

WSR 22-01-114
RULES OF COURT
STATE SUPREME COURT
[December 6, 2021]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO GR) NO. 25700-A-1411
11.1—PURPOSE AND SCOPE OF THE)
INTERPRETER COMMISSION)

The Washington State Supreme Court Interpreter Commission, having recommended the suggested amendments to GR 11.1—Purpose and Scope of the Interpreter Commission, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2022.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2022. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 6th day of December, 2021.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET
Amended Rule

Washington Supreme Court
General Rule (GR) 11 Court Interpreters
Rule 11.1 Purpose and Scope of Interpreter Commission

(A) Name of Proponent: Washington State Supreme Court Interpreter Commission

(B) Spokespersons: Judge Mafe Rajul, Interpreter Commission Chairperson, Superior Court Judges Association Representative, Interpreter Commission; Judge Matthew Antush, District and Municipal Court Judges Association Representative, Interpreter Commission; Katrin Johnson, Public Member Representative, Interpreter Commission; and Justice G. Helen Whitener, Appellate Court Representative, Interpreter Commission.

(C) Purpose: To expand the membership of the Commission and further the mission and authority of the Interpreter Commission by amending GR 11 (Title of General Rule) and GR 11.1 (Purpose and Scope of the Interpreter Commission) to authorize the Commission to provide our state courts with best practices guidance regarding other forms of language access services, such as translated websites, court forms,

and other communications essential for access to courts, in addition to its current authority to create policies for the Administrative Office of the Courts' (AOC) Court Interpreter Program and provide best practices guidance to trial courts in the use of interpreter services. The suggested rule change(s) achieves the following:

1. It renames GR 11 to reflect that the General Rule 11 addresses language access services provided by the courts, digital or otherwise and authorizes courts to provide vital information necessary to access judicial proceedings and services in languages other than English. General Rule 11 is to be changed to "Interpreting and Language Access" and the wording "Court Interpreters" is removed.

2. It renames the "Supreme Court Interpreter Commission" to become the "Supreme Court Interpreter and Language Access Commission" in GR 11.1 and changes the title of GR 11.1 to become "Purpose and Scope of the Interpreter and Language Access Commission".

3. In addition to its current authority to develop policies for the AOC's Court Interpreter Program, it expands the authority of the Commission to establish and promulgate guidelines for the AOC and courts on text translation and other forms of language access means for persons who are Limited English Proficient (LEP) or who use a signed language.

4. In addition to its current authority over individual interpreter practices and other language access directives required by law, it clarifies that the Issues Committee will also address matters affecting interpreting as a service provided by interpreters and the courts. It also arranges the work of the Issues Committee under one sub-section.

5. It creates a fourth Committee on the Commission to be called "Translation Committee".

6. It expands the membership of the Commission from fifteen (15) members to twenty (20) members.

7. It creates the following five new positions on the Commission: a co-chair, one certified deaf interpreter representative, one deaf community representative, one translator or translation services representative, and one as-yet-to-be identified open position. The Commission requests an open position be granted to the Commission to enable the Commission to designate an additional representative position in order to enhance the subject matter expertise of the Commission in the future should that become necessary and which may be filled at the discretion of the Commission. As a result of the re-configuration, the Commission will have eighteen named positions with eighteen (18) members if the co-chair is from among the membership and nineteen (19) members if the co-chair is not a representative member from among the named representative positions. In the event the co-chair is a representative member, the Commission will have two open positions to establish at its discretion.

(D) Hearing: Recommended. This is a new expansion of the Commission's role and membership composition and clarifying questions and comments are likely to be provided by stakeholders.

(E) Expedited Consideration: Expedited consideration is not requested by the Commission.

Background Information and Supporting Documents

Background Information:

Pursuant to GR 11, the Commission has historically charged with developing policies governing the use of signed language and spoken language interpreters. However, as a result of the public health crisis caused by COVID-19, courts in Washington State have significantly

altered the way in which hearings are conducted as well as the way in which interpreter services and court information are provided. The pivot to remote hearings, coupled with remote interpreter services, both video and telephonic, required a revision to GR 11.3, which was made effective December 29, 2020 and addressed interpreting in court proceedings and services. However, much of the information given to the public by individual courts to access the court's remote hearings through web-based platforms were provided in English, with very few courts making that and other types of vital information (such as court forms and notices) accessible in other languages. The Supreme Court issued the following statement in Section 18 of its *Fourth Revised and Extended Order Regarding Court Operations*, No. 25700-B-646, filed October 13, 2020:

18. Courts must provide clear notice to the public of restricted court hours and operations, as well as information on how individuals seeking emergency relief may access the courts. Courts are encouraged to provide such notice in the most commonly used languages in Washington, and to make every effort to timely provide translation or interpretation into other languages upon request. The Washington State Supreme Court Interpreter Commission may assist courts in this process.

