

COURT EN BANC MINUTES - AMENDED

Tuesday, February 9, 2016, at 5:00 p.m.

Boone County Courthouse

Law Library

Judges Present: Judges Christine Carpenter, Gary Oxenhandler, Kevin Crane, Deborah Daniels, Carol England, Kimberly Shaw, Sue Crane, Michael Bradley, Commissioners Sara Miller and Casey Clevenger.

Others Present: Boone County Circuit Clerk Christy Blakemore, Adult Court Services Supervisor Brandon Walker, Prosecuting Attorneys Tracy Gonzalez, Merilee Crockett and Steve Gunn; Defense Attorneys Ben Faber and Manuel Tatayon, Public Defender David Wallis, Court Administrator Mary Epping, and Deputy Court Administrator Cindy Garrett.

1. Call to Order/Welcome

The meeting was called to order at 5:00 p.m. by Judge Christine Carpenter.

2. Introduction of All Guests

Judge Christine Carpenter welcomed and introduced guests.

3. Approval of the January 12, 2016 Minutes

Judge Gary Oxenhandler moved to accept the January 12, 2016, minutes. Second: Judge Kimberly Shaw. The motion passed unanimously.

4. Bond Investigations

Judge Gary Oxenhandler said he and Adult Court Services "ACS" Supervisor Brandon Walker recently talked about bond reports including a recommendation from the prosecutor's office. Judge Oxenhandler believes bond investigations should be independent determinations made by ACS. He believes normally the state would oppose bond reduction and the defense would normally recommend the bond be reduced. When the state and defense have agreed that an ROR is appropriate, it is noted in the bond investigation. Judge Oxenhandler suggested if the state's opinion is sought then the defense should also be contacted. Brandon said Judge Asel may have an opinion regarding this so it may need to be discussed at the next Court en Banc. Brandon said he has not discovered any other agency or risk tool that sites the prosecuting attorney's position. In the 1980's ACS began doing bond investigations and they included the state's position, and have done so ever since. His concern about including other positions is the impact on the timeliness of the reports. Brandon found a majority of the reports submitted in the last year did not have the state's position as it is ACS policy to give the state one day to respond, or ACS submits their report noting they were unable to be in touch with the state. Brandon reports that in the '90's, there was more of an exchange of

information between ACS and the state, which was beneficial and informative, however that has not occurred within the past 10 years as people do not have time. Judge Kevin Crane asked if there would be a time where defense counsel would oppose an ROR or reduction in bond. Judge Kimberly Shaw indicated this might occur if the defendant is getting time served, and then there is a reason to remain at the jail for a few days. Judge Carpenter said if ACS has a recommendation of ROR, then she wants to know the state's opinion. She understands the need to hear from both sides but is also concerned about delays it could cause with the report being submitted. Judge Oxenhandler believes ACS needs to be independent and staff could be swayed in their recommendation based upon a recommendation from the state. Judge Carol England said if the state is not contacted then you do not hear from the victim. Judge Crane recommended that in contacting the prosecutor for their position, that there be a contact person in the prosecutor's office if the person assigned to the case is not available. Judge Carpenter said agreed that Judge Asel should be allowed to weigh in on the topic. It was agreed this topic will be taken up by the bond committee and the bond committee will present a report at the March Court en Banc meeting.

5. Temporary Increased Security Level prior to Jury Trial

Court Administrator Mary Epping reported a visiting judge requested that the case he is hearing temporarily have an increased security level as it is a jury trial. This judge indicated their county does this on all jury trials. Mary said Judge Asel was on a committee where another judge noted the same process is followed in their county. Mary provided a handout of JIS security levels. Commissioner Casey Clevenger said this was a topic at new judge orientation and the facilitator at that training also recommended temporarily increasing the security level of cases being heard by a jury. Judge Carpenter asked how many judges are inquiring during voir dire if the public has looked at case.net. She asks this question and a large majority of people answer "yes" to the question.

Judge Sue Crane arrived for the meeting at 5:24 p.m.

Judge Crane asked what the difference is between closing the courtroom and raising the security level. Mary Epping agreed to do more follow-up on the topic.

Judge Oxenhandler said even if a judge orders it, the burden of a violation of the sunshine law falls upon the clerk.

This topic will further be addressed at March Court en Banc meeting.

6. 2016 Missouri Attorney's/Paralegal's/Secretary's Handbooks and eBook

Court Administrator Mary Epping reported there was a request for the Court to provide updates to the new Missouri Attorney's/Paralegal's/Secretary's Handbook. She has included in the Court en Banc's packet on pages 6-8 information that has previously been posted to this book. She inquired if any changes are recommended, including we should

include Commissioner Sara Miller and Commissioner Casey Clevenger. It was agreed we should request the inclusion of the commissioners. It was noted the alternative courts need to be updated and should be listed under Commissioner Clevenger.

