

COURT EN BANC MINUTES
Tuesday, February 23, 2021, at 5:00 p.m.
Zoom Video Conference

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

Others Present: Boone County Circuit Clerk Christy Blakemore and Circuit Clerk Unit Manager Sherry Seiling, Callaway County Circuit Clerk Megan Morse, Adult Court Services Supervisor Brandon Walker, Court Marshal Ben Pruett, District Defender Kevin O'Brien, Court Reporters Stephanie Allen, Jenni Bosh and Julia Paulus, Administrative Assistant Barbie Oeth, Court Administrator Mary Epping and Deputy Court Administrator Cindy Garrett

1. Call to Order/Welcome

The meeting was called to order by Judge Brouck Jacobs at 5:00 p.m.

2. Introduction of Guests

Judge Brouck Jacobs welcomed guests.

3. Approval of January 12, 2021 Minutes

Judge Stephanie Morrell moved to accept the January 12, 2021 minutes. Second: Judge Kevin Crane. The motion passed unanimously.

4. Six Month Municipal Alcohol/Drug Related Traffic Report

Deputy Court Administrator Cindy Garrett presented the Municipal Court semi-annual report for July through December, 2020, on intoxication-related offenses as set out on page 4 of the Court en Banc's packet. The report was reviewed and no action was taken.

5. Minor Settlements/Conservatorships

Judge Stephanie Morrell said she was asked to explain the process for minor settlements. She said these cases can originate two different ways. First, a petition for approval of minor settlement is automatically filed in the probate division. Second, if a lawsuit has been filed where a minor is one of the plaintiffs and there is already a next friend, the attorneys file a petition to approve the minor settlement within the lawsuit, then the judge assigned to that case needs to transfer it to the probate division. Once transferred the probate judge has a hearing to determine whether or not to approve it and determines whether a conservatorship has to be done, which disposes of that case. In cases where there are multiple plaintiffs including minor(s) and a petition to approve the minor

settlement is filed, the entire case can be transferred to the probate division for the approval of the minor settlement, the parties then dismiss the minor and the remaining plaintiffs are transferred back to the original judge for trial. The basic rule is anytime a case with a minor settlement is filed it needs to be held in the probate division. Judge Morrell said sometimes the attorneys will file these cases in the civil division, at which time the clerk needs to have it transferred to the probate division.

6. Supreme Court Letter, Self-Represented Litigants during COVID

Judge Brouck Jacobs said he received a letter from Chief Justice Draper that made recommendations for courts to be more open and accessible to pro se litigants. The order suggested the following: allow pro se litigants to make filings via mail, fax, hand delivery, drop off box or by email. Judge Jacobs said our circuit is already offering all those options with the exception of email, which was in consultation with both clerks. It has been agreed we will not offer an email option for pro se litigants. He also noted Callaway County has a drop box in front of their building. Judge Jacobs said he feels the options we have been providing have been beneficial for pro se litigants. Court Administrator Mary Epping said the Supreme Court's letter suggested these options and an order be made, however is not requiring it.

7. Board of Jail Visitors, Callaway

Judge Brouck Jacobs said Commissioner Casey Clevenger solicited two male Democrats to fill the vacant Board of Jail Visitors committee in Callaway County. Commissioner Clevenger said she and Judge Carol England have been working on this. She said Todd Gray and Verdis Lee have agreed to serve on the board. Todd Gray was formerly on the school board and is currently a Captain at the Fulton Fire Department. She said there was no minority representation on the board so she reached out to Verdis Lee who is active in the community and also on the school board. Judge Carol England moved to appoint Gray and Lee to the Callaway County Board of Jail Visitors committee. Second: Judge Kimberly Shaw. The motion passed unanimously.

Judge Stephanie Morrell moved to approve the Callaway County Board of Jail Visitors as noted on page 9 of the Court en Banc packet. Second: Judge Carol England. The motion passed unanimously.

