



**JUDICIARY OF GUAM
Administrative Office of the Courts
120 West O'Brien Drive
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**LANGUAGE ASSISTANCE POLICY
FOR PERSONS WHO ARE
LIMITED ENGLISH PROFICIENT (LEP)
And/Or
DEAF OR HARD OF HEARING (DHH)**

Approved by the
Judicial Council of Guam on
March 21, 2013

I. DEFINITIONS

- A. Limited English Proficiency – A person with limited English proficiency (LEP) does not speak English as his or her primary language, and has a limited ability to read, write, speak, or understand English. Many LEP persons are in the process of learning English and may read, write, speak, and/or understand some English, but not proficiently. LEP status may be context-specific. An individual may have sufficient English language skills to communicate basic information (such as name, address, etc.), but may not have sufficient skills to communicate detailed information in English (*e.g.*, medical information, eyewitness accounts, information elicited in an interrogation, etc.).
- B. Primary Source Language – A language of the speaker which is interpreted into a second language. An individual’s native tongue or the language in which an individual most effectively communicates.
- C. Interpretation – The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.
- D. Translation – The replacement of written text from one language (source language) into an equivalent written text in another language (target language).
- E. Bilingual – Refers to the ability to use two languages proficiently.
- F. Judiciary of Guam Interpreter Listing – A list of on-call interpreters maintained by the Clerks of Court at the Superior and Supreme Courts. These interpreters are remunerated for service.
- G. Bilingual Staff Interpreter – Deputy Clerks of Court for Superior Court of Guam, staff employees with bilingual proficiency in source and target languages.
- H. LA Coordinator – Language Assistance Coordinator is appointed by the Chief Justice of Guam to oversee implementation and annual updates of the LEP plan.
- I. DHH – Deaf or Hard of Hearing. A person who is disabled because of a hearing, communication, or speech disorder, or has difficulty in speaking or comprehending the English language, is unable to fully understand the proceedings in which the person is required to participate and thus is unable to obtain due process of law.

II. POLICY STATEMENT

The Judicial Council of Guam approved the first edition of the LEP Plan on July 16, 2007, and the second edition on March 21, 2013.

This LEP/DHH Plan was developed to provide timely, meaningful and equal access to programs, services, and/or information to persons who are limited English proficient (LEP) or Deaf and Hard of Hearing (DHH) in compliance with federal law.¹ The overarching goal is to ensure maximum communication between the Judiciary and all members of our community with whom the Judiciary interacts.

To the greatest extent practical, the Judiciary of Guam will strive to meet the needs of LEP/DHH persons by ensuring the highest quality of language assistance and services.

Judiciary employees will inform the public that language assistance services are available free of charge to LEP/DHH individuals. Signs are posted in the following public areas: Courts & Ministerial Division, Client Services and Family Counseling Division, Probation Services Division, Human Resources Division, Supreme Court Intake, and Northern Court Satellite. A copy is attached as Exhibit A. The Language Assistance (LA) Coordinator is tasked with monitoring the sufficiency of all signs to ensure maximum communication with the public.

All Judiciary of Guam personnel shall coordinate language assistance services for individuals who are LEP/DHH through the LA Coordinator, who is authorized to activate interpreters and/or translators for this purpose.

III. BACKGROUND

In an effort to promote the accuracy and integrity of judiciary proceedings and to preserve constitutional and fundamental principles of fairness and access to justice, the Judiciary of Guam is committed to continuing to provide language access services to LEP and DHH persons who come in contact with the Judiciary of Guam.

Language barriers can inhibit or prohibit individuals who are LEP/DHH from accessing and/or understanding important constitutional rights, working with counsel, complying with orders of the court or probationary obligations, and receiving meaningful access to programs, services and information.

Guam's population is 159,358 based on the 2010 U.S. Census of Population and Housing, and is the gateway to the United States from Asia and neighboring

¹ Title VI of the Civil Rights Act of 1964; 45 C.F.R. §80 et seq; and 28 C.F.R. §42 et seq.

Pacific islands. Guam is a “melting pot” of cultures with two official recognized languages for conducting business: English and native Chamorro. Although English is the primary language in Guam, other languages spoken in Guam include Chamorro, various Filipino dialects (e.g., Tagalog, etc.), Korean, Japanese, Chinese, Chuukese, Kosraean, Pohnpeian, Yapese, Palauan, Vietnamese and sign. The most significant population increases in Guam reported by the U.S. Census Bureau is Carolinian, from 123 in 2000 to 242 in 2010, an increase of 96.7%; Yapese, from 686 in 2000 to 1,263 in 2010, an 84.1% increase; and Chuukese, from 6,229 in 2000 to 11,230 in 2010, an 80.3% increase.

