

# Agenda

## Court Interpreter Committee

July 25, 2008  
12:00 to 3:00 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
Rule 3-306 amendments	Tab 2	Tim Shea

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

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

September 26, 2008

November 21, 2008

# Tab 1

**COURT INTERPRETER COMMITTEE  
MEETING MINUTES**

May 30, 2008  
Matheson Courthouse  
Salt Lake City, Utah

**Members Present:** Hon. Vernice Trease, Chair; Evangelina Burrows; Luther Gaylord; Peggy Gentles; Craig Johnson; Hon. Karlin Myers.

**Members Excused:** Daryl Hague; Deborah Kreeck Mendez ; Hon. Frederic M. Oddone; Dinorah Padro; Branden Putnam; Carolyn Smitherman; Brikena Ribaj.

**Guest Present:** Jennifer Storrer.

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

**Approval of minutes**

A motion by Peggy Gentles to approve the meeting minutes of 3/28/08 as prepared was seconded, and carried unanimously.

**Court Interpreter Fees Request for FY 2010**

Tim Shea reported the Judicial Council has approved a 3% increase for interpreters beginning July 1, 2008. The Judicial Council has increased the pay for certified interpreters by 28.7% in the last three years.

Blake Swain reported the results of a market analysis in the western region for certified court interpreter pay rates. The research showed that in some states, the interpreters receive an hourly rate, in other states a daily rate, and there is no consistent standard. Local governments set the fees in some instances. The analysis used a representative average and expressed everything in hourly rates. The analysis also included data for other medical interpreters, which include benefits.

Mr. Shea indicated that Utah court interpreter fees fall within the market survey. The question is how best to stay there. A 3.5% increase would put certified interpreters at about the \$40 per hour pay rate.

Following discussion, Luther Gaylord made a motion to propose a 3.5% pay increase for court interpreters for FY 2010 to the Judicial Council. The motion was seconded and carried unanimously. The request will be made by Judge Trease to the Judicial Council in August.

The pay rate for conditionally approved interpreters is currently at \$18.03 per hour and in the past has not been included in the pay increase request. Mr. Shea asked the committee if they wish to keep that pay rate at the same level. The group agreed that keeping the conditionally approved interpreters at this level provides an incentive for them to take the steps necessary to reach the next level.

**Identification cards for interpreters**

Mr. Shea indicated this issue arose because in some courts, security personnel are passing interpreters through the screening as they would an employee. The interpreters' identification cards were never intended for that purpose. Mr. Shea was asked by Fred Jayne to have the committee address the issue.

Peggy Gentles stated the question is do interpreters need to have identification cards? Building access is not an issue this committee needs to address.

Mr. Gaylord expressed that identification cards are useful to identify interpreters as such. Occasionally family members of the defendant come to court thinking they are going to interpret, but when they see Mr. Garylord's identification card they are aware he is the official interpreter.

Ms. Gentles noted that only the certified interpreters have identification cards. The more interpreters who have them, the more problematic it can become. If the certified interpreters need the cards, the cards should look very different from court employee badges. The committee agreed. Mr. Shea will report to Fred Jayne that the committee's consensus is that the ID cards for certified interpreters are useful and needed, but should look very different from a court employee badge to avoid confusion.

### **Court reporter member of committee**

Mr. Shea indicated this issue came up at the last committee meeting, but the group wanted to wait until this meeting for further discussion so ASL interpreter, Jennifer Storrer, could express an opinion. The question is whether a court reporter should be a committee member since they take real time notes that can be transmitted to a monitor and read, using the CART system.

Jennifer Storrer stated that in her experience, it is very seldom used. Hearing impaired individuals tend to prefer an oral interpreter that they can lip-read rather than reading a monitor. It is rare for a hearing impaired individual to request the CART system. A CART transcriber is not interpreting information but simply relaying it.

Mr. Gaylord noted that in speaking to some hearing impaired individuals, he learned that the primary language for hearing impaired is sign language and that usually their written language ability is around a fourth grade level. Written language is more like a second language for them. ASL interpreting is almost always preferable by hearing impaired people.

Mr. Shea stated he does not see a court reporter as being particularly knowledgeable about the issues this committee deals with. Ms. Gentles added that if there was an issue that had to do with hearing impaired individuals, the ASL representative on the committee would be able to address it.

Following discussion, the consensus of the committee is they do not recommend a court reporter be a member of this committee. Mr. Shea will make that recommendation to the Judicial Council.

### **Rule 3-306 amendments**

Mr. Shea noted many responses were received from justice court judges about what the impact would be if court employees were prohibited from serving as interpreters in simple hearings. He offered as an alternative to prohibiting employees from interpreting, that they be treated like a conditionally approved interpreter. Language in that section of the rule is similar to the concepts this committee discussed last time about when it might be appropriate for a judge to use a court employee for interpreting.

