

Agenda

Court Interpreter Committee

May 30, 2008
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	Tab 1	Judge Vernice Trease
Court Interpreter Fees Request for FY 2010		Blake Swain
Identification cards for interpreters		Tim Shea
Court reporter member of committee	Tab 2	Tim Shea
Rule 3-306 amendments	Tab 3	Tim Shea

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

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

July 25, 2008

September 26, 2008

November 21, 2008

Tab 1

**COURT INTERPRETER COMMITTEE
MEETING MINUTES**

March 28, 2008
Matheson Courthouse
Salt Lake City, Utah

Members Present: Hon. Vernice Trease, Chair; Evangelina Burrows; Luther Gaylord; Peggy Gentles; Daryl Hague; Craig Johnson; Hon. Karlin Myers; Dinorah Padro; Branden Putnam; Carolyn Smitherman; Jennifer Storrer.

Members Excused: Deborah Kreeck Mendez ; Brikena Ribaj; Hon. Frederic M. Oddone.

Staff Present: Rosa Oakes; Marianne O'Brien; Carolyn Carpenter

Welcome

Judge Vernice Trease, the new committee chair, introduced herself to the committee, and the committee introduced themselves to her.

Approval of minutes

A motion by Peggy Gentles to approve the meeting minutes of 1/25/08 as prepared was seconded, and carried unanimously.

Model tasks for approved interpreters

Daryl Hague indicated model tasks for approved interpreter training for languages other than Spanish have been suggested, but there may be more the committee wants to include. The grant will be done through the Humanities Department at BYU that specializes in test development. The examiner would not need to be present during the testing. Following the test, the performance is reviewed by an evaluator.

Following discussion, the committee determined there are three areas that should be included in the model tasks: Rule 11 colloquy, protective orders and detention hearings.

Dinorah Padro stated the actual reporting on the certification test in Spanish took about 8 minutes. It takes about 25 minutes for the oral interview. Professor Hague stated he does not think anyone would need to be observed for 25 minutes.

Mr. Shea asked if this is intended to be used for approved Spanish interpreters. Ms. Oakes responded that it has not been discussed, but it may be a better way of testing than we have now.

The committee discussed how court terminology could be handled. Points made:

- There could be a handout with frequent terminology that the interpreter could research.
- There would be different glossaries for different languages.
- Many courts outside of Utah already have glossaries in several languages.
- The interpreters could be provided with the English terminology they are likely to encounter in the three types of proceedings and it would be up to them to find the equivalent in their language.
- The process needs to be made easier for interpreters, not more difficult.

Ms. Oakes suggested that the interpreters take the written exam, receive some training, and then take the oral exam.

Mr. Gaylord suggested that they take some scenarios that already exist on the record and include them in the grant application, and then when the money is secured, produce our own. Mr. Shea will follow up with making arrangements for the transcript of hearings already held, and will talk with Dan Becker about a letter supporting the grant application. Those will be sent to Professor Hague. Professor Hague will speak with Jerry Larson.

District-wide coordinators

Ms. Oakes reported there now are district-wide coordinators doing the scheduling for each district. CORIS and CARE have been programmed to send an automated message to the interpreter coordinator, who schedules interpreters for juvenile court and district court. An all-day training was held with the coordinators in which they learned how to schedule in Groupwise. There have been a few bugs that needed to be worked out, but otherwise the scheduling is going well.

Ms. Padro asked if there is a review process involved in this scheduling. Mr. Shea indicated they are watching the implementation. Ms. Oakes has made herself available to the interpreter coordinators. If there are further steps to simplify the process, those will be explored. No efforts will be initiated to further reduce the number of interpreter coordinators.

Ms. Oakes noted that when glitches occur, it is largely a training issue. Because CORIS and CARE are generating automated messages through Groupwise, all interpreters are going onto a master calendar for the district. Everyone has access to the master calendar and can look at the calendar to see the name of the interpreter who will be coming for a particular case.

Mr. Gaylord raised the issue of what should be done when a juvenile judge asks if the interpreter in the courtroom at the time for the detention hearing is available to interpret at the next court date for that juvenile. Having been instructed to only accept assignments from interpreter coordinators, this puts interpreters in a difficult spot.

Mr. Shea responded that the juvenile court has a preference that the interpreter who is in the initial hearing remain with the case, much like the prosecutor remains with the case. That is permissible. It was never intended for the new scheduling process would interfere with that.

Ms. Oakes added that the group of judges and clerks decided when that happens, the clerk will send a separate email to the interpreter coordinator to let her know that the next hearing on the juvenile has been scheduled with the interpreter so the interpreter coordinator will not schedule another interpreter.

Distance interpretation

Ms. Oakes indicated the pilot for the long distance interpreting project was to be done in 3rd district in West Jordan and Tooele, and a bid was put out for software and equipment. General Communications won the bid. When the company went to West Jordan to see what equipment was already in place, West Jordan informed them they are having problems with their audio visual equipment. They do not want another vendor tinkering with anything until this has been resolved. It is expected the long distance interpreting can move forward next month.

Rule 3-306 amendments

Tim Shea indicated that because he was unable to attend the last meeting, Ms. Oakes shared the group's comments with him and he made some edits to the rule based on that. He directed the group to section (10)(A) in the rule about court employees as interpreters. This would be a new policy and is something that courts have never had. The broad outline is that the courts could hire interpreters as employees, paid by the state, and in the justice courts would be county or municipal employees, with the benefits that go with it. The interpreter would have to have the highest credentials in any particular language to be hired. This would follow the policy in many other states. It would establish a policy, but not a budget.

