

COURT EN BANC MINUTES
Tuesday, January 29, 2019, at 5:00 p.m.
Boone County Courthouse
Law Library, 2nd Floor

Judges Present: Judges Brouck Jacobs, Jeff Harris, Kevin Crane, Jodie Asel, Kimberly Shaw, Carol England, Sue Crane, Tracy Gonzalez, Stephanie Morrell, Commissioners Sara Miller and Casey Clevenger, and Columbia Municipal Judge Cavanaugh Noce.

Others Present: Boone County Circuit Clerk Christy Blakemore, Unit Manager Sherry Seiling, Callaway County Circuit Clerk Megan Morse, Adult Court Services Supervisor Brandon Walker, 13th District Public Defender Sarah Aplin, Assistant 13th District Public Defender 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 Kevin Crane.

2. Introduction of All Guests

Judge Kevin Cranes welcomed guests.

3. Approval of the December 11, 2018 Minutes

Judge Jodie Asel moved to accept the December 11, 2018, minutes. Second: Judge Kimberly Shaw. The motion passed unanimously.

4. Orders of Destruction – Circuit Court

Deputy Court Administrator Cindy Garrett reported the Boone County Circuit Clerk's office has asked to destroy by shredding the documents on pages 7 and 8 of the Court en Banc's packet. Judge Jodie Asel moved to approve the destruction of the records listed. Second: Judge Stephanie Morrell. The motion passed unanimously.

5. Election of Presiding Judge

Judge Kevin Crane provided the paper ballots to the Court en Banc. He said he was willing to hold the office for another two years; however, he recommends that thereafter it return to a two year rotation. Columbia Municipal Judge Cavanaugh Noce said there is a large amount of administrative work that goes along with being the presiding judge. He believes anyone willing to learn and keep doing it, has developed a very important skill. He does not believe the duty should be shared unless someone wants the responsibility. He believes continuity and the amount of workload is important and should be taken into

consideration in the future. Judge Jodie Asel said it is like having a job on top of a job. There was discussion that two years is not enough time for one person to have the position; however, it was noted the rule requires a vote every two years. Judge Sue Crane also noted that she believes a person should hold the position for more than two years. Judge Kevin Crane appointed Judge Tracy Gonzalez and Judge Stephanie Morrell to step out in the hall and count the votes. Judges Gonzalez and Morrell left to count the votes and returned shortly thereafter to announce Judge Kevin Crane won the election unanimously and will remain presiding judge. They then destroyed the ballots.

6. Update to Rule 33, Bond Hearing Rule

Judge Kevin Crane said on pages 9 through 11 of the Court en Banc's packet is proposed macros Judge Michael Bradley prepared prior to retiring, based on changes to Supreme Court Rule 33. It was noted the changes go into effect July 1, 2019. Judge Sue Crane said she was already considering making some changes to her domestic violence docket and she believes this material will be a good platform to build on when looking at alternative to monetary bonds. It was agreed all judges will review Rule 33, along with the information prepared by Judge Bradley and discussion should be had to ensure compliance. All felt they are currently in compliance. Judge Crane said the circuit judges will also review to determine how the rule applies to the circuit level.

7. Appointment of Board of Jail Visitors

Judge Kevin Crane noted on page 12 of the Court en Banc packet is a current list of the Board of Jail Visitors. Judge Brouck Jacobs moved that John Waldschlager, a male Republican resident of Boone County, be nominated to fill the vacancy to the Boone County Board of Jail Visitors. Second: Judge Jeff Harris. The motion passed unanimously.

8. Public Defender Waitlist

Judge Kevin Crane said Jeremy Pilkington is the Deputy District Defender, under District Defender Sarah Aplin. Judge Kevin Crane said he met with both of them last week and their discussion included:

- 1) As a first priority, the public defender will begin entering on Department of Corrections inmates with a probation violation case pending on the waitlist.
- 2) The public defender requests associate circuit judges put more onus on the accused to hire private counsel. In support of this, Court Administrator Mary Epping is contacting local bars to create a list of local private counsel who are willing to represent indigent defendants for a fee.
- 3) Developing a better process of representation of indigent, in-custody juvenile offenders, in an effort to relieve this court from paying contract attorneys. We inquired of the law school to see if they would be interested in supervising Rule 13 law students to do juvenile defense work; however, that has been unsuccessful to date.

