



IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE NORTHERN MARIANA ISLANDS
JUDICIARY LANGUAGE ACCESS POLICY AND PLAN

ADMINISTRATIVE ORDER 2015-ADM-0023-RUL

ORDER

¶ 1 This matter is before the Court on its own motion in recognition of the need to provide meaningful and timely language access services to limited English proficient (LEP) persons who come in daily contact with the Northern Marianas Judicial Branch. To preserve the fundamental principles of fairness, due process and equality, it is essential that LEP persons communicate in a language they are able to understand and in which they are able to be understood by the courts and staff.

¶ 2 The *Northern Mariana Islands Judiciary Language Access Policy and Plan*, attached as Exhibit A, provides a blueprint to develop and implement language access services within the Northern Marianas Judicial Branch, complete with standards for qualified interpreters and translators, trained court staff and judges, and multi-lingual signage and documents.

¶ 3 The policy is a result of efforts of the Northern Marianas Judicial Branch and its stakeholders, including the CNMI Bar Association, the Office of the Attorney General, the Office of the Public Defender and other entities.

¶ 4 IT IS ORDERED the *Northern Mariana Islands Judiciary Language Access Policy and Plan* is hereby adopted and shall take effect immediately.

SO ORDERED this 3rd day of November, 2015.

/s/ _____
ALEXANDRO C. CASTRO
Chief Justice

/s/ _____
JOHN A. MANGLONA
Associate Justice

/s/ _____
PERRY B. INOS
Associate Justice



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Deanna M Ogo

Exhibit A



NORTHERN MARIANA ISLANDS JUDICIARY LANGUAGE ACCESS PLAN AND POLICY

Approved by the
Commonwealth Supreme Court
Effective November 3, 2015

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INTRODUCTION

Federal law¹ prohibits national origin discrimination and requires federally assisted law enforcement entities, such as the Judiciary, to take reasonable steps to provide meaningful access to programs, services, and information to Limited English Proficiency (LEP) and Deaf and Hard of Hearing (DHH) individuals. In compliance with federal law, this Language Access Plan and Policy (LAPP) is designed to provide timely, meaningful, and equal access to Judiciary programs, services, and information to LEP and DHH persons.² Since 1995, the Judiciary has taken steps to remedy the absence of these services, beginning with the professional responsibilities for Commonwealth interpreters.³ This policy moves a step further by promoting the accuracy and integrity of court proceedings, preserving constitutional principles of fairness and access to justice, and ensuring maximum communication between the Judiciary and members of the community with whom the Judiciary interacts.

BACKGROUND

The NMI Judiciary LAPP is consistent with Title VI of the Civil Rights Act of 1964. Title VI of the Civil Rights Act of 1964 prohibits providing different services to individuals as it relates to race, color, and national origin; denying the opportunity to participate as a member of a planning or advisory body, ensuring adequate representation; and 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.

In 1997, Congress redefined the Title VI Act, determining that the organization receiving federal funds is responsible if a discrimination complaint is filed, not just the specific program under which the complaint was filed. On August 16, 2010, Assistant Attorney General Thomas E. Perez of the U.S. Department of Justice (USDOJ) Civil Rights Division issued a letter providing guidance to state court systems on the implementation of language access services. That letter advised state courts that, despite conflicting state or local laws or court rules, they must remain in compliance with the federal requirement of providing language assistance to LEP individuals if those individuals' presence or participation in the court matter is appropriate. Furthermore, the letter states the importance of meaningful access to civil, criminal, and administrative courts; and to proceedings handled by magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other officials. Additionally, it emphasized that the meaningful access

¹ Civil Rights Act of 1964 tit. VI § 601, 42 U.S.C. § 2000d.

² Certain provisions of the LAPP are modeled after language access policies of Rhode Island, Hawaii, and Guam.

³ *In re the Matter of the Code of Professional Responsibility for Interpreters in the Commonwealth Superior Court* (NMI Super. Ct. Sept. 6, 1995) (Decision & Order on Delivering Interpretation Services in the Commonwealth Superior Court).