Peggy Gentles indicated that the secondary employment policy in the state courts would not allow (10)(B). The court executives looked at this idea when it was first proposed and they are opposed to it. It is an unnecessary impingement into the court's operations. A full time employee cannot be approved to do this. Ms Gentles made a motion to strike (10)(B) from the proposal. The motion was seconded and carried unanimously.

Section (10)(C) was reviewed. First hand communications by clerks over the counter who speak a language would not be governed by the rule. In brief hearings, clerks or probation officers who speak a language could not participate.

Judge Myers asked if there could be some exceptions to use a court employee who speaks a language in such circumstances as on a Friday night and someone is passing through the area and cannot come back on another day.

Mr. Shea indicated there is an exception now that is subject to a lot of differing interpretations. The policy of the existing rule is to require judges to use certified interpreters, but the exceptions are drafted in such a way that, using a court employee has become fairly common in some courts, and often inappropriately so. The proposal, as drafted, would say this cannot be done. Certified, approved or conditionally approved interpreters can be used, but not a court employee.

Judge Myers said this is a problem in a rural justice court. Perhaps there could be an exception for worst case scenarios. We are trying to protect defendants but hurt them by telling them they must return in order to get the most qualified interpreter. Ms. Padro suggested these may be rare situations. Judge Myers agreed they are.

Mr. Shea stated it does not have to be the most qualified interpreter. There is a part of the rule that permits a conditionally approved interpreter to be used, if in the judge's discretion, the nature of the hearing is such that a conditionally approved interpreter can interpret the hearing so the defendant is not losing any rights or responsibilities. Nothing done so far removes any of that.

Mr. Gaylord indicated the purpose of having interpreters in the courts is to put people on equal footing so their rights are not trampled. If they are going to be severely inconvenienced by having to make a trip back to Utah from Colorado or Arizona two weeks later because of a rule that a certain kind of interpreter is needed vs. a court employee who speaks Spanish, that is a problem. The other side of that is a justice court where there are at least 9 certified interpreters within a 25 mile radius and they are never called to interpret. Instead, the court uses the in-court clerk as an interpreter. It is convenient, and they do not have to pay, but it does not follow the rule as it is currently written. That was part of the consideration in drafting the changes.

Judge Trease suggested reframing the rule to list the considerations that a judge needs to make before allowing a court employee to interpret. There could be several factors to consider such as the distance from the courthouse an interpreter is and due process or constitutional rights.

Ms. Oakes asked Judge Myers if such interpretations could be handled by phone. Judge Myers replied his courtroom does not have a phone.

Mr. Gaylord indicated there is also an issue surrounding mixing of roles. He expressed concern for the potential for abuse because court employees are not as independent as contract interpreters, and ultimately the in-court clerk is answerable to the judge. There is a potential to subtly influence proceedings. Being both a court clerk and an interpreter seems complicated and problematic. It's one thing if a court wants to hire independent contract interpreters as staff interpreters to be there every day, all day, and interpret when needed, vs. that interpreter also having other court duties.

Mr. Shea noted that a staff court interpreter would be responsible for doing whatever is in their job description, one of which would be interpreting, but could include other duties. He anticipates that such an employee's duties would focus first on interpretation, and second on tasks related to interpretation, such as training and translation. A staff interpreter should be used to highest and best use. This policy would not preclude a clerk from being the staff interpreter if s/he is willing to work for that amount of money and is a certified interpreter. Mr. Shea stated he does not see an issue with the court being the institution that provides the staff interpreter regardless of what that interpreter's other duties may be.

Mr. Gaylord said it could be problematic if the staff interpreter takes a fine payment from a defendant that 2 weeks earlier s/he was interpreting for in court. Ms. Gentles agreed this could be an appearance problem and undermine the defendant's confidence in the system.

Judge Trease asked what about an instance where a Spanish-speaking defendant enters a plea and files a motion to withdraw his plea, claiming his rights were not explained to him properly by the interpreter and the interpreter becomes a witness in court. Can hearings be held with a court employee being a witness?

Mr. Shea responded court personnel are occasionally witnesses now, albeit very infrequently. Ms. Gentles noted it would become problematic if it was frequent.

Judge Myers expressed that as the justice court representative on this committee, he is concerned that in the rural justice courts a judge be able to decide it may be in the best interest of the defendant to have a Spanish speaking clerk interpret minor things.

Mr. Gaylord expressed that the professionalism and detachment an interpreter must maintain can be blurred when hired as a staff interpreter who is serving as both an interpreter and performing other functions.

Mr. Shea indicated that the interpreter's role in the court room is one that needs to be protected. That is where most of the visible interaction occurs and professional detachment is very important. In terms of court personnel interacting with a client in a setting outside the courtroom in the normal course of other duties, he does not see how a transaction like that is seen as expressing some type of bias or favoritism. The interpreter is still a member of the court, which itself is detached and neutral.

Judge Myers expressed there are circumstances that come up in court, besides interpreters, that rely solely on the person's ability to act professionally. That is the case with judges working with attorneys, where some are very familiar and some are not as able to maintain a professional appearance. It is not just court interpreter situations where that can occur.

Following discussion, Peggy Gentles made a motion that the rule include as a draft, some contemplation that a court can hire an interpreter as a court interpreter employee rather than using independent interpreter contractors without necessarily approving the language that has been drafted so far, and

without addressing the issue of the employee that is hired performing other court duties besides interpretation. The motion was seconded and carried unanimously.

Mr. Shea will draft some language that will address the exceptional circumstances of using court employees as interpreters that does not leave the door open to abuse. Discussion on the rest of the rule will be deferred.

