



Interpreter Commission
Friday, March 4, 2016 (8:45 a.m. – 11:45 a.m.)
AOC SeaTac Facility
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
Eileen Farley
Fona Sugg
Judge Laura Bradley

Members Absent:

Judge Theresa Doyle

AOC Staff

Robert Lichtenberg
James Wells
Stacy Smith

Guests:

Diana Noman
Christy McDade
Kim Tofstad

CALL TO ORDER AND WELCOME

The meeting was called to order by Justice Steven González.

APPROVAL OF DECEMBER 4, 2016 MEETING MINUTES

Minutes were approved.

CHAIR'S REPORT

Introductions

Judge Laura Bradley introduced herself to the Commission. She has been a member of the Access to Justice (ATJ) Board since October 2015. Some of her experience with language access issues comes from working at the Board of Industrial Insurance Appeals (BIIA) and helping implement their Language Access Plan (LAP) and spoke about some of the language access issues there. She will be attending future Commission meetings as a liaison between the ATJ Board and the Commission.

Stacy Smith introduced herself and explained that she recently came on to the AOC to staff the Minority and Justice Commission, having graduated from Seattle University Law School in 2014 where she became knowledgeable about the importance of diversity in the legal profession, having studied implicit bias, racial fairness, and access to justice issues.

The remaining meeting attendees introduced themselves.

Minutes Recording

The Commission discussed audio recording of Commission and Committee meetings. Recently rules involving public disclosure of Judicial Branch business and court administrative matters underwent implementation. Several other Commissions have stopped recording their meetings due to the difficulty in reviewing audio materials pursuant to public disclosure requests the review involves redacting personal and other information. In general the AOC does not record the audio portion of meetings. Given the limited number of AOC staff resources for complying with public disclosure requests, the Commission agreed to stop recording the audio of meetings and encourage AOC staff to take measures to ensure accurate notes are taken of Commission and committee meetings.

Decision: The Commission will not record the audio of Interpreter Commission meetings or the meetings of its committees.

Judicial College Report

Justice González reviewed the Court Interpreter training given at the 2016 Judicial College, which newly-appointed judges over the previous 12 months at all levels are required to attend. As a demonstration of interpreting for the other judges, the Court Interpreter session began with an introduction by Judge Alicea-Galvan whose speech was simultaneously interpreted into Spanish. The session received one of the top ratings at the Judicial College. The evaluations indicated that the topic warrants more time. The plans for next year include a panel and the participation of Judge Tam Bui.

Supreme Court Language Access Plan

A draft of a language access plan (LAP) was presented to the Supreme Court last year. The Chief Justice directed the Courts of Appeal to designate someone from each division to join a group to review the plan as a plan for all of the Appellate Courts. So far, only Division 1 has done so. There was some resistance from the divisions and questions about the need, legality, and funding of LAP were brought up.

There was also discussion of the LAP template for the trial courts which is currently being updated. Justice González stated he recently spoke with Associate Justice Cuéllar from the California Supreme Court to discuss some of the factors that helped influence their ability in designing and implementing a LAP for the California appellate

courts. Some of the considerations involved in the implementation included changing the Evidence Code, acquiring support from groups such as the court interpreter's union, domestic violence advocates, and other stakeholders; responding to pressure from the Department of Justice for increased access services; creating a staged approach to implementation; acquiring more internal support from the legislative and executive branch agencies, which are held by the same political party; having a unified judiciary; and a more stable revenue stream from their statewide income tax. Also, with the Los Angeles court system, the state's largest, having a long history with interpreting with a great deal of cultural competency and diversity among its staff, it was easier to move forward. Justice Cuéllar offered to come up to Washington to speak on the topic, although it was suggested that having a completed LAP template in place would be needed.

AOC staff mentioned that appellate branch courts in Ohio have implemented their LAP. Judge Bradley mentioned that there had been a study in her area and getting the study information may be helpful.