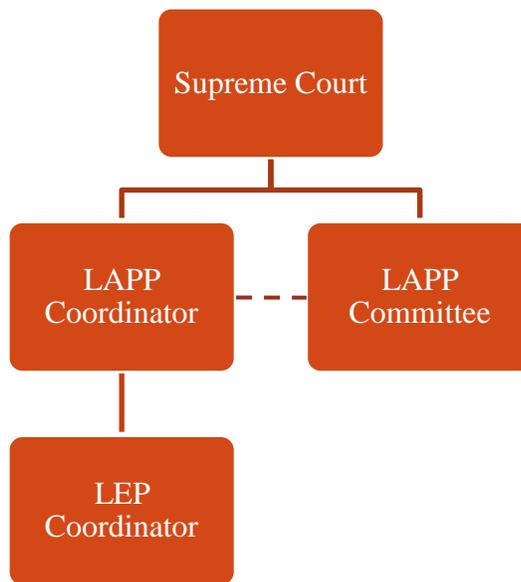
requirement occurs both inside and outside the courtroom, and noted that the Department of Justice expects that interpretation services be provided at no cost.

The USDOJ Civil Rights Division recommended a four-factor analysis to determine reasonable steps in implementing a LEP/DHH policy, including:

- (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.

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

The structure governing the management of language access services is as follows:



Section 1. Definitions

- (a) **Bilingual.** Refers to the ability to use two languages proficiently.
- (b) **Bilingual Staff Interpreter.** Court staff with bilingual proficiency in source and target languages.
- (c) **Certified Interpreter.** An interpreter who appears on the Court Interpreter Registry Program.

- (d) **Court Interpreter Registry Program (CIRP).** A list of on-call interpreters maintained by the LAPP Coordinator and LEP Coordinator.
- (e) **Deaf or Hard of Hearing (DHH).** A person who is disabled because of a hearing, communication, or speech disorder, or has difficulty in speaking or comprehending the English language, or 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
- (f) **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.
- (g) **Judiciary.** The Judiciary is comprised of the courts and personnel of the Commonwealth of the Northern Mariana Islands, including all facilities and services provided in Saipan, Rota, and Tinian.
- (h) **Language Access Plan and Policy Committee (LAPP Committee).** The Chief Justice shall appoint a maximum of 7 members of the LAPP Committee.
- (i) **Language Access Plan and Policy Coordinator (LAPP Coordinator).** The Language Access Plan and Policy Coordinator is appointed by the Chief Justice to oversee implementation and annual updates of LAPP, LAPP forms, CIRP, Interpreter Code of Conduct; and ensure that interpreters are trained in accordance with Judiciary standards.
- (j) **Limited English Proficient Individual (LEP Individual).** A person who does not speak English as his or her primary language and has a limited ability to read, write, speak, or understand English, including, but not limited to, skills to communicate detailed information in English (e.g., medical information, eyewitness accounts, information elicited in an interrogation, etc.)
- (k) **Limited English Proficiency Coordinator (LEP Coordinator).** The Limited English Proficiency Coordinator is appointed by the Chief Justice to coordinate with all Judiciary service providers to ensure interpreter services are provided as needed, and that all forms and signage are in compliance with this Policy. The LEP coordinator is under the supervision of the LAPP Coordinator and the Chief Justice.
- (l) **Source Language.** The language that is translated or interpreted to the target language. The language in which the speaker effectively communicates.
- (m) **Qualified Interpreter.** An interpreter other than a certified interpreter on the NMI Judiciary Interpreter Listing.
- (n) **Target Language.** The language to which a source language is translated or interpreted.

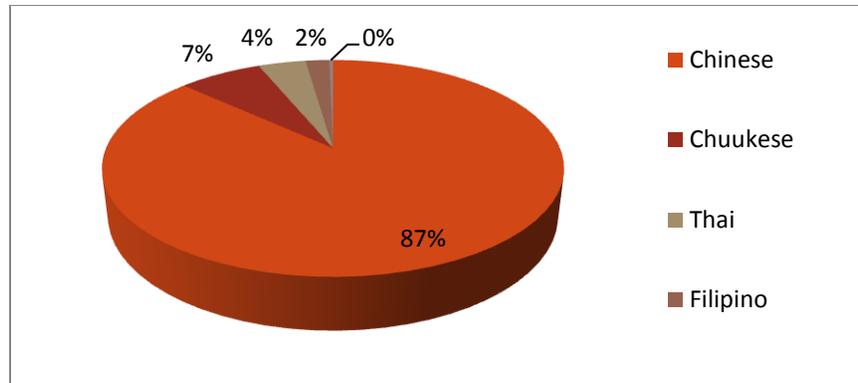
- (o) **Translation.** The replacement of written text from one language (source language) into an equivalent written text in another language (target language).