In addition, Guam receives over 1 million tourists each year. According to the Guam Visitors Bureau, in 2011, Guam welcomed 1,150,201 tourists; and projected 1.3 million tourists for 2012.

Guam has a limited population base and is geographically isolated, located about 8 hours by air from the island state of Hawaii, and an additional 8 hours by air from Hawaii to the continental United States (West coast). Guam is located approximately 6,600 miles from San Diego, California. Therefore, interpreters and translators for certain languages may be unavailable or extremely limited on island. Compounding the geographic isolation is Guam’s time zone. Guam falls under Chamorro Standard Time (ChST), which is typically a day ahead and the opposite time of day from the continental United States.

Whether a person is a resident of Guam, or a temporary visitor, the opportunity to come in contact with the courts for a criminal or civil matter is evident. Many of our residents, U.S. citizens and permanent residents receive services from the Judiciary. Some clients provide their own interpreters as an alternative to the court’s use of interpreters or bilingual employees. LEP/DHH persons occasionally rely on their children to interpret for them, and on occasion, may call upon neighbors or strangers to act as interpreters or translators. However, an untrained “interpreter” may be unable to understand the concepts or legal terminology he or she is being asked to interpret or translate. Thus, we must minimize these instances and rely on the trained interpreters used by the Judiciary of Guam, as well as provide training to all employees and judges on the proper use of interpreters and bilingual staff.

According to the American Bar Association (ABA) Standards for Language Access in Courts,³ “training is also necessary to dispel the myth and understanding that bilingualism is sufficient qualification to interpret: the trained judge or court personnel understands that not all bilingual persons have the necessary interpreting skills to work in courts and that the skills needed to interpret are extensive. This training should also provide guidance on the steps

³ American Bar Association Standards for Language Access in Courts, Standing Committee on Legal Aid and Indigent Defendants, February 2012,.

necessary to appoint a qualified interpreter and should describe the differences between interpreters and bilingual staff and the appropriate roles for each.”

Prospectively, the Judiciary of Guam will explore recruitment opportunities of bilingual staff (e.g., Bonafide Qualifications) to maximize communication among our employees and the public, specifically for non-courtroom related settings (e.g., public service counters and information). The Language Assistance Coordinator shall develop protocols and provide training to bilingual employees, in addition to a court-wide presentation to inform all employees of the availability and appropriateness of when bilingual employees can be contacted.

On December 27, 2012 the Guam Judicial Council approved the Court Interpreter Registry Program (CIRP) to promote the accuracy and integrity of judiciary proceedings, and to preserve fundamental principles of fairness and access to justice. The CIRP governs the assignment and use of interpreters for indigent criminal defense work, courtroom pre-trial and post judgment proceedings involving criminal indigent defendants, for juvenile delinquency defense, and juvenile proceedings when parental rights are implicated. CIRP interpreters are compensated for services based on assignments coordinated through the LA Coordinator.

The CIRP is distinguished from bilingual assistance to LEP/DHH persons not involved in a criminal case. In these instances, language assistance is provided by bilingual court employees who are fluent in the source language of the LEP/DHH person, and there is no additional compensation for such services by a bilingual court employee. Such bilingual assistance is informal and limited to providing basic information related to the particular services of a Division wherein the employee is assigned, in order to better assist an LEP/DHH person to receive access to court services, procedures, and documents.

Federal law prohibits national origin discrimination and requires federally assisted law enforcement entities such as the Judiciary of Guam to take reasonable steps to provide meaningful access to programs, services and information to individuals who are LEP/DHH. The Judiciary of Guam’s Language Assistance Policy is consistent with Title VI of the Civil Rights Act of 1964, which states:

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

After a U.S. Supreme Court ruling, Congress redefined the Title VI Act in 1997 that holds responsible the entire organization who is a recipient of federal funds if a discrimination complaint is filed, and not just the specific program under which the complaint was filed.

Title VI of the Civil Rights Act of 1964 prohibits:

- A. Providing different services to individuals as it relates to race, color, and national origin.
- B. Denying the opportunity to participate as a member of a planning or advisory body, ensuring adequate representation.
- C. Selecting the location of a facility with the purpose or effect of excluding individuals to avoid excluding individuals based on race, color, or national origin.

