

Agenda

Court Interpreter Committee

August 24, 2007
12:00 to 1:30 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Judicial Council Room, Suite N31

Approval of minutes	Judge Lynn Davis
Introduction of Evangelina Burrows	Judge Lynn Davis
Introduction of newly certified interpreters	Judge Lynn Davis
Assessing interpreter fees as costs	Judge Lynn Davis
Building block request for 2009	Judge Lynn Davis
Voting membership for agency for interpreters for deaf	Judge Lynn Davis
Future meeting dates	Judge Lynn Davis
Training and Testing Report	Rosa Oakes
Hiring interpreters as court employees	Tim Shea
OPI testing	Prof. Daryl Hague Brikena Ribaj
Interpreter payments	Luthor Gaylord

Committee Web Page: <http://www.utcourts.gov/committees/CourtInterpreter/>

Meeting Schedule: Matheson Courthouse, 12:00 to 1:30, Judicial Council Room

August 24, 2007
September 21, 2007
November 16, 2007
January 25, 2008
March 28, 2008
May 30, 2008
July 25, 2008
September 26, 2008
November 21, 2008

**COURT INTERPRETER COMMITTEE
MEETING MINUTES**

June 1, 2007
Matheson Courthouse
Salt Lake City, Utah

Members Present: Hon. Lynn Davis, Chair; Luther Gaylord; Daryl Hague; Craig Johnson; Dinorah Judd; Deborah Kreeck Mendez; Brikena Ribaj; Carolyn Smitherman.

Members Excused: Hon. Brendan McCullagh; Peggy Gentles; Hon. Frederic M. Oddone; Branden Putnam.

Staff Present: Mary Boudreau; Rosa Oakes; Rob Parkes.

Guests Present: Jennifer Storrer; Evangelina Burrows.

Welcome & Chair's Report

Judge Davis welcomed all present. He extended a special welcome to Dinorah Judd, the newly appointed certified court interpreter representative to the committee, guest Jennifer Storrer trainer of ASL interpreters from the Utah Interpreter Program, and guest Evangelina Burrows, interpreter coordinator for the 3rd District.

Judge Davis noted that Ms. Burrows is the nominee for the interpreter coordinator representative to the committee. Her name will go before the Judicial Council for approval next month. He also referred to past discussion about expanding committee membership to include a representative from the Utah Interpreter Program for the deaf, and noted that the position for the justice court judge representative will become vacant this fall. Applications for that vacancy closed May 31.

A **motion** by Luther Gaylord to approve the minutes as prepared was seconded and carried unanimously.

Human Resources' Market Survey of Interpreter Fees

Rob Parkes, AOC Human Resources Director, thanked Rosa Oakes for her assistance with the market comparability survey, attached as Tab 2. Even with the most current information, though, it continues to be difficult to draw comparisons about interpreter fees because there are so many differences in each state. Some states have contract hourly rates; some have annual rates because their interpreters are salaried. Benefits connected with salaries make comparison difficult as well. Compensation comparisons in the Western states were listed separately. The comparison shows the current Utah rate of pay as well as the rate that that will become effective July 1st with the 3.5% COLA increase. The mean, median and mode rates were calculated for each group, with the Western states being the significant comparison for Utah. The material also

includes five states not included in the statistical calculations, as well as salary rates of Utah medical interpreters.

Mary Boudreau noted that, nationally, the Consortium states are focusing on how to recruit interpreters because they all struggle with the compensation issue for interpreters, and state legislatures trying to keep a balanced budget.

Luther Gaylord asked if mileage reimbursement is figured in the comparability charts. Mr. Parkes responded that it is not. Some states reimburse mileage as Utah does. In some states if travel takes more than an hour, an hourly rate is given instead of mileage reimbursement.

Dinorah Judd asked about the current 48-hour notice and cancellation fees, and the possibility of expanding notice to 5 working days. Judge Davis said this would be addressed as revisions to Rule 3-306 in the near future, possibly when Tim Shea is able to attend the next meeting.

Mr. Gaylord asked Mr. Parkes why only the Western states are used as compensation comparisons for a decision on Utah's interpreter fee increases. Mr. Parkes responded that it is the standard used in the court system for any comparisons because Western states are the most comparable regionally. The cost of living in other regions of the country differs from that in the Western region.