Section 2. Needs Assessment and Data

- (a) **Needs Assessment.** The CNMI’s population is 53,883 based on the 2010 U.S. Census of Population and Housing. The CNMI serves as one of the gateways to the United States from Asia and neighboring Pacific islands. It is a “melting pot” of cultures with three officially recognized languages for conducting business: English, Chamorro, and Carolinian. Although these are the primary languages, other languages spoken include Chinese, Chuukese, Filipino, Japanese, Kosraen, Korean, Marshallese, Palauan, Pohnpeian, Vietnamese, Yapese, and American Sign Language.

An analysis was conducted based on case filings and services required in the Superior Court during calendar years 2012 through 2014. Language assistance data is illustrated below along with associated costs in descending priority. The Chinese language was the most requested over the three-year period at 87% or \$4,344.75; followed by Chuukese at 7% or \$349.75; Thai at 4% or \$189.00; and Filipino at 2% or \$105.00. As of 2015, interpreters are compensated at the rate of \$15/hour.

Summary of Language Services Provided Calendar Years 2012-2014			
<i>Language</i>	<i>No. of Cases</i>	<i>Total Cost (\$15/hour)</i>	<i>%</i>
Chinese	65	\$4,344.75	87%
Chuukese	5	\$349.75	7%
Thai	1	\$189.00	4%
Filipino	3	\$105.00	2%
American Sign Language	1	\$15.00	0.3%
Total	75	\$5,003.50	100%



- (b) Data.** To maximize the efficient use of court resources, the LAPP Coordinator will work toward improving the Judiciary’s capacity to gather, record, analyze, and use language data. The LAPP Coordinator will review existing forms, rules, and procedures and identify improvements for the purpose of gathering language data. Such data shall be used to update the LAPP and allocate interpreter resources.

Section 3. 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 the Safe Harbor Provision of the Office of Civil Rights (OCR), U.S. Department of Health & Human Services. Vital documents must be translated if 5% or 1,000 (whichever is less) of the service population are LEP/DHH.

The LAPP 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 individuals. The LEP Coordinator will work on ensuring that specific vital documents are translated and training provided to judicial officers and staff.

Services requested outside of a case with court-appointed counsel will be provided in compliance with Title VI of the Civil Rights Act of 1964. The LAPP Coordinator is responsible for developing programs that enhance services to LEP/DHH individuals in non-Sixth Amendment cases and expand services in all areas that LEP/DHH individuals come in contact with the Judiciary comply with the four-factor analysis and criteria on an annual basis.

Section 4. Procedures

- (a) Determining the Need for an Interpreter in the Courtroom.** First, the need can be determined at an early stage in a criminal proceeding, usually based on inquiry from the judge. Additionally, in a non-criminal proceeding, the LEP/DHH individual can make

his/her need known to any Judiciary service provider including but not limited to, the Supreme or Superior Clerks of Court, Office of Adult Probation, Cashier, Marshal Service Division, Family Court Division, or Recorder's Office, 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 will determine 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, court staff may utilize the Judiciary's Case Management System (CMS) 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 hearing, such as probation, prosecution, defense attorney, correctional personnel, youth detention personnel, social workers, and treatment providers or therapists.

- (b) Identification of LEP Individuals.** To the greatest extent possible, employees should attempt to ascertain what language an LEP individual is speaking in order to provide adequate services. If one is unsure about the language being spoken, the LEP Coordinator or court staff will provide guidance to ensure language assistance services are provided as quickly as possible. All Judiciary personnel shall coordinate language assistance services for individuals who are LEP/DHH through the LEP Coordinator, who is authorized to activate interpreters and translators for this purpose.

During an emergency situation, court staff who are unable to determine the language being spoken by an LEP/DHH individual should refer customers, clients, and phone calls to the LEP Coordinator. If a phone call is referred, court staff shall remain on the line until their supervisor or division head answers. The LEP 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. The Judiciary will exhaust its search by contacting neighboring jurisdictions for interpreters.

- (c) Notice.** Court staff 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 in Rota, Tinian, and Saipan: the Judiciary atrium, television monitors, hallways, courtrooms, offices of the Clerk of the Supreme and Superior Court, Office of Adult Probation, Cashier's Office, Family Court Division, Law Revision Commission, Marshal Service Division, Recorder's

Office, and other areas as deemed appropriate by the LAPP Coordinator. Mobile signs will also be included. The Judiciary's website will reflect compliance updates regarding language assistance services. The LAPP Coordinator and LEP Coordinator are tasked with monitoring the sufficiency of all signs to ensure maximum communication with the public.

