

Case.net accessibility brings questions about case closures

This summer will bring a major change to Case.net, as you may know. The Missouri Supreme Court is planning on July 1 to initiate Remote Public Access. All of you will be able, for the first time, to “click through” on case docket entries and see the pleadings.

No longer will you need to go to the courthouse (or email a friendly attorney) to send you copies of pleadings. And those of us who are lawyers are working hard to keep our brain engaged in terms of what must be redacted from case documents we file.

But, behind the scenes, a troubling practice continues to rise to the surface in regard to Case.net. And now it's time for you to help protect your right to access court cases online.

You already probably know how to go to Case.net and to type in a case number or a name and, as a result, locate a list of potential cases that will satisfy your search. You are able to do that because the Missouri Constitution guarantees that “all trials upon the merits shall be conducted in open court ...” and, Missouri statutes guarantee that “the sitting of every court shall be public”

But it probably won't surprise journalists to know there are exceptions to every rule. Almost every case involving a juvenile is conducted in a closed courtroom and case records regarding such matters are not open to the public. There are other cases where proceedings may be closed, but Missouri court rules require a showing in an open courtroom that there are “compelling circumstances” – one often-cited case in Missouri held that in making a determination whether to close a proceeding, the “court must explain why closure or sealing is necessary and why less restrictive alternatives are not appropriate”

Recently, Eugene Volokh, a professor at University of California at Los Angeles and frequent blogger/

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columnist on the subject of legal and political issues, discovered that a case in which he had provided an affidavit was not available on Case.net. He hired attorney Mark Sableman, from St. Louis, to litigate the unsealing of that case and, ultimately, a Missouri appellate court upheld the refusal of the trial court to make that case open to the public.

Mark and I are members of the Missouri Press-Bar Commission, a group operating under the auspices of the Missouri Bar, which has as its purpose to enhance communication between the media and the judiciary (and, of course, with lawyers in general). Included in its mission is to strengthen First Amendment access to courts while also strengthening Sixth Amendment rights, including the rights of criminal defendants. This includes the rights to a public trial. And it inherently includes the right of the public to access court records.

After comparing notes about cases we have come across that were not publicly available on Case.net, we concluded that it would be beneficial for the court rules to set out a standard for when cases are “closed” to public review – under the terms of Case.net, that means cases where the “security level” is so high that

the case totally disappears. In such cases, you cannot get a case number by searching the Party Index and, if you happen to know the case number, a search of the Index for that case number generates no result. The case has literally disappeared.

Mark, attorney for the Missouri Broadcasters Association, and I, on Missouri Press' behalf, have written to the Clerk of the Missouri Supreme Court, asking that it look into this situation. We believe a standard should be set as to when such a disappearing act is permitted. This would involve amending an existing Missouri Supreme Court Rule to provide the following: a) a public hearing would be required where there would have to be “compelling circumstances” justifying the closing (embarrassment of the parties wouldn't qualify); b) detailed court findings would be required in the public court file; and c) closure would be limited based on the circumstances -- not every part of the file could be closed. The public would have a right to seek reconsideration of this Court order one year after it was entered.

The Supreme Court will take time as it considers making this rule change. In the meantime, if you become aware of a similar case, let us know. We may update our information to the Supreme Court as they ponder this request.

The thing that seemed most offensive to us as we considered the cases we knew that were closed – some of them were simply publicly-owned businesses who didn't want the public to know they were fighting or the outcome of the fight. What justification is there for that?



Jean Maneke, is MPA's Legal Hotline attorney. Contact her at (816) 753-9000; jmaneke@manekelaw.com.