

UNIVERSITY OF KANSAS COURT OF PARKING APPEALS

RULES OF PRACTICE AND PROCEDURE

1. AUTHORIZATION AND PURPOSE

The following Rules of Practice and Procedure are promulgated by the University of Kansas Court of Parking Appeals for the guidance of judges and attorneys in the fair and timely consideration of cases. The Rules are authorized by University Senate Code Article XIII.3, University Senate Rules and Regulations Articles 5.4 and 6.9, and the KU Transportation Services Parking Regulations. The KU Court of Parking Appeals is a quasi-judicial board that shall review appeals as a court of equity, weighing the interests of the State of Kansas and the University in promoting safe, orderly, and effective traffic operations against mitigating circumstances surrounding the appellant's violation.

2. ORGANIZATION

2.1 OFFICERS

2.1.1 APPOINTMENTS ANDELECTIONS

- (a) Officers shall be elected by University of Kansas students who have participated in Court proceedings at least once during the school year of the election.
- (b) Any eligible voter may run for an Officer position if enrolled as a University of Kansas School of Law student during the fall and spring semesters of the year following the election. Candidates must submit their names for consideration in a manner prescribed by the Chief Justice. A candidate for Chief Justice is highly recommended to be second year law student who serves as an Officer.
- (c) Elections shall be held near the end of the spring semester for a term beginning June and lasting until May the following year.
- (d) Elections shall be fairly administered in a manner determined by the Chief Justice.
- (e) If an Officer resigns or is removed from their position, a replacement shall be appointed by a majority vote of the remaining Officers to serve for the remainder of the term.
- (f) The appointment and election of Officers shall be subject to approval by the Dean of the Law School or the Dean's designee as required by University Senate Code, Article XIII.3.

2.1.2 OFFICER POSITIONS

- (a) General Responsibilities: Officers shall provide for the timely review all ex parte appeals and petitions for En Banc review. Officers shall be responsible for maintaining files in the Court office. Officers each should maintain office hours at regularly scheduled times. Officers should attempt to improve any aspect of the Court in need of improvement and maintain communication with the Clerk.
- (b) Chief Justice: The Chief Justice is the chief administrative officer of the Court. The Chief Justice shall have the power to call and preside over meetings of the Officers and to promulgate rules with the advice and consent of the Officers, including emergency rules to be in effect until the advice and consent of the Officers is secured. The Chief Justice shall assign judges to hearing panels, and perform other necessary and proper administrative functions. The Chief Justice shall train and instruct Officers of all relevant procedures, including but not limited to: courtroom responsibilities , rendering ex parte and in person appeals, attorney consultation, and general duties. The Chief Justice may delegate duties to other Officers.
- (c) Chief Justice of the Court En Banc: The Chief En Banc shall be responsible for the supervision and coordination of the En Banc proceedings and any other duties delegated to the Chief En Banc by the

Chief Justice. Responsibilities include but are not limited to, soliciting judges for the En Banc panel, scheduling and posting the En Banc docket, and ensuring that En Banc decisions are published in the En Banc casebook.

- (d) Associate Chief Justice: The Associate Chief shall be responsible for supervising judges and any other duties delegated to the Associate Chief by the Chief Justice. Responsibilities include but are not limited to, assisting the Chief Justice in assigning and notifying the judges to hearing panels. The Associate Chief Justice shall act as the Chief Justice in the Chief Justice's absence or when the Chief Justice is unable to perform administrative duties.
- (e) Chief University and Chief Defense Attorneys: The Chief Attorneys shall be responsible for the supervision of the University and defense attorneys practicing before the Court. The Chief University Attorney is the chief attorney representing the University in all appeals. Approval of the Chief University Attorney is required for any attorney motion to voluntarily dismiss a citation. The Chief Defense Attorney is the chief attorney representing all appellants against the University. Approval of the Chief Defense Attorney is required for any plea of no contest. The Chief Attorneys should consult with the practicing attorneys on any case when the amount in controversy is fifty dollars or more, there is a possibility of temporary or permanent parking privilege revocation, or an attorney for the hearing has not previously participated in Court proceedings.
- (f) Non-student Members: Non-student members of the Court may be chosen by the University Senate Executive Committee. Each member shall serve a term of one year, being eligible for a successive one-year term. Non-student members' duties, responsibilities, or rights do not include those of other Officers except as specified by the University Senate Executive Committee.
- (g) Clerk of the Court: The Clerk is the head secretary in the Transportation Services office. The Clerk's responsibilities include but are not limited to: contacting appellants when their appeal has been granted or denied, notifying appellants of their hearing times, filing petitions for certiorari and maintaining records of all appeals. The Clerk is not considered an Officer by these Rules except as otherwise stated.

3. JURISDICTION

The Court shall have jurisdiction to hear any contest of a citation issued by KU Transportation Services for an alleged violation of the KU Parking Regulations.

3.1 DEADLINE FOR FILING

3.1.1 TEN BUSINESS DAYS

- (a) The Court may hear appeals filed within ten business days, or on the tenth business day, starting on the date that the citation was issued.
- (b) A business day for the purposes of this section is any day during which KU Transportation Services is open to the public and conducts normal business operations for a substantial portion of the day. Business days do not include holidays or weekends.

3.1.2 EXCEPTION

- (a) An appellant may petition the Clerk to allow the submission of a late appeal. The petition shall fully describe the circumstances surrounding the issuance of the ticket and the lack of notice.
- (b) The Clerk may allow a charged party to appeal a ticket after ten business days if the charged party lacked actual notice of the alleged violations during the ten business day appeal period.

3.2 INITIATION OF PROCEEDINGS

3.2.1 WHO MAY APPEAL A CITATION

- (a) A party may contest a citation issued for an alleged violation of KU Parking Regulations involving a vehicle registered in the party's name or for which the party claims responsibility.
- (b) All appeals must be filed in the manner provided for by the KU Parking Regulations.

3.2.2 INITIATION OF THE REVIEW PROCESS

- (a) The Clerk shall open a case file upon receipt of a timely filed appeal.
- (b) The Officers shall conduct an ex parte review of the appeal. If the appeal is granted an in person hearing, the appeal shall be assigned to a panel of the Court.
- (c) The Chief Justice should post the hearing docket to which the appeal is assigned at least one week before the scheduled hearing.