Posted signs will detail information such as contact number for the LAPP/LEP Coordinator, points of contact in the Clerks of Court offices and alternates, telephone number, office numbers, website information, and how to acquire services, and should be translated in various languages.

- (d) **Staff Training.** According to the American Bar Association (ABA) Standards for Language Access in Courts, "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 necessary to appoint a qualified interpreter and should describe the differences between interpreters and bilingual staff and the appropriate roles for each."⁴

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

The LAPP Coordinator may work with the LEP Coordinator and the Human Resources Division to provide training to key staff on the LAPP policies and procedures, identify LEP/DHH individuals, differentiate various languages being spoken, understand cultural differences and issues, and deliver services to LEP/DHH individuals. Training of staff will be periodic and documented by the LAPP Coordinator with copies to the Human Resources Division.

- (e) **Court Interpreter Qualifications.** The LAPP Committee shall determine the standards for certified and qualified interpreters.

Some clients provide their own interpreters as an alternative to the court's use of interpreters or bilingual court staff. LEP/DHH individuals occasionally rely on their children to interpret for them and, on occasion, may call upon neighbors or strangers to act as interpreters or translators. Because an untrained "interpreter" may

⁴ American Bar Association Standards for Language Access in Courts, Standing Committee on Legal Aid and Indigent Defendants, February 2012.

be unable to understand the concepts or legal terminology he or she is being asked to interpret or translate, the Judiciary will minimize these instances by providing trained interpreters, as well as training its staff on LEP procedures.

The Supreme Court is responsible for approving the CIRP and qualified interpreters 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 qualifying cases. CIRP interpreters are compensated for services based on assignments coordinated through the LEP Coordinator.

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 may be required to 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 LAPP Coordinator, and must keep current in their skills by attending continuing education training. All registered interpreters are held to the NMI Interpreter Code of Conduct adopted by the NMI Supreme Court.

- (f) **Exigent Circumstances.** In exigent circumstances when a needed language is rare—particularly in a small jurisdiction like the NMI—or the availability of testing or predetermined standards have not been met, the court may determine whether the proposed interpreter is qualified to participate adequately in a court proceeding. In such cases, the judge may conduct a *voir dire* of the proposed interpreter. The only interpreter available might be someone with no credentials. Therefore, the need for the court’s inquiry is increased as is consideration of the requirements in this LAPP.

In the event that a qualified interpreter is unavailable, LEP individuals can also use any bilingual court staff members who are able to help secure an interpreter. Bilingual staff members are not authorized to interpret in a proceeding unless they are qualified, so their role is limited to assisting the court and party in obtaining an interpreter.

Section 5. Compliance and Evaluation of LAPP.

- (a) **LAPP Coordinator.** Except as noted below in this section, the LAPP Coordinator shall work with the LAPP committee by preparing and completing the annual Compliance and Evaluation Report by March 31 of the subsequent year, analyzing data and trends, not limited to duties in section 2(b), ensuring brochures and signs are translated, mitigating problems and adjusting procedures as needed in consultation with the Director of Courts, and training personnel on procedures. Furthermore, the LAPP 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 areas. Evaluation criteria may include, among other data:

- (1) Assessing the number of LEP individuals requesting court interpreter services from the Judiciary
- (2) Assessing current language needs to determine if additional services and/or translated materials should be provided (e.g., court forms, informational brochures)
- (3) Assessing the knowledge court staff possesses of LAPP policies and how to provide language assistance services to LEP individuals.

On or before February 1, 2016, the LAPP Coordinator shall submit to the Supreme Court initial detailed reports documenting the efforts made to comply with this LAPP.

(b) LEP Coordinator. The LEP Coordinator shall assist the LAPP Coordinator in the day-to-day implementation of the LAPP. The LEP Coordinator shall assist in drafting, preparing and completing policies, procedures, reports and other related duties as assigned.

(c) Contact Information.

- (1) LAPP Coordinator:
P.O. Box 502165
Saipan, MP 96950
Tel. 670-236-9800
- (2) LEP Coordinator:
P.O. Box 502165
Saipan, MP 96950
Tel. 670-236-9800