



February 4, 2020



By Email and 1st Class U.S. Mail

Susan L. Carlson
Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
supreme@courts.wa.gov

Dear Madam Clerk,

Please accept the following comments to the Proposed New Washington State Court Rule GR 38, published for comment in November 2019. These comments are jointly made on behalf of the Washington State Minority and Justice Commission (MJC), Washington State Interpreter Commission (together, “Commissions”), and the Washington State Access to Justice Board (Board).

The Commissions and the Board unanimously support adoption of this Court rule, with certain amendments discussed below.

The Commissions and the Board unanimously believe that the adoption of this Court rule is in line with one of the fundamental missions of their organizations: to protect all persons’ access to our State Courts, where the vast majority of justice is sought and achieved in this State.

The Commissions and the Board believe that the failure to enact such a rule would weaken trust in our system of justice, close the doors to the most vulnerable, make our communities less safe, and pervert the fair and equal treatment of all, to which we all aspire.

As a long-time member of the MJC -- a jurist from eastern Washington -- stated, there may be no more important challenge to accessing the Court in our generation than the federal actions that necessitate this rule.

About the Commissions and the Board

The Washington State Supreme Court established the MJC nearly 30 years ago, based upon the “fundamental principle of the fair and equal treatment of all” and the recognition that “any system of justice ... must be examined continuously” to ensure it is “meeting the needs of all people governed, to include people of color.” See Order of the Supreme Court dated October 4, 1990. The MJC is tasked with identifying “the concerns ... regarding lack of equal treatment” and “to make recommendations for judicial improvement.” *Id.* The State Supreme Court overwhelmingly has renewed the order of establishment every five years since enactment.

The Washington State Supreme Court created the Interpreter Commission to ensure equal access to justice and to support the courts in providing access to court services and programs for all individuals regardless of their ability to communicate in the spoken English language. The Interpreter Commission serves as a policy making and advisory body to the Washington Courts, including the Administrative Office of the Courts (AOC), concerning court interpreters and language assistance in general. The Commission

sets policy for the courts and the Court Interpreter Program, which is responsible for interpreter certification, registration, testing, continuing education, training, and discipline. The Commission is also responsible for strategic planning and working with educational institutions and other interpreter program stakeholder groups to develop resources to support court interpreting in Washington. The Commission is actively involved in developing and supporting judicial and court administrator education on issues affecting language access in our courts.

The Access to Justice Board was established by the Washington State Supreme Court in 1994 for a two-year evaluation period, reauthorized November 1996 for an additional five years and made permanent on November 3, 2000. *See* Order of the Supreme Court. The board was specifically tasked “to promote and facilitate equal access to justice in Washington State for low and moderate income people.” *Id.* The board historically provides leadership on issues facing the delivery of civil legal services in our state and has been a model for many other states in the country.

The Commissions and the Board, thus, view these comments in line with their fundamental mission, as the issues herein implicate equality, access, and justice.

Comments

Procedural, Legal and Factual Background

Twice in the last several years, the Chief Justice of the Washington State Supreme Court wrote the leadership of the United States Department of Homeland Security (DHS) to express the Court’s concern about immigration officers and agents taking enforcement action in and around our State’s courthouses. Chief Justice Fairhurst explained that such enforcement action impeded the fundamental mission of our courts, which is to ensure due process and access to justice for everyone regardless of their immigration status, whether such persons were victims in need of protection from domestic violence, witnesses summoned to testify, or families who may be in crisis. The Chief Justice further explained that enforcement action in and around our local courts deterred individuals from accessing our courthouses, spread fear in our immigrant communities, both those lawfully present and those undocumented, and thus made our communities less safe. The MJC and the Board wholly support the Chief Justice’s analysis of our local justice system’s interests and concerns she raised about this enforcement action.

