

COURT EN BANC MINUTES
Tuesday, January 30, 2018 at 5:00 p.m.
Boone County Courthouse
Law Library, Second Floor

Judges Present: Judges J. Hasbrouck Jacobs, Kevin Crane, Jeff Harris, Jodie Asel, Kimberly Shaw, Carol England, Sue Crane, Michael Bradley, Leslie Schneider, Deborah Daniels, and Commissioner Sara Miller.

Others Present: Boone County Circuit Clerk Christy Blakemore, Boone County Circuit Clerk Unit Manager Lana Brooks, Callaway County Deputy Circuit Clerk Megan Morse, Attorneys Kevin O'Brien and Travis Jacobs, Court Reporters Diana Taylor, Julia Hunt and Jenni Leibach, 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 Kevin Crane.

2. Introduction of All Guests

Judge Kevin Crane welcomed guests.

3. Approval of the December 12, 2017 Minutes

Judge Jodie Asel moved to accept the December 12, 2017, 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 6 of the Court en Banc's packet. Judge Jodie Asel moved to approve the destruction of the records listed. Second: Judge Kimberly Shaw. The motion passed unanimously.

Skipped to # 8

5. Assignment of Expungement Cases

Judge Kevin Crane said there were changes to section 610.140, RSMo, effective January 1, 2018, which is noted on pages 7-15 of the Court en Banc's packet.

Judge Crane asked if there was any reason why these cases cannot be randomly assigned among associate and circuit judges. Circuit Clerk Christy Blakemore said the filing fee is assigned as a circuit filing. She also indicated the clerk can have the filings randomly assigned by case type. It was agreed the cases would randomly be assigned to all associate and circuit judges, with the exception of Judge Leslie Schneider. Judge Crane said if there is too much of an impact on the associate judges in Callaway County, then he would re-evaluate the process. It was agreed once the case was randomly assigned the judge would set the case to be heard in 30 days. If there is an objection to the expungement, the judge would then set the case at 90 days.

6. Jury Questionnaire

Deputy Court Administrator Cindy Garrett said there was follow-up regarding the concerns of race being asked on the jury questionnaire. Circuit Clerk Christy Blakemore spoke with Judge Gary Lynch and Judge Bates, who are on the Case Management Oversight Team. Judge Bates indicated the race question was included on the questionnaire as it had to do with the Batson challenge.

Cindy said she spoke with Betsy AuBuchon, Clerk of Supreme Court, who indicated the Supreme Court determined the race question needed to be asked, but they left it as optional. She was unable to provide any further information as to why.

Cindy also spoke with Nick Boehlen at OSCA, who has been our contact with implementing eJuror. Nick provided Cindy with a proposed report that can be used by the judge for purpose of him/her granting/denying excuses. Race will not be included in that report.

Court Administrator Mary Epping provided a handout, stamped confidential. The handout showed the jury process in its current form and what the process would be once Show-Me Juror is implemented. The Court en Banc approved the process for receiving bios versus the questionnaire; they approved randomization of jurors (after check in), including if there are two juries; they approved the new strike list; and they approved the automated seating chart.

7. Child Support Court

Judge Kimberly Shaw has been working on a proposal for a post plea Child Support Court. She has been meeting with Charles Stevenson from Focus on Fatherhood out of Marshall, Missouri, where they have a program that is doing extremely well and they would like to duplicate in Boone County. She is also working with Russell Freeman and Damian Dean from United Community Builders. This agency would assist with parenting classes, GED classes, and employment training. This agency is also working with John Jenright at Child Support Enforcement to discuss the proposed program and how they may be able to assist with providing funding for a case manager to ensure timely compliance of the defendants in the program. Judge Shaw will continue to provide updates at the next Court en Banc meeting.

Skipped to #9

8. Local Court Rule 23.1 & 23.2

Judge Deborah Daniels arrived.

Judge Kevin Crane said based on recent changes with Supreme Court Rule 81.12 as well as comments from OSCA as to the security level for transcripts, the court reporters request changes be made to Local Court Rule 23.1 and 23.2 as noted on page 16 of the Court en Banc's packet. Judge Jodie Asel moved to accept the changes. Second: Judge Kimberly Shaw. The motion passed unanimously. It was noted it would become effective in 60 days.

