

# Agenda

## Court Interpreter Committee

November 21, 2008  
12:00 to 1:30 p.m.

Administrative Office of the Courts  
Scott M. Matheson Courthouse  
450 South State Street  
Executive Dining Room

Approval of minutes	Tab 1	Judge Vernice Trease
Introduction of Haloti Moala		Judge Vernice Trease
Report to Council Preview		Rosa Oakes
Report on Annual Consortium Conference		Rosa Oakes
Training Presenter Education Credit	Tab 2	Tim Shea
Strategic Plan – Next Steps	Tab 3	Tim Shea
Rule 3-306	Tab 4	Tim Shea

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

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

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**

September 26, 2008  
Matheson Courthouse  
Salt Lake City, Utah

**Members Present:** Evangelina Burrows; Luther Gaylord; Peggy Gentles; Daryl Hague; Craig Johnson; Deborah Kreeck Mendez; Hon. Karlin Myers; Dinorah Padro; Branden Putnam; Carolyn Smitherman.

**Members Excused:** Hon. Frederic M. Oddone; Brikena Ribaj. Jennifer Storrer; Hon. Vernice Trease.

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

**Approval of minutes:**

Tim Shea, welcomed all present. A motion by Deborah Kreeck Mendez to approve the meeting minutes of 5/30/08 as prepared was seconded, and carried unanimously.

**Rule 3-306 amendments**

Mr. Shea included the changes approved by the committee at the last meeting.

Lines 104-105: Luther Gaylord noted that some judges want continuity from one hearing to the next and prefer that the same interpreter be used for each hearing on the same case. The committee agreed the interpreter coordinator should be scheduling the same interpreter in these cases and lines 104-105 are not necessary. Mr. Shea will remove those from the draft.

Lines 83-85 and lines 123-125 concerning interpreter for witnesses in civil cases: The committee had questions about what would happen in instances of medical malpractice or financial issues. If the judge or jury is going to have to make decisions based on the witness, this is critical. The committee felt that unintended consequences could occur with this new requirement. It was also expressed that if more preparation by the interpreter in certain cases is warranted, the interpreter should be able to charge more. It may be that issues should be handled between parties. The consensus of the committee is that this needs more study and should not be decided right now. Civil lawyers and judges who have dealt with these circumstances should probably be queried. Mr. Shea will research how often this occurs and in the meantime, will take these lines out of the draft.

Lines 109-112 on assessing the cost of an interpreter: Mr. Shea asked the committee if they saw any benefit to identifying subsequent provisions to the law that govern when and how to assess costs. Many believe this should not be done, but state law does permit it. The committee agreed it is good to have the references because many people do this without concern for the rules and this reminds them there are parameters.

Lines 133-191 on discipline: Mr. Shea indicated that the court's HR policies do not offer much help in this area. Jennifer Storrer sent some information about the discipline process in her organization. The general approach is to indicate what the discipline can consist of. The rest of the paragraphs are a description of the process. Forms have not yet been developed for this.

Luther Gaylord referred to lines 158-159 and 172-173, and 180 regarding notice. He suggested notices should be limited to the program manager and they should be mailed, not emailed. Many interpreters do not check their email regularly and could get into trouble because they missed the message. Mr. Shea will remove “email” from the text.

(8)(E) lines 163-169. Mr. Gaylord noted that if there is mediation, there is a certain cost associated with that. Peggy Gentles noted if it is part of a process this committee has set up and is about a credential the committee gives, the court should pay for it. Mr. Shea stated it has never come to a point where a professional mediator is needed. Most discipline processes in other areas have a mediation component.

Deborah Kreeck Mendez asked who pays for mediation in cases that involve medical or police issues. Mr. Shea said he does not know and will do more research on that.

(8)(F) lines 170-176. Ms. Mendez expressed that it is intimidating for a person who files a complaint to have to appear before the whole committee. Mr. Gaylord said speaking from the perspective of an interpreter, if someone is going to the trouble to file a complaint against him, he would want the entire committee to hear the person’s testimony. Mr. Shea noted that unless otherwise specified, it would be a quorum of this committee, which is the majority (half plus one). It has never gone that far. A closed meeting would be recorded, but the record is private.

