



Interpreter Commission
Friday, May 29, 2014, 9:30 a.m. – 12:00 p.m.
Yakima Area Arboretum, 1401 Arboretum Dr., Yakima, WA. 98901

MEETING MINUTES

Members Present:

Justice Steven González
Judge Andrea Beall
Dirk Marler
Kristi Cruz
Eileen Farley
Sam Mattix
Alma Zuniga
Fona Sugg
Linda Noble (by phone)

Members Absent:

Judge Theresa Doyle
Thea Jennings

AOC Staff

Danielle Pugh-Markie
Robert Lichtenberg
James Wells

Guests

Abby Henson
Janealle Jenkinson
Berle Ross

CALL TO ORDER AND WELCOME

The meeting was called to order by Justice Steven González. The American Sign Language (ASL) interpreters and a guest from the Office of Deaf and Hard of Hearing introduced themselves. Members of the Commission and AOC staff then introduced themselves.

February 20, 2015 MEETING MINUTES

Justice González discussed the February 20, 2015 Commission meeting minutes and said they would be deemed approved as in the meeting packet if Commission members had no changes before end of the meeting.

CHAIR'S REPORT

Update on AOC staff changes

Danielle Pugh-Markie announced she began her new position as manager of the Office of Trial Courts and Judicial Education as of May 1, 2015. She is transitioning out of her role as manager of the Supreme Court Commissions and Cynthia Delostrinos will act as an interim lead for that group until a successor for Ms. Pugh-Markie is found.

Legislative Budget Update

Justice González updated the Commission members about the budget request from the BJA (Board of Judicial Administration) for additional funding for interpreter services in the trial courts. The initial lobbying effort for the funding was suspended after the Washington State House of Representatives and Senate released their budgets. The Senate budget included a sharp decrease in funding for interpreter related activities, the Administrative Office of the Courts (AOC), and the state Supreme Court. He referenced the strained relationship between the Supreme Court and some Legislators.

Mr. Marler reviewed some of the specific details of the Senate budget, which include large cuts to judicial education, eliminating the Center for Court Research at the AOC, take funds from technology development, not funding new technology to Courts of Limited Jurisdiction, and reducing the budget to the AOC by 15%.

Under normal circumstances, the AOC Court Interpreter Program would be working with the courts at this time of year to set up the reimbursement program for the following fiscal year starting July 2015. Given that budget negotiations by the legislature were ongoing at the time of this meeting and could continue for several more weeks, Mr. Marler suggested not the Court Interpreter Program wait to communicate to the courts regarding what the interpreter reimbursement program would look like for the next year.

AOC Letter to Courts

The Commission members took a few minutes to review the letter that had been recently sent from the AOC to judicial officers and court staff regarding “Provision of Language Access Services Under Title IV of the Civil Rights Act and the Americans with Disabilities Act”.

The Commission clarified that the letter went to the presiding judges of the Courts of Limited Jurisdiction and discussed how other organizations, such as city and county associations, could also benefit from receiving the letter. AOC staff was requested to distribute electronic copies of the letter to the Commission members and Justice González encouraged them to share the letter. Justice González also pointed out that the letter references the proposed legislative budget’s impact on the resources that court interpreter program provides.

AOC staff began a discussion on the apparent conflict between state law and federal law and policy regarding who assumes the cost of interpreters in court. General Rule 34 is the court rule under which a civil case litigant may request a waiver of interpreter costs that can be otherwise imposed under RCW 2.43.040. However, this conflicts with Title VI of the Civil Rights Act which guarantees the availability of interpreters to LEP litigants regardless of that person’s ability to pay. The Commission members expressed interest in learning what the current court practices are for using GR 34 to waive costs and whether there may be a way to harmonize the statute and rule so that it does not create a violation of federal law. It was pointed out that many courts deal with the conflict by ignoring the process laid out in GR 34 with the understanding that it is superseded by federal law or by reasoning that constitutional due process rights are

protected by using interpreter services. The Commission considered how to advise courts on how deal with the conflict. A first step could be examining any policy statements that courts who do not follow GR 34 might have. Courts could also be advised to look at their county's budget and see how much federal money would be in jeopardy, both inside and outside the court, by not following Title VI and providing interpreters at no cost.

