MEMORANDUM

To: Members of the Kansas Municipal Judges Association

From: KMJA Executive Committee

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Re: Dealing with COVID-19 issues in Municipal Court

Date: March 26, 2020

To all Municipal Judges in the state of Kansas,

With the recent issues and concerns about coronavirus (COVID-19) occurring around the globe, many aspects of our daily lives have been substantially altered, both personally and professionally. This applies to our municipal courts as well. The KMJA Executive Committee has jointly drafted this memorandum with information and suggestions in order to address this issue in your courts. Some of the suggestions may not apply to your court or your city. The intent of this memorandum is simply to provide information, knowledge, suggestions and ideas. Each city will choose to handle the situation in their own way, but our hope is that you find some guidance and some answers to any questions you may have. Please feel free to reach out to any of us at any time at the email addresses listed above, or by posting on the KMJA listserv, which goes out to all KMJA members across the state. That address is KMJA-Court@list.ink.org.

As you know, President Trump has declared the COVID-19 concerns a National Emergency, and Governor Kelly has likewise declared a State of Emergency and has issued numerous executive orders related to the same. The Kansas Supreme Court has issued several administrative orders applicable to the District and Appellate courts. It is the opinion of this committee that the Supreme Court orders do not apply to municipal courts. However, we are attaching those orders and will discuss them for those of you who wish to attempt to make your courts consistent with what is occurring in State courts. Please know that new orders may be issued by the President, Governor and/or Kansas Supreme Court daily, so by the time you read this, there may be additional orders in place. We will address what is out as of this writing. All bills or Orders referred to below are included as an attachment in this email.

On March 16, 2020, the Kansas Supreme Court issued AO 2020-PR-015, restrictions to mitigate the spread of COVIS-19. That order restricted access to the Kansas Judicial Center, limited travel and meetings, and required self-quarantining for Kansas Judicial Center personnel if they had traveled to an area with high positive COVID-19 tests. You may notice this if you attempt to contact the appellate courts or the Office of Judicial Administration.

Just two days later, the Chief Justice signed AO 2020-PR-016, which imposed statewide judiciary restricted operations of the district and appellate courts. In essence, it ordered those courts to cease all activity other than what is considered to be essential. It also stayed deadlines and timelines for speedy trial in district courts, which was authorized by 2020 House Substitute for Senate Bill 102. Speedy trial issues for municipal courts are addressed below. Among other things, in criminal cases, the Court ordered that the following are emergency operations:

1. Setting bonds for probable cause arrests that are conducted without a warrant;
2. Conducting first appearances;
3. Setting appearance bonds; and
4. Issuing warrants.

We mention the criminal emergency findings simply because those are things that we as municipal judges also engage in on a frequent basis, so if you are attempting to draft administrative orders that are similar to the State orders, those would be the actions that are similar.

In addition, 2020-PR-016 also ordered “to the extent feasible, all emergency operations must be conducted by two-way electronic audio-visual communication.” This committee is well aware that the vast majority of municipal courts throughout the state do not have the capabilities to hold court audio-visually, but feel it is important for you to be aware that this has been ordered at the state court level if feasible. For those of you willing to make this attempt, we are including some possible ways to go about setting this up below.

2020-PR-016 has also ordered that all UA’s, alcohol testing and home visits by court services personnel (state probation officers) cease, as well as all requirements for defendants to meet in person with their probation officer. This order applies to district court cases across the state. Again, this does not apply to municipal courts. You may want to consider a similar order for the safety of your probation officers and the general public.

On March 20, the Chief Justice signed AO 2020-PR-024, which simply addressed the issuance and extension of Protection From Abuse and Protection From Stalking orders.

On March 28, the Governor executed Executive Order 20-16, which is a state-wide “stay home” order. This order became effective March 30 and remains in force until rescinded, until April 19, 2020, or until the statewide State of Disaster Emergency proclaimed on March 12, 2020, relating to COVID-19 expires, whichever is earlier. Although government services have been determined to be an essential need and are an exception to the order, many courts across the state have rescheduled all dockets through at least April. Some courts remain open for business even without dockets, and others have chosen to close court. This committee questions whether court dockets may still be held and be in compliance with the “stay home” order, as it is not clear that defendants would be allowed to leave home in order to attend court.

It is worth noting as well that as of this writing, some law enforcement agencies across the state are, for the most part, releasing municipal defendants unless serving a sentence for which they were convicted. In other words, if a defendant is being held pre-trial on a municipal or even a state misdemeanor, the jails do not want them in the jail population and they are requesting that the judge’s send release orders to the jail. This committee is recommending a similar stance by way of administrative order.

We believe this is a good time to address administrative orders in general. The Kansas Judicial Branch website states that “Kansas Supreme Court administrative orders communicate binding instruction about the operations or internal governance of Kansas courts and the judicial branch.” See Kscourts.org. Administrative orders are generally recognized as a way for courts to establish rules for the courts. K.S.A. 12-4106 provides broad powers for municipal judges, including the power to grant continuances, determine applications for parole, discharge accused persons and set dockets. It is the suggestion of this committee that a written order be prepared which reflects any emergency orders that the municipal court is making.

