

**COURT EN BANC MINUTES**  
**Tuesday, December 15, 2020, at 5:00 p.m.**  
**Zoom Video Conference**

**Judges Present:** Judges Kevin Crane, Jeff Harris, Brouck Jacobs, Josh Devine, Kimberly Shaw, Carol England, Tracy Gonzalez, Stephanie Morrell, and Commissioners Sara Miller and Casey Clevenger

**Others Present:** Boone County Circuit Clerk Christy Blakemore, Callaway County Circuit Clerk Megan Morse, Adult Court Services Supervisor Brandon Walker, Court Marshal Ben Pruett, Technology Services Supervisor Chris Fishman-Weaver, District Defender Sarah Aplin and Assistant District Defender Jeremy Pilkington, District Defender Kathryn Benson, Assistant Prosecuting Attorney Jessica Caldera, Court Reporter Jenni Bosh, Court Administrator Mary Epping and Deputy Court Administrator Cindy Garrett

**1. Call to Order/Welcome**

The meeting was called to order by Judge Kevin Crane at 5:00 p.m.

**2. Introduction of Guests**

Judge Kevin Crane welcomed guests.

**3. Approval of November 17, 2020 Minutes**

Judge Stephanie Morrell moved to accept the November 17, 2020 minutes. Second: Judge Kimberly Shaw. The motion passed unanimously.

*Skipped to Item #12*

**4. Board of Jail Visitors, Callaway**

Judge Kevin Crane said we have resignations on the Callaway County Jail Board from Graham McCaulley and Brian Atkins, two male democrats. Judge Carol England said she will work to find replacements. This item will be on the agenda in January, 2021.

**5. Public Defender**

**a. Appeals**

Judge Kevin Crane said all appeals of eligibility for the Public Defender services are currently assigned to him, which he has found to be too much. He suggested that each judge hear their own appeals. After discussion it was determined a public defender needs to be present for the appeal process and, since a public

defender is assigned to the circuit judges, it was agreed when associate judges have an appeal they will rotate setting them on the circuit judges law day dockets. A schedule of the circuit judges' law day dockets will be distributed to the associate circuit judges.

Judge Stephanie Morrell asked if the public defender form is going to be changed as they need to know if the defendant is ineligible due to indigency or due to there being no due process finding. Judge Crane explained the appeal court process. He said there are 3 different forms to be used. He said the defendant appeals the finding of being disqualified. Judge Crane said a public defender has to be present in court to indicate the basis for refusal. He said the reasons could be they were found not indigent due to being able to bond from jail, the defendant makes too much money, the offense is not likely to result in incarceration, etc. If the reason for disqualification is the offense is not likely to result in incarceration, the judge asks the prosecuting attorney for the state's recommendation. Judge Crane said he is not allowed to make a blanket finding for all probation cases, if it is a probation violation for other than restitution, then the due process finding must be made when setting the case; if the probation violation case is only for restitution, then probation is suspended and set for a probation violation hearing, where the due process finding and the appointment of public defender is not necessary. It was noted in Callaway County either the clerk or the associate circuit judge sets appeal cases on the next circuit judge law day docket.

District Defender Sarah Aplin will review the current form and address the issues and forward the form to judges for approval. It was agreed the forms used by Judge Crane in the appeal process needs to be forwarded to all circuit judges.

**b. Contracts and Budget Amendment**

Court Administrator Mary Epping said one person applied to be an attorney for the cases the public defender will not take due to low/no probability of incarceration; however, Jennifer Bukowsky donated \$300,000 to the court for the public defender wait list in Boone County for panel attorneys to be assigned. Mary said this will not completely eliminate the waitlist but it will dramatically decrease it. Mary said State Director Mary Fox will be seeking an additional attorney in each district where there is a waitlist. Mary said the Court en Banc voted electronically Friday, December 11, for the budget amendment to accept the \$300,000. The vote was approved, as follows:

Approved: Kevin Crane, Brouck Jacobs, Jeff Harris, Josh Devine, Kimberly Shaw, Sue Crane, Tracy Gonzalez, Leslie Schneider and Stephanie Morrell.

Nays: None.

Judge England was not available to vote.

