

What newspapers print still can result in change

Judge selection rules amended

Most of the time when I talk about sunshine law violations and we get to the point of what happens when someone breaks the law, I feel fairly powerless. Yes, you can complain to Missouri's attorney general, but I realize the odds of anything happening from that office are generally slim. Yes, you can complain to your local prosecutor, but the odds of that person taking action are even slimmer, because that person is usually serving to defend the public body that broke the law.

You can hire your own attorney, but most folks can't afford that option. So, when the caller is a newspaper, my last suggestion is that they write about the violation. After all, as many of you remind me, you now buy ink not by the barrel but by the train car load.

But on occasion, I find the power of the press is not just a euphemism. The power of the pen really exists and it is mightier than the sword on occasion.

Just a few weeks ago, I saw again the difference you make in our state's operation. But let's backtrack, to see how far we've come.

Late last year, the Missouri Supreme Court's appellate judicial evaluation committee was in the process of selecting a panel of candidates for the Missouri Supreme Court. Reporters wanted to be close by where they met to see who would be coming and going. The committee, according to the Missouri Constitution, is governed by state law except as it is instructed by Supreme Court rule. The committee announced the date and time of its meeting to the public, but did not announce the place

of the meeting. Nothing in the Supreme Court rules permitted the commission to omit this information from its meeting notice, which was required by the sunshine law.

Reporters covering this committee wrote stories about this violation. And not long after that, the names of the candidates, which WERE permitted to be kept confidential, were leaked to the media. Soon certain governmental officials complained about the lack of openness and a struggle ensued between those supporting the Missouri Plan and those believing the system was flawed due to the secrecy of the process.

This article is NOT about whether the Missouri Plan works.

What is interesting to me is that there was much coverage of the entire issue. This subject drew much public attention.

News columns discussed the benefits that might come from more openness in the process.

And recently, Chief Justice Laura Denvir Stith announced that new rules had been adopted by the Court that would provide greater openness in this process. "Members of the Court think it is important to make the process more public to the extent not inconsistent with encouraging well-qualified applicants to apply," she said in announcing the change.

The amended rules will require notice of the date, time AND place of meetings 24 hours in advance. Certain information regarding the pool of candidates will be released – information not previously made available to the public. And the



Jean Maneke, MPA's Legal Hotline attorney, can be reached at (816) 753-9000, jmaneke@manekelaw.com.

final nominees for the position will have their applications made public, with confidential or personal information redacted.

No, this isn't everything that everyone wanted. But it is a sign to me that those buying ink by the barrel OR the train car load can make a difference in the state. And it makes me proud.

On another interesting front, I read an article the other day about the use of the photos from the MySpace page of the young woman caught in the entanglement with New York Gov. Eliot Spitzer. Some copyright lawyers were arguing about the media's right to use those photos and whether they were infringing on important rights.

My initial perception, had one of you called me to check on this, is that if it is being used in the context of a news story, your use would have fallen under the "fair use" exception of the law. Obviously, other media entities, such as *The New York Times* and the AP, reached the same conclusion. It is true that the source of the photos must be credited in a situation like that, but I believe when news happens, use of such photos doesn't require permission of the photographer.

It's an interesting question. What if you know a photographer has taken photos that you have access to, but which you have not requested permission to use, and then a situation arises where you need or want to use those photos? Where the photographer has not given you permission to use them, do you have the right to use them first and ask permission later? I don't know that there's much case law that would help us determine the correct answer.

I'm glad folks with bigger budgets for lawyers than most of you do got there first!

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