

# Agenda

## Court Interpreter Committee

September 26, 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

November 21, 2008  
January 23, 2009  
March 27, 2009  
May 22, 2009  
July 31, 2009  
September 25, 2009  
November 20, 2009  
January 22, 2010

# Tab 1

**COURT INTERPRETER COMMITTEE  
MEETING MINUTES**

July 25, 2008  
Matheson Courthouse  
Salt Lake City, Utah

**Members Present:** Hon. Vernice Trease, Chair; Evangelina Burrows; Luther Gaylord; Peggy Gentles; Craig Johnson; Deborah Kreeck Mendez; Hon. Karlin Myers; Hon. Frederic M. Oddone; Jennifer Storrer.

**Members Excused:** Daryl Hague; Dinorah Padro; Branden Putnam; Carolyn Smitherman; Brikena Ribaj.

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

**Approval of minutes**

Judge Trease welcomed all present. A motion by Peggy Gentles to approve the meeting minutes of 5/30/08 as prepared was seconded, and carried unanimously.

**Rule 3-306 amendments**

Tim Shea reviewed the amendments to Rule 3-306 with the committee. He noted that many of the changes were to clarify and simplify the rule, but some amendments do change the policy. The committee discussed each section and made suggestions, which were noted by Mr. Shea.

(1) Definitions

The group thought that the definitions of the credentials of interpreters should remain in the rule. Mr. Shea will include the process for a conditionally approved interpreter in the definition.

(2) Court Interpreter Committee

The committee discussed its role in the certification and discipline process. The committee concluded that it would delay issuing credentials to require approval by the committee. The application process is mostly ministerial and can be handled by staff. The committee can review denials if the applicant requests it. Even though the committee is not involved in certifying or approving interpreters, it can still play a role in discipline.

(3) Application, training, testing, roster.

The group agreed to the policy of requiring observation and mentoring as part of the application process. The details will have to be worked out.

(4) Appointment

The committee discussed what "reasonably available" means in requiring a certified interpreter. It was decided the gravity of the matter, not the distance, should be the deciding factor. Conditionally approved interpreters should be used in very limited circumstances. The committee discussed the factors to consider for appointing a conditionally approved interpreter. Again the primary focus should be on the gravity of the proceeding, although in some circumstances, a conditionally approved interpreter may be as good as it's going to get because

there are no qualified interpreters in that language. The committee wanted to have some kind of record of the need and the conditionally approved interpreter's ability.

(5) Waiver

The committee felt that withdrawing a waiver should be a simple process liberally granted. And that the court should be able to reject a waiver.

(6) Removal

The committee felt that removal from the case should not be tied to discipline. The interpreter should be encouraged to report his or her limitations.

(7) Discipline

The committee thought the discipline section should be revised to more accurately reflect the objectives and process. Mr. Shea will look at bar standards and at HR language dealing with employees. Jennifer Storrer will send him ASL's procedures.

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:** September 22, 2008  
**Re:** Rule 3-306

There were several comments about the difficulty of reading the rule with all of the interlineations. So I have changed to a draft of what the rule would look like if all of the changes are approved.

I have included the changes approved by the committee at the last meeting. In most cases, that was a concept, so we will want to review the text. Consider in particular:

Lines 22-27 and lines 88-98 on conditionally approved interpreters.

Lines 83-85 and Lines 123-125 concerning an interpreter for witnesses in civil cases. This is new. The idea is that in civil cases, an interpreter for a witness is for the benefit of the finder of fact – the judge or jury – so the court should appoint a certified interpreter. However, the court would not pay for the interpreter; that would remain the responsibility of the party.

Line 109-112 on assessing the cost of the interpreter. This is an old issue but new to the draft. I think many on the committee believe that the cost of an interpreter should, as a matter of policy, not be assessed against the defendant. But it is permitted by state law, and a provision like this might get people to focus on the specifics of when and how it is permitted.

Lines 125-129 on waiver. The concept is much the same as the last draft, but you wanted some changes in the text.

Lines 130-132 on removal. You asked that removal not be connected to discipline.

Lines 133-191 on discipline. This is where we left off. I have added one concept from the HR manual on discipline, but most of that document does not have much relevance to this process. I have added several ideas from documents that Jennifer sent.

