

WSR 22-01-115
RULES OF COURT
STATE SUPREME COURT
[December 6, 2021]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO GR) NO. 25700-A-1412
11.3—REMOTE INTERPRETATION)

The Washington State Supreme Court Interpreter Commission, having recommended the suggested amendments to GR 11.3—Remote Interpretation, 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 expeditiously.

(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 February 28, 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 11.3 Remote Interpretation

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

(B) Spokespersons: Judge Mafe Rajul, Chair, Interpreter Commission, Superior Court Judges Representative; Judge Matthew Antush, Interpreter Commission Issues Committee Chairperson, District and Municipal Court Judges Association Representative; Kristi Cruz, Attorney Representative, Interpreter Commission; Donna Walker, ASL Interpreter Representative, Interpreter Commission; Luisa Gracia Camón, Interpreter Representative, Interpreter Commission; and Diana Noman, Interpreter Representative, Interpreter Commission.

Purpose: To make amendments regarding the use of remote interpreting services during court proceedings to provide clarification, including the application of the rule to persons with hearing loss and to court participants. The suggested rule changes achieve the following:

1. It changes the title of the rule to reflect the use of a service, rather than the service itself.

2. It removes the requirement to conduct a preliminary determination for non-evidentiary hearings.

3. It removes the wording "fully and meaningfully participate," because this language is not defined.

4. It clarifies that interpreter services must be provided to all limited English-proficient persons and persons with hearing loss involved in a legal proceeding, which may be litigants, but also parents, witnesses, guardians, observers etc.

5. The requirement to provide documents in advance to interpreters was edited to remove the requirement as it pertains to parties, while leaving in the option to provide time at the hearing for an interpreter to review documents when courts are not able to provide them in advance.

6. It clarifies the section on recordings to remove the first sentence referring to court records as that is stated in a different court Rule. The proposed edits then focus on allowing parties to request a recording of the simultaneous interpretation itself and allows for flexibility as to how a court chooses to create such a recording.

7. It inserts individual Comments to follow each rule, rather than place all the Comments at the end, which makes the intent and purpose of each individual section of the rule more closely paired to the rule language for comprehension and application.

(D) Hearing: Not recommended.

(E) Expedited Consideration: Expedited consideration is requested by the Commission.

Background Information:

Pursuant to rule GR 11.1, the Commission is charged with developing policies governing the use of signed language and spoken language interpreters. In October 2020, the Interpreter Commission submitted requested rule changes to GR 11.3, reflecting the increased use of remote interpretation due, in part, to the coronavirus pandemic. Understanding that there was an immediate need for guidance on the use of remote interpreter services, the rule changes were submitted for expedited consideration. The proposed changes were adopted by the Washington Supreme Court and went into effect on December 29, 2020. Following the adoption of changes to rule GR 11.3, the Commission received feedback from multiple sources, including comments from the District and Municipal Court Judges Association (DMCJA). The proposed changes in this packet reflect the efforts of the Commission to respond to the feedback received and to provide clarification to courts in an effort to improve access to justice.

Previously, in Section (a), the rule did not allow for the use of telephonic interpreter services in evidentiary hearings. In modernizing the rule, Section (a) allows courts to utilize remote interpreter services for evidentiary hearings but requires the court to make a preliminary determination, on the record, of the LEP person or the person with a hearing loss's ability to participate in this manner. The Commission received feedback that this preliminary determination was overly burdensome in non-evidentiary hearings. The proposed rule change modifies the rule to remove this step of the preliminary determination in non-evidentiary hearings

Additionally, the phrase, "to fully and meaningfully participate," was removed since that language is not defined and would be difficult for courts to implement. The comment acts to provide this

context and rationale, without retaining the language in the rule itself.

The rule is being modified throughout to acknowledge that use of the term, "litigant," is too narrow. This change also recognizes that individuals utilizing interpreter services are not limited to this role, but also include witnesses, parents or guardians, and court observers. In most instances, the use of the term, "litigant," was expanded to incorporate this broader view except for the reference to attorney and client communications, when the use of the term litigant is appropriate.

In Section (f), the Commission received feedback that providing documents to interpreters in advance of a hearing is administratively challenging and would require additional staff resources. While the Commission understands this concern, the rule already incorporates an exception allowing courts to provide interpreters with time at the hearing to review documents in instances when providing them in advance is not practical. The Commission does recommend a rule change to remove the requirement that parties provide such documents in advance, given the difficulty in facilitating the transfer of data between parties and interpreters. The Commission is mindful that providing interpreters with relevant documents and information in advance of a hearing, or allowing them time at the hearing to review documents, increases accuracy and efficiency in legal proceedings.

In Section (h), the proposed edit seeks to clarify that the recording is of the simultaneous interpretation, meaning the interpretation that the LEP person or person with hearing loss is receiving. The interpretation into English is already part of the official record. There are situations where it is appropriate for a party to request that a recording be made of the interpretation in the foreign spoken language or in the signed language, for issues of challenge or appeal. Because courts will have different approaches to making such a recording, the language in the section was edited to allow courts the flexibility in how they create such a recording.

In conclusion, the proposed changes will provide clarification and flexibility to Washington courts while ensuring that the use of remote interpretation services is done in a manner that provides meaningful access to LEP persons and persons with hearing loss.

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

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

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.

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 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 eCode of pProfessional rResponsibility for jJudiciary iInterpreters.

Comment

Section (b) reinforces the requirement that interpreters appointed to appear remotely must meet the qualification standards established in RCW 2.42 and 2.43 and they must be familiar with and comply with the eCode of pProfessional rResponsibility for jJudiciary iInterpreters. Courts are discouraged from using telephonic interpreter service providers who cannot meet the qualification standards outlined in RCW 2.42 and 2.43.

(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

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

(f) 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. To ensure accuracy of the record, ~~the court and the parties should~~, where practicable, courts should provide relevant case information and documents to the interpreter in advance of the hearing including, but not limited to:

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

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

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

(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) Upon the request of a party, the court may make and maintain a ~~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

Section (h) ~~first recognizes that interpreted testimony is part of the official record. 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 part.~~ The use of consecutive interpreting mode is the industry standard general practice for witness testimony where the witness is themselves LEP or Deaf., is to utilize the consecutive interpreting mode. This allows for the English interpretation to be on the record. ~~The second portion of t~~This section, also addresses high-stakes 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

Section (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.

Comments:

~~(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 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 litigant 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.

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.

(2) Section (b) reinforces the requirement that interpreters appointed to appear remotely must meet the qualification standards established in RCW 2.42 and 2.43 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 RCW 2.42 and 2.43.

(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 is also appearing remotely, as is contemplated in (h), courts should also ensure that the technology allows litigants 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; and clear, audible transmission of voices.

(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 a 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.

(5) Section (h) 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 consid-

~~erations 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.