

AGENDA

LANGUAGE ACCESS COMMITTEE

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

Executive Dining Room
Friday, September 18, 2015
12:00 p.m. to 1:30 p.m.

12:00 p.m.	Welcome and Approval of Minutes (Tab 1)	Judge Rick Smith
12:05 p.m.	Proposed Amendments to Rules 3-306.03, 3-306.04, and 3-306.05 (Tab 2)	Alison Adams-Perlac
12:45 p.m.	Interpreter Records Retention Policy (Tab 3)	Alison Adams-Perlac
1:00 p.m.	Update on National ASL Certification	Michelle Draper
1:25 p.m.	Other Business	

Upcoming Meetings:

November 13, 2015

January 15, 2016

Tab 1

Meeting Date	Language Access Committee	
May 15, 2015	Judicial Council Room	
Members Present	Member Excused	
Judge Rick Romney	Shantelle Argyle	
Judge Su Chon	Amine El Fajri	
Judge Rick Smith	Wendell Roberts	
Randall McUne	Jennifer Andrus	
Michelle Draper		
Gabriela Grostic		
Miguel Medina		
Maureen Magagna		
Megan Haney		
Mary Kaye Dixon		
Staff: Alison Adams-Perlac, Rosa P. Oakes		
Guests: Dina Hall, Israel Gonzalez, Frank Chavez, Ingrid Oseguera, Noelia Erickson, Grant Anderson, Katherine Watson, Scott Joyce, Luther Gaylord		
Topic: Approve minutes of March 20, 2015		
Megan Haney moved to approve the minutes; Maureen Magagna seconded the motion. Motion passed unanimously.		
Topic: Credentialing Exception	By Rosa P. Oakes	
Following-up on this topic from the previous meeting. Ms. Oakes reported that Ms. Vida Allahverdi had not attempted to retake the language assessment to become an approved interpreter. Ms. Allahverdi was present to request that the Committee take into account her years of experience interpreting in the courts, the fact that she has never received any complaints against her (formal or otherwise), and that she is well educated in English and Farsi (Farsi being her 1 st language at home) and consider “grandfathering” her in as an approved interpreter – or at the very least extend the deadline for passing the language assessment.		
<i>Judge Chon moved to close the meeting; Judge Smith seconded the motion. The motion passed. The Committee discussed the idea of creating an exception policy for exotic languages that would address these types of situations. Ms. Adams-Perlac suggested that Ms. Allahverdi remain on the interpreter roster as a Registered 2 interpreter while the Committee develops and approves an exception policy, which is likely to occur at the August committee meeting. Judge Smith so moved; Ms. Magagna seconded. The motion passed unanimously. Miguel Medina moved to re-open the meeting; Randall McUne seconded the motion. The motion passed.</i>		
Judge Romney informed Ms. Allahverdi of the decision to develop an exception policy and stated that she could likely apply for an exception under the new rule at the committee’s October meeting.		

section .05; paragraph 3 clarifies that coordinators have some discretion when making assignments. Section .05 also outlines a more detailed process for how formal complaints will be handled. Various suggestions were made for clarification and extensive discussion ensued. Consequently, Ms. Adams-Perlac decided it would be best to update Section .05 of the Rule based on this meeting's discussion and to revisit the topic at the August 2015 meeting. Meanwhile, Judge Chon moved to approve Sections .01, .02, and .03; Megan Haney seconded the motion. The motion passed unanimously.

Topic: Proposed Amendments to Rule 3-306.04, "reasonably available" language, and Best Practices for Interpreter Coordinators

By Alison Adams-Perlac & Gabriela Grostic

Ms. Grostic followed-up on this issue from the previous meeting wherein there was some concern by certified interpreters that coordinators were not complying with the rule to call on certified interpreters first. Ms. Grostic suggested that the rule be amended as it relates to Spanish interpreters specifically. She indicated that the rule should not allow for non-certified Spanish interpreters to be tapped because it would violate a defendant's right to due process. There was some discussion on due process rights for those whose language is other than Spanish. Ms. Adams-Perlac responded by distributing a graph that demonstrates the most recent data on the level of usage of certified interpreters. She explained that she had extracted the information from the state FINET system, which is used to pay interpreter invoices. According to FINET, certified interpreters are assigned to 99% of all court proceedings. Discussion on how certified interpreters can seek more work in the courts ensued. Ms. Adams-Perlac suggested that while the rule does not require amending in connection with this topic, perhaps the Best Practices for Interpreter Scheduling document can be modified to include "as outlined in Rule 3-306" at the end of the second line. Ms. Grostic moved to modify the document as suggested; Mr. Medina seconded the motion. The motion passed unanimously.