3.3 DEADLINE FOR DECISION

- (a) The deadline for issuing ex parte and in personam decisions is one year of the appellant filing their appeal.
- (b) The deadline for issuing En Banc decisions is one year of the appellant filing their appeal, but this deadline may be extended upon written consent of Transportation Services.

4. EX PARTE REVIEW

- (a) All appeals are reviewed ex parte by the Officers before granted, dismissed, or pulled for an in person hearing.
- (b) Two Officers shall review each appeal. If the Officers agree, the appeal will be disposed of in the manner agreed upon. If the Officers disagree, a third Officer shall review the appeal and make a final decision.
- (c) The Officers shall vote to pull an appeal for an in person hearing if the facts on face of the appeal are not sufficiently clear to reach a just result without further review.
- (d) An appellant may request an in person hearing. Appellants are not guaranteed an in person hearing, and no right to an in person hearing exists for appeals of parking citations.

5. ATTORNEY RESPONSIBILITIES

5.1 DECORUM

All attorneys must show respect for the client and the Court. Attorneys and their clients are suggested to dress professionally on the night of the hearing, and meet all other expectations of proper courtroom decorum both during, before, and after a hearing.

5.2 PREHEARING

5.2.1 GENERALLY

- (a) Read the KU Parking Regulations, the Rules of Practice and Procedure, and En Banc precedent to determine the appropriate controlling law.
- (b) After signing up to represent an appellant or the University, attorneys should monitor their email inboxes. Copies of appeals are sent via email week before the hearing date.
- (c) If a conflict of interest exists, attorneys shall contact an Officer or the presiding judge of the hearing for which a conflict exists as soon as possible. An attorney who knowingly withholds information relating to a conflict of interest may be subject to Court sanctions.

- (d) Both attorneys should develop written interrogatories for the appellant to answer. Interrogatories may be included in evidence packets submitted to the Court.
- (e) Attorneys should contact each other to discuss evidence and witnesses.
- (f) Attorneys should conduct thorough fact finding efforts, including visiting the site of the alleged violation, contacting witnesses, or other acts necessary to zealously pursue their client's interests within the bounds of professional responsibility.
- (g) Contact the opposing attorney 48 hours or more before to the hearing to exchange, either physically or digitally, any evidence, affidavits, photographs, maps, En Banc cases or other materials submitted as a part of the evidence packets. Evidence packets shall then be forwarded to the presiding judge no later than 24 hours before the hearing. Evidence packets exchanged less than 48 hours before the hearing
 - a. or submitted less than 24 hours before the hearing will only be admitted if the late exchange or submission is not unduly prejudicial.
- (h) Attorneys should determine whether or not any witnesses will testify at the hearing. If the appellant appears, the attorneys should prepare for direct and cross examination. Attorneys should inform the presiding judge whether witnesses will appear.
- (i) Attorneys should consult with the Chief University or Chief Defense Attorney if the amount in controversy is fifty dollars or more, there is a possibility of parking privilege revocation, or the attorney has not previously participated in Court proceedings.
- (j) Attorneys should submit any prehearing motions if necessary or beneficial to their case.

5.2.2 UNIVERSITY ATTORNEY

- (a) A University attorney shall not contact the appellant without the permission of the opposing defense attorney.
- (b) Interrogatories should be timely submitted to the defense attorney, who then shall relay those questions to the appellant. If interrogatories are not answered, the questions asked should be included in the evidence packet.
- (c) Contact the defense attorney at least twenty-four hours in advance to obtain agreement and initial, either physically or digitally, any evidence, affidavits, photographs, maps, or En Banc cases.

5.2.3 DEFENSE ATTORNEY

- (a) Contact the appellant as soon as possible. Explain the appeals process, verify if the appellant will be present at the hearing, and if necessary establish a time when the appellant and attorney can meet to discuss the facts of the case. Attorneys may submit interrogatories in addition or in lieu of meeting an appellant in person.
- (b) Defense attorneys are not required to give the University attorney a copy of the defense attorney's interrogatories, excepting those interrogatories that the defense intends to use at the hearing.
- (c) Attorneys should manage the expectations of their clients at all times.
- (d) Appellants may not respond to attorney's contact attempts. In that case, attorneys should proceed to advocate as best as able on the appellant's behalf. Attorneys may contact Officers for assistance in arguing their case.

5.2.4 PREHEARING MOTIONS

5.2.4.1 FILING A PREHEARING MOTION

- (a) An attorney who submits a prehearing motion should submit the motion within three days after the dockets are posted. An attorney may submit a late prehearing motion only upon a showing of good cause.
- (b) Prehearing motion forms are available in the Court office and online.
- (c) Prehearing motions must be signed by the defense and University attorneys. Officers must approve the motion. Motions shall be submitted to a presiding judge.

5.2.4.2 UNIVERSITY’S MOTION TO VOLUNTARILY DISMISS

- (a) A motion to voluntarily dismiss a citation, also known as a nolle prosequi motion, serves to declare that the University will not pursue a case further.
- (b) A nolle prosequi motion may be entered only when the University’s investigation reveals that the University’s position has no legal merit. A plea of nolle prosequi has the same effect as a dismissal.
- (c) A plea of nolle prosequi must be approved by the Chief University Attorney, or another Officer if the Chief University Attorney is unavailable.
- (d) Judges may not refuse a plea for nolle prosequi unless there is reason to believe that it was not entered in good faith.

5.2.4.3 PLEA OF NO CONTEST

- (a) A plea of no contest, also known as a plea of nolo contendere, serves as an admission that the facts are as stated on the citation and no mitigating circumstances may warrant dismissal of the citation.
- (b) The decision to make a plea of nolo contendere rests solely with the appellant. A plea of nolo contendere shall be submitted only after a full discussion of the consequences of the plea between the appellant and the defense attorney.
- (c) A plea of nolo contendere must be approved by the Chief Defense Attorney, or another Officer if the Chief Defense Attorney is unavailable.
- (d) A presiding judge may deny a motion of nolo contendere.