In order for the Commission to assist courts in the process of providing translation into other languages in order to access vital court services and processes, it believes that it should be granted the authority to establish and promulgate best practices and provide the guidance to our local courts and justice partners on text translation practices for individuals who are LEP and to persons who rely on signed languages. In order to fulfill that service promise, it needs to have a credentialed document translator on the Commission and to have a deaf community representative to advise the Commission on how it may assist the courts with addressing the unique language and information access needs of persons who are deaf, hard of hearing, or deaf-blind.

Previously, in the years 2007-2009, the Interpreter Commission was engaged in assisting the AOC's Pattern Forms Committee with translation of selected pattern forms and clarifying its role in the area of translation activities. As a result of its work with the Forms Committee, the Commission spoke as a whole and asserted the position that the Commission needed to be more engaged with assisting the courts in identifying vital documents for translation and assisting with translation services the courts needed by the courts to enable access to vital forms and vital information pursuant to federal Department of Justice policies on language access under Title VI of the Civil Rights Act of 1964. However, in 2009, the AOC sustained a significant budget reduction that eliminated several internal positions that supported the language access aspects of court services. What is demonstrative of these Commission activities is the view that the Commission has had a historical role in identifying best practices and assisting with forms translation priorities and needs in partnership with the AOC and the courts. If granted authority to provide policies and guidance to local courts and the AOC on best translation practices, the Commission will work to create a guidance document similar to the one created for the Courts of the State of Pennsylvania.

As a result of the expansion of the Commission's mission and role to address other forms of language access practices, if so authorized by the Supreme Court, it would be most practical to change the Title of GR 11 from "Court Interpreters" to "Interpreting and Language Access" and to change the title of GR 11.1 to reflect the following Rule

title, "Purpose and Scope of the Interpreter and Language Access Commission.

To support its new role in providing guidance on language access matters in general, the Commission needs to have appropriate stakeholder voices and subject-matter expertise available for its guidance and policy development activities and content. As a result of this need, the Commission recommends expanding the number of enumerated representative positions on the Commission to add a deaf community representative, a certified deaf interpreter (CDI) representative, and a co-chair position, of which may be filled by a new individual member or by a current member so designated by the Supreme Court in accordance with GR 11.1(c). The Commission respectfully requests that the Court authorize those aforementioned positions and enable the Commission the authority to fulfill its mission and vision through the capability to identify other as-needed representatives.

Supporting Documentation:

- Washington State Supreme Court, *Fourth Revised and Extended Order Regarding Court Operations*, No. 25700-B-646, Filed October 13, 2020. <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Extended%20and%20Revised%20Supreme%20Court%20Order%20October%202020.pdf#search=fourth%20revised%20order>
- Commission Meeting Minutes Excerpts Regarding Translation Oversight: Interpreter Commission meeting minutes from: March 9, 2007; September 14, 2007; October 19, 2007; November 30, 2007; March 14, 2008; June 20, 2008; October 3, 2008; February 6, 2009; and April 22, 2011:

Minutes excerpt from March 9, 2007 meeting:

03.09.07 minutes - <https://www.courts.wa.gov/content/publicUpload/Interpreters-Attachment/03.09.07%20IC%20Minutes.pdf>

Development of Forms Committee

The budget request includes monies for forms translation. Merrie Gough, who staffs the Pattern Forms Committee (PFC), can tell us how many forms are currently being translated. It was recommended by the Committee that the Interpreter Commission be the policy-making body regarding forms translation and make decisions regarding which forms to translate. Recommendation: Interpreter Commission partner with the Pattern Forms Committee on the forms translation effort.

