Jordan Rothman
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August 16, 2024

Dear Mr. Rothman,

Your June 18 post in *Above the Law*, "Strategies For Serving Clients Who Speak Another Language," discusses the important topic of communication with the country's increasingly linguistically-diverse clientele. While we commend your willingness to serve clients whose languages you don't speak or sign, your guidance to attorneys for navigating conversations with limited English proficient (LEP) individuals raises concerns, since effective communication with clients is a prerequisite for effective representation.

Best practices for effective oral communication in any legal setting require the services of a competent interpreter: a linguistic professional who can accurately perform the different modes of interpretation and knows legal terminology, understands cultural considerations, and abides by professional ethics. Such interpreters bolster attorney-client relationships by removing barriers to full communication and put the LEP individual on equal footing to access the justice system. The American Bar Association published Formal Opinion 500 in 2021, titled "Language Access in the Lawyer-Client Relationship," which states the following:

> *"...it is the lawyer's affirmative responsibility to ensure the client understands the lawyer's communications and that the lawyer understands the client's communications. In situations where there is doubt about the efficacy of client-lawyer communication, that doubt should be resolved in favor of engagement of an interpreter, translator, or an appropriate assistive or language-translation device."*[1]

While your experience is that having a family member interpret is "the most efficient way to ensure that the client had all of the information necessary to evaluate matters," the use of a family member to serve as an interpreter should be limited to exigent situations that do not involve matters of substance. According to the Department of Justice's website on effective communication requirements for compliance with the Americans with Disabilities Act, family members and friends accompanying a person who uses sign language "often [lack] the impartiality and specialized vocabulary needed to interpret effectively and accurately."[2] The same is true for spoken languages; the vast majority of bilingual people lack the necessary

technical skills and language competence that are required for interpretation, particularly in legal matters. Family members may also be inherently biased, and their use as an interpreter infringes on the LEP individual's right to confidential communication with counsel. Using a qualified interpreter avoids these problems, enabling the attorney and client to communicate without any limitations and empowering the client to participate fully and effectively.

There are well-established statutes and court policies on the federal and state court levels which require the use of certified court interpreters and prohibit the use of laypersons, especially family members, as interpreters during court proceedings and ancillary events. It would be imprudent to assume that inadequate language access during an attorney interview with a client, when information is being exchanged, the facts of the case are being discussed, and decisions are being made, would have less negative impact than inadequate language access in a court proceeding. While the use of a layperson instead of a professional interpreter may be convenient or budget conscious on the front end, the questionable quality and dangers to complete communication, confidentiality and attorney-client privilege should dissuade the conscientious attorney from the multiple risks associated with using that method of communication.

It is true that "Google Translate has come a long way," as you state in your post. However, it is still insufficient in communication beyond the most basic of interactions, as it is inadequate in legal matters and not equally effective, or available, in all languages. Several publications and settlement agreements between the Department of Justice (DOJ) and a variety of entities mention Google Translate, which the DOJ believes is "...not a reliable translation or interpretation service"[3] and "...of limited value and accuracy."[4] Similarly, the American Bar Association advises "caution when considering any kind of machine translation" in legal proceedings.[5] Stakeholders Advocating for Fair and Ethical AI in Interpreting (Interpreting SAFE AI) Task Force has created a Guidance document for developers and users of interpreting products that use artificial intelligence. SAFE AI urges those developing and implementing any AI-based communication to follow the criteria of end user autonomy, improving safety and wellness for end users, transparency of quality, and accountability for errors and harms.[6]

Nevertheless, many interpretation services are available, and it behooves attorneys to do their research and compare costs and quality assurance processes, considering the benefits and drawbacks of such remote services as video or phone interpretation. Depending on the case and the jurisdiction, there may be language access resources available to attorneys through the courts. An important factor to consider when choosing interpreters or translators is their credentialing, as state certifications exist for the most common languages. Many court systems offer a public online registry of court interpreters and translators, and there are other accessible registries such as the National Court Interpreter Database through the United States Courts and the Interpreter and Translator Directory through the National Association of Judiciary Interpreters and Translators (NAJIT), as well as the Registry of Interpreters for the Deaf (RID).

Training (with approved CLE credits) is available for attorneys on the use of interpreters and translators, and on how to enter evidence produced in languages other than English into the

record. Such training can give attorneys an edge in their representation and make them more attractive to potential LEP clients. A number of resources for legal professionals representing non-English speakers are referenced below. While not exhaustive, these resources highlight the long-standing principle that effective communication with LEP individuals starts with competent interpreter services.

We hope that this information is helpful to you, and we wish you and your firm success. Please do not hesitate to contact us should our letter prompt any questions.

Sincerely,

National Association of Judiciary Interpreters and Translators (NAJIT)
Certification Commission for Healthcare Interpreters (CCHI)
Association of Language Companies (ALC)
American Translators Association (ATA)
The Registry of Interpreters for the Deaf, Inc. (RID)

Reference:

1. American Bar Association. *Formal Opinion 500: Language Access in the Client-Lawyer Relationship.* October 6, 2021, page 6. https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-500.pdf

2. U.S. Department of Justice. Civil Rights Division. *ADA Requirements: Effective Communication.* February 28, 2020. https://www.ada.gov/resources/effective-communication/#use-of-accompanying-adults-or-children-as-interpreters

3. Department of Justice. *Clay County School District EEOA Investigation Findings Letter.* June 29, 2023, page 14. https://www.justice.gov/d9/2023-10/clay_county_school_district_-_u.s._doj_findings_letter_-_redacted.pdf

4. Department of Justice. *Suffolk County Technical Assistance Letter.* September 13, 2011, page 23. https://www.justice.gov/sites/default/files/crt/legacy/2011/09/14/suffolkPD_TA_9-13-11.pdf

5. American Bar Association. *Standards for Language Access in Courts.* February 2012, page 86.

https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf

6. Stakeholders Advocating for Fair and Ethical AI in Interpreting. *Interpreting SAFE AI Task Force Guidance on AI and Interpreting Services.* June 2024, page 12. https://safeaitf.org/wp-content/uploads/2024/07/SAFE-AI-Guidance-07-01-24.pdf