

TOP STORY

Formal Ethics Opinion Outlines Client Language Access Duties

By Josephine M. Bahn – July 11, 2022

The [ABA's Standing Committee on Ethics and Professional Responsibility](#) has provided guidance on a lawyer's duty to overcome language barriers when representing the growing number of clients with limited English proficiency or non-cognitive differences or impairments. According to [Formal Ethics Opinion 500](#), lawyers may now be required to procure the services of an interpreter, translator, or other language-translation or assistance technology to comply with their duties of communication and competence. ABA [Litigation Section](#) leaders caution that when providing advice and engaging in the practice of law, lawyers must ensure their clients fully understand all aspects of their individual cases.

Opinion Clarifies Language Access Obligations

The standing committee analyzed a lawyer's duties under the [Model Rules of Professional Conduct](#) in circumstances where there may be language or other barriers to communicating with a client. [Model Rule 1.1](#) outlines the minimum requirements related to a lawyer's competency and [Model Rule 1.4](#) details a lawyer's duty of communication to his or her client. Additionally, lawyers are responsible for management of nonlawyer assistants, like translators, under [Model Rule 5.3](#). Effective communication is required between lawyers and their clients to achieve the clients' objectives, allow the client to make informed decisions, and for the client to receive adequate access to justice.

The standing committee outlined four principal requirements for lawyers to comply with the Model Rules. Each obligation requires a lawyer to consider clients' ability to connect and understand the legal advice they are receiving from their lawyer, regardless of any impairment or impediment.

First, lawyers must identify language-access barriers affecting their ability to effectively communicate with their clients to establish a "reasonably effective mode of communication," the committee said. Lawyers must evaluate their clients' need for interpreters or other aid devices to better communicate with the client rather than waiting for the client to request such assistance, the committee noted.

Next, lawyers must assess the qualifications of the interpreter or aid device service provider. This includes verifying that the interpreter or translator the lawyer plans to utilize is competent in the client's spoken language or mode of speech, can adequately convey the underlying parts of the legal concepts involved in the client's case, and that the interpreter or translator lacks any bias or partiality in translating.

Third, much like other nonlawyer assisted services such as paralegals, Model Rule 5.3 requires lawyers to supervise interpreters or other communicative systems to help their clients fully participate in their legal matter. The lawyer has direct supervisory authority over the nonlawyer and is required to take all reasonable opportunities to maintain the same professional courtesies.

Finally, social and cultural barriers such as religion and ethnicity "may affect a client's understanding of legal advice, legal concepts, or other aspects of the representation," the formal opinion noted. Lawyers must identify these differences and seek to understand them, the committee stated. To overcome these differences, the lawyer should pay attention to "cognitive biases," frame questions in "context-sensitive" manners and explain concepts in multiple ways, ask "confirming questions" to ensure the matter is understood, and conduct additional research, the committee explained.

Interpreters Necessary for Client Understanding

The Model Rules require lawyers to be aware of how to best communicate with their clients, according to Section leaders. Not only should attorneys have interpreters or translators when needed, but they should also prepare their client for official questioning regardless of the witness communication barriers, notes [John M. Barkett](#), Miami, FL, cochair of the Section's [Ethics & Professionalism Committee](#). "As a profession, lawyers have the obligation to communicate with their clients," Barkett adds.

Effective representation requires patience and confirmation that the client understands what the lawyer is asking, explains Barkett. He illustrated this obligation by discussing one of his clients who only spoke Creole. Through conversation over several hours between himself and a translator, they were able to prepare for testimony before an immigration judge. "The interpreter would translate my questions, and then she and my client would engage in conversation. She would then explain to me what was discussed, and I would re-ask my question. And so it went for several hours over two days," he explains.

Effective Communication Cuts Unnecessary Cost

Section leaders note that language barriers can add further challenge to client communications. In situations where “the attorney and client do not speak the same language, it heightens the chance for misunderstandings and potentially increases the costs associated with having documents translated or having an interpreter participate in telephone conferences,” explains [Michael S. LeBoff](#), Newport Beach, CA, cochair of the Section’s [Professional Liability Litigation Committee](#). If attorneys are able to distill potential communication roadblocks at the outset, it can cut unnecessary litigation costs for their client, he concludes.

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- Jeanne M. Huey, “[ABA Formal Opinion 500: An Impractical Standard for the Real-World Practice of Law?](#)” *Ethics & Professionalism* (Dec. 3, 2021).
- David L. Hudson Jr., “[New ABA ethics opinion clarifies obligations for language access in lawyer-client relationships](#),” *ABA J.* (Oct. 6, 2021).
- “[ABA issues guidance for lawyers with clients who have communication differences](#),” *ABA News* (Oct. 6, 2021).