Court reporter member of committee

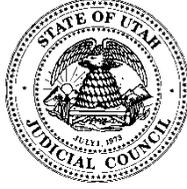
Mr. Shea asked the group if they want a court reporter on the committee. Ms. Gentles noted that real time reporting as an accommodation for the ADA for someone who cannot hear does not come up very often.

Mr. Gaylord asked will an ASL interpreter be arranged for deaf individual in most cases? Ms. Gentles replied not in all cases. But a court reporter would be employed and what is being said can be read off the court reporter's computer.

Mr. Shea said his recommendation is that the committee does not influence policies regarding language interpreters. However, Jennifer Storrer, the ASL representative on this committee had to leave the meeting before this topic was discussed, and because input from her is wanted, discussion on the topic will be deferred to the May 30 meeting.

The meeting was adjourned.

Tab 2



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Court Interpreter Committee
From: Tim Shea *TS*
Date: May 23, 2008
Re: Court reporter as member

The Judicial Council amended Rule 1-205 to add an American Sign Language representative. During the comment period for the proposed amendment, a court reporter submitted the following comment, suggesting that a court reporter be added to the committee. The Judicial Council has asked for your recommendations.

It is respectfully here suggested that the Managing Court Reporter from Third District or an Official Court Reporter representative be added to this committee as well.

There is a national interpreting "practice" called Communication Access Realtime Translation (CART). Used to assist hearing-impaired individuals in school settings and elsewhere, for court purposes this is the phenomenon whereby hearing-impaired court patrons -- those who do not use American Sign Language -- have provided for them a court reporter (called in national usage a "stenographic interpreter") who "writes" the proceedings in stenographic realtime, the immediate computer-screen English translation of which allows the patron to be "reasonably accommodated."

The court interpreter's office in Third District, for example, routinely refers CART interpreting engagements to the Managing Reporter's Office, on the assumption that "that's what we do."

Yet there are significant problems emerging, unaddressed: in policy; in records retention or dissemination; in certification; in oaths; in definition of "reasonable accommodation;" in security; in scope of official-reporter employment (CART is very different from judicial reporting; there is a specific CART certification and no state-court official reporter in Utah currently holds it); in conflict of interest; in ADA compliance and liability (there's a recent Ninth Circuit case on the very subject of reasonable accommodation using realtime; and that same issue has frighteningly been broached by a Legal Defender in a CART engagement in the Matheson Courthouse).

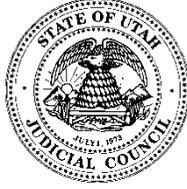
The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

The court interpreter in Matheson arranges for ASL interpreters for court hearings, yet also refers all CART engagements to the Managing Reporter's Office, and that office needs representation on this committee as well.

Your attention is appreciated.

Posted by Ed Midgley December 5, 2007 02:25 PM

Tab 3



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Court Interpreter Committee
From: Tim Shea *TS*
Date: May 23, 2008
Re: Rule 3-306

I have attached the next draft of amendments to Rule 3-306, in which I have deleted the original paragraph (10)(B). Judge Meyers shared the responses he received about the proposal to prohibit court staff from interpreting other than by hiring a staff interpreter, and I have included those as well. If nothing else, they show that we need to form an outreach subcommittee and patch some relationships.

Some of the responses raise the point that there are times when a clerk should legitimately be used as an interpreter. I sensed no disagreement with this principle in the last committee meeting, but I also sensed that we want to try to ensure that the discretion to do so is not abused. Not so interpreters can guarantee their employment, but to protect the integrity of the judicial process.

My proposal in response to all of this is to require of court staff the same qualifications we require of conditionally approved interpreters. That section already has the considerations that the committee discussed last time as justifying a staff person to fill in as an interpreter. In addition, I have asked our audit department to include in the standard internal audit inappropriate use of staff as interpreters. (I have also asked them to include inappropriate charges to the defendant for interpretation.) They have agreed to do so.

Encl: Rule 3-306

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

Hi Karlin,

In my view, a full prohibition is a bad idea and only serves the interests of the interpreters. I do use my court staff in court occasionally, but only when an interpreter has been scheduled and then does not appear. Even then, depending on the case, I try not to do it. And, obviously, with certain languages it is not possible to do.

When a defendant is represented, a continuance for an interpreter sometimes results in additional attorney fees, actual delay (for both prosecution and defense). It seems unfair to cause these problems in a case when it is not the fault of either party that the interpreter has not arrived, and we have the ability to proceed with court staff. It could start to look like the court is supporting the "business" of the interpreter.

Surely the committee is NOT considering prohibiting the use of court staff to communicate with defendants who come to the court just to pay a fine or schedule a hearing. The ramifications of THAT decision boggle the imagination, and the pocket book! (Talk about waste in government.)

Be well,

Peggy

Judge Myers, I don't use court staff, as none have a foreign language, but in courts in rural areas, it seems like it should be allowed for simple hearings like initial arraignments. A total ban could hurt rural courts. Thanks for your concern.

Judge Clair Poulson

This is a great committee for you to be on. Thank you for your work.

I feel that the current law is sound and where the line should stay.

There are some times when a person who is a part of the staff of the city will do interpretation for us. We often have Spanish speaking defendants show up without notice. Do you make them come back again for a minor charge or do you find a person to help? Sometimes they work for the city.

Judge Ivo Peterson

My experience has been that the interpreters are generally reliable, but I do not wish to be placed in the position of violating a rule when I have no practical alternative except to use court staff if an interpreter fails to appear.

