

## 2023 HAWAII ACCESS TO JUSTICE CONFERENCE

### “BUILDING TRUST AND UNDERSTANDING ABOUT CIVIL ACCESS TO JUSTICE”

Friday, June 16, 2023

William S. Richardson School of Law, University of Hawai'i

**Panel on “Language Access, Immigrants, Interpreters, and Access to Justice:** It is an established civil right that Limited English Proficient (‘LEP’) persons must be provided with effective interpretation and translation services to ensure meaningful access to the justice system and other governmental services.”

**Moderator:** **Corey Park**, President, The Legal Clinic

**Panelists:**

**Suzanne Zeng**, President, Language Services of Hawai'i; Director, Community Interpreting Certificate Program, Kapiolani Community College

**Rebecca Leibowitz**, Managing Attorney, Hawai'i Immigrant Justice Center of the Legal Aid Society of Hawai'i

**I. The right of Limited English Proficient (“LEP”) persons to effective interpretation and translation services to ensure meaningful access to the justice system and other governmental services is rooted in the United States and Hawai'i constitutions and implemented by federal and state laws**

**Federal Law:**

**United States Constitution:**

5<sup>th</sup> and 14<sup>th</sup> Amendments: Guarantee of fundamental fairness and the equal protection of the laws

6<sup>th</sup> Amendment: Guarantee of the right to cross-examine adverse witnesses in criminal cases

**Title VI of the Civil Rights Act of 1964**, 42 U.S.C. 2000d: Prohibits discrimination on the basis of national origin in any program or activity receiving federal financial assistance

**Executive Order 13166**, 65 Fed. Reg. 50,121 (Aug. 16, 2000): Requires all agencies receiving federal funds to provide “meaningful access” for limited English proficient persons to programs, services, and activities

**Hawai'i Law:**

**Hawaii Constitution, Article I, Section 5:** “No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be

discriminated against in the exercise thereof because of race, religion, sex or ancestry.”

**Hawaii Language Access Law**, Haw. Rev. Stat. §§ 321C-1 to 321C-7: Requires state agencies to “take reasonable steps to ensure meaningful access to [state funded] services, programs, and activities by limited English proficient persons....”

Other important Hawai'i requirements:

**Hawaii Rules of Professional Conduct** requires attorneys to:

“[K]eep a client reasonably informed about the status of a matter” and “promptly comply with reasonable requests for information” (HRPC Rule 1.4 (a));

“[E]xplain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation” (HRPC Rule 1.4 (b));

“[E]nsure that the [interpreter’s] conduct is compatible with the professional obligations of the lawyer...” (HRPC Rule 5.3(b)).

**Hawaii Rules of Evidence, Rule 604:**

“Interpreters. An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true translation.”

## **II. The need for meaningful language services in Hawai'i is great**

**Hawai'i has one of the highest proportions of non-English speakers in the nation.**

Over one in four Hawai'i residents over the age of 5 speaks a language other than English at home (**27.8% or approximately 351,000 residents**).

One in eight Hawai'i residents is considered LEP (**11.9% or approximately 157,800 residents**).

**The diversity of languages in Hawai'i adds to the difficulty of providing adequate language services.**

The top 15 languages provided in court proceedings in fiscal year 2019 were:

- |                                |                                  |
|--------------------------------|----------------------------------|
| 1. Chuukese (3612 proceedings) | 9. Vietnamese(417)               |
| 2. Ilokano (1220)              | 10. American Sign Language (246) |
| 3. Marshallese (939)           | 11. Cantonese (231)              |
| 4. Korean (894)                | 12. Samoan (230)                 |
| 5. Spanish (878)               | 13. Tongan (169)                 |
| 6. Mandarin (616)              | 14. Pohnpeian (168)              |
| 7. Tagalog (473)               | 15. Kosraean (85)                |
| 8. Japanese (469)              |                                  |

**III. What does it mean to be Limited English Proficient?**

**Hawai'i's language access law:** “‘Limited English proficient person’ means an individual who, on account of national origin, does not speak English as the person’s primary language and self identifies as having a limited ability to read, write, speak, or understand the English language.” (Haw.Rev.Stat. 321C-2)