8. Municipal Cases Certified for Jury Trial

Judge Brouck Jacobs said in Boone County, when a municipal case is certified for a jury trial, these cases have been filed in circuit court. He said there has been a request for these cases to be heard by associate circuit judges. He said all three associate circuit judges in Boone have agreed to hear these cases. Judge Stephanie Morrell said the statute specifies the case should be heard in front of an associate circuit judge. Boone County Circuit Clerk Christy Blakemore said years ago it was agreed circuit judges would hear all jury trials.

9. Continuances with Scheduled In-Person Interpreters

Judge Leslie Schneider said she has had several civil cases that required an in-person interpreter. She said the attorneys agreed to continue the case without advising court, therefore interpreters were present or it was too late to cancel, in which case the county has to assume the cost of paying for interpreters despite there being no hearing.

Court Administrator Mary Epping said OSCA currently pays for interpreters for criminal cases; however, the legislature has not appropriated funds to cover the cost of interpreters for civil cases. Mary said a statute on page 10 of Court en Banc's packet states the court may require a deposit by the parties on civil cases for interpreters. In discussion with the circuit clerks it was agreed we do not feel a deposit is necessary. Mary proposed a new local court rule on the bottom of page 10 of the Court en Banc's packet so that when there is a motion to continue filed less than 48 hours before the court date the court may require the parties to pay for the cost of interpreters if the court cannot cancel the interpreter(s) in time. Judge Tracy Gonzalez moved to approve Rule 56.2 as noted on page 10 of the Court en Banc packet, with the amendment of striking "the hearing or trial" and replacing with "a court proceeding". Second: Judge Kevin Crane. The motion passed unanimously. Mary said this rule will take effect in 60 days.

10. Justice Reinvestment Initiative Grant

Court Administrator Mary Epping said in late 2020 to early 2021, the Supreme Court held a virtual "Leading Change Criminal Justice Leadership" Series. The focus of these sessions included: early intervention – from public health system to law enforcement, after arrest from initial detention to community corrections, and the impact of race and poverty on criminal justice

Locally, through participating in the Stepping Up initiative, two sequential intercept mappings and NACo's leadership lab, one area of focus has been sequential intercepts 0-1 by increasing resources in the community for the public and first responders, including law enforcement. These resources will enable individuals and first responders to have more options when interacting with someone in a mental health crisis or in need of mental health services. Intercept 0 is before law enforcement, and Intercept 1 is after 911 has been called. Mary said Commissioner Thompson, Steve Hollis from the Health Department and Mary applied for JRI funding for a team to travel to Miami-Dade or Tucson to see their models of diversion and treatment in the jail; and also, for a consultant to help establish the best use of FTEs the city is funding for licensed social workers: 911 diversion, co-responders, or a mobile crisis unit. Mary said we were awarded \$38,000 to accomplish this.

Mary also noted Burrell may have received funding to develop a regional "Access Center."

11. Jury Brochure

Court Administrator Mary Epping said jurors get a handout from the marshals, but it does not explain the background of how they were selected or what is happening while they wait. Mary said on pages 11 and 12 of the Court en Banc's packet is a proposed brochure for the court's review.

Mary said there is plenty of room if there is a request for additional information. Judge Brouck Jacobs said this brochure would be placed in the designated seats of the jurors. Judge Jeff Harris said there are also brochures available to be given out at the end of some trials when jurors have heard emotional evidence. He wanted to know if there was protocol to provide those brochures and also inquired if those needed to be updated. Mary said she has those brochures that are printed when requested by a judge. Please let Mary know if you have additional content you want added to either brochure.

12. COVID Update

Court Administrator Mary Epping provided the following updates:

We have moved to Phase 2 on Monday. If there are no additional positive COVID results we can determine if we want to move to Phase 3 in two weeks. The difference with Phase 3 is administrative leave is no longer available to staff if someone gets COVID; however, Phase 3 is the most open, allowing all trials.

Vaccines

- Staff in the Juvenile Office, Marshals, JJC and Adult Court Services were able to receive vaccines as they work in law enforcement and/or may be present at the jail or juvenile detention center.
- A few falls under the 1B, Tier 2 group and have received vaccines or on the list to.
- All others governmental staff fall under 1B, Tier 3 and are still waiting. It is anticipated this will be Mid-April, but it's likely will be sooner than that.
- We have been coordinating with the local health departments and OSCA, and individuals are also encouraged to sign up on their own.