Mary drafted an MOU with Boone County and Missouri State Public Defender for the contracts. She said the County Commission approved the MOU and



completed a first read for the budget amendment. The budget amendment has to wait 10 days for a second read before it can be finally approved, however the MSPD can start making the appointments, but the money cannot be spent until 10 days from today. Mary said the process will be for the public defender to appoint their panel attorneys, at their rate, and then send them to Mary where she will review/approve and send them to county for payment.

Judge Kevin Crane requested Assistant Prosecuting Attorney Jessica Caldera to request of those in her office to be vigilant with respect to these waitlist cases and if it is an old case that can be dismissed, to do so. Judge Crane said he has had to dismiss cases without prejudice. Sarah said panel attorneys are being assigned by their case contracting unit and they have prioritized based on age.

#### **6. Boone County Jail Warrant Service**

Judge Kimberly Shaw said this topic can be passed as it was discussed at Jail Overcrowding this morning. Circuit Clerk Christy Blakemore said part of the issue has been resolved and the sheriff's department has agreed that before they will return a warrant showing served, they will call the clerk to check into the case and be provide guidance before serving. Christy said the part not resolved is on cases where a warrant is issued and sent to the sheriff, however the defendant has already posted bond based on the bond schedule prior to the warrant with a higher bond being sent to the sheriff. On these cases it is not clear how they are to be handled. It was suggested it be taken to the judge and the judge make a docket entry to clarify what is expected. Judge Kevin Crane said we do not want to do away with the scheduled bond option. He said we can revisit our scheduled bond for on call people and we can visit with the prosecuting attorney regarding our standing agreement where if the prosecuting attorney wants a bond higher than the scheduled bond then they ask for it; however, Judge Crane wants to avoid the problem where law enforcement has to re-arrest someone who has posted on the scheduled bond. It was agreed if a new warrant is issued, a docket entry from the judge would be recommended. Judge Crane suggested the prosecutor call the jail to verify defendants are still in custody before sending a warrant request to the judge, which would reduce the number that might bond before a warrant is sent out. Judge Crane also recommended judges act quickly upon receiving warrant requests to also help eliminate people posting bond on the scheduled bond and then having a separate warrant issued with a higher bond.

#### **7. Finding Due Process**

Judge Kevin Crane passed this item as the topic was already discussed on Item #5.

#### **8. Warrants with Electronic Monitoring**

Judge Stephanie Morrell said this is an extension of prior discussions regarding home detention and an Adult Court Services bond investigation. She said there are often times on a PC warrant that the prosecuting attorney asks for electronic monitoring to be a

condition of bond. The issue arises when a defendant attempts to bond but the defendant had not yet been approved for electronic monitoring, therefore the jail does not know if that person should be released. Judge Morrell said Jail Sgt. Christy McCaleb asked that if home detention is included in the PC warrant, then a no bond be ordered to allow for time for the home detention study if the judge feels the defendant is a danger unless on home detention. She said if someone is released on home detention from a PC warrant, then Adult Court Services is not aware as there is no entry going to court services for a home detention study. It was finally agreed if the judge believes a defendant needs to be on electronic monitoring, then bond should be denied, subject to a home detention investigation by Adult Court Services.

## **9. Rule 4.1 Criminal Filings**

Court Administrator Mary Epping said on page 8 of the Court en Banc packet is a proposed rule based on the last meeting about late criminal filings filed right before and sometimes during court. The proposed local court Rule 4.1 states in criminal cases for defendants out of custody shall be filed with the clerk by 12 noon the day before the date on the ticket, summons or bond indicates the arraignment is to be set. Mary said this would be a circuit wide rule. Judge Morrell moved to approve Rule 4.1 as set out on page 8. Second: Judge Brouck Jacobs. The motion passed unanimously. It was agreed this rule will go into effect in 60 days as there is not a need for an emergency clause. It was noted the prosecuting attorney's offices have both started following this process.

