

**COURT EN BANC MINUTES**  
**Tuesday, March 10, 2009, at 5:00 p.m.**  
**Boone County Courthouse**  
**Law Library**

**Judges Present:** Gene Hamilton, Gary Oxenhandler, Cary Augustine, Larry Bryson, Deborah Daniels, Christine Carpenter, Leslie Schneider, Jodie Capshaw Asel, and Carol England. Also present: Commissioner Sara Miller, and Columbia Municipal Court Judge Robert Aulgur.

**Others Present:** Columbia Municipal Court Clerk Shara Meyer, Reality House Executive Director Dennis Winfrey, Interim Public Defender Tony Manansala, Boone County Circuit Clerk Christy Blakemore, Unit Manager Lana Brooks, Court Administrator Kathy Lloyd, and Assistant to the Court Administrator Joy Rushing. .

**1. Call to Order**

The meeting was called to order by Presiding Judge Gene Hamilton.

**2. Approval of Minutes**

Judge Jodie Capshaw Asel made a motion to approve the minutes of the February 10, 2009, meeting as presented. Second: Judge Deborah Daniels. The motion passed unanimously.

**3. Presentation by Reality House**

A. Work Release Employment

Reality House Executive Director Dennis Winfrey stated that the order signed by the judge granting work release contained a sentence authorizing the Sheriff's Department to make changes in the conditions of the release (such as place and hours of employment). If a judge only wants the person released to a specific place of employment, or during specific hours, the judge needs to mark through the general statement on the form and include the specific instructions.

B. Moral Reconciliation Therapy

Reality House Executive Director Dennis Winfrey handed out information on Moral Reconciliation Therapy (MRT), which is a new program they are providing to their Alternative Sentencing clients. The program tries to train individuals to make better choices from a moral point of view. This program is for those individuals for whom substance abuse treatment and/or mental health care, even when effective for the underlying substance abuse or mental health problem, does not result in improved behaviors. He has completed training for the program, and Reality House is training additional people to present the program. The program has been around since the 1980's, and has proven effectiveness.

The therapy is conducted in single-sex groups of around 12-15 people – there is a female leader for the female group and a male leader for the male group. Groups are held once a week for an hour, and it generally takes about 30 weeks to complete the program.

Mr. Winfrey presented the court with an outline of the program, its steps and incentives used to affect behavior. The cost of attending for the participants, including books and other materials, is about \$325 (\$25 for the book and \$10 per session).

Judge Christine Carpenter explained that the Alternative Sentencing Courts had been looking for a program for individuals whose criminal behavior and thinking goes beyond their issues of substance abuse or mental illness, and MRT seems to be an effective program for those individuals. The participants have given it very positive reviews. The program would be a good option for the other judges as a condition of probation.

#### **4. Public Defender's Request for Public Defender Dockets in Divisions V, IX and XI**

Tony Manansala, Acting Director of the Public Defender's Office, handed out information on the dockets for the Public Defenders. He explained that they only have ten attorneys to provide representation, and if they could reduce the time attorneys have to spend in court waiting, that would free up their time to work on cases in the office. If they could have a Public Defender docket or dockets, that would be helpful, especially since they will be down to eight attorneys for a time by April. The Prosecuting Attorney's Office is okay with this proposal.

The Public Defender's Office averages 9 – 10 dockets in just Divisions V and XI. The Court Administrator asked whether they are asking to consolidate the cases on a given day, or just have the Public Defender cases taken up at a specified time. Mr. Manansala responded that they would prefer assigning them to given days, but having separate times so they don't have to sit through other cases would help. However, if they could have just two days with no court appearances required, that would really help. Judge Bryson asked whether there were any days that would not be good for consolidation, and Mr. Manansala responded that his office generally has to be in court on Mondays and Fridays, for law days and the DWR/DWS dockets. He understands that that probably cannot be changed. If cases were consolidated on a few dockets, he would probably just send two attorneys to each of those dockets. Judge Daniels asked whether he was asking to reassign cases from her Tuesday and Wednesday morning domestic violence dockets, and Mr. Manansala responded that he was not.

Judge Hamilton directed that staff would look at the dockets and see what might be done to relieve the problem.

#### **5. Public Defender Liens**

Judge Gene Hamilton said that he had received a letter from Bob Sterner, Callaway County Prosecutor, regarding Public Defender Liens. He is suggesting that satisfaction of the liens be a condition of probation. Judge Hamilton said he had discussed this proposal with Judge Oxenhandler and they feel that this could result in a conflict of interest if the Public Defender needs to represent the defendant on a revocation of probation for failure to pay the lien. Acting Director Tony Manansala responded that they generally do a tax intercept to collect these liens. He agrees that making it a condition of probation would present conflict of interest problems.