Mr. Lichtenberg mentioned that Grant County may have contacted the Office for the Attorney General (AGO) and the AGO may be able to help provide guidance on how to deal with the conflict between RCW 2.43 and Title VI. He suggested that the AG's office could sent out an advisory letter to counties that the counties could refer to in dealing with the conflict. Mr. Marler mentioned that someone from the AG's office had contacted the AOC about the issue. Justice Gonzalez suggested inviting someone from the AG to the next Commission meeting so that they can have a direct discussion about the issue. The Commission could explain the problems that are occurring statewide, explain the conflict between state and federal law, and inquire how the AG is advising or would advise state agencies when those agencies are dealing with the conflict. The Commission and AG could discuss what kind of advice that could be given that doesn't violate people's rights for access to justice or put federal funding at risk.

There was concern that it might not be appropriate for the Commission to have practical advice that in effect would be telling courts to not obey part of the law. Therefore, the Commission thought best course of action would be to work to change RCW 2.43.

The Commission discussed the possible issues that could arise going the Washington State Legislature with a proposed change to RCW 2.43 that would guarantee that courts provide an interpreter regardless of the LEP party's ability to pay. Identifying parties, such as those whose funding would be in jeopardy for violating Title VI, ahead of time and looking for support could help move the legislation forward. The Commission could also look at the administrative costs associated with processing In Forma Pauperis filings (IFPs) when the majority of the filings are approved. Since most IFPs are granted, this would also provide evidence that if changes to RCW 2.43 are made, there will not a significant increase in costs for courts providing interpreters.

Given the potential difficulties in changing RCW 2.43, the Commission discussed changing GR 34 instead. They reviewed some of the hurdles in initially passing GR 34 and how there was significant debate about the wording of the rule from many courts and there was a large number of iterations in the wording before something was eventually agreed upon.

There was a concern that the language used in the AOC letter could lead to confusion between Title VI and the ADA and between RCWs 2.42 and 2.43. Title VI and RCW 2.43 provide services for LEP parties while 2.42 and the ADA provide backing for services deaf individuals. Under 2.42 a deaf individual would never be required to prove indigency before being provided an interpreter at no charge. There was a concern that the growing conversation in the state involving LEP individuals could lead courts to

conflate the services that must be provided for LEP parties with deaf individuals, which have different legal authorities behind them. The Commission felt that communication addressing this issue could accompany the information that would be sent out to the courts regarding the new list of certified ASL interpreters.

Forum Briefing

Ms. Pugh-Markie described the public forum that would be taking place after the Commission meeting. The Commission reviewed the prepared questions that could be asked during the forum.

While discussing the potential questions that the audience might ask, Ms. Farley brought up the topic of public defenders using court certified interpreters and how the public defenders pay for interpreter costs. Members of the Commission discussed their own experiences in how public defenders used certified interpreters and how they managed the costs involved. The Commission suggested contacting Katrin Johnson, former coordinator of the Court Interpreter Program, who is currently working at the Office of Public Defense (OPD). This could give the Commission insight into what kind of education opportunities regarding interpreters the OPD might be interested in doing and also what kind of language access issues are faced by public defense work.

This discussion brought up a concern about using the same interpreter outside the courtroom for the defense and then inside the courtroom. This could result in a bias or divulging of information from different parties. The discussion revealed discrepancy between the practices in the ASL and spoken language interpreting communities. In the ASL community, it is standard practice to use different interpreters for a court proceeding and for attorney-client meetings outside of the court. For spoken language interpreters it is often preferred to use the same interpreter since their familiarity with the case and terminology could allow them to render a more accurate and complete interpretation. For spoken interpreters, the onus is on the interpreter to manage the information and to not reveal information.

The Commission also discussed how complaints and other issues brought up during the forum should be dealt with. Since most issues could not be resolved at the forum, it was suggested there might be more work for the Issues Committee. Since there would be a long interval before the next Commission meeting, the Commission could act in the interim if the Issues Committee felt there was a need.

The Commission moved on to discuss the public forum that would be taking place in the afternoon following the Commission meeting. They reviewed some prepared questions that could be asked to stimulate the conversation. They also discussed how particular types of complaints could be handled and directed.

Issues Committee

Continuing Education Credits

Judge Beall outlined the Issues Committee's work in modifying the policy for Continuing Education Units (CEUs). After exploring the frameworks that other states use for CEUs, and considering previous input from interpreters, the Issues Committee recommended adding a third category to for CEU credits. The proposal:

Category	Credits
Ethics	2
Performance or Skills Based	8
General	6

Judge Beall explained that one area where the Issues Committee struggled was how to apply this category system to registered interpreters who have only 10 required credits. Two options were described: raise the number of required credits for registered interpreters to 16 with the categories as certified interpreters or keep the number of credits at 10 and break down the credits into similar categories. The proposed breakdown of 10 credits:

Category	Credits
Ethics	2
Performance or Skills Based	6
General	2

Mr. Lichtenberg mentioned that the states who have the same number of credits required for registered and certified interpreters may be more proactive in ensuring there are enough affordable language neutral classes available for registered interpreters. He reported that some court administrators have commented that they would like to see both groups of interpreters have the same number of CEUs as a matter of quality control. He suggested that Washington could become more active in making sure education opportunities are available and then increase the number of CEUs needed for registered interpreters.