Skagit County

The Commission discussed their next meeting which will take place in Skagit County with an open-to-the-public forum on language access issues in courts to follow. The Commission discussed inviting law enforcement and the local jail to discuss their language access issues. The incorrect use of interpreters at early stages with law enforcement often can cause problems later in court. Other possible topics included addressing the needs of resident LEP parties who speak indigenous languages from Central America and the ability of the local courts in finding and using AOC-certified interpreters.

Commission Strategic Planning

The Commission discussed strategies to move forward with their work. One suggestion was to create more sub-committees that could allow members to address additional issues. Also mentioned was the idea that the Commission could create ad hoc workgroups that may include non-Commission members to advance the work of the Commission. It was noted that the use of temporary workgroups wouldn't require any change to Commission policy.

The need for distributing language access program work to Commission members was also suggested. In 2008 the AOC helped counties to implement their LAPs using a temporary project employee to provide guidance and training. With the new LAP revision being distributed this year and with no such person onboard, the Commission members could be assigned to help the Interpreter Program with providing local court staff education so that programmatic institutional knowledge is shared between the AOC, the Commission and the county courts.

The Commission talked about the difficulties in prioritizing its work with some activities. They discussed whether to focus energies on easier to accomplish tasks with less impact or on more difficult tasks that have a larger effect. They also discussed the need to have long-term policy and program development strategy in place but cautioned that the final strategies must be realistic. It was suggested that AOC staff help identify and prioritize the strategic goals. Some of these goals include looking for grants, implementing Video Remote Interpreting, and providing select training opportunities. The question of priorities could be addressed at the public forum in Skagit County.

The Commission discussed devoting one of their quarterly meetings to a retreat where the Commission could focus on its work. Having a facilitator at the retreat would be beneficial. Given the possible cost, there was a suggestion that grad students Evans School at the University of Washington look for these kinds of opportunities to practice their skills. A facilitator may only be necessary for half of the time rather than the whole retreat. Another suggestion would be to contact Wendy Frazier. Members of the Commission would help AOC staff in setting up a planning meeting for a retreat.

Annual Report

AOC staff discussed the development a Commisison 2015 Annual Report. They asked that some Commission Members volunteer to serve as an editorial board. Ms. Jennings and Mr. Mattix volunteered.

COMMITTEE REPORTS

Issues Committee

Complaint Forms

Judge Beall discussed the Issues Committee work on creating a set of complaint forms. The impetus to create the forms came out of the discussion at the public forum in Yakima in 2015. The Committee initially began work on two complaint forms, one to report issues regarding interpreters' conduct and one to report issues regarding interpreter services at a court. The Committee decided that the complaint form regarding interpreter services at a court was more within the purview of the AOC and decided to focus on creating a complaint form regarding interpreters' conduct.

The Commission reviewed the draft complaint form and accompanying instructions. One suggestion was to make it clear in that the complaint form was just one avenue to make a complaint to the AOC and that other kinds of contact, such as email and phone calls, are also possible. Another suggestion was to make the form usable on mobile devices since people are more likely to have a smart phone than a computer.

The Commission discussed having complaint forms for reporting problems with ASL interpreters. The Office of the Deaf and Hard of Hearing (ODHH) asked the Commission to handle disciplinary hearings involving ASL interpreters as it has no such authority to do so and the Commission does. It was mentioned that while the national Registry for Interpreters of the Deaf (RID) handles the actual certification of ASL interpreters and does have its own disciplinary process for ethical violations, their ethical practices rules differ from those of GR 11.2 and that GR 11.2 would as a matter of law supersede the RID's Code of Conduct when the two differ.

There was a concern that the Commission and the AOC may not have enough representation or experience with ASL issues. One suggestion from ODHH was to have the ODHH conduct complaint review for merit regardless of whether the complaint is first filed with the AOC or ODHH and then send their recommendation to the AOC on whether to dismiss the complaint for lack of merit or forward it to the Commission's Disciplinary Committee for further proceedings.

