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Marcia M. Eason
President
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832 Georgia Ave.
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Chattanooga, TN 37402-2433

April 3, 2008

Dear Ms. Eason:

I received your letter of March 24, and I am disturbed at the misstatements it contains, especially after the lengthy conference call I and reporter Jamie Satterfield had with the bar association's general counsel explaining in detail the facts behind our stories.

At the heart of the issue is when and how the hearing of March 5 and 6 became open to the public. Your letter states:

"Shortly before the hearing scheduled for March 5, 2008, the attorney against whom the complaint was filed and his attorney filed a motion to open the proceedings (docket). The motion was granted conditionally by the court (docket). Before the motion to open the proceedings was filed, the attorney had filed twelve motions in the case beginning February 4, 2008 (docket). In addition to filing the motion to open records and unseal the records, the attorney against whom the complaint had been filed was required to file a waiver of confidentiality, which apparently was filed at or before the time for the scheduled hearing (docket)."

According to your chronology, then, the hearing should have been opened to the public on March 5, and its continuation on March 6 certainly should have been on the public docket. It was not, as Ms. Satterfield's story stated:

"A day-long hearing was held Wednesday at Collier's direction by U.S. District Magistrate Judge Susan K. Lee. However, no notice of that hearing was filed publicly, nor was it included in the daily list of cases to be heard, known as a public docket."

The story went on to say:

"On Thursday, the News Sentinel contacted Lee's clerk, who said he could confirm only that a continuance of that hearing was set to begin that morning. Lee later Thursday morning unsealed all documents in the case."

You state in your letter: "Implying that one of the judges opened a hearing to the public only at the request of the reporter, rather than at the request of the party to the proceedings as required by the rules, is also inaccurate." But as you can see, the story just states the facts, and they were accurate. Since, according to your letter, you have had no contact with the judge, and neither have we, it is open to speculation whether or not the reporter's inquiry in any way influenced the timing of the public docketing of the case or the granting of the motion to unseal. All we know is that those results did not directly follow Moncier's motion on March 3 or waiver on March 5 but did directly follow Ms. Satterfield's inquiry on March 6.

Regarding your other assertions:

- You state: "Implying that the reporter's reliance on 'anonymous sources' prevented the reporter from being thrown in jail was also inaccurate." Nothing of the sort ever was implied in the News Sentinel. In a column I wrote discussing the need for a federal shield law, I posed a hypothetical case, saying, "(if) Satterfield had reported what was happening based on anonymous sources, she would have run the risk of being thrown in jail if she later refused to reveal her sources." That is accurate. Without a federal shield law, reporters who refuse to reveal anonymous sources to federal judges run the risk of being thrown in jail. Your letter misconstrues the point entirely.
- You state: "The editorial cartoon published by the Knoxville News Sentinel portraying a robed judge, smoking and leaning on the scales of justice posed in front of a federal court in Chattanooga while the public wears a blindfold, in light of the rules governing the court's actions and the docket entries in this case, was unjust." In fact, the robed figure represented Justice, not a federal judge. But that is beside the point. The larger issue is your declaring the cartoon "unjust" based on "the rules governing the court's actions and the docket entries." The docket entries, as I pointed out above, do not support your position. They reveal, in fact, that a non-public hearing proceeded -- on March 5 -- despite filings by the attorney involved seeking an open hearing.

Perhaps the underlying question is Rule 83.7, You state: "The rule, to protect the person against whom the complaint was filed, requires that all documents related to the complaint, and the proceedings, be kept confidential, unless a court order is entered (through motion, the party may request waiver of that confidentiality protection)." However, it is my understanding that the rule is discretionary. The judge is not compelled by the rule. Regardless, as you point out, the purpose of the rule is to protect the attorney against whom a complaint has been filed. The rule's purpose is not to protect the general public, which clearly has an interest in knowing of complaints against attorneys. The courts, in drafting the rule, judged the privacy interests of accused attorneys to be more important than the access interests of citizens. That may be a widespread standard and, in the opinion of the bar association and others, entirely justified. But that does not mean that criticism of such a balancing of interests is "unjust."

Despite your letter, I continue to understand the facts to be that a well-known attorney faced federal disbarment in proceedings not open to the public based on a discretionary rule that allows such proceedings to occur from beginning to end without the public's knowledge. That attorney requested that the proceedings be opened, but they were not until after a reporter made an inquiry.

The News Sentinel has a strong interest in open government. I personally believe that it is a newspaper's duty to advocate vigorously on behalf of public access, and I find nothing "unjust" about employing humor or hyperbole in opinion pieces written in that cause. I do find it disheartening that the bar association would feel compelled to dedicate its time and prestige to investigation and condemnation of newspaper commentary obviously intended to encourage debate of an issue of public interest and importance.

As you are aware, we have received a condensed version of your letter for publication and will be printing it soon. It notes that your full letter already has been posted on the bar association web site. I will be posting this letter on my blog -- http://blogs.knoxnews.com/knx/editor/ -- and linking to your letter. I request that you, in turn, link to my response or post it on your web site. If you feel I have misstated facts in this letter, I hope you will contact me to clarify them.

Sincerely,

Jack McElroy