- 4) Developing a Child Support Court, where one defense attorney and prosecuting attorney could attend a specific docket with Judge Kimberly Shaw. The court has discussed with a prosecuting attorney about filing these cases as civil versus criminal; therefore, a public defender would not have to appear. It is not anticipated this would eliminate all criminal child support cases.
- 5) Judge Crane is requesting the prosecutor's office do an additional review of the waitlisted cases for potential pre-plea diversion. The public defender agrees to remove those cases from the waitlist and represent them in an effort to dispose of through diversion to treatment court. Commissioner Casey Clevenger said procedurally the prosecuting attorney needs to provide the public defender with names of those they are recommending for diversion, and the public defender will need to contact the defendants and notice the case up. Judge Crane agreed to have the cases set on his docket. Judge Kimberly Shaw said she recently had the prosecutor report in court that a defendant was eligible for pre-plea diversion; therefore, she placed it in her order with notice to the public defender.

9. BIP Bond Condition

Judge Kimberly Shaw asked that Amy Cunningham, the Domestic Assault Court Coordinator be sent an email when judges receive warrants on domestic assault cases and the prosecuting attorney requests a condition of bond that the defendant enroll and complete a batterer's intervention program, and if the judge orders the condition of BIP. Amy should be provided with the case number and name of the defendant so she can follow-up with the individual when they bond in an effort to assist them in getting signed up for BIP. Judge Stephanie Morrell said she just signed approximately 15 warrants the day prior with this bond condition. Circuit Clerk Christy Blakemore said they can attempt to find those cases to notify Amy. Christy will ask her staff to also watch for these cases in the future.

10. Court Administration Goals

Court Administrator Mary Epping provided a list of 2019 goals:

- 1) Treatment Court: look at housing options versus Reality House which is currently \$45 a day.
- 2) An internal training program, in coordination with the clerk's office, has begun for staff and supervisors. She also hopes to expand this to provide additional training to supervisors.
- 3) An internal audit was completed with the Juvenile Officer on their standards. She believes there will be follow-up on this, including training staff and cooperating with state folks when an outside audit is completed.
- 4) Explore options and make necessary changes at the Juvenile Justice Center for when Raise the Age goes into effect in two years.
- 5) Explore options and other possible solutions with the public defender waitlist.
- 6) Continue to work with county and city officials regarding mental health initiatives. Mary advised Commissioner Janet Thompson's goal is to have an access center where law enforcement can take individuals with mental health

issue versus taking them to the jail. She said the chief of police says 80% of the calls they receive are for people in mental health crises.

7) Finalize working manuals for staff planning to retire in the next two years. It is important for us to have working manuals and the institutional knowledge of these folks. She said our Budget Administrator Diana Vaughan plans to retire next year and JJC Facilities Maintenance Don Roddy will be retiring at which time we lose this position with the state. She anticipates we will get a county FTE for Don's position; however, it is important to have his institutional knowledge of the building in writing. Mary asked that she be advised if there are other items that judges feels she should specifically give attention to.

Judge Kevin Crane said another goal that has been accomplished is adding art in some of the courtrooms and judge's chambers that is relevant to the courthouse. He said some of this art was donated by Judge Michael Bradley. Judge Crane thanked Mary for her help on this.

11. Alcohol/Drug Related Traffic Report

Deputy Court Administrator Cindy Garrett presented the Municipal Court report for July through December, 2018, on intoxication-related offenses as set out on page 13 of the Court en Banc's packet. Cindy said the report for January through June for Holts Summit showed only 1 case pending at the end of June. However, the clerk in Holts Summit found errors that had been made in JIS. Those errors have been corrected, which reflects there were actually 12 cases pending, therefore the current report shows those 12 cases pending as of July 1, 2018. The report was reviewed and no action was taken.

