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Javier Castillo, Chair
NAJIT Board of Directors
2002 Summit Blvd., Ste. 300
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October 24, 2022

Dear Mr. Castillo:

Thank you for your letter of September 27, 2022, and for providing the list of resources referenced in your letter. Thank you also for providing me with the “Resources for Attorneys and Other on How to Deliver Services Through Interpreters.” With your permission, I would like to post this resource list with Formal Opinion 500 on the ABA website.

I appreciate your organization’s concerns that some might read Formal Ethics Opinion 500 as: (1) allowing interpreters to provide legal services to clients by analyzing legal concepts for the listener and (2) that it is easy to identify competent interpretation or translation services. I apologize if this Opinion has caused concerns for you and your members. However, we believe Opinion 500 does not communicate either idea to practicing lawyers.

As you appreciate ABA Formal Ethics Opinions are written for lawyers and are merely advisory. The ABA does not license or discipline lawyers in the U.S. That work is done by state supreme courts. The ABA has developed models for rules of professional conduct and for operating lawyer disciplinary systems. States have based their ethics and disciplinary structures on these models. The Standing Committee on Ethics and Professional Responsibility interprets these models through issuing advisory, nonbinding ethics opinions. Opinion 500 is one such opinion.

While the practice of law is defined by case law and differs from jurisdiction to jurisdiction, lawyers know that interpreting and applying legal concepts to the facts presented is the practice of law and, therefore, is the duty and responsibility of the lawyer, not interpreters. To allow the interpreter to provide legal analysis would be to violate Model Rule of Professional Conduct 5.5(a) which prohibits a lawyer from assisting in the unauthorized practice of law. The opinion states, “the lawyer must make reasonable efforts to ensure that the interpretive or translation services are provided in a manner that is compatible with the lawyer’s ethical obligation.” Lawyers understand that an interpreter or translator cannot provide their own substantive analysis of a legal issue and that use of the term “explain” in the Opinion does not suggest otherwise.

Additionally, I do not believe that lawyers reading the Opinion section advising them to seek out and secure qualified interpreters and translators who are familiar with legal concepts, who are free of conflicts, who are detached and impartial, and who are outside professionals gives the impression that finding such incredible individuals is easy. We know that it is not.

Again, I am sorry that this Opinion has caused your group concern and appreciate you taking the time to express these matters to us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lynda C. Shely". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Lynda C. Shely