



## The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness

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July 8, 2021

Geoff Moulton, Court Administrator of Pennsylvania  
Administrative Office of Pennsylvania Courts  
ATTN: Interpreter Regulation Comments  
601 Commonwealth Avenue  
P.O. Box 61260  
Suite 1500  
Harrisburg, PA 17106

Re: Comments on Proposed Interpreter Regulation Amendments to 204 Pa. Code Ch. 221

Dear Mr. Moulton,

We are writing today in response to the May 22, 2021 request from the Administrative Office of Pennsylvania Courts for comments on its proposed amendments to the Act 172 regulations for court interpreters. The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness (“Interbranch Commission”) thanks the AOPC for its willingness to meet with and listen to the concerns of interpreters. We also greatly appreciate the opportunity to offer comments on these critical regulations.

As you know, the Interbranch Commission was established in 2005 to implement the recommendations from the Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System (the “Report”), published in 2003 after three years of study.<sup>1</sup> The Report spans 550 pages and covers fourteen individual topics, including chapters on litigants with Limited English Proficiency and the intersection of racial and ethnic bias, among other topics.

As a consequence of the Report’s findings, the Interbranch Commission has focused at length on promoting the equal application of the law for all Pennsylvanians, including those who have Limited English Proficiency (“LEP”). These individuals are often immigrants who face linguistic and cultural barriers that may prevent their equal access to justice in our state courts. As the Report notes, “due process is a core value of the American judicial system” that becomes “jeopardized if

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<sup>1</sup> A copy of the report is available at [http://www.pa-interbranchcommission.com/\\_pdfs/FinalReport.pdf](http://www.pa-interbranchcommission.com/_pdfs/FinalReport.pdf).

litigants with limited English proficiency . . . are unable to have access to competent interpreters and other language assistance.”<sup>2</sup>

To better ensure the provision of due process for all Pennsylvanians, the Interbranch Commission played a key role in the passage of Act 172 of 2008, which established a certification system for court interpreters and mandated that interpreters be provided in certain court and administrative proceedings. Other past initiatives of the Commission include, among others, translating and publishing key court forms, conducting a study and producing a report on Interpretation and Translation Services in Commonwealth Administrative Agencies, and collaborating with Widener University’s Legal Education Institute to provide training for interpreters, judges, and attorneys on the proper use of interpreters in court and administrative proceedings. More recently, the Interbranch Commission’s Interpreter Services Committee has worked to facilitate meetings between interpreters and Osvaldo Aviles, AOPC’s Interpreter Program Administrator, so that the interpreters could share their concerns regarding the now-formally proposed changes to the regulations’ compensation schedule. Our comments that follow are informed by our own discussions with these interpreters, as well as by a perspective derived from years of studying and implementing changes for LEP individuals and dedicated interpreters, whose efforts allow our justice system to effectively and fairly operate.

**1. The proposed changes to Schedule G should be amended to retain the two-hour minimum pay requirement for interpreters engaged in remote interpretation.**

Becoming a certified or “otherwise qualified” interpreter in Pennsylvania is a time-consuming and complicated task. While the requirements for these classifications vary slightly, prospective interpreters generally must fill out a registration form;<sup>3</sup> attend a multifaceted orientation workshop;<sup>4</sup> pass a multi-hour written exam;<sup>5</sup> successfully complete an oral proficiency exam;<sup>6</sup> undergo a criminal background check;<sup>7</sup> read through and agree to abide by the Pennsylvania Rules of Professional Conduct for Judicial Interpreters;<sup>8</sup> and pay fees and complete continuing education credits pursuant to certification renewal every two years.<sup>9</sup> Each of these tasks stands in addition to the years of practice interpreters must put into mastering the art of skillfully facilitating communication between individuals, who otherwise would have no means of being able to engage with one another.

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<sup>2</sup> Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System 18 (2003).

<sup>3</sup> 204 Pa. Code § 302 (2010).

<sup>4</sup> 204 Pa. Code § 303 (2010).

<sup>5</sup> 204 Pa. Code § 304(a) (2010).

<sup>6</sup> 204 Pa. Code § 304, Comment (b) (2010).

<sup>7</sup> 204 Pa. Code § 305 (2010).

<sup>8</sup> 204 Pa. Code § 307 (2010).

<sup>9</sup> 204 Pa. Code § 310 (2010).

Accordingly, like skilled individuals in other professions, interpreters should be able to expect a certain standard of compensation that is responsive to and respectful of the work they have put into developing their skills. This begins with amending the proposed regulations to replace the contemplated one-hour minimum pay requirement<sup>10</sup> with the existing two-hour requirement. This change would better memorialize an appreciation for the challenging work interpreters do - an appreciation whose importance the AOPC seems to acknowledge by retaining in its proposal the very same two-hour minimum pay requirement for *onsite* interpreting.<sup>11</sup> By raising the minimum compensation requirement to two hours for remote interpreting, the AOPC would achieve a sensibly uniform compensation arrangement. A two-hour minimum exists for onsite interpreting because interpreters rarely know how long onsite assignments will take and therefore deserve a standardized minimum to make the assignment worth their while. The same rationale applies to interpreters working remotely for the reasons set forth below.