5.2.4.4 MOTION TO DISQUALIFY A JUDGE

- (a) An attorney may submit a motion to remove a judge from a panel on grounds of prejudice, bias, conflict of interest, or the appearance thereof. A motion to disqualify may be brought to the hearing panel or the Chief Justice, or if the Chief Justice is accused of prejudice or bias, any other Officer.
- (b) Grounds to disqualify a judge may exist when the judge is the appellant, the judge was involved with the case as an attorney, the judge is closely related to the appellant, or there is a personal or business relationship between the judge and the appellant. A judge may be removed for a substantial personal conflict between the judge and an attorney.
- (c) A judge may be removed for any display of racial, ethnic, religious, gender, sexual, disability, age, language, or other form of prejudice.
- (d) The judge or Officer reviewing the motion shall then make a determination, based on a preponderance of evidence, if the challenge should be sustained.
- (e) If sustained, the judge shall be removed from the panel and a substitute judge shall be appointed.

5.3 AT THE HEARING

5.3.1 MOTIONS AT THE HEARING

A motion at a hearing is made before a panel of judges at any time prior to final judgment. If a motion for mistrial or dismissal is granted, the hearing panel shall either summarily dispose of the case in favor of the appellant or shall conduct a rehearing, as justice demands.

5.3.1.1 MOTION TO DISMISS

An attorney may move to dismiss a case if the Court does not have jurisdiction to hear the case.

5.3.1.2 MOTION FOR MISTRIAL

An attorney may move for a mistrial if there is any violation of the Rules of Practice and Procedure.

A panel of judges may grant a mistrial if the panel decides that it cannot fairly dispose of the case due to a violation of the Rules of Practice and Procedure.

5.3.2 ATTORNEY COMMENTS BEFORE QUESTIONING WITNESSES

Opening statements shall not be allowed. The Court may permit attorneys to briefly identify the issue that will be the subject of subsequent questioning. The opposing counsel or the Court may object if the statement is serving the function of an opening statement or is leading in nature.

5.3.3 QUESTIONING WITNESSES AT THE HEARING

5.3.3.1 DIRECT EXAMINATION

The defense attorney is the first to call witnesses to the stand. Attorneys shall have five minutes to examine the witnesses. If multiple witnesses are present, the attorneys shall have a total of five minutes to conduct a direct examination of all witnesses. Attorneys may not ask leading questions on direct examination. Attorneys may ask only relevant, admissible questions. Attorneys need not use all of their allotted time.

5.3.3.2 CROSS EXAMINATION

After direct examination, the opposing attorney shall have five minutes to cross-examine witnesses. The scope of cross-examination is not limited to that of direct examination. Attorneys may ask any relevant question. Attorneys may ask leading questions on cross-examination.

5.3.3.3 RE-DIRECT AND RE-CROSS EXAMINATIONS

- (a) The presiding judge may allow a re-direct of witnesses. In determining if a re-direct will be allowed, the Court shall balance the interests of efficiency against the probative value of a redirect. During re-direct, attorneys may attempt to clarify or rebut any misleading or damaging testimony elicited by the prosecution on cross-examination. A re-direct shall not exceed 3 minutes. The scope of inquiries is limited by the cross-examination.
- (b) The presiding judge may allow a re-cross examination a witness after a re-direct. Indetermining if a re-cross will be permitted, the Court shall balance the interests of efficiency against the probative value of a re-cross. If necessary, the prosecution should attempt to clarify in the light most favorable to the prosecution any point raised in re-direct examination. A re-cross shall not exceed 3 minutes. The scope of inquiries is limited by the re-direct.

5.3.4 OBJECTIONS

- (a) Attorneys may object to questions, statements, acts, omissions, evidence, or other conduct by standing and proclaiming “objection” at any time during a hearing prior to the delivery of final judgment. An objecting attorney must state the grounds for an objection.
- (b) The following are examples of cognizable objections:
 - a. Making an opening statement.

- b. Asking a leading question on direct.
 - c. Badgering the witness.
 - d. Arguing the case during questioning.
 - e. Irrelevant question.
 - f. The question has been asked and answered.
 - g. Inadmissible evidence.
 - h. Refusing to initial evidences or stipulate to the facts.
 - i. Asked after closing: Judges may not ask questions after closing arguments conclude.
 - j. Arguing facts not in evidence during closing.
- (c) The non-objecting attorney may be given opportunity to respond to the objection.
- (d) The presiding judge shall determine the merits of the objection by either sustaining or overruling the objection.
- (e) Sustained objections may prohibit the Court from considering a statement, require the cessation objectionable conduct, or other affects, as justice demands.
- (f) All objections shall be made in a timely manner. Timely objections to questions should be made before the answer is given. Timely objections to answers must be made prior to the following question asked.
- (g) An improperly sustained or dismissed objection that materially affects the outcome of a case may be grounds for reversal upon appeal to the Court En Banc. An attorney asserting a material and improperly disposed objection bears the burden of proving that the objection took place and that the presiding judge exceeded their discretion. A recording or a statement by the presiding judge shall suffice as evidence that an objection took place.

5.4 POST-HEARING DUTIES

5.4.1 ADVISING

- (a) If an appeal is denied, the defense attorney should advise the client of En Banc procedure for review of the decision. The attorney should inform the client of the costs of an appeal and the chances of success according to the best judgment of the attorney. Attorneys may consult with the Chief En Banc or another Officer prior to consulting with their client post-hearing.
- (b) University attorneys need not consult with Transportation Services post-hearing unless requested.

5.4.2 FILING A PETITION FOR EN BANC REVIEW

If an appellant wishes to appeal a case to the Court En Banc, it shall be the responsibility of the appellant and the appellant's attorney to file a petition for review, also known as a petition for certiorari. The petition must state the reasons why the Court's decision should be reviewed according to the grounds for En Banc Appeals. All petitions must be submitted to the Clerk in the Transportation Services office. Attorneys may consult with an Officer prior to submitting the petition for review.

5.4.3 EN BANC PETITION DEADLINE

A petition for certiorari must be filed with the Clerk in the Transportation Services office within ten business days or on the tenth business day, beginning on the first business day after the hearing. Attorneys shall be notified only if the petition for certiorari has been granted.

6. JUDGE RESPONSIBILITIES

6.1 PREHEARING DUTIES

Judges shall show respect for the appellant, attorneys, and the Court at all times. Judges should maintain a constructive tone in the courtroom and while giving attorney feedback. A judge may not be cruel or negative. Judges shall wear one of the robes located in the Court office during hearings.