Skipped to # 10

9. Protocol for Presenting Exhibits

Judge Sue Crane said in family court they frequently receive a lot of exhibits. She would prefer that exhibits be submitted through a CD. Judge Crane said she sought feedback from attorneys regarding this suggestion and they have not voiced any concerns. She indicated she would like to seek some continuity within the circuit on the process of how exhibits are presented. Judge Kevin Crane said he will make a record to the exhibit, the exhibit number and an explanation of the exhibit, however the state or defense is responsible for maintaining exhibit that are admitted into evidence. It also notes on the record who is responsible for maintaining the exhibits. Judge Sue Crane said in family court there are exhibits they need to take to their office in order to determine how to rule. Judge Leslie Schneider suggested they develop a process for continuity in family court cases. Therefore, the family court judges and commissioner will meet and come up with a proposed rule in family court as to exhibits. This will be reviewed at the next Court en Banc meeting.

Skipped to #11

10. Scheduling of Associate Circuit Jury Trials

Judge J. Hasbrouck Jacobs arrived.

Judge Kevin Crane said he recently issued an edict that when a court reporter was available they would provide services for an associate circuit jury trial. It then came to his attention that in past when associate circuit judges heard jury trials, FTR gold was used to tape the proceeding instead of using court reporters.

Judge Crane said his opinion is if a court reporter is available, that associate circuit jury trials should be recorded by a court reporter as opposed to using FTR gold. He believes a court reporter is more accurate and, from a system stand point, it allows the clerk's employees to do clerk work after voir dire instead of having to be in courtroom the entire time with the FTR gold recording. Judge Crane said Judge Bradley recently tried a jury trial where FTR gold was used. During the time of the trial, the clerk's office was down eight staff due to unfilled positions and illness. Because FTR gold was used, another clerk was removed from their office to sit in court the better part of the day. Judge Crane said he cannot direct a circuit judge to have their court reporter; available, however he believes it is better for them to be present if available.

Judge Crane asked for feedback from others as he understands there is a differing of opinions. Judge Leslie Schneider said there was a case out of Adair County where the circuit clerk was recording a trial and at least a half of day of recording was missing which resulted in a reversal of the case. She said that would not have occurred with a court reporter. Judge Crane said these same things have occurred in states who have attempted to save money by not having court reporters. His view is the proceeding of a jury trial governs a court reporter, if available. Judge Jodie Asel inquired if there was research into how many cases there have been that requested a transcript and the difference in expense for the preparation of a transcript. Judge Crane said there is no way to quantify the expense issue. It was noted the transcript is done at OSCA when recorded by FTR gold. The clerk requires a deposit and OSCA bills out the cost of creating the transcript. There have been nine jury trials at an associate circuit level since the Court en Banc voted for misdemeanor jury trials to be heard by an associate circuit judge. It is unknown how many transcripts have been requested of those cases. Judge Jodie Asel said she tried jury trials at the associate level for many years, never had a court reporter, and is not aware of any instance

where there was a problem of getting a good transcript from electronic recordings. Judge Asel wanted to know if we have ever had a problem locally with transcripts, how many transcripts have been created, and what is cost of getting transcripts from an electronic recording versus using a court reporter. Judge Carol England said she had a case recently where the parties had one day of trial and the recording were transcribed prior to the second day of trial. She viewed the transcripts and was shocked at how inaccurate the transcript was. Judge Deborah Daniels said she had a probate case that was electronically recorded that was appealed and the crucial part where she found the ability to pay, was what was lost on the recording.

Judge Kevin Crane said there are problems with the electronic taping and it requires a clerk to be in court the entire time, not just during voir dire. He further indicated if he were an associate circuit judge he would want a court reporter, if available. It was agreed that court reporters are state paid employees, however they are employed by their specific circuit judge. Judge Crane said unless further disagreement, we are back to determining if there is an agreement for court reporters to be preferable in associate circuit jury trials and, if so, how to give them notice so they can determine availability. Associate circuit judges said they prefer to have court reporters for jury trials. Judge Crane said we will look for this to occur, when available. Judge Crane requested a process be arranged so they get notice of misdemeanor jury trials.