The Interbranch Commission has yet to hear from any interpreters who have argued that certain facts exist to warrant a difference between remote and onsite compensation regimes. To the contrary, we have repeatedly heard that remote interpretation is in fact *more challenging* than its onsite counterpart. Remote work requires interpreters to establish and maintain a secure Internet connection, often using their own electricity, personal computer devices, and headsets. It also requires interpreters to locate a space that ensures their ability to hear and work effectively with LEP individuals remotely engaged in complex legal proceedings. Finally, like any other kind of remote communication, interpreting remotely makes it more challenging to establish a helpful rapport with clients whose trust and confidence in the judicial system hangs in the balance.

While the list goes on, the point remains: requiring interpreters to accept a pay cut for work that is *more challenging* than onsite interpretation is not the course of action our Commonwealth should commit itself to, and is inconsistent with its courts' admirable efforts over the last fifteen years to improve access to justice for all Pennsylvanians. Implicit in the adoption of new regulations is the assumption that certain practices are to be incentivized, while others are to be discouraged. The Interbranch Commission does not believe that we incentivize due process or attract more qualified interpreters to our judicial system by reducing a minimum pay requirement that interpreters justifiably relied upon while performing functions essential to the survival of our legal system, particularly during the current pandemic. What these amendments *will* incentivize is the opting out of remote interpretation by interpreters, which will damage meaningful language access in our courts by leaving less-qualified interpreters to perform the work. This not only harms individuals with limited English proficiency, but also the deaf, deafblind and the hard of hearing.

Equally as foreseeable are the costly appeals that will need to be litigated as a result of interpreter services declining in reliability. Such a decline also portends the burdensome litigation of claims

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<sup>10</sup> 51 Pa. Bull. 2792 (May 22, 2021) (“Schedule G. - Interpreting Fee Schedules - Remote Interpreting Fee Schedule”).

<sup>11</sup> 51 Pa. Bull. 2790 (May 22, 2021) (“Schedule G. - Interpreting Fee Schedules - Onsite Interpreting Fee Schedule”).

arising under Title VI. As you know, Title VI of the Civil Rights Act of 1964 prevents Pennsylvania courts and other entities that receive “Federal financial assistance” from discriminating against individuals on the basis of their race, color, or national origin.<sup>12</sup> Included in this prohibition on discrimination is the premise that recipients of federal aid must take steps *toward* ensuring LEP individuals equitable access to legal proceedings. Adopting regulations that have the effect of weakening access to the courts for these individuals comports with neither Title VI nor, in the case of audio- and visually-impaired individuals, with the Americans with Disabilities Act of 1990.

For these reasons, the Interbranch Commission strongly urges the AOPC to retract its proposed amendment reducing the minimum pay requirement for remote interpretation to one hour. The AOPC states in its Explanatory Report that the proposed regulations ensure that Pennsylvania “remains competitive” with surrounding states.<sup>13</sup> Indeed, we believe that rather than falling behind its neighboring states in compensating its court interpreters, Pennsylvania can become a leader in meaningfully recognizing interpreters for the work they put into their certifications, the skills they have been performing during an unprecedented era, and the talents with which they continue to enrich our judicial system.

**2. The proposed changes to Schedule G should be amended to retain the current regulations’ billing increments of 30 minutes.**

For reasons similar to those described above, the Interbranch Commission strongly urges the AOPC to retract the proposed amendment reducing remote interpretation billing increments after the one-hour minimum from 30 minutes to 15 minutes.<sup>14</sup>

As the Interbranch Commission analyzed this particular proposal, we were unable to identify any reason that necessitates its implementation. While the Explanatory Report states that “changes were developed with input received from rostered interpreters,” the interpreters and other stakeholders we have spoken to unanimously oppose this reduction.<sup>15</sup>

Again, this change appears to be steering our judicial system down the wrong path. It is neither responsible nor fair to force interpreters to leave money on the table for those unaccounted-for extra minutes during which they are executing services that require extensive certifications and that none of the rest of us would be able to perform. Paring back the compensatory expectations of interpreters will only encourage them to opt out of performing remote work, placing the integrity of language access in our courts in grave jeopardy.

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<sup>12</sup> 42 U.S.C. § 2000d (1964).

<sup>13</sup> 51 Pa. Bull. 2793 (May 22, 2021) (“Explanatory Report”).

<sup>14</sup> 51 Pa. Bull. 2792 (May 22, 2021) (“Schedule G. - Interpreting Fee Schedules - Remote Interpreting Fee Schedule - Miscellaneous Provision 2a. Hourly Rate”).