(8)(G) Lines 177-180. It was asked if this is an administrative agency appeal. Mr. Shea said it may not strictly be an administrative appeal. Ms. Gentles asked where the jurisdiction is if it does not fall in the administrative area. Mr. Gaylord noted that the current rule specifically gives the right to the interpreter to appeal the decision to the Judicial Council. There is no mention of it now. Ms. Mendez noted that in an agency decision, it can be appealed and it is not that formal. The interpreter could sue, if s/he wanted. The nature of the evidence and the standard of proof are not mentioned.

Mr. Gaylord asked if an interpreter is brought before the committee with counsel and the attorney objects on behalf of the interpreter to the introduction of certain evidence, how Judge Trease, as chair of this committee would rule. Is there anything to guide her in terms of making rules on any of the objections? Mr. Shea responded no. It is in the nature of an interview. He asked if Mr. Gaylord would like the language that was taken out to be reinstated.

Mr. Gaylord indicated he is more comfortable with the draft as it is, but is wondering if it ended up being a battle about what evidence will be allowed in and what evidence will not, where the chair of the committee would look - civil cases, criminal law or where – for guidance.

Mr. Shea responded he is not sure, but likely to quorums like this one. In the end, it is really not evidence since it is not under oath. Ms. Mendez asked if this committee is an investigative body making a decision based on investigation, or if each side presents their story and the committee then makes a decision. Mr. Shea said the latter is a better description, but part of that process would be that each individual member would have to come to the conclusion of who is telling the truth. Individually, committee members would have to make those decisions so in that sense it is an investigative body.

Ms. Mendez asked where the committee gets its authority. Mr. Shea responded the authority comes from this rule. The Judicial Council is responsible for the credentials. This model is recognized and is common and recommended by the Consortium, which is a collection of states under the umbrella of the National Center for State Courts.

Mr. Shea indicated that another model is for interpreters to have a licensing board with DOPL, just like beauticians and barbers do. The current and proposed model for interpreters is similar to the one court-

annexed mediators. There is Judicial Council rule establishing minimum requirements to be a mediator on the court roster. There is a sanction process that ends with the loss of credentials.

Mr. Gaylord asked if the interpreter was de-credentialed, whether the interpreter has a right to appeal that to a higher body. Mr. Shea said it would not be an appeal, but the interpreter could sue in district court. It cannot be treated as the next level of review as would district court review of agency action. There are statutes that govern that. In our situation, the interpreter would have to craft a civil complaint for damages or injunctive relief based on a statutory or common law theory of relief.

Ms. Mendez asked if the quorum must include the chair of this committee. Dinorah Padro suggested the quorum should also include at least one interpreter representative. Ms. Gentles suggested the committee would not want the content of votes to be publicized. Professor Hague suggested a statement about confidentiality should be added.

Following discussion, Mr. Shea indicated he will add provisions that the chair and at least one interpreter representative be part of the quorum and will copy the Judicial Council's confidentiality language that states that if the meeting is closed, the committee members can only talk with others who attended the meeting.

(8)(I) - on reporting discipline to the Consortium. Judge Myers asked, if the Consortium gave Utah notice that there was an interpreter from another state who was suspended, whether Utah would act without their own hearing.

Ms. Mendez noted that the Utah Bar does not license out of state attorneys in Utah, but rather allows them to use their license from another state to practice in Utah. It is like a driver's license. I cannot use my Utah driver's license to drive in Idaho if I am a resident there.

Mr. Shea indicated the analogy of the bar license and driver's license are good ones. Utah does recognize, and this draft would continue the existing policy, that if a person has interpreting credentials in another state with a qualification process that is similar to Utah's (consortium states, California and a few other states with high quality requirements), that the interpreter would be allowed to interpret in Utah. He does not know, however, whether Utah's credentials are given to the interpreter or if Utah relies on the credentials from the other state. He will check with Ms. Oakes to see what the current practice is.