John Baxter

Very annoying, VERY ANNOYING case in point today. Our records show that for our arraignment calendar a Spanish interpreter was ordered using the usual method for ordering interpreters. We had our Spanish speaking defendants wait through 2/3 of the calendar before receiving word that no interpreter was available. I suppose I could have

just shooed them out of the courtroom in English. Instead, I used my Spanish speaking clerk to just give new dates. Every single case was a case that the defendants wanted to resolve and that would have been proper to resolve. I am absolutely and unequivocally, given today's waste of our resources, to any rule which forbids any use of court staff to interpret in all circumstances.

John Baxter

I would second John's opinion. We have similar issues and concerns in WVC. Furthermore, even the more available interpreters don't show when they should and I lose precious time and resources when that happens, if I can't use my staff. I am a firm believer in making sure that non-English speakers be given every opportunity and advantage that an interpreter brings but I sometimes feel like these requirements assist and benefit the interpreter much more than they assist the defendant.

Kieth Stoney

I tend to agree with John on this issue. We are very remote in Daggett County, and it is a major undertaking to get an interpreter even for Spanish speaking defendants. There would be no way we could even begin to conduct Court if we could not use a staff member on occasion. But I do agree that they (staff) should only be used in situations where the Court is unaware that we needed an interpreter.

Charlene Hartmann

I agree with John. I have two clerks that are as fluent in Spanish as any interpreter available. While I do not use them for hearings or trials, I will on occasion use them for first appearances or even taking pleas when the defendant does not want to come back.

Ronald Kunz

I believe that the impetus for this movement is to eliminate "competition" for the court authorized interpreters. It seems to have little to do with competency as no one has tested the competency of the clerks. A blanket prohibition is unwise, unnecessary and unproductive. It will lead to more return trips to court for defendants.

We had an Arabic speaking defendant yesterday wait for three hours for an interpreter who never showed up. We had to call Language Line to reschedule. the interpreters are often late, need to leave for other courts, and generally unreliable.

Michael Kwan

1 Rule 3-306. Court Interpreters.

2 Intent:

3 To declare the policy of the Utah State Courts to secure the rights of persons who
4 are unable to understand or communicate adequately in the English language when
5 they are involved in legal proceedings.

6 To outline the procedure for certification, appointment, and payment of court
7 interpreters.

8 To provide certified interpreters in all cases legal proceedings in those languages for
9 which a certification programs have 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 persons and not to
13 interpretation for the hearing impaired.

14 Statement of the Rule:

15 (1) Definitions.

16 (1)(A) "Appointing authority" means a trial judge, administrative hearing officer, or
17 other officer authorized by law to conduct judicial or quasi-judicial proceedings
18 commissioner, referee or juvenile probation officer, or a delegate thereof.

19 (1)(B) "Approved interpreter" means an non-certified interpreter person who has
20 fulfilled the requirements established by the committee in paragraph (3).

21 (1)(C) "Certified interpreter" means a person who has fulfilled the requirements set
22 forth in subsection 4 been certified by the committee.

23 (1)(D) "Committee" means the Court Interpreter Committee established by Rule 1-
24 205.

25 (1)(E) "Conditionally-approved interpreter" means a non-certified interpreter person
26 who has completed an application form and, after responding to questions about
27 background, education and experience pursuant to subsection (6)(C), has received
28 conditional approval from the appointing authority under paragraph (4)(B).

29 (1)(F) "Code of Professional Responsibility" means the Code of Professional
30 Responsibility for Court Interpreters set forth in Appendix H.

31 (1)(G) "Legal proceeding" means a ~~civil, criminal, domestic relations, juvenile, traffic~~
32 ~~or administrative~~ proceeding before the appointing authority. Legal proceeding does not
33 include a conference between the non-English speaking person and the interpreter ~~that~~
34 ~~occurs~~ outside the courtroom, hearing room, or chambers presence of the appointing
35 authority unless ordered by the appointing authority. ~~In juvenile court legal proceeding~~
36 ~~includes the intake stage.~~

37 ~~(1)(H) "Non-English speaking person" means any principal party in interest or~~
38 ~~witness participating in a legal proceeding who has limited ability to speak or~~
39 ~~understand the English language.~~

40 ~~(1)(I) "Principal party in interest" means a person involved in a legal proceeding who~~
41 ~~is a named party, or who will be bound by the decision or action, or who is foreclosed~~
42 ~~from pursuing his or her rights by the decision or action which may be taken in the~~
43 ~~proceeding.~~

44 ~~(1)(J) "Witness" means anyone who testifies in any legal proceeding.~~

45 (2) Court Interpreter Committee. The Court Interpreter Committee shall:

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

48 (2)(B) certify court interpreters who meet minimum qualifications;

49 (2)(C) issue opinions to questions regarding the Code of Professional Responsibility;
50 and

51 (2)(D) discipline court interpreters.

52 ~~(3) Minimum performance standards. All certified and approved interpreters serving~~
53 ~~in the court shall comply with the Code of Professional Responsibility.~~

54 ~~(4) Certification.~~ (3) Application, training, testing, roster.

