

Keep two basics in mind with 'Do Not Call' Law



Federal Law took effect Oct. 1

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While everyone is debating the pros and cons of the federal and/or the state Do Not Call laws, the association's hotline attorney's head is spinning, trying to keep straight all the provisions of the various laws.

If you are as confused as I am, here are the two basics you need to keep in mind:

1. If a name is on either the federal or state list, you must not call this person. The federal program began Oct. 1. As you know, the state program has already been implemented. The federal registry data for up to five area codes will be available for free for registered users at www.ftc.gov, the federal trade commission's website. Beyond five, there is an annual fee of \$25 per area code of data, with a maximum annual fee of \$7,375 for the entire U.S. database.

The fee must be paid annually. Payment of the fee provides access to the data for an "annual period," which is defined as the 12 months following the first day of the month in which the fee was paid. For example, a company that pays its annual fee on Sept. 15, 2003, has an "annual period" that runs from Sept. 1, 2003, through Aug. 31, 2004.

If you need access to the Missouri list, go to the Missouri attorney general's web page at www.ago.state.mo.us. About mid-way down the page is the "No Call" logo. When you click in the logo, you are taken to the No Call web page. There, about mid-way down that page, is the application to get the no-call list from the attorney general's office. Pricing is quarterly, and the cost is \$25 for each area code in the state per quarter.

2. Once you have the no-call lists, remember that you CAN call persons on the list if you have had a business relationship with this person in the last 6 months. (The federal law has a "prior business relationship" window of 18 months, substantially longer than the state window. Based upon federal law provisions regarding conflicts in the two laws, the state window would apply, therefore the time limits are shorter.) If you follow those two basic principles, you should be fine. At the moment, all of these areas of the law are changing, so we will need to watch closely for announcements about enforcement provisions.

Just in case you are interested, recent statistics from the Federal Trade Commission show 22.3 percent of Missouri households have signed up for the federal Do Not Call list.

Before I close, let me note that the Missouri Court of Appeals for the Eastern District of Missouri, in St. Louis, issued an opinion in late August upholding the dismissal of a defamation claim filed against Rust Communications and the Southeast Missourian. The paper had done a series of articles in 1998 on an entity called Community Sweat Equity Housing, which focused on rehabilitating housing units. The plaintiff claimed she was defamed in the articles.

The court found that a review of the facts pleaded in the petition, when viewed in a light favorable to the plaintiff, still did not state any grounds for relief. The court reiterated the basic elements of defamation in Missouri: 1) Publication 2) of a defamatory statement 3) which identifies the plaintiff 4) that is false 5) that is published with a requisite degree of fault and 6) damages the plaintiff's reputation.

Further, the court found, after examination of the statements the plaintiff complained of, that none of them were defamatory. Further, the court found some of the statements to be opinions. In fact, the plaintiff, in regard to some of the statements she complained about, admitted they were true.

Missouri courts are seldom given a chance to speak on libel matters, and a favorable opinion is always good

for the media for future issues that might arise. Thanks to the folks at Rust and to Ben Lipman and his cohorts at Lewis, Rice, for their good work upholding the law in this state!