

COURT EN BANC MINUTES
Tuesday, April 2, 2019, at 5:00 p.m.
Callaway County Courthouse
Jury Room, 2nd Floor

Judges Present: Judges 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, 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 Crane welcomed guests.

3. Approval of the March 5, 2019 Minutes

Judge Jodie Asel moved to accept the March 5, 2019, minutes. Second: Judge Kimberly Shaw. The motion passed unanimously.

4. Orders of Destruction

Deputy Court Administrator Cindy Garrett reported the Boone County Circuit Clerk's office has asked to destroy by shredding the documents on pages 5 and 6 of the Court en Banc's packet. Judge Stephanie Morrell moved to approve the destruction of the records listed. Second: Judge Kimberly Shaw. The motion passed unanimously.

5. BIP as Bond Condition

Judge Kimberly Shaw reminded judges that if they add a bond condition for a defendant to attend a Batterer's Intervention Program ("BIP") as a condition of bond, they should email Amy Cunningham to advise her of the case so she can follow-up with the defendant. Judge Shaw said for individuals ordered to complete a BIP as a condition of bond, the Domestic Assault Court Coordinator has the defendant sign a Domestic Violence Compliance Record ("DVCR"), notifying the defendant of the date by which the defendant must enroll in classes by, begin classes by and the date the BIP must be completed. Judge Shaw inquired if judges preferred for the DVCR to be signed by the

judge who ordered a BIP as a bond condition or by the judge assigned to the case. It was agreed the judge assigned to the case should sign the DVCR.

6. Ex Parte

Commissioner Sara Miller said at a recent Juvenile Detention Alternative Initiative ("JDAI") meeting, Columbia Public School officials said they are seeing an increase in the number of child order of protection cases where the protected child and minor respondent attend the same school and an order is issued for the respondent child to not enter the same school as the protected child. When the schools are made aware of the order, they have to transfer the respondent child to a different school, and they cannot provide transportation. Commissioner Miller said many children, as young as middle school, are being removed from schools due to these ex parte orders. Judge Leslie Schneider, Commissioner Miller and Judge Kimberly Shaw looked into the issue and found the OSCA approved forms has a check box that prohibits the respondent child from entering the protected child's school but there is no statutory provision authorizing that order. Judge Schneider and Commissioner Miller are suggesting when reviewing minor respondent cases, if you are unable to discern from the petition whether they attend the same school, to mark through "enter the school" on the ex parte order until a hearing can be held to determine if that requirement should be entered. Judge Kevin Crane asked if the clerk can inquire what schools each of the parties attend when the petitioner is completing the petition, noting if they attend different schools. Circuit Clerk Christy Blakemore said she can ask the clerks to try to obtain this information. Judges were asked to carefully consider the school situation as to the protected child and minor respondent. Commissioner Miller said judges can order the respondent child to remain a specific distance from the protected child within the school, to which school officials said they are able to accommodate.

Judge Shaw said another issue in both child and adult orders of protection case is in reference to the box being checked on the order giving custody/visitation of the child to the petitioner, where a prior order may exist as to custody/visitation, therefore causing interference in prior orders. Judge Kevin Crane said he was always told when on-call that the judge should never do anything with the section as to custody/visitation due to prior existing orders. Commissioner Casey Clevenger said other unattended consequences of visitation on orders of protection that she has seen is when orders for visitation are granted, but there is a no contact with the petitioner, even by means of a third party. It is not clear how to set the visitation if the respondent is not allowed to contact the petitioner, even by a third party. Commissioner Miller said normally there is a provision that allows communication between the parties only concerning the child or visitation arrangements. Judge Sue Crane recommended that the respondent be referred to the clerk's office to file a motion to amend, which is pro se friendly.

7. Time Standards

Court Administrator Mary Epping provided the 2018 fiscal year annual report on time standards reports for the 13th Circuit from OSCA. Mary provided a handout of the