6.2 PREHEARING DUTIES

6.2.1 APPOINTMENT AND SCHEDULING

- (a) The Officers shall provide a sign up sheet for judges who wish to participate.
- (b) For each in person hearing, a panel of three judges shall be appointed to hear the appeal. One of the three judges shall act as the presiding judge for the panel.
- (c) Judges should plan on showing up at least ten minutes prior to the beginning of the hearing.
- (d) It is the responsibility of the judge to find a substitute if unable to attend a hearing or if the judge anticipates disqualification. Judges unable to serve shall notify the Chief Justice as soon as possible.
- (e) In the event that no substitute judge can be secured, the presiding judge, or Chief Justice if the presiding judge is absent, shall either grant a continuance or allow the case to be heard with a panel of two judges. In the event of a split decision with a panel of two judges, the appeal shall be granted.

6.2.2 DISQUALIFICATION

- (a) Judges must recuse themselves from any hearing when the judge cannot fairly or objectively dispose of the case due to a bias, prejudice, or a conflict of interest.
- (b) A judge must resign from any hearing when the judge may appear to lack the ability to fairly or objectively dispose of a case due to a bias, prejudice, or a conflict of interest.

6.21 REMOVAL

Any judge may be removed upon the majority vote of the Officers, for cause, at any time prior to final judgment. A judge who is removed shall be replaced by an appointee designated by the Officers.

6.22 THE PRESIDING JUDGE

- (a) The presiding judge of the panel shall be chosen by the Chief Justice. The presiding judge will be listed first on the docket or otherwise distinguished as the presiding judge.
- (b) The presiding judge should relay evidence packets and other pertinent information from the attorneys to the other judges of a hearing, excepting evidence or information that the presiding judge has determined to be inadmissible during the prehearing phase.
- (c) The presiding judge shall independently rule on all prehearing motions unless otherwise specified by these Rules.
- (d) The presiding judge may consult and communicate with the Chief Justice or any other Officer for assistance in fulfilling the role of presiding judge.

6.23 PANEL JUDGES

- (a) Judges who sit on a panel and do not preside shall be assigned specific roles and delegated responsibilities as the presiding judge sees fit.
- (b) Panel judges shall keep in communication with the presiding judge.

- (c) Panel judges should review all rules as necessary to properly adjudicate the hearing. Panel judges should thoroughly read attorney evidence packets before the hearing.

6.3 AT THE HEARING

6.3.1 THE PRESIDING JUDGE

- (a) The presiding judge shall ensure that the hearing proceeds in an orderly and timely manner, verify that all judges on the panel are present for the hearing, and ensure that all attorneys and judges have reviewed the evidence packets.
- (b) The presiding judge may, if necessary, brief new judges on courtroom procedure, time limits, the facts of the case, and any relevant law.
- (c) The presiding judge is solely responsible for ruling on evidentiary matters, objections, and motions, unless otherwise stated in these Rules.
- (d) The presiding judge shall be responsible for convening the hearing, ensuring all witnesses are read their rights, clearing the courtroom during deliberation, and verifying that all decision forms have been completed.
- (e) The presiding judge should read the decision to the Court if the presiding judge is part of the majority. If the presiding judge is not part of the majority, another judge shall read the majority and the presiding judge may read the dissent.
- (f) The presiding judge shall return all materials to the Traffic Court office at the conclusion of the hearing and send any completed decision forms to the Chief Justice, either digitally or by placing the completed forms in the designated space in the Traffic Court office.

6.3.2 PANEL JUDGES

- (a) Judges who sit on a panel and do not preside shall be assigned specific roles and delegated responsibilities as the presiding judge sees fit.
- (b) One judge of a panel should keep time during the hearing. One judge should monitor recording equipment, provided that the use of such equipment is necessary. One judge should swear in witnesses.
- (c) All judges shall provide attorneys performance evaluation at the conclusion of the hearing. During the evaluation, only judges and attorneys should be present. The presiding judge may postpone evaluations or submit them in writing after the hearing if the presiding judge deems it necessary.

7. EVIDENCE

7.1 RULES OF EVIDENCE

7.1.1 GENERALLY

Except as otherwise specified, this Court shall follow the Kansas Rules of Evidence.

7.1.2 PROCUREMENT OF EVIDENCE

- (a) Each party to a proceeding shall have the responsibility of procuring witnesses for attendance at the hearing, in addition to any documentary or tangible evidence a party intends to offer.
- (b) All written or documentary evidence must be presented to opposing counsel at least 48 hours in advance of a hearing in order to give notice of the evidence intended to be used at trial. Attorneys are recommended to exchange evidence before the 48 hour deadline. The presiding judge may extend or alter

deadlines upon request , so long as the substantive rights of parties are not affected.

- (c) After presenting evidence to opposing counsel, each attorney shall submit such evidence to the presiding judge, or to the Traffic Court mailbox located on the 2nd floor, or personally to an Officer. Evidence shall be submitted at least 24 hours before a hearing. Attorneys should submit evidence packets 48 hours or more before a hearing. Late submissions may not be considered.
- (d) All affidavits from Transportation Services must be stamped or otherwise endorsed to show the affidavits are genuine, official, and in the words of a named Transportation Services official.
- (e) Attorneys submitting physical evidence packets shall make four copies of all materials that attorneys intend to submit to the Court. One copy of each evidence packet shall be given to each judge as well as opposing counsel.
- (f) When submitting En Banc cases as part of an evidence packet, attorneys should highlight the phrases and wording that the attorney plans to discuss in closing arguments.
- (g) The Court shall provide sample evidence packets and cover sheets for attorneys. Attorneys need not use sample packets or cover sheets, but all packets should contain the same information and be organized in a convenient and easily utilized manner.
- (h) Attorneys may tab or otherwise provide alterations to ease navigation through the submitted materials, so long as the alterations do not alter the substance of the materials, the alterations are easily distinguishable from the original material, and the alterations are not otherwise inconsistent with these Rules.
- (i) The presiding judge has the discretion to require physical or electronic evidence packets. Electronic materials must meet all other relevant criteria for submission. Electronically submitted materials should be sent directly to the presiding judge.

7.2 WITNESSES

The names of witnesses, other than the appellant, must be given to the opposing counsel at least 48 hours prior to the beginning of the hearing. The presiding judge may permit witness testimony after the 48 hour deadline passes if the probative value of the testimony substantially outweighs the prejudicial effect of the late notice, and good cause is shown by the attorney calling the late witness. The names of all testifying witnesses must be given to the presiding judge when evidence packets are submitted.

