

FILED
SUPREME COURT
STATE OF WASHINGTON
March 31, 2022
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE PROPOSED
AMENDMENTS TO GR 11.3—REMOTE
INTERPRETATION

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ORDER

NO. 25700-A-1414

The Washington State Supreme Court Interpreter Commission, having recommended the adoption of the proposed amendments to GR 11.3—Remote Interpretation, and the Court having considered the proposed amendments, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

- (a) That the proposed amendments as attached hereto are adopted.
- (b) That pursuant to the emergency provisions of GR 9(j)(1), the proposed amendments will be expeditiously published in the Washington Reports and will become effective upon publication.

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ORDER
IN THE MATTER OF THE PROPOSED AMENDMENTS TO GR 11.3—REMOTE
INTERPRETATION

DATED at Olympia, Washington this 31st day of March, 2022.


González, C.J.

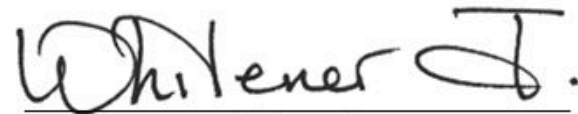

Johnson, J.

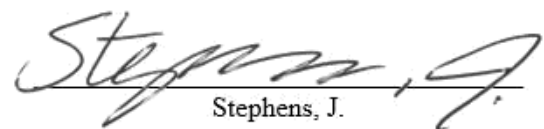

Gordon McCloud, J.


Madsen, J.


Yu, J.


Owens, J.


Whitener, J.


Stephens, J.

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GR 11.3

REMOTE INTERPRETATION INTERPRETING

- (a) ~~Whenever an interpreter is appointed in a legal proceeding, the interpreter shall appear in person unless the Court makes a good cause finding that an in-person interpreter is not practicable, and where it will allow the users to fully and meaningfully participate in the proceedings. The court shall make a preliminary determination on the record, on the basis of testimony of the person utilizing the interpreter services, of such ability to participate and if not, the court must provide alternative access.~~

Interpreters may be appointed to provide interpretation via audio only or audio-visual communication platforms for non-evidentiary proceedings. For evidentiary proceedings, the interpreter shall appear in person unless the Court makes a good cause finding that an in-person interpreter is not practicable. The Court shall make a preliminary determination on the record, on the basis of the testimony of the person utilizing the interpreter services, of the person's ability to participate via remote interpretation services.

Comment

- 19 1. ~~Section (a) is a significant departure from prior court rule which limited the use of telephonic interpreter services to non-evidentiary hearings.~~ While remote interpretation is permissible, in-person interpreting services are the primary and preferred way of providing interpreter services for legal proceedings. Because video remote interpreting provides ~~the participants and litigants and~~ interpreters the ability to see and hear all parties, it is more effective than telephonic interpreter services. Allowing remote interpretation for evidentiary hearings will provide flexibility to courts to create greater accessibility. However, in using this mode of delivering interpreter services, where the interpreter is remotely situated, courts must ensure that the remote interpretation is as effective and meaningful as it would be in-person and that the LEP ~~(Limited English Proficient) litigant person or person with hearing loss~~ is provided full access to the proceedings. Interpreting in courts involves more than the communications that occur during a legal proceeding and courts utilizing remote interpretation should develop measures to address how LEP and persons with hearing loss will have access to communications occurring outside the courtroom where the in-person interpreter would have facilitated this communication. Courts should make a preliminary determination on the record regarding the effectiveness of remote interpretation and the ability of the LEP litigant to meaningfully participate at each occurrence because circumstances may change over time necessitating an ongoing determination that the remote interpretation is effective and enables the parties to meaningfully participate.

38
39 Interpreting in courts involves more than the communications that occur during a legal
40 proceeding and courts utilizing remote interpretation should develop measures to address how
41 LEP and persons with hearing loss will have access to communications occurring outside the
42 courtroom where the in-person interpreter would have facilitated this communication. Courts
43 should make a preliminary determination on the record regarding the effectiveness of remote
44 interpretation and the ability of the ~~LEP litigant~~ person utilizing the interpreter service to
45 meaningfully participate at each occurrence, because circumstances may change over time

1 necessitating an ongoing determination that the remote interpretation is effective and enables
2 the parties to meaningfully participate.

- 3
4 (b) Chapters 2.42 and 2.43 RCW and GR 11.2 must be followed regarding the interpreter's
5 qualifications and ~~€~~Code of ~~þ~~Professional ~~þ~~Responsibility for ~~–j~~Judiciary ~~–i~~Interpreters.

