

AGENDA

LANGUAGE ACCESS COMMITTEE

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

Judicial Council Room
Friday, April 15, 2015
12:00 p.m. to 1:30 p.m.

12:00 p.m.	Welcome and Approval of Minutes (Tab 1)	Judge Rick Romney
12:05 p.m.	Credentialing Exception	Rosa Oakes
12:15 p.m.	Proposed Amendments to Rules 3-306.01, 3-306.02, 3-306.03, and 3-306.05 (Tab 2)	Alison Adams-Perlac
12:45 p.m.	Proposed Amendment to Rule 3-306.04, "reasonably available" language, and Best Practices for Interpreter Coordinators (Tab 3)	Alison Adams-Perlac Gabriela Grostic
1:25 p.m.	Other Business	

Upcoming Meetings:

August 21, 2015

October 16, 2015

Tab 1

Meeting Date	Language Access Committee	
March 20, 2015	Judicial Council Room	
Members Present	Member Excused	
Judge Rick Romney	Judge Rick Smith	
Judge Su Chon	Shantelle Argyle	
Randall McUne		
Jennifer Andrus		
Michelle Draper		
Megan Haney		
Mary Kaye Dixon		
Miguel Medina		
Gabriela Grostic		
Maureen Magagna		
Wendell Roberts		
Staff: Alison Adams-Perlac, Rosa P. Oakes		
Guests: Luther Gaylord, Noelia Erickson		
<p>Judge Romney welcomed committee members and sought to correct an omission from the previous meeting wherein a motion was not made to re-open the meeting. Megan Haney moved to open the meeting; Maureen Magagna seconded the motion. Motion passed.</p>		
<p>Topic: Approve minutes of January 23, 2015</p> <p>Michelle Draper moved to approve the minutes; Randall McUne seconded the motion.</p> <p>Motion: Passed unanimously</p>		
Topic: Credentialing Exception		By Rosa P Oakes
<p>Ms. Oakes asked the committee to consider an exception in the credentialing of a Farsi-speaking interpreter. The interpreter has worked in the courts as an independent contractor under the "Approved" designation for many years. Previously approved interpreters were reclassified as "Registered II" due to the addition of a foreign language exam component for the Approved credential. Further, the elimination of the "Registered II" designation on May 1, 2015 requires interpreters to complete the component by that date, or face elimination from the roster. While the Farsi-speaking interpreter has taken the foreign language exam two separate times with two different testing organizations, she has failed to achieve the established passing score by 1 point. Upon significant discussion, the committee requested an update on the situation at the next meeting in May. If the interpreter has not at that time achieved the required passing score, she should request an extension directly to the committee.</p>		
Topic: Records Retention Proposal		By Alison Adams-Perlac
<p>Ms. Adams-Perlac followed-up on the previous meeting's conversation on this topic. She stated that there are certain pieces of information currently kept in a physical file for each credentialed interpreter that should be saved permanently in an electronic form. These items are: progress sheet (log of requirements met and when); certification certificate; proof of exams and scores; most recent CE compliance forms; and, any</p>		

disciplinary documentation. She also recommended that CE compliance forms for previous reporting periods be kept for 1 year and all other documents be maintained for at least 3 years. Ms. Adams-Perlac noted that it is not yet clear on where this policy will reside – whether it will become a part of the Rule or the Records Retention policy. If the committee agrees with the proposal, Ms. Adams-Perlac will further develop the policy language.

Mary Kaye Dixon moved to approve the proposed Records Retention Policy in concept; Judge Chon seconded the motion. Motion passed unanimously.

Topic: Proposed Amendments to Rule 3-306

By Alison Adams-Perlac

Ms. Adams-Perlac reviewed a proposed new format for the Rule. She mentioned that based on a request from the Judicial Council, a change is proposed on how often the Council will review the interpreter fee structure. Currently, the Judicial Council reviews interpreter fees annually; however, they would prefer to review it every 3 years along with a national wage analysis. This does not, however, preclude the Council from reviewing interpreter fees on a more frequent basis if needed.

In response to concerns about access to and ease of commenting on Rule changes, Ms. Alison-Perlac agreed to post a link on the committee website and add a reminder to the agenda.

Ms. Adams-Perlac highlighted a proposal that gives the interpreter coordinators discretion, as long as he or she complies with the Rule, to decline to assign interpreters. Ms. Grostic raised concerns about the ambiguity of the policy regarding when/how coordinators decide on which interpreters to schedule. After considerable discussion, Ms. Grostic requested the opportunity to present her views more formally at the next meeting. She moved to set this topic on the agenda for the May committee meeting. Randall McUne seconded the motion. Motion passed.

Ms. Adams-Perlac described proposed changes to the disciplinary process for interpreters. Various comments and suggestions were made and subsequently, she asked committee member to take time to consider these and prepare to discuss further at the May meeting.

Other business:

Megan Haney inquired about the availability of interpreters for probation Interviews, which are primarily held in the probation offices. Ms. Adams-Perlac responded that interpreters can and should be provided for LEP individuals in those interviews.

Judge Chon mentioned that courthouse sound systems are currently being upgraded and wondered if there would be issues with the interpreter headsets. Ms. Oakes agreed to investigate the issue.

Meeting Adjourned

Next meeting is scheduled for May 15, 2015

Tab 2

1 **Rule 3-306.01. Language access definitions. ~~in the courts.~~**

2 Intent:

3 To define terms used in rules 3-306.01 through 3-306.05.

4 ~~To state the policy of the Utah courts to secure the rights of people under Title VI of~~
5 ~~the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. in legal proceedings who are~~
6 ~~unable to understand or communicate adequately in the English language.~~

7 ~~To outline the procedure for certification, appointment, and payment of interpreters~~
8 ~~for legal proceedings.~~

9 ~~To provide certified interpreters in legal proceedings in those languages for which a~~
10 ~~certification program has been established.~~

11 Applicability:

12 This rule shall apply to terms used in rules 3-306.01 through 3-306.05. ~~legal~~
13 ~~proceedings in the courts of record and not of record. This rule shall apply to~~
14 ~~interpretation for non-English speaking people and not to interpretation for persons with~~
15 ~~a hearing impairment, which is governed by Utah and federal statutes.~~

16 Statement of the Rule:

17 ~~(1) Definitions.~~

18 ~~(1)(A)~~ “Appointing authority” means a judge, commissioner, referee or juvenile
19 probation officer, or delegate thereof.

20 ~~(42)(B)~~ “Approved interpreter” means a person who has been rated as “superior” in
21 testing and has fulfilled the requirements established in paragraph (3).

22 ~~(43)(C)~~ “Certified interpreter” means a person who has successfully passed the
23 examination of the Consortium for Language Access in the Courts and has fulfilled the
24 requirements established in paragraph (3).

25 ~~(44)(D)~~ “Committee” means the Language Access Committee established by Rule 1-
26 205.

27 ~~(45)(E)~~ “Conditionally-approved interpreter” means a person who, in the opinion of
28 the appointing authority after evaluating the totality of the circumstances, has language
29 skills, knowledge of interpreting techniques, and familiarity with interpreting sufficient to
30 interpret the legal proceeding. A conditionally approved interpreter shall read and is

31 bound by the Code of Professional Responsibility and shall subscribe the oath or
32 affirmation of a certified interpreter.

33 ~~(16)(F)~~ “Code of Professional Responsibility” means the Code of Professional
34 Responsibility for Court Interpreters set forth in Code of Judicial Administration
35 Appendix H. An interpreter may not be required to act contrary to law or the Code of
36 Professional Responsibility.

37 ~~(17)(G)~~ “Legal proceeding” means a proceeding before the appointing authority,
38 court-annexed mediation, communication with court staff, and participation in mandatory
39 court programs. Legal proceeding does not include communication outside the court
40 unless permitted by the appointing authority.

41 ~~(18)(H)~~ “Limited English proficiency” means the inability to understand or
42 communicate in English at the level of comprehension and expression needed to
43 participate effectively in legal proceedings.

44 ~~(19)(I)~~ “Registered interpreter” means a person who interprets in a language in
45 which testing is not available and who has fulfilled the requirements established in
46 paragraph (3) other than paragraph (3)(A)(vi).

47 ~~(10)(J)~~ “Testing” means using an organization approved by the committee that uses
48 the American Council on the Teaching of Foreign Languages (ACTFL) scale.

49 ~~(2) Language Access Committee. The Language Access Committee shall:~~

50 ~~(2)(A) research, develop and recommend to the Judicial Council policies and~~
51 ~~procedures for interpretation in legal proceedings and translation of printed materials;~~

52 ~~(2)(B) issue informal opinions to questions regarding the Code of Professional~~
53 ~~Responsibility, which is evidence of good-faith compliance with the Code; and~~

54 ~~(2)(C) discipline court interpreters.~~

55 ~~(3) Application, training, testing, roster.~~

56 ~~(3)(A) Subject to the availability of funding, and in consultation with the committee,~~
57 ~~the administrative office of the courts shall establish programs to certify and approve~~
58 ~~interpreters in English and the non-English languages most frequently needed in the~~
59 ~~courts. The administrative office shall publish a roster of certified, approved, and~~
60 ~~registered interpreters. To be certified, approved or registered, an applicant shall:~~

61 ~~(3)(A)(i) file an application form approved by the administrative office;~~

62 ~~(3)(A)(ii) pay a fee established by the Judicial Council;~~
63 ~~(3)(A)(iii) pass a background check;~~
64 ~~(3)(A)(iv) provide proof that the applicant is a Utah resident;~~
65 ~~(3)(A)(v) complete training as required by the administrative office;~~
66 ~~(3)(A)(vi) obtain a passing score on the court interpreter's test(s) as required by the~~
67 ~~administrative office;~~

68 ~~(3)(A)(vii) complete 10 hours observing a certified interpreter in a legal proceeding;~~
69 ~~and~~

70 ~~(3)(A)(viii) take and subscribe the following oath or affirmation: "I will make a true~~
71 ~~and impartial interpretation using my best skills and judgment in accordance with the~~
72 ~~Code of Professional Responsibility."~~

73 ~~(3)(B) A person who is certified in good standing by the federal courts or by a state~~
74 ~~having a certification program that is equivalent to the program established under this~~
75 ~~rule may be certified without complying with paragraphs (3)(A)(v) through (3)(A)(viii) but~~
76 ~~shall pass an ethics examination and otherwise meet the requirements of this rule.~~

77 ~~(3)(C) No later than December 31 of each even-numbered calendar year, certified,~~
78 ~~approved, and registered interpreters shall pass the background check for applicants,~~
79 ~~and certified interpreters shall complete at least 16 hours of continuing education~~
80 ~~approved by the administrative office of the courts.~~

81 ~~(4) Appointment.~~

82 ~~(4)(A) Except as provided in paragraphs (4)(B), (4)(C) and (4)(D), if the appointing~~
83 ~~authority determines that a party, witness, victim or person who will be bound by the~~
84 ~~legal proceeding has a primary language other than English and limited English~~
85 ~~proficiency, the appointing authority shall appoint a certified interpreter in all legal~~
86 ~~proceedings. A person requesting an interpreter is presumed to be a person of limited~~
87 ~~English proficiency.~~