Mr. Gaylord stated he can understand the concerns of the justice court judges, but expressed concern that allowing a court employee to serve as an interpreter or allowing an interpreter to be hired as an employee might cause the professionalism that has been achieved to backslide.

Mr. Shea said the sense he got from the committee at the last meeting was that there are circumstances in which an employee could be used as an interpreter, but that they should be limited circumstances. The

intent of the provision is to preserve the progress that has been made and try to identify the limited circumstances in which a conditionally approved interpreter, who happens to be a court employee, can be used. The only language that currently regulates employees as interpreters is that interpreting not take the employees away from their regular duties.

Ms. Gentles wondered how many people are inquiring about whether the employees have read the code of professional responsibility before allowing them to act as an interpreter. This rule change would call attention to that requirement.

Judge Myers indicated the most serious cases in justice court are DUIs. The bulk of cases in his court are traffic. Justice court judges should have discretion to use a conditionally approved interpreter employee interpreter from, say, the utilities department for such cases.

During discussion, the following points were made:

- There should be awareness of appearance problems and who a conditionally approved interpreter works for. If they work for the court, they would at least have some idea of the process and the judge may be aware of their language competence.
- If it is a DUI, can a conditionally approved interpreter convey all the information they need to?
- The most serious case a justice court judge might deal with is a class B DUI, but it can set the defendant up for felony charges further down the road. If the interpreter is not competent enough, the connection may not be understood by the defendant.
- With a class B DUI, a judge should recognize there are consequences later on and conclude that is not one of the circumstances in which they should be using a conditionally approved interpreter.
- Limiting a court employee as an interpreter was never about getting more work for the credentialed interpreters. The concern is about professionalism and having qualified, well-trained people doing the job.

Mr. Gaylord expressed his concern that if the requirement of completing an application form is eliminated, at a minimum, there should be a requirement that the person reads, understands, and agrees with the code of professional responsibility before becoming conditionally approved. What will take the place of filling out the form and responding to questions? Mr. Shea will review the draft rule. His intent was appropriately strict standards for using a conditionally approved interpreter but there should be a process to ensure that the standards are followed.

Judge Myers indicated that often video arraignments are conducted from jail. If a member of law enforcement is the only person who speaks Spanish, they provide the interpreting. Mr. Gaylord opposes that. Some of the jailers' attitudes with respect to defendants is alarming. A neutral party should be obtained to interpret, never a member of law enforcement.

Mr. Shea said that using anyone from law enforcement or prosecution to interpret for a defendant is problematic. A jailer hired because he speaks Spanish so he can communicate first-hand with Spanish-speaking inmates is fine, but interpreting for the defendant would not be permitted by the Code of Professional Responsibility.

Mr. Gaylord asked what the rule is trying to satisfy. Certain justice court judges always use their court clerks for interpreting.

Mr. Shea responded that the judiciary does itself a disservice by having a policy that in essence prohibits hiring a staff interpreter. The policy change would not create any money, but it at least permits interpreters to be hired as court employees if desired. In all likelihood that will probably only happen in

the largest districts. The further effort with conditionally approved interpreters will give to the appointing authorities the message that if they need to apply to an employee, the same test would be applied if they were bringing someone in from the outside. The current policy is designed to give supervisors the ability to say a clerk cannot be used for interpreting because the clerk is needed at the front desk. It would be better to portray the interpreter as an important appointment that the clerk is or is not qualified to fill.

Judge Myers expressed that he would like to send justice court judges some proposed language. Mr. Shea responded that if any of them want access to the developments, Judge Myers could email them the link to the court interpreter website and give them the committee's meeting dates if they want to attend.

Mr. Shea referred the committee to page 23, paragraph 8, addressing fees and expenses. The changes are basically the same policy as exists now, but in fewer words. The one change this would make is that the fee the Judicial Council sets would apply in justice courts as well as state courts. With the current range of fees, sometimes an interpreter will take an assignment and cancel it if a better one comes along.

Mr. Gaylord asked how that is accomplished. He thought the justice courts were their own entities with limited oversight authority by the AOC. Mr. Shea stated that the AOC does not oversee any court but the Judicial Council has several rules that apply in justice courts.

Ms. Gentles asked what the range of pay is in justice courts. Mr. Gaylord responded that most are paying the same as state rates, but some are paying more and some are paying less. The policy used to say justice courts pay at a rate of their own choosing, so this would be a mandate to the justice courts that they must pay the same rate as the state courts.

Ms. Shea referred the committee to paragraph 8(C). Mr. Shea noted that the provision was intended in the nature of a contempt, which he thinks everyone is comfortable with. Ms. Gentles expressed that having this in the rule does not add anything. The committee agreed and Mr. Shea will delete paragraph 8(C).