statistics which compares the 13th Circuit to other circuits with a population of more than 200,000. Mary said Supreme Court Operating Rule 17 established time standards to ensure the prompt and fair disposition of cases filed in Missouri Circuit Courts. Mary noted on the handout blue font indicates when the circuit met or exceeded the time standards, red font indicates a decrease in the percentage from the prior year, yellow highlights shows an improvement in our circuit's percentage; and a green box indicates the time standard was met. Mary said as an overview the 13th Circuit met time standards in 1 category and improved in 2 categories. On page 3 of the handout, the yellow highlighted boxes indicate the circuits with the highest percentage. Mary reviewed our circuit's history from FY10 through FY18. It was noted in circuit felony our circuit used to meet the standard of 90% to 95%, where currently our circuit is at 79% and 89%, which is a cause for concern. Judge Jodie Asel inquired if the public defender wait list for counsel is going to affect these standards. Mary said she feels it is important to watch the associate criminal and circuit felony cases over the next couple of years to determine the effect. Mary noted with reviewing the disposition rate to the state, our circuit met or exceeded the state percentage in 6 categories and fell behind the state percentage in 4 categories. Boone County increased in case filing in all case types except for 4 types and Callaway County increased in all case filings except 2 types. Mary discussed the filing disposition rate, which she feels is extremely important as it determined if we are disposing of cases as quickly as cases are being filed. She said you want to be at 1.0 to dispose of cases at the same rate they are filed; if above 1.0 you are disposing of more cases than are being filed; and if below 1.0 it causes back log, as more cases are being filed than are being disposed. The 13th Circuit is below 1.0 in five categories and are meeting the standard in four categories. Mary then reviewed the trends of filings and dispositions by case types for a five year history. Mary encouraged everyone to contemplate the numbers. Mary ended by saying when looking at all case types we are currently creating a back log in that we are at .97 for the D/F ratio for FY 18. Mary said if there is additional information requested, please let her know.

There was discussion about whether defendants are using the list of attorneys created that are willing to be contacted by those on the public defender wait list. It was noted some defendants are asking for the list and there are a few people who have hired private attorneys, however the associate circuit judges noted their wait list dockets have hundreds of clients on them. Judge Stephanie Morrell said the last PD wait list she received showed the oldest case being on the waitlist since in May, 2018. However, she said she has people whose cases were filed in October, 2017 and have been coming to court for one and a half years. She inquired why the dates on when people were found indigent is not accurate on the wait list. Judge Kevin Crane said he spoke with District Defender Sarah Aplin before today's meeting and she will be getting a report to the court that reflects the defendants who have been assigned an attorney due to being in custody with DOC or another county. Therefore the waitlist should be reduced. Judge Morrell inquired about people on the waitlist, who are in DOC, and have filed a speedy trial request. She said her docket entry says "notice to public defender". However she feels there are 3 or 4 cases where nothing has happened despite her court entry. District Defender Sarah Aplin said she is not sure of the break down, however moving forward, any of those in custody, they have prioritized taking them off the waitlist and moving

forward those clients will not go on the waitlist, as they will be assigned an attorney. Judge Kimberly Shaw said she also had some cases in DOC with a speedy trial request, where it appeared an attorney had not been assigned, therefore she emailed Sarah Aplin directly. Judge Morrell said she is also setting cases for a case review on the DOC video docket. Judge Crane inquired of Circuit Clerk Christy Blakemore if the break down was due to no attorney being assigned to the case. Christy said the public defender can still get notice even without an attorney assigned. Christy will follow-up on this issue. Judge Crane recommended the public defender be appointed during the video docket as there is a public defender in the courtroom.

Judge Jodie Asel wanted to reiterate her concerns regarding probation cases and the statute that requires notice be given prior to the expiration of term and conduct a hearing if reasonably able to do so. She is concerned about those defendants on the wait list and if lack of counsel is going to be interpreted within a reasonable amount of time or not once an attorney enters their appearance after their probation has expired. It was discussed the public defender will have to advocate for their client, therefore no solution was determined.

8. Adult Court Services Recommit Authority

Court Administrator Mary Epping said at the January Court en Banc meeting Adult Court Services Supervisor Brandon Walker raised concerns about the Adult Court Services staff's ability to recommit someone on home detention without a warrant. Mary noted that between 1990 and 2010 there was a recommit authorization form for predisposition cases that was signed by a judge that authorized ACS to put someone back in custody without a warrant if they violated conditions of home detention. Mary said there was a document in 1990 from the sheriff that was provided to the jail that included a list of ACS staff who were authorized to put someone in jail. Mary said in 2010 the Court en Banc readdressed this issue and they made the decision there must be a warrant versus the recommit form. There was discussion at that time regarding what to do with defendants present at ACS, when they were waiting for a warrant. ACS staff were feeling their hands were tied and they had to allow the person to leave until the warrant could be attained. It was agreed a Court Marshal could not be asked to hold a person without a warrant. Brandon therefore asked the CEB to reconsider the use of the recommit form and Judge Jeff Harris asked for the statutory authority that allowed them to recommit. Mary provided a handout that includes the current Supreme Court Rule 33.01(f) which talks about if releasing someone, the judge shall advise the individual that a warrant for arrest will be issued immediately upon a violation. She also included on the handout the new updates to the rule effective July 1, 2019. Lastly included is section 544.445, RSMo, which authorizes ACS to be that check in person under subsection (4). Mary said she and Brandon have discussed it and she reads the rule and statute to say a warrant is required and Brandon is proposing it does not prohibit a recommit form from being utilized. Mary asked the CEB for discussion and consideration.

