

**IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

MLK50: JUSTICE THROUGH
JOURNALISM, MEMPHIS FOURTH
ESTATE INC., MEMPHIS
PUBLISHING CO., and NEXSTAR
MEDIA GROUP, INC.,

Plaintiffs,

v.

JUVENILE COURT OF MEMPHIS AND
SHELBY COUNTY, TENNESSEE,

and

THE HONORABLE TARIK B.
SUGARMON, in his official capacity as
Judge for the Juvenile Court for
Memphis and Shelby County, Tennessee,

Defendants.

No. _____

PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION

Pursuant to Tenn. R. Civ. P. 65.04(2), Plaintiffs MLK50: Justice Through Journalism, Memphis Fourth Estate Inc., Memphis Publishing Co., and Nexstar Media Group (collectively, "Plaintiffs" or the "Press Coalition") file this Motion for Temporary Injunction. In support of this Motion, the Press Coalition concurrently submits and relies upon Plaintiffs' Complaint, Memorandum of Law in Support of Motion for Temporary Injunction ("Memorandum"), and the declarations of Katherine Burgess, Rebecca Cadenhead, Lucas Finton, Aaron Fleming, Bruce Moore, and Paul R. McAdoo, and all exhibits thereto.

For the reasons detailed below and in the supporting Memorandum, this Court should grant the Press Coalition a temporary injunction prohibiting Defendants from enforcing a policy that requires the Press Coalition to seek and be granted permission from Defendants to attend juvenile delinquency proceedings (the “Advance Permission Policy”). The Advance Permission Policy violates Tenn. R. Juv. Pr. & P. 114(b) (“Rule 114(b)”), and the Press Coalition has suffered irreparable injury and will continue to suffer immediate and irreparable injury if the Advance Permission Policy is not enjoined.

1. The Press Coalition is likely to succeed on the merits of their claim that the Advance Permission Policy is illegal and contrary Rule 114(b).

2. Tenn. Code Ann. § 1-3-121 provides that “[n]otwithstanding any law to the contrary, a cause of action shall exist under this chapter for any affected person who seeks declaratory or injunctive relief in any action brought regarding the legality or constitutionality of a governmental action.”

3. Plaintiff MLK50: Justice Through Journalism (“MLK50”) is a nonprofit online news outlet based in Memphis, Tennessee. Compl. ¶ 1; Burgess Decl. ¶ 2; Cadenhead Decl. ¶ 2.

4. Plaintiff Memphis Fourth Estate Inc. is the publisher of the Daily Memphian, a daily online publication based in Memphis, Tennessee. Compl. ¶ 2; Fleming Decl. ¶ 2.

5. Plaintiff Memphis Publishing Co. publishes the Commercial Appeal, a daily newspaper based in Memphis. Compl. ¶ 3; Finton Decl. ¶ 2.

6. Plaintiff Nexstar Media Group Inc. owns and operates WREG, a television news station based in Memphis. Compl. ¶ 4; Moore Decl. ¶ 3.

7. Plaintiffs have standing to bring this suit under Tenn. Code Ann. § 1-3-121 because the Advance Permission Policy has affected the ability of Press Coalition and their reporters to attend and report on juvenile delinquency proceedings. Burgess Decl. ¶¶ 7–16; Cadenhead Decl. ¶¶ 11–20, 25–26, 29–32; Fleming Decl. ¶¶ 9–15; Finton Decl. ¶¶ 8–14; Moore Decl. ¶¶ 7–15.

8. Rule 114 governs access to juvenile proceedings in Tennessee.

9. Rule 114 was “promulgated by the General Assembly and the Supreme Court” and therefore has “the force and effect of law.” *Frye v. Blue Ridge Neuroscience Ctr. P.C.*, 70 S.W.3d 710, 713 (Tenn. 2002) (citation omitted); *see also M.E.A. ex rel. Exum v. Moody*, No. W2003-01669-COA-R3-PT, 2004 WL 316977, at *8 (Tenn. Ct. App. Feb. 19, 2004). Accordingly, any policy or practice contrary to Rule 114 is illegal. Tenn. Code Ann. § 16-3-406; *see also Davis v. State*, 313 S.W.3d 751, 759 (Tenn. 2010).

10. Rule 114(a) provides that “[d]ependent and neglect cases shall not be open to the public.”

11. In contrast, Rule 114(b) provides that “[d]elinquent and unruly case are open to the public.”

12. Rule 114(b) restrains courts from closing delinquency or unruly juvenile proceedings absent balancing “the interests of the parties and the public’s interest in open proceedings” and application of the following rules:

(1) When closure is sought by a party:

(A) The party seeking to close the hearing shall have the burden of proof;

(B) The court shall not close proceedings to any extent unless it determines that failure to do so would result in particularized prejudice to the party seeking closure that would override the public's compelling interest in open proceedings;

(C) Any order of closure must not be broader than necessary to protect the determined interests of the party seeking closure;

(2) The juvenile court must consider reasonable alternatives to closure of proceedings; and

(3) The juvenile court must make adequate written findings to support any order of closure.

13. The Advisory Commission Comments to Rule 114 explain that juvenile delinquency proceedings “‘may’ be closed only through the process as outlined above” and that “*State v. James*, 902 S.W.2d 911 (Tenn. 1995) authorizes the closure process specified in subdivision (b) for delinquent and unruly cases.”

