

# Open, and increasingly shut, records

To this observer, these days seem to be among the toughest days we've had in years in regard to access to public information. At times, it seems like "one step forward, two steps back" when you assess if progress is being made in Missouri on this front.

For example, there have been numerous times reporters have complained that they go to the courthouse a few days before trial and find that public access to court pleadings on that case are now closed records, just as they attempt to get current so they can properly cover the proceeding.

This was an issue that was percolating up during the time that final changes were being made to strengthen the media's rights under Supreme Court Operating Rule 16, which covered cameras being permitted in the courtroom.

Then, this summer, the Supreme Court revised Court Operating Rule 2.04 in the process of the Expanded Remote Access Implementation. That has been discussed in detail over the summer and you are beginning to see how that functions.

There are problems surfacing and those need to be noted by you and forwarded to me so they can be compiled.

By no means is this a flawless process. Your press association is working with the Missouri Broadcasters Association and others to identify needed steps and fix these problems. It is obvious that this is not going to be an easy task.

But it is important to look closely at the new Operating Rule 2.04 and, if you cover the state courts, to keep a copy handy. The rule change does include a provision that should help with the issue of a closed file relating to trials.

The new rule says in Section 1(d): "Access to case records as provided by this Court Operating Rule 2.04 shall not be restricted in anticipation of a jury trial without a court order setting forth specific written findings supporting a compelling justification to restrict access."

While it does not specifically say this, it would seem reasonable to assume that restriction would need to be limited in scope so that once a jury is selected, other members of the public (and the media) would again be given access to the background on the case. (Also, this is where having a good relationship with your local judge is very important — there are no doubt times where a reporter with such a relationship with the judge could possibly be given earlier limited access under certain restrictions in order to prepare for the trial.)

Meanwhile, as the new Remote Access plan rolls out, another law that was passed in 2021 is making clear its defects. The language of concern is found in Section 590.502 of the Revised Statutes of Missouri. Subsection 2 of that statute, commonly known as the "Police Officers' Bill of Rights" as it went through the Missouri legislature, discussed administrative investigations of cops that could lead to disciplinary actions, dismissals, transfers or demotions.

In such cases, the process of questioning is restricted in various ways. Most of those restrictions give certain rights to the officer being questioned.

But the "kicker" is that the outcome of the investigation is a closed record under the Sunshine Law. Getting access to it requires obtaining a court order. So if citizens make a complaint against a law enforcement officer, they are not allowed to request a copy of the outcome of that investigation. It's a secret.

Does that seem right? If you, as a citizen, take the bold step of

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complaining about a cop, you can forget about even knowing what happened and you will just hope that law enforcement takes the required step of redacting your name from the records.

And if you are a community down the road and that cop applies for a job, know that you will have no way of finding out about any official

complaint made against that person that might influence your decision whether or not to hire them.

This statute is the basis of a case that was scheduled to be heard by the Mo. Supreme Court on Sept. 27, called *City of St. Louis v. State of Missouri*. It usually takes several months for the Court to issue its decision, so it's possible we won't hear anything about it until November or December.

And the Court is not hearing this case on the basis pointed to above — the case is postured as one questioning whether the bill as passed had outgrown the scope of its original purpose and therefore was invalid, whether certain obligations within the final bill constituted an "unfunded mandate" under the Hancock Amendment and thus invalidated the bill, and other concerns.

As far as Missouri journalists are concerned, the best outcome would be for this entire law to be invalidated. We shall look forward to this decision, for sure!



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