

COURT EN BANC MINUTES
Tuesday, March 15, 2011, at 5:00 p.m.
Callaway County Courthouse
Jury Assembly Room

Judges Present: Judges Gary Oxenhandler, Larry Bryson, Kevin Crane, Christine Carpenter, Robert Sterner, Carol England, Leslie Schneider, Jodie Capshaw Asel, and Commissioner Sara Miller.

Others Present: Boone County Circuit Clerk Christy Blakemore, Callaway County Circuit Clerk Judy Groner, Commissioner Doc Kritzer, Callaway County Assistant Prosecuting Attorney Casey Clevenger, 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.

2. Introduction of All Guests

The guests shown under "Others Present" introduced themselves.

3. Approval of the February 15, 2011 Meeting Minutes

Judge Jodie Asel made a motion that the minutes of the February, 2011, meeting be approved. Second: Judge Carol England. The motion passed unanimously.

4. Destruction of Records – Circuit Court – Boone & Callaway County

Assistant to the Court Administrator Mary Epping said 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. Judge Gary Oxenhandler asked whether the records were microfilmed. Boone County Clerk Christy Blakemore said they were microfilmed.

Judge Jodie Asel made a motion to approve the destruction of the files. Second: Judge Carol England. The motion passed unanimously.

5. Adult Court Services Probation Services

Court Administrator Kathy Lloyd explained pages 8 and 9 of the handout were a breakdown of the current Adult Court Services probation cases by charge. The list included 255 cases which were eligible for ACS supervision, and 166 cases which were not eligible for ACS probation supervision. Kathy said there was also pending legislation (Senate Bill 731) to allow C and D felonies to be supervised on private probation. Judge Jodie Asel said the circuit and associate circuit judges' associations have lobbyists and the 13th Circuit can contact them regarding this bill. Joe Moseley had called Judge Oxenhandler to let him know a private probation company called having heard the 13th Circuit may be interested in private probation. The company may be calling Judge Oxenhandler. Also, Judge Camp in Cape Girardeau contacted Judge Deborah Daniels about private probation and may be making a presentation to the 13th Circuit. Judge Christine Carpenter said she accepted 27 pleas to DWIs earlier in the day and in 10 of the 27 cases, the state recommended Adult Court Services probation. She said 7 out of those 10 were charged as firsts even though they had priors (an

SIS or more than 10 year ago). The state asked for all of the conditions for those with seconds who were charged as a first. Judge Carpenter said the court needs to talk to the prosecutor about the lack of available resources or to have the defendant pay for probation. Judge Oxenhandler said that everything was on the table for discussion, but a defendant not having money is an issue the court is working through.

Judge Oxenhandler said this would be an ongoing conversation and he wanted this item back on the April agenda. He also plans to invite Pete Bakutes to the next Court en Banc.

6. Administrative Order 01-11

Judge Gary Oxenhandler asked that this item be passed to the April meeting if Judge Deborah Daniels wanted to continue discussing updates to the bond form.

7. Local Court Rule 22

Judge Leslie Schneider asked this item to be passed to the April meeting as Judge Deborah Daniels had some concerns about amending the rule.

8. Status of Review of Local Court Rule 33 by BCBA Civil Rules Committee

A. Meeting with Milt Harper

Judge Gary Oxenhandler met with Milt Harper – chair of the Boone County Bar Association Civil Rules Committee – about Local Court Rule 33. There is a residual rule that matters left on the docket after 15 days were either dismissed or ruled on in chambers. It used to be that whenever a civil action was filed, attorneys would file motion to dismiss for failure to state a claim. The Supreme Court of Missouri issued a rule to not file dilatory motions in civil actions. That rule is now gone. Judge Oxenhandler said he still gets a lot of motions when no action is taken. He does not enter an order unless there is a change, such as if an attorney withdraws, otherwise he lets the attorneys call up the case. Judge Kevin Crane said if it is an old case, he will set the motion. Judge Oxenhandler said in his discussion with Milt, the changes suggested by the civil rules committee made Rule 33 more convoluted. They are still trying to work through this.

Judge Oxenhandler said this item would be back on the April agenda.

B. Notice of Service of Process by E-mail.

Judge Oxenhandler said six to eight weeks ago, the Boone County Clerk's office stopped sending notice of service to attorneys. Milt said the attorneys want the notice. Milt asked whether the clerk's office could send a notice over e-mail. Boone County Clerk Christy Blakemore said e-mail would be more burdensome on her staff. She indicated there is nothing in the clerk's handbook about having to send a notice of service to attorneys. Christy also checked with six other counties (St. Francis, Platte, Clay, St. Charles, Greene and LaFayette) and none send notice of service. Judge Jodie Asel asked why attorneys cannot check on Case.net. Judge Oxenhandler said it is a "non-event" so you would have to continually look online. Judge Leslie Schneider said attorneys can pay for a process server and the process server will let the attorney know notice has been served. Christy said 60 percent of attorneys use process servers, but that her office processes 500 cases a month in their associate docket. Christy offered that when the attorney initiates a case and the clerk's office receives the filing fee, the clerk's office can print the court date on the receipt and mail the receipt to the attorney. That way the attorney has the

court date and can look on Case.net the week before the court date to see if the notice has been served. The Boone County Circuit Clerk's office does not currently send receipts, but sending the receipt would save time and money as opposed to sending the notice of service to all of the parties. Christy added the majority of attorneys have a pick-up box. Callaway County Clerk Judy Groner said it would help her office if they could stop sending notices too. Judge Robert Sterner replied if Callaway is going to stop sending notices, the Callaway bar needs to be notified.

