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Dear Ms. Haines, Esq.:

PROPOSED CHANGES TO COURT RULE 1-333(c)(4)

We, the National Association of Judiciary Interpreters and Translators (NAJIT), the American Translators Association (ATA), Virginia Legal Interpreters Association (VALIA), the American Alliance of Professional Translators and Interpreters (APPTI), the Registry of Interpreters for the Deaf, Inc., and the Association of Language Companies (ALC) write to express our concerns regarding proposed Rule 1-333(c)(4) which the Standing Committee on Rules of Practice and Procedure submitted in its Two Hundred and Twenty-Third Report to the Supreme Court of Maryland on July 18, 2024.

Rule 1-333(c)(4) under Category Three, prescribes circumstances the court shall consider with regard to appointing more than one interpreter in a proceeding. The proposed changes to Rule 1-333(c)(4) increase the time threshold to appoint more than one interpreter from three to four hours. The evidentiary basis supporting this proposal is unknown. Under the proposed rule, a sole interpreter may be deemed sufficient in proceedings lasting up to four hours.

Interpreters, as officers of the court, are an integral part of ensuring that justice is dispensed fairly, efficiently, and accurately. The proposed new threshold of four hours for one interpreter to work independently exceeds established industry standards, increasing the risk of compromising language access and non-compliance with the Maryland Code of Conduct for Court Interpreters. The proposed amendments may also place state courts in violation of long-standing civil rights requirements.

Interpreters working alone for prolonged periods are prone to making mistakes that may adversely affect the prospect of a fair trial. Moser-Mercer et al.'s landmark experimental study, "Prolonged turns in interpreting: Effects on quality, physiological and psychological stress" (1998), found:

Interpreters working for longer than approx. 30 minutes, the recommended turn time in simultaneous interpreting under standard working conditions, risk a decline in quality of output, which appears to be due to a combination of psychological and physiological factors.¹

This “decline in quality of output” is largely due to the cognitively taxing nature of interpreting, especially in simultaneous mode. Renowned scholar and linguist Daniel Gile affirms that “there is an intrinsic difficulty in interpreting, which lies in the cognitive tasks involved.”² Gile observes that during a lengthy interpretation session, the brain’s ability to evaluate its output becomes impaired, and errors increase. In short, the longer an interpreter works without a break, the greater the probability of mistakes in the interpretation.

Professional standards allow interpreters to request breaks during proceedings to avoid the cognitive fatigue that can impact the accuracy of their interpretation. Indeed, Canon 8 of Maryland’s Court Interpreter Handbook states: “Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.”³ However, when a single interpreter is hired for a four-hour hearing, as in the proposed changes to Rule 1-333(c)(4), this means that they will need to request a break from the court approximately every thirty minutes to comply with their duty to interpret accurately, significantly prolonging the time that a case will take on the docket, interrupting the flow of arguments or testimony, and generally inconveniencing the court. Interpreters requesting breaks often face a great deal of pressure to take shorter breaks than they require to reduce this inconvenience, which does not solve the problem of fatigue-induced errors.

In order to mitigate the risk to accuracy and the impact on judicial efficiency, best practices recommend assigning a team of interpreters (usually two) to proceedings lasting over 30 minutes. NAJIT’s position paper, “Team Interpreting in Court-Related Proceedings,” states:

Team interpreting is recommended for all legal proceedings that may extend over a period of thirty minutes and fall outside the category of formulaic proceedings that generally follow a set and scripted order, such as arraignments, initial appearances, sentencings, and pleas.⁴

In nearby jurisdictions, state judiciaries have developed policies for team interpreting that illustrate how distant the proposed rule is from contemporary practice. Below is a sampling of safeguards put in place to preserve accuracy and prevent interpreter fatigue.

Virginia’s Language Access Plan Manual establishes that “[a]n interpreter’s role is physically and mentally taxing. Studies show that an interpreter’s performance deteriorates markedly between 30 and 45 minutes of continuous interpretation.... It is a best practice for simultaneous and consecutive language interpretation that two interpreters be assigned for events lasting longer than two hours.”⁵

The Code of the Commonwealth of Pennsylvania likewise requires a second interpreter for proceedings lasting over two hours: “The presiding judicial officer should appoint a team of interpreters...where a bench trial, jury trial, or other judicial proceeding is expected to last longer than two hours,” noting in the Code’s comments that “judicial officers should be aware that accuracy of interpretation can decline substantially after 30 minutes of continuous interpretation and should provide the interpreter with regular breaks accordingly.”⁶