There is a need for standards for a uniform format, etc. Leticia stated that the Northwest Justice Project has translated forms. There was agreement on the need for standards that could be used to determine whether to post these or other forms translated by other organizations on AOC's website. Also mentioned was incorporating work that King County has already done in translating forms. Ann can provide national standards for forms translation too.

There is a need for deliberate policy oversight of this effort. The role of the Commission would be to provide such policy oversight, not to manage the actual work of the forms translation. Commissioner Rockwood noted that the strength and advantage of the PFC is the development of standardized statewide forms.

The consensus of the Commission is that they strongly support the PFCs recommendation and to continue to move in this direction. Robert will begin to lay the groundwork for the collaboration with the PFC, including creating a subcommittee of the Interpreter Commission to work with the PFC.

The Commission requested this be put on the agenda for the next meeting, pending the Legislature appropriating funds for this. For the next meeting, Robert will draft a proposal describing the charge, responsibility, and purpose of the subcommittee and proposing possible membership.

Excerpt from September 14, 2007 Meeting Summary:

09.14.07 minutes - <https://www.courts.wa.gov/content/publicUpload/Interpreters-Attachment/09.14.07%20IC%20Minutes.pdf>

INTERPRETER COMMISSION/PATTERN FORMS COMMITTEE

Karina reported that the committee is close to prioritizing the languages for translation. Besides Spanish, Russian and Vietnamese, two more languages still need to be selected. Questions and concerns raised included: What is / will be the protocol for use of translated forms? Do specific steps or procedures need to be identified? How will it be decided which additional languages to select for forms translation? How do we take into account forms that have already been translated (including forms translated by King County)? How much funding should be held back from LAP funds for pattern forms translation?

Excerpt from October 19, 2007 meeting minutes:

10.19.07 minutes - <https://www.courts.wa.gov/content/publicUpload/Interpreters-Attachment/10.19.07%20IC%20Minutes.pdf>

INTERPRETER COMMISSION/PATTERN FORMS COMMITTEE

Karina reported that the pattern form languages that need translation are being identified. Chris noted that there is money set aside from the LAP funding for forms translation, and that he has given the go-ahead for translation of vulnerable adult pattern forms. The list of other forms to be translated has yet to be finalized depending on the cost of translating the vulnerable adult forms.

It was noted that forms translation can be very expensive; in addition, forms change often, and that can also add to the expense. Merrie Gough sends the updated translated forms to judges. A member noted that it is difficult to distribute updated forms to all parties. Whose job is it to make sure forms are updated in the courtrooms? Ron suggested adding a "revised date" on the bottom of each form.

A suggestion was also made to circulate to trial court administrators a list of which forms will be translated into which languages. This may help trial court staff avoid the cost of having local interpreters translate those forms.

November 30, 2007 Meeting minutes excerpt

11.30.07 minutes - <https://www.courts.wa.gov/content/publicUpload/Interpreters-Attachment/11.30.07%20IC%20Minutes.pdf>

Interpreter Commission/Pattern Forms Committee

The joint Interpreter Commission/Pattern Forms Committee has met a couple of times to determine which forms will be translated into which languages using Justice in Jeopardy monies. While the Committee still has to prioritize much of its work, the Commission was advised that the new Vulnerable Adult Forms are currently being translated into Spanish. A more substantial report will be provided at the Commission's January 25, 2008 conference call, including discussion of the protocol for forms and the languages to be translated.

(Not discussed at 1/25/2008 meeting but at the next one, below):

Excerpt from March 14, 2008 Commission meeting minutes: 03.14.08 minutes - <https://www.courts.wa.gov/content/publicUpload/Interpreters-Attachment/03.14.08%20IC%20Minutes.pdf>

Interpreter Commission/Pattern Forms Committee

Leticia provided a handout to the group that included "top priority" forms for translation, protocol for translators, and court forms already translated. After much discussion, members stated that it would be helpful to 1) obtain a list of current statutorily mandated forms, and 2) receive input from the SCJA and DMCJA on what forms need to be translated with AOC efforts/funds after all the mandated forms are translated into several top priority languages for Washington State. The Commission members agreed unanimously and supported AOC in its effort to conduct the final review of King County Superior Court forms (in accord with the translation protocol) and post them on AOC's website immediately after the completion of the final review.