Judge Oxenhandler said the clerks' office is not going to e-mail notices or mail notice of service, but may send the attorneys a receipt for filing fees with the court date on the receipt.

9. After Hours Warrant Requests

Boone County Circuit Clerk Christy Blakemore said when after-hour warrants are issued they electronically go to the sheriff's department, but are not assigned a case number until the clerk's office is open. Therefore, the warrants are not in MULES and the highway patrol does not have access to them. The resolution is that the clerk's office will give the sheriff "ghost" case numbers to use to enter the warrants into MULES. The new problem is that a warrant number is also needed, which is generated from JIS. The sheriff is working with the highway patrol on this issue.

Judge Gary Oxenhandler asked Christy to report back in April about this topic.

10. Fingerprints on Non Reportable Offenses

Boone County Circuit Clerk Christy Blakemore spoke on behalf of her staff and of Court Marshal Les Werner regarding a change requested in Les's memorandum attached with the agenda. The marshals were experiencing a backup of too many people needing to be fingerprinted. Many of the defendants being fingerprinted were for non-reportable offenses, Les has confirmed with the Missouri State Highway Patrol that the patrol is not processing fingerprints for such offenses. In addition, fingerprinting takes about 15-20 minutes per person so there are many defendants waiting around getting irritated. Judge Kevin Crane said the prosecutors asked for all fingerprints to be taken and kept on file. Court Administrator Kathy Lloyd explained at one point the highway patrol discussed keeping all fingerprints, but does not do so. Judge Christine Carpenter asked whether defendants' fingerprints were printed at the jail if they had shock time. There was a discussion about when defendants are fingerprinted at the jail, but in non reportable offenses the prints would only be for the jail's purposes and not sent to the highway patrol. Judge Gary Oxenhandler suggested the marshals take fingerprints only on reportable offenses and if the prosecutors want fingerprints on specific non-reportable offenses in Boone, they make the request to the Court en Banc. Christy said her office marks files and docket sheets for criminal cases with reportable offenses. Judge Carpenter further suggested contacting the jail to see whether their fingerprints could be sent to the highway patrol. Kathy said she would check with the jail about it.

Judge Carpenter moved to print only reportable offenses as designated by the clerk's office on the criminal case files in Boone County. Second: Judge Jodie Asel. The motion passed unanimously.

11. Reports of Intoxication-Related Traffic Offenses from Municipalities of Boone and Callaway Counties

Assistant to the Court Administrator Mary Epping said in August 2010, House Bill 1695 was signed into law and requires municipalities to report six months of dispositions of all charges for intoxication-related offenses to OSCA and the circuit court (section 577.066.3, RSMo). The reports are due 60 days after the end of the 6 month reporting period. The Court en Banc shall make

recommendations or take any action it deems appropriate based on the review of the reports. The 13th Circuit municipalities that hear drug- and alcohol-related offenses include Auxvasse, Centralia, Columbia, Fulton, Hallsville and Holt's Summit. It was determined at the meeting that Fulton and Centralia do not need to report since an associate circuit judge sits on those cases and they are heard at the respective circuit court. Mary explained the summary of the reports was included in the court's packet on pages 16-38 and includes pending cases, cases filed and disposed, and how they were disposed, by month.

Judge Gary Oxenhandler said the 13th Circuit was one of few circuits that were in compliance with this new reporting law. He asked to pass on his thanks to the municipal courts for their timely reporting. There was a discussion whether any action needed to be taken. Mary said this is the first report and as the reports come in over time, if there are trends that need to be addressed the court may consider taking action.

12. Callaway County Courthouse Improvements

Judge Carol England said the new hearing room was finished and was being used daily. Judge Gary Oxenhandler said the new ceremonial sound system is in and running. Court Administrator Kathy Lloyd said furniture purchased for the Callaway hearing room was from the 2011 budgeted furniture funds. She reported that, to compensate, half of the jury chairs were going to be purchased this year and the other half next year instead of all of the chairs out of this year's budget. She also wanted to pay for the sound system, which was less than \$500, out of the Administration of Justice Fund which had \$2,500 budgeted for "unanticipated technology expenses." Kathy asked the Court en Banc to approve \$3,500 to pay for the wireless network out of the Callaway County Law Library fund. This would cover the cost of the equipment and the installation. (*At this point, the law library report was provided as reflected in the section below.*) Judge Kevin Crane moved to approve the expenditure. Second: Judge Carol England. The motion passed unanimously.

