

# BARRISTER

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Have Been Overhauled*

**The Nuts and Bolts of the  
New Overtime Rule**

*The Who, What, When,  
Where & How of  
Prenuptial  
Agreements*



# ARE MDJS, CCP JUDGES AND COURT ADMINISTRATORS REQUIRED TO PROVIDE INTERPRETERS?

By Gabriela Raful, Esquire

The number of United States residents who are deemed to be Limited English Proficient (LEP) has substantially increased in the recent decades. A LEP person is one who does not speak English as his or her primary language, and who has limited ability to read, write, speak, or understand the English language. According to the Migration Policy Institute, as of 2011, LEP individuals represented nine percent of the U.S. population, or more than 25 million individuals.<sup>1</sup>

Pennsylvania and Berks County are not the exception to this substantial increase of LEP individuals in the last decades. In Berks County, there are 24,600 LEP individuals.<sup>2</sup> Berks is the county with the fifth highest number of LEP individuals in Pennsylvania.<sup>3</sup> The significant number of LEP individuals in our county raises the question of whether Magisterial District Judges, Court Common Pleas Judges and Court Administrators are required to provide interpreters in all court proceedings? The short answer: YES.

Federal and State law mandates that LEP individuals must be given meaningful access to the courts. Both Title VI of the Civil Rights Act of 1964<sup>4</sup> and the Omnibus Crime Control and Safe Street Act of 1968<sup>5</sup> prohibit national origin discrimination by recipients of federal assistance. The United States Supreme Court has held that failing to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI

regulations.<sup>6</sup> The Department of Justice (DOJ) has also made clear that court systems receiving federal financial assistance, directly or indirectly, must provide meaningful access to LEP persons in order to comply with Title VI and other regulations.<sup>7</sup> This requirement to provide language access to LEP individuals applies despite conflicting state or local laws or court rules.<sup>8</sup> Executive Order 13166 further emphasized this requirement by directing federal agencies to publish LEP guidelines.<sup>9</sup>

The DOJ has made clear that language assistance to LEP individuals must be provided even when proceedings are handled by officials such as magisterial district judges, masters, commissioners, hearing officers, arbitrators, mediators and other decision-makers. Failure to do so constitutes a violation of Title VI, The Safe Street Act, the Pennsylvania Interpreter Act 172, Executive Order 13166, and regulations implementing the same.

As a recipient of federal funds, all courts in Pennsylvania have an obligation to provide equal access to all persons, including LEP individuals. As a result, Pennsylvania has enacted Act 172 which provides that it is "the policy of this Commonwealth to secure the rights, constitutional or otherwise, of persons who because of a non-English speaking cultural background or because of an impairment [...] are unable to understand or communicate adequately in the English language when they appear in court or are involved in judicial proceedings."<sup>10</sup>

Despite federal and state law mandating access to interpreters

<sup>1</sup> Joseph Russell et al., *Limited English Proficient Individuals in the U.S.: Linguistic Diversity at the County Level*, MIGRATION POLICY INSTITUTE, available at [www.migrationpolicy.org/sites/.../LEPstate-countyData.xlsx](http://www.migrationpolicy.org/sites/.../LEPstate-countyData.xlsx) (last visited Jun. 6, 2016).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> 42 U.S.C. § 2000d et seq.

<sup>5</sup> 42 U.S.C. § 3789d(c).

<sup>6</sup> *Lau v. Nichols*, 414 U.S. 563 (1974).

<sup>7</sup> 67 Fed. Reg. 41, 455.

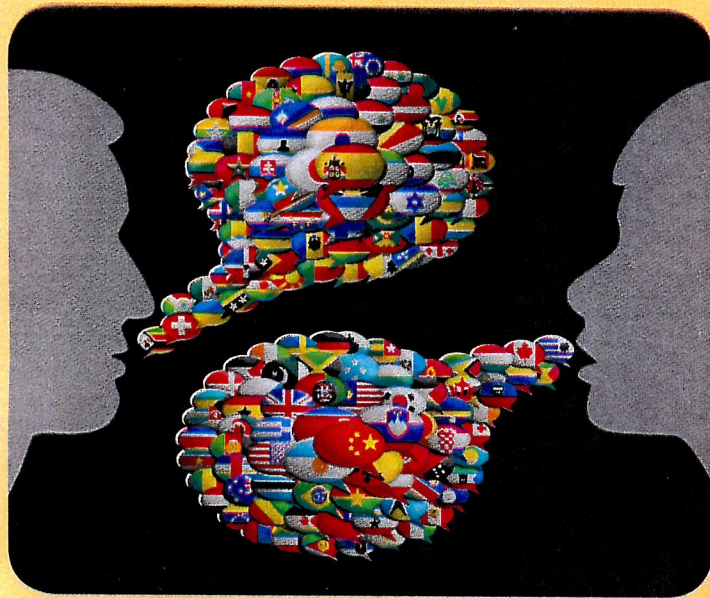
<sup>8</sup> *Id.*

<sup>9</sup> 65 Fed. Reg. 50, 121.

<sup>10</sup> 42 Pa. Const. Stat. § 4401; See also, 204 Pa. Code § 221.101-311.