**Assessing a person’s level of English proficiency:**

**Elementary:** Can give basic familiar information (name, address)

**Conversational:** Can understand and speak simple sentences

**Narrative:** Can describe what happened using proper vocabulary and grammar (such as in response to open-ended questions)

**External factors that can affect language proficiency:**

- Strange or unfamiliar circumstances
- Emergency situations
- Emotional conditions
- Private, sensitive information discussions
- Dealing with persons of authority
- Risks of losing something of value

**IV. Requesting an interpreter**

**Outside of court:**

- Bilingual staff
- On demand phone interpretation services from third party organizations
- In person interpretation services from third party organizations
- Individually contracted interpreters

**In court:**

Prior to the appearance, request to have an interpreter assigned by calling the clerk's office; if unsuccessful, as often occurs, the LEP person must still appear in court at the appointed time.

At the hearing, counsel or the LEP person should request an interpreter by written or oral motion.

The case may be continued pending the procurement of an interpreter.

Information on language services in the courts can be obtained from:

Office on Equality and Access to the Courts  
Hawaii State Judiciary  
426 Queen Street, Room B17  
Honolulu, HI 96813-2914  
Phone: (808) 539-4860  
E-mail: OEAC@courts.hawaii.gov

**V. The competent interpreter should have the knowledge, skills and ethics to provide effective services**

The competent interpreter should be **fluent** in both languages; **know the terminology** involved; be able to provide **consecutive and simultaneous interpreting in an accurate fashion**; be **impartial**; understand the **role of an interpreter and its boundaries**; and act **professionally and ethically**.

The Hawai'i Supreme Court has promulgated the **Hawai'i Rules for Certification of Spoken-Language Interpreters** which provides for the registration, certification, and qualification of spoken-language interpreters.

**VI. Practice pointers for working effectively with interpreters**

**Plan ahead.** Interpreted proceedings always take longer due to the simple fact that every part of the conversation must be stated twice.

**Counsel should look and speak directly to the LEP person**, as if in a normal conversation, speaking in the first person; for instance, do not say to the interpreter, "Ask him what his name is," but rather to the LEP person, "What is your name?"

**Use short sentences and pause frequently.**

**Ask only one question at a time.** Too many questions at the same time may cause confusion and require additional clarification through the interpreter.

**Allow the interpreter to convey the information.**

Use “**plain English**”; avoid slang, jargon, technical terms or acronyms.

**Speak naturally, clearly, and distinctly.**

**Do not ask the interpreter to “explain” a court form or anything else.**

**Ensure that only one person is speaking at a time** so the interpreter can hear and interpret everything said; have the judge enforce if needed.

**Limit the use of gestures and facial expressions.**

**Pay attention to sound of your voice;** the interpreter will focus on inflection and tone of voice.

**Be aware of cultural considerations.** The LEP person is likely unfamiliar with the local culture, the formal setting, and how things work in the United States. To the extent possible, the LEP person should be prepared for the proceedings by explaining how things work, what to expect, phrases that may be used, and the like.

**Observe and enforce role boundaries and professionalism on the part of the interpreter.**

**Pay attention to the interpretation and be alert for possible problems with the interpreter or the accuracy of the interpretation.** Address any issues as soon as possible.

- If the interpreter appears to be summarizing or explaining or is having a conversation with the LEP person, ask the interpreter if there is a problem and reinforce the interpreter’s proper role.
- Remind the interpreter to interpret everything that is being said.
- In court, ask the judge to intervene if needed, to help ensure accurate interpretation and a clean record.

## **VII. CONCLUSION**

The civil right of persons of limited English proficiency to meaningful access to the justice system and other governmental programs, services, and activities is rooted in the United States’ and Hawai’i’s constitutions. Effective interpretation and translation services are essential ingredients to achieve such access, and the bar is in a unique position and has a critical responsibility to guarantee that this right is not lost.