Court recognizes role of notices in newspapers

Websites must be maintained; many aren't

As we begin to approach the end of 2013 and the beginning of a new year, perhaps it's a good time to spend a few minutes thinking about the status of legal notice newspapers in our state and how important they are to maintain. Our legislature will soon be in session for another term, and legislators need to be reminded frequently about why the role of legal notice newspapers is so important to the administration of justice.

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A basic function of many legal notices is to make certain persons aware that there is a court proceeding of some fashion which may affect their rights. These, by definition, are persons who may or may not be reached by standard methods of service of process – either they don't have a mailing address on record or they can't be found by a process server in order to be handed papers detailing why certain rights or interests in property are on the table and may be lost by their failure to act.

When situations like that arise, it is important that there be a clear method to give this person notice of the pending matter. Posting a notice on a pole or in a government office building simply won't work in today's society. The notice needs to be widely distributed and in a permanent fashion so that either the person being sought or others who know of that person will see the information and be able to direct the party to a place where that information is permanently available to review.

As a matter of note, the issue of public notice was recently addressed in a case in the appellate court in the Western District of Missouri, where landowners argued that where public record contained their contact information, public notice in a newspaper was not sufficient.

That August 2013 decision of the Western District of Missouri Court of Appeals pointed to U.S. Supreme Court decisions that have recognized that where a direct property interest is involved, published notice can be insufficient "if more direct methods of communication are reasonably available."

But at the same time, the U.S. Supreme Court has noted that individual notice is not required for every person "who conceivably may have a claim" that is involved. When the action being taken is a "public action" and it has only an "indirect impact" on a taxpayer's interest, then case law shows that those interests, for due-process purposes, are "fundamentally different than the wholesale taking of an owner's real property."

The Missouri court held that this was not a situation where personal notice was required. Indeed, the court concluded, publication notice may well be sufficient for those kinds of interests. This case clearly recognized that there are situations where notice by publication is absolutely acceptable.

Relying solely on the Internet for that purpose is not an acceptable solution, either. A quick review of many city government websites in the state shows that they are not regularly updated, or, in fact, may not even exist. The same is true of many websites of county government, also. Even the State of Missouri does not keep all of its websites updated daily. For example, a great example is that as of the time of writing this column, in mid-November, the Missouri Attorney General's website was updated with this month's press releases, but the sunshine law statutes posted there, several of which were changed effective in late August still had not been updated.

I am not trying to pick on our present Attorney General. It just happens to be a handy example. There are many other state websites that are equally out of date in some areas. Some of these of which I'm aware are websites that the public depends on for information about its state. Updating state websites, understandably, cannot be a priority in times of tight budgets and pressing other needs for public funds.

Indeed, that is exactly the point I am trying to make. Newspapers have as their primary function to publish on a weekly, bi-weekly or daily basis. They are private commercial operations, not subject to the constraints of government funding. They provide solid evidence of this notice for use in court proceedings. And having evidence from an impartial third party of the publication of this notice reinforces in the court process that the administration of justice was fully carried out.

A recent column by *New York Times* columnist Adam Liptak pointed out that courts, in particular the U.S. Supreme Court, had gotten into the habit of including in its decisions links to websites on the Internet that were no longer there. In short, the hyperlinks didn't work. Liptak noted that sometimes that proved very amusing.

"A link in a 2011 Supreme Court opinion about violent video games by Justice Samuel A. Alito Jr. now leads to a mischievous error message. 'Aren't you glad you didn't cite to this Webpage?' it asks. 'If you had, like Justice Alito did, the original content would have long since disappeared and someone else might have come along and purchased the domain in order to make a comment about the transience of linked information in the internet age'," the column said.

You may be smiling, but at least you go to bed knowing that when you reference an article that ran in the newspaper 20 years ago, it's still going to be there when you wake up in the morning!