6
7 Comment

8 Section (b) reinforces the requirement that interpreters appointed to appear remotely must
9 meet the qualification standards established in RCW 2.42 and 2.43 and they must be familiar
10 with and comply with the ~~€~~Code of ~~þ~~Professional ~~þ~~Responsibility for ~~–j~~Judiciary ~~–i~~Interpreters.
11 Courts are discouraged from using telephonic interpreter service providers who cannot meet
12 the qualification standards outlined in RCW 2.42 and 2.43.

- 13
14 (c) In all remote interpreting court events, both the ~~litigant~~LEP individual and the interpreter must
15 have clear audio of all participants throughout the hearing. In video remote court events, the
16 ~~litigant~~person with hearing loss and ~~the~~ interpreter must also have a clear video image of ~~the~~all
17 participants throughout the hearing.

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19 Comment

20
21 Section (c) discusses the importance of courts using appropriate equipment and technology
22 when providing interpretation services through remote means. Courts should ensure that the
23 technology provides clear audio and video, where applicable, to all participants. Because of the
24 different technology and arrangement within a given court, audio transmissions can be
25 interrupted by background noise or by distance from the sound equipment. This can limit the
26 ability of the interpreter to accurately interpret. Where the ~~litigant~~LEP person or person with
27 hearing loss is also appearing remotely, as is contemplated in (h), courts should also ensure
28 that the technology allows ~~litigants~~for full access to all visual and auditory information.

29 When utilizing remote video interpreting for persons with hearing loss, the following
30 performance standards must be met: real-time, full-motion video and audio over a dedicated
31 high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality
32 video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in
33 communication; a sharply delineated image that is large enough to display the ~~interpreter and~~
34 ~~person using sign language's face, arms, hands, and fingers~~ the face, arms, hands, and fingers
35 of both the interpreter and the person using sign language; and clear, audible transmission of
36 voices.

- 37 (d) If the telephonic or video technology does not allow simultaneous interpreting, the hearing
38 shall be conducted to allow consecutive interpretation of all statements.

- 39
40 (e) The court must provide a means for confidential attorney-client communications during
41 hearings, and allow for these communications to be interpreted confidentially.

42
43 Comment

1 (f) Section (e) reiterates the importance of the ability of individuals to consult with their attorneys,
2 throughout a legal proceeding. When the interpreter is appearing remotely, courts should
3 develop practices to allow these communications to occur. At times, the court interpreter will
4 interpret communications between an LEP or Deaf litigant and an attorney just before a
5 hearing is starting, during court recesses, and at the conclusion of a hearing. These practices
6 should be supported even when the court is using remote interpreting services. To ensure
7 accuracy of the record, ~~the court and the parties should,~~ where practicable, courts should
8 provide relevant case information and documents to the interpreter in advance of the hearing
9 including, but not limited to:

10 (i) Copies of documents furnished to other participants such as complaints, guilty
11 pleas, briefs, jury instructions, infraction tickets, police reports, etc.

12 (ii) Names of all participants such as the parties, judge, attorneys, and witnesses.

13 (iii) If not practicable to provide documents in advance, courts should allow time for
14 the interpreter to review documents or evidence when necessary for accurate interpretation.

15
16 (g) Written documents, the content of which would normally be interpreted, must be read aloud
17 by a person other than the interpreter to allow for full interpretation of the material by the
18 interpreter.

19
20 (h) Upon the request of a party, the court may make and maintain ~~an audio~~ recording of the spoken
21 language interpretations or a video recording of the signed language interpretations made
22 during a hearing. Any recordings permitted by this subparagraph shall be made and maintained
23 in the same manner as other audio or video recordings of court proceedings. ~~This subparagraph~~
24 ~~shall not apply to court interpretations during jury discussions and deliberations.~~

25
26 Comment

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28 ~~Section (h) first recognizes that interpreted testimony is part of the official record. For court~~
29 ~~interpreting, it is the industry standard to use simultaneous interpreting mode when the LEP~~
30 ~~or Deaf individual is not an active speaker or signer part. The use of consecutive interpreting~~
31 ~~mode is the industry standard general practice for witness testimony where the witness is~~
32 ~~themselves LEP or Deaf, is to utilize the consecutive interpreting mode. This allows for the~~
33 ~~English interpretation to be on the record. The second portion of ¶ This section, also~~
34 ~~addresses high-stakes situations where, at the request of a party, the court is to make a~~
35 ~~recording of the interpretation throughout the hearing, aside from privileged~~
36 ~~communications. If the court is not able to meet this requirement, an in-person hearing is~~
37 ~~more appropriate to allow recording of both the statements made on the record and the~~
38 ~~interpretation throughout during the hearing. Recordings shall not be made of~~
39 ~~interpretations during jury discussions and deliberations off the record.~~

40
41 (i) When using remote interpreter services in combination with remote legal proceedings, courts
42 should ensure the following: the LEP person or person with hearing loss is able to access the
43 necessary technology to join the proceeding remotely; the remote technology allows for
44 confidential attorney-client communications, or the court provides alternative means for these
45 communications; the remote technology allows for simultaneous interpreting, or the court shall

1 conduct the hearing using with consecutive interpretation and take measures to ensure
2 interpretation of all statements; translated instructions on appearing remotely are provided, or
3 alternative access to this information is provided through interpretation services; audio and video
4 feeds are clear; and judges, court staff, attorneys, and interpreters are trained on the use of the
5 remote platform.

