

Treat public notices (legals) with respect they deserve

Timely publication critical to proceedings

Recently, several papers in the state called the MPA hotline due to problems that have arisen with advertisers over typical land foreclosure legal notices. The circumstances creating the issues ranged from the newspaper having to change its publication date from its standard day of the week due to a holiday to a newspaper failing to start running a foreclosure notice on the proper day.

It goes without saying that the legal notices you run are some of the most important things you do as a newspaper. A few state legislators every year think that moving legal notices out of newspapers would be a great idea for a variety of reasons. Your association constantly reminds them that moving notices out of newspapers would be a very bad idea.

I'm sure you don't need a reminder of all those reasons, including the permanence of the printed page compared to the impermanence of an electronic image, the security of a printed page compared to the lack of security of a website, and the fact that newspapers are readily available to everyone, even folks who don't have a computer, who don't have internet access and who think "Googling" is looking at someone with "goggle" eyes.

As the hotline attorney, I'm very sensitive to the issues newspapers face in running legal notices. As an attorney and "consumer" of legal notices, I have seen the other side of the legal notice equation, too. Many times legal notices are placed directly by the courts.

When I personally am responsible for placing a legal notice, I've taken to sending it to the newspaper electronically because it helps ensure that it gets

printed without typographical errors, as well as making it easier for the paper. I suspect many of you at times simply scan a notice you receive on paper for the same reason.



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But I don't know how many of you send out "proofs" to your customers for approval before the notice runs. I suspect sending out proofs is more something that is done with an ad you create for a commercial customer, but I would suggest that it is a very good idea for your legal notice customers, too.

And in addition to proofing the language you have in the ad, I would suggest you have on the proof the dates the ad is to run, and make sure the customer signs off on that

so that there is no confusion as to when the ad is to run.

Those of you who have been unfortunate enough to have missed the start date of a foreclosure notice know that the law firm placing those ads has a large amount of preparatory work in place that hinges on those ads running on the correct dates. Some of you have at times had demands made on you to pay a law firm's expenses when a notice failed to start on the proper date and the entire process had to be restarted. What do you do when that happens?

The solution to this problem is to be sure you have in place prior to the time the ad runs an agreement with your advertiser as to damages owed if a mistake runs in an ad. Every newspaper should have a "rate card" in place that goes out to every person who places an ad, whether a display ad, a legal notice or just a classified ad. It should include the pricing schedule, and all the terms and

conditions relating to your advertisements. And you need in it some language limiting the liability of the newspaper in case of a mistake in the ad.

Here are some samples of language you could use:

"This newspaper will not be liable for any error in or any omission of any advertisement published or ordered to be published unless a proof of such advertisement is requested by the advertiser and said proof returned to the newspaper office by deadline."

Use language like this if you don't want to provide a proof to everyone but you want to protect yourself. Be absolutely sure it goes out to every advertiser prior to or at the time the ad is placed. Be sure the deadline is given to the advertiser, preferably in writing.

But be aware that if a proof is requested and then you fail to publish an ad, you may be liable for additional damages, which is why the following language would also be helpful to include:

"The newspaper's liability is limited to the cost of the advertisement containing the error and in no event shall the newspaper be liable for any general, special, or consequential damages whatsoever." This language may cost you the price of the ad if a mistake is made, but it will protect you from claims for additional damages.

There are other items that should be in your rate card, most especially language that says the advertiser is responsible for the originality of any material supplied to you for display advertising and also that the advertiser agrees to defend and indemnify you in case of a claim for damages arising out of any advertising you may publish.

As always, if you want to discuss this issue further, give me a call.

Those placing notices should proof copy; rate card should limit liability for errors.
