

## Language Access in State Courts

### Hawaii Summary

#### A. Provides interpreters free of charge to all LEP litigants and witnesses in all civil proceedings?

##### 1. Ensures a statewide mandate is in place covering all civil proceedings? *No*

Although there are several court rules and policies permitting courts to appoint interpreters in civil proceedings, none appears to be mandatory.<sup>1</sup> The closest is a court rule providing that “[a] person who is Limited English Proficient . . . shall, throughout a legal proceeding, have the right to the assistance of an interpreter appointed by the court as provided by court rule.”<sup>2</sup> The “as provided by court rule” language is ambiguous. If it means that there is a right to an interpreter only if another court rule so provides, then there does not appear to be a right to an interpreter in civil cases in Hawaii, because several other court rules make appointment discretionary.<sup>3</sup> In any event, a legal services lawyer told us that this rule is not viewed as mandatory, and that “many judges do not even consider it a rule.”<sup>4</sup>

In practice, interpreters are provided routinely only in domestic violence temporary restraining order matters, and in termination of parental rights cases.<sup>5</sup> A legal services attorney reported that, in his experience, interpreters are never provided for LEP litigants in housing and consumer cases, and that he has seen interpreters appointed only very rarely in other types of civil proceedings.<sup>6</sup>

##### 2. Does not charge for interpreters in civil proceedings? *No*

At the court’s discretion, interpreters may be paid for from appropriated funds, or the costs may be assessed against either party.<sup>7</sup> In practice, prosecutors pay for interpreters in

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<sup>1</sup> For example, a policy adopted by the Hawaii Supreme Court deems an interpreter necessary whenever a party or witness does not speak English well enough to be understood, or when a party does not understand English well enough to follow the proceedings and assist his or her counsel. Haw. S. Ct., In the Matter of the Adoption of the Policies for Interpreted Proceedings in the Courts of the State of Hawai’i (June 22, 1995), available at <http://www.state.hi.us/jud/ctrules/cssliappendixb.pdf>; Haw. S. Ct., Policies for Interpreted Proceedings in the Courts of the State of Hawai’i, § I(A). However, the policy does not provide guidance regarding the types of proceedings in which an interpreter must be appointed, other than to say that the policy’s “[a]pplication . . . must be considered in the context of state and federal constitutional rights and other relevant state and federal law.” Haw. S. Ct., Policies for Interpreted Proceedings in the Courts of the State of Hawai’i, Preamble.

<sup>2</sup> Haw. R. for Certification of Spoken and Sign Language Interpreters 1.3, available at <http://www.state.hi.us/jud/ctrules/cssli.pdf>.

<sup>3</sup> Court rules covering civil, probate and family matters provide that in civil trials, “[t]he court may appoint an interpreter . . .” Haw. R. Civ. P. 43(f); Haw. R. Probate 15(e); Haw. R. Fam. Ct. 43(f).

<sup>4</sup> Interview with Russ Awakuni, Staff Attorney, Legal Aid Society of Hawaii (Feb. 20, 2009). Mr. Awakuni serves on the Hawaii Access to Justice Commission’s Committee on Overcoming Barriers to Access to Justice

<sup>5</sup> Interview with Philip M. Liu, Hawaii Court Interpreting Services Coordinator (Feb. 25, 2008). The Hawaii Supreme Court has held that parents facing termination of their parental rights have a constitutional right to an interpreter if one is needed. *In re Doe*, 57 P.3d 447, 457, 459 (Haw. 2002).

<sup>6</sup> Interview with Russ Awakuni, Staff Attorney, Legal Aid Society of Hawaii (Feb. 20, 2009).

<sup>7</sup> Haw. R. Civ. P. 43(f).

domestic violence restraining order matters, and the court pays for interpreters only in family parental rights cases, or in other cases in which the court appoints an interpreter.<sup>8</sup>

In the experience of the legal services attorney with whom we spoke, the court has never paid for an interpreter in a housing or consumer case. Only once has he witnessed the state provide an interpreter to an LEP litigant in such a case, and that was during an administrative hearing in a case where charges had been brought against the litigant by the state.<sup>9</sup> The attorney was unaware of exemptions for parties who cannot afford to pay, even though due to legal aid income eligibility cutoffs, most of his clients would qualify for an exemption if one existed.<sup>10</sup>

**3. Ensures that all LEP individuals receive interpreters in civil proceedings: Has clear guidelines for appointment, or provides an interpreter whenever one is requested? *Yes***

Whenever it appears that a party may not speak or understand English well enough to participate in the proceedings, courts are required, with or without motion, to conduct an examination into the necessity of appointing an interpreter.<sup>11</sup> These examinations should include questions related to the party's identification, knowledge of the proceedings, and comfort with English vocabulary.<sup>12</sup> The examination and the court's conclusions should be done on the record, and if the court concludes that an interpreter is required, "the case file should be clearly marked to ensure that an interpreter will be present when needed in any subsequent proceeding."<sup>13</sup>

The practice in civil proceedings does not appear to conform to these requirements. The legal services attorney with whom we spoke has never heard a judge ask if a litigant needs an interpreter.<sup>14</sup> He said that instead of continuing a case until an interpreter for an LEP litigant can be provided by the state, a judge will issue a general denial and order an LEP litigant to come back for the pre-trial proceedings with his or her own interpreter.<sup>15</sup> The "interpreters" that civil litigants most frequently obtain are family members whose English may be only slightly better than their own.