Ms. Boudreau then reviewed the memo at Tab 3; it was sent to the Judicial Council in May by Tim Shea, about interpreter fee increases. As recommended by this committee last year, the Council considered whether interpreters could receive the same COLA increase that was received by state employees this year. The Council approved this request. Mr. Shea's memo includes a chart of the current pay rate for all levels of interpreters, and what the pay rate will be after the approved 3.5% pay increase. The Council excluded the conditionally approved interpreters in a certified language from the COLA increase because, in the past, this committee wanted to encourage interpreters to become certified, and giving them a pay increase would not provide an incentive to do so. Mr. Shea wanted comments from this group about whether that approach should be changed if there is a COLA increase next year.

Ms. Judd asked if it is known how many conditionally approved Spanish interpreters are working regularly in the courts. Judge Davis responded that it could probably be broken out, and is likely not a great number. He suggested expanding this to not include a COLA raise for conditionally approved interpreters, either. If anything, interpreters should be motivated to become more than conditionally approved.

Mr. Gaylord stated that in the Farmington district court, there has recently been difficulty in finding interpreters for less common languages. Most rare language interpreters have other jobs. If a pay increase would make finding such interpreters easier, it should be done, but it likely would not make a difference.

There was group consensus that the pay rate should not be automatically increased each year for any conditionally approved interpreters, no matter what the language, whether certified or not.

Ms. Boudreau reported that Mr. Shea also wanted this group to consider whether to recommend a building block for a fee increase in fiscal year 2009. The 3.5% COLA increase that is going through this year is a result of this committee's recommendation last year. This committee's recommendation for a budget building block fee increase (separate from any COLA increase) must be in by July, so the matter must be decided at this meeting.

Judge Davis restated that the question is whether, beyond the COLA increase that might be given to state employees and court interpreters each year, this committee believes that, based on the market comparability survey before it, an hourly fee increase should be recommended for certified and other court interpreters? If so, then a building block must be requested.

Ms. Boudreau noted that, last year, the question of raising the basic pay rates arose, but was held over until a market comparability survey could be completed. When that was done, the decision of this committee as a whole was not to present an overall base pay rate increase building block proposal. However, the committee also recognized the difficulty that is created by the possibility of 5-10 years passing between any interpreter pay increases. While the committee did not propose a larger rate increase, it did ask the Council to look at annual COLAs given to state employees and apply the same COLA to interpreters. The Council approved that proposal.

Increases beyond the COLAs present a different question. A building block increase must be proposed whenever the courts seek a permanent fee increase. If this committee recommends such an increase, the proposal goes to the Council and, if approved, it must still go to the legislature for approval. This issue is separate from the 3.5% COLA, which will go into effect in July.

Judge Davis clarified that if the committee makes an hourly rate increase proposal, even if it is approved by the Judicial Council, it might not be approved by the legislature. Last year, the committee felt it was best to request an annual COLA increase, rather than trying for a large base pay increase every 5-10 years. A smaller year-to-year increase is at least more likely to be attained.

Mr. Gaylord said that it is not that the interpreters do not appreciate the COLA increase, but from their perspective, even though beginning July 1 their pay will increase to \$37.50 an hour because of the COLA, in 2001 interpreters were told their pay would increase to \$40 an hour, and then it was rescinded. Perhaps it is better strategically to go with the incremental COLA annual increases vs. going long periods of time and then asking for what seems to be a huge jump in pay.

Ms. Judd asked about a possible mileage reimbursement increase because of the increased cost of gasoline. Judge Davis responded that the reimbursement amount is increased every now and again by the legislature, and the amount will increase beginning July 1, 2007.

Ms. Boudreau suggested that while the committee can propose a pay rate increase, the proposal should be supported by good reasoning. The Council may say that, based on the market comparability study, \$37.50 an hour looks reasonable.

Judge Davis observed that he is the person who will make the proposal to the Council. He is a strong advocate for the interpreters, but does not want to impair his trust with the Judicial Council. The Council will be looking at the same data this committee has seen, and will ask for justification for any pay increase request. The Council tends to aim just above the mid-range on a market comparability study.

