

Trial Publicity Ethics and the Making of a Crime Documentary

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Dr. Mike Hoeflich and Jess W. Hoeme

A CLE Seminar
presented by

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Today's Presenters



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Overview

I. Court Case Overview

II. Pre-Commitment Ethical Considerations

- Rule 1.7
- Rule 1.8
- Missouri Rule 4-1.6
- KRPC 1.6

III. Ethical Considerations with Contractual Commitment

IV. Ethical Considerations in Recording

- Rule 3.6

V. Experiential Notables / Lessons Learned

I. Court Case Overview

Court Case Overview

The case arose from the 2018 fatal stabbing of Pearson's then-boyfriend, Kyle Hill. Pearson always asserted her conduct was undertaken in defense of herself and her child, and the county attorney in office at the time of Hill's death elected not to proceed with criminal charges. However, when a new county attorney took office four years later, Pearson was arrested for second-degree murder. With these new charges looming, Jess Hoeme took on Pearson's case in August of 2022.

A&E Series “Accused: Guilty or Innocent?”

“Murderous Mother or Protective Parent?”

Hoeme’s appearance in the episode includes interviews about the case, as well as footage from the August 2023 [stand-your-ground hearing](#) where Hoeme argued Pearson was immune from prosecution because her conduct was justified according to Kansas law regarding self-defense and defense of others. Unbeknownst to Hoeme and Pearson before the hearing, [CourtTV](#) was also set up in the courtroom to air the entire hearing live. Despite this surprise and the attention on the case, however, Hoeme remained calm and strategically laid out his defense work through eyewitness statements and cross-examination.

II. Pre-Commitment Ethical Considerations

Pre-Commitment Ethical Considerations

Evaluating Conflict of Interest of Attorney

- Financial Interest
- Publicity Interests
- Biases in Providing Legal Advice

Rule 1.7 a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

...

(2) there is a substantial risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Pre-Commitment Ethical Considerations

Obtaining Client Informed Consent in writing

Rule 1.7

(b) Notwithstanding the existence of a concurrent conflict of interest under Rule 4-1.7(a), a lawyer may represent a client if:

- (1)** the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2)** the representation is not prohibited by law;
- (3)** the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4)** each affected client gives informed consent, confirmed in writing.

Pre-Commitment Ethical Considerations

Rule 1.8

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case

Pre-Commitment Ethical Considerations

Preserving Confidentiality / Privacy

Missouri Rule 4-1.6

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives **informed consent**, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by Rule 4-1.6(b).

KRPC 1.6

(a) A lawyer shall not reveal information relating to representation of a client unless the client **consents after consultation**, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

III. Ethical Considerations with Contractual Commitment

Ethical Considerations with Contractual Commitment

Overall ensuring contract terms -

- were compliant with all applicable laws,
- court orders,
- rules of professional conduct,
- practically feasible, and
- capable of being executed / complied with non-disclosure requirements.

Key term: ability to have input before the final cut.

IV. Ethical Considerations in Recording

Ethical Considerations in Recording

Court Protection Orders

Ethical Considerations in Recording

Extrajudicial Statements about an ongoing case

Rule 3.6

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

Ethical Considerations in Recording

Local Court Rules regarding Media Access

In this particular jurisdiction*, there were no written rules regarding recording in court. Instead, the Judge was consulted for approval, guidance, and expectations regarding the situation.

In addition, the Judge ensured there were no special requests before showing the film crew where to sit and requesting them to remain quiet during court.

** Other jurisdictions may have more formal rules that would need to be followed in this sort of situation*

Other Ethical Considerations in Recording

- Ensuring information did not reach the adversary to the detriment of the case strategy
- Clean workspace in office location where recording occurred
- Discreet presence in office location
- Preserving the Attorney Client Privilege

IV. Experiential Notables / Lessons Learned

Experiential Notables / Lessons Learned

- Impact to litigation strategy
- Impact to relations with opposing counsel
- Impact of cameras in the courtroom

Thanks for Attending!

QUESTIONS?