

Washington State Supreme Court Interpreter and Language Access Commission

COMMISSION MEMBERS

Honorable J. Michael Diaz, Chair
WA Court of Appeals, Division One

Honorable Edirin Okoloko
Superior Court Judges Representative

Honorable G. Helen Whitener
Appellate Court Representative

Honorable Lloyd Oaks
District and Municipal Court
Judges Representative

Ashley Callan
Superior Court
Administrators Representative

Annalisa Mai
District and Municipal Court
Administrators Representative

Jeanne Englert
Administrative Office of the Courts
Representative

Iratxe Cardwell
Interpreter Representative

Diana Noman
Interpreter Representative

Donna Walker
American Sign Language
Interpreter Representative

Kristi Cruz
Attorney Representative

Michelle Hunsinger de Inciso
Public Member Representative

Florence Adeyemi
Public Member Representative

Vacant
Public Defender Representative

Anita Ahumada
Community Member Representative

Naoko Inoue Shatz
Ethnic Organization Representative

Luisa Gracia
Translation Services Representative

David Poland
Deaf Community Representative

John Plecher
Certified Deaf Interpreter Representative

April 26, 2024

TO: Supreme Court Rules Committee

FROM: Interpreter and Language Access Commission (ILAC)

RE: Comment on Proposed Changes to GR 11.3

Dear Justice Yu and Rules Committee Members,

The Interpreter and Language Access Commission (ILAC) has serious concerns about the proposed changes to GR 11.3. The proposed changes include some minor modifications to the language that would be acceptable. However, ILAC believes that the rule would result in less judicial oversight over the accessibility of important civil proceedings for individuals who are limited English proficient (LEP) or deaf or hard of hearing (DHH). Thus, ILAC does not support the proposal.

By way of background, in December 2020, our Supreme Court modified GR 11.3 to permit broader types of remote interpretation, which had been limited to telephone interpreting and to non-evidentiary hearings. The COVID-19 pandemic prompted that rule change as our courts were starting to use video interpretation in all types of hearings. Our Supreme Court enacted that rule change without comment. Remote interpretation continued to be limited to non-evidentiary hearings.

Then, in October 2021, ILAC submitted a proposal to amend GR 11.3 further. Namely, ILAC sought to expand the use of remote interpretation *to evidentiary hearings*, with procedural safeguards designed to ensure that persons who are LEP or DHH were able to meaningfully participate in such hearings, even when using this relatively new medium. Our Supreme Court received input from various organizations, which may be found here: [Comments for GR 11.3 - Remote Interpretation](#).

In response, the ILAC convened a workgroup to address the concerns of those various stakeholders, some of whom thought the rule was too permissive, some of whom thought the rule did not go far enough in permitting courts freely to use remote

interpretation. As we explained to our Supreme Court in the spring of 2022, the ILAC's proposed rule was a product of compromise, seeking to balance the interests of the courts, court users who are LEP or DHH, advocates, interpreters, and other stakeholders. Our Supreme Court passed the rule change, making it effective in November 2022.

With that background, we wish to provide the following comments regarding the proposed rule amendment:

- We agree that remote interpreting is a valuable tool in the delivery of language services. Remote interpretation is particularly necessary in counties where there is no credentialed language interpreter available or willing to appear in person, and in all counties for those languages of lesser diffusion. Thus, the rule already envisions and allows for remote interpretation in all types of hearings in all types of cases. And the rule requires additional procedural safeguards in the form of individualized judicial oversight *only for evidentiary hearings*, where the rule has long counseled caution. GR 11.3(a).

In such evidentiary hearings, the rule requires that a court who wishes to appoint a remote interpreter (1) to make a good cause finding that an in-person interpreter is not “practicable” and (2) to 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. Id. There is no challenge to the remainder of GR 11.3(b) through (i), which provide additional safeguards to effectuate the protections of GR 11.3(a).

Since the rule was enacted, ILAC has not received notice of any operational or other concerns from any stakeholders about understanding or making the two findings required by GR 11.3(a).

In summary, we believe GR 11.3 already grants the courts the technological flexibility they need to efficiently dispense justice, while ensuring that procedural safeguards are in place for a subset of particularly important hearings, namely evidentiary hearings. And there is no claim or evidence before you that it is impractical for a court to make those two relatively simple findings prior to appointing a remote interpreter. On the contrary, the proposal maintains the good cause standard for criminal cases and a version of the second finding.

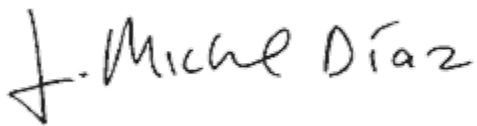
Thus, the proposed amendment is unnecessary and, crucially, persons who are LEP or DHH would lose the protection of having a judge pause and individually decide whether a remote interpreter was appropriate in certain important cases, described below.

- If the proposed amendment is adopted as presented, we are concerned that, as a matter of practice, remote interpretation in many types of important civil matters will proceed remotely “automatically” without due regard to the unique needs of persons who are LEP or DHH. Civil matters include protection order hearings and involuntary treatment act matters, where a person who is LEP or DHH may be at their most vulnerable. While the proposed rule may reflect the current reality that some civil matters are conducted remotely without a finding of good cause, that fact may mean only that more guidance and training is required, not that these sound procedural bulwarks should be lowered.
- We believe additional study would be warranted before amending the rule again. As we have discussed, the most impacted stakeholder is the LEP or deaf individual, whose views no one has solicited since the 2022 amendment. We do not know whether remote interpretation is working effectively for those members of our community. ILAC would be happy to work with the Washington State Center for Court Research, BJA Task Force or any other stakeholder to study these issues, solicit additional feedback, and continue to provide guidance and training to our state judiciary as needed.

We believe, at this time, the rule, as written, adequately balances the interests of all stakeholders. Thus, ILAC urges the to Court to reject the proposed changes, which are more specifically addressed in the comments below.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "J. Michael Diaz". The signature is written in a cursive, flowing style.

J. Michael Diaz
Judge, Washington State Court of Appeals – Division I
Chair, Interpreter and Language Access Commission

Comments regarding specific language changes:

(a) Interpreters may be appointed to provide interpretation via remote means only or audiovisual communication platforms for ~~nonevidentiary~~ all noncriminal proceedings and those criminal proceedings in which good cause is shown. ~~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, and shall inquire on the record to ensure the ability of the interpreter and the person utilizing the services of the interpreter to clearly communicate with each other. ~~of the person's ability to participate via remote interpretation services.~~

ILAC comments as to:

- 1) Sentence one: Accept revision in the first sentence to replace “audio only or audiovisual communication platforms” with “remote means.”

This change helps with clarity and applies plain language principles.

- 2) Sentence one: Reject revisions striking “non-evidentiary” and replacing it with “all non-criminal proceedings and those criminal proceedings in which good cause is shown.”
- 3) Sentence two: Reject deletion of “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.”

As the rule has long been written, ILAC believes the important distinction is between evidentiary and non-evidentiary hearings, not between civil and criminal matters. Therefore, this change is not needed.

- 4) Final sentence: Combine the current rule with some of the proposed language from the proposal. We propose that the final sentence should read, “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 ability of the interpreter and the person utilizing the services of the interpreter to clearly communicate with each other.”

Summary of ILAC counter-proposal:

- (a) Interpreters may be appointed to provide interpretation via remote means 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 ability of the interpreter and the person utilizing the services of the interpreter to clearly communicate with each other.”