

Guidance Memorandum-UPDATED

To: Court Presiding Judges
Court Administrators
Court Interpreter Coordinators

From: Supreme Court Interpreter Commission

RE: Provision of Court Interpreting Services During Public Health Emergencies

Date: April 27, 2020

This updated advisory is being furnished because of recent Supreme Court Orders regarding the provision of interpreter services for Limited English Proficient (LEP) parties and those who use signed languages for their court proceedings during this public health emergency. To ensure that best practices are utilized when interpreters are used for court hearings that are being held, the Supreme Court Interpreter Commission and AOC Court Interpreter Program offers the following guidance:

- 1) Basic Requirement:** As a result of the risk of contagion from exposure to the COVID -19 virus, the recommendation from the Commission is for the provision of interpreting by remote means whenever possible in accordance with Supreme Court Revised and Extended Order Regarding Court Operations No. 25700-B-615.
- 2) Remote Interpreting Appointment Requirement** Courts must continue to observe the interpreter appointment requirements of RCW 2.42 and RCW 2.43 and make every reasonable attempt to secure the in-person services of AOC-credentialed certified and registered language interpreters and those sign language interpreters listed on the Office of Deaf and Hard of Hearing's (ODHH) approved court interpreter registry.
See RCW 2.42: <https://apps.leg.wa.gov/RCW/default.aspx?cite=2.42>;
RCW 2.43: <https://app.leg.wa.gov/RCW/default.aspx?cite=2.43>
AOC Credentialed Interpreters: http://www.courts.wa.gov/programs_orgs/pos_interpret/
ODHH Court Interpreter Registry: <https://www.dshs.wa.gov/altsa/odhh/certified-court-interpreters>
- 3) Safe Distancing Using Assistive Listening Systems:** If the interpreter is willing to appear in-person, but with social distancing restrictions, the court can offer the in-person interpreter the use of assistive listening systems with wearable/disposable headsets, transmitters, and microphone units made available to the LEP party and spoken-language interpreter. ASL interpreters willing to appear in person should be allowed a working space safely distanced from other individuals in the courtroom but which allows a clear view between the deaf party and interpreter. For information on using assistive listening equipment for interpreting purposes, the AOC Court Interpreter Program can provide additional information. Please contact Robert Lichtenberg at Robert.Lichtenberg@courts.wa.gov for links to resources.
- 4) Remote Telephonic Interpreting Guideline:** Pursuant to Supreme Court Amended Order No. 25700-B-607, courts are given discretion to suspend court rules as necessary to conduct court operations. Courts thus may suspend restrictions on the use of remote telephonic interpreting

provided in GR 11.3 unless doing so could violate constitutional protections. **See GR 11.3:** http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&ruleid=gagr11.3.

Telephonic Interpreting Best Practices can be found here:

<https://www.courts.wa.gov/content/publicUpload/Interpreters/Telefone%20Interpreting%20-%20Best%20Practices.pdf>

- 4) **Remote Video Interpreting:** For courts that have the capability to provide remote video interpreting services, the National Center for State Courts has several links to best practices and solutions for providing language access using remote technologies. One can find them here: <https://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/VRI/Interpreter-Support.aspx>

If a language interpreter is appearing via video, the court must ensure that the video capabilities enable the interpreter every opportunity to provide an accurate interpretation of evidentiary information. If necessary, the court should attempt to make arrangements with individual interpreters and parties for remote appearances using commercially available video platforms, with clear audio and video capabilities for the interpreter. Ideal video-based participation platforms enable multiple remote parties to be visible to one another simultaneously.

- 5) **Just Cause Finding for Non-Credentialed Interpreters Appearing Remotely:** The court must make a just cause finding for appointing an interpreter who is not AOC or ODHH-credentialed and this applies to remote interpreters who are not AOC credentialed. The court shall take measures to qualify the non-credentialed interpreter on the record employing appropriate *voir dire* questions to determine the interpreter's qualifications and suitability to interpret, just as if the interpreter were in court providing in-person interpreting services. This includes ensuring the interpreter is familiar with the Code of Professional Conduct for Judiciary Interpreters, GR 11.2.
- 6) **Interpreting Evidentiary Proceedings:** In the event an evidentiary issue in a case requiring an interpreter is presented to the court, and it is not necessary to proceed immediately, the court may reschedule the hearing.
- a. **Restriction against Telephonic Interpreting:** Where the nature of the evidentiary matters being present to the court do not require visual inspection or review of offered evidence by the remote interpreter, the court should make a finding that it suspends the restriction against telephonic interpreting for evidentiary matters only after both sides to the proceeding have agreed AND the interpreter has been consulted as to whether they will be able to accurately interpret further without visual or auditory access to the evidence being reviewed or presented. Extra care should be used when interpreters are asked to remotely interpret audio recordings offered to the court.
 - b. **Evidentiary proceedings via video:** The court shall make every effort to give the interpreter control over the viewing of the evidence and to ask clarifying questions to the court about the item offered prior to interpreting further. If the interpreter cannot see the item, a visual description should be provided by counsel offering it. Judges should judiciously monitor the effectiveness of the interpretation provided in those instances.

- 7) **Attorney and Client Confidentiality:** Courts shall ensure interpreters are available via video or telephone connection for confidential communications between defendants & their attorneys attending court proceedings.

If you need additional information or guidance on requirements and best practices for providing essential language access services during this difficult time, please contact Bob Lichtenberg at Robert.Lichtenberg@courts.wa.gov.