Mr. Thomas E. Perez, Assistant Attorney General with the U.S. Department of Justice Civil Rights Division issued a letter on August 16, 2010 to provide guidance to state court systems (copy attached as Exhibit B). “Through this letter, DOJ intends to provide greater clarity regarding the requirements that courts receiving federal financial assistance provide meaningful access for LEP individuals... The federal requirement to provide language assistance to LEP individuals applies notwithstanding conflicting state or local laws or court rules. DOJ, however, views access to all court proceedings as critical. The DOJ Guidance refers to the importance of meaningful access to courts and courtrooms, without distinguishing among civil, criminal, or administrative matters. *See* DOJ Guidance, 67 Fed. Reg. at 41,462. Every effort should be taken to ensure competent interpretation for LEP individuals during *all* hearings, trials, and motions, *id.* at 41,471 (emphasis added), including administrative court proceedings. *Id.* at 41,459, n.5.”

“Courts should also provide language assistance to non-party LEP/DHH individuals whose presence or participation in a court matter is necessary or appropriate, including parents and guardians of minor victims of crime or where the parental rights of individuals are implicated such as in juvenile dependency matters, and truancy cases. Proceedings handled by officials such as magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers should also include professional interpreter coverage. DOJ expects that meaningful access will be provided to LEP/DDHH persons in all court and court-annexed proceedings, whether civil, criminal, or administrative including those presided over by non-judges.”

“...DOJ Guidance makes clear that court proceedings are among the most important activities conducted by recipients of federal funds, and emphasizes the need to provide interpretation free of cost... DOJ expects that, when meaningful access requires interpretation, courts will provide interpreters at no cost to the persons involved. The meaningful access requirement extends to court functions that are conducted outside the courtroom as well. Examples of such court-managed offices, operations, and programs can include information counters; intake or filing offices;

cashiers; records rooms; sheriff's offices; probation and parole offices; alternative dispute resolution programs; pro se clinics; criminal diversion programs; anger management classes; detention facilities; and similar offices, operations, and programs... DOJ expects courts to provide meaningful access for LEP/DHH persons to such court operated or managed points of public contact in the judicial process, whether the contact at issue occurs inside or outside the courtroom."

IV. FOUR-FACTOR ANALYSIS

The Office of Civil Rights (OCR) recommended a four-factor analysis be conducted to determine reasonable steps in implementing our LEP/DHH policy. These factors are:

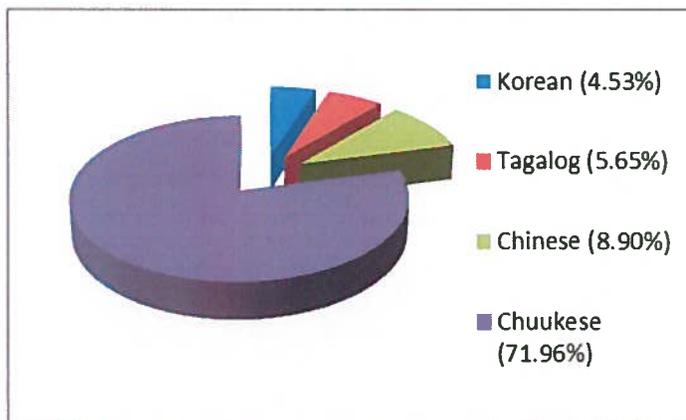
1. The number or proportion of LEP/DHH persons served or encountered in the eligible service population.
2. The frequency with which LEP/DHH persons come in contact with the program.
3. The nature and importance of the program, activity, or service provided by the program. (Rank activities or services based on level of importance; reasonableness.)
4. The resources available to the recipient.

An analysis was conducted based on case filings and services required in the Superior Court of Guam during calendar years 2004 through 2012. A summary is listed on the succeeding page.

