



Practical Tips for Attorneys Working with LEP/DHH Adverse Parties or Witnesses

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This memo from Georgia Legal Services Program (GLSP) provides practical tips to assist attorneys in working on cases where the adverse party (AP) or witness for the AP is limited English proficient (LEP). These tips may prove useful with Deaf/ Hard of Hearing (DHH) clients as well. Sometimes the AP is LEP/DHH in addition to your own client or the AP or witness may be the only LEP/DHH individual. Having an LEP AP is especially common in Temporary Protective Order (TPO) cases. As officers of the court, attorneys have an implied ethical duty to ensure an LEP or DHH AP has adequate language assistance, especially when the AP appears *pro se*. Attorneys and judges are encouraged to review and become familiar with the [Supreme Court of Georgia Rule on the Use of Interpreters for Non-English Speaking and Hearing Impaired Persons](#) (“Rule”) if you have not already.¹

LEP/DHH AP (represented)

1. Communicate with the AP’s counsel and inform him or her if your client is LEP/DHH (if applicable) and that you have requested a certified court-appointed interpreter to assist your client with communicating effectively during the hearing/trial and any other subsequent legal proceedings.
 - a. If you have not already, be sure to provide opposing counsel with a copy of the pleadings you filed.
2. If the AP (or one of his or her witnesses) is the only LEP/DHH individual in the case, determine if opposing counsel has put the court on notice (in writing) about the AP’s need for a qualified (preferably Certified) court-appointed interpreter.
 - a. If opposing counsel has not, inform opposing counsel that he or she will need to request, in writing, that the court appoint a certified interpreter.
 - b. This request should be made in advance of the hearing/trial date.

¹ Hereinafter “Rule” - Direct Link - http://w2.georgiacourts.org/coi/files/Rule%20on%20Interpreters%20-%20FINAL_JULY.pdf

The Rule references the Georgia Code provisions governing use of interpreters for DHH clients. Those provisions are O.C.G.A. §§ 24-6-652 through 658.

3. Confirm that opposing counsel has filed written notice with the court.
4. If the AP's counsel, for any reason, refuses to request an interpreter for his or her LEP/DHH client and/or witnesses, then you should file GLSP's [Motion for Certified Interpreter and Supporting Brief](#) requesting an interpreter be appointed to the case.²
 - a. In your motion, you should request the court to examine the LEP individual and make an official determination on the record about the need for an interpreter.
Rule, Appendix A(II)(A)-(B)
 - b. In your motion you should explain why it is critical and necessary that the LEP/DHH opposing party or witness have the assistance of a court-appointed, certified interpreter. (i.e., due process concerns, perjury issues) Practically, you want the AP to know what is going on and what is ordered by the court.
 - c. Additionally, you should explain to the court that it will be detrimental to the LEP/DHH party and your own client if the court denies appointing a certified or other qualified interpreter. (i.e., due process concerns) *This is regardless of whether your client is LEP/DHH.*
 - d. **Remember:** in cases filed under the Family Violence Act (**O.C.G.A. § 19-13-1 et seq.**), including petitions for protective orders, Georgia law is clear that both the Petitioner, Respondent and/or any witnesses who are LEP are entitled to a court-appointed foreign or sign language interpreter free of charge. **O.C.G.A. § 15-6-77(e)(4).**³
5. Upon request, or *sua sponte*, the decision maker (usually the judge presiding over the case) should voir dire the AP or witness to determine his/her level of English comprehension. The term "decision maker" includes judges, magistrates, special masters, commissioners, hearing officers, arbitrators, neutrals or mediators.⁴ To make that determination, the decision maker should normally include questions on the following:
 - a. Identification (e.g., name, address, DOB, place of birth)
 - b. Active Vocabulary
 - i. "How did you come to the proceeding today?"

² GLSP has two motions, one for domestic violence cases brought under Georgia's Family Violence Act and another for all other types of civil cases in state courts.

³ For DHH clients, *see*, O.C.G.A. §§ 24-6-652 through 658.

⁴ *Rule*, Appendix A (II)(A).

- ii. “What kind of work do you do?”
 - iii. “Describe what you see in the room.”
 - iv. “What have you eaten today?”
 - v. **Questions should be phrased to avoid “yes” or “no” replies.**
- c. The civil or criminal proceeding
- i. “What is your understanding of the nature of the charge or the type of proceeding we are having today?”
 - ii. “What is the purpose of the proceedings?”
 - iii. “What is your understanding of my role as the judge?”
 - iv. “What is your understanding of the legal rights you have as a party or defendant in this case?”
 - v. “What is your understanding of your responsibilities as a witness in this case?”

Rule, Appendix A (II)(C).

NOTE: In some instances, the decision-maker may skip the voir dire process and appoint the interpreter based solely on counsel’s written request. The Rule does not mandate the court to voir dire the LEP/DHH individual. The Rule states that the court “should” do so.

NOTE: The fact that an individual speaks or understands some English does not preclude the individual from the right to have an interpreter appointed by the court.

- d. After examination the decision maker should state his or her conclusion on the record, and the file in the case should be clearly marked and data entered electronically when appropriate by personnel to ensure that an interpreter will be present when needed in any subsequent proceeding.

Rule, Appendix A (II)(D).

- e. If after a diligent search by the court a certified or other licensed interpreter cannot be found or is unavailable, the Court should weigh the necessity of having the proceeding at that time without a licensed interpreter or with an unlicensed interpreter against continuing the proceeding to a later date when a qualified, licensed interpreter is available.
- f. If the court determines that the use of a non-licensed interpreter is warranted, then:
- i. Make an objection on the record and request that the case be continued until a qualified, licensed interpreter is appointed to the case.