55 ~~(4)(A) (3)(A)~~ Subject to the availability of funding, and in consultation with the
56 committee, the administrative office shall establish programs to certify court interpreters
57 in the non-English languages most frequently needed in the courts. ~~The administrative~~
58 ~~office shall:~~

59 ~~(4)(A)(i) designate languages for certification;~~

60 ~~(4)(A)(ii) establish procedures for training and testing to certify and recertify~~
61 ~~interpreters; and~~

62 ~~(4)(A)(iii) establish, maintain, and issue to all courts in the state a current directory of~~
63 ~~certified interpreters.~~

64 ~~(4)(B) To become certified an interpreter shall: The administrative office of the courts~~
65 ~~shall publish a roster of certified interpreters and a roster of approved interpreters. To~~
66 ~~be included on a roster, an applicant shall:~~

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

68 ~~(4)(B)(i) prior to participation in the training program, (3)(A)(ii) pay a fee established~~
69 ~~by the Judicial Council to the administrative office to offset the costs of training and~~
70 ~~testing;~~

71 ~~(3)(A)(iii) pass a background check;~~

72 ~~(4)(B)(ii) (3)(A)(iv) complete training as required by the administrative office;~~

73 ~~(4)(B)(iii) (3)(A)(v) obtain a passing score on the court interpreter's test(s) as~~
74 ~~required by the administrative office; and~~

75 ~~(4)(B)(iv) not have been convicted of a crime of moral turpitude; and~~

76 ~~(4)(B)(v) have complied with the Code of Professional Responsibility if the interpreter~~
77 ~~has previously provided interpreting services to the Utah courts.~~

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

81 ~~(4)(C) (3)(B) An interpreter may be certified upon submission of satisfactory proof to~~
82 ~~the committee that the interpreter who is certified in good standing by the federal courts~~
83 ~~or by a state having a certification program that is equivalent to the program established~~
84 ~~under this ~~section~~ rule may be certified without complying with paragraphs (3)(A)(iv) and~~
85 ~~(3)(A)(v) but shall otherwise meet the requirements of this rule.~~

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

90 ~~(5) Recertification.~~

91 ~~(5)(A) Subject to the availability of funding, the administrative office shall establish~~
92 ~~continuing educational requirements for maintenance of certified status.~~

93 ~~(5)(B) To maintain certified status, a certified interpreter shall:~~

94 ~~(5)(B)(i) comply with continuing educational requirements as established by the~~
95 ~~administrative office; and~~

96 ~~(5)(B)(ii) comply with the Code of Professional Responsibility.~~

97 ~~(6) (4) Appointment.~~

98 ~~(6)(A) Certified interpreters. When an interpreter is requested or when (4)(A) If the~~
99 ~~appointing authority determines that a principal party in interest or person who will be~~
100 ~~bound by the action or a witness has a limited ability to understand and communicate in~~
101 ~~English, the appointing authority shall appoint a certified interpreter ~~shall be appointed~~~~
102 ~~except under those circumstances specified in subsection (6)(B), (C), or (D) as follows.~~

103 ~~(4)(B) No interpreter is needed if court personnel can speak fluently the language~~
104 ~~understood by the person and the nature of the communication is such that s/he is~~
105 ~~permitted to do so. An approved or conditionally approved interpreter may be appointed~~
106 ~~for a juvenile probation conference if the probation officer does not speak the language~~
107 ~~understood by the juvenile.~~

108 ~~(6)(B) Approved interpreters.~~

109 ~~(6)(B)(i) Standards for appointment. (4)(C) An approved interpreter may be~~
110 ~~appointed only under the following circumstances:~~

111 ~~(6)(B)(i)(a) if there is no certification program established under subparagraph (4) for~~
112 ~~interpreters in the language for which an interpreter is needed,~~

113 ~~(6)(B)(i)(b) if there is a certification program established under subsection (4), but if~~
114 ~~no certified interpreter is reasonably available, or~~

115 ~~(6)(B)(i)(c) for juvenile probation conferences, if the probation officer does not speak~~
116 ~~a language understood by the juvenile.~~

117 ~~(6)(B)(ii) Court employees may serve as approved interpreters, but their service shall~~
118 ~~be limited to short hearings that do not take them away from their regular duties for~~
119 ~~extended periods.~~

120 ~~(6)(B)(iii) The administrative office shall keep a list of all approved interpreters~~
121 ~~pursuant to subsection (6)(B) unless the interpreter is excluded from the list under~~
122 ~~subsection (10).~~

123 ~~(6)(C) Conditionally approved interpreters.~~

124 ~~(6)(C)(i) Standards for appointment.~~ A conditionally-approved interpreter may be
125 appointed only under the following circumstances:

126 ~~(6)(C)(i)(a) if there is no certification program established under subparagraph (4) for~~
127 ~~interpreters in the language for which an interpreter is needed and no approved~~
128 ~~interpreter is reasonably available,~~

129 ~~(6)(C)(i)(b) if there is a certification program established under subsection (4), but if~~
130 ~~no certified or approved interpreter is reasonably available, or~~

131 ~~(6)(C)(i)(c) for juvenile probation conferences, if the probation officer does not speak~~
132 ~~a language understood by the juvenile.~~

133 (4)(D) Any person may be appointed to interpret if the appointing authority
134 determines that the gravity of the legal proceeding and the potential consequence to the
135 non-English speaking person are so minor that delays in obtaining a certified, approved,
136 or conditionally-approved interpreter are not justified.