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.

1 Rule 3-306. Court Interpreters.

2 Intent:

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

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

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

10 Applicability:

11 This rule shall apply to legal proceedings in the courts of record and not of record.  
12 This rule shall apply to interpretation for non-English speaking persons and not to  
13 interpretation for the hearing impaired.

14 Statement of the Rule:

15 (1) Definitions.

16 (1)(A) "Approved interpreter" means a person who has fulfilled the requirements  
17 established in paragraph (3).

18 (1)(B) "Certified interpreter" means a person who has fulfilled the requirements  
19 established in paragraph (3).

20 (1)(C) "Committee" means the Court Interpreter Committee established by Rule 1-  
21 205.

22 (1)(D) "Conditionally-approved interpreter" means a person who, in the opinion of the  
23 presiding officer after evaluating the totality of the circumstances, has language skills,  
24 knowledge of interpreting techniques, and familiarity with interpreting sufficient to  
25 interpret the legal proceeding. A conditionally approved interpreter shall read the Code  
26 of Professional Responsibility and subscribe the oath or affirmation of a certified  
27 interpreter.

28 (1)(E) "Code of Professional Responsibility" means the Code of Professional  
29 Responsibility for Court Interpreters set forth in Appendix H. No person shall request or  
30 direct a court interpreter to act contrary to the Code of Professional Responsibility.

31 (1)(F) "Legal proceeding" means a proceeding before the presiding officer. Legal  
32 proceeding does not include a conference between the non-English speaking person  
33 and the interpreter outside the court unless ordered by the presiding officer.

34 (1)(G) "Presiding officer" means a judge, commissioner, referee or juvenile probation  
35 officer.

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

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

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

41 (2)(C) discipline court interpreters.

42 (3) Application, training, testing, roster.

43 (3)(A) Subject to the availability of funding, and in consultation with the committee,  
44 the administrative office of the courts shall establish programs to certify and approve  
45 court interpreters in the non-English languages most frequently needed in the courts.  
46 The administrative office shall publish a roster of certified interpreters and a roster of  
47 approved interpreters. To be certified or approved, an applicant shall:

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

49 (3)(A)(ii) pay a fee established by the Judicial Council;

50 (3)(A)(iii) pass a background check;

51 (3)(A)(iv) complete training as required by the administrative office;

52 (3)(A)(v) obtain a passing score on the court interpreter's test(s) as required by the  
53 administrative office;

54 (3)(A)(vi) complete 10 hours observing a certified interpreter in a legal proceeding;

55 (3)(A)(vii) complete 10 hours of mentoring in the target language showing  
56 increasingly independent responsibility for interpretation; and

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

60 (3)(B) An interpreter who is certified in good standing by the federal courts or by a  
61 state having a certification program that is equivalent to the program established under

62 this rule may be certified without complying with paragraphs (3)(A)(iv) through (3)(A)(vii)  
63 but shall pass an ethics examination and otherwise meet the requirements of this rule.

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

68 (4) Appointment.

69 (4)(A) Except as provided in paragraphs (4)(C), (4)(D) and (4)(E), if the presiding  
70 officer determines that a party, witness, victim or person who will be bound by the action  
71 has a limited ability to understand and communicate in English, the presiding officer  
72 shall appoint a certified interpreter in legal proceedings in the following cases:

73 (4)(A)(i) criminal cases;

74 (4)(A)(ii) preliminary inquiries and cases filed on behalf of the state under Title 78A,  
75 Chapter 6, Juvenile Court Act of 1996;

76 (4)(A)(iii) cases filed against the state pursuant to Utah Rule of Civil Procedure  
77 65B(b) or 65C;

78 (4)(A)(iv) cases filed under Title 78B, Chapter 7, Protective Orders;

79 (4)(A)(v) cases filed under Title 77, Chapter 3a, Stalking Injunctions;

80 (4)(A)(vi) civil commitment under Title ##, Chapter ##; and

81 (4)(A)(vii) other cases in which the presiding officer determines that the court is  
82 obligated to appoint an interpreter.

83 (4)(B) In other cases, if the presiding officer determines that a witness has a limited  
84 ability to understand and communicate in English, the presiding officer shall appoint a  
85 certified interpreter for the witness, except as provided in paragraphs (4)(C) and (4)(D).

