

April 24, 2024

Justices of the Washington Supreme Court
P.O. Box 40929
Olympia, Washington 98504-0929

VIA E-MAIL: supreme@courts.wa.gov

RE: Proposed Amendment to General Rule 11.3

Dear Justice Yu,

Limited English Proficient (LEP) individuals have a constitutional right to understand and participate in their cases to the same degree as individuals whose primary language is English. We oppose the proposed changes to GR 11.3 that would permit interpreters to appear remotely, even in evidentiary hearings and trials in criminal cases.

The Task Force on Race and Washington's Criminal Justice System, or Task Force 2.0, developed proposed recommendations to address racial disparities in multiple topic areas, including language access. Their report, *Race and Washington's Criminal Justice System: 2022 Recommendations to Criminal Justice Stakeholders in Washington*, stresses the importance of in-person interpretation for LEP individuals who physically appear in court:

Courts should ensure that LEP individuals have access to in-person, rather than remote, interpretation in criminal proceedings, to allow for consultation with attorneys before, after, or during the hearing, to ensure that interpreters have access to relevant documents, and to ensure that the full context of the hearing is conveyed to the LEP individual.

Race and Washington's Criminal Justice System, pp.27-28.

The reasons the report cites for favoring in-person interpretation remain true. Attorneys must be able to speak with LEP individuals before, during, and after hearings to discuss new information, explain the hearing, and arrange for follow up meetings. Interpreters' access to documents introduced or produced at hearings is equally important, as

they need to convey what the documents say. Finally, evidentiary court hearings and trials involve complex information that may be unfamiliar to the accused. Interpreters must be present in court to convey the full context of an evidentiary hearing or trial.

The proposed changes would let courts refuse to provide in-person interpretation at an evidentiary hearing or trial based only on a finding of good cause, untethered to any qualifier. This Court should make clear that in person interpretation is the primary and preferred method, as stated in the first comment to the current rule. We do not object to clarifying that interpretation can occur remotely for non-evidentiary hearings, but we oppose other proposed changes to the rule. We ask that the Court alter GR 11.3 to read:

(a) In-person interpreting services are the primary and preferred way of providing interpreter services for legal proceedings. Interpreters may be appointed to provide interpretation via remote means ~~audio only or audiovisual communication platforms~~ for nonevidentiary 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.

Thank you for your time and attention.

Sincerely,

Civil Survival

King County Department of Public Defense

Jason Schwarz, Director

Snohomish County Office of Public Defense

Kathleen Kyle, Executive Director
Snohomish County Public Defender Association

Magda Baker, Director of Legal Services
Washington Defender Association

Washington State Office of Public Defense

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Civil Survival, King County Department of Public Defense, Snohomish County Office of Public Defense, Snohomish County Public Defender Association, Washington Defender Association, and Washington State Office of Public Defense submit the attached comment regarding proposed GR 11.3.

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