**B. Ensures that interpreters are competent by testing before appointing an interpreter in civil proceedings? *No*.**

Hawaii maintains a registry of credentialed interpreters, and provides by court rule that courts "may" give preference to interpreters on the list.<sup>16</sup> Although the use of an interpreter who is on the list seems to be discretionary, the courts will only pay for interpreters who are on the list.<sup>17</sup> There does not appear to be a requirement that courts must use the most highly qualified interpreter available. For this reason, we indicate above that Hawaii does not necessarily ensure

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<sup>8</sup> Interview with Philip M. Liu, Hawaii Court Interpreting Services Coordinator (Feb. 25, 2008).

<sup>9</sup> Interview with Russ Awakuni, Staff Attorney, Legal Aid Society of Hawaii (Feb. 20, 2009).

<sup>10</sup> *Id.*

<sup>11</sup> Policies for Interpreted Proceedings in the Courts of the State of Hawai'i, § I(B).

<sup>12</sup> *Id.*, § I(C).

<sup>13</sup> *Id.*, § I(B).

<sup>14</sup> Interview with Russ Awakuni, Staff Attorney, Legal Aid Society of Hawaii (Feb. 20, 2009).

<sup>15</sup> *Id.*

<sup>16</sup> Haw. R. for Certification of Spoken and Sign Language Interpreters 13, 14. The registry is available at <http://www.state.hi.us/jud/pdf/interpreters.pdf>.

<sup>17</sup> Haw. R. for Certification of Spoken and Sign Language Interpreters 14.

that interpreters are competent, even though the state has in place an extensive apparatus for credentialing interpreters.

In order to appear on the registry list, and to be considered “registered,” court interpreters must pass written tests of English proficiency and court interpreter ethics, attend a two-day orientation, pass a criminal background check, and have a General Excise Tax license.<sup>18</sup> Hawaii also recognizes four other levels of spoken court interpreter credentials, all of which are also listed on the registry list: “conditionally approved,” “approved,” “certified,” and “certified master.”<sup>19</sup> To qualify for any of those levels, an interpreter must pass the Consortium’s oral exam, or another test approved by the courts.<sup>20</sup> Hawaii is a member of the National Center for State Courts, Consortium of State Court Interpreter Certification.<sup>21</sup>

A court “policy” instructs that, when “it appears an interpreter cannot understand and interpret the terms used in the proceeding, the judge should conduct a brief examination of the interpreter to determine if the interpreter is qualified to interpret in the proceeding. When conducting the examination the judge should, if possible, seek the assistance of an interpreter whose qualifications have been established.”<sup>22</sup> There do not appear to be any guidelines for courts to use in making this determination.

There appears to be a particular need in the state is for competent interpreters in Chuukese, which is a Micronesian language in which interpretation is commonly requested.<sup>23</sup>

*The Brennan Center for Justice report, Language Access in State Courts, contains guidelines for the provision of court interpreters in civil cases. It also contains aggregate information – in the form of United States maps – regarding the extent to which the 35 states with the highest proportion of limited English proficient people (as a percentage of population) comply with the guidelines regarding providing interpreters in all civil cases and providing them free of charge.*

*This series of “state summaries” contains additional, detailed information about the extent to which the 35 states comply with those guidelines, and with the guideline regarding ensuring that interpreters are competent.*

(last updated November 2, 2009)

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<sup>18</sup> Haw. R. for Certification of Spoken and Sign Language Interpreters 2.1.

<sup>19</sup> *Id.* App. A.

<sup>20</sup> *Id.* 2.1 & App. A.

<sup>21</sup> National Center for State Courts, Consortium for State Court Interpreter Certification, available at: [http://www.ncsconline.org/D\\_RESEARCH/CourtInterp/Res\\_CtInte\\_ConsortMemberStatesPubNove07.doc](http://www.ncsconline.org/D_RESEARCH/CourtInterp/Res_CtInte_ConsortMemberStatesPubNove07.doc)

<sup>22</sup> Policies for Interpreted Proceedings in the Courts of the State of Hawai’i, § I(D).

<sup>23</sup> Haw. Access to Justice Hui, 2007 Assessment of Civil Legal Needs and Barriers of Low and Moderate-Income People in Hawai’i, p. II-29 (Nov. 2007), available at [http://www.legalaidhawaii.org/HUI\\_Access\\_to\\_Justice.pdf](http://www.legalaidhawaii.org/HUI_Access_to_Justice.pdf) (noting that language barriers are particularly bad for Micronesians); Interview with Russ Awakuni, Staff Attorney, Legal Aid Society of Hawaii (Feb. 20, 2009) (discussing need for and lack of certified interpreters in Chuukese); Hawaii Judiciary, Court Interpreter Certification Program, Court Interpreter Registry (Feb. 16, 2009) (listing three Chuukese interpreters, all of whom are deemed “registered” but not “certified”), available at <http://www.state.hi.us/jud/pdf/interpreters.pdf>.