



Lathrop Gage Files Complaint Pro Bono on Behalf of Missouri News Outlets Regarding State Supreme Court Operating Rule

April 23, 2010

In an argument that urges the Missouri State Judicial Records Committee to reconsider its proposed changes to Missouri Supreme Court Operating Rule 2, Lathrop Gage attorney Bernie Rhodes (Business Litigation - Kansas City) is representing *pro bono* the interests of the state's media outlets in a matter that could have a severe impact on the public's right of access to court records. Mr. Rhodes submitted the letter to Jefferson City today on behalf of The Kansas City Star, the Kansas City Business Journal, the University of Central Missouri Muleskinner, Meredith Corporation (the owner and operator of KCTV-5 and KSMO-TV), The E.W. Scripps Company (the owner and operator of KSHB-41), Public Television 19, Inc. (the owner and operator of KCPT), and Entercom Communications Corp. (the owner and operator of KMBZ News Radio 980).

"In recent years, as courts have modernized their procedures and have placed case information online, those efforts have sometimes resulted in the proverbial one step forward, two steps backward situation," Mr. Rhodes writes in his letter to the State Courts Administrator. "The Committee's current proposal would dramatically restrict the type of information that has been historically available from court records in this State. For example, the proposed new Rule 2.04 would restrict a party's address to the city, state and zip code. This rule alone would significantly damage the public's ability to use court records to properly identify individuals involved in both civil and criminal lawsuits, due to the fact that many individuals living in the same city have the same name."

In the letter filed today, Mr. Rhodes refers to Missouri Supreme Court precedent to illustrate the value of the public's right to access to court records. He also points to recent civil rights lawsuits that allege a violation of First Amendment rights over new policies forbidding public inspection of new civil filings. In these suits, courts found in media outlets' favor.

Mr. Rhodes argues that the proposed changes to Rule 2.05 are particularly injurious. In essence, under the guise of protecting "personal identifiers," the proposed change would make sweeping changes to the right of the public to obtain meaningful information from court records. To begin with, subsections (a) and (b) of the



rule contain a confusing use of the term "personal identifiers," which doesn't appear to be defined anywhere in the rule. Then, in subsection (c), the term "personal information" is used. According to Mr. Rhodes, it is unknown how either of these terms relate to the "Personal Information Numbers" term used in the title to proposed Rule 2.05. Furthermore, with listing of so-called "personal information" contained in subsection (c) to potentially include "victim" and "witness" "name[s]," this would be a dramatic reversal of hundreds of years of practice of court records identifying both victims and witnesses.

"This information is crucial to the media's role as the Fourth Estate, e.g., to act as the public's eyes and ears to carefully look over law enforcement's shoulder and ensure the fair administration of justice," says Mr. Rhodes, who has more than 25 years experience litigating complex business and commercial disputes throughout the United States, including extensive jury trial practice, appellate practice and, more recently, alternative dispute resolution. He is particularly known for his mastery of all phases of media law and communications law for print, broadcast, cable and media throughout Midwest.

"If this rule were adopted, law enforcement at both the police and prosecuting attorney level could effectively prevent the media from investigating claims of unfair criminal prosecutions by preventing the media from learning the identifies of - and independently contacting - alleged victims and witnesses to corroborate (or rebut) the government's claims. Simply put, it would allow law enforcement officials to immunize themselves from the watchful eye of the media. Such a practice would plainly be unconstitutional. (...) It is against this clear history of the long-held right of access to court records that the proposed changes to Operating Rule 2 must be considered."

About Lathrop Gage:

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