- ii. If the objection is overruled, refer the court to the Georgia Commission on Interpreters' [Instructions for Use of a Non-Licensed Interpreter](#).⁵
- iii. Remind the court, as needed, that the use of a non-certified interpreter requires the court to make an audio or audiovisual recording of all non-English testimony. *Rule*, Section VII (A)(1)-(3).
- iv. Remind the court that it is inappropriate for friends, family members, bilingual attorneys, etc. to serve as interpreters.
 - 1. Compare an interpreters' ethical obligation to limit communication with the court and parties with an attorney's ethical obligation to communicate effectively with his or her client.⁶
- v. At the end of the proceeding, move that a certified or other licensed interpreter be appointed for any future legal proceedings.

NOTE: Be sure to always keep a copy of the [Interpreter's Oath](#)⁷ in your case file.

Do you solemnly swear or affirm that you will faithfully interpret from (state the language) into English and from English into (state the language) the proceedings before this court in an accurate manner to the best of your skill and knowledge?

- g. If the decision maker concludes that the no interpreter is needed, but that decision is clearly incorrect:
 - i. Object to the court's decision to preserve the issue on appeal.
 - ii. Renew that objection throughout the proceeding as appropriate.

LEP/DHH AP (pro se)

- 1. Immediately file GLSP's Motion for Certified Interpreter and Supporting Brief.

⁵ Direct Link - [http://w2.georgiacourts.org/coi/files/model%20form\(1\).doc](http://w2.georgiacourts.org/coi/files/model%20form(1).doc)

⁶ See, Interpreter Code of Professional Responsibility, Standard VII (Interpreters shall maintain impartiality by avoiding undue contact with witnesses, attorneys, interested parties, and jurors before, during and until the case is concluded) available at <http://w2.georgiacourts.org/coi/files/Code%20of%20Professional%20Responsibility%20for%20Interpreters.doc> (Last visited February 5, 2015); See also, Georgia Rules of Professional Conduct (GRPC) Rule 1.4 available at <http://www.gabar.org/barrules/georgia-rules-of-professional-conduct.cfm> (Last visited February 5, 2015).

⁷ Direct Link - http://w2.georgiacourts.org/coi/index.php?option=com_content&view=article&id=58&Itemid=75

- a. If you are unable to communicate with the AP prior to the hearing, be sure to request in writing that the court examine the AP to determine if a certified interpreter is needed.
 - b. Refer to *LEP/DHH AP (represented) Section 5* above.
 - c. **Remember:** In cases filed under the Family Violence Act, **O.C.G.A. § 19-13-1, et seq.**), including petitions for protective orders, Georgia law is clear that both the Petitioner, Respondent and/or any witnesses who are LEP are entitled to court-appointed foreign or sign language interpreter free of charge. **O.C.G.A. § 15-6-77(e)(4).**
2. At the hearing, the AP may refuse to use the court-appointed interpreter for various reasons, including but not limited to,:
- a. She or he does not identify as LEP/DHH and does believe she or he needs the assistance of an interpreter.
 - b. She or he does not understand the interpreter is *neutral*, appointed by the court, because the opposing attorney made the request on the LEP/DHH individual's behalf.
3. If the LEP/DHH AP (or witness) refuses to use the interpreter, but it is clear that she or he is LEP/DHH and is having difficulty communicating effectively in English, be sure to **establish in the record** that:
- a. The AP is LEP/DHH.
 - b. The court provided the AP with the use of a certified or other licensed interpreter free of charge.
 - c. The AP refuses to use the interpreter and insists on communicating without any language assistance.
 - d. This preserves the record in case of an appeal by either party and the AP asserts his or her right to due process was violated because she or he was prevented from fully participating in the initial hearing because of a language barrier.
4. If the LEP/DHH AP insists on using his or her own interpreter (family member, friend, bilingual attorney, etc.):

- a. Object and remind the Court it is inappropriate to use an unlicensed interpreter when a court-certified or other licensed interpreter is available. (i.e., potential conflict of interest, confidentiality concerns)
 - i. *See*, Standard X of Georgia’s [Code of Professional Responsibility for Interpreters](#).⁸
 - ii. Compare an interpreter’s ethical obligation to limit communication with the court and parties with an attorney’s ethical obligation to communicate effectively with his or her client.⁹
- b. If the court permits the use of an unlicensed interpreter, reference *LEP/DHH AP (represented) sections 5 (f)(i)-(v)* above.

NOTE: Remember, failure to have a qualified interpreter appointed in a case, when needed, can result in reversible error on appeal.¹⁰

⁸ Direct Link: <http://w2.georgiacourts.org/coi/files/Code%20of%20Professional%20Responsibility%20for%20Interpreters.doc>

⁹ *See*, Interpreter Code of Professional Responsibility, Standard VII (Interpreters shall maintain impartiality by avoiding undue contact with witnesses, attorneys, interested parties, and jurors before, during and until the case is concluded) available at <http://w2.georgiacourts.org/coi/files/Code%20of%20Professional%20Responsibility%20for%20Interpreters.doc> (Last visited February 5, 2015); *See also*, Georgia Rules of Professional Conduct (GRPC) Rule 1.4 available at <http://www.gabar.org/barrules/georgia-rules-of-professional-conduct.cfm> (Last visited February 5, 2015).

¹⁰ *See*, Edmondson-Cooper, Jana J., *Is It Reversible Error?: Due Process and Access to Justice for Limited English Proficient and Deaf/Hard of Hearing Individuals*, Georgia Courts Journal (March 2015) available at <http://w2.georgiacourts.gov/journal/index.php/component/content/article/59-march-2015/322-is-it-reversible-error> (Last visited March 9, 2015).