Mr. Gaylord said he does not think the Council needs to be bound by what the AOC comes up with in its market analysis. Court interpreters have not banded together to pay for an alternate market comparability analysis. Because he does not think the proposal for an increased base pay rate will fly, he is not suggesting the committee propose a \$5 per hour rate increase at this point.

Deborah Kreek Mendez reported a recent study done by the New York Times on the standard of living in the U.S. She said she was surprised to see that the cost of living along the Wasatch Front is comparable to Seattle and Las Vegas. That would suggest that Utah should be at the higher end of the Western States in terms of interpreters' base pay.

After considerable discussion, Dinorah Judd made a **motion** to request for FY 2009 a base pay raise to \$40 an hour for certified interpreters, and to \$35 an hour for approved interpreters, in addition to any annual COLA increase. The motion was seconded and carried unanimously.

Judge Davis indicated he feels he can articulate the case for this increase to the Judicial Council in light of the cost of living study, and in connection with promised increases that have not materialized for a variety of reasons in the past.

Continuing Report – OPI Testing

OPI Testing – Prof. Hague stated he has nothing to report until after the next meeting of his group. Brikena Ribaj reported she has done some investigation with the office at Ohio State University that handles the testing. It is all computerized at Ohio State. The sample they have does not match the sample at the University of Utah. She said she does not know how one could compare and contrast to different formats. Prof. Hague and Ms. Ribaj will provide more information at the next committee meeting.

Training and Testing

Rosa Oakes reported:

1. In April, an English diagnostic test was conducted. Twenty people across the state took it, but only one passed. Another diagnostic test scheduled for July.
2. A skill-building workshop was conducted in April for those wanting to become certified Spanish-language court interpreters. There were 17 participants. The two out-of-state instructors did an excellent job. They were impressed with the potential quality of the interpreters they tested, saying it was the highest level they had seen nationwide. For part of the instruction, the range master from the sheriff's department was brought in to show how weapons are assembled, how a bullet works, etc. The group learned weapons terminology.

3. On May 11-12 a test preparation workshop was conducted; the same two instructors participated in preparing the group for the test on June 14, 15.
4. Four certified interpreters are no longer working for the courts, for various reasons.

Long Distance Interpretation

Rosa Oakes researched what would need to be done in courtrooms in order to use remote interpreting from other states or countries. Nothing researched would specifically facilitate court interpretation. Something would have to be custom made. Many programs use web-based video conferencing. If the software was purchased, interpreters could link into the court system's video conferencing, but it would be costly. The justice court currently uses a VIACK system to do this, but it is costly. Telephone quality is poor and does not allow for visual cues. There will be no opportunity for the committee to present anything to the Judicial Council this year, but research into the possibilities will continue. Ms. Oakes said video conferencing would work best, especially if it was a secure, web-based system.

Ms. Boudreau noted that one of the sound engineers who has put audio systems into the state's new courtrooms talked with Mr. Shea, Ms. Oakes, and herself about accessing remote interpreters; he indicated that the state-of-the-art system for doing this in the federal courts consists of two phone lines, instead of one. Though this system has been partially installed in the newer state courts, all necessary equipment was not built in during construction because of cost. Arizona is experimenting with a system to use video cams for self-help services, and will also have some of their interpreters evaluate the potential of that system for interpreting.

Jennifer Storrer indicated she has done some VRI remote interpreting. Some companies offer video remote interpreting with a good picture, but not good sound quality. Emergency rooms have this equipment available on wheel carts, but that would be awkward for interpreters.

Fee Assessment Question about Justice Court Practice

Luther Gaylord reported that, about three weeks ago, he became aware that in a couple of justice courts, the judges are ordering defendants to pay interpreter fees as part of their sentences. The defendants were under the impression that interpreters are making a lot of money because of this; this could potentially create hostility toward interpreters. Mr. Gaylord wondered if imposing such fees presents an obstacle to equal access to the courts and/or if could open the door for an equal protection claim about disparate treatment if Spanish-speaking or other-language defendants are being ordered to pay fines.