12. PA Portal Update

Boone County Circuit Clerk Christy Blakemore provided a handout of data on the Fine Collection Center for FY17. Christy said the PA portal came about with Senate Bill 5 for municipal prosecutors as they needed a mechanism to file their tickets with the court. She said there are also state prosecutors that do not have a computer system that allows them to file tickets with the court. She noted the PA portal is an enhancement to the eFiling system to be a tool to get filings to the court, however it is not intended to be a case management system. Christy said the schedule is for this to be assessable to all counties by April 1, 2019. Many of our municipal prosecutors are using this program and it is working well, and it is currently being piloted by 15 counties including Callaway. Christy said Supreme Court Rule 37 and 38 have been updated and they go into effect May 1, 2019, which is the same date FCC is going away. The state is deploying the program based on Highway Patrol troop coverage area. Boone and Callaway County are scheduled to go live on February 1 for Troop F. The process will start with the returns from FCC (not guilty pleas of defendants who failed to return a plea to FCC) and the remaining FCC tickets will begin being processed through the PA portal in late March. Christy said the highway patrol tickets will go electronically to the PA portal and the portal is the only way the prosecuting attorney can get those tickets. It is up to the prosecutor whether they use the portal to file the tickets with the court. The prosecutor

can set up filters within the portal to allow them to approve and file a large group of tickets at one time to the clerk. The clerk can also set up filters to accept multiple filings. Once the cases are filed, defendants can go to Case.Net to plead guilty and pay their fine, in place of FCC. Christy said one impact on the clerk of the PA portal is that for cases that are not paid or pled, the FCC was doing the suspension notices, which will now be assumed by the clerk. One additional difference is that currently FCC tickets are due in 30 days; however, all cases will now have court dates. The cases will need to be filed and accepted by the clerk fairly quickly as defendants cannot plead and pay through Case.Net prior to court unless their case has been filed. Christy said the handout provided is 2017 data for filings through FCC. For Boone and Callaway counties, guilty pleas were 65% of the cases. She is hopefully this trend will continue.

13. Other

Judge Kevin Crane said a handout was provided by Probation and Parole District Administrator Todd Fleharty at this morning's Jail Overcrowding meeting. There is a section of Earned Compliance Credit ("ECC") on the handout. Judge Crane said Todd advised him there is a movement to get rid of ECC, which will also come up this legislative session. Judge Crane inquired if anyone was opposed to ECC being repealed, as Probation Officers noted it is extremely difficult to calculate the ECC. Offenders could still be granted early discharge from probation. Judge Brouck Jacobs said he was not comfortable being associated with endorsing the issue. Judge Jeff Harris said at the judicial conference he believes ECC was an issue they endorsed. Judge Harris moved for 13th Circuit judges to tell the Boone County lobbyist to support and work for the passage of a repeal of the Earned Compliance Credit. Second: Judge Carol England. Judge Jodie Asel said she would rather change some of the lesser felonies to something less than 5 years. Judge Tracy Gonzalez felt she needed more time to make a decision on this as she was not aware Boone County had a lobbyist. Judge Asel said she would like an opportunity to review the resolution. Judge Jeff Harris withdrew his motion.

Judge Crane said in the interim, while ECC is effective, he requested that the ECC items on the handout provided at Jail Overcrowding, be reviewed. He said defendants are automatically not eligible for ECC if they owe restitution; therefore, an order stating this is not necessary. He also noted if a violation report is received on a case that has ECC running, such as a violation for a new crime, the judge can stop ECC from running in the case. The handout states "In response to a violation, the court may hold a hearing on any eligible offense, eligible for ECC, and make a finding that the offender is ineligible to earn credits because of the nature and circumstances of the violation." It was noted the court can suspend and make an order for the offender to not get ECC at all. Judge Crane said if a defendant is sent to CODS, then ECC is not accruing during those 120 days. For offenders in treatment court, there is no ECC accrued while in treatment court, as it remains suspended until the offender is successfully discharged from treatment court. Commissioner Casey Clevenger said the offenders do get back dated credit if they are successful in treatment. Judge Crane also noted probation and parole may recommend that a defendant not get ECC in a violation report. Lastly, Judge Crane said Todd noted that in the SAR, they make it a condition that the defendant pay court costs. Todd

wanted to avoid having his officers do this. Judge Crane says he always says “civil judgment in accordance with law” on every case he disposes of and as a result the defendant has to pay court costs. He also notes defendant not to be discharged from probation until all court costs, fees and if it is available, restitution is paid in full. Judge Jodie Asel said she does not say this as a condition of probation, rather it is assessed and costs due forthwith. Judge Crane recommended that all judges make this a part of their order. He said an order can include that the defendant not to be released from probation until all court costs and fees are paid in full. Probation and parole can request to extend probation for one year if the costs and fees are not paid.

