

**COURT EN BANC MINUTES**  
**Tuesday, January 11, 2011, at 5:00 p.m.**  
**Boone County Courthouse**  
**Law Library**

**Judges Present:** Judges Gary Oxenhandler, Jodie Capshaw Asel, Larry Bryson, Kevin Crane, Christine Carpenter, Bob Sterner, Leslie Schneider, Deborah Daniels, and Commissioner Sara Miller. Carol England was present telephonically.

**Others Present:** Boone County Circuit Clerk Christy Blakemore, On Track Court Coordinator Adrian Johnson, Public Defender Tony Manansala, Information Technology Supervisor Steve Smith, Court Administrator Kathy Lloyd and Assistant to the Court Administrator Mary Epping.

**1. Call to Order/Welcome**

The meeting was called to order at 5:00 p.m. by Judge Gary Oxenhandler. Judge Oxenhandler announced that Judge Carol England was “present” through Judge Oxenhandler’s speaker phone. He welcomed Judge Bob Sterner to his first Court en Banc meeting as a judge.

**2. Introduction of All Guests**

The guests shown under “Others Present” introduced themselves. Judge Leslie Schneider said Callaway Circuit Clerk Judy Groner was planning on attending the meeting but was prohibited by the weather.

Judge Gary Oxenhandler passed out the ballots to the judges to vote for the presiding judge. Judge Carol England voted by proxy through Judge Bob Sterner. Judge Oxenhandler asked Judge Larry Bryson and Judge Bob Sterner to count the votes. There was a discussion about whether the presiding judge voted. Court Administrator Kathy Lloyd looked up Local Court Rule 100.1.1 which said the incumbent presiding judge shall only vote if there is a tie.

*Judges Bryson and Sterner stepped out of the meeting at 5:05 to count the votes.*

**3. Approval of the December 14, 2010 Meeting Minutes**

Assistant to the Court Administrator Mary Epping said page 5 of the minutes, which was also page 5 of the court’s handout, should be edited so that the next meeting date section reads “January 11, 2011” instead of “2010.” Judge Kevin Crane made a motion that the minutes of the December 14, 2010, meeting be approved as amended. Second: Judge Deborah Daniels. The motion passed unanimously.

**4. Election of Presiding Judge**

*Judges Bryson and Sterner returned at 5:07.*

Judge Larry Bryson announced that Judge Gary Oxenhandler was voted as presiding judge for a two-year term to end in 2013. The ballots were to be destroyed by Judge Sterner at the direction of the presiding judge. Judge Oxenhandler said he appreciated the opportunity to serve again and the support that everyone has given him, and he intends to give up the position after his new term. He said it is a challenging position but that change is good.

**5. Destruction of Records – Circuit Court – Boone County**

Assistant to the Court Administrator Mary Epping explained the Boone County Circuit Clerk’s Office asked to destroy, by shredding, the documents set out on pages 6 and 7 of the court’s packet. She asked Boone County Circuit Clerk Christy Blakemore if all the documents had been microfilmed, and Christy advised that they were. Judge Christine Carpenter made a motion to approve the destruction of the records. Second: Judge Deborah Daniels. The motion passed unanimously.

**6. OnTrack Program, Sentencing and Early Release**

Judge Christine Carpenter introduced Adrian Johnson as the OnTrack administrator. She said she was proud that Adrian chose our court because he had visited every drug court in the state and he chose to work for the 13<sup>th</sup> Circuit. Judge Carpenter announced the first person started the OnTrack program, and 9 more people would be starting the program this month. Judge Gary Oxenhandler said he, Court Administrator Kathy Lloyd, Adrian, Boone County Commissioner Skip Elkin, Bob Davidson, Dan Hanneken from the Department of Corrections, and Betty Dickneite from the Boone County Human Resources office met regarding the organization and implementation of the community services work that the participants will be doing. Judge Oxenhandler said the court’s representatives made it clear they did not want to burden the county and that the county’s involvement was important in the initial phase of the program. He also spoke with Kathy and Judge Carpenter about keeping records to show the money the court is providing to the county and the services being utilized. Judge Carpenter discussed the organizing committee’s proposal for the possibility of early discharge from probation. Judge Oxenhandler said he endeavored to plan a meeting for next Wednesday with the public defender’s office regarding changes from supervised to unsupervised probation. He said he would make sure Judge Carpenter had information about the upcoming meeting.