#### **6. Request for Consolidation of Mid-Missouri Legal Services Dockets in Callaway County**

Assistant to the Court Administrator Joy Rushing explained that Susan Lutton, Director of Mid-Missouri Legal Services, was making a request similar to that of the Public Defender for consolidation of their cases in Callaway County. Commissioner Sara Miller said she only has paternity cases there two days a month. Judge Carol England added that she has had them appear on probate cases, but she only has one probate docket a week. Judge Cary Augustine said that he

has several dissolution and adult abuse dockets, and he will talk to the MMLS attorneys to see if something can be worked out to reduce the number of times they have to travel to Callaway each month.

**7. Request for Local Court Rule – Electronic Signature in Municipal Court**

Columbia Municipal Court Judge Robert Aulgur introduced the Columbia Municipal Court Clerk, Shara Meyer. Ms. Meyer explained that the court wanted to start using an electronic device to digitally capture the signature of a defendant on various types of documents, such as an acknowledgment that they have received and understand the rules of probation, payment requirements, etc. The software would store the document electronically, and this would reduce the expense of printing the multi-part forms they are now using. They would print off a copy for the defendant. There was a general discussion of the wording of the proposed Local Rule change to allow this. Judge Gary Oxenhandler made a motion to approve an amendment to Local Court Rule 69.7 to read as follows:

**69.7 CASE RECORDKEEPING**

- C. **Electronic Signatures.** Upon approval of the Presiding Judge of the Circuit Court and the Municipal Court Judge, a municipal court shall give digital signatures obtained from the defendant the same effect as an original signature. A copy of the document with the electronic signature shall be given to the defendant.

Second: Judge Leslie Schneider. The motion passed unanimously. The new rule will be effective after the 60-day comment period.

**8. DWI Disposition Proposal**

Judge Christine Carpenter said that Brent Nelson is the prosecutor who is now handling DWI's, and he and Milt Harper met with her to discuss suspended imposition of sentences (SIS) on DWI's. They would like the court to change its tradition of generally not giving SIS's on DWI's. Municipal Court Judge Robert Aulgur said that he has been following what he thought was the circuit's philosophy, and he will grant an SIS only in unusual circumstances. She is just providing this for the court's information. Judge Carol England added that when she hears about SIS requests, it is usually connected with a request for SCRAM.

**9. Faxing of Petitions for Orders of Protection**

Judge Leslie Schneider made a motion to table this item. Second: Judge Carol England. The motion passed unanimously.

**10. Liability Insurance**

Judge Larry Bryson explained that he has raised this issue several times in the last year or so. Assistant to the Court Administrator Joy Rushing said that she had talked to Ron Holliger, with the Missouri Attorney General's Office, about the state legal defense fund. Mr. Holliger said that the state fund would defend a judge even for administrative actions, as long as the act was part of the judge's duties as a judge. The only type of situation where they might not provide a defense was a situation where the judge is accused of assaulting an employee. She also talked to an individual with the insurance company which provides coverage to judges in Missouri. They have seventy-seven judges enrolled in their program. It is a claims-made policy, in that it covers

claims made while the policy is in force. It has a \$50,000 limit on employment actions, and a \$25,000 limit for disciplinary actions. Ms. Rushing contacted several courts that the insurer indicated carried the coverage. Greene County said they do not purchase the coverage. Cole County does purchase it, but the decision to do so was made a number of years ago and their court administrator does not know the reasons it was purchased. Clay County said that they thought the insurance would cover some things that the state fund would not cover.

After some discussion, staff was asked to determine whether the state legal defense fund would pay a judgment, in addition to providing a defense.

#### **11. Vacant Juvenile Office Attorney Position**

Court Administrator Kathy Lloyd said the State Court Budget Committee will not exempt the circuit from the hiring freeze so it can fill the attorney position in the Juvenile Office. She subsequently got a call from Walt Fisher saying that he could not guarantee that we would be able to fill the position in July. Court Administrator Kathy Lloyd asked Mr. Fisher whether the court would be able to review the situation for the next fiscal year, and rearrange staffing to fill the attorney position and leave another position vacant. It appears that the only option would be to fill an unfilled county juvenile position with a state employee, and then filling the attorney position. Her recommendation for the short term is to contract with a private attorney, Melissa McAllister, to provide assistance to the Juvenile Office on an hourly contract basis. She would be used primarily for termination of parental rights cases, so the remaining Juvenile Office attorney would be free to handle the regular caseload. The contract attorney would be paid out of the Juvenile Office budget for professional services. Judge Cary Augustine made a motion to enter into an agreement with Melissa McAllister to provide services to the Juvenile Office as a contract attorney, using funds out of the Juvenile Office budget for professional services. Second: Judge Leslie Schneider. The motion passed unanimously.

