

COURT EN BANC MINUTES
Tuesday, December 8, 2009, at 5:30 p.m.
Callaway County Courthouse
Jury Assembly Room

Judges Present: Judges Gene Hamilton, Gary Oxenhandler, Kevin Crane, Jodie Capshaw Asel, Larry Bryson, Carol England, Cary Augustine, Christine Carpenter, Leslie Schneider, and Deborah Daniels.

Others Present: 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 at 6:05 p.m. by Presiding Judge Gene Hamilton.

2. Approval of Minutes

Judge Gary Oxenhandler made a motion to approve the Minutes of the October 6, 2009, meeting as presented. Second: Judge Christine Carpenter. The motion passed unanimously.

3. Westlaw

Assistant to the Court Administrator Joy Rushing discussed the information on the costs of the WestLaw electronic service. The costs for 2009 totaled \$15,615.79, and are projected to increase to \$16,396.61 in 2010. If the court cancels this service, the cost of the printed materials will increase by just over \$4,000, but the court will recognize a projected \$12,000 in savings in 2010.

The Missouri Practice Series is not available on Lexis-Nexis, and there is no cost-efficient way to obtain the complete series from West. We will still purchase the hard copy volumes we are currently purchasing.

There was a general discussion of the print services we were using, and whether the court might consider also discontinuing some of those subscriptions. It was the consensus of the judges that they rarely use the Missouri Digest series.

Judge Gary Oxenhandler made a motion to drop the electronic WestLaw, and keep the VAMS, Southwest Reporter and Miscellaneous print services. Second: Judge Deborah Daniels. The motion passed unanimously.

4. Consolidation of the Circuit Civil Dockets

Judge Gary Oxenhandler stated that he was recommending consolidation of the circuit civil dockets, and cases would be assigned to judges on a rotating basis. There was a general discussion of what would happen in special circumstances, such as a request for change of judge.

Judge Gary Oxenhandler made a motion that Local Rule 6 be amended to add a sentence to the first paragraph stating: "However, upon the filing of a circuit civil case, the same shall be assigned evenly and randomly among the circuit court judges, unless otherwise directed by the presiding judge." Second: Judge Kevin Crane. The motion passed unanimously. Judge Gary

Oxenhandler made a motion that the rule become effective January 1. Second: Judge Leslie Schneider. The motion passed unanimously.

5. Bonding Authority

Court Administrator Kathy Lloyd said that Judge Oxenhandler had brought forward some concerns regarding the bonding capacity of bonding agents. Judge Oxenhandler explained that he had reviewed the Supreme Court rule regarding bonding, and it appears that it requires a one-to-one ratio between assets and liabilities. In his personal review of actual ratios that exist, he found a wide variety. There has been a study of this issue recently by a committee appointed by the Missouri Supreme Court, and it appears that the issue will be before the Missouri legislature in 2010. It further appears that there will eventually be a ratio established either by statute or by the Department of Insurance. He would like the court to take a look at this issue.

Court Administrator Kathy Lloyd added that they were scheduling meetings with the bonding agents to discuss some of the major issues. It would be best if the court had some proposals to present at those meetings. One example is the way Clay County approaches the issue. They do not allow an agent to post a single bond in excess of their total assets, but they will allow total bonds of seven times the agent's assets.

Judge Kevin Crane said that the letter should say that "issues that will be discussed at the meeting are" There was a general discussion of the various issues involved in determining bonding authority. Judge Gary Oxenhandler made a motion that the letter to the bonding agents regarding the meetings, as amended, be sent. Second: Judge Christine Carpenter. The motion passed unanimously.

6. Protocol for Home detention Fees

Judge Jodie Capshaw Asel explained that her committee had been looking at establishing a protocol for assessment of home detention fees. In the process of developing a protocol, they looked at the effect of inability to pay on home detention numbers. Adult Court Services is suggesting that any person asking to have fees reduced or waived show that they are receiving some other form of state or federal assistance. A draft reflecting the results of the committee's discussions is attached to the court's agenda. Judge Christine Carpenter indicated that she has noticed a problem with people not paying the first two weeks up front. Judge Deborah Daniels says that she sees a people who only pay the first two weeks and don't pay thereafter. The court voted to table the issue.

7. Reappointment of Board of Jail Visitors – Boone and Callaway

Boone County. Judge Gene Hamilton indicated that the members are willing to be reappointed, except for Donna Hennigh. He is recommending that Sandy Schnarre be appointed in her place. Judge Christine Carpenter made a motion to appoint Genie Rogers, Sandy Schnarre, Harry Bosoian, Verna Harris-Laboy, Tony Davis, and Robert Buckley to the Boone County Board of Jail Visitors. Second: Judge Carol England. The motion passed unanimously.