Judge Carpenter asked the circuit judges to notify defendants sentenced pursuant to Section 559, about participation in the OnTrack program. There was a discussion about whether providing notice might make someone avoid participating by not coming back to Boone County after their 120 day release from incarceration. Adrian said that some defendants feel like the judge is “sneaking something in” or that the program is a punishment. There was a discussion about reminding defendants of the benefits of participating in the program; and also discussing whether the defendant is eligible to participate. Judge Carpenter said a better approach may be to go through the defense bar and ask the defendant whether their attorney mentioned the program to them, and providing an introductory brochure about all the alternative sentencing courts.

Judge Carpenter said she was going to speak to the Boone County Bar and the prosecutor’s office about alternative sentencing court. She also said she and Judge England will be doing a “Lunch and Learn” for the judges on February 10 about alternative sentencing court.

**7. Administrative Order 4-00 - Modification**

Judge Leslie Schneider asked that this be passed to the next meeting.

**8. Administrative order 01-11**

Judge Gary Oxenhandler directed everyone to a handout labeled “Administrative Order 01-11.” The proposed updates to Administrative Order 03-09 are under Roman numeral III and clarify when bonds are released. There are two categories – drug offenses and non-drug offenses. If someone

posts bond in something other than a drug offense, and if no charges are filed by the return date, then the bond is returnable. If it is a felony drug case, the bond can be held up to six months. Judge Oxenhandler said the original order was not clear and referenced the bond agreement. Judge Oxenhandler asked the judges to consider the changes. There was a discussion about the liability of the bond and the burden on the clerk's office versus the burden on the bonding agent to collect the bond. Judge Deborah Daniels asked that the order indicate the 6 months was for "felony" controlled substances. Judge Daniels thought the bond form may need some changes as well.

Judge Crane proposed alternative language as follows:

Except as herein provided, if charges are not filed by the return date listed on the bond, the bondsperson shall be eligible for release from liability on the bond and any cash bond posted shall be eligible for return. However, if the arrest involves **felony** controlled substances, the bondsperson shall not be eligible for release from liability **or return on the bond and any cash bond posted shall not be eligible for return** until six months has lapsed, unless sooner ordered by the Court.

Boone County Circuit Clerk Christy Blakemore said her office currently sends the bonds back to bonding agents when the bond they are liable for is released. She also said bond agents can come in to court and may ask to be taken off of a bond.

*Commissioner Sara Miller and Judge Leslie Schneider stepped out of the meeting at 5:35.*

There was a discussion about if a bonding agent was still liable for a bond if the agent does not go to the clerk and ask to be taken off the bond. Judge Oxenhandler said he interpreted it as after the return date, the bond agent can say they want off the bond, but they are not eligible to get off of a felony controlled substance case without a court order for 6 months. Judge Larry Bryson said he has had cases where a bond has been posted, then returned, and the state does not file until after the bond date has passed. He said in that situation he issues a summons but will not issue a warrant, but did not know how the amended order would apply.

*Commissioner Miller and Judge Schneider returned at 5:40.*

Judge Oxenhandler asked if there was a motion regarding this order. Judge Crane moved to accept the amended administrative order with his changes. Second: Judge Jodie Asel. Judge Deborah Daniels asked, for clarification, if there are multiple arrests in a domestic relations case and they post bond within a 24-hour period, if two months later a warrant request comes in for the defendant she does not worry if the bond is still in place because the return date would have passed. Should she issue a warrant? What if the old bond had not been released? Court Administrator Kathy Lloyd said she thought the new rule puts the responsibility to get a bond returned on the bond agent. Christy agreed and said the bonding agents should be watching their cases and should be contacting the clerk's office about their bonds being released. Judge Daniels agreed but said she has had people arrested on a bond that was not, but should have been, returned and the defendant posts bond two or three times; she thought the bond should not be in place after the return date passes. Judge Crane asked if the court could go with this language and discuss it again at a later date. Judge Oxenhandler replied "yes," and said there was a motion to approve the language and a second, he asked if there was a vote to accept Judge Crane's language. The motion passed unanimously. Judge Oxenhandler said this will come back on the February agenda and asked Judge Daniels to look at the agreement with the bond agents.

