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**Subject:** FW: Comment on Proposed amendments to GR 11.3(a)  
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**From:** Torres, Hugo [mailto:Hugo.Torres@kingcounty.gov]  
**Sent:** Thursday, February 3, 2022 1:49 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment on Proposed amendments to GR 11.3(a)

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I write to comment on the proposed changes to GR11.3(a). I am a Senior Deputy Prosecutor with the King County Prosecuting Attorney's Office, and a fluent Spanish speaker. My fluency in Spanish comes from my parents, who immigrated to this country and learned English as a second language. It is perhaps because of this background that I am more sensitive to court proceedings that involve interpreters, and to upholding the important role that interpreters have in ensuring that the justice system can be accessed equally by all people, regardless of English language fluency. Whenever I have cases with interpreters, either with victims/witnesses in the cases I manage, or with defendants that I have prosecuted, I am ever mindful that the individual(s) needing translation are in a position where they are reliant on a third party to convey the understanding necessary to meaningfully participate in a proceeding. The proposed change to GR11.3(a) concerns me because it transforms an important, connected relationship from being assumed to be in person, to instead becoming a detached, mechanical translation mechanism that defaults to a remote audio or audio-visual service.

As a prosecutor, I take seriously my obligations to ensure that legal processes are fair and transparent, and to respect and secure that a defendant's due process rights and presumption of innocence are maintained throughout a criminal proceeding. When I have dealt with defendants who need an interpreter, it is readily apparent that the role of an interpreter is key to ensuring that justice is fair in a criminal proceeding. Part of the role of an interpreter in a criminal proceeding is to be the voice and ears of a defendant, to provide a means of interacting with the justice system clearly and accurately. An in-person interpreter is often fundamental to accomplishing this ideal: they can develop a rapport with a defendant, they can engage in confidential back and forth on matters that need clarifying but do not need public expression, they can sense things in the courtroom that are often necessary to provide further context in the translated language.

Much of this is lost if translation is done remotely, especially if audio only, but even video severely

limits much of the context and relational cues that often cannot be replicated via remote means. My deepest concern is however the loss of trust and confidentiality that is often necessary in a criminal proceeding, where a translator serves not just as an intermediary between defendant and court, but also between defendant and their own counsel. If defendant has questions for their attorney in the middle of a plea hearing, must the defendant ask them in open court? In a sentencing, if a defendant has information they want their attorney to add, must they raise that in open court without the benefit of a private consultation?

Impromptu and confidential dialogue is often needed between defendants and their attorneys. This becomes logistically challenging when translation is done remotely, and even if confidential dialogue between counsel and client is achieved, it renders what should be a trusting relationship into one mediated electronically by a remote party. Remote interpretation, when done through audio technology, can also open up an unfair situation where attorneys like me, who speak the same language as a defendant and are in the room when translation is being broadcasted, can end up with a better understanding of what a defendant is saying/thinking than their own attorney will.

I do appreciate what the proposed change is trying to accomplish. In this time of COVID and remote appearances, we have seen that many court services can operate as efficiently via audio-visual means, and there are certainly hearings where this can continue to be the case, such as a scheduling hearing where defendant and counsel consulted ahead of time. But there are many non-evidentiary hearings, such as plea hearings and sentencings, where having an interpreter be there in person can be fundamental to ensuring the integrity of the proceeding and the confidence and full participation of a defendant.

I therefore urge a reconsideration of this rule change. Remote interpretation in a criminal proceeding should always remain at the discretion and assent of the party being translated for. That a hearing is non-evidentiary does not render it less meaningful or important for the person being subjected to the justice system.

Hugo Torres  
King County Senior Deputy Prosecutor  
Economic Crimes Unit