Meeting adjourned

Next meeting is August 21

Tab 2

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

8 Statement of the Rule:

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

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

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

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

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

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

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

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

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

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

27 (3) The Language Access Committee may, for good cause shown, exempt an interpreter of a rare
28 language from meeting one or both of the requirements listed in subparagraph (1)(B) and (1)(F). An
29 interpreter seeking an exemption shall make a written request, outlining the reasons for the exemption, to
30 the Language Access Program Coordinator. The Language Access Committee shall consider the request
31 at its next meeting following the request, and may require the interpreter making the request to appear at
32 the meeting or to provide more information.

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

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

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 the Civil Rights
4 Act of 1964, 42 U.S.C. 2000d, et seq. in legal proceedings who are unable to understand or communicate
5 adequately in the English language.

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

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

9 Applicability:

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

13 Statement of the Rule:

14 (1) Appointment.

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

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

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

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

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

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

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

32 (1)(E) The appointing authority may appoint an interpreter with certified or approved or equivalent
33 credentials from another state if the appointing authority finds that the approved, registered or
34 conditionally approved interpreters who are reasonably available do not have the language skills,
35 knowledge of interpreting techniques, or familiarity with interpreting sufficient to interpret the legal
36 proceeding. The appointing authority may consider the totality of the circumstances, including the

37 complexity or gravity of the legal proceeding, the potential consequences to the person of limited English
38 proficiency, and any other relevant factor.

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

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

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

50 (2)(A) A court may hire an employee interpreter. The employee will be paid the wages and benefits of
51 the employee's grade and not the fee established by this rule. If the language is a language for which
52 certification in Utah is available, the employee must be a certified interpreter. If the language is a
53 language for which certification in Utah is not available, the employee must be an approved interpreter.
54 The employee must meet the continuing education requirements of an employee, but at least half of the
55 minimum requirement must be in improving interpreting skills. The employee is subject to the discipline
56 process for court personnel, but the grounds for discipline include those listed in this rule.

57 (2)(B) A state court employee employed as an interpreter has the rights and responsibilities provided
58 in the Utah state court human resource policies, including the Code of Personal Conduct, and the Court
59 Interpreters' Code of Professional Responsibility also applies. A justice court employee employed as an
60 interpreter has the rights and responsibilities provided in the county or municipal human resource policies,
61 including any code of conduct, and the Court Interpreters' Code of Professional Responsibility also
62 applies.

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

66 (3) Review of denial of request for interpreter. A person whose request for an interpreter has been
67 denied may apply to review the denial. The application shall be decided by the presiding judge. If there is
68 no presiding judge or if the presiding judge is unavailable, the clerk of the court shall refer the application
69 to any judge of the court or any judge of a court of equal jurisdiction. The application must be filed within
70 20 days after the denial.

71 (4) Waiver. A person may waive an interpreter if the appointing authority approves the waiver after
72 determining that the waiver has been made knowingly and voluntarily. A person may retract a waiver and

73 request an interpreter at any time. An interpreter is for the benefit of the court as well as for the non-
74 English speaking person, so the appointing authority may reject a waiver.

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

77 (6) Payment.

78 (6)(A) The fees and expenses for language access shall be paid by the administrative office of the
79 courts in courts of record and by the government that funds the court in courts not of record. The court
80 may assess the fees and expenses as costs to a party as otherwise provided by law. (Utah Constitution,
81 Article I, Section 12, Utah Code Sections 77-1-6(2)(b), 77-18-7, 77-32a-1, 77-32a-2, 77-32a-3, 78B-1-
82 146(3), URCP 54(d)(2), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and
83 regulations and guidance adopted under that title.)

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

88 (7) Fees.

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

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

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 Access Program
6 Coordinator, the Language Access Committee, interpreter coordinators and contract interpreters.

7 Statement of the Rule:

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

11 (2) Discipline.

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

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

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

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

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

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

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

20 (2)(A)(vii) failing to appear as scheduled without good cause; ~~and~~

21 (2)(A)(viii) unprofessional behavior toward a client, judge, court staff, or Language Access Committee
22 member; and

23 (2)(A)(ix) being charged with, or convicted of, a crime.

24 (2)(B) Discipline may include:

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

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

27 (2)(B)(iii) suspension from the roster of certified or approved interpreters with conditions for
28 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 conditions for
31 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 the discretion to
34 decline to assign an interpreter listed on the statewide interpreter roster.

35 ~~(34) Filing of Fformal Ccomplaints.~~

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

39 (4)(B) A formal complaint shall be filed with the Language Access Program Coordinator. However, the
40 Language Access Program Coordinator may file a formal complaint with the Language Access Program
41 Manager, in which case, the program manager will fulfill the program coordinator's responsibilities under
42 this rule.