## **9. Local Court Rule 33.5 Ruling on Motions in Chambers**

Judge Oxenhandler directed the court en banc to page 8 of the court's packet. He said the clerks send the judges a note on motions on file for 18 days and 99 percent of the time the judges indicate to let the attorneys "call it up." Rule 33.5 says "motions which do not require the introduction of evidence and where argument is not required, shall be submitted to the court for ruling in chambers fifteen days after service has been accomplished on adverse parties." Judge Oxenhandler asked whether this rule should be kept. Judge Leslie Schneider said judges need to keep their cases moving and thinks the court should keep Rule 33.5. She thought the Civil Rules Committee of the bar should be part of the discussion. Judge Oxenhandler said this was an initial discussion and wanted to get the Court en Banc's thoughts on it. Judge Jodie Asel said she cites Rule 33.5 when she rules on a motion such as a motion to dismiss. She said it has been effective for out-of-town attorneys who do not realize the rule is in place and the motion is passed and the attorneys have to move to set the motion aside. Judge Kevin Crane asked how he is supposed to know whether the attorneys want to introduce evidence as required by the rule. Commissioner Sara Miller said the attorney should note in their motion to dismiss if they are requesting a hearing. She said in family court there are a lot of motions she rules on after the 15 days have passed. Judge Schneider reiterated that she thinks the bar should be involved in the discussion. Judge Larry Bryson asked Boone County Circuit Clerk Christy Blakemore if there was a tickler file. Christy said the issue came up because 99 percent of the time when the clerks notify the judges that the 15 days have passed, the judges say that the attorneys need to notice up the motion, but the clerk's office does not notify anyone, they just file it. There was a discussion about the differences in motions for family law cases and for circuit civil cases, and there are different problems with different types of motions that may need different solutions.

Judge Oxenhandler said he will refer this rule to Milt Harper, the chair of the Civil Rules Committee. Judge Schneider said all of Rule 33 needs to be reviewed. Judge Daniels said before sending it to the committee, the rule should be edited grammatically. This will be back on the agenda for the February Agenda and the court will decide if it wants to do something with this rule or not.

Judge Asel said a case came up recently that was a bankruptcy stay and the clerk's office asked how long she wanted to stay the case. She put it on the docket saying "cause set for status hearing" and the attorneys said the case had been discharged in bankruptcy court and they would be filing a dismissal. Judge Asel inquired as to how long a stay can last. Judge Crane said he had one recently and he understood the statutory language says "stay up to 6 months" and once the 6 months has elapsed, the stay is lifted. Judge Schneider said the bankruptcy stay may be extended so it is not necessarily just 6 months.

## **10. Progress Report from Video Conference Committee**

Judge Deborah Daniels said the Video Conference Committee met and expanded the committee to include the clerk's office. The committee is going to first draft a proposed local court rule covering video conference rules for post-conviction relief hearings and will be getting all the clerk's office forms together for the Court en Banc to review. Judge Daniels says she understands that judges are using video conferencing as the need arises, this is just a uniform approach and the committee wanted to start with a narrow, defined civil type of case before expanding to other types of cases. Court Administrator Kathy Lloyd said the committee understands the court does not have to have a rule to do the video conferencing, but it helps to put a procedure in place to save money and time. Judge Oxenhandler said there would be a training component as well, so that the judges will know how to use video conferencing, when to use it and how to incorporate it.

## **11. Callaway County Courthouse Improvements**

Judge Oxenhandler said he met with the information technology office to discuss setting up the PolyCom in Callaway so a judge in Boone or Callaway can cover for a judge in the other county. It is his understanding in talking to Chris Fishman-Weaver, it will just be a matter of educating everyone on it. Judge Carol England said the new hearing room is being set up and the only thing missing is a desk for the judge. Court Administrator Kathy Lloyd said that there is \$1,100 budgeted for furniture in Callaway's budget and it is possible to buy half of the new jury chairs and spend the other half on a desk.

*Judge Kevin Crane stepped out at 6:00.*

Kathy said the Callaway auditor has a catalog book and she asked Judge England to look for a desk that was \$500 or less that could be used for the new hearing room. Judge Oxenhandler said the marshals have been moved. One is using the judge's office and the other is south of the hearing room. The judge's office has been moved to the law library and there is a laptop available. He mentioned they need a phone hooked up and programmed.