Mr. Gaylord asked if a disciplinary procedure were to take place in Utah and the certification came from another jurisdiction, would the other state sanction or remove the interpreter's credentials. Mr. Shea responded that he does not know. The discipline would be reported to the Consortium, and they would let the member states decide what to do with that information. Judge Myers has asked the reverse of that question: What does Utah do if someone reports discipline from another state to Utah?

Ms. Mendez said that if Utah does nothing about it and the interpreter violates in Utah, the state is exposed to liability. Mr. Shea indicated that this is a question that is not answered in the current draft. Mr. Gaylord expressed concern if Utah does not have a way to sanction an interpreter with credentials from another jurisdiction.

Mr. Shea stated that currently there is no provision for reporting the sanction to the jurisdiction that licensed the interpreter, only to the Consortium. Ms. Mendez stated that a provision is needed to make sure misconduct is reported and that Utah respond if discipline is reported to the Consortium.

Ms. Gentles noted that lines 60-63 speak to certifying people that have interpreter certifications elsewhere. She suggested something be added that if the interpreter no longer meets those requirements s/he does not have the Utah certification anymore.

Ms. Padro asked whether Utah courts should be contacting the jurisdiction in which interpreter is certified to make sure they are in good standing before they are certified in Utah. Judge Myers agreed that should be done. Ms. Gentles suggested that we should check on certification from the non-consortium states. Mr. Shea will speak with Rosa Oakes and Dustin Treanor about building that into the background check.

(9) Fees. Ms. Gentles suggested this be clarified so it does not imply that we are setting the fees that interpreters are supposed to be paid in civil cases.

Mr. Shea briefly summarized the changes to the rule. Many changes were cosmetic, but there are some significant policy changes as well. He will circulate another draft, incorporating today's discussion, and members can send any further feedback to him. The next step may be to take it to the Boards rather than publish it for comment. The committee agreed with this.

Ms. Gentles asked if this can be done before the next committee meeting in November. Mr. Shea responded he will try to get it to the Boards before then.

The next meeting will be on November 21 at noon in the executive dining room. 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:** November 17, 2008  
**Re:** Training Presenter Education Credit

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The biannual training requirement for certified court interpreters is 16 hours. The Utah State Bar has a program that allows 3 hours of MCLE credit for every one hour that a person teaches, except panel presentations, which are one for one. Would the committee like to implement something similar for interpreters who prepare and present training programs?

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.

# Tab 3

**Court Interpreter Standing Committee  
Strategic Planning Initiative  
Report to the Judicial Council  
September 12, 2006**

**Introduction.**

1. Language should not be a barrier to justice. Utah, like the rest of the nation, is home to increasingly diverse cultures with increasingly diverse languages, as well as simply growing numbers of people who are not fluent in English. A different language does not make the person who speaks it any less a resident, any less a taxpayer, any less a citizen, any less deserving of the benefits of our judicial process. By providing qualified court interpreters, we bridge the communication gap and improve access to justice.

**Purpose of the Court Interpreter Program.**

2. Our purpose is to provide qualified court interpreters. To that end, we look to improve recruitment, training, accountability, availability, and services. Language differences create difficulties on both sides of the barrier. Improvements will assist the client, to be sure, and also judges and court staff.

**Summary Outline of the Court Interpreter Program.**

3. In 1995, Utah was one of the first eight states to join the National Center for State Courts' Consortium for State Court Interpreters. The Judicial Council established the Court Interpreter Committee as an advisory panel in 1996. In February 2005 the Council recognized the panel as a standing committee. In the interim, the policies recommended by the committee and adopted by the Council have built a strong program dedicated to securing the rights of people who are unable to communicate in English. The committee meets bi-monthly and many court interpreters who are not members regularly attend, showing their interest and support for the program.

4. The Utah court interpreter program has three levels of qualification. From highest qualified to lowest, they are certified, approved, and conditionally approved. An interpreter can be certified in Spanish and, within the last year, Vietnamese. A Consortium of states organized through the National Center for State Courts has established minimum certification standards. Utah recognizes certifications issued by other Consortium states and the federal courts. For all other languages, as well as for Spanish and Vietnamese, an interpreter can be approved. Once certified or approved, the interpreter can interpret in any court. Conditional approval is a status decided by the judge when neither a certified nor an approved interpreter is available. The decision extends only to the hearing for which it is made.