Delaware’s Judiciary Language Access Plan does not specify the threshold at which the court should obtain a second interpreter. Still, it does require that the court “[p]rovide rest breaks as needed, since interpreter accuracy declines significantly after 30 minutes of continuous interpretation. Two interpreters are required for trials and longer proceedings.”⁷

The New Jersey Judiciary’s Language Access Plan calls for a team of two interpreters for proceedings lasting more than two hours and also provides for team interpreting “for proceedings projected to last two hours or less when they involve witness testimony, complex matters, indigenous languages, and/or multiple LEP participants.”⁸

In U.S. District Courts and in the District of Columbia, it is worth noting that the pay schedule for contract court interpreters is for half days and full days,^{9,10} similar to Maryland’s pay rate of 4 hours and 8 hours. However, their pay schedules do not impact team interpreting policy, two unrelated factors that seem to be conflated in Maryland’s Rule 1-333 proposal. Volume 5 of the United States Guide to Judiciary Policy, to which the D.C. courts also adhere, allows the presiding judge to “designate two or more interpreters to work as a team (recommended for trials or lengthy judicial proceedings),” listing the following proceedings as examples where a team of interpreters may be necessary: “trials and evidentiary hearings; legal arguments on motions; and sentencing hearings at which complex issues are argued.”¹¹

ASTM International, one of the world’s largest international standards-developing organizations, has published guidelines defining “the minimum professional standard for quality services in language interpreting” in their 2015 publication, “Standard Practice for Language Interpreting”:

*To reduce the risk of error resulting from fatigue, during lengthy assignments interpreters should work in teams and alternate at regular predetermined intervals. Interpreting is extremely mentally taxing because the interpreter is under pressure to preserve the form and full content of the source language message.*¹²

ASTM’s guidelines recommend two interpreters for consecutive interpretation assignments that are of a complex or technical nature, or if they last longer than two hours. For simultaneous interpretation assignments, they recommend two interpreters for assignments lasting longer than one hour.

NAJIT’s position paper concludes that, as officers of the court, interpreters have a sworn obligation to interpret accurately and completely to the best of their ability.

To meet this obligation, it is necessary to insist that proper working conditions be provided, thus making the use of team interpreting indispensable for longer proceedings.

Not doing so jeopardizes the ability of the interpreter to honor their commitment to work to the best of their ability and render an accurate, complete, and faithful interpretation. More importantly, due process cannot be guaranteed without team interpreting.⁴

For these reasons, we endorse team interpreting as the best practice to ensure the accuracy of interpretation in court, thereby safeguarding a defendant's right to be "linguistically present"¹³ at trial.

We respectfully recommend that Rule 1-333 be amended to uphold team interpreting as the standard practice for trials and lengthy hearings. As mentioned above, Delaware, D.C., and the federal courts endorse team interpreting without establishing threshold times beyond which a second interpreter must be sought. Should Maryland decide to retain a threshold time in Rule 1-333, and 30 minutes is considered not viable, we recommend one hour for simultaneous interpretation assignments and two hours for consecutive interpretation assignments, in keeping with the guidelines provided by ASTM. Our letter includes a detailed proposal outlining these recommended amendments and the rationale behind them, which we believe will enhance the accuracy and reliability of court interpretations, ultimately benefiting the judicial process.

Sincerely,

The National Association of Judiciary Interpreters and Translators (NAJIT) Board of Directors
The American Translators Association (ATA) Board of Directors
Virginia Legal Interpreters Association (VALIA) Board of Directors
The American Alliance of Professional Translators and Interpreters (AAPTI)
The Registry of Interpreters for the Deaf, Inc. (RID)
The Association of Language Companies (ALC)

References

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Proposed construction of Rule 1-333(c)(4)

To comply with US civil rights and language access policies, we propose the following construction of Maryland Court Rule 1-333(c)(4) be adopted:

(4) Multiple Interpreters in the Same Language

The court shall ensure a fair and just proceeding by obtaining more than one interpreter in the same language when:

- (A) the proceeding is expected to exceed two hours of consecutive interpreting;
- (B) the proceeding is expected to exceed one hour of simultaneous interpreting;
- (C) the proceeding includes complex issues and terminology or other such challenges; or
- (D) the court determines that more than one interpreter is necessary to ensure a fair and just proceeding.

Committee note: To ensure accurate interpretation, interpreters should be granted reasonable rest periods at frequent intervals.