



Interpreter Commission
Friday, December 4, 2015 (8:45 a.m. – 11:45 a.m.)
AOC SeaTac Facility, Large Conference Room
18000 International Blvd., Suite 1106, SeaTac, WA 98188

MEETING MINUTES

Members Present:

Justice Steven González
Dirk Marler
Sam Mattix
Thea Jennings
Judge Andrea Beall
Lynne Lumsden
Kristi Cruz
Linda Noble
Alma Zuniga

Members Absent:

Judge Theresa Doyle

AOC Staff

Robert Lichtenberg
James Wells

Members Attending by Telephone

Eileen Farley
Fona Sugg

Guests:

Nicole Walker
Czar Peralta
Shirley Bondon

CALL TO ORDER AND WELCOME

The meeting was called to order by Justice Steven González. Members and staff introduced themselves.

APPROVAL OF OCTOBER 2, 2015 MEETING MINUTES

Minutes were approved with modification.

CHAIR'S REPORT

Supreme Court / Appellate Courts Language Access Plan

Justice González updated the Commission on the progress of the Language Access Plan (LAP) for the Supreme Courts and Courts of Appeal. A request was sent out to the Courts of Appeals in Washington to form a group of representatives from the Supreme Court and representatives from each of the Divisions. Judge Masako Kanazawa from Division I has volunteered so far.

Meeting with the Department of Justice

Mr. Lichtenberg described a meeting he had with Christine Stoneman who is Principal Deputy Chief in Federal Coordination and Compliance Section of the Civil Rights Division at U.S. Department of Justice (DOJ). Ms. Stoneman asked about how the DOJ can help Washington modernize the LAP for the court system. She also asked about how courts work with the state law that allows courts to charge litigants in civil cases for interpreters and what the DOJ could do to help in getting those courts to be compliant with Title VI.

Justice González suggested that the DOJ can directly contact the courts that do have a policy of charging litigants for interpreters. Members of the Commission discussed the previous attempts to reach out to those courts and explain the requirements of Title VI and agreed that direct communication with the DOJ could be more productive. This may spur those courts to change their policy and also serve to justify a push for funding locally or from the state. Justice González asked AOC staff to explore possible communication with the DOJ regarding those courts that have reported that some form of charges are assessed against non-indigent LEP parties for interpreting services.

COMMITTEE REPORTS

Issues Committee Report

Survey

The Commission discussed the survey they sent to courts across the state. The survey asked the courts about their practice of charging litigants for interpreters and asked about their resources for assisting people who are deaf or hard of hearing. Some courts responded they hadn't received requests for interpreter services for deaf or hard of hearing persons. The Commission discussed the possibility that this response indicated that there actually may have been a need for those services in that court in the past, but that the people with those needs didn't know how they could request those services or what kind of services would be available. A few members of the Commission mentioned that the survey results conflicted with some previous information they had about what was happening in the courts.

The Commission discussed some specific responses on the survey that they felt should be addressed:

From Pacific Municipal Court:

If a continuance is requested by the defendant and they agree to pay interpreter costs, they are imposed for the following hearing. If the city requests a continuance, we do not impose those costs. These are usually for infractions - proof of insurance or a license usually. Not on criminal cases.

From Enumclaw:

This court charges the actual interpreter costs when someone FTA's and the interpreter was here only for them. If the interpreter has other cases, the defendant is not charged.

The Commission felt that informing these municipal courts of their practices could be an effective way to educate them about the Title VI-related prohibitions against charging LEP parties for interpreters in the circumstances they referenced.

Change to State Law

The Committee summarized their discussion about whether changes should be made to General Rule (GR) 34 or RCW 2.43 to eliminate the conflict between state and federal law regarding payment for interpreter services. The Committee concluded that changes should be made to RCW 2.43. The AOC has made a previous attempt to have it changed via 2013 request legislation but there was inconclusive movement in the Legislature at the time. This led to a discussion regarding how the updated policy framework of the LAP for trial courts would address this conflict and perhaps lead to further action.

Video Remote Interpreting

Judge Beall reported that she was approached by Judge Frank Dacca, Chair of the District and Municipal Court Judges Association (DMCJA) Rules Committee about Video Remote Interpreting (VRI) who had asked whether its use requires any court rule changes. Judge Beall informed them that a review of GR 11.3 would be a good place to start as it currently sets rules for the courts and interpreters regarding telephonic interpreting.

Office of Deaf and Hard of Hearing and Certified ASL Interpreters

The Commission discussed how the AOC and the Commission has very little historical role involving ASL interpreters, although GR 11 gives the Interpreter Commission oversight of ASL interpreters. One such role for both entities could involve establishing specific continuing education requirements for ASL interpreters. ASL interpreters on the list maintained by the Office of Deaf and Hard of Hearing (ODHH) get some education on Code of Conduct found in GR 11.2 at the time they take the initial training offered by ODHH prior to being sworn in, but they aren't required to get additional ethics education credits.