Callaway County. All but Jack McBride are willing to stay on the Board. Judge Gary Oxenhandler made a motion to reappoint Tom Riley, Ramona Wilkinson, Melanie Dowling, Daniel VanOrden and Kitty Comer to the Callaway County Board of Jail Visitors. Second: Judge Deborah Daniels. The motion passed unanimously. Judge Carol England will look for a replacement for Jack McBride. Tom Riley will be asked to serve as chair of the Board.

8. Court Operating Rule Updates

Boone County Circuit Clerk Christy Blakemore explained that Missouri Supreme Court Operating Rules 2 and 8 have been amended. Under the changes to Court Operating Rule 2, information on Adult Abuse and Child Abuse cases will no longer be available on Case.Net, until the full order of protection is issued, since those cases are now closed under state statute. Rule 8 now allows courts to destroy certain original records after they are microfilmed, and most records can be microfilmed and destroyed after five years. Her office is starting a program to do this.

Court Operating Rule 4 has been emended to require assigning separate case numbers to a Dissolution of Marriage and the accompanying Petition for Determination of Paternity. The issue is whether this will require the payment of two filing fees. Commissioner Sara Miller indicated that the two cases could be consolidated for hearing, and that two filing fees be required. If someone wanted the filing fee waived, they could make a request to the court to have it waived.

9. House Bill 481

Boone County Circuit Clerk Christy Blakemore said that House Bill 481 passed in the last legislative session closed court records regarding dissolutions of marriage and legal separations filed after August 28, 2009. This is an issue for abstract and title companies who need to access these files to get information on real estate ownership for their businesses. The Clerk's office is asking the court to approve an administrative order which would authorize the clerks to make information from dissolutions and legal separations available to representatives of abstract and title companies for the purpose of determining the interests of individuals in real property as part of the business of the abstract or title insurance company. The court took no action on this recommendation.

10. Restitution

Boone County Circuit Clerk Christy Blakemore said that CPA's from the Office of the State Courts Administrator came into her office and looked at their procedures for handling financial transactions. During this review, OSCA came up with figures that showed that the court had about \$5 million in uncollected restitution. A number of the amounts shown should not be shown as restitution due and uncollected because they involve cases where probation was revoked, or probation expired with restitution unpaid.

Her staff is cleaning up the figures so they can determine how much restitution is really owed the court. The restitution will be written off if: (1) the defendant is discharged from probation; or (2) the defendant is sent to the Department of Corrections or Boone County Jail.

Right now, there is no way in JIS to handle joint and several obligations on restitution. The clerks have been assessing half of the total amount to each defendant when the amount is ordered jointly and severally. There was a general discussion of the issue.

Judge Hamilton offered to contact OSCA to see whether a computer software fix could be planned.

11. Sprint Treo Pro

Court Administrator Kathy Lloyd said that the information in the court's packet shows that the estimated cost of replacing the judges' PDA's with new Treos would be just over \$1,300. One reason they were looking at replacing the PDA's was that staff hoped the judges could be able to

access their e-mail with the new Treo's. Staff has since learned that OSCA will not be able to purchase the software licenses which would be needed to support this activity. OSCA believes that they may have some licenses returned to them from circuits who are not able to use them. If that happens, they could come up with four licenses, but that would not be enough licenses for everyone. Jackson County has their own server for judges' e-mails, so that is why their judges can access their e-mail remotely. It was the consensus of the court to do nothing at this time.

12. Videoconferencing for Desktops

Court Administrator Kathy Lloyd said that Judge Deborah Daniels had received information that OSCA was asking whether judges would be interested in having videoconferencing from their computer desktops. Kathy contacted OSCA about this, and the capability would be available to the court for \$150 per computer. There was a general discussion of what uses this could be put to. Judge Gary Oxenhandler made a motion to table this issue. Second: Judge Leslie Schneider. The motion passed unanimously.

13. Live Scan Fingerprinting

Court Administrator Kathy Lloyd explained that there had been a discussion at the jail overcrowding meeting that the court was not taking fingerprints. Pages 24 and 25 of the court's packet show the types of cases where fingerprints are now required. A big area where the court had not been requiring fingerprints, and where they are now required, are the DUR/DUS cases. The clerks will now begin stamping the files on those cases to indicate that fingerprints are required.

