



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

Agency: Office of Administrative Hearings

- Permanent Rule
- Emergency Rule

(1) Date of adoption: 5-5-93

(2) Purpose: To conform model rule to change in law requiring certification of foreign language interpreters and clarify procedures for using interpreters.

(3) Citation of existing rules affected by this order:

- Repealed:
- Amended: WAC 10-08-150
- Suspended:

(4) Authority for adoption:

Statute: RCW 34.05.250

Other Authority:

(5.1) **PERMANENT RULE ONLY**

Pursuant to notice filed as WSR 93-07-096 on 3-23-93 (date).

Describe any changes other than editing from proposed to adopted version: (7) and (8) are changed in form. The content is reorganized to clarify that decision translation provisions apply only to non-English speaking parties and to facilitate provision of the interpreter's telephone number in hearings where the party and/or the interpreter appear by telephone.

(5.2) **EMERGENCY RULE ONLY**

Pursuant to RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If yes, explain:

(6) Effective date of rule:

Permanent Rules

Emergency Rules

- 31 days after filing
- Other (specify) _____ *
- Immediately
- Later (specify) _____

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

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STATE OF WASHINGTON

MAY 05 1993

TIME
WSR

93-10-097

NAME (TYPE OR PRINT)

David R. LaRose

SIGNATURE

TITLE
Chief Administrative Law Judge

DATE
5-5-93

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

WAC 10-08-150 Adjudicative proceedings--Interpreters. (1)

~~((An "impaired person" is any person involved in an adjudicative proceeding who is a hearing impaired person or a limited English speaking person.~~

~~(2) A "hearing impaired person" is a person who, because of a hearing impairment or speech defects, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, or hard of hearing.~~

~~(3) A "limited English speaking person" is a person who because of a non-English speaking cultural background cannot readily speak or understand the English language.~~

~~(4) A "qualified interpreter" is one who is readily able to interpret spoken and translate written English to and for impaired persons and to interpret or translate statements of impaired persons into spoken English and who meets the requirements of WAC 10-08-150(9): Provided, That for hearing impaired persons a qualified interpreter must be certified by the registry of interpreters for the deaf with a specialist certificate legal, or master's comprehensive skills certificate or comprehensive skills certificate.~~

~~(5) An "intermediary interpreter" is a hearing impaired interpreter who is certified by the registry of interpreters for the deaf with a reverse skills certificate, who meets the requirements of WAC 10-08-150(9), and who is able to assist in providing an accurate interpretation between spoken and sign language or between variants of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter for the hearing impaired.~~

~~(6) When an impaired person is a party to any adjudicative proceeding or witness therein, the presiding officer shall, in the absence of a written waiver signed by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceedings. The right to a qualified interpreter may not be waived except when:~~

~~(a) The impaired person requests a waiver through the use of a qualified interpreter;~~

~~(b) The representative, if any, of the impaired person consents; and~~

~~(c) The presiding officer determines that the waiver has been made knowingly, voluntarily, and intelligently.~~

~~(7) Waiver of a qualified interpreter shall not preclude the impaired person from claiming his or her right to a qualified interpreter at a later time during the proceeding.)~~ When an impaired person as defined in RCW 2.42 or a non-English-speaking person as defined in RCW 2.43 is a party or witness in an adjudicative proceeding, the presiding officer shall appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of RCW 2.42 and 2.43.

~~(2) ((-8-))~~ Relatives of any participant in a proceeding and employees of the agency involved in a proceeding shall not be

appointed as interpreters in the proceeding. This subsection shall not prohibit the office of administrative hearings from hiring an employee whose sole function is to interpret at administrative hearings.

(3) ~~((9))~~ The presiding officer shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired or non-English-speaking person. This determination shall be based upon the testimony or stated needs of the impaired or non-English-speaking person, the interpreter's education, certifications, and experience in interpreting for contested cases or adjudicative proceedings, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. The parties or their representative ~~((f))~~((+)) may question the interpreter as to his or her qualifications and impartiality.

(4) ~~((10))~~ If at any time during the proceeding, in the opinion of the impaired or non-English-speaking person, the presiding officer or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired or non-English-speaking person, the presiding officer shall appoint another ~~((qualified))~~ interpreter.

~~((11) If the communication mode or language of a hearing impaired person is not readily interpretable, the interpreter or hearing impaired person shall notify the presiding officer who shall appoint and pay an intermediary interpreter to assist the qualified interpreter.)~~

(5) ~~((12))~~ Mode of interpretation.

(a) Interpreters for ~~((limited))~~ non-English-speaking persons shall use simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(b) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation ~~((f,+))~~ unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the ~~((qualified))~~ interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

(c) When an impaired or non-English-speaking person is a party to a proceeding, the interpreter shall translate all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit translation and the presiding officer shall ensure that the interpreter translates the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceeding ~~((f,s))~~ as a nonimpaired or English-speaking party listening to uninterpreted statements would have.

(6) ~~((13))~~ An ~~((qualified))~~ interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. An ~~((qualified))~~ interpreter shall not, without the written consent of the parties to the communication, be examined as to any information

the interpreter obtains while interpreting pertaining to any proceeding then pending.

(7) ((14)) The presiding officer shall explain to the ((impaired)) non-English-speaking party that a written decision or order will be issued in English, and that the party may contact the interpreter for an oral translation of the decision and that the translation itself is at no cost to the party. ((If the party has a right to review of the order or decision, the presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.

~~((15) At the hearing t))~~ The interpreter for a limited English-speaking party) shall provide to the presiding officer and the party the interpreter's telephone number. ~~((written in the primary language of the impaired party. A copy of such))~~ The telephone number shall be attached to the decision or order mailed to the ((impaired)) party. A copy of the decision or order shall also be mailed to the interpreter for use in translation.

(8) If the party has a right to review of the order or decision, the presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.

~~((16) In any proceeding involving a hearing impaired person, the presiding officer may, with the consent of the agency involved in the hearing, order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use as the official transcript of the proceeding. Where simultaneous translation is used for interpreting statements of limited English speaking persons, the foreign language statements shall be recorded simultaneously with the English language statements by means of a separate tape recorder.))~~

(9) ((17) A qualified interpreter appointed under this section is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses.)) The agency involved in the hearing shall pay ~~((such))~~ interpreter fees and expenses. ~~((The fee for services for interpreters for hearing impaired persons shall be in accordance with standards established by the department of social and health services, office of deaf services.))~~