## **10. Justice Reinvestment Initiative Grant**

Court Administrator Mary Epping said since 2016 in Boone County the court has been working with local agencies and entities to decrease the number of individuals who find themselves in the intersection of mental health, homelessness and the criminal justice system. She said there have been trainings, technical assistance and Sequential Intercept Mapping with community members, law enforcement, and county and city officials. Mary said we know we need mental health professionals available to assist law enforcement either as a co-responder or a mobile crisis unit, and/or a center or location for law enforcement to drop people off at. In coordination with the county and city law enforcement, and county health department, Mary is requesting to apply for funding from the Justice Reinvestment Initiative Grant for funding of an expert consultant to come to Boone County to help determine what is the best model, and for a team to travel to Tucson, Arizona or Miami, Florida to see their model. Mary would like to request \$25,000 for this purpose and it will not cost the court or the county any additional money. The Justice Reinitiate grant will award 4 courts up to \$50,000.

Judge Tracy Gonzalez moved to approve allowing Mary to apply for the grant funding. Second: Judge Stephanie Morrell. The motion passed unanimously.

Mary said she and Commissioner Clevenger spoke with KC Rafferty from the Missouri Coalition for Community Behavioral Health. KC is requesting letters of support for local and regional crisis response centers. Mary and Commissioner Clevenger asked for



approval to submit a letter of support from the 13<sup>th</sup> Circuit. Mary said this could mean a local or regional access center at some point in the near future. The Court en Banc noted their support for this project.

#### **11. Legislation for JJC Staff**

Court Administrator Mary Epping said attached on pages 9 through 12 of the Court en Banc's packet is the letter Mary referenced at the last meeting that she sent to the Circuit Court Budget Committee. She said the committee did not approve her request to pay Juvenile Justice Center staff who have more than 20 hours of compensatory time, therefore she is asking for approval from the court to seek legislation to be filed to add the judiciary to cover "juvenile justice or detention center staff" to section 105.935 (8) (on page 10). The Court en Banc approved Mary's request to seek legislation.

#### **12. COVID and Webex Updates**

Technology Services Supervisor Chris Fishman-Weaver said effective April 1, 2021 Zoom will no longer be approved by the Supreme Court which means we have to switch to WebEx. Chris said WebEx works with some of the courtroom units, such as in the Boone County ground floor courtroom. He said judges will also have the ability to create a room on WebEx, which will eliminate the need to send invites for each court docket, as parties can just join the room, however the judge will have to manage the room. Court Administrator Mary Epping said there are some courts that post the room of some divisions, which means any division that chooses to post their room would not have to send individual invites for each docket; however, they would have to manage their waitroom and remove people as appropriate. She said if there is anyone who does not want their room posted or has confidential cases, we could still send individual invites. Chris said we will be getting some additional video units from OSCA, which will allow some mobile units to be set up in some courtrooms versus iPads. There will be three mobile units in Boone County and one in Callaway County, which were received from OSCA CARES Act funding. Mary requested that each judge email her to advise if they want their WebEx room posted on our website.

Chris said the fiber project for the Boone Courthouse is anticipated to be completed on January 4. Chris said at that time he will work with OSCA to get the fiber routed into our system. Chris said once fiber is in place, this would mean judges could be on the network and no longer have to use their VPN token.

Mary provided additional COVID updates. She said only one employee was out on quarantine and two are out part-time due to closures of childcare facilities. She said there are not any current positives and we have only had one internal transmission since March.

Mary said the Center for Disease Control has changed its standards so that close contacts are only in quarantine 10 days or 7 days if they take a test that results in a negative result

after day 5, as long as the person has no symptoms. Therefore, staff can potentially return to work sooner.

Mary said she has been contacting OSCA and other court administrators in reference to the vaccine and to see if court staff can be included on the essential worker list.

Mary said the court received 3,000 more masks from Boone County Emergency Management and she has requested 3,000 more for Boone County and 1,000 more for Callaway County from the state. Mary said we have gone through approximately 6,000 surgical masks between the public and staff.