Excerpt from June 20, 2008 Minutes:

06.20.08 minutes - <https://www.courts.wa.gov/content/publicUpload/Interpreters-Attachment/06.20.08%20IC%20Minutes.pdf>

TRANSLATION OF STATE FORMS

Leticia provided a handout outlining the protocol for translators, editors, and reviewers of translated state forms:

- Certification by a national translation organization or academic program; or five years of legal translation work experience.
- Translators must provide five work references and five samples.
- Certification or registration as a court interpreter is preferable but not required.
- The primary translator will use an editor, qualified as a translator, to review the work product for accuracy and completeness.
- One additional reviewer, qualified as a translator, shall review the work product for accuracy and completeness. If an editor is not utilized, then two additional reviewers shall review the document for accuracy and completeness.
- A glossary of terms used must accompany each completed assignment. Translators will be required to use the master glossary that is developed.
- Translators must adhere to the NAJIT's code of ethics (www.najit.org).

These criteria apply equally to translation services contracts resulting from sole source and request for proposal procurement methods.

Steve noted that WITS is currently formulating a list of translators.

King County's forms are still missing the second review in order to put them on AOC's website.

Excerpt from October 3, 2008 Meeting Minutes:

10.03.08 minutes - <https://www.courts.wa.gov/content/publicUpload/Interpreters-Attachment/10.03.08%20IC%20Minutes.pdf>

III. Update on Translation of State Forms

State forms have been translated by the Northwest Justice Project, and the translators, editors, and reviewers met the requirements approved by the Commission. There were changes made to the English versions of those forms in July, and those changes have now been adapted to the translated versions. Those forms are currently posted on the AOC website.

King County Superior Court has translated state forms per the Commission's protocol, but is still in the process of translating/editing/reviewing the edits made to the forms in July. Once completed, they will be posted to the AOC website.

All translated state forms are written in a bilingual format - they include both the original English text, along with the translated text. The forms also instruct the users to complete them in English.

Excerpt from February 6, 2009 Meeting Minutes:

02.06.09 minutes - <https://www.courts.wa.gov/content/publicUpload/Interpreters-Attachment/02.06.09%20IC%20Minutes.pdf>

Update on Translation of State Forms

In 2007 and 2008, an ad hoc committee on forms translation met to discuss several issues regarding translating of state forms. Based on their recommendations the Commission adopted several standards for translations such as the qualifications of translators and editors, the process of editing and reviewing translations, and the selection of languages to translate. The Commission had not previously come to a conclusion to which forms should be translated, because no funding had been available at the time for translation of additional forms. At this time, all forms which are required by statute to be translated, are either translated or in the process of being translated.

There may be \$25,000 available in LAP funding for the translation of additional forms, which must be completed by June 30, 2009. Members discussed options on how to spend the money and agreed that (1) given the tight timeline and the demand for Spanish forms, it makes sense to focus this funding on Spanish translations; (2) the forms identified by the ad hoc committee as priority forms should be translated into Spanish, and (3) the ad hoc committee should reconvene to determine which additional forms should be translated with the funding.

Excerpt from April 20, 2011 Meeting: Interpreter Commission

Translation Standard

04.22.11 minutes - <https://www.courts.wa.gov/content/publicUpload/Interpreters-Attachment/04.20.11%20IC%20Minutes.pdf>

In 2008 the Interpreter Commission established a one-page translation protocol, setting standards for the qualifications of translators, and the general overall process of translating, editing and reviewing. Recently the Consortium for Language Access in the Courts released a comprehensive guide for translation of legal documents. The Commission agreed that this resource should be used to revisit and expand the Washington translation protocol, to promote a uniform standard for translating court documents. It was recommended that an ad hoc committee be formed to work on the project. Katrin will send an email to the full Commission soliciting volunteers for the project.

• The Unified Judicial System of Pennsylvania, *Translation Policy and Procedures Manual*. https://www.ncsc.org/_data/assets/pdf_file/0033/59388/Translation-Manual-Final.pdf

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Title of Rule 11

GR 11

Court Interpreters Interpreting and Language Access

The use of qualified interpreters is authorized in judicial proceedings involving hearing impaired or non-English speaking individuals and courts are authorized to provide vital information necessary to access judicial proceedings in languages other than English.