Judge Kevin Crane said our circuit continues to be a pilot site for eJuror. He said currently in jury trials, the prosecutor and defense attorneys are provided with the juror questionnaires. There are occasions when some juror questionnaire forms are not fully completed and the prosecutor or defense counsel may want to know more about the individual juror. When either side has an incomplete questionnaire, then counsel should advise the judge they need completed questionnaires for specific juror numbers. Blank juror questionnaires will be available and the judge can ask the court marshal to have the specific jurors be given a blank questionnaire to complete. He said if the juror fills it out, that is the response, which will hopefully keep from asking the individual questions in voir dior. He also said we are aware of the need to get dates of birth included on the questionnaire.

14. Comments from the Public

Boone County Circuit Clerk Christy Blakemore reminded everyone that when completing search warrants while on-call, the clerks need all the paperwork sent to them the next working day. It was agreed these are sent by e-mail to BNE-Criminal-Inbox. The judges said they also send to the LE agency requesting the warrant and the prosecuting attorney.

Christy said the Missouri Court Automation Committee is getting sponsors to file legislation to increase the \$7 Court Automation fee to \$25. This fee helps to pay for state automation. Christy said the committees’ argument is automation has saved counties money, due to electronic processing, therefore the need for less paper and files.

Court Administrator Mary Epping said she was also contacted for a fiscal note for legislation filed to increase the amount paid to jurors from \$6 to \$40.

Christy Blakemore said in 2015 Judge Christine Carpenter entered an order to write off the ten years or older debt. Christy said they are getting close to completing this, therefore they may need another order to work on additional debt.

Court Services Supervisor Brandon Walker said he sent an email reminder yesterday that when ACS staff send reports to judges, judges need to respond to ACS and include the attachment. ACS has found a way to allow a response sent to them to also be sent to the clerk’s office automatically, therefore the judge does not need to include the clerk in the email response. He said if there is no reply to their information or violation reports, then

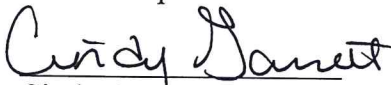
the report never gets filed on Case.net. Brandon said they have had clerical turnover in his office and they recently discovered some errors. They learned that when informational violation reports were sent to the judge and the judge replied, but did not reply with attachment, the report never got filed within the case. He said in the past their clerical caught these errors and ensured the report got filed; however, with the turnover that did not occur. Judge Kevin Crane requested an email be sent again reminding judges of the need to reply to all reports sent and to reply with attachment.

An on-call situation was discussed involving the home detention program and warrant procedures. Brandon brought up a related issue. He said his office anticipates seeing more of these issue due to the mix of people their office is supervising now versus 10 years ago when the majority of their caseload were commit people and, therefore, the judges did not have to get involved to issue a warrant as ACS staff had the ability to use the recommit form. He said in approximately 2009 the decision was made that ACS staff should not have that authority to remand those out on bond to jail. As a result of this, every time someone on pre-trial violates their condition and needs to be revoked, they have to request a warrant from the judge. He said they revoke approximately 12 to 20 people a year. Brandon said on-call, there may only be 3 occasions a year, where they need to request a warrant. During the week day a judge would just do a docket entry on this case and the clerks prepare the warrant; however, when on-call there was no mechanism for a judge to do a warrant. The jail will not accept an email docket entry after hours. Judge Jodie Asel said she has blank warrants at home that she can complete and fax. It was noted this situation was different than the situations Brandon just discussed regarding ACS prior vest authority. There was discussion as to the prior source of the authority given to ACS. It was agreed this would be placed on the agenda for next month to review the initial authority and the reason for rescinding the authority. As to the need for a warrant after hours, it was requested a copy of a blank warrant form be placed on the laptop. Judge Crane said he is also working with Major Tom Reddin from the sheriff's department to determine what they require.

15. Meeting Date

The next meeting is scheduled for March 5, 2019, in Boone County at 5:00 p.m. It was noted the April meeting will be in Callaway County. Judge Kimberly Shaw moved to adjourn. Second: Judge Carol England. The motion passed unanimously. The meeting adjourned at 6:20 p.m.

Prepared by:



Cindy Garrett
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Submitted by:



Mary Epping
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Distributed on:

3/1/19