14. In *James*, the Tennessee Supreme Court held that in order to close a juvenile delinquency proceeding, a court “shall apply the following rules”:

1. The party seeking to close the hearing shall have the burden of proof;

2. The juvenile court shall not close proceedings to any extent unless it determines that failure to do so would result in particularized prejudice to the party seeking closure that would override the public's compelling interest in open proceedings;

3. Any order of closure must be no broader than necessary to protect the determined interests of the party seeking closure;

4. The juvenile court must consider reasonable alternatives to closure of proceedings; and

5. The juvenile court must make adequate written findings to support any order of closure.

902 S.W.2d at 914.

15. Despite Rule 114(b)'s presumption of openness for juvenile delinquency proceedings, Defendants' Advance Permission Policy requires that the public, including the Press Coalition, obtain permission from the juvenile court before attending any juvenile delinquency proceeding. Compl. ¶ 18; Burgess Decl. ¶¶ 10–13; Cadenhead Decl. ¶¶ 11–22, 25–26; Finton Decl. ¶ 9; Fleming Decl. ¶¶ 9–14; Moore Decl. ¶¶ 6–8. The Advance Permission Policy further requires that the requestor identify a specific juvenile whose proceeding they wish to attend. Compl. ¶ 18; Cadenhead Decl. ¶ 20; Finton Decl. ¶¶ 9–11; Moore Decl. ¶ 6.

16. The Press Coalition's journalists have been prevented from attending juvenile delinquency proceedings by the Advance Permission Policy both directly and because of its deterrent effect. Burgess Decl. ¶¶ 7–13 (denied access to juvenile delinquency proceeding); Cadenhead Decl. ¶¶ 20, 26 (denied access to juvenile delinquency proceedings); *id.* ¶¶ 15–17 (deterred from attending juvenile delinquency proceeding); Finton Decl. ¶¶ 12–13 (deterred from attending juvenile delinquency proceedings); Fleming Decl. ¶¶ 10–14 (denied access to juvenile delinquency proceeding); Moore Decl. ¶¶ 7–8 (denied access to juvenile delinquency proceeding).

17. The Advance Permission Policy violates Rule 114(b) because it renders juvenile delinquency proceedings presumptively closed. Compl. ¶¶ 36–37; Cadenhead Decl. ¶¶ 11, 14, 20; *id.*, Attach. 4.

18. Rule 114(b) explicitly provides that juvenile delinquency proceedings may be closed only on a case-by-case, proceeding-by-proceeding basis and only after the court has considered reasonable alternatives to closure and made written findings of particularized prejudice to the party seeking closure.

19. By presumptively closing all juvenile delinquency proceedings, the Advance Permission Policy improperly shifts the burden of proof to the public, including the Press Coalition, to justify openness—despite the unambiguous language of Rule 114(b)(1)(A), which unequivocally places the burden on the party seeking to close the proceeding.

20. For example, the Advance Permission Policy violates Rule 114(b) by requiring the party requesting access to identify a specific juvenile whose proceeding the requestor wishes to attend. Nothing in Rule 114 requires the public to make this—or any other—showing in order to exercise their right of access.

21. The Advance Permission Policy also violates Rule 114(b) because it may include a requirement that permission be sought at least 48 hours before any hearing the requestor seeks to attend. Fleming Decl. ¶ 9; Moore Decl. ¶¶ 6, 8.

22. In enforcing their Advance Permission Policy, Defendants have never provided Plaintiffs a written order, as Rule 114(b)(3) requires, that details findings adequately supporting closure. Burgess Decl. ¶ 15; Cadenhead Decl. ¶ 27; Moore Decl. ¶ 9. Defendants' failure to do so has frustrated and continues to frustrate the Press Coalition's ability to appeal such closures, necessitating this action.

23. The Press Coalition will suffer irreparable harm absent a temporary injunction because there is no way to calculate or compensate the Press Coalition for the damage that the Advance Permission policy has done and continues to do to their ability to attend and report on juvenile delinquency proceedings. *AmeriGas Propane, Inc. v. Crook*, 844 F. Supp. 379, 390 (M.D. Tenn. 1993).

24. The balance of equities favors granting temporary relief because a temporary injunction would not hamper Defendants' ability to properly apply Rule 114(b) to close some juvenile proceedings or otherwise cause substantial harm to Defendants. *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 711 (6th Cir. 2002).

25. The public interest also favors granting preliminary relief. "Open proceedings, with vigorous and scrutinizing press, serve to ensure the durability of our democracy." *Detroit Free Press*, 303 F.3d at 711. And compliance with Rule 114(b), which ensures the proper balance between "the public's compelling interest in open proceedings" and any "particularized prejudice to the party seeking closure," best serves this public interest.

WHEREFORE, pursuant to Tennessee Rule of Civil Procedure 65.04(2), Plaintiffs respectfully request that this Court grant the Press Coalition a temporary injunction restraining Defendants from enforcing the Advance Permission Policy and requiring Defendants to fully comply with Rule 114(b) when seeking to close specific proceedings in specific cases.

Respectfully submitted,

/s/ Paul R. McAdoo

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing will be served with the Petition and Summons upon the Defendants.

/s/ Paul R. McAdoo

Counsel for Plaintiffs