Webex

- Most divisions are changing to Webex on March 1, for those changing Mary will be checking with judges about when we can eliminate Zoom accounts. She said we will hang on to accounts for a couple of months just in case.
- For those that approved it, the links to the Webex Rooms will be posted on the courts' Docket page with information on how to call in as well. There will be a shortcut to this page on our homepage.

Dispositions

- With all the talk about a backlog due to COVID, Mary ran a CourTool report in COGNOS to compare the circuit's disposition rate for 2019 compared to 2020. In 2019 our disposition rate was 92.2% and in 2020, it was 98.9%
 - Of note:
 - Criminal case disposition improved from 83.53% to 101.55%
 - Criminal filings dropped 1,257, but dispositions improved from 7,614 to 7,980.

Judge Jeff Harris believes our disposition rates should be reported to the media and the local bar as the notation of there being a backlog is not accurate. Judge Jacobs said there is a plan for this to be presented.

13. Legislations

Boone County Circuit Clerk Christy Blakemore said she sent by email a copy of the House Bill and Senate Bill that the circuit clerk's association is supporting. She said a similar bill was filed last year. She said these bills go to the ongoing and recent issue in Lincoln County. She said there was a recent ruling in the Cole County case by Judge Callahan where he said the presiding judge does not have the right or ability to suspend the circuit clerk of her duties but Judge Callahan did not have the right to reinstate her. Christy is happy to discuss any concerns regarding the bills.

Commissioner Casey Clevenger said Representative Travis Fitzwater filed HB 1080 which would change the definition of judicial officer for the purpose of tampering with a judicial officer to include treatment court and family court commissioners. There was a question if it would include a traffic or probate commissioner. She believes he was planning to update the language to include any judicial commissioner.

Court Administrator Mary Epping reviewed the following bills: HB 557 & 560 for investigation of private residential facilities; HB 313 regarding Victim Impact Programs; HB 707 and SB 237 modifies court reporter compensation; HB 712 prohibits municipal court for charging a fee for obtaining a police report or PC statement; HB 748 fixes issues for the court to collect fees versus treasurer; SB 270 establishes time standards for judges and implements fines and discipline to a judge for not meeting the standards; SB 357 modifies medical marijuana regarding treatment court; SB 455 increase court automation fee from \$7 to \$12.

14. Courthouse Technology Committees

Court Administrator Mary Epping said she is requesting there be a standing courthouse technology committee for each county. She said technology is not lasting as long.

Mary is recommending there be an administrative order that each county have a committee that includes the following individuals:

- 1 - Associate Circuit Judge (of that county)
- 1 - Circuit Judge (can be the same or different)

- 1 - 13th Circuit IT Supervisor
- 2 - Court Administrator and Deputy Court Admin
- 1 - Juvenile Office Representative
- 3+ - Attorneys- Prosecutors and/or Public Defender plus at least 1 other

Judge Brouck Jacobs said we will need to determine what we are going to allow for technology once courts are allowed to resume as they were prior to COVID. He believes the Supreme Court may provide some guidance on this as well. Please let Judge Jacobs or Mary know if you are willing to be on this standing committee. He said this committee would make recommendations to the Court en Banc.

15. Westlaw Contract

Court Administrator Mary Epping said Westlaw has a new agent who has been proactive in reaching out to us. Mary said we used to have a subscription to Westlaw where we paid more than \$10,000 a month. She said the state then created a free LexisNexis accounts, but we still purchase books from Westlaw. Mary said on page 13 of the Court en Banc's packet is shows our circuit is spending \$12,573 annually for paper copies of certain books. The agent is stating if we switch to Westlaw Edge, we would have access to all the information online plus research which would be \$5,744.64 annually. Mary said there could be a combination of having some hardback books as well. Mary needs to know if the Court en Banc wants to move from free Lexis to paid Westlaw. She said we have budget to pay for these items out of the Law Library fund, where the fund balance was more that \$100,000 at the beginning of the year. Mary requested you let her know which you prefer and she will bring back the results at the next Court en Banc meeting and request approval for a budget amendment if necessary.