88 ~~(4)(B) An approved interpreter may be appointed if no certified interpreter is~~
89 ~~reasonably available.~~

90 ~~(4)(C) A registered interpreter may be appointed if no certified or approved~~
91 ~~interpreter is reasonably available.~~

92 ~~(4)(D) A conditionally-approved interpreter may be appointed if the appointing~~
93 ~~authority, after evaluating the totality of the circumstances, finds that:~~

94 ~~(4)(D)(i) the prospective interpreter has language skills, knowledge of interpreting~~
95 ~~techniques and familiarity with interpreting sufficient to interpret the legal proceeding;~~
96 ~~and~~

97 ~~(4)(D)(ii) appointment of the prospective interpreter does not present a real or~~
98 ~~perceived conflict of interest or appearance of bias; and~~

99 ~~(4)(D)(iii) a certified, approved, or registered interpreter is not reasonably available~~
100 ~~or the gravity of the legal proceeding and the potential consequence to the person are~~
101 ~~so minor that delays in obtaining a certified or approved interpreter are not justified.~~

102 ~~(4)(E) The appointing authority may appoint an interpreter with certified or approved~~
103 ~~or equivalent credentials from another state if the appointing authority finds that the~~
104 ~~approved, registered or conditionally approved interpreters who are reasonably~~
105 ~~available do not have the language skills, knowledge of interpreting techniques, or~~
106 ~~familiarity with interpreting sufficient to interpret the legal proceeding. The appointing~~
107 ~~authority may consider the totality of the circumstances, including the complexity or~~
108 ~~gravity of the legal proceeding, the potential consequences to the person of limited~~
109 ~~English proficiency, and any other relevant factor.~~

110 ~~(4)(F) No interpreter is needed for a direct verbal exchange between the person and~~
111 ~~court staff if the court staff can fluently speak the language understood by the person~~
112 ~~and the state court employee is acting within guidelines established in the Human~~
113 ~~Resources Policies and Procedures. An approved, registered or conditionally approved~~
114 ~~interpreter may be appointed if the court staff does not speak the language understood~~
115 ~~by the person.~~

116 ~~(4)(G) The appointing authority will appoint one interpreter for all participants with~~
117 ~~limited English proficiency, unless the judge determines that the participants have~~
118 ~~adverse interests, or that due process, confidentiality, the length of the legal proceeding~~
119 ~~or other circumstances require that there be additional interpreters.~~

120 ~~(4)(H) A person whose request for an interpreter has been denied may apply to~~
121 ~~review the denial. The application shall be decided by the presiding judge. If there is no~~
122 ~~presiding judge or if the presiding judge is unavailable, the clerk of the court shall refer~~

123 the application to any judge of the court or any judge of a court of equal jurisdiction. The
124 application must be filed within 20 days after the denial.

125 ~~(5) Payment.~~

126 ~~(5)(A) The fees and expenses for language access shall be paid by the~~
127 ~~administrative office of the courts in courts of record and by the government that funds~~
128 ~~the court in courts not of record. The court may assess the fees and expenses as costs~~
129 ~~to a party as otherwise provided by law. (Utah Constitution, Article I, Section 12, Utah~~
130 ~~Code Sections 77-1-6(2)(b), 77-18-7, 77-32a-1, 77-32a-2, 77-32a-3, 78B-1-146(3),~~
131 ~~URCP 54(d)(2), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq.,~~
132 ~~and regulations and guidance adopted under that title.)~~

133 ~~(5)(B) A person who has been ordered to pay fees and expenses for language~~
134 ~~access may apply to the presiding judge to review the order. If there is no presiding~~
135 ~~judge, the person may apply to any judge of the court or any judge of a court of equal~~
136 ~~jurisdiction. The application must be filed within 20 days after the order.~~

137 ~~(6) Waiver. A person may waive an interpreter if the appointing authority approves~~
138 ~~the waiver after determining that the waiver has been made knowingly and voluntarily. A~~
139 ~~person may retract a waiver and request an interpreter at any time. An interpreter is for~~
140 ~~the benefit of the court as well as for the non-English speaking person, so the~~
141 ~~appointing authority may reject a waiver.~~

142 ~~(7) Removal from legal proceeding. The appointing authority may remove an~~
143 ~~interpreter from the legal proceeding for failing to appear as scheduled, for inability to~~
144 ~~interpret adequately, including a self-reported inability, and for other just cause.~~

145 ~~(8) Discipline.~~

146 ~~(8)(A) An interpreter may be disciplined for:~~

147 ~~(8)(A)(i) knowingly making a false interpretation in a legal proceeding;~~

148 ~~(8)(A)(ii) knowingly disclosing confidential or privileged information obtained in a~~
149 ~~legal proceeding;~~

150 ~~(8)(A)(iii) knowingly failing to follow standards prescribed by law, the Code of~~
151 ~~Professional Responsibility and this rule;~~

152 ~~(8)(A)(iv) failing to pass a background check;~~

153 ~~(8)(A)(v) failing to meet continuing education requirements;~~

154 ~~(8)(A)(vi) conduct or omissions resulting in discipline by another jurisdiction; and~~

155 ~~(8)(A)(vii) failing to appear as scheduled without good cause.~~

156 ~~(8)(B) Discipline may include:~~

157 ~~(8)(B)(i) permanent loss of certified or approved credentials;~~

158 ~~(8)(B)(ii) temporary loss of certified or approved credentials with conditions for~~
159 ~~reinstatement;~~

160 ~~(8)(B)(iii) suspension from the roster of certified or approved interpreters with~~
161 ~~conditions for reinstatement;~~

162 ~~(8)(B)(iv) prohibition from serving as a conditionally approved interpreter;~~

163 ~~(8)(B)(v) suspension from serving as a conditionally approved interpreter with~~
164 ~~conditions for reinstatement; and~~

165 ~~(8)(B)(vi) reprimand.~~

166 ~~(9) Complaints.~~

167 ~~(9)(A) Any person may file a complaint about a matter for which an interpreter can~~
168 ~~be disciplined. A party, witness, victim or person who will be bound by a legal~~
169 ~~proceeding, may file a complaint about the misapplication of this rule.~~

170 ~~(9)(B) The complaint shall allege an act or omission for which an interpreter can be~~
171 ~~disciplined or that violates this rule. The complaint shall be in writing and signed and~~
172 ~~filed with the program coordinator. The complaint may be in the native language of the~~
173 ~~complainant, which the AOC shall translate in accordance with this rule. The complaint~~
174 ~~shall describe the circumstances of the act or omission, including the date, time,~~
175 ~~location and nature of the incident and the persons involved.~~

176 ~~(9)(C) The program coordinator may dismiss the complaint if it is plainly frivolous,~~
177 ~~insufficiently clear, or does not allege an act or omission for which an interpreter can be~~
178 ~~disciplined or that does not violate this rule.~~

179 ~~(9)(D) If the complaint alleges that the court did not provide language access as~~
180 ~~required by this rule, the program coordinator shall investigate and recommend~~
181 ~~corrective actions that are warranted.~~

182 ~~(9)(E) If the complaint alleges an act or omission for which the interpreter can be~~
183 ~~disciplined, the program coordinator shall mail the complaint to the interpreter at the~~
184 ~~address on file with the administrative office of the courts and proceed as follows:~~

185 ~~(9)(E)(i) The interpreter shall answer the complaint within 30 days after the date the~~
186 ~~complaint is mailed or the allegations in the complaint are deemed true and correct. The~~
187 ~~answer shall admit, deny or further explain each allegation in the complaint.~~

188 ~~(9)(E)(ii) The program coordinator may review records and interview the~~
189 ~~complainant, the interpreter and witnesses. After considering all factors, the program~~
190 ~~coordinator may propose a resolution, which the interpreter may stipulate to. The~~
191 ~~program coordinator may consider aggravating and mitigating circumstances such as~~
192 ~~the severity of the violation, the repeated nature of violations, the potential of the~~
193 ~~violation to harm a person's rights, the interpreter's work record, prior discipline, and the~~
194 ~~effect on court operations.~~

195 ~~(9)(E)(iii) If the complaint is not resolved by stipulation, the program coordinator will~~
196 ~~notify the committee, which shall hold a hearing. The committee chair and at least one~~
197 ~~interpreter member must attend. If a committee member is the complainant or the~~
198 ~~interpreter, the committee member is recused. The program coordinator shall mail~~
199 ~~notice of the date, time and place of the hearing to the interpreter. The hearing is closed~~
200 ~~to the public. Committee members and staff may not disclose or discuss information or~~
201 ~~materials outside of the meeting except with others who participated in the meeting or~~
202 ~~with a member of the Committee. The committee may review records and interview the~~
203 ~~interpreter, the complainant and witnesses. A record of the proceedings shall be~~
204 ~~maintained but is not public.~~

205 ~~(9)(E)(iv) The committee shall decide whether there is sufficient evidence of the~~
206 ~~alleged conduct or omission, whether the conduct or omission violates this rule, and the~~
207 ~~discipline, if any. The chair shall issue a written decision on behalf of the committee~~
208 ~~within 30 days after the hearing. The program coordinator shall mail a copy of the~~
209 ~~decision to the interpreter.~~

210 ~~(9)(E)(v) The interpreter may review and, upon payment of the required fee, obtain a~~
211 ~~copy of any records to be used by the committee. The interpreter may attend all of the~~
212 ~~hearing except the committee's deliberations. The interpreter may be represented by~~
213 ~~counsel and shall be permitted to make a statement, call and interview the complainant~~
214 ~~and witnesses, and comment on the claims and evidence. The interpreter may obtain a~~
215 ~~copy of the record of the hearing upon payment of the required fee.~~

216 ~~(9)(E)(vi) If the interpreter is certified in Utah under Paragraph (3)(B), the committee~~
217 ~~shall report the findings and sanction to the certification authority in the other~~
218 ~~jurisdiction.~~

219 ~~_(10) Fees.~~

220 ~~(10)(A) In April of each year the Judicial Council shall set the fees and expenses to~~
221 ~~be paid to interpreters during the following fiscal year by the courts of record. Payment~~
222 ~~of fees and expenses shall be made in accordance with the Courts Accounting Manual.~~

223 ~~(10)(B) The local government that funds a court not of record shall set the fees and~~
224 ~~expenses to be paid to interpreters by that court.~~

225 ~~(11) Translation of court forms. Forms must be translated by a team of at least two~~
226 ~~people who are interpreters certified under this rule or translators accredited by the~~
227 ~~American Translators Association.~~

228 ~~(12) Court employees as interpreters. A court employee may not interpret legal~~
229 ~~proceedings except as follows.~~