<sup>15</sup> 51 Pa. Bull. 2793 (May 22, 2021) (“Explanatory Report”).

**3. The proposed changes to Schedule G should be amended to either remove or clarify the expectation that interpreters allow 30 to 45 minutes between assignments when providing services remotely.**

Miscellaneous Provision 3(b) to the Remote Interpreting Fee Schedule states that interpreters “are expected” to allow at least 30 to 45 minutes between cases involving remote work to ensure “a smooth transition between assignments.”<sup>16</sup> The Commission strongly suggests that this provision be removed or, at minimum, amended to clarify that its direction is a *recommended* best practice rather than a requirement.

As proposed, this provision ostensibly requires skilled interpreters to relinquish hours of work time each day without remuneration. As a result, even with multiple assignments on a given day, these time blocks will compel interpreters to forego assignments in a profession that depends financially on securing as many opportunities per diem as is ethically possible. The clearest distillation of this particular proposal is that effectively, interpreters will be forced to accept a pay cut.

Moreover, the proposal *already* adds provisions designed to ensure a smooth transition between remote assignments. Interpreters will need to inform the court, for instance, if they have “another matter scheduled after the expected time commitment they agreed to when hired for the case.”<sup>17</sup> Additionally, the proposal prohibits interpreters from leaving an ongoing matter “due to a scheduled conflict with an upcoming assignment” unless the presiding judicial officer provides his or her consent.<sup>18</sup> These specific requirements support the more generalized prescriptions in Miscellaneous Provision 4 for incentivizing smooth transitions – among them, the requirement that interpreters have equipment compatible with courts’ platforms<sup>19</sup> and the suggestion that interpretation be provided from a quiet location that utilizes a secure wired connection.<sup>20</sup>

In sum, the minimal benefit to be derived from requiring interpreters to block 30 to 45 minutes between remote assignments is not commensurate with the compensatory harm interpreters will suffer as a consequence. Far less intrusive means for ensuring a smooth transition between assignments already exist; in fact, they are already enshrined in the AOPC’s proposal. If the contemplated time block provision is incorporated into the regulations as a requirement, interpreters justifiably will be encouraged to take their skills to other, more competitive markets

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<sup>16</sup> 51 Pa. Bull. 2792 (May 22, 2021) (“Schedule G. – Interpreting Fee Schedules – Remote Interpreting Fee Schedule - Miscellaneous Provision 3b”).

<sup>17</sup> 51 Pa. Bull. 2792 (May 22, 2021) (“Schedule G. – Interpreting Fee Schedules – Remote Interpreting Fee Schedule - Miscellaneous Provision 3c”).

<sup>18</sup> 51 Pa. Bull. 2792 (May 22, 2021) (“Schedule G. – Interpreting Fee Schedules – Remote Interpreting Fee Schedule - Miscellaneous Provision 3d”).

<sup>19</sup> 51 Pa. Bull. 2793 (May 22, 2021) (“Schedule G. – Interpreting Fee Schedules – Remote Interpreting Fee Schedule - Miscellaneous Provision 4a”).

<sup>20</sup> 51 Pa. Bull. 2793 (May 22, 2021) (“Schedule G. – Interpreting Fee Schedules – Remote Interpreting Fee Schedule - Miscellaneous Provision 4b, 4c”).

where such pay cuts do not exist. The resulting decrease in reliable interpretation in the judiciary is hardly a distant worst-case scenario, but rather a foreseeable consequence of failing to meaningfully honor the work our interpreters perform.

Accordingly, the Commission strongly suggests that the AOPC either remove Miscellaneous Provision 3(b) or amend its language to clarify that allowing time between assignments is a best practice rather than a legal requirement. Although our Commission more zealously recommends the provision's removal, both options respect our interpreters' livelihoods and avoid the undesirable scenarios of counties interpreting the provision in different and potentially harmful ways.

#### 4. Conclusion

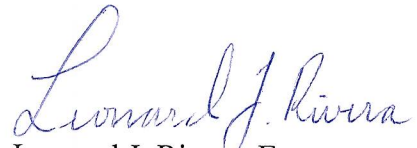
In closing, we thank you for your interest in working with interpreters for the purpose of bettering our justice system. We also greatly appreciate the opportunity to comment on this proposal. We believe that with the adoption of the suggested changes outlined above, interpreters will earn the compensation schedule they deserve as champions of language access and due process, two of the core principles of our democracy.

If you have any questions or concerns concerning this matter, we would be happy to discuss them at your convenience.

Respectfully,



Rhonda Hill Wilson, Esq.  
Commission Co-Chair



Leonard J. Rivera, Esq.  
Commission Co-Chair



Lisette M. McCormick, Esq.  
Executive Director

cc: Interbranch Commission Members  
Interpreter Services Committee Members