The Commission discussed the signature area of the form where there is language regarding the sharing of identity of the person making the complaint. AOC staff brought up the concern that there may be some circumstance where an element in a complaint may need to be reported to other authorities. For example, if a criminal activity by the interpreter was involved. The Commission felt this language might be a barrier to an LEP party making the complaint, especially if they have immigration issues and that information about criminal violation reporting could be shared with the LEP party later on in the process, if necessary. So the Commission referred back the draft language for further resolution by the Issues Committee

The Commission made suggestions on areas of the form where the language could be simplified into "plain language". The capability at the Interpreter Program to make the forms into plain language versions may be limited and may require that outside resources be used.

The Commission also discussed how LEP parties and courts would be informed about the complaint forms. A suggestion was made to have it as part of the roll out of the LAP template, having it visibly available on the AOC website as well as local court websites, or included in multilingual notices posted at court houses and in their webpages.

Education Committee

Mr. Mattix updated the Commission on the recent activity of the Education Committee. He shared the Committee's review of the AOC Calendar of Trainings. They also provided a document that was created to help guide AOC on how classify interpreter education classes with the new CEU categories. The Commission reviewed the document and made some suggestions. Some classes clearly belonged in certain categories. However, some were less obvious, such as those that deal with legal topics but that aren't directly interpreting related. It was noted that most of the classified topics

fit into the Performance/Skills category and that the General category was more of a catch-all for interpreter-related topics relatively more removed from what happens in the courtroom or legal settings.

The Commission discussed how the document could also be used to give guidance for interpreters and class providers. Once finalized it could be distributed with additional information regarding how earned credits would roll over into other categories.

Disciplinary Report

AOC staff updated the Commission on the status of interpreters meeting the compliance requirements for the 2014-2015 cycle. The Disciplinary Committee had not yet met and some interpreters were still in the process of coming into compliance. At this similar point in time compared to the previous cycle, slightly fewer interpreters are out of compliance.

COURT INTERPRETER PROGRAM ISSUES

Program Reports

Revisions to GR 11.3

The Commission discussed possible updates to GR 11.3 which would add language regarding Video Remote Interpreting (VRI) to the existing guidance on telephonic interpreting. The updated language is being proposed by the Rules Committee of the District and Municipal Court Judges Associations (DMCJA). One concern was how VRI would be used when the litigant is not present in the court room and was appearing by video from the jail or elsewhere. That and other related matters affecting the record or rights of the parties are not specified in the current GR 11.3 rules. Another issue would be how both an interpreter and another party could both appear by video in court if both are remotely situated in different places, one in the jail and the interpreter on another video connection not in the jail. This would affect the ability of attorneys to communicate with their clients and ensuring access to counsel using this technology should be considered. Overall, the language in the proposed rule seems to confuse the interpreter appearing by video with the litigant appearing by video and should be made clearer.

There were also concerns about the capturing of the un-interpreted language for the court record. Currently if there is an in-person court reporter, only the interpreted speech is captured on the record. However, new digital transcription makes it possible to record both the interpreted and un-interpreted speech.

Additional concerns from the Commission included how ASL interpreters would be included in the rule and the need for the litigant to give informed consent for the court to use VRI. The Commission felt that it is important for the rules should be thorough and thoughtful since the use of VRI would only increase in the future.

Justice González appointed Judge Beall and Eileen Farley to submit draft comments on the matter of revising GR 11.3 to him for review and forwarding to the DCMCJA Rules Committee.