Judge Davis noted a statute (U.C.A. §77-32a-2) that provides interpreting fees can be assessed, but would have to be limited to the actual cost incurred in a particular case. For example, if five cases were done in an hour in a justice court, the interpreter pay of \$37.50 per hour would be divided by 5 to determine the assessment amount.

Ms. Mendez observed that this seems to be an equal protection issue. Some defendants may say they do not need an interpreter simply because they do not want to be assessed a fee.

Mr. Gaylord stated his understanding that administrators in justice courts, particularly the high-volume justice courts, are upset about how much they are paying interpreters, and so are pressuring judges to re-coup some of the costs.

Judge Davis asked the committee's interpreter representatives to ask other interpreters whether they see this occurring only in certain courts, or if it is broader than that. He said he would send a generic letter to Brent Johnson, asking for a legal opinion on this.

Court Interpretation – Case Law Update

Judge Davis distributed and reviewed a case law update. In addition, he shared the conclusion in an article published in the *Harvard Latino Law Review* with the group.

The meeting was adjourned to July 27, 2007.

1 ~~(13)-(10)~~ Translation of court forms. ~~Requests for translation of court forms from~~
2 ~~English to another language shall be submitted to the committee. The committee shall~~
3 ~~determine whether the form shall be translated, reviewing such factors as a) whether~~
4 ~~the English form has been approved by the Judicial Council or the Supreme Court or is~~
5 ~~in common use throughout the state, and b) whether an approved translation of the form~~
6 ~~has already been done. Forms determined by the committee to be appropriate for~~
7 ~~translation shall be submitted by the committee to a team consisting of at least two~~
8 ~~translators. In languages for which there is a certification program, translators must be~~
9 ~~certified interpreters, preferably with some translating experience. In languages for~~
10 ~~which there is no certification program, translators may be qualified interpreters with~~
11 ~~extensive court interpreting experience, and preferably with some translating~~
12 ~~experience, or a professional translation service chosen by the committee. After~~
13 ~~translation, the administrative office shall distribute the translated documents to the~~
14 ~~courts statewide.~~ Forms must be translated by a team of at least two people who are
15 interpreters certified under this rule or certified by a federal court or a court of a
16 Consortium state or translators accredited by the American Translators Association.

17 (11) Court employees as interpreters. A court employee may not interpret legal
18 proceedings except as follows.

19 (11)(A) A court may hire an employee as an interpreter. If the language is a
20 language for which certification in Utah is available, the employee must be a certified
21 interpreter. If the language is a language for which certification in Utah is not available,
22 the employee must be an approved interpreter. The employee may be assigned to other
23 duties when not interpreting. The employee may be assigned to other courthouses as
24 would any other court employee. The employee will not be included on the roster of
25 certified or approved interpreters. The following conditions of employment shall be as an
26 employee rather than as provided in this rule:

27 (11)(A)(i) wages, benefits and reimbursement of expenses;

28 (11)(A)(ii) education requirements, but at least half of the minimum requirement shall
29 be in improving interpreting skills; and

30 (11)(A)(iii) discipline process, but the grounds for discipline include those listed in
31 this rule.

32 (11)(B) A court may appoint an employee as an interpreter engaged in secondary
33 employment at the employee's courthouse or another. If the language is a language for
34 which certification in Utah is available, the employee must be a certified interpreter. If
35 the language is a language for which certification in Utah is not available, the employee
36 must be an approved interpreter. The employee may be included on the roster of
37 certified or approved interpreters. The employee must meet the continuing education
38 requirements of an employee, but at least half of the minimum requirement must be in
39 improving interpreting skills. The grounds and process for discipline depend on whether
40 the person is being disciplined as an employee or as an interpreter.

41 (11)(C) A state court employee employed as an interpreter or serving as an
42 interpreter as secondary employment has the rights and responsibilities provided in the
43 Utah state court human resource policies, including the Code of Personal Conduct, and
44 the Court Interpreters' Code of Professional Responsibility also applies. A justice court
45 employee employed as an interpreter or serving as an interpreter as secondary
46 employment has the rights and responsibilities provided in the county or municipal
47 human resource policies, including a code of conduct, and the Court Interpreters' Code
48 of Professional Responsibility also applies.

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