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## Representing non-English speaking clients

By Justin Rebello

When Michael Rakower was hired to represent a Taiwanese-born man in a real estate dispute, he found himself attempting to overturn an \$8 million summary judgment order on behalf of a client whose language he couldn't understand.

With help from the man's daughter as a translator, Rakower learned that the client had gone into the first case unaware of what summary judgment was, and was appalled that his prior attorney never told him he could be ordered to pay upwards of \$8 million.

"Basically the client was geared up in his mind for trial and did not understand the significance of summary judgment," said Rakower. "He was not aware his case could be lost any time prior to trial."

On appeal, Rakower sought to avoid a similar breakdown in communication. His strategy was to consistently ask his client difficult questions to be certain that he had a clear understanding of the legal process involved in his case. During the appeal, Rakower presented a 30-page affidavit highlighting procedures in the initial case that were either omitted in his client's prior papers or that the client simply didn't understand because he did not speak English.

Thanks to Rakower's efforts, the summary judgment was vacated last September.

Working with a client who doesn't speak English can create extra hurdles for the attorney, from making sure the client understands his or her options to teaching the client how to appeal to a jury.

In every case, communication is essential.

"Attorneys tend to talk a lot and don't always wait for answers," said Teresa Rendon, an attorney at Legal Aid Services of Oklahoma Human Rights Commission and a member of the Oklahoma Bar Association's Diversity Committee. "They see the client's head nodding and just assume the person understands."

Rendon has represented a host of non-English speaking clients, including Latino farm workers, and she said that many had a tendency to be respectful and not speak up, not wanting to interrupt the attorney.

In each case, Rendon makes it a point to ask specific questions to make sure her clients can follow along.

"You can't ask questions that can be answered with a yes or no. You have to be sure they are getting it," said Rendon.

### Preparing for trial

Explaining the legal process to someone who doesn't speak English can be an ordeal. Legal terminology can go over the head of an English-speaking layperson, let alone someone who needs it translated.

While translators are often a necessity, it is important to use them to facilitate the case for the client. A common problem is a client speaking several lines in another language, only to have the translator reply with a one-word answer.

Rendon recommends that you use the translator to help prepare your client's testimony.

"Practice your questions through the interpreter, just as you would if practicing in English," said Rendon. "You can even use the translator to their benefit, as it

gives clients time to collect their thoughts a little more."

Cultural differences can also cause problems.

For example, "in many Latin American cultures, people are accustomed to bringing their families everywhere they go, which can be a real problem in family law cases," said Rendon.

She said it can be difficult to convince a client in the midst of a divorce case to tell his child that she can't be present during certain meetings leading up to trial.

### Appealing to a jury

A chief concern for attorneys is presenting their client before a pool of jurors who might not speak the language, and therefore have difficulty being sympathetic to their case.

That makes non-verbal cues essential, said Jocelyn Cinquino, a jury consultant at the legal services firm Kroll Ontrack/TrialGraphix in New York City.

"If you have a non-English speaking witness, the jury will not be able to get the full breadth of communication," said Cinquino. "So they look for peripheral cues. Is the witness hesitating? Does he become angry or combative? If the jurors can't understand what they are hearing, they are going to be looking at how an individual is reacting."

When a non-English speaking witness takes the stand, Cinquino recommends that a translator not be placed between the witness and the jury box, to ensure that it appears the client is speaking directly to the jury.

It is also critical that a client is made aware in advance of some of



the more personal or detailed questions he or she will be asked, so the witness doesn't appear rattled during cross-examination.

"Certain cultures find it very rude, for example, to ask about someone else's background," said Cinquino. "A [foreign] witness might not understand why a stranger is asking questions about his or her family. But this is how many jurors build a rapport with a witness."

During voir dire, attorneys should try to determine how receptive prospective jurors will be to a client who does not speak English.

Cinquino recommends asking about any foreign travel or a history of non-English speaking relatives or friends.

Also, while a juror who is proficient in the same language as your client might seem like an ace in the hole, it could actually be a detriment to your case because he or she might "act [to other jurors] like an expert on some level, but he or she may be wrong about [a fact] that turns out to be important."

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