14. FTR in Hearing Room 1

Court Administrator Kathy Lloyd stated that in this year's budget the court included financing for a new FTR unit in Hearing Room 1. The anticipated cost of that unit is about \$10,000. Kathy talked to Marla Gunn after the completion of the courthouse expansion and renovations, and Marla said she has not scheduled anything in Hearing Room 1 that needs to be recorded. It does not appear to be a wise investment of the court's money to put a recording system in a courtroom where it seldom will be used, and then pay \$800 a year for maintenance of the unit. Judge Leslie Schneider made a motion to not purchase the new FTR unit for Hearing Room 1. Second: Judge Kevin Crane. The motion passed unanimously.

15. DWI Court

Judge Christine Carpenter directed the court's attention to pages 29-31 of their packets, which is a proposal setting out the framework for the new DWI Court. Judge Larry Bryson asked what the "possible incentives" mentioned in the proposal would be. There was a general discussion of what happens if a defendant receives a DWI while they are on probation on another charge. Judge Carpenter responded that her policy is to transfer the DWI to the judge who has the defendant on probation on the other charge, when she knows of the existing probation. One possible incentive for DWI court would be that there would be no revocation of the existing probation if they participated in DWI court, but that decision would be up to the judge who has the probation. Judge Carpenter said she is seeing a number of cases where the defendant is charged with a felony and they are being pleaded out as misdemeanors. This would be another incentive for DWI court. She has discussed the proposed court with defense attorneys, and they are very supportive.

Court Administrator Kathy Lloyd explained that the cost of the program would be \$2,750, and the intent is to require payment of \$1,200 of that cost in advance. After they are in the program two

months, they would have to pay \$150 a month for each of the succeeding ten months. Judge Carpenter added that the costs of tracking would be paid by monies from OSCA.

Judge Carpenter stated that it appears that legislation will be introduced in the current legislative session which would provide for a hardship license for anyone enrolled in a DWI court..

Court Administrator Kathy Lloyd further explained that if the DWI court goes forward, the court will need to make changes to the Drug Court budget to accommodate the revenue and costs for the DWI court. Judge Carpenter added that the numbers shown on pages 32 and 33 of the court's packet are not accurate; more precise estimates are shown on the handout being passed out to the court.

There was a general discussion that there are no funds available to pay the cost of the program for individuals who are indigent.

Judge Gary Oxenhandler made a motion to approve the proposed DWI court as proposed. Judge Carpenter indicated that would include the addition of the word "possible" before the word "incentives." Second: Judge Leslie Schneider. The motion passed unanimously.

Judge Christine Carpenter made a motion to adjust the court's budget as necessary to accommodate the revenue and expenditures for the DWI court. Second: Judge Gary Oxenhandler. The motion passed unanimously.

16. Proposed 2010 Docket Schedule

Court Administrator Kathy Lloyd explained that pages 34 through 37 of the judges' packets set out the new docket schedules for 2010. The changes are highlighted in yellow, and they are fairly minor. Twice a month with the anticipation of the new DWI court being scheduled on Thursday afternoon, Judge Bryson has agreed to take the arraignment docket that Judge Carpenter had been handling. In Division X, a note has been added showing pro se uncontested dissolutions on the first and third Tuesdays at 3:00 p.m. In Division XI, the Criminal and Probate docket times have been switched. Judge Leslie Schneider made a motion to approve the changes in the docket schedule. Second: Judge Gary Oxenhandler. The motion passed unanimously.

17. Boone County Auditors Fiscal Year 2010 Budget Summary

Court Administrator Kathy Lloyd stated that Boone County had made a few changes in their budget, due to the current economic situation. First, they are reducing their match for the employee 401A plan from \$25 to \$15. Second, they are eliminating the Employee Assistance Plan, which was not being used to any great extent. There has been no increase budgeted for personnel.

18. Review of the Vote Regarding FY 2010 Boone County Budget Reduction

Court Administrator Kathy Lloyd asked the court to ratify the electronic vote taken the week of October 14-16, 2009. Judge Gary Oxenhandler made a motion to ratify the vote, as documented on page 43 of the court's packet. Second: Judge Leslie Schneider. The motion passed unanimously.

19. Agenda Items and R.S.V.P. to Legislative Luncheon

Court Administrator Kathy Lloyd reminded the court that RSVP's for the legislative luncheon are due December 7, and suggested agenda items should be turned in by Monday, December 12.

20. Other

None

21. Comments from the Public

None

22. Next Meeting Date

The next meeting date is January 26 at the Boone County Courthouse.

Prepared by: _____
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Submitted by: _____
Kathy Lloyd
Court Administrator

Distributed on: _____