Mr. Shea stated that the state has a series of statutes that permit a judge to order a defendant who has been convicted, and who has the ability to pay, to reimburse the cost of the interpreter. That is expressly permitted by statute. There is a series of federal laws and regulations that prohibit that. The Department of Justice has written guidelines under an executive order that prohibit charging a defendant for an interpreter because that discriminates based on country of origin. There is also an argument that as a matter of fundamental fairness, due process requires that non-English speaking defendants be treated the same as English-speaking defendants so they should not be charged for something that is necessary for them to take part in for their own defense.

Mr. Gaylord asked if, when Brent Johnson offered his opinion to the committee, this was taken into consideration. Mr. Shea responded he did not believe it was. Mr. Gaylord indicated that in previous meetings, the gist of Brent Johnson's opinions was that they probably should not charge. Mr. Shea stated that Judge Davis was going to send a memo to all the justice court judges about this but that it never happened.

Judge Trease suggested that the discussion should be divided into two parts: the first part being the judge orders a defendant to pay interpreter fees prior to conviction, and the second part being the judge orders it after conviction. Mr. Shea said he has requested that pre-conviction charges to the defendant be included in future audits.

Mr. Shea stated he does not know whether it would pass, but if the committee agrees with the policy, the most constructive approach is to delete those statutes that permit the judge to assess the defendant with

interpreter costs. Judges are reluctant to look to an interpretation of federal law when there is an express statute in front of them.

Judge Myers indicated that county budgets are very tight, so it can be difficult to pay for interpreters if the charge cannot be assessed against the defendant. Mr. Shea responded that nothing done here today will change that policy, which is in the statutes, not the rules. We would be satisfied if we can just get people to agree that the defendant has to be convicted and have the ability to pay before that cost is imposed.

Judge Trease asked how the security fee works. Mr. Shea responded that it is a surcharge. If a person is convicted and a fine is imposed, there is an automatic surcharge of x%. The money goes to security, education, and technology for justice court. Ultimately the Judicial Council provides grants in those three areas to support the justice courts.

Mr. Shea referred the group to paragraph 7 regarding discipline. Because of time constraints, Mr. Gaylord suggested deferring discussion on this to the next meeting. The group agreed.

Ms. Gentles referred to lines 103-107, and asked if certified interpreters are not being allowed to be used in juvenile probation conferences. Mr. Shea responded that this does not prohibit a certified interpreter to be used, but permits an approved or conditionally approved interpreter to be used.

Mr. Gaylord asked if this would set up a separate rule. Currently the rule is that certified interpreters must always be used when reasonably available. An approved can be used when a certified interpreter is not reasonably available. Is this saying for those juvenile probation conferences an interpreter coordinator could arrange for an approved interpreter and would not have to give a certified interpreter the first offer? Mr. Shea stated that the draft is new language, but reflects the existing rule, which says that if a juvenile court probation officer speaks the language, the officer can conduct a first-hand conversation or use an approved or conditionally approved interpreter.

### **ASL representative on the Court Interpreter Committee**

Mr. Shea asked if the committee would like to recommend Jennifer Storrer to be the ASL representative member on the court interpreter committee. Mr. Gaylord made a motion to recommend Jennifer Storrer be member of the Court Interpreter Committee. The motion was seconded and approved.

The next meeting is scheduled for July 25, but it is the day after a holiday so Mr. Shea will poll committee members via email to see if they can attend that day.

Because the next meeting is not scheduled until the end of July, Luther Gaylord will email his comments about the discipline section of the rule to Mr. Shea, who will make any changes that can be made without further discussion.

The meeting was adjourned.

# Tab 2

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 established in paragraph (3).

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).

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

51 ~~(2)(D) (2)(C)~~ 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 and approve  
57 court interpreters in the non-English languages most frequently needed in the courts.

58 ~~The administrative 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 certified or approved, 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;~~

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) complete 10 hours of observation;~~

79 ~~(3)(A)(vii) complete 10 hours of mentoring showing increasingly independent~~  
80 ~~responsibility for interpretation; and~~

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

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

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

93 ~~(5) Recertification.~~

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

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

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

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

100 ~~(6) (4) Appointment.~~

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

107 (4)(B) No interpreter is needed for a first-hand verbal exchange between the person  
108 and court personnel if court personnel can fluently speak the language understood by  
109 the person. An approved or conditionally approved interpreter may be appointed for a  
110 juvenile probation conference if the probation officer does not speak the language  
111 understood by the juvenile.