Judge Jodie Asel said a recent problem she acquired with requiring a warrant is that ACS had a person in their office and they came to her requesting her to issue a warrant. Judge

Asel believes items should go through the court file and not be hand delivered. She said if the recommit form is not approved, then she wants a paper trail for issuing a warrant. Judge Crane felt the recommit form process works, if it is not violating the rule. All agreed the problem lies with there being no authority for the recommit form. Judge Stephanie Morrell said there has been discussion among associate judges regarding ACS supervision pre-disposition, either through ROR or pre-disposition home detention, that the judges are advising the defendant when in custody of all their conditions, and then if bonding a warrant can be issued for arrest. She noted on the ACS form there are only a couple conditions that advise a warrant can be issued for their arrest. She believes the form needs to be changed to comply with SCR 33.01 that a violation of any condition set out by ACS can result in a warrant. All agreed a warrant is necessary to detain someone for a violation. Mary asked if there is a process that can accommodate the issue of someone present, who has violated a condition, to expedite a warrant. Brandon said they look at individual cases from a public safety issue when determining the need to request a warrant. He said in the past few two years they have only revoked 15 to 18 people per year from home detention, however the two years prior to that there were close to 30 requests for revocation. He said the majority of their clients are pre-trial felons. He believes last year there were approximately 6 cases where he was trying to locate a judge to sign a warrant, while the person was in their office. There has been discussion about the authority of the Court Marshal to detain. Mary suggested a committee be appointed to review this topic and bring back recommendations to CEB. Judge Crane appointed a committee of Brandon, Mary, Judge Morrell and Court Marshal Les Werner.

9. Update on Bond Fee

Court Administrator Mary Epping said anytime there are changes to local court rules, Court en Banc approval is needed. Page 7 of the Court en Banc's packet is an update for the rate being used by CourtMoney. She noted the 7% percent rate was never reflected in the local court rules.

Mary requested CEB approval to update the local court rules to reflect the updated contract. She also requested the approval be with an emergency clause so our local court rules are accurate with the current rate. Judge Kevin Crane said the change was made years ago after it was addressed at Jail Overcrowding, however the local court rules were not updated and it was not brought to the Court en Banc. He said work is being done to see if the current rate should be changed.

Judge Carol England moved to update the local court rules to reflect the fee of 7% as noted on page 7 of the Court en Banc packet. She further moved that it be approved with the emergency clause. Second: Judge Kimberly Shaw. The motion passed unanimously.

10. PA Portal

Circuit Clerk Christy Blakemore said the Highway Patrol started submitting tickets through the portal on April 1, 2019. She said the prosecuting attorney is on board to use the portal for filing tickets. She said this process is in place as the Fine Collection Center

is going away. She said there was a meeting with Judge Kimberly Shaw and every ticket has a court date. They are setting the court dates out 6 weeks, which will allow time to file with the PA portal and for the prosecutor to file the tickets with the clerk. She said all the tickets through the PA portal will be set at 9:03 a.m. Christy believes the process is currently working well and they will address problems as they arise.

Court Administrator Mary Epping gave kudos to Christy for getting the process in place. Mary said Technology Services Supervisor Chris Fishman-Weaver has been working to set up a kiosk for those people without internet access that want to plead and pay. Christy said she has ordered 2 iPads for this kiosk process.

11. Legislation

Court Administrator Mary Epping provided an update on legislation. She said legislation that continues to move includes HB192, which modifies provisions relating to payment of fines by offenders and eliminates putting people in custody for non-payment; SB 297 relating to those 70 and older being excused from jury duty; a bill allowing elected official to be excused from jury duty during their term; SB88 which modifies provisions relating to GALs; and the bill to increase statewide court automation from \$7 to \$25. Mary is willing to share information on the bills she is tracking. Circuit Clerk Christy Blakemore said the clerk's association has concerns regarding a bill that has to do with family court matters, when custody orders are entered, that the court shall notify the school within one business day.