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

48 (5) Investigation by program coordinator.

49 (35)(CA) The program coordinator may dismiss the complaint if it is plainly frivolous, insufficiently
50 clear, or does not allege an act or omission for which an interpreter can be disciplined or that does not
51 violate this rule.

52 (35)(DB) If the complaint alleges that the court did not provide language access as required by this
53 rule, the program coordinator shall investigate and recommend corrective actions that are warranted.

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

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

60 (5)(C)(ii) Unless the program coordinator determines the allegation in the formal complaint to be
61 particularly egregious, the interpreter shall remain on the court interpreter roster until a final decision on
62 discipline has been made.

63 (35)(EC)(iii) The program coordinator may review records and interview the complainant, the
64 interpreter and witnesses. After considering all factors, the program coordinator may propose a
65 resolution, which the interpreter may stipulate to. The program coordinator may consider aggravating and
66 mitigating circumstances such as the severity of the violation, the repeated nature of violations, the
67 potential of the violation to harm a person's rights, the interpreter's work record, prior discipline, and the
68 effect on court operations.

69 (35)(EC)(iv) When the investigation of the formal complaint is complete, the program coordinator
70 shall notify the interpreter of the proposed resolution. Within 15 days of the proposed resolution, the
71 interpreter shall, in writing, either accept the discipline by consent or request a hearing by a panel of the
72 Language Access Committee. If the complaint is not resolved by stipulation, the program coordinator will

73 ~~notify the committee, which shall hold a hearing.~~If the interpreter fails to respond to the program
74 coordinator's proposed resolution, or fails to request a hearing within 15 days, the interpreter will be
75 deemed to have stipulated to the proposed resolution.

76 (6) Hearing by panel.

77 (6)(FA) The program coordinator shall notify the chair of the Language Access Committee if the
78 interpreter requests a hearing by a panel. The chair of the Language Access Committee shall assign
79 three members of the Committee, including one interpreter, to serve on the panel for the hearing, and
80 shall assign one of the panel members to chair the hearing. The chair of the panel shall be responsible for
81 sending notice to the interpreter, the complainant and the program coordinator.

82 (6)(GB) The hearing before the panel shall be private and closed to the public. The hearing shall be
83 recorded. The hearing will be informal and will not be governed by the Rules of Civil Procedure and the
84 Rules of Evidence. The interpreter, the complainant, and the program coordinator may attend the hearing.
85 The interpreter and the program coordinator may each bring counsel to the hearing. The program
86 coordinator and the interpreter may submit exhibits and call witnesses. Panel members and staff may not
87 disclose or discuss information or materials outside of the meeting except with others who participated in
88 the meeting or with a member of the panel.

89 (6)(HC) If any party fails to appear, the panel may proceed on the evidence before it. If the
90 complainant fails to appear, the panel may dismiss the Formal Complaint.

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

97 (6)(JE) The interpreter may appeal the decision to the Language Access Committee by sending a
98 written request to the program coordinator within 15 days of the date of the panel's decision.

99 (7) Appeal hearing before the Language Access Committee.

100 (7)(KA) The committee chair and at least one interpreter member ~~must~~shall attend the hearing before
101 the Language Access Committee. If a committee member is the complainant or the interpreter, the
102 committee member is recused. Members of the panel are also recused. The program coordinator shall
103 mail notice of the date, time and place of the hearing to the interpreter and the complainant. The
104 interpreter and program coordinator may submit briefs and exhibits, which the committee shall review.
105 The information the committee may consider shall be limited to information presented to the panel. The
106 hearing is closed to the public. Committee members and staff may not disclose or discuss information or
107 materials outside of the meeting except with others who participated in the meeting or with a member of
108 the Committee. The committee may review records and interview the interpreter, the complainant and
109 witnesses. A record of the proceedings shall be maintained but is not public.

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

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

123 (8) (3)(E)(vi) If the interpreter is certified in Utah under Paragraph (3)(B) rule 3-306.03(1), the program
124 coordinator, panel or committee shall report any final findings and sanction to the certification
125 authority in the other jurisdictions.

Tab 3

Interpreter Records Retention Proposal

1. Permanent Records
 - a. Progress sheet – log of all the requirements interpreter has met and when;
 - b. Certification Certificate;
 - c. Proof of exams passed and trainings attended (if we administer them);
 - d. Most recent continuing education documentation provided; and
 - e. Disciplinary and complaint documents.
2. Retain for 2 Years
 - a. Continuing education documentation for years other than most recent year.
3. Retain for 3 Years after Interpreter is Inactive

All other documents.
4. Add Reference to Court Records Retention Policy