5. All interpreters are independent contractors paid for their time and mileage under a formula in the court accounting manual. Interpreters are scheduled locally. Interpreters in the district and juvenile courts are paid through the AOC from a separate line item appropriated for that purpose at the rate set by the Judicial Council. Justice courts pay for interpreters from local funds at a rate of their choosing. Court employees may not be used as interpreters, except in limited circumstances.

6. The program is governed by Rule 3-306.

## **Goals and Tasks.**

### **Goal 1. Improve recruitment of qualified interpreters.**

7. Issue: Currently, Utah has 32 interpreters certified in Spanish, one certified in Vietnamese, one federally certified in Navajo, and 84 approved interpreters in 39 languages. On the demand side, in 2005 there were 6,400 reported hearings with interpreters in the state courts. This does not include justice court hearings nor the many unreported state court hearings. Further, the courts compete for the interpreters' time with attorneys, medical practitioners, the federal courts, federal and state agencies and other individuals and organizations.

8. Judges report that interpreters in Spanish, which is by far the most common need, are usually available but that we still have need for more. Availability in less-common languages is problematic. Interpreters, even in Spanish, can be difficult to schedule in remote courts. The relative frequency of languages is a moving target. A language seldom spoken in Utah a few years ago may be more common today.

#### Tasks:

- (A) Develop partnerships with public and private universities to encourage interpreting as a career.
- (B) Re-examine minimum qualifications for approved interpreters.
- (C) Develop and maintain multi-language testing and non-specific language skills classes. [\(BYU grant application\)](#)
- (D) Support local and state recruiting efforts.
- (E) Improve recruitment in less common languages.
- (F) Re-examine the employment/contract relationship between the interpreter and the courts. [\(Draft amendments to Rule 3-306\)](#)
- (G) Re-examine the structure for interpreter fees. [\(Discussions in progress; report to committee in January\)](#)
- (H) Consider assessing interpreter fees as costs to a convicted defendant in criminal cases, subject to the ability to pay, similar to costs of representation. [\(Draft amendments to Rule 3-306, citing statutes and rules that establish limitations\)](#)
- (I) Research trends in immigration and languages used in the courtroom to anticipate need.

## **Goal 2. Improve interpreter training.**

9. Issue: The interpreter program has sufficient initial education and testing for interpreters certified in Spanish but only a few continuing education opportunities. The program has modest initial education for approved interpreters, no tests except for Spanish interpreters and no continuing education requirements.

10. To be certified, one must attend a two-day class, pass a three-part skills examination and an ethics exam, and attend ten hours of in-court observation. The skills exam uses a nationally approved test and nationally approved standards to test English skills, Spanish skills, and interpreting skills. In addition to these requirements, the AOC offers a five-day class to prepare for the examinations, but the class is not required.

11. Certified interpreters must obtain 16 hours of continuing education every two years. There are opportunities in the community to meet this requirement, but in the 2004 – 2005 biennium the courts offered only one skills-building class and one ethics class. Although the 16-hour requirement is less than half that of court employees and only one-quarter that of judges, four certified interpreters did not meet the requirement within the deadline.

12. The second level of qualification, approved, has a one-day orientation class that includes an introduction to court interpreting, the interpreters' code of ethics and court procedure. Approved interpreters also must observe ten hours of court interpreting. For approved Spanish interpreters, we briefly assess English and Spanish skills, but for other languages we do not. We have a pilot mentoring prerequisite for certified and approved interpreters, but it has not moved beyond a pilot program in the Third District. There is no continuing education requirement for approved interpreters. Judges report that certified interpreters are highly skilled, but that the quality of interpretation falls off dramatically among approved interpreters.

13. Interpreting is a skill much more complex than just speaking the language. Carrying on a conversation in Spanish does not qualify one for interpreting in Spanish. Consider that most English-speakers become horribly lost merely trying to repeat, simultaneously or consecutively, the words of another English-speaker.