7.3 BURDEN OF PROOF

7.3.1 UNIVERSITY'S BURDEN OF PROOF

The University shall present some evidence to the Court of the facts upon which a citation is based. An appeal must be granted if the University fails to provide sufficient evidence to a panel of judges in support of the University's theory of the facts and controlling law.

7.3.2 APPELLANT'S BURDEN OF PROOF

The appellant bears the burden of persuasion. An appellant must show by a preponderance of the evidence some ground upon which the Court may base a decision to grant an appeal. The Court shall deny an appeal if an appellant fails to provide reasonably attainable evidence relevant to a dispositive issue.

7.4 ADMISSIBILITY

7.4.1 GENERALLY

- (a) Only relevant evidence shall be admitted. Relevant evidence may be excluded if the probative value is

substantially outweighed by the prejudicial effect.

- (b) All proof shall be presented by the parties or their representatives. All persons who are neither parties nor representatives shall address the panel of judges only when the panel grants such persons permission.
- (c) A witness may address the panel of judges only when called upon.
- (d) The presiding judge shall make a final determination regarding the admissibility of evidence. The presiding judge may defer to other judges of a panel.

7.4.2 APPELLANT TESTIMONY

Appellant testimony is considered evidence. The appellant's initial appeal shall be considered testimony by the Court.

7.4.3 SURPRISE EVIDENCE

- (a) In general, surprise evidence should not be admitted.
- (b) Surprise evidence may be admitted if the attorney requesting admission can show good cause as to why the evidence was not previously shown to the opposing party.
- (c) If surprise evidence is admitted, opposing counsel must be given opportunity to review the evidence.

7.4.4 EVIDENCE OF PRIOR VIOLATIONS

Unless first raised by the defense, evidence of prior violations shall be inadmissible except to prove specific knowledge of regulations or knowledge of the restrictions in a particular area.

7.4.5 HEARSAY

Hearsay may be admitted at discretion of the Court.

7.4.6 WITNESSES ON A PARTY'S CHARACTER

No witnesses shall be permitted to testify on the issue of a party's character.

7.5 JUDICIAL DISCRETION

7.5.1 EXCLUSION OF EVIDENCE

- (a) The Court may exclude otherwise admissible evidence, either on its own motion or upon a motion made by either party, if the probative value of the evidence is outweighed by the undue consumption of time.
- (b) Objections to evidence must be timely. Decisions to exclude evidence must be made at the beginning of the proceedings.

7.5.2 JUDICIAL NOTICE

The Court may take judicial notice of facts that are so generally known that they cannot reasonably be the subjects of dispute.

7.5.3 LOWER COURT BRIEFING

In general, briefing by attorneys on cases in the lower court shall be discouraged. The lower court panel shall not have discretion to accept briefs on issues or cases, without the express written permission of a majority of the Court officers.

Any brief accepted by the lower Court shall be submitted to both the Court and opposing counsel no later than 48 hours before the hearing. Opposing counsel will be afforded the opportunity to prepare and submit a reply brief on any issues or cases briefed by an attorney. The reply brief will be due at least one hour prior to the hearing, and any reply brief must be submitted to both opposing counsel and the Court for approval.

In any event, a lower court brief shall be no longer than three pages double spaced. The brief shall include the following: (1) a short statement of the issue or issues addressed by the brief, (2) a brief argument detailing the party's position on the issue, and (3) signed certification of receipt by the opposing party.

No motion to delay a hearing to prepare briefs shall be entertained by the lower court. If any issue of fairness arises after briefing has been accepted, the lower Court must reject all briefs and disregard any arguments made within the briefs, unless also made within the hearing, either by the attorneys or sua sponte.

8. PROCEDURES

8.1 Guarantee of Due Process

All parties to proceedings before the Court shall be accorded the protection of due process of law.

8.1.1 RIGHT TO COUNSEL

- (a) Each party to an in person proceeding shall have the right to representation by student counsel. No right to counsel exists for ex parte appeals.
- (b) During the fall and spring terms, the Court will appoint law student counsel to argue in person appeals. No Court appointed counsel shall be available during the summer term. The Court may continue any summer case to the fall term.
- (c) Appellants to an in person proceeding have the right to select their counsel upon approval of the Chief Justice, provided the proposed counsel meets the Court's other eligibility requirements. If a non-officer Member of the Court agrees to represent an appellant, they shall not receive compensation for their service.

8.1.2 NOTICE OF HEARING

A party against whom a citation is issued shall have the right to a written statement of the alleged violation of Parking Regulations. A summons or citation is a sufficient notice. Defects in the citation may be grounds for dismissal for insufficient notice of the nature of the offense has been given.

8.1.3 RIGHT TO REMAIN SILENT

A party against whom a citation is issued shall have the privilege of remaining silent and refusing to give evidence.

8.1.4 OPPORTUNITY TO EXAMINE EVIDENCE

Each party to an in person hearing shall be entitled to a full examination of the evidence presented by the other party, including the opportunity to cross-examine witnesses.

8.1.5 NOTICE OF DECISION

Each party to a proceeding shall be entitled to prompt, written notice of the decision of the judicial body hearing the case.

8.1.6 APPELLATE REVIEW

A party may seek review by the Court En Banc by filing a petition of certiorari with the Clerk.

8.2 THE HEARING

8.2.1 OPEN HEARINGS

- (a) In person hearings are open to the public.
- (b) A hearing may be closed to all except the charged party, the party's representatives, and the

representatives of the University, if the panel of judges deems such action necessary. Authority for this Court to hold closed hearings is authorized by K.S.A. 75-4318(g)(l).

8.2.2 TIME AND PLACE

- (a) The hearings shall be held at the time and place designated on the docket.
- (b) If it is necessary to change the time or place of the hearing, the Chief Justice shall provide the parties with reasonable notice of the change.
- (c) The appellant shall be seated next to the defense counsel and move to the witness seat during questioning.

8.2.3 SEQUENCE OF EVENTS

8.2.3.1 GENERALLY

The presiding judge may deviate from the sequence of events as outlined in this section so long as the substantive rights of the parties are not affected.