137 ~~(6)(C)(ii) Procedure for appointment.~~ Before (4)(E) Every time before appointing a
138 conditionally-approved interpreter, the appointing authority shall evaluate:

139 ~~(6)(C)(ii)(a) evaluate (4)(E)(i)~~ the totality of the circumstances including the gravity of
140 the judicial legal proceeding and the potential ~~penalty or~~ consequence to the accused
141 non-English speaking person ~~involved,~~

142 ~~(6)(C)(ii)(b) ask questions as to the following matters in an effort to determine~~
143 ~~whether the interpreter has a minimum level of qualification:~~

144 ~~(6)(C)(ii)(b)(1) (4)(E)(ii)~~ whether the prospective interpreter ~~appears to have~~ has
145 adequate language skills, knowledge of interpreting techniques and familiarity with
146 interpreting in a ~~court or administrative hearing setting~~ legal proceeding; and

147 ~~(6)(C)(ii)(b)(2) (4)(E)(iii)~~ whether the prospective interpreter has read, understands,
148 and agrees to comply with the Code of Professional Responsibility for court
149 interpreters set forth in appendix H.

150 (4)(F) The appointing authority should appoint an interpreter whose home base is
151 within 25 miles of the courthouse if one is reasonable available. If an interpreter within
152 25 miles of the courthouse is not reasonably available, the appointing authority should
153 give preference to an interpreter whose home base is closer to the courthouse over one

154 whose home base is farther away. This paragraph does not change the requirement in
155 paragraph (4)(A).

156 ~~(6)(C)(iii) The procedure to conditionally approve a non-certified interpreter must~~
157 ~~occur every time the interpreter is used.~~

158 ~~(6)(C)(iv) Court employees may serve as conditionally-approved interpreters, but~~
159 ~~their service shall be limited to short hearings that do not take them away from their~~
160 ~~regular duties for extended periods.~~

161 ~~(6)(D) Other interpreters. An interpreter who is neither certified, approved nor~~
162 ~~conditionally-approved may be appointed when a certified, approved or conditionally-~~
163 ~~approved interpreter is not reasonably available, or the court determines that the gravity~~
164 ~~of the case and potential penalty to the accused person involved are so minor that~~
165 ~~delays attendant to obtaining a certified, approved, or conditionally-approved interpreter~~
166 ~~are not justified.~~

167 ~~(7)(5) Waiver.~~

168 ~~(7)(A)(5)(A) A non-English speaking person may at any point in the proceeding~~
169 ~~waive the right to the services of an interpreter, but only when if the appointing authority~~
170 ~~approves the waiver after:~~

171 ~~(7)(A)(i) the waiver is approved by the appointing authority after explaining on the~~
172 ~~record to the non-English speaking (5)(A)(i) explaining to the person through an~~
173 ~~interpreter the nature and effect of the waiver;~~

174 ~~(7)(A)(ii) the appointing authority determines on the record (5)(A)(ii) determining that~~
175 ~~the waiver has been made knowingly, intelligently, and voluntarily; and~~

176 ~~(7)(A)(iii) the non-English speaking (5)(A)(iii) affording the person has been afforded~~
177 ~~the opportunity to consult with his or her attorney.~~

178 ~~(7)(B) At any point in any proceeding, for (5)(B) An interpreter is for the benefit of the~~
179 ~~court as well as for the non-English speaking person, so the appointing authority may~~
180 ~~reject a waiver. For good cause shown, a ~~non-English speaking~~ person may retract his~~
181 ~~or her waiver and request an interpreter.~~

182 ~~(8) Oath. All interpreters, before commencing their duties, shall take an oath that~~
183 ~~they will make a true and impartial interpretation using their best skills and judgment in~~
184 ~~accordance with the Code of Professional Responsibility.~~

185 ~~(9)(6)~~ Removal in individual cases. ~~Any of the following actions shall be good cause~~
186 ~~for a judge to remove an interpreter in an individual case:~~

187 ~~(9)(A) being unable to interpret adequately, including where the interpreter self-~~
188 ~~reports such inability;~~

189 ~~(9)(B) knowingly and willfully making false interpretation while serving in an official~~
190 ~~capacity;~~

191 ~~(9)(C) knowingly and willfully disclosing confidential or privileged information~~
192 ~~obtained while serving in an official capacity;~~

193 ~~(9)(D) failing to follow other standards prescribed by law and the Code of~~
194 ~~Professional Responsibility; and~~

195 ~~(9)(E) failing to appear as scheduled without good cause.~~ The appointing authority
196 may remove an interpreter from a legal proceeding for any grounds for which an
197 interpreter can be disciplined.

198 ~~(10) Removal from certified or approved list. Any of the following actions shall be~~
199 ~~good cause for a court interpreter to be removed from the certified list maintained under~~
200 ~~subsection (4)(A)(iii) or from the approved list maintained under subsection (6)(B)(iii):~~
201 (7) Discipline.

202 (7)(A) An interpreter may be disciplined for:

203 ~~(10)(A)~~ (7)(A)(i) knowingly ~~and willfully~~ making false interpretation while serving in an
204 official capacity;

205 ~~(10)(B)~~ (7)(A)(ii) knowingly ~~and willfully~~ disclosing confidential or privileged
206 information obtained while serving in an official capacity;

207 ~~(10)(C)~~ (7)(A)(iii) knowingly failing to follow ~~other~~ standards prescribed by law, ~~and~~
208 the Code of Professional Responsibility and this rule;

209 (7)(A)(iv) failing to pass a background check;

210 (7)(A)(v) failing to meet continuing education requirements; and

211 ~~(10)(D)~~ (7)(A)(vi) failing to appear as scheduled without good cause.