14. A special part of education is familiarity with and application of the interpreters' code of ethics. The interpreter is bound by a code of ethics just like the judge, just like the lawyers, just like the clerk. Yet even if the interpreter understands the ethical responsibilities of a situation, which may not always be the case, others often do not. Often the interpreter is directed to serve in a capacity outside the scope of his or her responsibilities – to serve in a capacity that is prohibited, or at least limited, by the code of ethics. The professional presence of the interpreter in the courtroom is of recent vintage. We struggle with issues that result simply from unfamiliarity.

Tasks:

- (A) Develop partnerships with public and private universities to provide initial and continuing education opportunities.
- (B) Require initial skills training for certified interpreters. ([Integrated into new test preparation classes](#))
- (C) Develop and require initial skills training and testing for approved interpreters.
- (D) Develop continuing skills training opportunities for certified interpreters.
- (E) Study continuing skills training requirements and opportunities for approved interpreters.
- (F) Expand initial and continuing training in ethics.
- (G) Develop a summary description of the interpreter's role for use in the courtroom. ([Laminated card](#))
- (H) Develop classes for judges and staff in the ethics and role of interpreters. ([Applying for time on the spring and fall judicial conference agendas](#))
- (I) Develop classes for interpreter coordinators in the availability of American Sign Language interpreters.
- (J) Integrate cultural training, especially English and Spanish legal and social cultures, as part of training opportunities.
- (K) Develop local training opportunities.
- (L) Develop orientation class for new interpreters.
- (M) Improve continuing education monitoring and recordkeeping.

### **Goal 3. Improve interpreter availability.**

15. Issue: Court calendars are fluid. Hearings are scheduled and rescheduled on short notice. Short hearings go overtime. Long hearings conclude quickly. The time between hearings can be a few minutes or a few hours. Some courts use a rotation system for scheduling interpreters; others have their favorite person; others take whomever is available. Ensuring the simultaneous presence of the judge, prosecutor, defense counsel, defendant and interpreter is difficult. The long distances separating courthouses make a difficult situation even worse. If the hurdles to scheduling an interpreter are too high, courts may sometimes try to muddle through rather than postpone a hearing. Interpreters and court personnel alike suffer the consequences of scheduling problems. Given the dynamic nature of the process, scheduling an interpreter will always be difficult, but we should be able to improve.

#### Tasks:

- (A) Investigate the costs and benefits of centralized interpreter scheduling. ([Interpreter coordinators implemented statewide](#))
- (B) Investigate local interpreter scheduling using a centralized calendar. ([GroupWise calendar implemented for certified interpreters](#))
- (C) Investigate best practices for interpreter scheduling.
- (D) Develop incentives against cancellations by interpreters.
- (E) Research technological solutions. ([Distance interpretation pilot project: West Jordan juvenile court; Tooele district court](#))

- (F) Research the needs of district, juvenile, and justice courts. Serve those different needs.
- (G) Research the needs of urban and rural courts. Serve those different needs.

#### **Goal 4. Improve interpreter accountability.**

16. Issue: Currently, there is no recognized process for evaluating an interpreter. Presumably, a court declines to schedule an interpreter whose performance is particularly poor. Aside from not scheduling an interpreter and removing him or her from the list, there are few discipline options.

- (A) Develop a process for evaluating interpreters.
- (B) Develop a process for issuing ethics opinions.
- (C) Develop a process for making a complaint about an interpreter. ([Develop forms to support the new discipline process](#))
- (D) Evaluate the adequacy of the current discipline process. ([Draft amendments to Rule 3-306](#))
- (E) Improve interpreter performance and discipline recordkeeping.

#### **Goal 5. Improve translation services.**

17. Issue: The most common service of interpreters is, of course, interpreting in court. However, the people who cannot speak English in their courtroom appearance also will not be able to read the many pamphlets and forms produced by the courts. Translating documents has never been the primary role of the interpreter program, but it is an important role.

