

**COURT EN BANC MINUTES
Tuesday, August 23, 2016, at 5:00 p.m.
Callaway County Courthouse
Jury Assembly Room, Second Floor**

Judges Present: Judges Christine Carpenter, Jeff Harris, Kevin Crane, Jodie Asel, Kimberly Shaw, Carol England, Sue Crane, Michael Bradley, Deborah Daniels, Commissioners Sara Miller and Casey Clevenger, and Municipal Judge Robert Aulgur.

Others Present: Boone County Circuit Clerk Christy Blakemore, Callaway County Circuit Clerk Judy Groner, Court Services Supervisor Brandon Walker, Court Marshal Les Werner, Sergeant John Balkenbush, Boone County Prosecutor Dan Knight, Callaway County Prosecutor Chris Wilson, Assistant Prosecuting Attorney Risa Perkins, Public Defenders David Wallis and Jeremy Pilkington, 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 July 26, 2016 Minutes

Judge Deborah Daniels moved to accept the July 26, 2016, minutes. Second: Judge Kimberly Shaw. The motion passed unanimously.

4. Destruction of Records

Deputy Court Administrator Cindy Garrett reported the Boone County Circuit Clerk's office has asked to destroy by shredding the documents on page 4 of the Court en Banc's packet. Judge Kimberly Shaw moved to approve the destruction of the records listed. Second: Judge Michael Bradley. The motion passed unanimously.

5. Bond Procedures

Commissioner Casey Clevenger arrived at 5:15 p.m.

Judge Kevin Crane said there is currently an administrative order for the Boone and Callaway County Uniform Bond Schedule. The order on page 5 of the Court en Banc packet is a proposal to not have a scheduled bond but rather a waiver process. There was discussion regarding Attachment A on page 6 of the Court en Banc's packet and

Attachment C on page 8 of the packet. Judge Crane said he believes there is not a concern as to Attachment C except for the Public Defender. Judge Deborah Daniels provided input regarding Attachment A – Bond Information Form, stating she would be opposed to the arresting officer gathering the information on state violations for the following reasons: a) the rules do contemplate only the probable cause statement at the time the charge is filed; b) the arresting officer's Bond Information Form would destroy the fact witness issue as there is no place where the officer is attesting to this information under independent oath; c) the cases that talk about the court's obligation to consider financial reasons comes after the charge is set and at a time when the court is doing a speedy review of the conditions that are holding the person in custody at the time; d) under the Missouri state rules you never post a bond or bail until the charge is filed; e) having law enforcement commenting on character or mental condition or nature of circumstances of the violation prior to charge being filed will keep appellant lawyers busy. Municipal Court Judge Bob Aulgur agreed Attachment A is only useful if you are going to set a bond prior to charging.

Judge Crane said he would be in favor of only requiring the probable cause statement from law enforcement and not Attachment A, as that would facilitate a pre-charge bond setting. Judge Crane said his goal as chairperson of the bond committee is to be as righteous with the United States Constitution in the view of federal courts as possible. It was clear a scheduled bonding system, absent some type of a waiver, was not going to be possible.

Judge Sue Crane inquired about changes to the bond schedule allowing a no bond for 24 hours on domestic cases. Judge Kevin Crane stated the current bond schedule will need to be amended due to the new criminal codes that go into effect on January 1, 2017.

Judge Kevin Crane moved that the order of page 5 be approved with the following changes: In the second paragraph add a period after "Probable Cause Statement", striking the rest of that sentence; in paragraph 3, change Attachment "B" to "A" and change Attachment "C" to "B". Page 6 of the packet would be eliminated, page 7 would be changed to "Attachment A" and page 8 would be changed to "Attachment B." Additional changes to page 8 include correcting the spelling of Misdemeanor in the title and removing the word "Boone" from paragraph 1 and on the signature line. Second: Judge Deborah Daniels. Judge Michael Bradley complimented Judge Crane for his work on this process. However, he is of the opinion that at some point we need to get away from the bond schedule. He believes the current process is a start to the process. The motion passed unanimously.

Judge Kevin Crane asked about an effective date. He would like to meet with all law enforcement officials about the new process before it goes into effect. It was agreed Judge Carol England and Judge Sue Crane will meet with Callaway County law enforcement officials and Judge Kevin Crane will meet with Boone County law enforcement officials. Judge Carpenter would like to have a goal of this going into effect by September 15, 2016. Judge Carpenter plans to sign this order on August 24, stating

Administrative Order 7-05 is repealed effective September 15, 2016.