230 ~~(12)(A) A court may hire an employee interpreter. The employee will be paid the~~
231 ~~wages and benefits of the employee's grade and not the fee established by this rule. If~~
232 ~~the language is a language for which certification in Utah is available, the employee~~
233 ~~must be a certified interpreter. If the language is a language for which certification in~~
234 ~~Utah is not available, the employee must be an approved interpreter. The employee~~
235 ~~must meet the continuing education requirements of an employee, but at least half of~~
236 ~~the minimum requirement must be in improving interpreting skills. The employee is~~
237 ~~subject to the discipline process for court personnel, but the grounds for discipline~~
238 ~~include those listed in this rule.~~

239 ~~(12)(B) A state court employee employed as an interpreter has the rights and~~
240 ~~responsibilities provided in the Utah state court human resource policies, including the~~
241 ~~Code of Personal Conduct, and the Court Interpreters' Code of Professional~~
242 ~~Responsibility also applies. A justice court employee employed as an interpreter has the~~
243 ~~rights and responsibilities provided in the county or municipal human resource policies,~~
244 ~~including any code of conduct, and the Court Interpreters' Code of Professional~~
245 ~~Responsibility also applies.~~

246 ~~(12)(C) A court may use an employee as a conditionally-approved interpreter under~~
247 ~~paragraph (4)(C). The employee will be paid the wage and benefits of the employee's~~
248 ~~grade and not the fee established by this rule.~~

1 **Rules 3-306.02. Language Access Committee.**

2 Intent:

3 To outline the responsibilities of the Language Access Committee.

4 Applicability:

5 This rule applies to the Language Access Standing Committee of the Judicial
6 Council.

7 Statement of the Rule:

8 The Language Access Committee shall:

- 9 (1) research, develop and recommend to the Judicial Council policies and
10 procedures for interpretation in legal proceedings and translation of printed materials;
11 (2) issue informal opinions to questions regarding the Code of Professional
12 Responsibility, which is evidence of good-faith compliance with the Code; and
13 (3) discipline court interpreters as provided by rule 3-306.06.

1 **Rule 3-306.03. Interpreter certification.**

2 Intent:

3 To outline the procedure for certification of interpreters for legal proceedings.

4 Applicability:

5 This rule shall apply to legal proceedings in the courts of record and not of record.

6 This rule shall apply to interpretation for non-English speaking people and not to
7 interpretation for persons with a hearing impairment, which is governed by Utah and
8 federal statutes.

9 Statement of the Rule:

10 (1) Subject to the availability of funding, and in consultation with the committee, the
11 administrative office of the courts shall establish programs to certify and approve
12 interpreters in English and the non-English languages most frequently needed in the
13 courts. The administrative office shall publish a roster of certified, approved, and
14 registered interpreters. To be certified, approved or registered, an applicant shall:

15 (1)(A) file an application form approved by the administrative office;

16 (1)(B) pay a fee established by the Judicial Council;

17 (1)(C) pass a background check;

18 (1)(D) provide proof that the applicant is a Utah resident;

19 (1)(E) complete training as required by the administrative office;

20 (1)(F) obtain a passing score on the court interpreter's test(s) as required by the
21 administrative office;

22 (1)(G) complete 10 hours observing a certified interpreter in a legal proceeding; and

23 (1)(H) take and subscribe the following oath or affirmation: "I will make a true and
24 impartial interpretation using my best skills and judgment in accordance with the Code
25 of Professional Responsibility."

26 (2) A person who is certified in good standing by the federal courts or by a state
27 having a certification program that is equivalent to the program established under this
28 rule may be certified without complying with paragraphs (1)(A) through (1)(H) but shall
29 pass an ethics examination and otherwise meet the requirements of this rule.

30 (3) No later than December 31 of each even-numbered calendar year, certified,
31 approved, and registered interpreters shall pass the background check for applicants,

32 and certified interpreters shall complete at least 16 hours of continuing education
33 approved by the administrative office of the courts.

34 (4) With the exception of staff interpreters who are employees of the courts, court
35 interpreters, including those listed on the statewide roster, are independent contractors.

1 **Rule 3-306.05. Interpreter removal, discipline and formal complaints.**

2 Intent:

3 To outline the procedures for interpreter removal and discipline.

4 Applicability:

5 This rule shall apply to the Language Access Program Manager, the Language
6 Access Program Coordinator, the Language Access Committee, interpreter
7 coordinators and contract interpreters.

8 Statement of the Rule:

9 (1) Removal from legal proceeding. The appointing authority may remove an
10 interpreter from the legal proceeding for failing to appear as scheduled, for inability to
11 interpret adequately, including a self-reported inability, and for other just cause.

12 (2) Discipline.

13 (2)(A) An interpreter may be disciplined for:

14 (2)(A)(i) knowingly making a false interpretation in a legal proceeding;

15 (2)(A)(ii) knowingly disclosing confidential or privileged information obtained in a
16 legal proceeding;

17 (2)(A)(iii) knowingly failing to follow standards prescribed by law, the Code of
18 Professional Responsibility and this rule;

19 (2)(A)(iv) failing to pass a background check;

20 (2)(A)(v) failing to meet continuing education requirements;

21 (2)(A)(vi) conduct or omissions resulting in discipline by another jurisdiction; and

22 (2)(A)(vii) failing to appear as scheduled without good cause.

23 (2)(B) Discipline may include:

24 (2)(B)(i) permanent loss of certified or approved credentials;

25 (2)(B)(ii) temporary loss of certified or approved credentials with conditions for
26 reinstatement;

27 (2)(B)(iii) suspension from the roster of certified or approved interpreters with
28 conditions for reinstatement;

29 (2)(B)(iv) prohibition from serving as a conditionally approved interpreter;

30 (2)(B)(v) suspension from serving as a conditionally approved interpreter with
31 conditions for reinstatement; and

32 (2)(B)(vi) reprimand.