13. Law Library Report

Assistant to the Court Administrator Mary Epping gave details as to the Boone and Callaway county law library budgets as shown in the court's packet on pages 39-48. She explained that both accounts are doing well. One major reason for the surplus was because the 13th Circuit cancelled its Westlaw online account. Mary mentioned a Westlaw representative called and inquired whether the court would be interested in reopening Westlaw online research accounts. The court said it was not interested. Judge Christine Carpenter asked whether there were guidelines about what the library funds may be used for. Court Administrator Kathy Lloyd said there were, and technology is included. (*At this point, the conversation went back to allocating the funds for the wireless network for the section above.*) Judge Gary Oxenhandler said the 13th Circuit also requested two Ubi Duos from OSCA, which are computers that allow for communication with someone who is deaf and able to type. OSCA has a grant and may be able to get Ubi Duos for interested courts.

Mary continued that the state is not going to print the 2010 Missouri Revised Statutes books so the circuit needs to purchase 2010 cumulative supplement for each current set of books. It was discussed whether all of the sets in the courtrooms and judges' offices needed a cumulative supplement at \$100 per set. It was decided that each courtroom, hearing room and library would get a set, and that Mary would e-mail the judges and commissioner to see if they wanted a paper copy for their office. Commissioner Sara Miller said the paper copies were important to see the historical changes and that cannot be easily accessed online. There was a discussion about purchasing copies of the supplement on CD, but the books were preferred.

14. Appointment of Female Republican to Callaway County Board of Jail Visitors

Judge Robert Sterner reported the first person he asked did not want to participate on the board so he will be asking a second person. He will report back in April with the second person's response. Court Administrator Kathy Lloyd said that Callaway's board is down one person. Judge Gary Oxenhandler asked Assistant to the Court Administrator Mary Epping to e-mail Tom Riley and let him know we know they are down one but that we are working on it.

15. 2012 Budget Schedule

Court Administrator Kathy Lloyd directed the court to page 49 of the court's packet. She reported this page outlined the target dates for developing the 2012 circuit budget. The budget will be presented to the Court en Banc on August 9.

16. Alternative Sentencing Updates

Court Administrator Kathy Lloyd reported that pages 50 and 51 of the court's packet reflected updates on the OnTrack Program. She said federal funds have been released and the court may accept new people into the program. Kathy indicated that OnTrack Administrator Adrian Johnson requested that 90 day reports be sent directly to him. Adrian will then fill out the blue form (on page 51 of the court's packet) and give the report and form to the judge. Judge Jodie Asel had concerns about the procedure. Kathy said the protocol is being put into place and defendants should be contacted as soon as possible regarding participation in the OnTrack Court. Judge Asel said that she had case files where the 90 day report was missing and that the reports need to stay with the file at all times. Judge Gary Oxenhandler said he asks the clerk to deliver files to him 90 days from the day of sentencing. Judge Christine Carpenter said Adrian should be credited with the court receiving the federal funds. She said our court is the only one in the country receiving federal funding and that was because of Adrian talking to the feds at his training and getting them to release it.

17. Jury Manual Update

Assistant to the Court Administrator Mary Epping said she worked with Jury Supervisor Linda Dolliver on amendments to the current Jury Manual. Two sections needed to be updated to reflect that Linda makes CDs with copies of the questionnaires for the attorneys for Boone County and that she destroys the CDs along with the questionnaires as reflected on pages 53 and 54 of the court's packet. Judge Kevin Crane moved to approve the proposed changes. Second: Judge Christine Carpenter. The motion passed unanimously.

18. Recycling

Court Administrator Kathy Lloyd indicated that she and Judge Gary Oxenhandler met with Commissioner Karen Miller and Bob Davidson about recycling paper for free. Currently the court pays for shredding paper onsite. While documents that are confidential must continue to be shredded, other paper can go in the new recycling bins. Kathy said it is up to the court to determine what is confidential, and the company picking up the recycling paper will not be responsible if something was in the recycle bin that should have been shredded. Judge Christine Carpenter asked if she could shred her own paper and put it in the paper recycling bin. Kathy said she could. There are a limited number of recycle boxes available, and it was decided the court administrator's office would get three or four boxes. Individuals would be responsible for getting paper from their office to the bins. There was a discussion about reusing the back side of paper.

19. Interpreter Protocols/Guidelines

(This was not discussed due to time constraints.)

20. Bench/Bar Meeting – April 13, 2011

Judge Gary Oxenhandler reminded the court that the bench/bar meeting is April 13, 2011.

21. Other

Judge Gary Oxenhandler said the copies of “McGuffey’s Eclectic Reader on Evidence” were in his office for the judges and commissioner. He asked everyone to pick up their copy.

Judge Oxenhandler said some counties have discussed hiring a lab to do their testing for drugs. Byron Hill of ABC labs was consulted about possibilities for the 13th Circuit.


22. Comments from the Public

None.

23. Next Meeting Date

The next meeting will be April 5, 2011, at the Boone County Courthouse.

Prepared by:



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Submitted by:

Kathy Lloyd
Court Administrator

Distributed on: _____