16. Update to ACS Report and Recommendation Regarding Nonpayment of Fines Form

Adult Court Services Supervisor Brandon Walker said a judge requested a line be added to the warrant request form, which involved the IT department making the change. On page 14 of the Court en Banc packet is the form with the update as requested.

Judge Stephanie Morrell moved to approve the change to the form. Second. Judge Gonzalez. The motion passed unanimously.

17. Other

Judge Jeff Harris said he had his first jury trial in Callaway a few weeks ago and he wanted to acknowledge all the great work everyone did to make it a seamless, smooth process.

Judge Brouck Jacobs said in consultation with all the judges it was agreed we should ask legislature for a traffic court commissioner. This position would handle all the traffic cases for Boone and Callaway. He said between 2018 and 2019 there was a 41%

increase in traffic filings in Boone County and a 38% increase in Callaway County. He said these cases fall primarily on Judge Shaw and Judge England but has a ripple effect on all dockets. He said in Boone County several circuit judges are handling what would typically be associate circuit dockets and Judge England and Judge Crane do not have any assistance in that regard. He said if we were able to take the traffic cases from the associate circuit divisions, it would more time in the office to spend time on rulings and judgments and allow for more court time. He said a request has been made; however, it is not certain it will happen this year, but he will try again next session. Judge Jacobs spoke with a traffic commissioner in St. Louis County. He said there is a statute on traffic court commissioners specific to St. Louis County where they are paid 1/3 of an associate circuit judge's salary but only allowed to work 1/3 of a 40-hour week. The statute allows for them to hear any type of traffic misdemeanor and municipal cases, DWI or DWR cases. In St. Louis County they handle only DOR license actions (civil cases), where each of the two commissioners have two dockets a week and spend the rest of their time preparing judgments and findings. Judge Jacobs said the circuit would use the commissioner in traditional traffic dockets. Judge Jacobs has contacted Senator Rowden's office for this legislative request and encouraged anyone with ties to someone to reach out to them. Judge Kevin Crane said another advantage of a commissioner is the CEB hires that person and it is someone who wants to hear the specific cases. Judge Jacobs said we considered asking for an associate judge for Boone County to hear cases in both counties or a circuit judge it is anticipated once the Boone County population hits 200,000 we are entitled to an additional associate circuit judge. Boone County currently has more than 180,000 residents so it is anticipated within the next decade we will be entitled to another judge.

Callaway County Circuit Clerk Megan Morse said the Callaway Sheriff's warrant clerk has been sending old warrants from the late 1980s and early 1990s requesting they be recalled. Megan said Boone County has an order that allows the clerk to write off fees for anything over 10 years old. Megan said OSCA has said the CVC can also be written off. Megan is asking for a similar order allowing her to write off fees that are 10 years or older effective January 1, 2021. Court Administrative Mary Epping said this is done through an administrative order that will be issued unless there is an objection. Megan said currently they have over \$520,000 outstanding.

Court Administrator Mary Epping said in Boone County 1E, 1W, 2E, and 2W the overhead speakers died and the listen tech technology was not working correctly. She said those have been replaced and are now working.

Commissioner Casey Clevenger said in treatment court they are considering applying for a BJA grant to expand their co-occurring treatment court and also make a multi-track DWI court, where they may explore federal funding for this expansion.

18. Comments from the Public

No comments from the public.

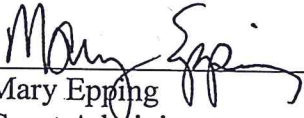
19. Next Meeting Date

The next meeting is scheduled for March 23, 2021, at 5:00 p.m. by Zoom. Judge Stephanie Morrell moved to adjourn. Second: Judge Tracy Gonzalez. The motion passed unanimously. The meeting adjourned at 5:58 p.m.

Prepared by: _____

Cindy Garrett
Deputy Court Administrator

Submitted by: _____


Mary Epping
Court Administrator

Distributed on: _____

3-19-2021