

## **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.