AOC staff described the collaboration between the ODHH and the AOC regarding ASL interpreters and how that relationship could become more formal. Some members of the Commission had a concern about the Interpreter Commission having oversight of the discipline of ASL interpreters given the lack of a knowledge base on the Commission

about matters involving ASL interpreters. The ASL interpreter liaison position had only recently been filled.

The Commission went on to discuss the differences and similarities faced by members of the deaf community and limited English proficient persons (LEPs) when using interpreters in court settings. They also discussed the challenges faced by the interpreters for members of those communities. They discussed how ASL and spoken language interpreters have different cultures when working with their “clients” with ASL interpreters typically interacting more with the “client”.

The Commission decided to wait on any decision regarding the oversight of discipline of ASL interpreters and the requirements of ethics as a part of ASL continuing education until a representative from the ODHH could be present for the discussion. A more immediate concern was how the Interpreter Commission would recognize ASL interpreters on the ODHH list. The Commission passed a tentative motion to recognize those interpreters as “certified” in certain situations. The motion would be deemed passed after it is reviewed by the ODHH to ensure it meets with meets their request.

Decision: Credentialed ASL interpreters on the ODHH list would be deemed certified for the purposes of the AOC court interpreter reimbursement program and those interpreters can use the term “certified” on their interpreter ID badges provided by the ODHH.

COURT INTERPRETER PROGRAM UPDATE

Member Motion: Permanent Oath

Mr. Mattix brought a motion to the Commission requesting legislation that would allow court-certified and registered interpreters to take one permanent oath, rather than be required to renew their oath every two years. The Commission noted that other states such as Oregon, California, and Idaho have a number of interpreters with WA AOC-recognized certification reciprocity who have a permanent oath in their states. Also, WSBA-licensed attorneys take a similar oath that they do not need to renew.

Full text of motion and the modifications to state law are found in Appendix I. The Commission passed the motion unanimously.

Decision: Propose to the legislature to amend RCW 2.43.050: Oath so that court certified and registered interpreters are permanently sworn upon receiving their credential instead of taking an oath again every two years.

LAP Workgroup Update

The Commission discussed the progress of the LAP workgroup. The workgroup is working on both a policy guide and a template that courts can use to develop their LAPs. The workgroup plans to include information about deaf and hard of hearing individuals, which is often absent from this kind of document. The workgroup is also adding a section on filing grievances. Judge Estudillo recently joined the workgroup.

The Commission discussed how the new LAP will address language access issues beyond just interpreters and will address accommodations for deaf, hard of hearing, and deaf-blind to the extent those accommodations enable language access. The LAP policy guide and template will reference these services but won't go into great detail. It will have information where courts can look for resources and additional information. There was a concern that including too much information in the plan could make it too unwieldy and make it difficult for courts staff to use. It was suggested that a separate document addressing ADA language access issues may be more practical.

The workgroup hopes to have a draft ready to show at the next Commission meeting. They would like to have a version ready for the spring judicial conferences.

Court ADA Contact Directory

The Commission discussed the possibility of creating a directory of ADA coordinators for courts across the state. Shirley Bondon clarified her role at the AOC as assisting courts on issues relating to the ADA. Each court has its own ADA coordinator that works directly to the public. With over 400 courts in the state, it would be difficult to maintain an updated list of contact information for a specific person who is the court or county's ADA coordinator since the person in that role changes. A small survey of court websites showed that most courts do list contact information for ADA accommodation, although often the information isn't always clearly laid out.

Workshop Evaluation Results

The Commission reviewed the evaluations for the Institute for New Court Employees (INCE). The results were favorable. Ms. Cruz mentioned that her term on the Interpreter Commission would be ending next year and suggested transitioning another Commission member into the role of trainer for these kinds of education events.

BUSINESS FOR THE GOOD OF THE ORDER

ATJ Plan Letter and Civil Legal Aid Needs Report: Group Discussion

The Commission discussed collaborating with other groups such as the Minority and Justice Commission, Gender and Justice Commission, and Access to Justice Board

(ATJ). The Commission discussed how the Interpreter Commission could bring up the needs of LEP parties to the other groups and stress the importance of using qualified interpreters and translators in their work.

Some suggestions included reviewing each other's annual reports and having a member from one Commission go to other commissions' meetings. Another suggestion that the Commission invite a member of the ATJ to be a member of the Commission or have a member of the Commission work on the ATJ. It was suggested that Ms. Jennings act as a liaison for the Interpreter Commission to the ATJ.