212 (11) Discipline

213 ~~(11)(A) An interpreter may be disciplined for violating the Code of Professional~~
214 ~~Responsibility.~~ (7)(B) Discipline may include: decertification, suspension, probation or
215 other restrictions on the interpreter's certification or qualification. Discipline by the

216 ~~committee does not preclude independent action by the Administrative Office of the~~
217 ~~Courts.~~

218 ~~(7)(B)(i) removal from the legal proceeding;~~

219 ~~(7)(B)(ii) loss of certified or approved credentials;~~

220 ~~(7)(B)(iii) suspension from the roster of certified or approved interpreters with~~
221 ~~conditions;~~

222 ~~(7)(B)(iv) prohibition from serving as a conditionally approved interpreter;~~

223 ~~(7)(B)(v) suspension from serving as a conditionally approved interpreter with~~
224 ~~conditions; and~~

225 ~~(7)(B)(vi) reprimand.~~

226 ~~(11)(B)-(7)(C) Any person, including other than a~~ members of the committee, may
227 ~~initiate file a complaint in writing with the program manager. Upon receipt of a~~
228 ~~complaint, the committee shall provide written notice of the allegations. If the complaint~~
229 ~~is not plainly frivolous, the program manager shall mail the complaint~~ to the interpreter.
230 Within 20 days after the ~~notice complaint~~ is mailed, the interpreter shall submit a written
231 response to the ~~complaint program manager~~. ~~The response shall be sent to the~~
232 ~~administrative office staff assigned to the committee.~~

233 ~~(11)(C) Upon receipt of the interpreter's response, staff shall attempt to informally~~
234 ~~resolve the complaint. Informal resolution may include stipulated discipline or dismissal~~
235 ~~of the complaint if staff determines that the complaint is without merit. The program~~
236 ~~manager will meet with the complainant and the interpreter to mediate an appropriate~~
237 ~~resolution. If the complaint is resolved, the interpreter and complainant will sign the~~
238 ~~stipulated resolution.~~

239 ~~(11)(D)(i) A hearing shall be held on the complaint if informal resolution is~~
240 ~~unsuccessful, or if the committee otherwise determines that a hearing is necessary.~~

241 ~~(11)(D)(ii) The hearing shall be held no later than 45 days after notice of the~~
242 ~~complaint was sent to the interpreter. (7)(D) If the complaint is not resolved, the~~
243 ~~program manager will sign a statement to that effect, and the committee shall hold a~~
244 ~~hearing within 45 days after the statement. The committee program manager shall~~
245 ~~serve mail notice of the date, time and place of the hearing to the interpreter with notice~~
246 ~~of the date and time of the hearing, via by certified mail, return receipt requested.~~

247 ~~(11)(D)(iii)~~ The hearing shall be closed to the public. The interpreter may be
248 represented by counsel and shall be permitted to testify, present evidence and
249 comment on the allegations. The committee may ask questions of the interpreter,
250 complainant and witnesses. The committee may rely upon evidence commonly relied
251 upon by reasonably prudent persons in the conduct of their important affairs. Testimony
252 shall be under oath and a record of the proceedings shall be maintained. The
253 interpreter may obtain a copy of the record upon payment of any required fee.

254 ~~(11)(E)-(7)(E)~~ The committee shall issue a written decision within 10 days from the
255 conclusion of the hearing. The decision shall be supported by written findings and shall
256 be ~~served on~~ mailed to the interpreter ~~via first-class mail~~.

257 (7)(F) If the committee finds that a certified interpreter has violated a provision of the
258 Code of Professional Responsibility, and if the sanction includes suspension or removal
259 from the roster of certified interpreters, the findings and sanction will be reported to the
260 National Center for State Courts Consortium for State Court Interpreter Certification,
261 where they will be available to member states.

262 ~~(11)(F) The interpreter may appeal the committee's decision to the Judicial Council.~~
263 ~~The interpreter shall file the notice of appeal with the Judicial Council no later than 20~~
264 ~~days after the committee's decision is mailed to the interpreter. The notice of appeal~~
265 ~~shall include the interpreter's written objections to the decision. The Judicial Council~~
266 ~~shall review the record of the committee proceedings to determine whether the~~
267 ~~committee correctly applied procedures and sanctions, and to determine whether the~~
268 ~~committee abused its discretion. The interpreter and committee members are not~~
269 ~~entitled to attend the Council meeting at which the proceeding is reviewed.~~

270 (12) Payment(8) Fees and expenses.

271 (12)(A) Courts of Record.

272 ~~(12)(A) (i) In courts of record, the administrative office shall pay interpreter fees and~~
273 ~~expenses(8)(A) In courts of record, the administrative office of the courts shall pay~~
274 ~~interpreter fees and expenses for legal proceedings in the following cases. In courts not~~
275 ~~of record, the government that funds the court shall pay interpreter fees and expenses~~
276 ~~for legal proceedings in the following cases.~~

277 ~~(12)(A)(i)(a) in (8)(A)(i)~~ criminal cases,

278 ~~(12)(A)(i)(b) in (8)(A)(ii)~~ a preliminary inquiry or case filed on behalf of the state
279 under Title 78, Chapter 3a, Juvenile Courts,

280 ~~(12)(A)(i)(c) in (8)(A)(iii)~~ cases filed against the state pursuant to U.R.C.P. 65B(b) or
281 65C,

282 ~~(12)(A)(i)(d) in (8)(A)(iv)~~ cases filed under Title 30, Chapter 6, Cohabitant Abuse Act,

283 ~~(12)(A)(i)(e) in (8)(A)(v)~~ cases filed under Title 77, Chapter 3a, Stalking Injunctions,

284 ~~(12)(A)(i)(f) in (8)(A)(vi)~~ cases filed under Title 78, Chapter 3h, Child Protective
285 orders, and

286 ~~(12)(A)(i)(g) in (8)(A)(vii)~~ other cases in which the court determines that the state
287 court is obligated to pay for an interpreter's services, and