6. Conservatorship and Minor Settlements

Judge Jodie Asel said that in cases filed for the approval of minor settlements under the statute (507.188 RSMo 2000) if “the next friend or guardian ad litem has in his hands money or property of the minor in an amount in excess of ten thousand dollars, then the court shall order the next friend or guardian ad litem to pay or transfer such money or property to a duly appointed and qualified conservator of the minor”. Some attorneys take the position that if the proceeds of the minor settlements are in an annuity or structured settlement such that no money is paid out until after the child’s eighteenth birthday, a conservatorship is not required. Judges around the state (and within the 13th Circuit) vary in the application of the statute. Local rules from the 7th and 14th circuits in which cases filed for the approval of minor settlements are assigned to probate divisions were reviewed. Assignments of cases for approval of minor settlements to a single division would avoid the disparity of treatment in such cases within our circuit. Furthermore, if a conservatorship is deemed necessary it would be filed in the probate division as well so that both cases will be in the same division.

Judge Asel, Judge Daniels and Judge England will draft a proposed rule to bring to Court en Banc in September assigning minor settlement cases to the probate court.

7. Cell Phones in the Courthouse

Judge Christine Carpenter distributed a proposed amendment to the court’s cell phone policy, along with a summary of procedures of other circuits around the state. Judge Carpenter said there has been input from law enforcement, the local bar and our own security staff. She sees this as a matter of public safety and security for the courthouse. She understands there has been a lot of conversation regarding this topic and there’s a concern about the inconvenience to the public; however, she believes we must balance public safety with convenience. There was discussion regarding the proposal. It was recommended a sign be placed at the prosecutor’s office that witnesses/victims are not to use their phone except for within the prosecutor’s office. Judge Carpenter believes we need plenty of time to provide notice to the public if a revised policy is approved. Judge Carpenter moved to amend Local Court Rule 9.6 to forbid people to enter the courthouse with a cell phone with the following exceptions: attorneys in good standing, state and county employees on court business, members of the press, law enforcement and probation and parole when on official duty only, victims/witnesses and participants in the prosecuting attorney office or juvenile office for business only, and any other person the court would authorize. It is proposed we develop an identification system for those people who are exceptions and the effective date be October 1, 2016, and that this be in effect for Boone County Courthouse and Callaway County courtrooms and that lawyers be ordered to restrict their phone use to business only in the courtrooms. Second: Judge Kevin Crane. The motion passed unanimously.

8. eJuror

Court Administrator Mary Epping stated there was a meeting regarding eJuror and OSCA asked whether the 13th Circuit would be willing to pilot the program. Originally the pilot was to begin in St. Louis and Jackson County and then to the 13th Circuit. However that had a strong reaction from St. Louis and Jackson counties. Currently the program has had some delays and a date to potentially roll out is unknown.

Judge Sue Crane inquired about purchasing a scanner for jury questionnaires in Callaway County as currently paper copies are being made for attorneys in Callaway. It was noted a scanner would cost approximately \$900. More research will be done on options currently available to scan the questionnaires in Callaway County.

9. Settlement Conferences Local Court Rule

Court Administrator Mary Epping stated the settlement conferences schedule was recently reviewed and Judge Shaw will begin doing these in Boone County. Mary stated page 10 of the Court en Banc's packet proposes changing the rule to delete the reference to the specific day of the week settlement conferences are held. Judge Michael Bradley moved to remove the reference to any specific days with the local court rule. Second: Judge Carol England. The motion passed unanimously.

10. 13th Circuit Website

Deputy Court Administrator Cindy Garrett said she has done some research to see if it would be beneficial to add a section to our website to post Agenda Notices of Meetings and Administrative Orders. She reviewed what other circuits have posted on their websites. The Court en Banc recommended a section be added if deemed necessary and helpful.

11. Policy on Judges Portraits

Court Administrator Mary Epping said the question was recently asked whether a former judge's photo could be hung in the courthouse. Mary stated it is her understanding that a judge had to serve a full term and no longer be practicing law for their photo to be hung in the courtroom, but she did not see that practice documented anywhere. The Court en Banc agreed the practice has been a person cannot be a practicing lawyer and have served a full term.

12. Security – Callaway

Court Administrator Mary Epping said a security meeting scheduled for last week was cancelled and will be rescheduled soon. An X-ray machine has been purchased. Judge Carol England stated there was recently a meeting with the county commissioners and they are ready for the security committee to make a proposal to them regarding the use of

the X-ray machine. The county commissioners are also making plans to get the machine moved into the courthouse.

13. Family Services and Justice Fund, Status Offender Representation

Court Administrator Mary Epping said as part of the strategic plan for utilizing the Family Services and Justice Fund, we will begin using these funds for status offender representation. The Public Defender will not represent status offender youth as detention is not a possibility. It is not anticipated there will be significant number of these cases. Attorneys will be paid \$250 per case.

14. Docket Schedule

Court Administrator Mary Epping said she will be reviewing the docket schedule. She will be reviewing time spent on dockets and asked judges to let her know of any changes they would like to see. All circuit judges informally agreed there is no longer a need in having the jail on the Friday video docket. This change will be made as quickly as possible.