*Returned to Item #4*

### **13. Dockets**

Deputy Court Administrator Cindy Garrett said the following changes have been made to the dockets effective January 1, 2021:

#### *Boone County*

- i. Division 1– Probate start time moved to 8:30 a.m. on Tuesdays and Thursdays and a 9:00 a.m. dissolution docket was added on the 4<sup>th</sup> Friday.
- ii. Division 3 – DOC video docket moved to the 4<sup>th</sup> Monday at 9:00 a.m.
- iii. Division 4 – Associate civil returns set on the 1<sup>st</sup> and 3<sup>rd</sup> Fridays at 9:00 a.m. and 4<sup>th</sup> Friday at 9:00 a.m., associate civil trials are set on the 1<sup>st</sup> and 3<sup>rd</sup> Thursday at 1:30 p.m.
- iv. Division 5 – Traffic dockets scheduled at 9:00 a.m. on Tuesdays with the municipal docket on the 2<sup>nd</sup> Tuesday at 9:00 a.m.; Wednesday at 9:00 a.m. will be criminal (in custody with PD) and Wednesday at 1:30 p.m. will be criminal (out of custody & private counsel); Mondays at 9:00 a.m. will be bond forfeiture, show cause, PV & pros se defendants.
- v. Division 8 – Removing adoptions at 9:00 a.m. on the second Monday.
- vi. Division 9 – Mondays will be adult abuse at 9:00 a.m.; Thursdays will be landlord/tenant at 9:00 a.m. and landlord/tenant trials at 10:00 a.m. and 1:30 p.m.; jury trial setting was moved to Wednesday of week 2; expungements were removed from third Tuesday.
- vii. Division 12 – Drug Court will begin at 1:00 p.m. on Tuesdays; Veteran’s Court will begin at 1:00 p.m. on Wednesdays; and Co-Occurring Court will begin at 1:00 p.m. on Thursdays.

#### *Callaway County*

- viii. Division 12 – Family treatment court staffing will begin at 9:00 a.m. and court will be at 10:00 a.m.

### **14. GAL Implementation Plan**

Deputy Court Administrator Cindy Garrett said the GAL Implementation Plan on pages 19 and 20 of the Court en Banc’s packet is to be reviewed annually. No revisions were



proposed to the document this year. Judge Stephanie Morrell moved to accept the GAL Implementation Plan. Second: Judge Kimberly Shaw. The motion passed unanimously.

**15. Other**

Judge Kevin Crane said politically in the State of Missouri the time is right to make a plea for a Traffic Court Commissioner. He said St. Louis has traffic court commissioners and he believes we have a good basis for a request. He said they end up being less expensive than an associate judge in that they are not benefitted and can work another job. Court Administrator Mary Epping said the two commissioners in St. Louis are contracted, therefore not a tradition commissioner with benefits. Judge Crane said the position would be appointed by the Court en Banc. The Court en Banc approved proceeding on this request.

Judge Kevin Crane said the University of Missouri has approved the use of Trowbridge building for jury trials. He said we will visit the location on Friday at 11:00 a.m. This would be for circuit level voir dire and trials. He said the facility will only be available until MU goes back to in person school, which could be January 19, 2021. He requested judges let him know if they have a case that might be appropriate for this location. Judge Jeff Harris said he has a criminal trial scheduled on January 20 that will be held in the Boone County courthouse. Judge Crane suggested the circuit judges determine if they have any in custody cases that could be moved up to take advantage of this additional location.

**16. Comments from the Public**

District Public Defender Sarah Aplin commented that Supreme Court Rule 33 contemplates the court determining the bond verses a bond schedule. Judge Kevin Crane said he understands; however, there was a committee that approved the scenario where the right to having a judge set your bond can be waived, as with Miranda, and there is a form for accused at the jail to use and waive their right and post a bond or they can choose to wait for a judge to set the bond. Sarah said she believe this committee met prior to Rule 33 which she believes impacts those considerations. Judge Crane said he will consider this.

Sarah Aplin said the indigency determinations and appeals, if adhering to the criteria and scrutinizing those requests, is a way to help keep people off the waitlist.

**17. Next Meeting Date**

The next meeting is scheduled for January 12, 2021 at 5:00 p.m. by Zoom or if in person the meeting will be held in Callaway County. Judge Kimberly Shaw moved to adjourn. Second: Judge Stephanie Morrell. The motion passed unanimously. The meeting adjourned at 6:21 p.m.

Prepared by: Cindy Garrett  
Cindy Garrett  
Deputy Court Administrator

Submitted by: Mary Epping  
Mary Epping  
Court Administrator

Distributed on: