



National Association of Judiciary Interpreters & Translators
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October 26, 2021

Lynda Shely, Esq., Committee Chair,
6501 E. Greenway Parkway, Suite 103-406,
Scottsdale, Arizona 85254

Re: Formal Opinion 500, Language Access in the Client-Lawyer Relationship

Dear Counsel Shely:

We are writing to you concerning the recently published **Formal Opinion 500, Language Access in the Client-Lawyer Relationship**. The community of professional interpreters and translators was initially quite pleased to see the ABA address this matter. However, once we started to read the contents it became painfully clear this Opinion was crafted without input from the experts in the field: interpreters and translators.

There is a fundamental misunderstanding about the role professional interpreters play in attorney-client communications that your Opinion will only serve to perpetuate: interpreters do not *explain* legal concepts, as you state in your introductory paragraph:

“When reasonably necessary, a lawyer should arrange for communications to take place through an impartial interpreter or translator capable of comprehending and accurately **explaining** the legal concepts involved...”

By doing that, the interpreter would be taking over the legal counsel’s role, which the Opinion clearly describes on page 4:

“...it is incumbent on the lawyer . . . to **explain** a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

This misguided idea about the role of the interpreter is further emphasized in Section **B. Qualifications of a Person Providing Translation or Interpretive Services**. Perhaps what the Committee meant was that the interpreter conveys those concepts accurately *after* counsel has **explained** them to the client.

It is up to the legal professionals to find the appropriate language in plain English to explain complex legal concepts to their lay clients. The role of the interpreter is to find the exact equivalents in the client’s foreign language so as to convey what counsel has stated, nothing more and nothing less. That is what a professional interpreter does.

Suggesting alternative arrangements under this Section B, such as “a multilingual lawyer or nonlawyer staff member within the firm to facilitate communication with a client” (page 7) fails to

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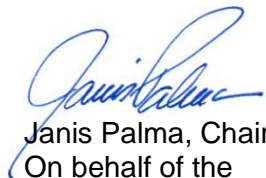
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take into account several factors inherent to the professional interpreter's performance. First and foremost, the fact that a lawyer or nonlawyer staff member may be familiar with legal terms or concepts in English, which does not mean he or she is familiar with those same terms or concepts in the client's foreign language. What you suggest is like saying a paralegal could very well represent a client in court. Likewise, your suggestion about using "a client's friend or a family member [...] as a viable interpreter or translator" is like saying a first-year law student knows enough about the law to give legal advice.

Professional interpreters are not only trained to expand their vocabulary range to a much higher level than the average bilingual speaker, including technical and legal terminology, but are also trained to expand their memory so they can listen to a speaker, retain what they say, convert that message to a second language, and deliver the message without distortions. Professional interpreters also abide by a Code of Ethics, a copy of which we attach to this letter. We understand the principles of privileged communication, confidentiality, conflicts of interest, and so forth.

It should also go without saying that the use of language translation technologies instead of qualified and competent interpreters should be avoided, except in cases of extreme emergencies. Artificial intelligence is fine for tourism but certainly not for use when a person's life, liberty or property are at stake, when children's safety, parental rights, safe housing, and other critically important matters hang in the balance. And, of course, AI will never be able to factor in social and cultural factors, as the Opinion proposes in Section D.

We hope the ABA and the Standing Committee on Ethics and Professional Responsibility will seriously consider revisiting this Opinion and, this time, give professional interpreters and translators a seat at the table as was done with the Standing Committee on Legal Aid and Indigence Defense project, "Laying the Path", which resulted in the seminal document, "ABA Standards for Language Access in Courts".



Janis Palma, Chair

On behalf of the

The NAJIT Board of Directors

cc: Mary McDermott, Esq., Lead Senior Counsel, Center For Professional Responsibility

Reginald M. Turner, Esq., President, American Bar Association

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