15. Legislative Update

Court Administrator Mary Epping provided a legislative update. She said OSCA has provided a 97 page document with all the changes that is available on the Court Information Center. She provided highlights of the changes including limited driving privileges has an exception for employment; protection orders now allow petitioners to request the court to order transfer of the billing rights of their cell phone; parenting plan guidelines will be reviewed by the Family Court Committee; child custody and visitation now has a paragraph to include in each order; adoptions will now have a new contact preference form created by the bureau of vital statistics regarding whether the biological parents wants to be contacted by the adopted child; expungements has an increase in the surcharge effective in 2018, allows multiple offenses to be included in one petition, provides specific offenses no longer eligible, and no longer requires fingerprint cards; new commercial receivership act was passed which essentially creates a bankruptcy case at the state level; updates regarding Children's Division and cases to be entered into the central registry; life sentence for juvenile offenders requiring specific notices; municipal traffic adjustments; witness mileage will now be .37 cents and DOC will reimburse at a higher rate of \$21.08; and notaries may now sign by electronic signature.

16. GAL Implementation Plan

Deputy Court Administrator Cindy Garrett said the GAL Implementation Plan on page 11 and 12 of the Court en Banc's packet is to be reviewed annually. No revisions were made to the document this year. Judge Carol England moved to accept the GAL Implementation Plan. Second: Judge Kimberly Shaw. The motion passed unanimously.

17. Bereavement Leave

Deputy Court Administrator Cindy Garrett said the Bereavement Leave policy on pages 13-15 of the Court en Banc's packet is amended to more accurately reflect the policy of Court Operating Rule 7. Our policy has always noted this as "compassionate leave", however Court Operating Rule 7 has it noted as Bereavement leave and it is more specific as to relatives that would apply. Judge Deborah Daniels moved to change the Court policies as referenced on page 14 of the Court en Banc's packet. Second: Judge Carol England. The motion passed unanimously.

18. Sexual Harassment Advisory Committee

Deputy Court Administrator Cindy Garrett requested the Court en Banc approve the Sexual Harassment Advisory Committee as noted on page 16 of the Court en Banc's packet. The changes from last year include Peter VanKort replacing Jason Terrell for the Court Marshal's office, Pam Dampier for the Juvenile Office and Courtney Pulley for the Juvenile Justice Center. Judge Deborah Daniels moved to approve the advisory committee. Second: Judge Kimberly Shaw. The motion passed unanimously.

19. Other

Court Administrator Mary Epping said all circuits were asked by OSCA to create policy stating no one in treatment court can have entrance or exit fees and a policy for indigency for treatment court. The policy as drafted lowers cost based on poverty guidelines (income and number of dependents). Probation officers will provide a monthly update on a participant's income and number of dependents at the staffing. The plan currently has the maximum being the current fee and then decreasing by \$25 increments. The reason for doing this is we receive money from the state Drug Court Coordinating Commission and it would likely affect future funds if we do not comply. The effective date is September 1, 2016. Mary noted our current Drug Court Fund has an excessive balance therefore we believe we can implement this plan; however, we will need to evaluate the plan on an on-going basis. Commissioner Casey Clevenger noted this would be applied retroactive for those who have outstanding balances.

Mary provided an update on the new Fair Labor Standards Act that goes into effect December 1, 2016, as it is a new standard for exempt employees. An employee will need to make \$47,500 to be an exempt. Mary said we have done an analysis of our state and county employees. The state has also asked for data on our state employees and is likely doing an analysis to determine if it is more cost effective to pay overtime or increase their salary over the FLSA standard. OSCA is evaluating whether the employees should be classified as exempt.

Judge Kevin Crane requested bond schedule changes be added to the next Court en Banc agenda in anticipation of the new criminal code. Judge Crane requested that Deputy Court Administrator provide the updated Criminal Code Guide to all judges to review

prior to the next meeting. Judge Crane and Judge Jodie Asel will be working on a draft of a proposed change to the bond schedule for the next meeting.

20. Comments from the Public

Callaway County Circuit Clerk Judy Groner asked who would be doing settlement conferences for Callaway. It was noted this is currently being discussed and a decision should be made soon.

Court Administrator Mary Epping stated an active shooter training is being held in Callaway County on September 8 for any judges interested in attending. Court Marshal Les Werner hopes to schedule another training in Boone County as well.

21. Next Meeting Date

The next meeting is scheduled for September 27, 2016, at 5:00 p.m. to convene in the Boone County Courthouse, Law Library. Adjourned at 6:40 p.m.

Prepared by: Cindy Garrett
Cindy Garrett
Deputy Court Administrator

Submitted by: Mary Epping
Mary Epping
Court Administrator

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