The Chief Justice respectfully asked DHS to mitigate enforcement actions in and around our local courthouses and asked DHS to designate the courthouses and their immediate vicinities as “sensitive locations.” The Chief Justice and the Chief Justice of Oregon’s Supreme Court met earlier this year to discuss the same. On November 21, 2019, U.S. Attorney General Bill Barr and the Acting Secretary of DHS wrote the Chief Justices, advising that, under the Supremacy Clause of the United States Constitution, court rules “cannot and will not govern the conduct of federal officers” and urged the Chief Justices to “reconsider these misguided rules.”

Two federal district courts this year, however, have held that the common law privilege to be free from civil arrests while at court or while travelling to and from courthouses, upon which the instant rule is based, is “still operative” and “applies” to immigration civil arrests. *See State of New York et al. v. U.S. ICE et al.*, No. 19-cv-8876, (S.D.N.Y., Order of December 19, 2019). One of these federal district courts has granted a preliminary injunction, enjoining DHS from “civilly arresting parties, witnesses, and others attending Massachusetts courthouses on official business while they are going to, attending, or leaving the courthouse.” *See Ryan et. al. v. U.S. ICE et al.*, No. 19-cv-11003 (D.MA., Order of June 20, 2019).

Finally, there is no factual dispute that immigration-related civil arrests have been occurring at or near our state courthouses regularly and that the effect on our immigrant communities has been profound. To take but one example of the type of litigants who are being excluded from our courts: victims are unwilling to seek the protection or services of the courts; victims are unwilling to report crimes; and victims and others unwilling to serve as witnesses. This type of enforcement is making our communities less safe.

In short, productive conversations with DHS have been attempted in good faith and been unsuccessful, and the proposed GR 38 is on sound legal-footing and factually ripe.

Amendments

A coalition of advocacy organizations has proposed the attached amendments to the proposed new GR 38. These proposed amendments are largely technical or for purposes of clarification. The Commissions and the Board support all of these changes. The Commissions and the Board also believe that “participants” in a proceeding should include parents or guardians in a juvenile court or dependency proceeding.

With these amendments, every member of each Commission and the Board are supportive of the GR 38 and respectfully urge the Supreme Court to adopt it.

Thank you for your consideration.

Minority and Justice Commission	Interpreters Commission	Access to Justice Board
Judge G. Helen Whitener	Judge Mafé Rajul	Salvador Mungia (Chair)
Lorraine Bannai	Judge Andrea L. Beall	Judge Laura Bradley (Chair-Elect)
Jeffrey Beaver	Fona Sugg	Hon. David Keenan
Lisa Castilleja	Frankie Peters	Francis Adewale
Judge Faye Chess	Sharon Harvey	Esperanza Borboa
Judge Linda Coburn	Kristi Cruz	Mirya Muñoz-Roach
Theresa Cronin	Katrin Johnson	Lindy Laurence
Asst. Chief Adrian Diaz	Francis Adewale	Terry J. Price
Judge Mike Diaz	Elisa O. Young	Michelle Lucas
Judge Theresa Doyle	Naoko Inoue Shatz	Hon. Frederick Corbit
Jason Gillmer	Luisa Gracia Camón	
Judge Bonnie Glenn	Diana Noman	
Kitara Johnson	Donna Walker	
Anne Lee	Florence Adeyemi	
Judge LeRoy McCullough		
Karen Murray		
Christopher Sanders		
P. Diane Schneider		
Judge Lori K. Smith		
Travis Stearns		

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Tracy, Mary](#)
Subject: FW: Public Comment - GR38 Rule Change
Date: Wednesday, February 5, 2020 12:21:55 PM
Attachments: [MJC-ATJ-IC Letter of Support of GR 38.pdf](#)

From: Thomas, Frank
Sent: Wednesday, February 5, 2020 12:12 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Diana Singleton <dianas@wsba.org>
Subject: Public Comment - GR38 Rule Change

Dear Ms. Carlson:

Please find attached a comment to be posted and made public regarding the proposed GR38 Rule Change. Please accept this public comment as the official statement jointly from the Washington State Minority and Justice Commission, the Washington State Interpreters Commission, and the Access to Justice Board. We will be sending your office a hard copy, as well. If there is any more that needs to be done in order to post this comment to the public, please let me know.

Thank you,
Frank Thomas

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