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February 22, 2022

VIA EMAIL

Honorable Charles W. Johnson
Honorable Mary I. Yu
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

RE: Comment on Proposed Amendments to GR 11.3

Dear Justice Johnson, Justice Yu, and Rules Committee Members:

The District and Municipal Court Judges' Association (DMCJA) respectfully opposes the current version of GR 11.3 and the amendments proposed by the Supreme Court Interpreter Commission. GR 11.3 in its current form and the proposed amendments are unworkable for Courts of Limited Jurisdiction and should be re-written. The DMCJA's objections regarding the current version of GR 11.3 and the proposed amendments are set forth below. For the Court's convenience, the DMCJA has provided a new version of GR 11.3 that balances the interests of litigants, interpreters, and trial courts, which is discussed below.

Both proposals address the following issues:

(a) When may the interpreter appear remotely?

1. Interpreter Commission Proposal:

(a) 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.

2. DMCJA Proposal:

(a) Interpreters may appear remotely unless a court order or local rule requires an in-person appearance.

Subsection (a) of GR 11.3 attempts to identify when the interpreter may appear remotely and when they must appear in-person. Under the amended section, interpreters must appear in person for evidentiary hearings, but may otherwise appear remotely. This distinction is completely unworkable for courts of limited jurisdiction.

In order for the interpretation process to be effective, the interpreter and the person using interpreter services should be using the same medium – either both in person or both remote. This proposal seems to be based upon a premise that the person needing interpreter services will always appear in person for evidentiary proceedings, and thus focuses on the location of the interpreter without any regard for how the person using interpreter services is appearing.

Additionally, the proposal draws a distinction between evidentiary and non-evidentiary that is nebulous. For example, many courts allow remote appearances for contested traffic hearings. These are evidentiary proceedings and the rules of evidence apply. For these hearings, having the interpreter appear remotely is the most efficient use of court resources as most defendants appear remotely as well. Protection order hearings, including the temporary order hearing, are also evidentiary proceedings in which statutes encourage the use of remote appearances. Again, the most efficient use of court resources and effective interpretation occur when the interpreter appears remotely if the defendant is appearing remotely.

An additional concern raised by this approach is scheduling interpreters. Court staff are generally responsible for scheduling interpreters. They may not know whether a specific hearing is an evidentiary hearing or not. Also, a hearing may become ‘evidentiary’ at any point, another point that makes this distinction unworkable in practice.

Courts must have the ability to determine when in-person interpreters are required. The rule also needs to allow flexibility for the needs of individual courts and for individual cases within those courts. The DMCJA has proposed language that would allow individual courts to establish when in-person interpreters are needed. Those decisions could apply to classes of cases or in specific circumstances.

There are several benefits to the DMCJA proposal. Individual courts are in the best position to know when in-person interpretation is necessary. Courts would be able to identify classes of cases, by order or by local rule, that require in-person interpreters. Individual courts are also in the best position to know whether the person needing interpreter services will be appearing in-person or remotely. That allows the court to better match in-person appearances with an in-person interpreter.

(b) A recitation of requirements for interpreters.

1. Interpreter Commission Proposal:

(b) Chapters 2.42 and 2.43 RCW and GR 11.2 must be followed regarding the interpreter's qualifications and Code of Professional Responsibility for Judiciary Interpreters.

2. DMCJA Proposal:

Deleted.

This subsection is not necessary. Those statutes and the rule apply to all proceedings involving an interpreter.

(c) Technology standards.

1. Interpreter Commission Proposal:

(c) In all remote interpreting court events, both the LEP individual and the interpreter must have clear audio of all participants throughout the hearing. In video remote court events, the person with hearing loss and the interpreter must also have a clear video image of all participants throughout the hearing.

2. DMCJA Proposal:

Courts should use technology that provides clear audio and video, where applicable, to all participants. The court shall make a preliminary determination on the record, including testimony of the person utilizing the interpreter services, of the person's ability to participate through remote interpretation services.

Subsection (c) outlines a requirement for quality of audio and video transmission, but could be worded more clearly. The court has no control over the devices used by persons appearing remotely or any control over the quality of internet access. This version of the rule outlines the court's responsibility regarding its own technology.

(d) Unnecessary language.

1. Interpreter Commission Proposal:

(d) If the telephonic or video technology does not allow simultaneous interpreting, the hearing shall be conducted to allow consecutive interpretation of all statements.

2. DMCJA Proposal:

Deleted

This subsection is not needed as part of the rule.

(e) Confidential Communications.

1. Interpreter Commission Proposal:

(e) The court must provide a means for confidential attorney-client communications during hearings, and allow for these communications to be interpreted confidentially.

2. DMCJA Proposal:

No suggested changes.

(f) Who provides documents to the interpreter?

1. Interpreter Commission Proposal:

(f) To ensure accuracy of the record, where practicable, courts should provide the following to the interpreter, electronically or by other means, in advance of the hearing, allowing the interpreter sufficient time to review the information and prepare for the hearing:

(i) Case information and documents pertaining to the hearing.

(ii) Names and spellings of all participants in the hearing to include but not limited to: litigants, judge, attorneys, and witnesses.

(iii) Evidence related to the hearing, to include but not limited to: documents, photographs and images, audio and video recordings and any transcription or translations of such materials.

2. DMCJA Proposal:

The parties may provide the following to the interpreter, electronically or by other means, in advance of the hearing, allowing the interpreter sufficient time to review the information and prepare for the hearing:

(i) Case information and documents pertaining to the hearing.

(ii) Names and spellings of all participants in the hearing to include but not limited to: litigants, judge, attorneys, and witnesses.

(iii) Evidence related to the hearing, to include but not limited to: documents, photographs and images, audio and video recordings and any transcription or translations of such materials.

Subsection (f) provides that the Court should, where practicable, provide case information, names of participants, and copies of any evidence related to the hearing to the interpreter in advance of the hearing. However, CLJs seldom know the identity of the interpreter in sufficient time in advance of the hearing to send any information. Also, the court has no way to know what evidence will be used in any hearing in advance of the hearing.

If this obligation is imposed, the parties, not the court, are in the best position to know what evidence they will be submitting. The DMCJA proposal gives the parties the opportunity to submit materials to the interpreter in advance of the hearing. However, the parties face the

same challenge as the court in determining the identity of the interpreter in advance of the hearing.

It is also important to note that interpreters will generally be appearing in-person for hearings that require many of the documents identified in the rule to be provided in advance. The phrase 'To ensure accuracy of the record' was removed as unnecessary.

(g) Reading of Documents for Interpretation.

1. Interpreter Commission Proposal:

(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.

2. DMCJA Proposal:

No changes are suggested to Subsection (g).

(h) Audio Recordings of Interpretations.

1. Interpreter Commission Proposal:

(h) An audio recording shall be made of all statements made on the record during their interpretation, and the same shall be preserved. Upon the request of a party, the court may make and maintain 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.

2. DMCJA Proposal:

Upon the request of a party, the court may make and maintain 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-maintained in the same manner as other recordings of court proceedings.

The first line of Subsection (h) states that audio recordings shall be made of all statements on the record. This is unnecessarily repetitive as CLJs already have the obligation to make and preserve an audio recording of proceedings. ARLJ 13. The DMCJA recommends that the remainder of Subsection (h) be re-worded for clarity.

(i) Unnecessary Language.

1. Interpreter Commission Proposal:

(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 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.

2. DMCJA Proposal:

Delete

Subsection (i) is unnecessary. The language in this subsection is a recitation of requirements and parameters already set forth in GR 11.3.

(j) Comments.

The comments to the rules are not helpful. They are all unnecessary and should be deleted.

In sum, the DMCJA urges you to reject the amendments proposed by the Washington Interpreter Commission and instead accept the amendments as proposed herein by the DMCJA. Thank you for your consideration of this matter.

Sincerely,



Judge Charles D. Short
DMCJA President

Attachment: DMCJA Proposal to Amend CR 11.3 [redlined and clean versions]

cc: Judge Jeffrey Goodwin, DMCJA Rules Chair
Ms. J Benway, DMCJA Rules Staff

GR 11.3 - REMOTE INTERPRETATION - DMCJA Suggested Revisions to Existing Rule

~~(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 including testimony of the person utilizing the interpreter services, of such ability to participate and if not, the court must provide alternative access. Interpreters may appear remotely unless a court order or local rule requires an in-person appearance.~~

~~(b) Chapters 2.42 and 2.43 RCW and GR 11.2 must be followed regarding the interpreter's qualifications and code of professional responsibility for judiciary interpreters.~~