The Commission discussed how broad or narrow the language should be regarding what classes would qualify for approval and what kind of policy guidance the Commission should give to AOC staff. They reiterated the objective was to allow a broader range of courses to qualify for approval, but to also ensure that interpreters take courses specifically related to the interpreting field with the performance and skills based category.

Mrs. Zuniga raised the concern that registered interpreters may not be able to afford the additional six credits. Mr. Lichtenberg suggested that it's possible that some states who have the same number of credits required for both certified and registered subsidize the cost for some classes making it more affordable for registered interpreters to complete

the same number of credits as certified interpreters. This may be accomplished by working with providers to make help keep costs down.

Given the significance of the changes, the Commission decided it would be important for interpreting community to have input. Judge Beall made a motion to: 1) to add the third category of CEUs with the amended policy language below, and 2) bring the number of required CEUs for registered interpreters to 16. The policy would be published for interpreter review. If there are was no objections from interpreters, then the change would be deemed approved at the following Commission meeting. If there were objections to part 2, then the proposed category breakdown for the 10 CEUs for registered interpreters would be: 2 Ethics, 2 General, and 6 Performance or Skills Based.

The Commissioned approved the modified policy language for publication to interpreters for comment and, unless there is opposition, it would be adopted at the next Commission meeting. The proposed policy reads:

Biannual Reporting Requirements for Certified Interpreters

REQUIREMENTS:

A. Continuing Education

Every certified court interpreter shall complete 16 hours of AOC approved continuing education each two-year compliance period. *Of the 16 required hours, at least (2) must be earned in ethics-specific educational activities; at least eight (8) must be earned in performance or skills based education activities; and the remaining six (6) may be general continuing educational activities. Ethics-specific or performance/skills based education activities may be used to accrue the needed general continuing education credits.*

- i) **Ethics-Specific Continuing Education** is defined as: *An educational activity related to appropriate court interpreter ethics or court interpreter protocol based upon the Code of Conduct for Court Interpreters in the Washington Court Rules.*
- ii) **Performance or Skills Based Education** is defines as: *An educational activity which is specific to the development of interpreting skills (simultaneous, consecutive, and sight); language skills; or technical skills related to interpreting and/or translation*
- iii) **General Continuing Education** is defined as: *An educational activity on topics that will enhance the participant's ability to perform interpreting work for the courts competently, fairly, and efficiently.*

Status of Somali

The Issues Committee recommended that Somali be moved from the certified language category to the registered language category. The motion passed.

Mr. Lichtenberg explained that during a recent conference for Court Interpreter Program Coordinators there was a discussion on the possible issues that might be resulting in the difficulties that Somali interpreters are having in passing the oral exam. The National Center for State Courts (NCSC) is reluctant to change the test given the large investment of money and time it takes to develop a test. Some of the notable issues that could be affecting the exam pass rate for Somali court interpreter candidates are related to the educational background and literacy of many Somali-language speakers. NCSC reported that many Somali speakers cannot read their own language in text form.

One alternative discussed was to establish a provisional category for Somali interpreters where an interpreter who scores a 65% or higher on a NCSC test could be granted provisional certification. To secure permanent certification, they would have to pass all 3 sections of the test at the 70% or higher level within 3 years. Since the registered testing is only a language proficiency test, having the provisional status would allow some assessment of the test candidate's ability to interpret since they would have feedback provided with their registered exam score. The Commission felt this would be a large change to policy and decided not to pursue this possibility.

Commission members discussed that this could be temporary measure and that in a few years we could reevaluate the category after there has been time for more training of Somali interpreters. In the meantime, having registered Somali interpreters would give courts some kind of assessment as to the quality of the interpreters.