Legislative Action Plan for 2017

The Commission discussed proposing legislation for the 2017 legislative session to expand the number of courts participating in the Court Interpreter Reimbursement Program. A decision package is due to AOC Leadership on April 6, 2016. The elements in the proposal are then vetted and prioritized by a Board of Judicial Administration (BJA) budget committee and then, if highly prioritized, then go to the full BJA for further consideration. The BJA will then decide what will go to the Supreme Court budget committee to consider for the 2017 budget request. There will be competition for prioritization involving several judicial branch issues and the Legislature will be facing a budget deficit so avoiding a cut to the current program allocation may be considered a victory. Despite the difficulties it is still important to push forward with the request since the support for interpreter issues is growing and it is important to keep the momentum.

The Commission discussed what would be included in the request. Trial courts are often in favor of pass-through funding. It will be important to propose a funding request that has a number of allies and support from courts.

LAP Update

The Commission discussed the status of the updated LAP. There are two sub-committees for the LAP workgroup, one working on the instructions and the court user LAP template and one working on the legal basis and policy rationales section. Some of the biggest changes include adding information about the complaint process, expanding the document to cover translation needs, and integration of ASL interpreters into the realm of language access services under the ADA. The next draft will go to the LAP workgroup for comment. The Commission would like to see a draft for the May 20 meeting.

ATJ Board Liaison Report

Ms. Jennings and Mr. Lichtenberg went to a recent Access to Justice (ATJ) board meeting. They reported on their communications with ATJ Board staff about the best way to provide input regarding the ATJ Board's strategic goals as the Board would like feedback on their draft goals by March 14. They are looking for a manageable number of goals and after the next draft they will be discussing how to implement them. Additional feedback would be welcome later on in the process.

ODHH Letter

The Issues Committee will discuss the letter during an upcoming committee meeting.

VRI Pilot Proposal

The Commission discussed a pilot VRI proposal from Stratus Video. Stratus is working with Illinois in implementing VRI in its courts and has worked with Pierce County to provide VRI in jail and probation settings. The Commission had a number of questions involving the pilot including how the interpreters for the pilot would be chosen and what kind of contracts they would have with Stratus. AOC will arrange a teleconference with Stratus involving several members of the Commission to address the questions generated from the Commission meeting and any other questions sent by email to AOC staff.

NEXT MEETING

The next meeting will be held in Skagit County on May 20 and will be followed by a public forum and short reception.

| Decisions: |
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| The Commission decided to no longer record the audio of Interpreter Commission meetings or the meetings of its committees. |

| Action Items | |
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| AOC Staff – Look into planning a strategic retreat. Judge Bradley and Ms. Jennings can help find a facilitator. | <i>Future Action</i> |
| Issues Committee – Look at ODHH request regarding discipline | <i>Completed</i> |
| AOC Staff – Look into the Evidence Code changes made in California in regards to their LAP | <i>Future Action</i> |
| AOC Staff – Contact California and Ohio regarding how often their appellate courts use interpreters. | <i>Future Action</i> |
| AOC Staff – Work with Ms. Farley regarding outreach for the Skagit County public forum. | <i>Completed</i> |
| Mr. Mattix and Ms. Jennings – Assist AOC staff in editing the annual report. | <i>Future Action</i> |
| Issues Committee/AOC staff – Edit the interpreter complaint form with the suggestions from the meeting. | <i>Completed</i> |
| AOC Staff – Include language regarding a court not following their LAP on the court services complaint form. | <i>Future Action</i> |
| AOC Staff – After the complaints forms have been approved, send out the courts via the list serves | <i>Future Action</i> |
| Mr. Mattix – Finalize CEU category examples based on meeting discussion. | <i>Completed</i> |
| Judge Beall – Provide input from the Commission with the DMCJA regarding rules changes to GR 11.3 | <i>Completed</i> |

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| <i>Ms. Cruz</i> – Share the resources that were developed for ASL VRI with the Commission | <i>Completed</i> |
| <i>AOC Staff</i> – Set up call with Stratus Video and some Commission members to discuss the VRI pilot project. Interested Commission members submit questions and topics to AOC staff prior to teleconference. | <i>Completed</i> |