# ARE MDJS, CCP JUDGES AND COURT ADMINISTRATORS REQUIRED TO PROVIDE INTERPRETERS? *Continued from page 7*



for LEP individuals, a recent report revealed that MDJ courts in Pennsylvania often operate in violation of these laws.<sup>11</sup> Problems included litigants being told to bring a friend as interpreter and court clerks who could not communicate with LEP individuals about court proceedings and about how to request an interpreter.<sup>12</sup>

Berks County, unfortunately, is not the exception. Too often we hear stories of LEP pro se litigants who are unable to obtain interpreters in civil cases, especially before MDJs. This is a clear violation of state and federal law. Interpreters must be provided in all court proceedings, without distinguishing among criminal cases, civil cases, or administrative matters and regardless of whether the LEP is indigent.<sup>13</sup> “Every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions, including administrative court proceedings.”<sup>14</sup> Moreover, it is mandatory in Pennsylvania to provide interpreter services *free of costs* in *all proceedings* where an LEP individual is a principal party in interest, which includes when the LEP individual is a named party, a defendant, a direct victim in a criminal proceeding or in a juvenile proceeding.<sup>15</sup> The costs for an interpreter are to be treated as a basic and essential operating expense, not as an ancillary cost.<sup>16</sup> Pennsylvania law also prohibits the use of family or other interested parties as interpreters.<sup>17</sup>

The Bar Association received several complaints that interpreters were not provided in civil cases. The Bar Association and its Minority Law Section have taken several steps to resolve the problem. The Minority Law Section held several meetings with Court Administrators and court personnel and explained the need — and the requirement by law — to provide interpreters. The Bar Association also, as part of last year’s Pro Bono Celebration, held a CLE on this issue in an effort to provide awareness of this situation.

Recognizing that there is a shortage of certified court interpreters, BCBA President Jill Gehman Koestel undertook an initiative to develop a curriculum to “teach to the test” for certification. She has led promising meetings with representatives from the Intermediate Unit, the Career Technology Centers and Reading Area Community College.

Nevertheless, even with such a shortage, noncompliance with the law should not be happening in our county. Berks County

<sup>11</sup> Alicia Angutano et al., *Barriers to Justice: Limited English Proficient Individuals and Pennsylvania’s Minor Courts*, STEPHEN AND SANDRA SELLER CENTER FOR SOCIAL JUSTICE, Temple University Beasley School of Law (Jan. 2015).

<sup>12</sup> *Id.*

<sup>13</sup> 67 Fed. Reg. at 41, 462.

<sup>14</sup> 67 Fed. Reg. at 41, 459 and 471.

<sup>15</sup> 204 Pa. Code § 221.107(b); 42 Pa. Const. Stat. § 4402.

<sup>16</sup> Letter from U.S. Assistant Attorney Gen., Thomas E. Perez, to State Court Chief Justices and Administrators (Aug. 16, 2010).

<sup>17</sup> 204 Pa. Code § 221.203(e).



has a Language Access Plan, which provides a framework for the provision of timely and effective language assistance to LEP persons within the 23rd Judicial District.<sup>18</sup> Once the court staff receives a request, in writing or verbally, or realizes that an individual is LEP, he or she should record the LEP individual's primary language in the case file and court's case management system so that the court will be prepared to provide language services for future hearings and court contact. Immediately, the court staff should request an interpreter from the County Access Coordinator. The interpreter request form should be available in every court, including magisterial district courts, and available online.<sup>19</sup>

Should the case be scheduled for a hearing and no request for interpreter was previously made, the presiding judge must determine if the individual is LEP. The Administrative Office of Pennsylvania Courts has a Model Voir Dire for determining the need of an interpreter.<sup>20</sup> If the presiding judge determines that the individual is LEP, a request for interpreter must be made, and the hearing or proceeding must be postponed. Again, Pennsylvania law prohibits the use of family or other interested parties as interpreters.<sup>21</sup>

Act 172 requires preference to be given to the appointment of a certified interpreter. However, when a certified interpreter is not available, a qualified interpreter may be appointed. In-person interpreter is the preferred method. Under special circumstances, such as emergency PFAs, remote interpreting may be allowed.

Under no circumstances should a proceeding, whether civil or criminal, take place where an individual is LEP and there is no interpreter available. This would be considered a violation of the individual's Civil Rights and can lead to action against the presiding judge. The Berks County Language Access Plan provides that any LEP individual has the right to file a complaint against the 23rd Judicial District and the presiding judge when he or she believes that the district did not provide the necessary LEP services.

In short, Magisterial District Judges, Court of Common Pleas Judges and Court Administrators are required to provide interpreters in all court proceedings, whether civil or criminal, free of cost. Failure to do so constitutes a violation of federal and state law. Attorneys are encouraged to report any instances when an LEP individual is not provided an interpreter even if said attorney was not a representative. We hope that the steps that our Bar Association and its Minority Law Section have taken will alleviate this problem. As a society, we cannot ensure due process and fair, efficient and adequate access to justice if LEP litigants are unable to have access to interpreters. ■

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18 See, Berks County, Pa., Language Access Plan, available at, <http://www.co.berks.pa.us/Dept/Courts/Documents/BERKS%20COUNTY%20LANGUAGE%20ACCESS%20PLAN.pdf> (last visited Jun. 8, 2016).

19 See, Berks County, Pa., Interpreter Request Form, available at, [http://www.co.berks.pa.us/Dept/Courts/Documents/Interpreter\\_Request\\_Form-Eng\\_Spa-rev\\_3-2015.pdf](http://www.co.berks.pa.us/Dept/Courts/Documents/Interpreter_Request_Form-Eng_Spa-rev_3-2015.pdf) (last visited Jun. 8, 2016).

20 See, Model Voir Dire for Determining the Need for an Interpreter, SUPREME COURT OF PENNSYLVANIA, available at, <http://www.pacourts.us/assets/files/setting-1700/file-229.pdf?cb=942e36> (last visited Jun. 8, 2016).

21 204 Pa. Code § 221.203(e).