GR 11.1

PURPOSE AND SCOPE OF ~~INTERPRETER COMMISSION~~ INTERPRETER AND LANGUAGE ACCESS COMMISSION

(a) Purpose and Scope. This rule establishes the Interpreter and Language Access Commission (Commission) and prescribes the conditions of its activities. This rule does not modify or duplicate the statutory process directing the Court Interpreter Program as it is administered by the Administrative Office of the Courts (AOC) (chapter 2.43 RCW). The ~~Interpreter~~ Commission will develop policies for the Interpreter Program and the Program Policy Manual, published on the Washington Court's website at www.courts.wa.gov, which shall constitute the official version of policies governing the Court Interpreter Program. The Commission shall establish and promulgate guidelines on interpreting, translation, and language access matters affecting individuals who are Limited English-proficient or who use a signed language.

(b) Jurisdiction and Powers. Every interpreter serving in a legal proceeding must comply with GR 11.2, the Code of Professional Responsibility for Judiciary Interpreters, and is subject to the rules and regulations specified in the Court Interpreter Disciplinary Policy Manual. The Commission shall establish ~~three~~ four committees to fulfill ongoing functions related to language access issues, discipline, and judicial/court administration education. Each committee shall consist of at least three Commission members and one member shall be identified as the chair.

(1) The Issues Committee is assigned issues, complaints, and/or requests from or about interpreters and interpreting for review and response. If the situation cannot be resolved at the Issues Committee level, the matter will be submitted by written referral to the Disciplinary Committee.

~~(2)~~ The Issues Committee will also address issues, complaints, and/or requests regarding access to interpreter services in the courts and may communicate with individual courts in an effort to assist in complying with language access directives required by law.

~~(3)~~(2) The Disciplinary Committee may sanction any interpreter serving in a legal proceeding for a violation of GR 11.2, the Code of Professional Responsibility for Judiciary Interpreters, and has the authority to decertify or deny credentials to interpreters based on the disciplinary procedures for: (a) violations of continuing education/court hour requirements, (b) failure to comply with Code of Professional Responsibility for Judiciary Interpreters (GR 11.2) or professional standards, or (c) violations of law that may interfere with their duties as an interpreter in a legal proceeding. The Disciplinary Committee will decide on appeal any issues submitted by the Issues Committee.

(3) The Judicial and Court Administration Education Committee shall provide ongoing opportunities for training and resources to judicial officers, court administrators, and court staff related to court interpretation improvement.

~~(5)~~(4) The Translation Committee shall provide guidelines to courts on matters involving written documents of a legal nature or which is related to accessing the court through textual means, whether digital or otherwise.

(c) Establishment. The Supreme Court shall appoint no more than 15 20 members to the ~~Interpreter~~ Commission and shall designate the chair and co-chair of the Commission. The Commission shall include representatives from the following areas of expertise: judicial officers from the appellate and each trial court level (3), spoken language interpreter (2), sign language interpreter (1), certified deaf

interpreter representative (1), court administrator (1), attorney (1), public member (2), representative from ethnic organization (1), an AOC representative (1), deaf community representative (1), translator or translation services representative (1) who shall hold a certified interpreting credential from the AOC and be a practicing professional translator, and other representatives as need. The term for a member of the Commission shall be three years. Members are eligible to serve a subsequent 3-year term. Members shall serve on at least one committee and committees may be supplemented by ad hoc professionals as designated by the chair. Ad hoc members may not serve as the chair of a committee.

(d) Regulations. Policies outlining rules and regulations directing the interpreter program are specified in the Interpreter Program Manual. The Commission, through the Issues Committee and Disciplinary Committee, shall enforce the policies of the interpreter program. Interpreter program policies may be modified at any time by the Commission and AOC.

(e) Existing Law Unchanged. This rule shall not expand, narrow, or otherwise affect existing law, including but not limited to chapter 2.43 RCW.

(f) Meetings. The Commission shall hold meetings as determined necessary by the chair. Meetings of the Commission are open to the public except for executive sessions and disciplinary meetings related to action against an interpreter.

(g) Immunity from Liability. No cause of action against the Commission, its standing members or ad hoc members appointed by the Commission, shall accrue in favor of a court interpreter or any other person arising from any act taken pursuant to this rule, provided that the Commission members or ad hoc members acted in good faith. The burden of proving that the acts were not taken in good faith shall be on the party asserting it.

[Adopted effective September 1, 2005; Amended effective April 26, 2016; December 18, 2018.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.