



ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** by the Board of Governors in January 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.6(a) and 5.3. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

Opinion No. 03-07
May 2004

Topic: “Responsibilities Regarding Nonlawyer Assistants” and “Client Confidences”

Digest: The responsibilities of lawyers regarding nonlawyer assistants extends to interpreters who are employed or retained by, or associated with a lawyer for the purpose of communicating with hearing impaired clients.

Ref: Illinois Rules of Professional Conduct, Rules 1.6(a) and 5.3

Illinois Interpreter’s Privilege 735 ILCS 5/8-911

In re Estate of Divine v. Giancola, 263 Ill. App. 3d 799, 635 N.E.2d 581 (1st Dist. 1994)

FACTS

Lawyer B refers client to Lawyer A. Client is hearing impaired. Lawyer B indicates to Lawyer A that in all likelihood it would be necessary to have a sign language interpreter because the potential client, although a lip reader, sometimes needs the assistance of a

signing interpreter. Client contacts Lawyer's A's office regarding possible representation in a social security disability matter.

QUESTIONS

1. Whether Illinois Rules of Professional Conduct 5.3 (responsibilities regarding nonlawyer assistants) extends to interpreters who are employed or retained by or associated with a lawyer for the purpose of communicating with hearing-impaired clients.
2. Whether a lawyer's communication with his hearing impaired client in the presence of an interpreter (employed or retained by, or associated with the lawyer for the purpose of communicating with the client) is protected under Illinois Rules of Professional Conduct 1.6.

OPINION

A lawyer's responsibilities for a nonlawyer assistant extends to sign language interpreters. Illinois Rule of Professional Conduct 5.3 provides:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) The lawyer, and, in a law firm each partner, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer and the firm;
- (b) each lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for a nonlawyer's conduct that would be a violation of these Rules if engaged in by a lawyer if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm, or has direct supervisory authority over the nonlawyer, and knows of the nonlawyer's conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.3 (c) places upon the lawyer the responsibility for conduct by nonlawyer assistants, the conduct of which would be a violation of these Rules if engaged in by a lawyer.

A search found no Illinois reported cases specifically addressing a lawyer's responsibilities regarding the conduct of interpreters. However, the Illinois Appellate court recognizes a lawyer's responsibility for the acts of the paralegal. *See, In re Estate of Divine v. Giancola*, 263 Ill. App. 3d 799, 635 N.E.2d 581, 588 (1st Dist. 1994).

The relationship between a lawyer and interpreter, who is employed or retained by, or associated with the lawyer for the purpose of communicating with a client, is analogous to the relationship a lawyer has with nonlawyer paraprofessionals, who act for the lawyer in the rendition of the lawyer's professional services.

Accordingly, Rule 5.3 would impose upon the lawyer the responsibility to ensure the conduct of the interpreter is compatible with the professional obligations of the lawyer.

The inquirer's second question seeks to determine whether a lawyer's communications with his hearing impaired client in the presence of an interpreter, employed or retained by, or associated with the lawyer for the purpose of communicating with the client, are protected under Rule 1.6 (Confidentiality of Information).

Rule 1.6, in pertinent part, provides:

- (a) . . . a lawyer shall not, during or after termination of the professional relationship with the client, use or reveal a confidence or secret of the client known to the lawyer unless the client consents after disclosure.

The Illinois Rules of Professional Conduct define "confidence" as information protected by the lawyer-client privilege under applicable law. In *Divine v. Giancola*, 635 N.E.2d at 588, the court recognized the presence of an attorney's employee, such as a secretary or law clerk, does not destroy the attorney-client privilege for material disclosed to the attorney in the employee's presence.

Furthermore, the Illinois Interpreter's Privilege Act provides "If a communication is otherwise privileged, that underlying privilege is not waived because of the presence of the interpreter." 735 ILCS 5/8-911 (2002).

In order to give effect to the rule of confidentiality, communications between a lawyer and hearing-impaired client in the presence of a sign language interpreter must be protected by Rule 1.6. And, Rule 5.3(c) requires the lawyer to make reasonable efforts to ensure the conduct of the interpreter is compatible with Rule 1.6.

In conclusion, Rule 5.3 imposes upon the lawyer, who employs, retains or associates with an interpreter, for the purpose of communication with a client, the responsibility to

ensure the conduct of the interpreter is compatible with the professional obligations of the lawyer. A lawyer's communications with the client in the presence of the interpreter are confidential. Rule 5.3 requires the lawyer to make reasonable efforts to ensure the interpreter does not violate client confidences.