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

88 (4)(D) A conditionally-approved interpreter may be appointed if the presiding officer,  
89 after evaluating the totality of the circumstances, finds that:

90 (4)(D)(i) neither a certified nor an approved interpreter is reasonably available; and

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

93 (4)(D)(iii)(a) the prospective interpreter has language skills, knowledge of  
94 interpreting techniques and familiarity with interpreting sufficient to interpret the legal  
95 proceeding; or

96 (4)(D)(iii)(b) the gravity of the legal proceeding and the potential consequence to the  
97 person are so minor that delays in obtaining a certified or approved interpreter are not  
98 justified.

99 (4)(E) No interpreter is needed for a direct verbal exchange between the person and  
100 a probation officer if the probation officer can fluently speak the language understood by  
101 the person. An approved or conditionally approved interpreter may be appointed for a  
102 juvenile probation conference if the probation officer does not speak the language  
103 understood by the juvenile.

104 (4)(F) In courts of record, the interpreter will be scheduled by the interpreter  
105 coordinator.

106 (5) Payment.

107 (5)(A)(i) In cases described in paragraph (4)(A), the interpreter fees and expenses  
108 shall be paid by the administrative office of the courts in courts of record and by the  
109 government that funds the court in courts not of record. The court may assess the  
110 interpreter fees and expenses as costs to a party as provided by law. (Utah  
111 Constitution, Art I, §12, Utah Code Sections 77-1-6(2)(b), 77-18-7, 77-32a-1, 77-32a-2,  
112 77-32a-3, 78B-1-146(3) and URCP 54(d)(2).)

113 (5)(A)(ii)(a) The courts will pay for:

114 (5)(A)(ii)(b) one interpreter for non-English speaking defendants and non-English  
115 speaking witnesses;

116 (5)(A)(ii)(c) a separate interpreter for each non-English speaking defendant and/or  
117 witness if the judge determines that one non-English speaking person has an interest  
118 adverse to the others, or the judge determines that due process, confidentiality, or other  
119 circumstances require that there be separate interpreters; or

120 (5)(A)(ii)(c) two interpreters for person(s) requiring an interpreter if the judge  
121 determines that the legal proceeding is so long that two interpreters are required to  
122 alternate duties.

123 (5)(B) In cases described in paragraph (4)(B), the interpreter fees and expenses  
124 shall be paid by the party calling the witness or as ordered by the court.

125 (6) Waiver. A person may waive an interpreter if the presiding officer approves the  
126 waiver after determining that the waiver has been made knowingly and voluntarily. A  
127 person may retract a waiver and request an interpreter at any time. An interpreter is for  
128 the benefit of the court as well as for the non-English speaking person, so the presiding  
129 officer may reject a waiver.

130 (7) Removal from legal proceeding. The presiding officer may remove an interpreter  
131 from the legal proceeding for failing to appear as scheduled, for inability to interpret  
132 adequately, including a self-reported inability and for other just cause.

133 (8) Discipline.

134 (8)(A) An interpreter may be disciplined for:

135 (8)(A)(i) knowingly making a false interpretation while serving in an official capacity;

136 (8)(A)(ii) knowingly disclosing confidential or privileged information obtained while  
137 serving in an official capacity;

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

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

141 (8)(A)(v) failing to meet continuing education requirements; and

142 (8)(A)(vi) failing to appear as scheduled without good cause.

143 (8)(B) Discipline may include:

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

145 (8)(B)(ii) temporary loss of certified or approved credentials with conditions for  
146 reinstatement;

147 (8)(B)(iii) suspension from the roster of certified or approved interpreters with  
148 conditions for reinstatement;

149 (8)(B)(vi) prohibition from serving as a conditionally approved interpreter;

150 (8)(B)(v) suspension from serving as a conditionally approved interpreter with  
151 conditions for reinstatement; and

152 (8)(B)(vi) reprimand.

