

News from Internet Business Law Services

Admissibility of Hearsay in the Context of Telecommunication Systems for the Hearing Impaired

In *Germano v. Int'l Profit Ass'n*, Case No. 07-3914 (7th Cir. Sept. 12, 2008), the National Association of the Deaf (NAD) and a private law firm represented a hearing impaired man in an employment discrimination case on appeal before the U.S. Court of Appeals for the 7th Circuit.

The case addressed a legal issue never before addressed by the court, namely, whether statements transmitted by a communication assistant in a call made through a telecommunications relay service are admissible in the same way as voice calls. In an opinion issued on September 12, 2008, the Court of Appeals reversed the district court's decision dismissing the case and remanded for further proceedings.

In the case of *Germano v. Int'l Profit Ass'n*, Case No. 07-3914 (7th Cir. Ill. Sept. 12, 2008), Germano, the plaintiff, was a job applicant who believed that the defendant and prospective employer had rejected him for a position on account of his hearing disability, and subsequently filed a suit against the employer. The district court granted summary judgment for the employer. In dismissing the case, the district court relied on its conclusion that the key evidence presented by the plaintiff, namely, a telephone conversation between the employer and the plaintiff conducted through a relay service, constituted inadmissible hearsay.

The Court of Appeals overturned the district court's decision, noting that the job applicant would have been permitted to testify about the employer's statements with no hearsay issue had the employer and job applicant "spoken to each other over an ordinary phone line as two hearing persons would have done." The Court of Appeals also analogized evidence of communications conducted through a relay services as those communications involving foreign language interpreters.

The Court of Appeals held that the relay service communications assistant served as "no more than a language conduit" between the hearing-impaired job applicant and the employer, and that the communications, thus, did not constitute inadmissible hearsay. The Court of Appeals reasoned that "a certified communications assistant, transmitting statements through a telecommunications relay service, does not add a layer of hearsay, unless the opponent of that evidence can produce specific evidence of unreliability or a motive to mislead." Further, the Court of Appeals noted that there was "no sound basis in law, fact, or policy on which to distinguish the role of communications assistants from that of reliable, unbiased foreign language interpreters."

How does a communications assistant (CA) differ from an interpreter?

The CA serves as a "language conduit." In this capacity, unlike an interpreter, a CA does not need to choose the best word to convey a meaning. The CA's task is simply to read out the English words from

the text he or she sees, and then type in the English words from the voice he or she hears.

Did the Court of Appeals address the issue of any policy reasons for admitting testimony about the content of telecommunications relay service (TRS) conversations?

The Court of Appeals held that there were strong policy reasons for admitting testimony about the contents of TRS conversations. In particular, the court noted that “denying the admissibility of statements made during a TRS conversation would strip those with hearing disabilities of a vital source of evidence available to hearing persons.”

Absent the ability to utilize TRS, the court noted that deaf persons would be limited in their ability to conduct important day-to-day affairs telephonically. The court also underlined that refusing to admit TRS assisted conversations on the grounds of hearsay is at odds with Congress’s intent to make disabled persons full and equal participants in society.

Did the Court of Appeals employ any test to determine the admissibility of the TRS calling assistant’s statements?

Although it is unclear whether the court used a specific test to determine the admissibility to TRS-based evidence, the court did note that a number of other courts presume that translated statements are “otherwise admissible unless there is a showing of unreliability or a motive to mislead.” In addition, the court drew a parallel between the use of TRS and the use of interpreters, and noted that other courts consider the following four factors “to check for likely bias or unreliability on a case-by-case basis” of interpreters:

[1] which party supplied the CA,

[2] whether the CA had any motive to mislead or distort,

[3] the CA’s qualifications and language skill, and

[4] whether actions taken subsequent to the conversation were consistent with the statements as translated.

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