

**COURT EN BANC MINUTES**  
**Tuesday, March 15, 2016, at 5:00 p.m.**  
**Boone County Courthouse**  
**Law Library**

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

**Others Present:** Boone County Circuit Clerk Christy Blakemore, Callaway County Circuit Clerk Judy Groner, Adult Court Services Supervisor Brandon Walker, Defense Attorney Ben Faber, Court Administrator Mary Epping, and Deputy Court Administrator Cindy Garrett.

**1. Call to Order/Welcome**

The meeting was called to order at 5:10 p.m. by Judge Christine Carpenter.

**2. Introduction of All Guests**

Judge Christine Carpenter welcomed and introduced guests.

**3. Approval of the February 9, 2016 Minutes**

Adult Court Services Supervisor Brandon Walker said on page one, under Bond Investigations, it should say "Brandon said he has not discovered any other agency or risk tool that sites the prosecuting attorney's position" instead of "Brandon said he has not found any other pre-trial service agencies in the state that do what ACS does, and there is no other agency that uses a risk assessment tool." Judge Kevin Crane moved to accept the February 9, 2016, minutes with said amendment. Second: Judge Kimberly Shaw. The motion passed unanimously.

**4. Alcohol/Drug Related Traffic – Filing Report**

Deputy Court Administrator Cindy Garrett presented the Municipal Court report for July through December, 2015, on intoxication-related offenses as set out on page 6 of the Court's packet. The report was reviewed and no action was taken.

*The Court en Banc skipped to item #6 – Temporary Increased Security Level Prior to Jury Trial*

## **5. Bond Investigations**

Judge Gary Oxenhandler reported he is close to having a proposed rule to present to the Court en Banc. He anticipates the rule will recommend defendants being released on summons or ROR except when they are a threat to the community, a threat to themselves, or if there are concerns of their failure to appear. He believes there will be the ability to have a bond set, however it will require law enforcement to complete a probable cause statement and a nine question questionnaire to be submitted to the prosecutor for submission to the judge. He has put together some time periods with regard to differentiating between misdemeanor and felony cases. He anticipates proposing no longer having a bond schedule as is currently constitutionally mandated. The mechanics of addressing the process for on-call and during business hours still needs further evaluation. Judge Oxenhandler will have a presentation for the April Court en Banc meeting.

*The Court en Banc skipped to #11 – Assigning an Associate Judge in JIS on Felony Cases*

## **6. Temporary Increased Security Level Prior to Jury Trial**

Court Administrator Mary Epping reported she followed up on this agenda item from the February meeting where it was discussed that some circuits temporarily raise the security level prior to jury selection and new judges were being instructed of this process at the new judge training. Mary spoke with OSCA and they did not know this was being recommended at new judges training and they indicated it is not a recommend practice, however a judge can do so if they choose. OSCA staff indicated the clerk must know the reason of the security level increase and understand it is an open case and therefore the public and media must be allowed to view it if requested. There was discussion on the topic. It was decided judges act as they deem appropriate, but there would not be anything done collectively.

*The Court en Banc skipped to item #8 – PREA audit*

## **7. Annual Report on Time Standards**

Court Administrator Mary Epping provided the 2015 annual report on time standards reports for the 13<sup>th</sup> Circuit from OSCA. She indicated the annual report is for fiscal year July 2014 through June 2015. Mary presented a PowerPoint of the statistics. Mary compared our circuit with the seven other judicial circuits in the state that have a similar population, although the 13<sup>th</sup> Circuit is the smallest of the comparison group. Mary said the current standards went into effect in 2009 via Supreme Court Operating Rule 17.23. A time standards report is sent monthly to each division regarding personal caseloads. All categories of cases are broken down into 90% and 95% disposed of by certain timelines depending on the case type. For FY15, as a circuit we did very well in domestic relations, in that we were the highest of the comparison circuits and we also met the time standards. For circuit felony cases we were also the highest and exceeded the standard by 1%. On associate civil cases all circuits exceeded most of the standards.



This year no one circuit performed better than others on the standards. Mary also showed a slide comparing the 13<sup>th</sup> Circuit to the statewide average. She noted overtime we were meeting all the standards compared to the state however this year we only exceeded the state in four categories. Filings were also reviewed. Overall filings are down in many areas except for simple probate felony and felony preliminary, where there was an increase. Overall change in civil was down 5%. Mary reviewed the ratio of filings to dispositions, noting you want a ratio of 1 or higher or a backlog is created. This was compared to the seven other circuits and then compared to our own circuit over a three year period. Mary reported filings are going down in most categories, but dispositions are also going down, however it is most important to look at the relative rate index. Judge Carpenter noted Callaway seen a decrease of cases by 100 to Boone's 1,000 decrease.

Mary will e-mail the PowerPoint to the Court en Banc.

*The Court en Banc returned to item #12 - Other*

**8. PREA Audit**

Court Administrator Mary Epping reported PREA is the Prison Rape Elimination Act. The Juvenile Justice Center recently underwent their first audit, which will be done every three years. The audit entailed reviewing policies and procedures and ensuring all processes comply with PREA standards. JJC was commended by the auditor and Mary wanted it to be noted Tara Eppy and Rick Gaines are the ones to thank for a job well done. Mary received a verbal report from the auditor that JJC passed at 100%.