- (A) Develop multi-language pamphlets about the interpreter program. ([Spanish only so far](#))
- (B) Translate pamphlets and forms into Spanish. ([Ongoing. Completed so far: Cohabitant abuse; landlord/tenant; select criminal and juvenile forms. In progress: mediation, name change. Recommended by Probate Committee: guardianship and conservatorship.](#))

#### **Goal 6. Establish the role of the committee.**

18. Issue: During the planning meeting divergent views were expressed about the proper role of the committee. Some favored a more hands-on approach to the day-to-day issues facing interpreters, judges, staff and others. Others argued for a more policy-oriented approach, leaving operations to the people on the ground. By pursuing the goals and tasks in this strategic plan, the committee will have no choice but to assume a policy level role – not setting policies, but recommending them to the Judicial Council. In recommending a policy, part of the committee’s responsibility will be to recommend its own continuing role and that of the judges, coordinators, clerks, and the AOC.

Tasks: Consider, as part of its discussions, the role of the committee and others in:

- (A) Recommending policy.
- (B) Developing programs.
- (C) Evaluations.
- (D) Ethics opinions.
- (E) Discipline. [\(Draft amendments to Rule 3-306\)](#)
- (F) Solving problems: with interpreters; with judges; with staff; with lawyers; with clients; with process.

## **Committee Interpreter Committee**

Lynn W. Davis, District Court, Chair  
Carlos A. Esqueda, Prosecutor  
Luther Gaylord, Certified Interpreter  
Peggy Gentles, Trial Court Executive  
Daryl R. Hague, Professor of Linguistics  
Peggy Johnson, Clerk of Court  
Deborah Kreeck Mendez, Defense Attorney  
Brendan McCullagh, Justice Court  
Jane Miner Pham, Approved Interpreter  
Jody Meyer, Interpreter Coordinator  
Frederic M. Oddone, Juvenile Court  
Branden Putnam, Probation Officer  
Mayra Villamar, Certified Interpreter  
Mary Boudreau, Staff  
Rosa Oakes, Staff

# Tab 4

1 Rule 3-306. Court Interpreters.

2 Intent:

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

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 people 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 and is  
26 bound by the Code of Professional Responsibility and shall subscribe the oath or  
27 affirmation of a certified 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) A person who is certified in good standing by the federal courts or by a state  
61 having a certification program that is equivalent to the program established under this

62 rule may be certified without complying with paragraphs (3)(A)(iv) through (3)(A)(vii) but  
63 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 62A, Chapter 5, Part 3 Admission to Mental  
79 Retardation Facility;

80 (4)(A)(v) cases filed under Title 62A, Chapter 15, Part 6, Utah State Hospital and  
81 Other Mental Facilities;

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

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

84 (4)(A)(viii) other cases in which the presiding officer determines that the court is  
85 obligated to appoint an interpreter.

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

89 (4)(B) An approved interpreter may be appointed if no certified interpreter is  
90 reasonably available.

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

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

96 (4)(C)(ii) appointment of the prospective interpreter does not present a real or  
97 perceived conflict of interest or appearance of bias; and

98 (4)(C)(iii) neither a certified nor an approved interpreter is reasonably available or  
99 the gravity of the legal proceeding and the potential consequence to the person are so  
100 minor that delays in obtaining a certified or approved interpreter are not justified.

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

106 ~~(4)(F) In courts of record, the interpreter will be scheduled by the interpreter~~  
107 ~~coordinator.~~

108 (5) Payment.

109 (5)(A) In cases described in paragraph (4)(A), the interpreter fees and expenses  
110 shall be paid by the administrative office of the courts in courts of record and by the  
111 government that funds the court in courts not of record. The court may assess the  
112 interpreter fees and expenses as costs to a party as provided by law. (Utah  
113 Constitution, Article I, Section 12, Utah Code Sections 77-1-6(2)(b), 77-18-7, 77-32a-1,  
114 77-32a-2, 77-32a-3, 78B-1-146(3) and URCP 54(d)(2).)

