

ETHICS OPINION

RO-2008-01

Advertising Ability to Communicate In A Foreign Language

QUESTION:

May an attorney advertise the ability to communicate in a foreign language if an employee of the attorney, and not the attorney, will be communicating with clients in the second language? If so, what ethical obligations and responsibilities are imposed upon the supervising attorney?

ANSWER:

An attorney may advertise the ability of a nonlawyer employee to communicate in a foreign language if the advertisement makes it clear that the nonlawyer employee and not the attorney will be communicating with the client in the foreign language. Additionally, if the advertisement is placed using the foreign language being advertised, then the disclaimer required by Rule 7.2(e) must also be in that same foreign language. If the advertisement being placed uses both English and the foreign language, then the disclaimer must be communicated through both the foreign language and English. Finally, any attorney using a nonlawyer employee to communicate with a client in a foreign language assumes all responsibility for the accuracy of the information relayed between the nonlawyer employee and client.

DISCUSSION:

Rule 7.2, Alabama Rules of Professional Conduct, provides, in pertinent part, as follows:

RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S
SERVICES

A lawyer shall not make or cause to be made a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

As such, an attorney cannot imply an ability to speak a foreign language when, in fact, it is an employee of the attorney that will be communicating with the client in the foreign language. Rather, if the attorney wishes to advertise the fact that his law firm can communicate with a client in a particular language, the advertisement must state with particularity whether the attorney has the ability to communicate in the foreign language or whether an employee has that ability. Additionally, if the advertisement is going to be published via the foreign language, the disclaimer required by Rule 7.2(e) must also be translated into the foreign language. If an advertisement is going to be published using both English and the foreign language, then the disclaimer should be included using both the foreign language and English formats.

Any attorney using a nonlawyer employee to communicate with a client in a foreign language should also be aware of Rule 5.3, Ala. R. Prof. C., which provides as follows:

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER
ASSISTANTS

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

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer, if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Under Rule 5.3, an attorney is held responsible for the conduct of any non-lawyer employee to the same extent as if the attorney engaged in the conduct himself. In the instant situation, by using a nonlawyer employee to communicate with a client, the lawyer is under a duty to ensure that information received from the client is accurately communicated to the lawyer through the nonlawyer employee. Likewise, the lawyer is also responsible for ensuring that the nonlawyer employee accurately relays the lawyer's communications to the client. Any failure by the nonlawyer 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.

Furthermore, pursuant to Rule 5.5(b), Ala. R. Prof. C., the lawyer employing the nonlawyer employee as a translator must also be careful to avoid assisting the nonlawyer employee in the performance of activities that constitute the unauthorized practice of law. For example, while legal advice may be relayed to a client through the use of a translator, the legal advice given must be that of the lawyer and not the translator. As such, the lawyer should always be present during conferences with the client and should not allow the nonlawyer employee to meet privately with the client. In addition, when making court appearances, the approval of the court should be sought in order to use the non-lawyer employee to translate information between the client and the lawyer and/or the court.

JWM/s

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