

WSR 22-08-074
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE PROPOSED) ORDER
AMENDMENTS TO GR 11.3—) NO. 25700-A-1414
REMOTE INTERPRETATION)

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 shown below 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.

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

Johnson, J.
Madsen, J.
Owens, J.
Stephens, J.
Gonzalez, C.J.
Gordon McCloud, J.
Yu, J.
Whitener, J.

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 nonevidentiary 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

[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 ~~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 person or person with hearing loss 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.

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 persons 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 person utilizing the interpreter service 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.

(b) Chapters 2.42 and 2.43 RCW and GR 11.2 must be followed regarding the interpreter's qualifications and ~~e~~Code of ~~p~~Professional ~~r~~Responsibility for ~~J~~judiciary ~~I~~nterpreters.

Comment

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

(c) In all remote interpreting court events, both the litigant LEP Individual and the interpreter must have clear audio of all participants throughout the hearing. In video remote court events, the litigant person with hearing loss and the interpreter must also have a clear video image of the all participants throughout the hearing.

Comment

[3] Section (c) discusses the importance of courts using appropriate equipment and technology when providing interpretation services through remote means. Courts should ensure that the technology provides clear audio and video, where applicable, to all participants. Because of the different technology and arrangement within a given

court, audio transmissions can be interrupted by background noise or by distance from the sound equipment. This can limit the ability of the interpreter to accurately interpret. Where the ~~litigant~~ LEP person or person with hearing loss is also appearing remotely, as is contemplated in (h), courts should also ensure that the technology allows ~~litigants~~ for full access to all visual and auditory information.

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

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

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

Comment

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

(f) To ensure accuracy of the record, ~~the court and the parties should~~, where practicable, courts should provide the following to the interpreter, electronically or by other means, in advance of the hearing, allowing the interpreter sufficient time to review the information and prepare for the hearing:

(i) Case information and documents pertaining to the hearing.

(ii) Names and spellings of all participants in the hearing to include but not limited to: litigants, judge, attorneys, and witnesses.

(iii) Evidence related to the hearing, to include but not limited to: documents, photographs and images, audio and video recordings and any transcription or translations of such materials.

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

(h) An audio recording shall be made of all statements made on the record during their interpretation, and the same shall be preserved. Upon the request of a party, the court may make and maintain ~~an audio~~ recording of the spoken language interpretations or a video recording of the signed language interpretations made during a hearing. Any recordings permitted by this subparagraph shall be made and maintained in the same manner as other audio or video recordings of court proceedings. ~~This subparagraph shall not apply to court interpretations during jury discussions and deliberations.~~

Comment

[5] Section (h). For court interpreting, it is the industry standard to use simultaneous interpreting mode when the LEP or Deaf individual is not an active speaker or signer. The use of consecutive interpreting mode is the industry standard for witness testimony where the witness is themselves LEP or Deaf. This allows for the English interpretation to be on the record. This section also addresses situations where, at the request of a party, the court is to make a recording of the interpretation throughout the hearing, aside from privileged communications. If the court is not able to meet this requirement, an in-person hearing is more appropriate to allow recording of both the statements made on the record and the interpretation throughout during the hearing. Recordings shall not be made of interpretations during jury discussions and deliberations off the record.

(i) When using remote interpreter services in combination with remote legal proceedings, courts should ensure the following: the LEP person or person with hearing loss is able to access the necessary technology to join the proceeding remotely; the remote technology allows for confidential attorney-client communications, or the court provides alternative means for these communications; the remote technology allows for simultaneous interpreting, or the court shall conduct the hearing using with consecutive interpretation and take measures to ensure interpretation of all statements; translated instructions on appearing remotely are provided, or alternative access to this information is provided through interpretation services; audio and video feeds are clear; and judges, court staff, attorneys, and interpreters are trained on the use of the remote platform.

Comment

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

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.