8.2.3.2 PRESIDING JUDGE CONVENES THE HEARING

- (a) The presiding judge verifies that both attorneys have seen each other's evidence.
- (b) The presiding judge will ask if either attorney wishes to submit any motions prehearing.
- (c) The presiding judge should convene the hearing by stating: "The University of Kansas Court of Parking Appeals is now in session, Judges _____, _____, and _____ presiding. Jurisdiction of this Court is based upon an appeal made within ten business days after the violation notice was issued by Transportation Services. Court authority is final except for appeals made from this Court to the Court En Banc."
- (d) The presiding judge asks the defense attorney to state the case and enter an appearance.
- (e) The defense attorney should state, "This is the case of the University of Kansas versus _____." Defense then should state the following:
 - a. Ticket number.
 - b. Date issued.
 - c. Violation number and description of the violation.
 - d. Lot name and/or number in which the ticket was issued.
- (f) The defense attorney should then state, "The appellant appears in person and by _____, defense attorney, KU Court of Parking Appeals."
- (g) The presiding judge should then instruct the University attorney to enter an appearance.
- (h) The University attorney should enter an appearance by stating "The University appears by _____, University attorney, KU Court of Parking Appeals."
- (i) If the appellant is present, the presiding judge shall state: "You both have five minutes for direct and cross-examination. The defense questions first. You both have five minutes for closing arguments."
- (j) If no testifying witnesses are present, the presiding judge shall state: "There will be no direct or cross examination. We will move straight to closing argument. Defense will begin the closing argument. You both have seven minutes."

8.2.3.3 QUESTIONING OF WITNESSES

- (a) The presiding judge instructs the defense attorney to call the first witness.
- (b) The defense attorney should inform the Court of the name of the witness.
- (c) The Court shall inform the appellant, if the appellant is the witness, of the right to remain silent and right not to give testimony. Should the appellant choose to testify, the Court should admonish them to tell the truth. The Court should then verify that the appellant understands the instructions.
- (d) Attorneys should begin by requesting that the witness states name and status at KU.
- (e) Following direct examination, the University attorney if, desired, initiates cross-examination.
- (f) Defense may re-direct the witness after cross-examination.
- (g) If re-direct is made, opposing counsel may re-cross-examine.
- (h) Defense has five minutes for direct examination and University has five minutes for cross-examination.
- (i) Before closing arguments, the presiding judge may ask the other judges if they have further questions of a witness. Judges may not ask a witness questions after closing arguments begin.
- (j) The presiding judge should then state “Witness you may step down. Defense, you may begin your closing argument. You have five minutes.”

8.2.3.4 CLOSING ARGUMENTS

- (a) Counsel may give a brief recitation of the issues to be discussed before closing arguments.
- (b) Each attorney shall present closing arguments. The defense attorney presents closing arguments first, followed by the University attorney.
- (c) Each side shall have five minutes to present closing arguments if witnesses are present. If no witnesses are present, each side shall have seven minutes to present closing arguments.
- (d) Counsel may summarize the facts in the light most favorable to the attorney’s position, interpret the regulations most favorably to the attorney’s side or state any supporting policy arguments. Counsel may not state facts that were not previously presented at trial. Previous En Banc cases should be used to support each party’s position.
- (e) The presiding judge shall ask whether defense counsel would like to reserve a portion of closing argument time for rebuttal. Only the defense has the right of rebuttal.

8.2.3.5 DELIBERATION

- (a) Upon completion of closing arguments, the judges shall clear the courtroom to deliberate. The deliberation of the judges is confidential and not open to the public. No individual may remain the courtroom during deliberations.
- (b) Judges should write up or type the decision before calling the parties back into the room. Judges are encouraged to write or type final decisions in sufficient details as to withstand an appeal to the Court En Banc.
- (c) When deliberating, the judges should make an effort to keep the hearings on schedule.

8.2.3.6 JUDGES RENDER THE DECISION

- (a) After deliberating, the judges deliver the decision of the Court as soon as both attorneys and the appellant are back in the room.
- (b) When returning the verdict, judges shall state the grounds for the decision, which shall be recorded on the decision form.
- (c) If the appeal is granted, the Court shall state, “it is the [unanimous 3-0/majority 2-1 decision of this Court to grant your appeal. [State the reasons] Transportation Services will be instructed to cancel your violation. Transportation Services may appeal this decision within ten business days from tomorrow. No further action on your part is necessary. Do you understand this action?”
- (d) If the appeal is denied, the Court shall state, “it is the [unanimous 3-0/majority 2-1 decision of this Court to deny the appeal. [State the reasons]. You have ten business days from tomorrow either to pay the fine or submit an appeal to the Court En Banc after consultation with you attorney. You have the responsibility of informing your client of this decision and the options he/she has. attorney. Do you understand your options?”
- (e) The defense attorney shall advise the client on appealing the adverse decision to the Court En Banc. If the appellant desires, the defense attorney must obtain En Banc materials from the Traffic Court office and assist the client to petition for certiorari within ten business days.

8.2.4 APPELLANT WHO FAILS TO APPEAR

- (a) The defense attorney should appear on the client’s behalf. An appellant’s failure to appear shall have no bearing on the credibility of the client’s defense.
- (b) If the defense attorney appears without the appellant, the evidence in support of the claim shall be presented, considered, and a decision rendered.
- (c) If appellant does not appear, no direct or cross examination will occur, and both the prosecuting and the defense attorneys will have seven minutes for closing argument.

8.2.5 ATTORNEY WHO FAILS TO APPEAR

- (a) If the appellant appears without the defense, the appellant may proceed without counsel or have the case continued.
- (b) If neither the appellant nor the defense attorney appears, the Court will proceed. The evidence shall be presented and considered, and a decision rendered. An appellant may appeal to the Court En Banc on the basis of ineffective assistance of counsel.
- (c) Presence of a completed citation qualifies as the University’s appearance. If the University attorney fails to appear and fails to present evidence, the case will be heard and decision will be rendered.

8.3 CONTINUANCE

- (a) Only upon a showing of good cause may a panel of judges grant a continuance.
- (b) Good cause should be presented to the hearing panel at the docketed time.
- (c) The presiding judge has the authority to deny the continuance for lack of good cause and force the attorneys to proceed with questioning and closing arguments.
- (d) Any case so continued shall be assigned to another docket and so decided at the rescheduled date.

Multiple continuances are not allowed except under highly exceptional circumstances.

