

USING INTERPRETERS: PRACTICAL TIPS AND ETHICAL CONSIDERATIONS

BY RENE L. VALLADARES, ESQ.

Why is learning how to effectively use interpreters so important for Nevada lawyers?

Nevada has a large population of non-English or limited-English proficiency (LEP) persons. 19.2 percent of Nevada's population consists of foreign-born people.¹ An estimated 322,600 Nevada residents are LEP individuals, and,² out of this figure, 236,100 are Spanish speakers, followed by 21,400 Tagalog-speaking LEPs, 15,500 Chinese-speaking LEPs and 6,500 Korean-speaking LEPs.

In all, there are 27 languages that are each spoken by more than 500 people who live in Nevada and speak a primary language other than English. These figures underscore the need for Nevada lawyers to learn to effectively deal with interpreters, considering key ethical and practical considerations that arise in cases involving individuals with limited-English proficiency.

What are an attorney's ethical obligations when dealing with an LEP client?

A lawyer's inability to speak an LEP client's primary language should not be a bar to representation, as long as the lawyer concerned "uses a qualified, impartial interpreter to conduct adequate communications with the client, and takes appropriate steps to protect the client's confidential information"³

When representing an LEP client, the "level of thoroughness and preparation reasonably required for representation" demanded by Rule of Professional Conduct (RPC) 1.1 (competence) cannot be achieved without an interpreter. Without a qualified interpreter a lawyer cannot "[r]easonably consult with the client about the means by which the client's objectives are to be accomplished,"⁴ "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation"⁵ or engage in any of the other requirements imposed by RPC 1.4 (communication). These rules require that a lawyer assess his or her client's need for an

interpreter, determine the primary language (and, if necessary, the dialect within that language) spoken by an LEP client and secure the services of a qualified interpreter.

The duty of communication also requires that lawyers have an understanding of how a client's culture and unfamiliarity with the judicial system might affect attorney-client communications. Therefore, lawyers should "take greater care in explaining complex legal communications to clients who are non-English speaking."⁶ For instance, a lawyer might even have to explain such basic concepts as the roles of the players in the courtroom or how a jury trial works. Likewise, it is important for a lawyer to recognize that "court proceedings can be confusing and intimidating for a non-English speaker since other countries' legal systems and concepts often vary from those of the U.S."

These ethical obligations raise a host of questions, including:

1. Who can serve as a "qualified" interpreter? and
2. What are the obligations of a lawyer when it comes to supervising the work of an interpreter?

Can I use my client's family or friends to interpret?

Once a lawyer determines that he or she needs to use an interpreter to communicate with a client, can a relative or friend of the client serve as a "qualified" interpreter? While

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there are some advantages to doing things this way—the client might feel more comfortable with someone he or she knows acting as an interpreter, and the services of a friend or family member are presumably free—there are very strong ethical and practical arguments against taking this route. In fact, several ethics opinions from other states strongly caution against it. For example, a New Hampshire ethics opinion warns:

Using relatives and friends as interpreters carries substantial risks. Such interpreters may have a personal interest in the outcome of the representation and, therefore, their interpretation may be biased. Often, cultural and social factors, or family dynamics can interfere with the accuracy of such interpreter's translation.⁷

Additionally, a Utah ethics opinion warns of the danger of violating RPC 1.7 (conflict of interest) and RPC 1.6 (confidentiality) when using relatives or friends of a client.⁸ According to this opinion, family members and friends acting as interpreters might have a personal interest in the outcome that could run afoul of RPC 1.7. Moreover, family members and friends might lack a basic understanding of the need for confidentiality and could easily be pressured by other family members or friends into disclosing the substance of the communications.

Who can serve as a qualified court interpreter in Nevada?

To avoid these potential ethical pitfalls, the best practice is to secure the services of an interpreter qualified by a body such as the Nevada Administrative Office of the Courts (AOC).

The AOC compiles and maintains a list of qualified interpreters. This list classifies interpreters into three categories: Certified Interpreters, Master Level Interpreters and Registered Interpreters. Certified Interpreters must complete an orientation workshop conducted by the AOC, achieve certain scores in oral and written tests, and complete 40 hours of observation. A Master Interpreter is a Certified Interpreter who obtained certain scores in oral or written tests or passed the federal certification examination. A Registered Interpreter is an interpreter for a language for which an oral examination has not been developed, but who has completed a series of requirements, including passing the written exam with certain scores, undergoing an oral proficiency exam and completing 40 hours of observation.

