



Northwest Justice Project

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César E. Torres
Executive Director

April 26, 2024

Honorable Charles W. Johnson, Chair
Honorable Mary I. Yu, Chair
Washington State Supreme Court Rules Committee
Temple of Justice
P.O. Box 40929
Olympia, WA 98504 - 0929

VIA Email: supreme@courts.wa.gov

Re: Proposed Amendment to General Rule 11.3

Dear Justice Johnson and Justice Yu:

I write on behalf of the Northwest Justice Project (NJP), a statewide law firm that each year provides critical civil legal assistance and representation to thousands of low-income people in cases affecting basic human needs such as family safety and security, housing preservation, protection of income, access to health care, education, and other civil matters. NJP provides services to a diverse population, including individuals who speak languages other than English, individuals with disabilities, and individuals who identify as lesbian, gay, bisexual, transgender, queer, nonbinary, or gender diverse (LGBTQI+). Our legal aid delivery model consists of a wide range of services including representation, unbundled services, and pro se assistance. A significant percentage of our clients are limited-English proficient (LEP) or Deaf and use interpreter services during their interactions with courts. In addition, many of these individuals are low-income and have limited access to technology.

NJP opposes the proposed changes to GR 11.3(a), Remote Interpretation, as proposed by the BJA's Remote Proceedings Task Force because it is not necessary. The rule already allows for remote interpretation in all types of cases and all types of proceedings, so long as the court finds good cause to use remote interpretation in evidentiary proceedings. No such analysis is required for non-evidentiary proceedings. The proposed rule change under consideration seeks to create different standards for remote interpreting between criminal and civil matters and would remove the requirement for courts to conduct a good cause inquiry when using remote interpreter services in all civil matters, including civil evidentiary

proceedings. We believe the appropriate distinction is between evidentiary and non-evidentiary proceedings and not between civil and criminal proceedings. We strongly believe that the good cause inquiry is the necessary safeguard to ensure that LEP and Deaf individuals have the ability to fully participate in the legal process free of language barriers.

GR 11.3 (a) has long cautioned against the use of remote interpretation in evidentiary proceedings. Prior to 2020, Washington courts were prohibited from using remote interpretation for evidentiary proceedings, per GR 11.3. This court expanded the use of remote interpretation in 2020 and 2022, in part in response to the COVID-19 pandemic and the need for courts to operate remotely, where possible. NJP supported that expansion because we recognize the value of remote interpreting, including for languages of lesser diffusion, for the efficiency of interpreters and litigants to appear remotely, and for rural areas of the state where access to court-credentialed language interpreters is limited. However, our support was and continues to be dependent upon the safeguard of the good cause inquiry and finding for both civil and criminal proceedings.

GR 11.3 (a) has long recognized the difference between evidentiary and non-evidentiary proceedings and rightly so has applied a higher standard for the use of remote interpreting in evidentiary hearings. As proposed, the rule would draw the distinction not between evidentiary and non-evidentiary proceedings, but between criminal and civil matters. It would allow the use of remote interpreting for all civil matters without any inquiry into its appropriateness. We are concerned that remote interpretation in civil matters such as protection order hearings, dissolution trials, unlawful detainer actions, and involuntary treatment act matters, will proceed without due regard to the necessary legal and procedural safeguards.

GR 11.3 does not require that all proceedings, whether evidentiary or not, be in person when an interpreter is needed. We recognize that in many cases LEP and Deaf litigants may prefer for the proceedings to be conducted remotely. We also recognize that there are many languages for which having an in-person interpreter is not possible. As currently written, GR 11.3 (a) gives courts the ability to make a good cause finding in these and other situations to use remote interpreting.

While the proposed rule may reflect the current reality that some courts are conducting civil evidentiary proceedings remotely without a finding of good cause, that fact may mean only that more education about what the rule requires is needed, not that legal and procedural safeguards should be lowered. Prior to expanding its use even further, the next step may be to assess the effectiveness of those services from the point of view of LEP and Deaf litigants, having just expanded the use of remote interpreting in 2022.

GR 11.3 (a), as currently written, already allows remote interpretation in all types of cases and in all types of proceedings. We believe the appropriate safeguard is maintaining the good cause finding that gives flexibility to courts, litigants, and interpreters while providing protections for those LEP and Deaf individuals for whom remote interpreting doesn't provide equal access. Therefore, we ask the court to reject the proposed changes to GR 11.3 (a).

Thank you for your consideration of our comments and for your leadership in promoting access to justice for LEP and Deaf Washingtonians.

Respectfully submitted,

Northwest Justice Project

A handwritten signature in black ink, appearing to read "César", with a long, sweeping horizontal line extending to the right.

César E. Torres
Executive Director