ODHH Interpreter List

Ms. Berle Ross, the Interpreter Program Manager at the Office of Deaf and Hard of Hearing (ODHH), presented and update to the Commission on the implementation of a new list of American Sign Language (ASL) interpreters. She explained that there would be three tiers for interpreters on the list. The highest tier would be interpreters who have obtained the Specialist Certificate: Legal (SC:L). There are only about 14 ASL interpreters with this certification in Washington. The second tier are interpreters who have passed the written exam portion of the SC:L certification but haven't yet taken the performance exam. There are currently 13 interpreters in a special training for taking the performance exam. The third tier are interpreters who are certified with the Registry for the Interpreters for the Deaf.

Currently there are 395 ASL interpreters in Washington, but only a small number are currently qualified to work in courts. ODHH will sponsor a 10 week training session to help interpreters pass the written portion of the SC:L. In addition, these interpreters would need to pass a background check paid for by ODHH, attend a court interpreter orientation related to the structure of Washington State Courts, and take an oath.

Ms. Ross went on to explain some issues that are still under consideration. These issues include:

- Who will handle grievances (the AOC or RID)
- How to combine the list of ASL and spoken language interpreters
- What kind of contract will be made with ASL interpreters, state contracts or direct contract
- How to ensure new interpreters are aware of both the RID code of ethics and the code of ethics in state law under General Rule (GR) 11
- How to handle the introduction to Washington courts class which will be required for certification. This class currently offered once a year and has up to now been tied to the spoken language test candidates

The Commission asked how they could help in implementing the new system. One suggestion was communication to the courts about the new list of interpreters.

After the conclusion of the presentation the Commission discussed how the Commission and the Committees could be involved in this new ASL certification process. How to communicate the new processes to courts was a key issue. Two audiences were identified: judges and court staff. This would be considered in a communication plan. Court administrators would be the most important audience to contact first since how they schedule ASL interpreter would be affected. This could be communicated via the available listservs.

Given the complexity and importance of the issues involved in implementing the new list, AOC staff should come up with recommendations for the Commission to consider. AOC can refer to the Committee chairs or the Commission chair for input regarding the recommendations. Justice Gonzalez recommended that staff call on the chairs of the Committees or himself if needed.

Education Committee

The Commission moved on with the committee reports with Mr. Mattix reporting for the Education Committee. At a previous Commission meeting the Education Committee was tasked with updating the language in the court interpreter policy manual regarding Continuing Education Unit Requirements. The Commission reviewed and approved the following changes to the policy manual effective January 1, 2016:

For [Certified Court Interpreters - Policy Manual](#) "Continuing Education Requirements" - "Biennial Reporting Requirements" – under heading "Non-Compliance":

Non-Compliance

A certified court interpreter, who fails to complete and record their biannual requirements at the end of the two-year reporting period, shall be considered out of compliance. Upon a preliminary determination of an interpreter's non-compliance by the AOC, the AOC will ~~submit a written complaint of non-~~

~~compliance, together with supporting evidence, to the Discipline Committee of the Interpreter Commission. The AOC will send a notice of non-compliance and a copy of the complaint and supporting evidence to the interpreter. The interpreter may respond within 30 calendar days of the date of notice by submitting to the Discipline Committee a written response. The response shall be in writing, and may include, affidavits or declarations of witnesses, copies of court records, or any other documentary evidence the interpreter wishes to have the Committee consider. promptly notify Washington State courts that the interpreter is “out of compliance” with CE reporting requirements, but still certified. Courts and interpreters will also be put on notice that the “permanent” (2-year) oath is no longer valid, so that interpreters who are out of compliance will have to be sworn every time they appear in court. If the interpreter does not come into compliance within sixty (60) days, the matter will be referred to the Disciplinary Committee.~~

~~The Discipline Committee shall meet (in person, via email or telephone conference call) within 40 calendar days of the date of the complaint to review the complaint and supporting evidence to determine whether there is clear and convincing evidence that the interpreter is out of compliance and, if so, impose such disciplinary action as it determines appropriate.~~

Certified interpreters will not be issued a current ID badge until all continuing education requirements are satisfied. If the Discipline Committee suspends or revokes the certification of an interpreter, the interpreter's name will be removed from the directory of interpreters found on AOC's website at www.courts.wa.gov/interpreters and an electronic notice will be sent to presiding judges and court administrators/managers.