8.4 JOINDER

- (a) Cases concerning two or more alleged violations of University parking regulations that involve a vehicle either registered in the name of a single charged party, or for which a single party claims responsibility, may be consolidated into a single hearing.
- (b) Cases concerning two or more alleged violations of the University parking regulations involving identical facts, occurring in the same area, and in the same general time frame, but with different appellants, may be consolidated by the Court upon a motion made by any party or the Court's own motion, pending approval of the joinder of parties by the Chief Justice. In the case of a joinder of parties before the Court En Banc, approval will be required by the Chief En Banc.
- (c) Joinder of claims or parties must be completed at least three days before the hearing. Joinder shall be permitted later than three days before a hearing.

9. SANCTIONS

9.1 GENERALLY

- (a) The Chief Justice shall have the responsibility of issuing sanctions against any member of the Court that fails to comply with ethical responsibilities or duties as a Member of the Court. Any individual may petition the Chief Justice for sanctions against a Member for misconduct relating to Court participation.
- (b) If sanctions are proposed against the Chief Justice, the Associate Chief shall assume the role of Chief Justice for the purposes of considering the sanctions.
- (c) Members against whom sanctions have been proposed will receive meaningful notice and opportunity to respond. A preponderance of the evidence must show that sanctions are justified.
- (d) Upon a majority vote by the Officers, sanctions may be delivered upon any Member.
- (e) Appellants or other non-Court members are not subject to Court sanctions. The Court may report egregious behavior by appellants or other non-Court members to University Student Affairs or other authorities, when appropriate.

9.2 SANCTIONABLE ACTS

9.2.1 PERJURY

When a panel of judges has probable cause to believe that any person has deliberately committed perjury in a case before a hearing panel, the Court may issue a sanction to that person pursuant to either the Rules of Practice and Procedure or University Senate Regulations.

9.2.2 CONTEMPT

The presiding judge of any panel may apply sanctions to any person who exhibits gross misconduct in the proceeding or in the preliminary matters related thereto.

9.2.3 VIOLATING ORDERLY PROCESSES

The Chief Justice may issue sanctions when probable cause exists to believe that an attorney engaged in behavior that was frivolous, contemptuous, or designed to burden and impede the Court's proper functioning.

9.3 CONSEQUENCES OF SANCTIONS

- (a) Sanctions may bar an individual from participation in Traffic Court for a definite or indefinite term, or may consist of a verbal reprimand. Repeated sanctions may result in removal from participation in Traffic Court for

a definite or indefinite term, or permanently. Members may be subject to University sanctions under the University Student Code Art. 22, if appropriate.

- (b) Sanctioned Officers may be subject to removal from their positions as Officers, conditional upon the majority vote of the non-sanctioned Officers or the permission of the dean of the School of Law.

10. COURT EN BANC

10.1 GROUND FOR EN BANC REVIEW

Appeals of ex parte or in person hearing decisions shall not be considered by the Court En Banc excepting those presenting appropriate grounds for review. These are the grounds for petitioning for certiorari and not standards of review for the Court En Banc.

10.1.1 APPEALS BY THE UNIVERSITY

- (a) Procedural error. The University may challenge a panel's decision on the basis that some aspect of the hearing did not follow the procedures laid out by the court and that error materially affected the outcome of the panel.
- (b) Perjury. The University may challenge a panel's decision if there is evidence that a witness committed perjury during the hearing.
- (c) Decision clearly erroneous in light of the evidence. The University may challenge a panel's decision on the basis that the decision is implausible based on the evidence presented meaning the finding of fact does not actually match what happened.

10.1.2 APPEALS BY THE DEFENSE

- (a) Misapplication of En Banc decision. An appellant may challenge a hearing panel's decision on the basis that it contradicts an existing En Banc determination of the law or applies incorrectly En Banc precedent to the case.
- (b) Procedural error. Appeals may be made to the Court En Banc for any violation of the Rules of Practice and Procedure that affects the substantive rights of the appellant. If an appeal is based on an overruled objection at the hearing, it shall be the responsibility of the defense attorney to notify the judges of that fact after the hearing to ensure that the overruled objections were recorded along with their reasons for overruling them.
- (c) Compelling policy considerations.
- (d) Decision clearly erroneous in light of evidence. An appellant may challenge a panel's decision on the basis that the decision is implausible based on the evidence presented meaning the finding of fact does not actually match what happened.
- (e) Inadequate representation of counsel. An appellant may challenge a panel's decision on the basis that the defense counsel lacked adequate time to prepare a defense. Failure to win a case, failure of attorneys to exchange evidence, general incompetence claims, and failure to contact the appellant when good faith attempts were made do not constitute grounds for inadequate representation.

10.2 PETITIONS FOR CERTIORARI

- (a) Once an appeal is denied in a lower Court, the University or an appellant has ten business days to file a petition for review with the Clerk in the Transportation Services Office. In order to begin the process, the appellant should contact the Clerk.

- (b) All petitions must be turned in to the Clerk, not to the Traffic Court, and time stamped when filed. Attorneys will be notified only if the petition for certiorari is granted.
- (c) Once the petition for certiorari is filed, the Clerk will notify the Officers.
- (d) The Officers shall review the petition to determine, by majority vote, if appropriate grounds exist for the case to be heard En Banc. If so, the petition for certiorari will be granted and an En Banc hearing set. If not, the petition will be denied.
- (e) No further review is possible if the Officers deny certiorari, and the appellant must pay the ticket. Appellants may petition the University Judiciary for a final decision denying an appeal if the appellant's parking privileges are to be revoked.

10.3 COMPOSITION OF THE COURT EN BANC

- (a) If a petition for En Banc review is granted, the Chief En Banc shall schedule a hearing and secure attorneys and judges. The Chief En Banc may delegate or receive assistance from other Officers as necessary.
- (b) A panel of judges for the Court En Banc may be comprised of no more than eleven and no less than seven judges. The number of judges shall be odd. Nine is the suggested number of judges for an En Banc hearing.
- (c) Judges for the Court En Banc are subject to the dismissal and recusal rules pertaining to conflicts of interest noted elsewhere in these Rules.
- (d) Judges for the Court En Banc shall be second or third year law students who have participated at least once before as an attorney. First year students who have participated at least once as an attorney may serve as a judge for the Court En Banc upon nomination of the Chief En Banc and approval of a majority of the Officers, although second or third year law students shall be given preference to serve as judges for the Court En Banc.
- (e) Attorneys should be second or third year students. Experienced first year attorneys may participate as En Banc attorneys. Attorneys may work in teams of two if desired.