#### **12. Annual Reports on Time Standards**

Court Administrator Kathy Lloyd explained that Court Operating Rule 17 regarding time standards changed effective January 1 of this year. Last year's data is based on the old time standards. The pages included in the court's packet compares the 13<sup>th</sup> Circuit with the other circuits serving a population of 150,000 and more. The blue figures shows who was highest. The court was either the highest, or tied for highest, in six of the time standard measurements. The court continues to fall the shortest in Associate Circuit criminal, which is where many of the other courts fall short. When compared with the state average, the numbers in blue show where the court was higher than the state average, and the numbers in red show where the court fell below the state average. The filing disposition ratio should be at 1.0 in order to avoid a backlog of cases. The court is at or above 1.0 in most areas. The overall disposition/filing ratio for Boone is 1.0, and for Callaway it is .92. For the circuit, we were at .98.

#### **13. Orders of Destruction**

Assistant to the Court Administrator Joy Rushing said that the court had received three requests for destruction of records from the Circuit Clerks Office for destruction of files per the requests included in the court's packet. Judge Cary Augustine made a motion to approve the requests for destruction of records filed by the Circuit Clerks Office. Second: Judge Gary Oxenhandler. The motion passed unanimously.

**14. Courthouse Expansion Update**

Court Administrator Kathy Lloyd stated that the expansion has reached substantial completion. The punch list is being completed. There is some money left in owner's costs to do some small work, such as refinishing the tables in the law library. Planning is now beginning for an open house. This would probably consist of several events over two days. On Friday, government employees would be invited to come and tour the courthouse during the workday, and in the evening there would be reception for the local bar. On Saturday there would be an open house for the public, with representatives of the various departments giving tours of their areas. Judge Oxenhandler has offered to demonstrate the audio-visual equipment in the new courtroom. Several dates have been suggested: April 17 and 18, April 24 and 25, and May 1 and 2. After some discussion, it was the consensus of the group that April 17 and 18 would be the best.

A question was asked regarding cleaning the courthouse. Court Administrator Kathy Lloyd responded that employees were responsible for cleaning their own offices/work areas. She will try to get facilities maintenance to do some cleaning of the common areas before the open house.

**15. Artwork Donation**

Judge Gene Hamilton announced that Marilyn Gaeth, a local attorney, has donated an original water color of the 1992 expansion of the courthouse.

**16. Bench Bar Dinner**

Judge Gene Hamilton reminded the group that the bench bar dinner was at Old Hawthorne tomorrow evening. There will be a very short program by Boone County Circuit Clerk Christy Blakemore. There will not be a question and answer program.

**17. Other**

Judge Gene Hamilton informed the group that Mid-Missouri Mental Health was asking Judge Daniels to transfer people to a facility in St. Louis. Judges should be sending people to Mid-Missouri Mental Health, and they can transfer the individuals after they receive them. Judge Bryson asked that the Mental Health procedures be considered as part of the discussion of the Fax Procedures at the next meeting.

**18. Comments from the Public**

Judge Gary Oxenhandler complimented everyone on meeting the time standards.

**19. Boone and Callaway County Security – Closed Session**

Judge Carol England made a motion to go into closed session pursuant to §610.021(19) of the Revised Statutes of Missouri to discuss existing and proposed security systems, the disclosure of which information will impair the court's ability to protect the security and safety of persons and real property, and the public interest in nondisclosure of the information outweighs the public interest in disclosure of the records. Second: Judge Gary Oxenhandler.

For: Judges Hamilton, Oxenhandler, Crane, Asel, Bryson, England,  
Augustine, Carpenter, Schneider and Daniels.  
Against: None

The meeting reconvened in open session at the conclusion of the closed meeting.

**20. Next Meeting Date**

The next meeting date is April 14 in the Law Library of the Boone County Courthouse.

Prepared by: \_\_\_\_\_  
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Assistant to the Court Administrator

Submitted by: \_\_\_\_\_ Distributed on: \_\_\_\_\_  
Kathy Lloyd  
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