33 (3) As long as he or she complies with rule 3-306.04, an interpreter coordinator has
34 the discretion to decline to assign an interpreter listed on the statewide interpreter
35 roster.

36 (34) Formal Ccomplaints.

37 (34)(A) Any person may file a formal complaint about a matter for which an
38 interpreter can be disciplined. A party, witness, victim or person who will be bound by a
39 legal proceeding, may file a formal complaint about the misapplication of this rule.

40 (34)(B) The complaint shall allege an act or omission for which an interpreter can be
41 disciplined or that violates this rule. The complaint shall be in writing and signed and
42 filed with the program coordinator. The complaint may be in the native language of the
43 complainant, which the AOC shall translate in accordance with this rule. The complaint
44 shall describe the circumstances of the act or omission, including the date, time,
45 location and nature of the incident and the persons involved.

46 (34)(C) The program coordinator may dismiss the complaint if it is plainly frivolous,
47 insufficiently clear, or does not allege an act or omission for which an interpreter can be
48 disciplined or that does not violate this rule.

49 (34)(D) If the complaint alleges that the court did not provide language access as
50 required by this rule, the program coordinator shall investigate and recommend
51 corrective actions that are warranted.

52 (34)(E) If the complaint alleges an act or omission for which the interpreter can be
53 disciplined, the program coordinator shall mail the complaint to the interpreter at the
54 address on file with the administrative office of the courts and proceed as follows:

55 (34)(E)(i) The interpreter shall answer the complaint within 30 days after the date the
56 complaint is mailed or the allegations in the complaint ~~are~~ will be deemed to be true and
57 correct. The answer shall admit, deny or further explain each allegation in the complaint.

58 (34)(E)(ii) The program coordinator may review records and interview the
59 complainant, the interpreter and witnesses. After considering all factors, the program
60 coordinator may propose a resolution, which the interpreter may stipulate to. The
61 program coordinator may consider aggravating and mitigating circumstances such as
62 the severity of the violation, the repeated nature of violations, the potential of the

63 violation to harm a person's rights, the interpreter's work record, prior discipline, and the
64 effect on court operations.

65 ~~(34)(E)(iii) When the investigation of the formal complaint is complete, the program~~
66 ~~coordinator shall notify the interpreter of the proposed resolution. The interpreter may~~
67 ~~accept the discipline by consent, or may request a hearing by a panel of the Language~~
68 ~~Access Committee. If the complaint is not resolved by stipulation, the program~~
69 ~~coordinator will notify the committee, which shall hold a hearing.~~

70 (4)(F) The program coordinator shall notify the chair of the Language Access
71 Committee if the interpreter requests a hearing by a panel. The chair of the Language
72 Access Committee shall assign three members of the Committee, including one
73 interpreter, to serve on the panel for the hearing, and shall assign one of the panel
74 members to chair the hearing. The chair of the panel shall be responsible for sending
75 notice to the interpreter, the complainant and the program coordinator.

76 (4)(G) The hearing before the panel shall be private and closed to the public. The
77 hearing shall be recorded. The hearing will be informal and will not be governed by the
78 Rules of Civil Procedure and the Rules of Evidence. The interpreter, the complainant,
79 and the program coordinator all may attend the hearing. The interpreter and the
80 program coordinator may each bring counsel to the hearing. The program coordinator
81 and the interpreter may submit exhibits and call witnesses. Panel members and staff
82 may not disclose or discuss information or materials outside of the meeting except with
83 others who participated in the meeting or with a member of the panel.

84 (4)(H) If any party fails to appear, the panel may proceed on the evidence before it. If
85 the complainant fails to appear, the panel may dismiss the Formal Complaint.

86 (4)(I) The panel shall determine whether there is a preponderance of evidence of the
87 alleged conduct or omission, and whether the alleged conduct or omission violates this
88 rule or the Code of Professional Responsibility. Within 30 days, the panel will inform the
89 program coordinator, the interpreter, and the complainant, in writing, of its decision and
90 the findings of fact supporting it. The panel may discipline the interpreter as provided
91 under paragraph (2)(B), including permanently removing the interpreter's credentials.

92 (4)(J) The interpreter may appeal the decision to the Language Access Committee
93 by sending a written request to the program coordinator with 30 days of the panel's
94 decision.

95 (4)(K) The committee chair and at least one interpreter member must attend the
96 hearing. If a committee member is the complainant or the interpreter, the committee
97 member is recused. Members of the panel are also recused. The program coordinator
98 shall mail notice of the date, time and place of the hearing to the interpreter and the
99 complainant. The interpreter and program coordinator may submit briefs and exhibits,
100 which the committee shall review. The hearing is closed to the public. Committee
101 members and staff may not disclose or discuss information or materials outside of the
102 meeting except with others who participated in the meeting or with a member of the
103 Committee. The committee may review records and interview the interpreter, the
104 complainant and witnesses. A record of the proceedings shall be maintained but is not
105 public.

106 ~~(43)(E)(iv)~~ The committee shall decide whether there panel is sufficient evidence of
107 ~~the alleged conduct or omission, whether the conduct or omission violates this~~
108 ~~rule,~~ abused its discretion in making its decision. If the committee determines that the
109 panel abused its discretion, the committee may dismiss the Formal Complaint. If the
110 committee determines that the panel did not abuse its discretion, the interpreter shall be
111 disciplined according to the panel's decision. ~~and the discipline, if any.~~ The chair shall
112 issue a written decision and analysis on behalf of the committee within 30 days after the
113 hearing. The program coordinator shall mail a copy of the decision to the interpreter.
114 The committee's decision shall be final.