6
7 **Comment**
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9 Section (i) contemplates a situation where the legal proceeding is occurring remotely,
10 including the interpretation. In this situation, all or most parties and participants at the
11 hearing are appearing remotely and additional precautions regarding accessibility are
12 warranted. This section highlights some of the additional considerations courts should make
13 when coupling remote interpretation with a remote legal proceeding.

14 **Comments:**
15

16 ~~(1) Section (a) is a significant departure from prior court rule which limited the use of telephonic~~
17 ~~interpreter services to non-evidentiary hearings. While remote interpretation is permissible, in-~~
18 ~~person interpreting services are the primary and preferred way of providing interpreter services~~
19 ~~for legal proceedings. Because video remote interpreting provides the litigants and interpreters~~
20 ~~the ability to see and hear all parties, it is more effective than telephonic interpreter services.~~
21 ~~Allowing remote interpretation for evidentiary hearings will provide flexibility to courts to create~~
22 ~~greater accessibility. However, in using this mode of delivering interpreter services, where the~~
23 ~~interpreter is remotely situated, courts must ensure that the remote interpretation is as~~
24 ~~effective and meaningful as it would be in-person and that the LEP litigant is provided full access~~
25 ~~to the proceedings. Interpreting in courts involves more than the communications that occur~~
26 ~~during a legal proceeding and courts utilizing remote interpretation should develop measures to~~
27 ~~address how LEP and persons with hearing loss will have access to communications occurring~~
28 ~~outside the courtroom where the in-person interpreter would have facilitated this~~
29 ~~communication. Courts should make a preliminary determination on the record regarding the~~
30 ~~effectiveness of remote interpretation and the ability of the LEP litigant to meaningfully~~
31 ~~participate at each occurrence because circumstances may change over time necessitating an~~
32 ~~ongoing determination that the remote interpretation is effective and enables the parties to~~
33 ~~meaningfully participate.~~

34
35 ~~Interpreting in courts involves more than the communications that occur during a legal~~
36 ~~proceeding and courts utilizing remote interpretation should develop measures to address how~~
37 ~~LEP and persons with hearing loss will have access to communications occurring outside the~~
38 ~~courtroom where the in-person interpreter would have facilitated this communication.~~
39

1 (2) Section (b) reinforces the requirement that interpreters appointed to appear remotely must
2 meet the qualification standards established in RCW 2.42 and 2.43 and they must be familiar with
3 and comply with the code of professional responsibility for judiciary interpreters. Courts are
4 discouraged from using telephonic interpreter service providers who cannot meet the qualification
5 standards outlined in RCW 2.42 and 2.43.

6
7 (3) Section (c) discusses the importance of courts using appropriate equipment and technology
8 when providing interpretation services through remote means. Courts should ensure that the
9 technology provides clear audio and video, where applicable, to all participants. Because of the
10 different technology and arrangement within a given court, audio transmissions can be interrupted
11 by background noise or by distance from the sound equipment. This can limit the ability of the
12 interpreter to accurately interpret. Where the litigant is also appearing remotely, as is contemplated
13 in (h), courts should also ensure that the technology allows litigants full access to all visual and
14 auditory information.

15
16 When utilizing remote video interpreting for persons with hearing loss, the following performance
17 standards must be met: real time, full motion video and audio over a dedicated high speed, wide-
18 bandwidth video connection or wireless connection that delivers high quality video images that do
19 not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; a sharply
20 delineated image that is large enough to display the interpreter and person using sign language's
21 face, arms, hands, and fingers; and clear, audible transmission of voices.

22
23 (4) Section (e) reiterates the importance of the ability of individuals to consult with their attorneys,
24 throughout a legal proceeding. When the interpreter is appearing remotely, courts should develop
25 practices to allow these communications to occur. At times, the court interpreter will interpret
26 communications between a litigant and an attorney just before a hearing is starting, during court
27 recesses, and at the conclusion of a hearing. These practices should be supported even when the
28 court is using remote interpreting services.

29
30 (5) Section (h) contemplates a situation where the legal proceeding is occurring remotely, including
31 the interpretation. In this situation, all or most parties and participants at the hearing are appearing
32 remotely and additional precautions regarding accessibility are warranted. This section highlights
33 some of the additional considerations courts should make when coupling remote interpretation
34 with a remote legal proceeding.

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36