



State Bar Actively Addressing Growing Hispanic Population

By Enrique J. Gimenez and Wendy Padilla-Madden

With a Hispanic population increase of more than 210 percent during the 1990s, Alabama has become a leading United States center for Hispanic population growth and business development. The first few years of this decade continued the trend, with Alabama's 22 percent increase in Hispanic population nearly doubling the national average. While many societal services have fallen short in their efforts to cope with this cultural influx—and, in some instances, simply failed to expend any effort at all—the Alabama State Bar, through its Spanish Speaking Lawyers Committee (“SSL”), has taken affirmative steps to ensure that this massive client base, one oftentimes unfamiliar with this country's language and, more often than that, its legal system, are adequately represented and protected.

The SSL's initial efforts quickly revealed that many in the Hispanic community were distrustful of engaging the legal process, even in the face of obvious legal wrong, based in large part on negative experiences with attorneys advertising themselves out to be Spanish-speaking. These attorneys, once engaged, all too often produced an assistant or employee with no legal training to serve as the client's contact. These relationships almost always ended poorly.



Earlier this year, however, the SSL was able to secure an informal opinion from the Office of General Counsel that quite sharply prohibits this type of legal abuse.¹ More specifically, the opinion makes clear that an attorney cannot imply an ability to speak a foreign language when, in fact, it is an employee of the attorney who will be communicating with the client in the foreign language. Instead, if an attorney is going to advertise the fact that her law firm can communicate with a client in a particular language, the opinion requires that any advertisement state with particularity whether the attorney has the ability to communicate in the foreign language, or whether an employee has that ability.

Perhaps most importantly, the informal opinion leaves no doubt that an attorney will be held responsible for the conduct of any non-lawyer employee to the same extent as if the attorney engaged in the conduct himself. Accordingly, any time a lawyer uses a non-lawyer employee to communicate with a client, the lawyer is under a duty to ensure that the information communicated to and received from the client is accurate. The opinion is clear that any failure by the non-lawyer employee to accurately relay information between the client and the lawyer that adversely affects the rights or interests of the client could constitute an ethics violation by the lawyer.²

Further in support of this effort, the Alabama State Bar recently formed a task force to review the proposed Alabama Unauthorized Practice of Law (“UPL”) Criminalization Act currently pending in the Alabama legislature and make a recommendation to what action, if any, is appropriate for the Alabama State Bar to take. This task force is being chaired by Wendy Padilla-Madden.

In addition to addressing potential abuse from the legal side, the SSL has additionally made strides in arming the Hispanic population with knowledge about the American legal system through

the translation of multiple ASB public information brochures into Spanish and composing a Spanish language brochure explaining many of the areas of confusion and difference between Central and South American legal systems and the U.S. system.³ The committee has also worked with the bar in attempting to identify attorney advertisements seeking to capitalize on this confusion.

Once Hispanics enter the court system, the SSL has worked hand-in-hand with Alabama’s Administrative Office of Courts (“AOC”) in securing the resources, financial and otherwise, to join the National Consortium of Court Interpreters. The committee’s hope is that the consortium will provide uniform training and testing materials to ensure that any individual providing interpreter services to Hispanics in the judicial system will be certified through the consortium. Presently, the SSL is providing feedback to the AOC on its draft of the AOC Policies and Procedures—Foreign Language Interpreters in Alabama’s Unified Judicial System.

Over the next decade, the influx of Hispanics into Alabama and its workforce are expected to continue outpacing most other groups. Accordingly, the group’s need to access a properly armed court system through competent legal counsel is necessary to mirror that rise. The Alabama State Bar, through its Spanish Speaking Lawyers Committee, hopes to remain in the forefront of attempting to meet these needs.⁴ ▲▼▲

Endnotes

1. The SSL has been advised that the OGC now intends to release the opinion as a formal opinion of the Disciplinary Counsel, a result certain to greatly increase the ability to curb misconduct.
2. A complete copy of the OGC’s informal opinion and, when released, the formal opinion, can be viewed and downloaded at www.lightfootlaw.com.
3. Copies of these materials may also be seen and downloaded at www.lightfootlaw.com.
4. The Spanish Speaking Lawyers Committee is chaired by Wendy Padilla-Madden and is divided into four

sub-committees: the Communications Sub-Committee, co-chaired by Kristin Johnson and Michael Johnson, is charged with translating bar publications into Spanish and creating a publication addressing the problem of UPL; the Hispanic Outreach and Rules Sub-Committee, co-chaired by Enrique J. Gimenez, provides guidance to the bar on the application of the UPL statute, *Rules of Professional Conduct* and *Rules of Court* encountered by lawyers representing clients with limited English proficiency; the Court Interpreters Sub-Committee, co-chaired by Michelle K. Pieroni and Brian P. Brock, outlines the rules and regulations the supreme court needs to promulgate in order to guide the judiciary when interpretive services are required; and the Referral Sub-Committee, co-chaired by Jessica S. Grover and Lou J. Willie, III, directs its efforts to compiling a list of existing resources to provide access to justice for the Hispanic community. The Honorable J. Scott Vowell, circuit court judge of Jefferson County, volunteers his time and counsel as an honorary co-chair.



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Bar’s Hispanic Outreach Committee and participation on the Alabama Defense Lawyers Association’s Diversity Task Force.



Wendy Padilla-Madden is an attorney and lobbyist with Balch & Bingham LLP’s Birmingham and Washington, D.C. offices. She chairs the Alabama State Bar’s Spanish Speaking

Lawyers Committee, as well as the Hispanic Business Council of the Birmingham Chamber of Commerce. Padilla-Madden is originally from Guatemala.