Another suggestion was to write a letter that can identify what kind of barriers are faced in language access and also have some recommendations. Ms. Cruz and Ms. Jennings will draft a letter for Justice González to review.

NEXT MEETING

March 4 at the AOC Office at 18000 International Blvd., Suite 1106, 8:45 to 11:45.

Decisions:
Credentialed ASL interpreters on the ODHH list would be deemed certified for the purposes of the AOC court interpreter reimbursement program and those interpreters can use the term "certified" on their interpreter ID badges provided by the ODHH.
Propose to the legislature to amend <u>RCW 2.43.050: Oath</u> so that court certified and registered interpreters are permanently sworn upon receiving their credential instead of taking an oath again every two years.

<i>Mr. Marler and AOC staff</i> – reach out to Pacific and Enumclaw Municipal courts and inform them of the problems with their polices on charging for interpreters.	<i>Future Action</i>
<i>Mr. Marler</i> – Refer motion regarding change to state law to allow interpreters to take a permanent oath to BJA for review and legislative request.	<i>Future Action</i>
<i>AOC Staff</i> – Follow up with Department of Justice regarding their willingness to reach out to the courts in the Issues Committee survey that are potentially charging litigants for interpreters.	<i>Suspended</i>

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<i>AOC Staff</i> – Inform ODHH of the Commission’s decision regarding the status of ASL interpreters being “certified” and confirm that this is what their request intended.	Completed
<i>AOC Staff</i> – Check with ODHH and see how they would like to see ASL interpreter discipline to be handled.	<i>Completed</i>
<i>Ms. Cruz and Ms. Jennings</i> – Draft a letter meant for groups and commissions regarding language access issues.	<i>Completed</i>

Appendix 1

WA Supreme Court Interpreter Commission Motion

Motion made by: Samuel Mattix, Interpreter Representative
Seconded by: Linda Noble

Motion: Propose to the legislature to amend RCW 2.43.050: Oath so that court certified and registered interpreters are permanently sworn upon receiving their credential instead of taking an oath again every two years.

The amendment, with proposed deletions in bold, may/shall read as follows:

(1) Upon certification or registration ~~and every two years thereafter,~~ certified or registered interpreters shall take an oath, affirming that the interpreter will make a true interpretation to the person being examined of all the proceedings in a language which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment. The administrative office of the courts shall maintain a record of the oath in the same manner that the list of certified and registered interpreters is maintained.

(2) Before any person serving as an interpreter for the court or agency begins to interpret, the appointing authority shall require the interpreter to state the person's name on the record and whether the person is a certified or registered interpreter. If the interpreter is not a certified or registered interpreter, the interpreter must submit the interpreter's qualifications on the record.

(3) Before beginning to interpret, every interpreter appointed under this chapter shall take an oath unless the interpreter is a certified or registered interpreter who has taken the oath ~~within the last two years~~ as required in subsection (1) of this section. The oath must affirm that the interpreter will make a true interpretation to the person being examined of all the proceedings in a language which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

Argument:

- (1) Other professionals serving in the court are permanently sworn either when they take office, receive their commission or become a member of the bar. Therefore professional interpreters who retain their credentials in good standing with AOC should also be permanently sworn.

Motion
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- (2) Remove existing confusion and inconsistent practice among courts and interpreters. Many judges ask interpreters: "Are you permanently sworn?" I have been asked this by more than one judge immediately after having said the words "sworn for this two-year period" as part of putting my credentials on the record. I answer the follow up question with a simple "Yes" to prevent confusion and to avoid the need for an explanation., Some interpreters just say they are permanently sworn, which is inaccurate, every time they put their credentials on the record in order to avoid confusion.
- (3) Reduce bookkeeping demands on AOC staff, and eliminate a biennial chore for interpreters and persons who administer and/or notarize oaths.
- (4) Both California and Oregon have "permanent" swearing in of credentialed interpreters -- one more reason for WA to follow their example, as we have reciprocity and many interpreters credentialed in CA and OR states.

ORS 40.275(8) states:

(8) A court, a hearing officer or the designee of a hearing officer shall require any person serving as an interpreter for the court or agency to state the person's name on the record and whether the person is certified under ORS 45.291. If the person is certified under ORS 45.291, the interpreter need not make the oath or affirmation required by ORS 40.325 or submit the interpreter's qualifications on the record. If the person is not certified under ORS 45.291, the interpreter must make the oath or affirmation required by ORS 40.325 and submit the interpreter's qualifications on the record.

These WA credentialed interpreters have to seek a judge or Notary in CA or OR to administer oaths for them every two years while they only have to file an oath once if they are credentialed in those "permanent" states.