, and provided proof to the court of completion of all such tasks assigned to the defendant, the defendant at the court's discretion may be excused from attendance at the review date, and such case may be closed by the clerk. If the defendant has not paid all such monies due and/or provided such proof of completion to 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.

19.5 No defendant still owing fines, costs, 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 assigned to the case.

19.6 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 the defendant continues to report as required, but otherwise violates the conditions of such probation or parole, the probation officer is empowered by the court to detain such probationer or parolee appearing in City Hall temporarily so that the municipal court judge may on that business day review the matter for possible forthwith revocation or reinstatement of such probation or parole. If a defendant fails to report to the probation officer as required by 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.

RULE 20: POST-TRIAL MATTERS

20.1 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 subsequent thereto must be in writing and accompanied by reasonable notice to the Court and adverse parties.

20.2 Copies of post-trial motions, if in writing, 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.

20.3 Any post-sentencing motion (other than appeal) challenging, or to set aside, the conviction or judgment, or to grant expungement of conviction, shall not be accepted by the clerk of the court without the payment of a fee of \$50.00, unless such fee is waived upon grounds of the movant's indigence by order of the court.

20.4 Once a 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) shall normally determine all matters concerning such case to the exclusion of another judge. Where a defendant has been convicted at trial, or by plea of guilty or no contest, before a Pro Tempore Judge, that case may be transferred by the Chief 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 21: APPEALS

21.1 An appeal must be taken within fourteen (14) days (weekends and holidays are not excluded) after judgment by conviction and sentence. The notice of appeal shall be filed with the District Court Clerk's Office and an appropriate appeal bond will be set by the presiding judge as provided by K.S.A. 22-3609. The appeal fee in District Court shall be set by the Sedgwick County District Court. Appeal costs in Municipal Court are \$10.00, or as may otherwise be assessed as required by Kansas Statutes Annotated or by ordinance of the City of Wichita.

RULE 22: EXPUNGEMENT

22.1 The annulment or expungement of municipal court convictions shall be conducted in conformance with Charter Ordinance No. 224 Section 8. Procedural information is available in the Municipal Court Clerk's Office.

22.2 Costs in expungement motions shall be assessed per case and shall be paid at the time of the filing of the motion.

RULE 23: IMPOUND HEARINGS

23.1 Impound hearings will be resolved pursuant to procedures consistent with City Code Section 11.97.010 *et seq.* and other ordinances of the City of Wichita and these Rules.

RULE 24: PUBLICATION OF RULES

24.1 These Rules of Practice shall be printed and published by the Court Clerk in loose-leaf form and made available for sale or distribution 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 business hours.

RULE 25: DEFENDANT'S COMPETENCY TO STAND TRIAL

25.1 Purpose; scope. This rule is intended to provide a timely, efficient, and accurate procedure for resolving whether a defendant is competent to stand trial. Competency to stand trial is distinct from other questions about a defendant's mental health that may be relevant in a criminal proceeding, such as for substantive defenses and incapacity to form specific intent.

25.2 Definitions. For purposes of this rule, the following definitions shall apply:

A. **Competency.** Whenever the words "competent," "competency," "incompetent" and "incompetency" are used without qualification in this Rule, they shall refer to the defendant's competency or incompetency to stand trial, as defined below.

A person is "incompetent to stand trial" when such person is charged with a crime and, because of mental illness or defect is unable:

(1) To understand the nature and purpose of the proceedings against such person; or

(2) To make or assist in making such person's defense.

B. **Competency evaluation.** A competency evaluation is an examination of the defendant by a qualified mental health professional, appointed by and acting on behalf of the court, limited to determining whether the defendant is competent to stand trial. Unless otherwise ordered by the court, a competency evaluation shall be limited to a determination of the defendant's competency and shall not state opinions about other matters including the defendant's ability to form a specific criminal intent.

25.3 Raising a question of competency; who may raise. A question of the defendant's competency to stand trial shall be raised whenever it appears that the defendant may not be competent to stand trial. The issue shall be raised by a motion for a competency evaluation and may be raised by any party or upon the court's own motion at any stage of the proceedings.

25.4 Motion for competency evaluation.

A. **By motion of a party represented by counsel.** When a question of competence is raised by a party who is represented by counsel or by an Assistant City Attorney, a motion for a competency evaluation shall be made orally or in writing and shall contain the following:

(1) a statement that the motion is based on a good faith belief that the defendant may not be competent to stand trial;

(2) a description of the facts and observations about the defendant that have formed the basis for the motion. If filed by defense counsel, the motion shall contain such information without violating the attorney-client privilege;

(3) a statement that the motion is not filed for purposes of delay;

(4) a statement of whether the motion is opposed;

(5) a statement of facts and/or circumstances in which counsel for the defendant believe support an evaluation to determine competency; and

(6) a request for a competency evaluation.

If the motion is made orally, the moving party shall complete the form motion to determine competency provided by the court. The written motion must be filed with the court by the end of the court's session.

B. ***By motion of a self-represented defendant or upon the court's own motion.*** When a question of competence is raised by a party who is self-represented or upon the municipal court's own motion, the municipal court shall dispose of the motion by filing an order that addresses the following:

(1) whether the motion is based on a good faith belief that the defendant is not competent to stand trial;

- (2) a description of the facts and observations about the defendant that have formed the basis for the motion;
- (3) whether the motion is advanced for purposes of delay; and
- (4) whether the motion is opposed.

If the motion is made orally by the presiding judge, the judge shall complete the order for competency evaluation.

25.5 Suspension of proceedings. Upon the filing of a motion for a competency evaluation, further proceedings in the case shall be suspended until the motion is decided.

25.6 Resolution of motion; reasonable belief. In considering a motion for a competency evaluation, the court shall comply with the following procedures:

- A. unless the court determines that a hearing on the motion is necessary, file an order finding whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial and order forthwith an evaluation by a qualified mental health provider to determine whether the defendant is competent to stand trial; or
- B. hold a hearing on the motion and file an order finding whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial.

25.7 Defendant found competent. If the defendant has been found competent to stand trial, the municipal court shall resume the proceedings against the defendant.

25.8 Defendant found not competent. If the defendant has been found not competent to stand trial, the municipal court may dismiss the case without prejudice in the interests of justice or may suspend the case from the court's docket for a period not to exceed ten business days. Any order suspending the case from the court's docket shall also direct the City Attorney to forward the Court's Order to the Sedgwick County District Attorney's Office for review. The order shall be delivered to the District Attorney within five (5) days of the finding of a reasonable belief that the defendant is not competent to stand trial.

25.9 Subsequent Proceedings. As competency issues may be cured with medication and other mental health interventions, the court's order determining competency shall be limited to the cases pending before the court at the time the competency evaluation is performed. The competency of a defendant in any subsequent criminal charges will be evaluated as outlined by this Rule.