

LEGAL HELP FOR SPEAKERS OF OTHER LANGUAGES:

Je ne comprends pas.

Ne rozumijem.

Non capisco

I don't understand.

No comprendo

Ich verstehe nicht

chan eil mi a' tuigsinn

wakayabiran

Ma nifhemx

Es nesaprotu.

No ho entenc

Nie rozumiem

Za na pohidam

ኅኔ ከይገብኦ ን ንዳት

MA EI SAA ARU

Ik begrijp het niet.

No capiso

Agko natatalusan



THREE ETHICAL TRAPS

“Lawyers, especially if themselves not trained in the accepted interpreting methods, may be blissfully ignorant of the miscommunication which is occurring in plain view.

At least until they wake up in a cold sweat.”

By Paul M. Uyehara

In providing services to clients with limited English proficiency (LEP), legal services staff must be sensitive to lurking ethical issues. Although programs have realized that the old ways of serving clients with LEP are no longer acceptable, this article will introduce possibly overlooked ethical considerations.

Let's look at five common scenarios for lawyer-LEP client communication and then consider how three of them could be hazardous ethically:

SCENARIO	LAWYER	INTERPRETER	RESULT
1	Monolingual	Not used	Neither party understands other well
2	Monolingual	Informal	Could be the same as #1
3	Monolingual	Professional	Should be OK
4	“Bilingual”	Not used	Same as #1 as lawyer not fluent
5	Bilingual	Not used	Best situation

Today, we understand that we need to be talking to clients with LEP in a common language in which both client and lawyer are fluent (scenario 5) or we need the services of a trained, truly bilingual interpreter to serve as a communication

conduit (scenario 3). So long as the lawyer in scenario 3 has been trained to effectively work with an interpreter, scenarios 3 and 5 are less likely to present special ethical issues.

Although the remaining three scenarios typi-

fy the old ways of doing business, they are still likely to be widely encountered. These scenarios should cause you to wake up in a cold sweat in the middle of the night.

Duty to Communicate

Rule 1.4 of the ABA Model Code of Professional Responsibility makes the lawyer responsible for good attorney-client communication. The rule mandates that a lawyer inform, consult with, explain and seek consent from the client about the case.

Attorneys who speak with clients in a language that one does not understand well risk a violation of Rule 1.4. Those who charge ahead in scenario 1 using English only, perhaps speaking more slowly or loudly, risk getting the facts wrong, not understanding the client's goals and not having the client understand legal advice. The situation is no different in scenario 4 when a lawyer with mediocre second language skills attempts to converse with the client in that language. Failing to seek assistance from an interpreter is asking for miscommunication when dealing with an LEP client.

The lawyer sensible enough to know that an interpreter is needed for effective communication should be a step ahead. Or not. In scenario 2, lawyers who rely upon informal interpreters may be in worse trouble for reasons that will be explained later. Informal interpreters are untrained, untested volunteers. Whether relatives or friends of the client, helpful community organization staff, or purportedly bilingual staff or law students, they may have serious deficiencies in at least one of the languages involved and have no way of knowing how to properly function as an interpreter. Learning a second language does not teach you how to interpret.

Lawyers using informal interpreters run the foreseeable risk that the interpreter will omit, change or add to what the speaker is saying or insert his own legal advice. The family interpreter may feel comfortable answering questions for the client. Lawyers, especially if themselves not trained in the accepted interpreting methods, may be blissfully ignorant of the miscommunication which is occurring in plain view. At least until they wake up in a cold sweat.

Confidentiality, Privilege and the Interpreter

Rule 1.6 provides that, with certain exceptions, a lawyer "shall not reveal information relating to representation of a client". Also, attorney-client privilege can protect communications between attorney and client from being divulged in court without the client's consent. But what happens when an interpreter is present for the conversation?

The presence of an extraneous person in an attorney-client conversation may undermine the confidentiality of the information and destroy the privilege. When used properly, the interpreter should be viewed as an agent of the lawyer whose presence is necessary to allow the conversation to occur. In those circumstances, the privilege is not lost.

The informal interpreter may play other roles in the situation — as a concerned relative expressing her own opinion, as advisor or as a witness. As the untrained interpreter strays from acting strictly as a conduit, the risk increases that a court will find that the privilege was lost.

And practical protection of the client's confidences requires that the interpreter know that he is not permitted to disclose to anyone not present what was said, or even that the client was seeking legal help.

Duty to Supervise Assistants

Model Rule 5.3 makes a lawyer responsible to ensure that any employee or contractor of the lawyer will comply with the other rules. Rule 5.3 applies to interpreters just as it applies to paralegals, law students and clerical staff. All must be trained and supervised to ensure that the non-lawyer assistant does not engage in conduct which the attorney cannot.

Rule 5.3 exposes the risk presented by the informal interpreter. Not only is the interpreter neither an employee nor a contractor of the lawyer, but the lawyer has no way of ensuring that the interpreter acts properly to protect the attorney-client relationship. The lawyer has not trained the interpreter or set any boundaries on the interpreter's conduct. Practically speaking, how can the lawyer supervise an interpreter he did not procure?

PRACTICE POINTERS

Lawyers communicating with clients with LEP should consider the following basic guidelines:

1. If you and the client are not fluent in the same language, use an interpreter.
2. Use professional interpreters and avoid informal ones, especially those supplied by the client.
3. Consider requiring the interpreter to sign a pledge to hold all information in confidence, protect attorney-client privilege, and not advise the client.
4. Get training in how to work with an interpreter and make sure that staff interpreters are trained and evaluated.

And when we use staff interpreters, ethical concerns suggest the importance of ensuring that they possess the necessary language skills and training to do the job well.

Programs would be well-advised to review ethical standards in their jurisdictions and adopt appropriate policies and training requirements. We all need our sleep. ★

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