**9. Public Trust in the Courts**

Judge Christine Carpenter reported there was a recent situation regarding a case being followed by media where the individual is currently released on bond. There was a report in the press that the defendant appeared in court and pled guilty. There were many upset citizens about this as they were following the case and considered themselves to be included as victims, and felt the court was trying to hide something. Ultimately, many of the things reported by the media were inaccurate, as the defendant had not appeared in court and had not pled guilty. Court Administrator Mary Epping took the majority of the complaints, she educated individuals as to how the system works, and explained how to use Case.net and the "Track this Case" option. Judge Carpenter received a glowing letter indicating how lucky we were to have Mary. They indicated she was professional, open, answered all their questions and she restored the public trust in the operation of courts among victims and also created avenues for further public involvement in the operations of the courts. Judge Carpenter wanted to recognize Mary for the accurate representation of the case and getting it out so well. This letter will be put in her permanent file.

*Judge Oxenhandler arrived at approximately 5:20 p.m.*

*The judges took a recess for a Court en Banc photo at this point, then continued to the next item.*

**10. State v. Carrawell Opinion**

Court Administrator Mary Epping reported a few weeks ago Centralia law enforcement contacted Susan Tatters to inquire about on-call judges' contact information due to the *Carrawell* opinion that was recently released. Mary noted a summary of this opinion is within the Court en Banc packet on pages 7-10. The cases references the search of an individual arrested and the Supreme Court found an unlawful search of the individual's bag. Centralia law enforcement felt they may need to more frequently contact the on-call judge if they need a warrant to search upon arrest. Judge Gary Oxenhandler recommended this issue be addressed through the bond committee. It was noted law enforcement must have contact with the prosecutor and not the judge. It was requested that Mary contacted Centralia law enforcement to ensure they understand their contact must be through the prosecutor when requesting warrants and not through the judge.

*The Court en Banc returned to item #5 – Bonds.*

**11. Assigning an Associate Judge in JIS on Felony Cases**

Circuit Clerk Christy Blakemore said she is not aware of the reason why our court has never assigned a judge in JIS to a felony case on the associate level. A judge is not assigned in JIS until the case is bound over. In reality a judge is assigned but it is not designated in JIS, which can cause confusion. Judge Kevin Crane moved that assignment of the judge on the associate level be entered in JIS. Second: Judge Michael Bradley. The motion passed unanimously.

**12. Other**

Mary Epping reported Judge Sterner is being honored by the Kingdom of Callaway Supper, as a recipient of the Settler's Award on March 29. This will be at the Kingdom Dinner which is held at William Woods. Callaway Circuit Clerk Judy Groner agreed to pick up tickets for anyone who wants to attend.

Mary said Commissioner Janet Thompson and Rusty Antel have been heading up the Stepping Up initiative for Boone County to address the mental health crisis at the jail and the community in general in an effort to connect the agencies who would be involved. One issue identified is the high percentage of people at the jail with a mental health condition that is not being addressed. They have requested that Judge Schneider be on a committee that would staff cases of defendants in the jail and bring any concerns to the attention of the prosecutor, defense counsel, and anyone else who might need to know. Judge Schneider has agreed to be on the committee as she does not hear any criminal cases. Judge Christine Carpenter stated this would be a triage process on a weekly basis with the committee members. This would simply make people aware of the situations of people in custody. This should help to take a burden off the jail of their responsibility to identify mentally ill people and bring to the court's attention. No one was opposed to Judge Schneider's participation on this committee.



Judge Gary Oxenhandler said the Court of Appeals, Western District, handed down a case today regarding processes and protocol to follow for “not guilty by reason of insanity” cases. The case comes out of Callaway County and it was affirmed in the 44 page opinion. Judge Oxenhandler will send the case to all judges. He stated it is an extremely complicated opinion and felt all should read the case if using the 552 protocol.

Judge Deborah Daniels said this opinion is different than if a defendant is not competent to assist in their own defense. She cautioned all that she received a request for a change of placement, where law enforcement had remained on guard with the person at the hospital. The request was to change placement to a psychiatric hospital, which she denied due to the criminal case pending, because in moving the defendant to another psychiatric hospital the person would have been released from custody. She suggested that a case cannot get too far ahead on the mental health case when a criminal case is pending.

Court Administrator Mary Epping provided an update on legislation. She noted the below bills:

HB1685 and SB860 would allow Callaway County a state paid Court Marshal. The funding was approved in 2015, but the statutory change was not passed. Both bills have been voted out of committee as a do pass. The house bill seems to be moving more quickly.

SB 572 known as the Municipal cleanup bill. It modifies the provisions related to municipal courts.

HB2743 creates the 47<sup>th</sup> circuit with Callaway and Audrain counties. SB 585 is a bill passed last year that split Taney and Christian county, creating a 46<sup>th</sup> circuit. This bill included an updated to statute that would allow juvenile officers and any juvenile staff who are state paid to remain as state paid if a county becomes a single class circuit. Therefore those staff would be protected, which was a concern in the past.

Mary has a long list of many other bills and she would be happy to send out her update if requested. She said overall bills seem to be moving slowly.

*The Court en Banc returned to item #7- Annual Report on Time Standards.*

Judge Sue Crane advised they are looking at the Bench/Bar meeting being in June. It will probably be at the Fulton Country Club. It will be unique and fun.

### **13. Comments from the Public**

Defense attorney Ben Faber said he believes *Carrawell* is a great case that is pretty broad and he anticipates the court hearing about it frequently in the future.

**14. Next Meeting Date**

The next meeting is scheduled for April 19, 2016 at 5:30 p.m. to convene in Callaway.

Prepared by: Cindy Garrett  
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Submitted by: Mary Epping  
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Distributed on: 4/15/16