While using interpreters qualified by the AOC is a best practice, often lawyers will have LEP clients whose dominant language is not included on the AOC's list. In those circumstances, the best practice is to contact an organization such as the Nevada Interpreters and Translators Association (NITA) for suggestions.⁹

What are my ethical duties to supervise an interpreter?

In all situations in which a lawyer is using interpreters, that lawyer has an ethical duty to supervise the interpreter's work under RPC 5.3 (responsibilities regarding nonlawyer services).¹⁰

A lawyer should take steps to assure that the attorney/client communication as facilitated by the interpreter is working properly. For instance, a lawyer "should allow for additional time for client meetings, and ask confirming questions to assure that information is exchanged accurately and completely."¹¹

A lawyer working with an LEP client must ensure that the interpreter is not giving his or her own advice to the client, as this can constitute aiding in the unauthorized practice of law, in violation of RPC 5.5(b)(2).¹² Another danger to watch out for is the potential for an interpreter to "filter" or "spin" what the lawyer is saying instead of impartially translating the communication.¹³ An indicator that this is taking place is when the time it takes the lawyer to make a statement and the time it takes the interpreter to translate do not reasonably correlate. Likewise, an interpreter engaging in a back-and-forth with the client that clearly doesn't correlate to what the attorney has been saying should serve as a red flag that the interpreter is filtering or spinning.

How can I effectively use interpreters in court?

Effective interpreting is an art that requires skill and hard work. Effectively working with an interpreter is also an art that attorneys can perfect by following simple practice points such as:

- Explaining the role of an interpreter to the LEP client. Specifically, advise the client to "wait for the question to be interpreted prior to answering."¹⁴
- Speaking directly to the person requiring an interpreter. Do not refer to him or her in the third person.
- Avoiding compound questions.
- Waiting until the interpreter is done speaking before you speak.
- Keeping abbreviations and acronyms to a minimum. Experienced interpreters might be familiar with the terms, but they can be distracting to the interpreter and confusing to the LEP listener.
- Becoming familiar with the Nevada Code of Professional Responsibility for Nevada Court Interpreters and ensuring that the interpreter is complying with this code of ethics.
- "There should *never* be an independent dialogue in court between an interpreter and the person needing an interpreter. The interpreter is probably explaining something or giving advice."¹⁵ If this happens, the proceedings should be stopped immediately and the interpreter should be required to repeat on the record what was discussed by the interpreter and the party.
- Expressing any concerns about the quality of the interpretation as soon as a problem arises.

Nevada's large population of individuals with limited-English proficiency makes effectively working with interpreters a critical skill for Nevada lawyers. Ethical duties of competence and communication demand that lawyers dealing with LEP clients secure the services of "qualified" interpreters. While a

client's family and friends can help a lawyer assess the client's interpreter needs, using family or friends as interpreters is not advisable and could well create conflicts of interest and threats to confidentiality. The best practice is to secure the services of an individual who has been credentialed by an official body such as the AOC. If the language at issue is not one for which there are certified interpreters in the AOC roster, lawyers can check with organizations such as the Nevada Interpreters and Translators Association. Working with interpreters in court can be challenging. Lawyers can significantly increase the effectiveness of the in-court use of interpreters by adhering to simple practice points, such as avoiding compound questions and allowing sufficient time for interpreters to do their jobs.

1. United States Census Bureau, QuickFacts, at <https://www.census.gov/quickfacts/NV>.
2. Migration Policy Tabulations from the U.S. Census Bureau at <http://www.migrationpolicy.org/programs/national-center-immigrant-integration-policy>. See also, Nevada State Court Language Access Plan.
3. New Hampshire Bar Association Ethics Committee Opinion #2009/10-2.
4. NRPC 1.4.(2)
5. NRPC 1.4.(5)
6. South Dakota Unified Judicial System, Bench Card: Courtroom Interpreting.

7. New Hampshire Bar Association Ethics Committee Opinion #2009/10-2.
8. Ethics Advisory Opinion No. 96-06, Utah State Bar.
9. The Nevada Interpreters and Translators Association, www.nitaonline.org.
10. NRPC 5.3. Responsibilities Regarding Nonlawyer Assistants.
11. New Hampshire Bar Association Ethics Committee Opinion #2009/10-2.
12. NRPC 5.5 (a) (2). Assist another Person in the unauthorized practice of law.
13. ABA Center for Professional Responsibility, Ethics Tips, December 2015, Don't Get Lost in Translation, Peter Geraghty.
14. Attorneys Guide to Working with Interpreters (NV), National Association of Judiciary Interpreters and Translators, Inc. www.najit.org.
15. South Dakota Unified Judicial System, Bench Card: Courtroom Interpreting.



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