Returned to #5

11. Reappointed of Callaway County Board of Jail Visitors

Judge Kevin Crane said that page 17 of the Court en Banc's packet lists the proposed members for the Callaway Board of Jail Visitors. Judge Kimberly Shaw moved to approve Larry Jones to the Callaway Board of Jail Visitors. Second: Judge Leslie Schneider. The motion passed unanimously. It was noted a female republican is needed to complete the board. This will be reviewed at the next Court en Banc meeting.

12. Docket Changes

Deputy Court Administrator Cindy Garrett provided an overview of the changes to dockets effective March 1, 2018, as noted on pages 18-22 of the Court en Banc packet.

For Callaway County Circuit Court dockets, circuit Divisions I, II and IV will have a full day in Callaway County. Each of the divisions are also adding a DOC video docket in the afternoon. There were no changes to the Callaway associate circuit docket.

For Boone County the Division XI docket was redistributed to other divisions until the governor appoints a replacement. Other minor changes were also noted:

Division I is assuming an associate criminal docket each morning and afternoon on Wednesday. He will also be doing weddings on the 2nd Friday.

Division II is assuming Landlord/Tenant dockets on each Thursday morning and afternoon.

Division III will have civil returns and Trials on Thursdays.

Division IV will have an associate criminal docket each Tuesday morning and afternoon.

Division V will assume an arraignment and criminal docket on Monday afternoons.

Division VIII is adding a Juvenile Detention Hearing docket each Thursday at 1:00 and a Special Settings docket on the 5th Tuesday and Wednesday mornings.

Division IX will assume a DUR/DUS docket on Wednesday mornings and he is adding a Bond Forfeiture Hearings docket on the 4th Friday of the month.

All cases moving from Division XI to new division will still show as Div. XI through at least March with the exception of new civil filings, as they will be set with the judge assigned.

Judge Kevin Crane said he will follow-up with the governor's office regarding the appointment of a judge for Division XI.

13. Legislation

Deputy Court Administrator Cindy Garrett provided information on bills that are moving through the system which included the following:

HB1369 – revises “service dogs” to include animals that provide support or therapeutic functions for individuals with psychiatric or mental disabilities. This has been reported “do pass.”

HB 1255 & SB793– Raises the age of juvenile court jurisdiction through the age of 17.

Cindy advised she and Court Administrator Mary Epping would be following legislation therefore please let one of them know if there is particular legislation you want followed.

14. Other

Judge Kevin Crane said he was just provided an updated wait list for the Public Defender in Boone County that he forwarded to everyone by email. He said you will see the list continues to grow.

Judge Crane said Jail Captain Keith Hoskins indicated there are five cases where defendants are in custody in another county, however they have a pending matter in Boone County. He asked judges to let him know of any other cases where the individuals were only brought to Boone County for the court hearing but would return to another jail where they are held for charges in that county. He is trying to find a way to get the prosecutor involved to get these defendants housed in Boone County so that the public defender will enter on the case and the case can begin moving. He understands this is counterproductive in regards to jail overcrowding concerns. He said for all the circuits who do DOC video, if the individual is in DOC and has a matter in Boone, if they file a motion for speedy trial, the public defender will represent them.

Judge Crane said this is Judge Deborah Daniels's last Court en Banc meeting. He thanked her for her service. Judge Daniels said it is bitter sweet, however she is hoping one door closes and another will open. She said it has been her great pleasure to serve in the office with everyone. Judge Daniels indicated she will have a get together, however a date has not been set as she wants to be sure her children can be present.

15. Comments from the Public

No comments.

16. Meeting Date

The next meeting is scheduled for March 6, 2018, at 5:00 p.m. to convene in the Callaway County Courthouse, either 1st Floor Courtroom or Second Floor, Jury Room. Judge Kimberly Shaw moved to adjourn. Second: Judge Carol England. The motion passed unanimously. Adjourned at 6:00 p.m.

Prepared by:

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Submitted by:

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Distributed on:

3/2/18