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Rules will change on access to juvenile court proceedings

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Reporters should be aware that beginning next January the Missouri Supreme Court will change some of its rules regarding access to juvenile hearings and records. Effective Jan. 1, 2006, hearings involving juveniles who are age 17 or hearings involving termination of parental rights will be open to the public, as will court records on those matters.

The court may, however, still exclude the public from such hearings during the testimony of any juvenile or victim. And parties to the hearing (except for the juvenile office) may request that the entire hearing or a portion of the hearing be closed. If such a request is made, the court will hear arguments on the issue and then make written findings in the record detailing the specific reasons for closing a hearing.

To close such a hearing the court must find that closure is in the best interest of the juvenile, that it will protect the physical or emotional well-being of the juvenile or safety of any other person, promote the integrity of the fact-finding process or protect the privacy of a party involved in the proceeding.

Further, the new rule allows the court on its own motion to exclude for good cause shown or for exceptional circumstances any person from the hearing, again requiring the court to make findings on the record as to why the person has been excluded. And the court specifically states that foster parents, adoptive parents, foster care institutions and other persons involved with the court proceeding may not give audio or video recordings concerning the juvenile or permit photographing or videotaping of the juvenile.

This last provision in the rule may have significant impact on some reporters doing stories about children in the juvenile system. The court is basically saying that if you are subject to the jurisdiction of the juvenile court because of your role in such a case, that you give up some of your First Amendment rights to talk about the case.

While the rule discusses audio and video recordings, it does not say that a person within the system may not be interviewed to discuss the child, only that no recordings may be made of the interview. However, it does prohibit the photographing of a child in foster care.

The court also notes that the juvenile office will be permitted, in connection with hearings as set out above, to provide information concerning the style of the case (name of the parties), the nature of the case (ie: whether it is abuse or neglect), the hearing date, the outcome of the hearing and the next hearing date.

Similarly, a new rule 122.02 has been enacted, effective Jan. 1, 2006, that makes accessible to the public all pleadings and orders of the court in cases involving 17-year-olds and involving termination of parental rights, but only for cases opened after Jan. 1, 2006. These records will have some information redacted, including, for example, the names of foster or adoptive parents or foster care institutions and the names of any person who reported child abuse. This rule will not, however, make available to the public any written reports, social records and other documents presented to the court for review at any hearing.

It is interesting to compare this announcement regarding this rule change to another recent rule change made by the Supreme Court. This change was announced March 9 and is not effective until next January.

Meanwhile, on Jan. 1, 2005, the court made effective changes to the rule governing public access to general court records. Supposedly it was announced Nov. 17, 2004, but no notice of that announcement was on the Supreme Court's web page earlier this year and those changes came in very quietly.

These changes to what is called Operating Rule 2 are equally significant to the media and to many members of the public. First, the rule provides that internal e-mail is not considered a public record. While Operating Rule 2 includes in its provisions that records which are considered closed under the Missouri Sunshine Law will be considered closed under Operating Rule 2, but does not reciprocally state that records which would be open under the Sunshine Law are also considered open under Operating Rule 2.

The rule provides that compiled records for the judiciary are not open to the public unless they would otherwise be open records under this rule and specifically states that there is no obligation for the courts to compile information from court records.

Finally, and most importantly, the new rule prohibits bulk distribution of court records for commercial gain, meaning that while perhaps a member of the media may be granted access to bulk distribution of court records for certain approved purposes, a member of the public may not access this information for non-media purposes.

These changes are greatly troubling. Like records of public bodies, court records are records compiled through the use of public funds. The courts depend on tax dollars to operate. (In fact, the Supreme Court recently spent significant time with the Missouri legislature ensuring that courts funding was not slashed by 25 percent in the state budget this year.)

At the same time, the Court is making its records less accessible to the public. Somehow these two facts do not seem to go together. Closure of public information is never in the public's best interest.