

## **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.