This committee is aware that as of the time of this writing, the situations in courts across the state may differ. Again, we are simply attempting to provide some guidance on current and possible future court decisions. With this background information, the executive committee provides the following guidance for municipal courts in Kansas:

* 1. **Research first.** As indicated above, the situation in the nation and Kansas is changing rapidly. Administrative orders from the Supreme Court, executive orders from the Governor, and local public health orders from the county public health officer or the county board of health may impact your situation and/or your authority. In addition, you will need to verify that your proposed actions do not violate any orders of your municipality regarding employees or facility usage.
	2. **Communicate before acting.** Before you enter any orders you should communicate with the interested stakeholders. The court clerk, city prosecutor, chief of police and the sheriff or jail administrator should be consulted about the order and process you plan to implement. They may have valuable insight and you may avoid unnecessary conflicts by having communicating with them.

* 1. **Canceling or rescheduling court dockets.** Unless authority has been transferred, the city administration has the authority to decide whether buildings will be open or closed to the public. Many of you are not completely closing the doors to the courthouse, but have chosen to reschedule upcoming dockets. We have attached sample administrative orders for making this change. If you currently have an administrative order that sets forth specific dockets, you might want to include language indicating the prior order is temporarily repealed.
	2. **Speedy trial issues.** As noted above, speedy trial deadlines have been stayed for district courts. As of the date of this memorandum, no similar legislation or administrative order has granted a stay for municipal courts. See attached 2020 House Substitute for Senate Bill 102. In addition, Supreme Court Order 2020-PR-016 specifically adopts the language in the House Substitute for SB 102. The intent of the legislature and the Supreme Court is to stay speedy trial issues for district and appellate courts. This committee believes the Supreme Court order may not apply to municipal courts, since it specifically references K.S.A. 22-3402, which is the code for criminal procedure. That said, some relief may be found in K.S.A. 12-4501:

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 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.

The appellate courts may certainly find that the earliest practical day may have to be a later date due to our current situation.  Regardless of this, there is a concern regarding those that are held in custody pending trial. This committee believes if municipal defendants are being held in custody pending trial, they may still have speedy trial issues.

The suggestion from the committee is the following:

**1. Consider releasing defendants being held pre-trial if you are not doing trials at this time.** It is likely that your sheriff and/or jail administrator will be requesting this. It will help to avoid a health crisis at the jail. It will also keep you from having speedy trial issues for cases that have been continued due to your administrative order.

**2. Adopt an order that addresses the issues in AO 2020-PR-016.**  You may need to tailor your order to take into account your dockets and the situation in your city. That is why is critical that you communicate with other stakeholders before entering any orders. It may be helpful to make a specific finding in your order that the court is unavailable for trial.

* 1. **Allowing pleas to be entered through counsel.** K.S.A. 12-4402 allows for counsel to enter a plea on behalf of a defendant in municipal court. “. . . . the municipal judge, upon request, may permit appearance, pleas and satisfaction of the judgment and sentence of the court by counsel or by mail.” It is the committee’s suggestion that defendants should sign any written pleas entered by counsel, if possible, but this is not required by Kansas law.
	2. **Allowing pleas by unrepresented defendants by mail:**  K.S.A. 12-4402 specifically authorizes the Judge discretion to accept plea, satisfaction of judgment and sentence by mail. It is important to remember that if there is to be an underlying jail penalty, even if that penalty is to be suspended, a written waiver of counsel must be obtained from the Defendant as required by *In the matter of Gilchrist*, 238 Kan. 202 (1985). The Supreme Court in *State v. Hughes*, 290 Kan. 159 (2010) made it clear that not only was the signature of the defendant necessary, but the judge must sign the certification that the rights were explained to the defendant. The current form approved by the judicial council states that the waiver was signed in the presence of the judge. This form is attached. It is unclear whether a phone call or video conference where the judge advised the defendant of his or her rights would suffice as for the certification of the judge, but this committee believes in light of the circumstances that this may suffice. A plea by mail should not be accepted for an unrepresented defendant that receives a jail or suspended jail sentence unless the judge can verify, and sign the certification, that the judge discussed the rights with the defendant and that the defendant knowingly waived those rights.
	3. **Holding court remotely**. Even when the distance requirements are modified, it is the belief of this committee that appearing in court by audio-visual communication will be vastly expanded by many courts around the country. Zoom may be a great option for holding court remotely. There is a version that is free that defendants could download onto their smart phones, and it allows you to communicate audio-visually. If you prefer a more secure line, BlueJean is an excellent option.
	4. **Use of a window.** For courts located in counties where there are no confirmed viruses, the use of a protected window in the clerk’s office may be appropriate. Make sure to limit contact with defendants and make sure that you or whoever is exchanging documents are using appropriate hand sanitizer and washing your hands regularly. It is suggested that you refrain from having the defendants sign orders or notices.

We find ourselves in a unique situation that may require us to consider doing things in such a way that we would not normally consider. There is no better time than now to “think outside the box” and be somewhat creative in our municipal courts. We encourage all judges to share ideas of how to address the situation on the listserv. Again, that address is KMJA-Court@list.ink.org.

Please be safe and feel free to reach out to the listserv, or board members, with questions.

KMJA Executive Committee