153 (8)(C) Any person may file a complaint in writing on a form provided by the program  
154 manager. The complaint may be in the native language of the complainant, which the  
155 AOC shall translate in accordance with this rule. The complaint shall describe in detail  
156 the incident and the alleged conduct or omission. The program manager may dismiss  
157 the complaint if it is plainly frivolous, insufficiently clear, or alleges conduct that does not  
158 violate this rule. If the complaint is not dismissed, the program manager shall mail or  
159 email the complaint to the interpreter at the address on file with the administrative office.

160 (8)(D) The interpreter shall answer the complaint within 30 days after the date the  
161 complaint is mailed or the allegations in the complaint are considered true and correct.  
162 The answer shall admit, deny or further explain each allegation in the complaint.

163 (8)(E) The program manager may review records and interview the complainant, the  
164 interpreter and witnesses. After considering all factors, the program manager may  
165 propose a resolution, which the interpreter may stipulate to. The program manager may  
166 consider aggravating and mitigating circumstances such as the severity of the violation,  
167 the repeated nature of violations, the potential of the violation to harm a person's rights,  
168 the interpreter's work record, prior discipline, and the effect on court operations. The  
169 interpreter or the program manager may request mediation.

170 (8)(F) If the complaint is not resolved by stipulation, the program manager will notify  
171 the committee, which shall hold a hearing. If a committee member is the complainant or  
172 the interpreter, the committee member is recused. The program manager shall mail or  
173 email notice of the date, time and place of the hearing to the interpreter. The hearing is  
174 closed to the public. The committee may review records and interview the interpreter,  
175 the complainant and witnesses. A record of the proceedings shall be maintained but is  
176 not public.

177 (8)(G) The committee shall decide whether there is sufficient evidence of the alleged  
178 conduct, whether the conduct violates this rule, and the discipline, if any. The chair shall  
179 issue a written decision on behalf of the committee within 30 days after the hearing. The  
180 program manager shall mail or email a copy of the decision to the interpreter.

181 (8)(H) The interpreter may review and, upon payment of the required fee, obtain a  
182 copy of any records to be used by the committee. The interpreter may attend all of the  
183 hearing except the committee's deliberations. The interpreter may be represented by

184 counsel and shall be permitted to make a statement, call and interview the complainant  
185 and witnesses, and comment on the claims and evidence. The interpreter may obtain a  
186 copy of the record of the hearing upon payment of the required fee.

187 (8)(I) If the committee finds that a certified interpreter has violated a provision of the  
188 this rule, and if the sanction includes suspension or removal from the roster of certified  
189 interpreters, the findings and sanction will be reported to the National Center for State  
190 Courts Consortium for State Court Interpreter Certification, where they will be available  
191 to member states.

192 (9) Fees. In April of each year the Judicial Council shall set the fees to be paid  
193 during the following fiscal year. Payment of fees and expenses shall be made in  
194 accordance with the Courts Accounting Manual.

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

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

200 (11)(A) A court may hire an employee as an interpreter. The employee will be paid  
201 the wages and benefits of the employee's grade and not the fee established by this rule.  
202 If the language is a language for which certification in Utah is available, the employee  
203 must be a certified interpreter. If the language is a language for which certification in  
204 Utah is not available, the employee must be an approved interpreter. The employee will  
205 not be included on the roster of certified or approved interpreters. The employee must  
206 meet the continuing education requirements of an employee, but at least half of the  
207 minimum requirement must be in improving interpreting skills. The employee is subject  
208 to the discipline process for court personnel, but the grounds for discipline include those  
209 listed in this rule. To avoid any appearance of impropriety, the employee should not be  
210 assigned duties that might require contact with non-English speaking persons other  
211 than for interpretation.

212 (11)(B) A state court employee employed as an interpreter has the rights and  
213 responsibilities provided in the Utah state court human resource policies, including the  
214 Code of Personal Conduct, and the Court Interpreters' Code of Professional

215 Responsibility also applies. A justice court employee employed as an interpreter or  
216 serving as an interpreter as secondary employment has the rights and responsibilities  
217 provided in the county or municipal human resource policies, including a code of  
218 conduct, and the Court Interpreters' Code of Professional Responsibility also applies.

219 (11)(C) A court may appoint an employee as a conditionally-approved interpreter  
220 under paragraph (4). The employee will be paid the wage and benefits of the  
221 employee's grade and not the fee established by this rule.

222