



**Department of
PUBLIC DEFENSE**

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Director**

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February 25, 2022

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 Opposing Proposed Changes to GR 11.3

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

The King County Department of Public Defense submits this comment in strong opposition to the proposed amendment to GR 11.3, which effectively repeals the rule as it currently exists and permits remote interpretation in critical hearings, including arraignments and guilty pleas.

The rules establishing procedures for court interpreters are intended “to place limited English proficient individuals on an equal linguistic footing with those who are fully proficient in English.” GR 11.2(f)(1) comment (1)[1]. The Committee should reject the proposed rule, which is a full and unwarranted retreat from that minimum protection for limited English proficient (LEP) individuals. While there may be unavoidable or unforeseeable circumstances making in-person interpretation of a particular hearing impossible or impracticable, courts must prioritize in-person interpretation and when in-person interpretation is impracticable explain the reasons for the impracticability on the record.

As public defenders working in court we have seen and felt the very real limitations of remote interpretation and how it diminishes the ability of people to consult with their attorneys before, during and after their court hearing. It is common for short conversations between counsel and client to take place in the course of a hearing. Those fluent in English and those with an interpreter present in-person may have these short clarifying conversations in real time without interruption to the hearing, or by stepping aside momentarily with little disruption. When interpreters appear by phone or video conference, by contrast, these short conferences can only occur if the court stops the hearing, sets up a breakout room, and has defense counsel and their client leave the courtroom to join the breakout room for a private conference. These short discussions between client and counsel as facts and arguments emerge are often critical, and requiring the defense to call the entire proceeding to a halt for contemporaneous attorney-client conversation, as remote interpretation necessarily does, unquestionably chills that dialogue and limits a person’s access to counsel, solely

because of the language they speak. In addition, halting the proceedings to allow for private communication causes hearings to run longer, and further clogs busy court calendars.

Remote interpreters often do not have easy or immediate access to documents that are being discussed on the record, such as no-contact orders, conditions of release paperwork, or sentencing documents. Those documents generally contain information related to prohibitions or obligations for our clients, not all of which are discussed verbally in court. This often leaves remote interpreters in a situation of summarizing what the parties are saying about those documents on the record, but not actually translating the full English document to the client at the time of the hearing. Even if the interpreter is able to communicate with the client after the hearing, the need to read the document to the interpreter, who then interprets it, causes delays that may prevent defense attorneys from handling a busy calendar (whereas, when the interpreter is in person, the interpreter can read directly from the document).

Finally, in-person interpretation ensures that counsel and their incarcerated clients can confer before and/or after a hearing. Remote interpretation makes this impossible because these discussions often take place in secured areas adjacent to the courtroom, where interpreters appearing in-person are able to accompany the lawyer and communicate easily. However, the physical infrastructure of many of these areas—often wired phones through thick-paned glass, surrounded by concrete—makes it impossible for clients to hear or understand interpreters speaking through a telephone or computer speaker. In addition, the internet connection can be inconsistent. These are indispensable discussions, requiring the attorney to explain the often complicated and emotional hearing just ahead or just concluded, review complex court documents involving nuanced legal questions, explain the court's rulings and the client's attendant legal obligations, and field all manner of questions from the client. What's more, remote interpretation (both during the actual court hearing and outside the actual hearing), can be very challenging for those who are hard of hearing, since the audio quality for remote interpretation is inferior to what is possible in person (where accommodations can be made including assistive listening devices, standing closer to the person, etc).

Because the proposed amendments will make attorney-client communication more difficult for LEP individuals without any finding of good cause to justify that limitation, DPD urges the Court to reject the proposed rule changes and maintain GR 11.3 in its current form.

Sincerely,

/s/Katherine Hurley

Katherine Hurley
Special Counsel for Criminal Practice and Policy

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Hello,

Attached please find a Comment from the King County Department of Public Defense Opposing Proposed Changes to GR 11.3.

Thank you,
Katie

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