115 (5)(B) The courts will pay for:

116 (5)(B)(i) one interpreter for non-English speaking defendants and non-English  
117 speaking witnesses;

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

122 (5)(B)(iii) two interpreters for person(s) requiring an interpreter if the judge  
123 determines that the legal proceeding is so long that two interpreters are required to  
124 alternate duties.

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

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

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

135 (8) Discipline.

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

137 (8)(A)(i) knowingly making a false interpretation ~~while serving in an official capacity~~  
138 in a legal proceeding;

139 (8)(A)(ii) knowingly disclosing confidential or privileged information obtained ~~while~~  
140 servicing in an official capacity in a legal proceeding;

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

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

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

145 (8)(A)(vi) conduct or omissions resulting in discipline by another jurisdiction; and

146 (8)(A)(vii) failing to appear as scheduled without good cause.

147 (8)(B) Discipline may include:

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

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

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

153 (8)(B)(vi) prohibition from serving as a conditionally approved interpreter;  
154 (8)(B)(v) suspension from serving as a conditionally approved interpreter with  
155 conditions for reinstatement; and

156 (8)(B)(vi) reprimand.

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

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

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

174 (8)(F) If the complaint is not resolved by stipulation, the program manager will notify  
175 the committee, which shall hold a hearing. The committee chair and at least one  
176 interpreter member must attend. If a committee member is the complainant or the  
177 interpreter, the committee member is recused. The program manager shall mail ~~or email~~  
178 notice of the date, time and place of the hearing to the interpreter. The hearing is closed  
179 to the public. Committee members and staff may not disclose or discuss information or  
180 materials outside of the meeting except with others who participated in the meeting or  
181 with a member of the Committee. The committee may review records and interview the  
182 interpreter, the complainant and witnesses. A record of the proceedings shall be  
183 maintained but is not public.

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

189 (8)(H) The interpreter may review and, upon payment of the required fee, obtain a  
190 copy of any records to be used by the committee. The interpreter may attend all of the  
191 hearing except the committee's deliberations. The interpreter may be represented by  
192 counsel and shall be permitted to make a statement, call and interview the complainant  
193 and witnesses, and comment on the claims and evidence. The interpreter may obtain a  
194 copy of the record of the hearing upon payment of the required fee.

195 (8)(I) If the committee finds that a certified interpreter has violated a provision of the  
196 this rule, and if the sanction includes suspension or removal from the roster of certified  
197 interpreters, the findings and sanction will be reported to the National Center for State  
198 Courts Consortium for State Court Interpreter Certification, where they will be available  
199 to member states. If the interpreter is certified in Utah under Paragraph (3)(B), the  
200 committee shall report the findings and sanction to the certification authority in the other  
201 jurisdiction.

202 (9) Fees. In April of each year the Judicial Council shall set the fees to be paid  
203 during the following fiscal year for the cases identified in Paragraph (4)(A). Payment of  
204 fees and expenses shall be made in accordance with the Courts Accounting Manual.

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

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

210 (11)(A) A court may hire an employee as an interpreter. The employee will be paid  
211 the wages and benefits of the employee's grade and not the fee established by this rule.  
212 If the language is a language for which certification in Utah is available, the employee  
213 must be a certified interpreter. If the language is a language for which certification in  
214 Utah is not available, the employee must be an approved interpreter. The employee will

215 not be included on the roster of certified or approved interpreters. The employee must  
216 meet the continuing education requirements of an employee, but at least half of the  
217 minimum requirement must be in improving interpreting skills. The employee is subject  
218 to the discipline process for court personnel, but the grounds for discipline include those  
219 listed in this rule. To avoid any appearance of impropriety, the employee should not be  
220 assigned duties that might require contact with non-English speaking people other than  
221 for interpretation.

222 (11)(B) A state court employee employed as an interpreter has the rights and  
223 responsibilities provided in the Utah state court human resource policies, including the  
224 Code of Personal Conduct, and the Court Interpreters' Code of Professional  
225 Responsibility also applies. A justice court employee employed as an interpreter has the  
226 rights and responsibilities provided in the county or municipal human resource policies,  
227 including any code of conduct, and the Court Interpreters' Code of Professional  
228 Responsibility also applies.

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

232