7. Legislation

Court Administrator Mary Epping reported she was at the legislature today testifying for SB860 which would provide for the Callaway Court Marshal. This would amend a current statute to create the position in Callaway. The money was allocated to OSCA's budget in 2015 but requested that the circuit seek the statutory change. Mary provided a handout of legislation she plans to follow. It was requested that Mary include legislation regarding the Expert Witness Standard.

8. Jury Folder

Circuit Clerk Christy Blakemore asked the circuit judges if they would find it beneficial for there to be a folder for items to be returned to the clerk each morning after a jury trial, since the clerk leaves after the jury is selected. It was decided there would be a designated jury folder that would be placed in the clerk basket the following morning after a jury trial.

9. Public Defender – No Longer Filing Liens

Circuit Clerk Christy Blakemore stated it is her understanding the public defender's notice of assessment will be filed on the front end of the case, and they will file now on current pending cases. The clerk is currently getting 30-50 items in the queue daily due to these filings; however it was 200-300 items daily recently due to the public defender filing these on all pending cases. The public defender is now naming these assessments differently so they can be more quickly identified. Christy also noted on the public defender lien form there is a box that says to disperse funds out of the cash bond to the public defender. Christy said if the box is marked, they are sending the fee to the public defender. If box is not checked the clerk is adding the public defender fee as part of the other costs in order to get it to disperse to the public defender. The lien forms are no longer being used.

10. Other

Judge Christine Carpenter said Judge Jodie Asel was on-call last week and put a lot of thought and effort into perceived changes that she would like to discuss in the future regarding search warrants, etc. This will be discussed at the next Court en Banc meeting.

Judge Christine Carpenter reported her last jury trial was extremely frustrating. It was a two day trial that went into the evening and there were some fairly serious technical problems. The jury had to go out and wait for quite some time in order to try and resolve the technical issues. Judge Carpenter believes it would be beneficial for the attorneys using the equipment to receive training. Technology Services Supervisor Steve Smith

and Court Administrator Mary Epping set up training sessions and they were announced through the Bar website and newsletter. The first training was last Friday and one attorney showed. The next training is scheduled for February 19 at 3:00 PM. Judge Carpenter asked what others thought about it being mandatory training. Mary added she and Steve made the decision that for all further jury trials, Steve or Michelle Wheeler will remain at the Courthouse until no more evidence is being presented or no more technology is needed. Another issue to consider is to calendar dates when OSCA is doing updates which might affect some of the systems being unavailable after hours. Judge Gary Oxenhandler stated a Bar meeting is scheduled for February 10, 2016 and it should be announced at that meeting that the Court en Banc is considering mandatory training for attorneys that might use any of the technology equipment in the courthouse for trials. This would be an opportunity to remind them of the training on February 19 to see if there is a better turn out, which could avoid mandatory training. Judge Carpenter agreed to make the announcement at the Bar meeting and to put on hold discussion regarding mandatory training to see what the turnout is for the next training.

11. Comments from the Public

There continued to be discussion regarding bond investigations. Attorney Manuel Tatayon said he understands the need for the bond investigation to be returned quickly, however if the state is going to be contacted without contacting the defense attorney, he believes that can create bias to the case. Tracy Gonzalez said the state would like to be contacted on bond investigation. She indicated if the prosecutor is not available, there is normally a bond memorandum filed and information within that memorandum could be used to know the state's position. Judge Deborah Daniels inquired to the level of the filing for the bond memo. It was agreed further follow-up will be done on this. Judge Carpenter said this topic will be taken up by the bond committee in which defense attorneys and the state are included.

Judge Kevin Crane reported there appears to be two issues that arose for on-call. The first issue is when an individual goes to the jail with a "to be set" bond and the jail calls as the defendants wants to know the amount of the bond. The judge will ask the jail staff a few questions and then verbally advise of the amount of the bond. The jail then sends a form for the judge to sign the following morning with the bond amount. The second issue is when law enforcement has a fear for the safety of the community on releasing a defendant, therefore the state contacts the judge and asks for a higher bond amount and the judge makes the decision. The state reported some judges want to hear from law enforcement. It was agreed in this situation the communication is between the state and the judge. The jail should then send the necessary form for the judge to sign. Assistant Prosecutor Marilee Crockett feels there should be written documentation versus just verbal information. The topic will be given to the bond committee to discuss. Judge Daniels stated we must ensure we are not making the Prosecutor a fact witness and this is the reason she will often tell law enforcement to send the probable cause statement. Judge Daniels referenced the case of Kalina v. Fletcher.

Defense attorney Ben Faber stated in reference to bond investigations there are times a defense attorney may recommend a defendant be released to treatment versus an ROR. Assistant Prosecuting Attorney Steve Gunn added regarding the bond schedule and investigation that the crime victim's right is lacking. He believes there may be an obligation to do this under statute.

12. Next Meeting Date

The next meeting is scheduled for March 15, 2016, at 5:00 p.m. to convene in the Boone County Courthouse, Law Library. Court en Banc group photo will be taken on this date.

Prepared by: Cindy Garrett
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Submitted by: Mary Epping
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Distributed on: _____