V. LANGUAGE ASSISTANCE DATA – CALENDAR YEARS 2004 - 2012

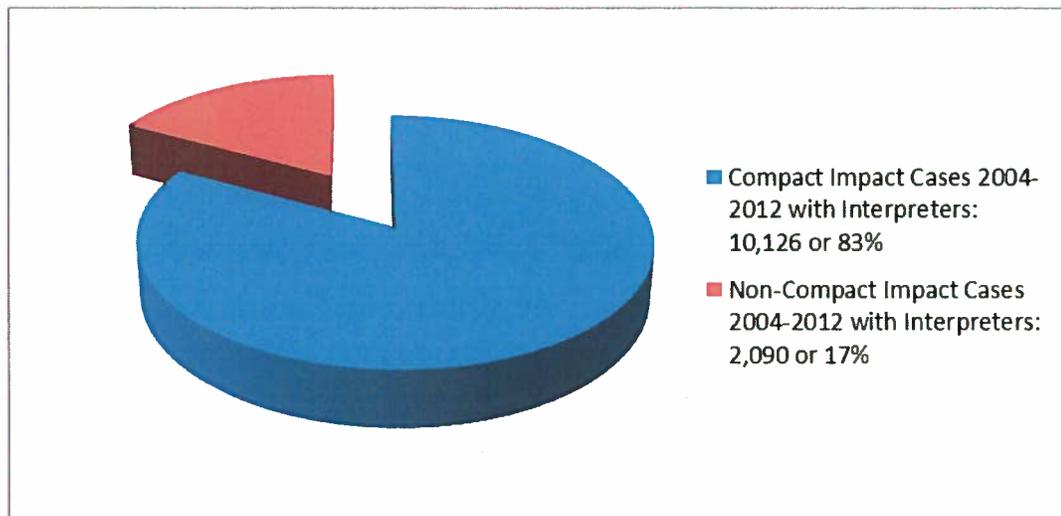
Language assistance data is illustrated below along with associated costs in descending priority. The Chuukese language was the most requested over the 8-year period at 72% or \$221,903; followed by Chinese at 9% or \$27,432.50; Tagalog at 6% or \$17,432.00; and Korean at 5% or \$13,982.00.

Summary of Language Services Provided Calendar Years 2004 - 2012			
<i>Language</i>	<i># Cases</i>	<i>Total Cost</i>	<i>%</i>
Mandarin	4	\$ 175.00	0.06
Chamorro	8	220.00	0.07
Indonesian	17	575.00	0.19
Japanese	24	668.75	0.22
Sign Language	37	1,551.25	0.50
Other	38	12,820.45	4.16
Vietnamese	44	1,498.00	0.49
Pohnpeian	53	1,562.50	0.51
Kosraean	101	2,231.25	0.72
Palauan	111	2,572.50	0.83
Yapese	163	3,750.00	1.22
Korean	452	13,982.00	4.53
Tagalog	495	17,432.00	5.65
Chinese	860	27,432.50	8.90
Chuukese	9,809	221,903.00	71.96
Grand Total:	12,216	\$ 308,374.20	100.00



An analysis of data for the same period (calendar years 2004-2012) was conducted for language assistance services provided to citizens from the Freely Associated States (Chuuk, Yap, Kosrae and Pohnpei) under the Compact of Free Association⁴.

The analysis revealed that of the total number of cases in which interpreter services were requested (n=12,216), 83% of these cases were for languages from the Freely Associated States, with the balance (n=2,090) or 17% as non-Compact cases (all other languages, such as Chinese, Tagalog, Korean, etc.).



VI. TRANSLATION OF VITAL DOCUMENTS

Based on an increase of interpreter services, vital documents that concern rights and responsibilities of a person must be translated in order to meet Office of Civil Rights' (OCR) Safe Harbor Provision, which qualifies that if 5% or 1,000 (whichever is less) of the service population is LEP/DHH, vital documents must be translated.

Statistics reveal that the Chuukese language was the most requested language during the 8-year period at 72% or \$221,903; followed by Chinese at 9% or \$27,432.50; Tagalog at 6% or \$17,432.00; and Korean at 5% or \$13,982.00. Therefore, vital documents need to be translated in these 4 languages which meet the Safe Harbor Provision (5% threshold). The LA Coordinator is responsible for working on programs and projects which ensure that important documents are translated in the various source languages, and that staff and judges receive repetitive training to maximize services to LEP/DHH persons. The LA Coordinator will work on ensuring vital documents are translated and training provided to judicial officers and staff.

⁴ Compact of Free Association, Public Law 108-188.

As of 2010, the Judiciary of Guam began translating vital documents into the Chuukese language. The following documents originating from the DWI (Driving While Intoxicated) Court have been translated and are being used in the courtroom and during attorney-client appointments.

- DWI Misdemeanor Advisement of Rights, Waiver, and Plea (Exhibit C)
- Guilty Plea (Exhibit D)
- Alcoholism Quiz (utilized by Probation Services Division) (Exhibit E)
- Alcohol Education Program (curriculum facilitated by Probation Services Division) (Exhibit F).

The Judiciary of Guam receives local appropriations to pay for interpreter services for defendants who are indigent and counsel is appointed as required under the 6th Amendment.

Services requested outside of a court appointed case will be provided in compliance with Title VI of the Civil Rights Act of 1964. The LA Coordinator is responsible for developing programs that enhance services to LEP/DHH persons in non-6th Amendment cases, and which expand services in all areas in which LEP/DHH persons come in contact with the Judiciary of Guam so as to meet the Four Factor analysis and criteria on an annual basis.