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

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

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

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

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

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

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

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

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

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

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

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

137 ~~(6)(C)(ii) Procedure for appointment.~~ (4)(D) Before appointing a conditionally-  
138 approved interpreter, the appointing authority shall enter findings that:

139 ~~(6)(C)(ii)(a) evaluate the totality of the circumstances including the gravity of the~~  
140 ~~judicial proceeding and the potential penalty or consequence to the accused person~~  
141 ~~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 (4)(D)(i) neither a certified nor an approved interpreter is reasonably available;

145 (4)(D)(ii) the gravity of the legal proceeding and the potential consequence to the  
146 person are so minor that delays in obtaining a certified or approved interpreter are not  
147 justified;

148 ~~(6)(C)(ii)(b)(1) whether (4)(D)(iii) the prospective interpreter appears to have has~~  
149 ~~adequate~~ language skills, knowledge of interpreting techniques and familiarity with  
150 interpreting ~~in a court or administrative hearing setting appropriate to that minor level of~~  
151 gravity and consequence;

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

154 ~~(6)(C)(ii)(b)(2) whether (4)(D)(v)~~ the prospective interpreter has read, understands,  
155 and agrees to comply with the ~~e~~Code of ~~p~~Professional ~~r~~Responsibility ~~for court~~  
156 ~~interpreters set forth in appendix H.~~

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

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

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

168 ~~(7)(5) Waiver.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

202 ~~(7) Discipline.~~

203 ~~(7)(A) An interpreter may be disciplined for:~~

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

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

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

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

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

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

213 ~~(11) Discipline~~

214 ~~(11)(A) An interpreter may be disciplined for violating the Code of Professional~~  
215 ~~Responsibility. (7)(B) Discipline may include: decertification, suspension, probation or~~  
216 ~~other restrictions on the interpreter's certification or qualification. Discipline by the~~  
217 ~~committee does not preclude independent action by the Administrative Office of the~~  
218 ~~Courts.~~

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

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

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

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

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

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

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

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

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

242 ~~(11)(D)(ii) The hearing shall be held no later than 45 days after notice of the~~  
243 ~~complaint was sent to the interpreter. (7)(D) If the complaint is not resolved, the~~  
244 ~~program manager will sign a statement to that effect, and the committee shall hold a~~

245 hearing within 45 days after the statement. The committee-program manager shall  
246 serve-mail notice of the date, time and place of the hearing to the interpreter ~~with notice~~  
247 ~~of the date and time of the hearing, via certified mail, return receipt requested.~~

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

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

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

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

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

272 (12)(A) Courts of Record.

273 ~~(12)(A) (i) In courts of record, the administrative office shall pay interpreter fees and~~  
274 ~~expenses(8)(A) In courts of record, the administrative office of the courts shall pay~~  
275 interpreter fees and expenses for legal proceedings in the following cases and for

276 translations. In courts not of record, the government that funds the court shall pay  
277 interpreter fees and expenses for legal proceedings in the following cases and for  
278 translations.

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

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

282 ~~(12)(A)(i)(c) in (8)(A)(iii)~~ cases filed against the state pursuant to U.R.C.P. 65B(b) or  
283 65C,

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

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

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

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

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

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

293 ~~(12)(A)(iii) Fees. (8)(B)~~ In April the Judicial Council shall set the fees to be paid to  
294 court interpreters for during the following fiscal year. Payment to interpreters of fees and  
295 expenses shall be made in accordance with the Courts Accounting Manual. ~~This section~~  
296 ~~does not apply to court employees acting as interpreters.~~

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

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

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

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

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

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

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

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

321 ~~(13)-(9) Translation of court forms. Requests for translation of court forms from~~  
322 ~~English to another language shall be submitted to the committee. The committee shall~~  
323 ~~determine whether the form shall be translated, reviewing such factors as a) whether~~  
324 ~~the English form has been approved by the Judicial Council or the Supreme Court or is~~  
325 ~~in common use throughout the state, and b) whether an approved translation of the form~~  
326 ~~has already been done. Forms determined by the committee to be appropriate for~~  
327 ~~translation shall be submitted by the committee to a team consisting of at least two~~  
328 ~~translators. In languages for which there is a certification program, translators must be~~  
329 ~~certified interpreters, preferably with some translating experience. In languages for~~  
330 ~~which there is no certification program, translators may be qualified interpreters with~~  
331 ~~extensive court interpreting experience, and preferably with some translating~~  
332 ~~experience, or a professional translation service chosen by the committee. After~~  
333 ~~translation, the administrative office shall distribute the translated documents to the~~  
334 ~~courts statewide. Forms must be translated by a team of at least two people who are~~  
335 ~~interpreters certified under this rule or certified by a federal court or a court of a~~  
336 ~~Consortium state or translators accredited by the American Translators Association.~~

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

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

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

358 (10)(C) A court may appoint an employee as a conditionally-approved interpreter by  
359 following the procedures in paragraph (4). The employee will be paid the wage and  
360 benefits of the employee's grade and not the fee established by this rule.

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

364