10.4 EN BANC PROCEDURE

The Chief En Banc may alter procedures under these rules to enhance the efficiency of the proceedings, so long as such alterations do not violate the due process rights of any party.

10.4.1 BRIEFS

- (a) Each attorney appearing before the Court En Banc is required to submit a brief. Each attorney should put one copy of the brief in the Traffic Court mailbox and give one copy to opposing counsel at least 48 hours before the hearing. At the discretion of the Chief En Banc, briefs may be submitted electronically.
- (b) The purpose of the brief is to describe the arguments that a party will present at the En Banc hearing. Each brief should include a table of authorities, statement of the issues, statement of the facts, argument summary, and argument section.
- (c) Each brief should include a cover sheet that states the name of both parties, the attorney's name, and the party submitting the brief.
- (d) Attorneys may consult with the Chief En Banc or any other Officer for guidance on the format and organization of briefs. Such consultation shall not constitute a conflict of interest or violate any ethical responsibilities, so long as the Officer does not utilize any information during such discussions in the rendering of a decision of the Court En Banc. In rendering a decision, judges shall not consider any facts or evidence not admitted according to these Rules.

- (e) Discussion on substantive issues between judges and attorneys or parties may create a conflict and require a judge's removal or recusal at the discretion of the Chief En Banc.
- (f) The Court shall maintain sample briefs for use by the attorneys, to be made available upon request.
- (g) The Chief En Banc shall forward copies of the briefs to the judges of the Court En Banc as soon as practicable.

10.4.2 EVIDENCE

- (a) The Court shall only be permitted to review a copy of the record.
- (b) The record may include the decision forms of the initial hearing, a copy of the initial appeal, a copy of the citation, evidence packets submitted to the initial hearing, or any recordings of the proceeding.
- (c) New evidence is not allowed except upon a showing of good cause. Upon a showing of good cause, the Chief En Banc may allow additional evidence.
- (d) An attorney who wishes to submit additional evidence shall give notice to opposing council. Opposing council shall be given meaningful opportunity to make objections to the admission of new evidence.
- (e) Admissibility requires any new evidence to be relevant to the review of the lower court's decision according to the appropriate grounds for En Banc review. The Court En Banc shall not conduct a de novo review of lower court findings on the facts.
- (f) Evidence must be submitted and the Chief En Banc must rule on the evidence's admissibility before attorneys submit the briefs so that the briefs may contain appropriate references to the evidence.
- (g) The Chief En Banc shall forward copies of all admitted evidence and to the judges of the Court En Banc as soon as practicable.
- (h) No witness may give testimony at the En Banc hearing.

10.4.3 ORAL ARGUMENT

- (a) The petitioner and the respondent have twelve minutes each for oral arguments.
- (b) The petitioner is the only party with the right to rebuttal. If the petitioner desires rebuttal time, the petitioner must indicate to the Chief En Banc at the beginning of oral arguments how much time the petitioner desires to reserve. The petitioner may reserve up to three minutes.
- (c) Judges may intervene intermittently during oral arguments to question the attorneys. Judges may not intervene to badger, discourage, or confuse an attorney.
- (d) Judges should not intervene during the final two of twelve minutes of any party's oral argument.

10.4.4 STANDARD OF REVIEW

The standard of review to be used for any En Banc proceedings shall be declared in the writ of certiorari and made known to both attorneys prior to the submission of briefs.

(a) Questions of Fact. Petitions based on procedural error will be reviewed under the arbitrary and capricious standard, meaning that the Court En Banc can determine that a previous ruling is invalid because it was made on unreasonable grounds or without any proper consideration of circumstances.

Petitions based on decisions clearly erroneous in light of the evidence will be reviewed using the clearly erroneous standard, meaning the finding of fact does not actually match what happened and there is no way a reasonable judge could have come to the same decision.

(b) Questions of Law. Petitions on the misapplication of en banc precedent are reviewed de novo. The Court En Banc owes no deference to the lower courts application of precedents or decisions of law, except where those applications led to findings of fact. In the situation precedent is misapplied and results in a finding of fact, the Court En Banc will review that finding using the clearly erroneous standard.

10.4.5 RENDERING A DECISION

- (a) Upon the close of oral arguments, the judges shall clear the courtroom to deliberate. Decisions of the hearing panel shall be determined by a majority vote. If the Court fails to reach a decision, the issuance of a final decision may be postponed.
- (b) Upon the conclusion of deliberations, the Court shall reconvene.
- (c) The Chief En Banc shall inform the attorneys of the Court's decision if one has been reached. If no decision has been made, the attorneys will be dismissed and informed that a decision will be forthcoming.
- (d) The Chief En Banc shall assign members of the Court En Banc to draft the opinion of the Court. All decisions should be written and filed within one week after the En Banc hearing, if practicable.
- (e) A copy of the decision shall be sent to each party to the proceeding, along with a copy of each separate opinion. All points of view of the judges shall be represented in the final decision.
- (f) If no majority exists, the plurality holding of the Court En Banc shall be considered binding. Plurality decisions may have limited or no precedential value on future hearings.
- (g) If the Court En Banc reverses a ruling, the Court can either 1) grant the appeal or 2) remand the case to a three judge panel composed of at least two (2) judges not involved in the original three judge panel.
- (h) Clearly Erroneous: Findings of fact by the lower court must be clearly erroneous in order for the Court En Banc to have the authority to reverse. The adequacy of mitigating or equitable factors is left to the discretion of a lower court.
- (i) A final opinion of the Court En Banc shall be published and made available by the Chief En Banc as binding present for future cases.

10.5 STARE DECISIS

Decisions of the Court En Banc shall have precedential authority over later hearings before the Court En Banc. The Court En Banc may overrule En Banc precedent only if the previous decision was clearly erroneous or if the underlying rationale for the precedent decision is no longer valid. Three judge panels shall not contradict or overrule matters of law decided by the Court En Banc.

11. AMENDMENTS

Any amendments to these Rules shall be made at the discretion of the Chief Justice with the advice and consent of the Officers. Pursuant to University Senate Rules and Regulations 6.9.1, amendments to the Court's procedures shall take effect 30 days after submission of the proposed amendments to the chairperson of the Judicial Board, unless returned by the chairperson for correction or modification.