115 ~~(34)(E)(v)~~ The interpreter may review and, upon payment of the required fee,
116 obtain a copy of any records to be used by the committee. The interpreter may attend
117 all of the hearing except the committee's deliberations. The interpreter may be
118 represented by counsel and shall be permitted to make a statement, call and interview
119 the complainant and witnesses, and comment on the claims and evidence. The
120 interpreter may obtain a copy of the record of the hearing upon payment of the required
121 fee.

122 ~~(34)(EN)(vi)~~ If the interpreter is certified in Utah under ~~Paragraph (3)(B)~~ rule 3-
123 306.03(1), the committee ~~shall~~may report the findings and sanction to the certification
124 authority in the other jurisdiction.

Tab 3

Contract interpreters have concerns about coordinators for the Utah State Courts are assigning work to court interpreters. A bit of background.

In March 2014, in response to a complaint raised by an interpreter, this committee discussed interpreter scheduling. At the committee's next meeting, in May 2014, Alison Adams-Perlac presented a document entitled BEST PRACTICES FOR INTERPRETER SCHEDULING.

<http://www.utcourts.gov/committees/CourtInterpreter/Minutes%2003212014.pdf>

It would be very beneficial to discuss this document because it appears to be at odds with Rule 3-306.

The rule states:

(4)(A) Except as provided in paragraphs (4)(B), (4)(C) and (4)(D), if the appointing authority determines that a party, witness, victim or person who will be bound by the legal proceeding has a primary language other than English and limited English proficiency, **the appointing authority shall appoint a certified interpreter in all legal proceedings.** A person requesting an interpreter is presumed to be a person of limited English proficiency.

(4)(B) An approved interpreter may be appointed if no certified interpreter is reasonably available.

(4)(C) A registered interpreter may be appointed if no certified or approved interpreter is reasonably available.

(4)(D) A conditionally-approved interpreter may be appointed if the appointing authority, after evaluating the totality of the circumstances, finds that:

(4)(D)(i) the prospective interpreter has language skills, knowledge of interpreting techniques and familiarity with interpreting sufficient to interpret the legal proceeding; and

(4)(D)(ii) appointment of the prospective interpreter does not present a real or perceived conflict of interest or appearance of bias; and

(4)(D)(iii) a certified, approved, or registered interpreter is not reasonably available or the gravity of the legal proceeding and the potential consequence to the person are so minor that delays in obtaining a certified or approved interpreter are not justified.

The best practices documents states:

Use certified interpreters first, then approved, then registered. Use conditionally approved only if know [sic] other interpreters are available.

This committee should discuss the "shall appoint a certified interpreter in all legal proceedings" language contained in (4)(A) of Rule 3-306.

This committee should also discuss the meaning "if no certified interpreter is reasonably available" in part (4)(B) of the rule.

The "best practices" document should then be edited, refined, and clarified based on the committee's discussion.

“Reasonably Available” Language

1. Utah Courts have declined to define “reasonably available” because it is a fact intensive inquiry.
2. The dictionary defines these terms as follows:
 - Reasonably – in a fair and sensible way
 - Available – able to be used or obtained
3. Any attempt to define the phrase in 3-306.04 by providing examples or scenarios would not include all situations an interpreter coordinator confronts when scheduling an interpreter. The phrase is included in 3-306.04 to provide discretion so that an interpreter coordinator can appoint an interpreter in every hearing, even when a certified interpreter is unavailable.

BEST PRACTICES FOR INTERPRETER SCHEDULING

DO

Use a scheduling rotation that enables you to fairly assign interpreters.

Use certified interpreters first, then approved, then registered as outlined in rule 3-306. Use conditionally approved only if no other interpreters are available.

Incorporate new interpreters into your scheduling system (even if you want to start them out with less-complicated hearings).

Consider travel costs, etc. when assigning an interpreter (e.g., have the same interpreter cover back to back hearings at one location instead of paying for another to travel to cover the second one).

Talk to interpreters about being on-time and present for hearings when scheduled.

Talk to the Language Access Program Coordinator about what to do about an interpreter you have given more than one late warning.

Talk to the Language Access Program Coordinator about what to do about an interpreter who fails to appear.

Document any problems with interpreters in writing and report them to the Language Access Program Coordinator.

Decline to assign a specific interpreter if a judge asks not to work with them.

DON'T

Decline to assign an interpreter because you have a personality conflict with them.

Leave new interpreters out of your rotation just because they are new.

Don't allow interpreters to trade assignments with each other. All assignments should go through you.

Don't remove an interpreter from your list without discussing it with the Language Access Coordinator.

1 **Rule 3-306.04. Interpreter appointment, payment and fees.**

2 Intent:

3 To state the policy of the Utah courts to secure the rights of people under Title VI of
4 the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. in legal proceedings who are
5 unable to understand or communicate adequately in the English language.

6 To outline the procedures for appointment and payment of interpreters for legal
7 proceedings.

8 To provide certified interpreters in legal proceedings in those languages for which a
9 certification program has been established.

10 Applicability:

11 This rule shall apply to legal proceedings in the courts of record and not of record.
12 This rule shall apply to interpretation for non-English speaking people and not to
13 interpretation for persons with a hearing impairment, which is governed by Utah and
14 federal statutes.

15 Statement of the Rule:

16 (1) Appointment.