~~(c) In all remote interpreting court events, both the litigant and the interpreter must have clear audio of all participants throughout the hearing. In video remote court events, the and interpreter must also have a clear video image of the participants throughout the hearing. Courts should use technology that provides clear audio and video, where applicable, to all participants. The court shall make a preliminary determination on the record, including testimony of the person utilizing the interpreter services, of the person's ability to participate through remote interpretation services.~~

~~(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.~~

~~(f) To ensure accuracy of the record, the court and the parties should, where practicable, may provide the following to the interpreter, electronically or by other means, in advance of the hearing, allowing the interpreter sufficient time to review the information and prepare for the hearing:~~

~~(i) Case information and documents pertaining to the hearing.~~

~~(ii) Names and spellings of all participants in the hearing to include but not limited to: litigants, judge, attorneys, and witnesses.~~

~~(iii) Evidence related to the hearing, to include but not limited to: documents, photographs and images, audio and video recordings and any transcription or translations of such materials.~~

~~(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) An audio recording shall be made of all statements made on the record during their interpretation, and the same shall be preserved. Upon the request of a party, the court may make and maintain 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.~~

(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 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.

~~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-

-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 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 re-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.

[Adopted effective September 1, 1994; Amended effective September 1, 2005; December 29, 2020.]

GR 11.3 - REMOTE INTERPRETATION - DMCJA Suggested Revisions to Existing Rule

- (a) Interpreters may appear remotely unless a court order or local rule requires an in-person appearance.
- (b) Courts should use technology that provides clear audio and video, where applicable, to all participants. The court shall make a preliminary determination on the record, including testimony of the person utilizing the interpreter services, of the person's ability to participate through remote interpretation services.
- (c) The court must provide a means for confidential attorney-client communications during hearings and allow for these communications to be interpreted confidentially.
- (d) The parties may provide the following to the interpreter, electronically or by other means, in advance of the hearing, allowing the interpreter sufficient time to review the information and prepare for the hearing:
 - (i) Case information and documents pertaining to the hearing.
 - (ii) Names and spellings of all participants in the hearing to include but not limited to: litigants, judge, attorneys, and witnesses.
 - (iii) Evidence related to the hearing, to include but not limited to: documents, photographs and images, audio and video recordings and any transcription or translations of such materials.
- (e) 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.
- (f) Upon the request of a party, the court may make and maintain 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 maintained in the same manner as other recordings of court proceedings.

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Subject: FW: REVISED Comment Letter re CR 11.3 with attachments
Date: Monday, February 28, 2022 3:08:39 PM
Attachments: [DMCJA Cmt Ltr re GR 11.3 With Attachments.pdf](#)
[image001.png](#)

From: Dugas, Tracy
Sent: Monday, February 28, 2022 2:48 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: 'Charles D Short' <cshort@co.okanogan.wa.us>; 'Goodwin, Jeffrey' <Jeffrey.Goodwin@snoco.org>; Benway, Jennifer <Jennifer.Benway@courts.wa.gov>; Oyler, Stephanie <Stephanie.oyler@courts.wa.gov>
Subject: RE: REVISED Comment Letter re CR 11.3 with attachments

Greetings,

Please see the attached letter *revised with attachments* intended as comment on the proposed amendments to GR 11.3, sent on behalf of Judge Charles D. Short, DMCJA President.

Thank you,

Tracy Dugas (she/her)

Court Program Specialist | Office of Judicial and Legislative Relations

From: Dugas, Tracy
Sent: Tuesday, February 22, 2022 4:41 PM
To: OFFICE RECEPTIONIST, CLERK <[SUPREME@COURTS.WA.GOV](#)>
Cc: Charles D Short <[cshort@co.okanogan.wa.us](#)>; 'Goodwin, Jeffrey' <[Jeffrey.Goodwin@snoco.org](#)>; Benway, Jennifer <[Jennifer.Benway@courts.wa.gov](#)>; Oyler, Stephanie <[Stephanie.oyler@courts.wa.gov](#)>
Subject: Comment Letters re CR 11.3 and CrRLJ 3.3/3.4

Greetings,

Please see the attached letters intended as comment on the proposed amendments to GR 11.3 and additional comment on the proposed amendments to CrRLJ 3.4, sent on behalf of Judge Charles D. Short, DMCJA President.

Thank you,

Tracy Dugas (she/her)

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