288 ~~(12)(A)(i)(h) for translation of forms pursuant to paragraph (13).~~

289 ~~(12)(A)(ii) In all other civil cases and small claims cases, the party engaging the~~
290 ~~services of the interpreter shall pay the interpreter fees and expenses.~~

291 ~~(12)(A)(iii) Fees. (8)(B)~~ In April the Judicial Council shall set the fees to be paid to
292 court interpreters for during the following fiscal year by the administrative office of the
293 courts or the government that funds the court not of record in legal proceedings and for
294 translation of forms. Payment to interpreters of fees and expenses shall be made in
295 accordance with the Courts Accounting Manual. ~~This section does not apply to court~~
296 ~~employees acting as interpreters.~~

297 (8)(C) The court may order that the fee and expenses paid to a court interpreter,
298 other than to a court employee hired under subsection (10)(A), be assessed against a
299 party failing to appear at a hearing of which he or she had notice.

300 ~~(12)(A)(iv) Expenses. Mileage for interpreters will be paid at the same rate as state~~
301 ~~employees for each mile necessarily traveled in excess of 25 miles one-way. Per diem~~
302 ~~expenses will be paid at the same rate as state employees.~~

303 ~~(12)(A)(v) Procedure for payment. The administrative office shall pay fees and~~
304 ~~expenses of the interpreter upon receipt of a certification of appearance signed by the~~
305 ~~clerk of the court or other authorized person. The certification shall include the name,~~
306 ~~address and social security number of the interpreter, the case number, the dates of~~
307 ~~appearance, the language interpreted, and an itemized statement of the amounts to be~~
308 ~~paid.~~

309 ~~(12)(B) Courts not of record.~~

310 ~~(12)(B)(i) In courts not of record, the local government that funds the court not of~~
311 ~~record shall pay interpreter fees and expenses in criminal cases in which the defendant~~
312 ~~is determined to be indigent.~~

313 ~~(12)(B)(ii) In small claims cases, the party engaging the services of the interpreter~~
314 ~~shall pay the interpreter fees and expenses.~~

315 ~~(12)(B)(iii) Fees. The local government that funds the court not of record shall~~
316 ~~establish the amount of the interpreter fees.~~

317 ~~(12)(B)(iv) Expenses. The local government that funds the court not of record shall~~
318 ~~establish interpreter expenses, if any, that will be paid.~~

319 ~~(12)(B)(v) Procedure for payment. The local government that funds the court shall~~
320 ~~pay the interpreter upon receipt of a certification of appearance signed by the clerk of~~
321 ~~the court. The certification shall include the name, address and social security number~~
322 ~~of the interpreter, the case number, the dates of appearance, the language interpreted,~~
323 ~~and an itemized statement of the amounts to be paid.~~

324 ~~(13)-(9) Translation of court forms. Requests for translation of court forms from~~
325 ~~English to another language shall be submitted to the committee. The committee shall~~
326 ~~determine whether the form shall be translated, reviewing such factors as a) whether~~
327 ~~the English form has been approved by the Judicial Council or the Supreme Court or is~~
328 ~~in common use throughout the state, and b) whether an approved translation of the form~~
329 ~~has already been done. Forms determined by the committee to be appropriate for~~
330 ~~translation shall be submitted by the committee to a team consisting of at least two~~
331 ~~translators. In languages for which there is a certification program, translators must be~~
332 ~~certified interpreters, preferably with some translating experience. In languages for~~
333 ~~which there is no certification program, translators may be qualified interpreters with~~
334 ~~extensive court interpreting experience, and preferably with some translating~~
335 ~~experience, or a professional translation service chosen by the committee. After~~
336 ~~translation, the administrative office shall distribute the translated documents to the~~
337 ~~courts statewide. Forms must be translated by a team of at least two people who are~~
338 ~~interpreters certified under this rule or certified by a federal court or a court of a~~
339 ~~Consortium state or translators accredited by the American Translators Association.~~

340 (10) Court employees as interpreters. A court employee may not interpret legal
341 proceedings except as follows.

342 (10)(A) A court may hire an employee as an interpreter. The employee will be paid
343 the wage and benefits of the employee's grade and not the fee established by this rule.
344 If the language is a language for which certification in Utah is available, the employee
345 must be a certified interpreter. If the language is a language for which certification in
346 Utah is not available, the employee must be an approved interpreter. The employee will
347 not be included on the roster of certified or approved interpreters. The employee must
348 meet the continuing education requirements of an employee, but at least half of the
349 minimum requirement must be in improving interpreting skills. The employee is subject
350 to the discipline process for court personnel, but the grounds for discipline include those
351 listed in this rule. To avoid any appearance of impropriety, the employee should not be
352 assigned duties that might require contact with non-English speaking persons other
353 than for interpretation.

354 (10)(B) A state court employee employed as an interpreter has the rights and
355 responsibilities provided in the Utah state court human resource policies, including the
356 Code of Personal Conduct, and the Court Interpreters' Code of Professional
357 Responsibility also applies. A justice court employee employed as an interpreter or
358 serving as an interpreter as secondary employment has the rights and responsibilities
359 provided in the county or municipal human resource policies, including a code of
360 conduct, and the Court Interpreters' Code of Professional Responsibility also applies.

361 (10)(C) A court may appoint an employee as a conditionally-approved interpreter by
362 following the procedures in subsection (4)(E).

363 (11) Acts contrary to the Code. No person shall request or direct a court interpreter
364 to act contrary to a code of conduct or the Court Interpreters' Code of Professional
365 Responsibility.

366