



**New York State Bar Association  
Committee on Professional Ethics**

Opinion 1053 (4/10/15)

**Topic:** Attorney-Client Privilege; Sign Language Interpreters; Communication; Competence

**Digest:** The scope and application of the attorney-client privilege is a question of law beyond the jurisdiction of this Committee, but we note that courts have repeatedly held that the privilege is not waived by a lawyer’s use of an agent to facilitate communication with a client. If use of a sign-language interpreter does not waive the privilege, and use of such an interpreter is necessary for effective communication between the lawyer and client, it is ethically required.

**Rules:** 1.1, 1.4, 1.6

**FACTS**

1. The inquirer works for an organization dedicated, in part, to assuring that persons with disabilities receive the rights afforded to them by federal and state law. In assisting deaf persons to navigate the legal system, the inquirer has encountered lawyers who contend that they cannot represent these individuals because they believe the use of sign language interpreters would violate the attorney-client privilege. The inquirer asks whether a lawyer’s use of a sign language interpreter jeopardizes the confidentiality of a communication between lawyer and client.

**QUESTION**

2. Is a lawyer’s use of a sign language interpreter ethically permitted when it is necessary to communicate effectively with a client?

**OPINION**

3. Rule 1.6(a) of the New York Rules of Professional Conduct (the "Rules") provides, with specific exceptions, that a lawyer “shall not knowingly reveal confidential information . . . or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person.” As Comment [3] to this Rule explains, “The principle of client-lawyer confidentiality is given effect in three related bodies of law: the attorney-client privilege of evidence law, the work-product doctrine of civil procedure and the professional duty of confidentiality established in legal ethics codes.”

4. The scope and application of the attorney-client privilege is a question of law, and it is beyond the authority of this Committee to resolve questions of law. Nonetheless, the Committee notes that courts have repeatedly held that the attorney-client privilege is not waived by a lawyer’s use of an agent to facilitate communication with a client. *See United States v. Ackert*, 169 F.3d 136, 139 (2d Cir. 1999) (“the inclusion of a third party in attorney-client

communications does not destroy the privilege if the purpose of the third party's participation is to improve the comprehension of the communications between attorney and client"); *People v. Osorio*, 75 N.Y.2d 80 (1989) (communications made to counsel through an agent of either attorney or client to facilitate communication generally held privileged); *Stroh v. General Motors Corp.*, 213 A.D.2d 267 (1<sup>st</sup> Dept. 1995) (presence of daughter of elderly client during conversations with attorney does not vitiate privilege); *see generally* American Law Institute, Restatement of the Law Governing Lawyers § 70; *see also* N.Y. Judiciary Law, art. 12 (providing for the hiring of court interpreters and the appointment of interpreters for deaf parties or witnesses). Nor does the use of a sign language interpreter necessarily violate Rule 1.6's general requirement that a lawyer safeguard a client's confidential information. *See* Rule 5.3 Comment [2] ("[nonlawyer] assistants, whether they are employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services.")

5. In order to maintain the privilege, the lawyer or law firm should ensure that the interpreter understands the requirement to maintain confidentiality. *See* Rule 5.3 (A law firm shall ensure that the work of nonlawyers who work for the firm is adequately supervised, as appropriate) and Comment [2] thereto ("A law firm must ensure that such assistants [both employees and independent contractors that act for the lawyer in rendition of professional services] are given appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client . . ."). Rule 5.3 notes that the lawyer may take into account factors such as the experience of the person whose work is being supervised. For example, the lawyer may need to take fewer precautions with a professional interpreter who is subject to a code of conduct than with a family member or friend of the client, who may not understand the requirements for retaining the privilege.

6. If use of a sign-language interpreter would not violate the attorney-client privilege, then when such use is necessary for effective communication between the lawyer and client, it is ethically required. Rule 1.4 governs a lawyer's duty to communicate meaningfully with a client. It includes, *inter alia*, the responsibility to apprise a client of material developments in the client's matter, to consult with the client about the means by which a client's objectives are to be accomplished, and to comply promptly with a client's reasonable requests for information. Rule 1.4 (a)(1)(iii), (2), and (4). As noted in Comment [1] to Rule 1.4, "reasonable communication between the lawyer and the client is necessary for the client to participate effectively in the representation." Thus, when a lawyer has a client with whom the only means of effective communication is through a sign language interpreter, the lawyer can satisfy the requirements of Rule 1.4 only by engaging this type of interpreter. N.Y. City 1995-12 (foreign language and sign interpreters). *Accord*, Utah Opinion 96-06 (foreign language interpreters); California Opinion 1984-77 (same).

7. Finally, if a lawyer needs a sign language interpreter to communicate effectively with a client, then, unless the lawyer utilizes such an interpreter, the lawyer would be unable to provide "competent representation" to the client, as required by Rule 1.1. As noted by Comment [5] to Rule 1.1, competent handling of a particular matter includes, *inter alia*, "inquiry into and analysis of the factual . . . elements of a problem." With many hearing-impaired clients, a lawyer could not effectively engage in the required inquiry if he failed to avail himself of a sign

language interpreter. N.Y. City 1995-12. Accord, Utah Opinion 96-06; California Opinion 1984-77.

## **CONCLUSION**

8. The scope and application of the attorney-client privilege is a question of law beyond the jurisdiction of this Committee, but we note that courts have repeatedly held that the privilege is not waived by a lawyer's use of an agent to facilitate communication with a client. If use of a sign-language interpreter does not waive the privilege, and use of such an interpreter is necessary for effective communication between the lawyer and client, it is ethically required.

(5-15)