VII. PROCEDURES

The following procedures are established to guide personnel in providing services to LEP/DHH persons:

A. Determining the Need for an Interpreter in the Courtroom

First, this can be determined at an early stage in a criminal proceeding, usually based on inquiry from either the Magistrate or Arraignment Judge. Additionally, in a non-criminal proceeding the LEP/DHH person can make this known to the Intake Unit of Courts & Ministerial Division, or to the judge upon the first hearing on their case.

Second, if the defendant in a criminal proceeding understands some basic English and is arraigned pursuant to a constitutionally based plea, then the second stage to capture whether interpretation is necessary is at pre-trial proceedings where the defense lawyer can request the assistance of an interpreter from the Judge. In a non-criminal proceeding the assigned judge will determine whether interpreter services are necessary for the proceedings.

Third, the Courts and Ministerial Division staff may utilize the Judiciary's Case Management System (CMS) to view the case history to determine if an interpreter has been provided for the individual in previous court hearings.

Fourth, stakeholders should notify the court of an LEP/DHH individual's need for an interpreter for an upcoming court hearing, such as probation, prosecution, defense attorney, correctional personnel, youth detention personnel, social workers, and treatment providers or therapists.

B. Identification of persons who are LEP in need language assistance

To the greatest extent possible, employees should attempt to ascertain what language an LEP individual is speaking in order to provide adequate services, or whether a person is DHH. If you are unsure about the language being spoken, please contact the Language Assistance Coordinator. Your supervisor or division head can provide guidance to ensure language assistance services are provided as quickly as possible.

During an emergency situation, court employees who are unable to determine the language being spoken by an LEP/DHH person should refer customers, clients, and/or phone calls to the LA Coordinator. If it is a phone call, court staff shall remain on the line until their supervisor or division head answers the call. The LA Coordinator is responsible for assisting court staff to secure an interpreter in the shortest amount of time. If an interpreter is not on court grounds, all attempts will be made to contact an interpreter via telephone in order to effectively respond to the emergency situation. Bilingual court staff can also be contacted to assist.

C. Notice

Signs will be posted at various Court locations, such as the Intake Section of Courts and Ministerial Division, Client Services and Family Counseling Division, Probation Services Division, and Marshals Division to inform potential LEP/DHH persons that language assistance services can be made available in various languages. Posted signs should detail information such as contact number for LA Coordinator, points of contact in the Clerks of Court offices and alternates, telephone number, office number, website

information, and how to acquire services, and should be translated in various languages.

D. Staff Training

The LA Coordinator may work with the LEP Coordinators and the Human Resources Division to provide training to key staff on the LEP Plan's Policies and Procedures, how to properly identify LEP/DHH persons, differentiate various languages being spoken, understand cultural differences and issues, and deliver services to LEP/DHH persons. Training will begin in 2013 and will continue periodically as staff are rotated, or as new employees are hired. Training of staff will be documented by the use of sign in sheets (name, title, division, date and signature), maintained by the LA Coordinator with copies to the Human Resources Division (employees personnel jackets), and Court Programs Administrator (for grant files).

E. Court Interpreter Qualifications

Court interpreters are qualified based on registration as a Court Registered Interpreter. To become a registered interpreter one must apply, be trained in basic courtroom interpreting and general interpreting skills and knowledge, and successfully pass an examination to test on general knowledge. Additionally, registered interpreters may be required to submit to an oral examination at the request of the LA Coordinator, and must keep current in their skills by attending continuing education training. All registered interpreters are held to the Guam Interpreter Code of Conduct adopted by the Guam Supreme Court.

VIII. COMPLIANCE MONITORING AND UPDATING OF POLICY

The LA Coordinator will review and update this plan annually on a calendar year basis and make recommendations for improvements based on the review. The evaluation should include problem areas or gaps in services, and a corrective action plan to address and resolve those problem areas. Evaluation criteria may include, among other data:

- Assessing the number of LEP persons requesting court interpreter services from the Judiciary of Guam
- Assessing current language needs to determine if additional services and/or translated materials should be provided (e.g., court forms, informational brochures)
- Assessing the knowledge court employees possess of LEP policies and how to provide language assistance services to LEP persons

The Judicial Council of Guam is responsible for approving the Policy of this LEP Plan. The Administrator of the Courts (AOC) is responsible for implementing the Plan and ensuring annual updates occur. The Language Assistance Coordinator is responsible for drafting annual updates to the plan, analyzing data and trends, ensuring brochures and signs are translated, mitigating problems and adjusting procedures as needed in consultation with the AOC, and training personnel on procedures. Any revisions or updates to this plan will be posted on the Judiciary of Guam's website at www.guamcourts.org.

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The effective date of this LEP plan is March 21, 2013.



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