



Maneke law column

Expect takedown requests in 2018

Courts will begin issuing expungement orders on Jan. 1

A few years ago, I remember writing all of you to say you needed to think ahead about how you would handle the first engagement or wedding announcement you received that involved two persons of the same sex. At the time, I knew that was an issue that hardly anyone wanted to be forced to consider and there would be push-back.

Today, I raise another tough subject that publishers need to begin thinking about seriously. Some of you have already faced this. When you've called to tell me you are struggling with what to do and in response have had me raise the issues I mention here, I've had some push-back again. But the need to think about this issue is now literally on our doorsteps.

On January 1, Missouri courts will begin issuing Orders of Expungement/Sealing of Criminal Records. Instead of the limited expungement that existed in Section 610.140, this new law will allow for the sealing of criminal records relating to infractions, ordinance violations, misdemeanors and some felonies. "The new law will help more people who were previously convicted of nonviolent, low-level offenses by sealing the public record," points out the Missouri Bar. "This new law works to improve the lives of Missourians by helping them move forward after paying for their mistake. Sealing low-level, nonviolent offenses in criminal records can help individuals

get back on track, especially when it comes to securing a job," said Missouri Bar president Morry Cole, St. Louis.

So once these formerly public records are sealed in court, these same folks are going to become more aware that an online search for their names will still turn up references in your newspaper archives to their court convictions. They will be beating a path to your door demanding you remove the stories about their convictions from your websites.

What do you do? That's what I'm asking you to think about today.

There are sites online that compile such data and charge a fee to remove it. You'll be asked if you would accept money to take down these stories. You will search around for an ethics code for newspapers that deals with this subject, but you'll find it doesn't exist.

Some newspapers across the country are forming in-house panels who meet periodically to review such requests and make case-by-case determinations. Some papers have adopted a policy of leaving the story accessible in their archives but breaking the link that allows search engines to bring it up in a general online search, a process that is referred to in some cases as "de-indexing the story."

(In fact, some time ago I wrote about a case where a circuit court judge in Missouri demanded this same thing in regard to a defamation case that

was pending in that court pending a judgment being issued.)

I have even read about cases where a sham lawsuit was filed against a defendant with a name somewhat similar to the publication and a court judgment rendered against the fake defendant ordering the story taken down. Then the plaintiff attempted to use that judgment in an effort to force the actual publisher to take down the story from the Internet.

I fortunately don't have to render decisions on ethical issues. What you will or won't do in regard to such stories are, more or less, all ethics issues. Those are yours to wrestle with. I do know that from a defamation position, if the story as it is reported was true when published, that fact is not changed by the subsequent removal of the court proceeding from court records. One cannot "undo" their arrest, even if they were subsequently not charged. (I will note, some newspapers add a note to the original story that charges were subsequently not filed or otherwise clarify the original story.)

And history is not changed by subsequent acts that seal information about what really happened in a case years ago. Formerly public facts do not become "private facts" because they are now sealed records based on a court order.

In short, there's no legal solution to this problem which I can offer you. But I encourage you to consider the question in your newsrooms and start early in considering how you will respond when this first request arrives at your offices, because I believe after January 1, you'll begin getting them.

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