12. Administrative Order 01-01 Security Check

Court Administrator Mary Epping said Judge Kevin Crane handed out a proposed administrative order that has been updated from what is in the Court en Banc packet on pages 8 through 10. Mary said there is an Administrative Order specific to Boone County as to who can bypass the security station, which is anyone by statute allowed to carry a weapon, plus elected officials. Mary said Court Marshals proposed to amend the order as essentially we are not increasing safety by allowing anyone who has 24 hour access to the courthouse to go through security during business hours. Those recommended to bypass security, with 24 hours access, are Adult Court Services officers, Juvenile Officers, Mary and Deputy Court Administrator Cindy Garrett, Court Marshals, the Public Administrator and Prosecuting Attorney and their exempt employees, who have 24 hour access and approval from their supervisor. An edit was recommended to add Boone County Courthouse to the heading. Judge Stephanie Morrell moved to approve Administrative Order 05-19 regarding Security Checks as proposed. Second: Judge Kimberly Shaw. The motion passed unanimously.

13. Email Transition in 3 Years

Court Administrator Mary Epping said Lotus Notes was sold by IBM so there are no more patches and as windows updates occur it will cause problems. Mary said OSCA is aware and they have created a committee. She is hearing by the end of this year, there

will be a recommendation for an email transition. In all likelihood they will transition to a new platform. Mary advised she is making everyone aware now, even though the transition will probably not occur for three years, as she anticipates all emails will not be copied over to the new system. She is recommending to save documents in the H drive, not in email. It was recommended a training be conducted on appropriate ways to save documents. Circuit Clerk Christy Blakemore said this is just one example of the need to increase court automation, as it is unknown what the cost might be to change email vendors, not only the technology, but also the staff time.

14. Bench/Bar Reception

Judge Kevin Crane said the Bench/Bar reception is scheduled for April 25, 2019 from 5:00 to 7:00 p.m. at the Boone County Historical Society.

15. Other

Judge Kevin Crane congratulated Commissioner Casey Clevenger on her acceptance to participate in an advanced workshop on trauma and the effects of trauma. Commissioner Clevenger said the workshop is hosted by the SAMHSA Gaines Center. She said they did a call for applications and she was just notified of her acceptance. Court Administrator Mary Epping said the application process was very competitive. All congratulated Commissioner Clevenger on her accomplishment.

Judge Kevin Crane informed the associate judges that at their annual conference that starts this week, Rule 33 will be on the agenda. He said this rule does not become effective until July, and he is told it is in the discussion phase, therefore he encouraged the associate judges to attend the session and voice any concerns they may have. Judge Crane said he believes Boone County has a separate argument than Callaway County as to the Adult Court Services issue and he believes Callaway's argument is similar to most of the state based on not having an Adult Court Services office. Judge Crane said in his meeting, there were two Supreme Court judges, and they were not in agreement as to the interpretation of the rule.

Judge Carol England provided an update regarding the Callaway County Justice Center meetings. She said they continue to move forward and have met with financial people. They said it will take passing a sales tax to fund the estimated \$30 million project. She said last week they met and proposed a piece of property owned by the State at the Missouri School of Deaf. They felt they could remodel the present footprint and add on a couple big areas. She said they are getting some push back from the community as a jail would be in a somewhat residential neighborhood and on the school grounds of the School of Deaf. Judge England said right behind the Missouri School for the Deaf is the Biggs Unit, which houses the most dangerous criminals in the state. Judge England said it would be 6 to 7 million dollars less if using this state owned building. Rep. Travis Fitzwater and Sen. Jenni Riddle proposed a bill in the legislature that the state give the land and building to Callaway County. She said Commissioner Jungermann and someone from the Office of Administrator testified in support of the bill. She said this

would save even more costs. Judge England said they have also prepared proposed ballot wording for a sales tax. Judge England said getting a sales tax passed will be difficult as Fulton School District and Jefferson City School District both passed a tax last year that raised property taxes. It was noted expanding the current courthouse is not feasible. She noted Callaway County assumes a lot of cost with having the Missouri School for the Deaf, a state hospital and a prison. She said these agencies bring jobs but Callaway County picks up costs for hearing all the guardianship cases across the state from the hospital.

16. Comments from the Public

Court Services Supervisor Brandon Walker said when the "Other section" is selected on the bond form, where the judge approves or denies the Adult Court Services recommendation, it is important for the judge to be specific as to their order.

17. Meeting Date

The next meeting is scheduled for May 21, 2019, at 5:00 p.m. in Boone County. Judge Carol England moved to adjourn. Second: Judge Kimberly Shaw. The motion passed unanimously. The meeting adjourned at 6:22 p.m.

Prepared by: Cindy Garrett
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Submitted by: Mary Epping
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