Similarly for [Registered Court Interpreters - Policy Manual](#):

Non-Compliance

~~A registered court interpreter, who fails to complete and record their biannual requirements at the end of the two-year reporting period, shall be considered out of compliance. Upon a preliminary determination of an interpreter's non-compliance by the AOC, the AOC will submit a written complaint of non-compliance, together with supporting evidence, to the Discipline Committee of the Interpreter Commission. The AOC will send a notice of non-compliance and a copy of the complaint and supporting evidence to the interpreter. The interpreter may respond within 30 calendar days of the date of notice by submitting to the Discipline Committee a written response. The response shall be in writing, and~~

~~may include, affidavits or declarations of witnesses, copies of court records, or any other documentary evidence the interpreter wishes to have the Committee consider. promptly notify Washington State courts that the interpreter is “out of compliance” with CE reporting requirements, but still registered. Courts and interpreters will also be put on notice that the “permanent” (2-year) oath is no longer valid, so that interpreters who are out of compliance will have to be sworn every time they appear in court. If the interpreter does not come into compliance within sixty (60) days, the matter will be referred to the Disciplinary Committee.~~

~~The Discipline Committee shall meet (in person, via email or telephone conference call) within 40 calendar days of the date of the complaint to review the complaint and supporting evidence to determine whether there is clear and convincing evidence that the interpreter is out of compliance and, if so, impose such disciplinary action as it determines appropriate.~~

Registered interpreters will not be issued a current ID badge until all continuing education requirements are satisfied. If the Discipline Committee suspends or revokes the certification of an interpreter, the interpreter's name will be removed from the directory of interpreters found on AOC's website at www.courts.wa.gov/interpreters and an electronic notice will be sent to presiding judges and court administrators/managers.

AOC staff stated it will notify interpreters of the policy change in a letter to be distributed September 2015 and which also will remind interpreters about their compliance reporting requirements being due on December 31, 2015.

Discipline Committee

Mr. Lichtenberg reported that he had sent a sanction letter to an interpreter who had not reported a conviction in violation of policy. The person was considering issuing an appeal. Since this would have been a complicated process involving the Attorney General's office, the interpreter and Court Interpreter Program agreed to send an advisory letter rather than a letter of sanction to the courts.

Court Interpreter Program Reports

In the interest of time, Ms. Pugh-Markie suggested that the Commission could review the material in the packet regarding the Court Interpreter Program updates and any concerns that members of the Commission or staff had could be handled by email or a conference call if necessary.

Ms. Sugg went over the evaluations from the Language Access Plan presentation at the recent Superior Court Judge's Association meeting in Skamania. The presentation

overall received positive reviews. Ms. Sugg felt that some of the material was rushed and there may have been too much content for the amount of time that was available for the presentation. Also, some of the practical exercise that was done during the presentation might not have as beneficial as hoped given the mixed audience of both judges and court administrators. One suggestion was that not enough time was spent on solving practical problems the courts are likely to face.

NEXT COMMISSION MEETING

October 2, 2015
AOC Office, SeaTac, WA

Decision Summary	Status (as of 10/2/15)
Issues Committee: Somali will be moved from certified language to a registered language.	<i>Complete</i>
Issues Committee: Pending comments from interpreters, the number of categories for CEUs will be expanded from two to three; the number of required CEUs for registered interpreters will be raised to 16.	<i>In-Progress</i>

Action Item Summary	
AOC Staff: When reminding interpreters in September about the end of the two-year cycle and their reporting requirements, also inform interpreters about the change of policy requiring them to promptly notify the Commission about any convictions	<i>In-Progress</i>
AOC Staff: Provide Commission members with a copy of the “Provision of Language Access Services Under Title IV of the Civil Rights Act and the Americans with Disabilities Act” and the documents the letter refers to.	<i>Completed</i>
Issues Committee: Look at what changes to RCW 2.43 would look like and what a change to GR 34 would look like and assess and make a recommendation about which alternative might be the most reasonable.	<i>In Progress</i>

<p>Mr. Marler. Talk to Callie Dietz regarding the suggestion to share the letter with county and city associations. Reach out to the Attorney General's Office and invite them to the next meeting to discuss the conflict between Title VI and RCW 2.43 and what kind of advice the AG would be comfortable giving on how state courts can deal with the conflict.</p>	<p><i>Completed</i></p>
<p>AOC Staff. Contact Katrin regarding potential training opportunities for public defenders</p>	<p><i>Completed</i></p>
<p>AOC Staff. In future communication to the courts involving the upcoming list of ASL interpreters, clarify any potentially confusing issues regarding the differences between foreign language interpreters and ASL interpreters and the their statutes</p>	<p><i>Future Action</i></p>
<p>AOC Staff: Work with ODHH to come up with a recommendations for the Commission to consider related to the implementation of the new list of ASL interpreters.</p>	<p><i>In-Progress</i></p>