Judge England said she met with the state hospital and they are ready to start using the PolyCom for hearings in mental health cases. Kathy asked IT to schedule a regular conference with the bridge for the mental health dockets from 8:15 a.m. to 9:30 a.m. on Monday, Wednesday, and Friday. She said IT will provide training for the clerks and the marshals in Boone and Callaway to assist in calling into the bridge and using the PolyCom. Judge England asked that the time be moved back and Kathy suggested setting the time for 7:45 a.m. to 9:30 a.m. Kathy mentioned the bridge will terminate without warning at the end of the scheduled time period.

*Judge Crane returned 6:04.*

## **12. Discussion Regarding Time Standards**

Judge Gary Oxenhandler said he has been receiving the time standard reports and asked the judges to review them. He encouraged the judges to ask the clerk's office to bring up any cases they are concerned about. Court Administrator Kathy Lloyd said there was a case she and Patty found that was 9,000 days old. She said it was disposed in 1986, but it was never entered properly, so if the judges know something is taken care of, to have a clerk check to make sure the correct code was entered to get it closed out.

## **13. Technology Updates**

### **A. Attorney Conflict Calendar**

Information Technology Supervisor Steve Smith said the attorney conflict calendar, a web-based application, began its pilot mode about a month ago. There are 6 attorneys currently participating in it and 10 people who manage the calendar. Two issues have been brought up: half-day conflicts, and situations when the attorney is available but the client is not. Court Administrator Kathy Lloyd said the half-day conflict issue will need to be addressed to permit half-days for trial settings before it is extended to all attorneys. Steve said he will need to see how long that change will take and he will keep Judge Oxenhandler updated. Judge Larry Bryson asked whether the pilot was used in conjunction with paper calendaring. Kathy said the paper conflicts are the ones being used for trial setting, the pilot is just a test to see what questions the attorneys have, do they understand the functions, etc.

**B. RSA Token**

Steve said at an earlier meeting it had come up that judges may need access to their e-mail when not at a court computer. He handed out the RSA Tokens which are registered to the judges and allows them to login to their e-mail from other locations. OSCA will provide the judges with a pin number. Steve said he will set up a lunch and learn for Webnotes or will provide one-on-one training for anyone who needs it.

Steve also mentioned that there is now a conference phone available and the courtrooms will have the ability to make long distance calls. Kathy said this will take the place of the device previously used for speaker phones, and the new conference phone also has microphones so more people may listen and may speak. This will be more convenient because calls will not have to go through Susan or Marla, and the phone may be used when the court needs interpreters. Kathy said there was also a protocol being created for using telephone interpreters that would allow the clerk to check out the phone for a hearing. Steve said there were also two new phone lines. One in the 4<sup>th</sup> Floor Training Room and one in the Jury Assembly Room for the media cart.

**14. Bench/Bar Meeting – April 13, 2011**

Judge Gary Oxenhandler said the bench/bar meeting is set for April 13, 2011, at the Country Club of Missouri. It will be informal, business attire with appetizers, and no formal meeting or dinner.

**15. Other**

Judge Bob Sterner thanked everyone for helping him with his first few weeks.

Assistant to the Court Administrator Mary Epping said she will be working with Court Administrator Kathy Lloyd and the clerk's office on interpreter protocols and asked the judges to notify her if there are specific instances where they think phone interpreters could, or should be used.

Court Administrator Kathy Lloyd said when the Court en Banc did the Board of Jail Visitors appointments in December, we did not recognize that Melanie Dowling, a female Republican in Callaway County, no longer wished to serve on the Callaway board. Judge Oxenhandler asked Judge Bob Sterner to get a name of someone who would be interested. Kathy said Judge Augustine who was the judge appointed to the Callaway jury commission, also needs to be replaced. Judge Oxenhandler asked Judge Sterner and Judge England to discuss it and let him know who would be interested.

Judge Oxenhandler said the jail administration meeting needed to be reset because it was missed as a result of the weather. He set it for February 15 and passed on January's meeting.

**16. Comments from the Public**

NONE

**17. Next Meeting Date**

The next meeting will be February 15, 2011, at the Boone County Courthouse.

Prepared by: Mary Epping  
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Submitted by: \_\_\_\_\_  
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