17 (1)(A) Except as provided in paragraphs (1)(B), (1)(C) and (1)(D), if the appointing
18 authority determines that a party, witness, victim or person who will be bound by the
19 legal proceeding has a primary language other than English and limited English
20 proficiency, the appointing authority shall appoint a certified interpreter in all legal
21 proceedings. A person requesting an interpreter is presumed to be a person of limited
22 English proficiency.

23 (1)(B) An approved interpreter may be appointed if no certified interpreter is
24 reasonably available.

25 (1)(C) A registered interpreter may be appointed if no certified or approved
26 interpreter is reasonably available.

27 (1)(D) A conditionally-approved interpreter may be appointed if the appointing
28 authority, after evaluating the totality of the circumstances, finds that:

29 (1)(D)(i) the prospective interpreter has language skills, knowledge of interpreting
30 techniques and familiarity with interpreting sufficient to interpret the legal proceeding;
31 and

32 (1)(D)(ii) appointment of the prospective interpreter does not present a real or
33 perceived conflict of interest or appearance of bias; and

34 (1)(D)(iii) a certified, approved, or registered interpreter is not reasonably available
35 or the gravity of the legal proceeding and the potential consequence to the person are
36 so minor that delays in obtaining a certified or approved interpreter are not justified.

37 (1)(E) The appointing authority may appoint an interpreter with certified or approved
38 or equivalent credentials from another state if the appointing authority finds that the
39 approved, registered or conditionally approved interpreters who are reasonably
40 available do not have the language skills, knowledge of interpreting techniques, or
41 familiarity with interpreting sufficient to interpret the legal proceeding. The appointing
42 authority may consider the totality of the circumstances, including the complexity or
43 gravity of the legal proceeding, the potential consequences to the person of limited
44 English proficiency, and any other relevant factor.

45 (1)(F) No interpreter is needed for a direct verbal exchange between the person and
46 court staff if the court staff can fluently speak the language understood by the person
47 and the state court employee is acting within guidelines established in the Human
48 Resources Policies and Procedures. An approved, registered or conditionally approved
49 interpreter may be appointed if the court staff does not speak the language understood
50 by the person.

51 (1)(G) The appointing authority will appoint one interpreter for all participants with
52 limited English proficiency, unless the judge determines that the participants have
53 adverse interests, or that due process, confidentiality, the length of the legal proceeding
54 or other circumstances require that there be additional interpreters.

55 (2) Court employees as interpreters. A court employee may not interpret legal
56 proceedings except as follows.

57 (2)(A) A court may hire an employee interpreter. The employee will be paid the
58 wages and benefits of the employee's grade and not the fee established by this rule. If
59 the language is a language for which certification in Utah is available, the employee
60 must be a certified interpreter. If the language is a language for which certification in
61 Utah is not available, the employee must be an approved interpreter. The employee
62 must meet the continuing education requirements of an employee, but at least half of

63 the minimum requirement must be in improving interpreting skills. The employee is
64 subject to the discipline process for court personnel, but the grounds for discipline
65 include those listed in this rule.

66 (2)(B) A state court employee employed as an interpreter has the rights and
67 responsibilities provided in the Utah state court human resource policies, including the
68 Code of Personal Conduct, and the Court Interpreters' Code of Professional
69 Responsibility also applies. A justice court employee employed as an interpreter has the
70 rights and responsibilities provided in the county or municipal human resource policies,
71 including any code of conduct, and the Court Interpreters' Code of Professional
72 Responsibility also applies.

73 (2)(C) A court may use an employee as a conditionally-approved interpreter under
74 paragraph (1)(D). The employee will be paid the wage and benefits of the employee's
75 grade and not the fee established by this rule.

76 (3) Review of denial of request for interpreter. A person whose request for an
77 interpreter has been denied may apply to review the denial. The application shall be
78 decided by the presiding judge. If there is no presiding judge or if the presiding judge is
79 unavailable, the clerk of the court shall refer the application to any judge of the court or
80 any judge of a court of equal jurisdiction. The application must be filed within 20 days
81 after the denial.

82 (4) Waiver. A person may waive an interpreter if the appointing authority approves
83 the waiver after determining that the waiver has been made knowingly and voluntarily. A
84 person may retract a waiver and request an interpreter at any time. An interpreter is for
85 the benefit of the court as well as for the non-English speaking person, so the
86 appointing authority may reject a waiver.

87 (5) Translation of court forms. Forms must be translated by a team of at least two
88 people who are interpreters certified under this rule or translators accredited by the
89 American Translators Association.

90 (6) Payment.

91 (6)(A) The fees and expenses for language access shall be paid by the
92 administrative office of the courts in courts of record and by the government that funds
93 the court in courts not of record. The court may assess the fees and expenses as costs

94 to a party as otherwise provided by law. (Utah Constitution, Article I, Section 12, Utah
95 Code Sections 77-1-6(2)(b), 77-18-7, 77-32a-1, 77-32a-2, 77-32a-3, 78B-1-146(3),
96 URCP 54(d)(2), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq.,
97 and regulations and guidance adopted under that title.)

98 (6)(B) A person who has been ordered to pay fees and expenses for language
99 access may apply to the presiding judge to review the order. If there is no presiding
100 judge, the person may apply to any judge of the court or any judge of a court of equal
101 jurisdiction. The application must be filed within 20 days after the order.

102 (7) Fees.

103 (7)(A) Every three years, the Judicial Council shall conduct a market survey and
104 shall set the fees and expenses to be paid to interpreters during the following two fiscal
105 years by the courts of record. Payment of fees and expenses shall be made in
106 accordance with the Courts Accounting Manual.

107 (7)(B) The local government that funds a court not of record shall set the fees and
108 expenses to be paid to interpreters by that court.