

# Agenda

## Court Interpreter Committee

January 23, 2009  
2:00 to 3:30 p.m.

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

Approval of minutes	Tab 1	Judge Vernice Trease
Introduction of Haloti Moala		Judge Vernice Trease
2009 Meeting Schedule		Tim Shea
Rule 3-306	Tab 2	Tim Shea
Fee Structure	Tab 3	Tim Shea
Certification Training: Non-language specific training	Tab 4	Rosa Oakes

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

**Meeting Schedule:** Matheson Courthouse, 2:00 to 3:30, Judicial Council Room

May 22, 2009

September 25, 2009

January 22, 2010

# Tab 1

**COURT INTERPRETER COMMITTEE  
MEETING MINUTES**

November 21, 2008  
Matheson Courthouse  
Salt Lake City, Utah

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

**Members Excused:** Hon. Vernice Trease; Hon. Frederic M. Oddone; Peggy Gentles; Daryl Hague; Haloti Moala.

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

**Approval of minutes:**

Tim Shea presided in Judge Trease's absence. Mr. Shea welcomed all present. A motion by Luther Gaylord to approve the meeting minutes of September 26, 2008 as prepared was seconded, and carried unanimously.

Mr. Shea noted that Judge Trease's law and motion calendar interferes with the meeting time of the Interpreter Committee and has prevented her from attending the meeting several times. Mr. Shea will speak with Judge Trease about the meeting time and see what can be done to accommodate her schedule.

**Report on Annual Consortium Conference**

Rosa Oakes reported on the Annual Consortium Conference held in Philadelphia in October. Ms. Oakes reported there currently about 40 states that are members of the Consortium. About 30 states were represented at the conference. The Consortium voted on and passed a name change from Consortium for State Court Interpreter Certification to Consortium for Language Access in the Courts. A new mission statement and core values were proposed, which still need work. Good information was received on Arabic languages, and on oral interviews, which are too expensive for Utah to conduct. The committee will continue to work on the program Professor Hague introduced. Ohio generated a new training video – The Role of Interpreters in the Legal System. On it is specific training for judges, for clerks, and for interpreters and is a good resource. Next year's meeting will be in Las Vegas, Nevada.

Mr. Shea asked if there was one point Ms. Oakes took away from the conference that the Interpreter Committee may be able to work on. Ms. Oakes responded that the Consortium asked that the state members formulate a plan for Title 6, and compliance with Limited English Proficiency plans.

Ms. Oakes read the definition of Title 6: "prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on grounds of race, color and national origin." Any agency that receives federal funding must have an LEP plan, even if the funding is received in an indirect way. Mr. Shea noted that the work this committee has done over several years meets all that DOJ requires, but it has never been reduced to a single document.

Luther Gaylord asked whether Title 6 is in conflict with statutes that provide there will not be language help to Spanish speaking people at the front counter in the courts.

Mr. Shea said that the courts have not scaled back their efforts. He mentioned the second language stipend to encourage courts to have a Spanish speaking clerk at the front counter and efforts to have interpreters at hearings.

### **Trainer Education Credit**

Mr. Shea indicated the Utah State Bar has a program where a lawyer can meet part of their MCLE requirements by teaching classes. Lawyers receive 3 hours of credit for every 1 hour of class. He asked the group if they saw a benefit to that approach for interpreters in achieving some of the 16 hours of education credit every 2 years.

Mr. Gaylord responded affirmatively. He noted that certified interpreters Rachel Webb and Travis Hyer recently presented an ethics workshop for interpreters. Ms. Webb's perception was she could only receive education credit for being a student in a class rather than a class instructor. Being an instructor entails a lot of preparation and the instructor is learning something in the process.

Jennifer Storrer indicated ASL has a similar program to the Utah Bar, except the instructor can only get prep hours the first time the class is taught. Thereafter, credit is given hour for hour.

Discussion ensued, with the following points made:

- Instructors should receive extra credit.
- If instructors are receiving credit, there may be more classes available.
- Instructors should receive payment for teaching as well as receive credit hours.

Mr. Gaylord asked if an instructor attended a conference out of state and was paid to instruct in a particular area at the conference, if the instructor could also receive education credit. Mr. Shea responded affirmatively.

Dinorah Padro suggested that instructors receive more than 1 for 1 credit after the first class is taught because there is still a large amount of effort that is made. The course would likely be revised each time it was taught.

Mr. Shea suggested instructors receive no more than 9 hours for teaching a class, which would equate to teaching 3 classes over the course of 2 years. The committee agreed with this. The committee agreed to give retroactive credit to Rachel Webb and Travis Hyer for teaching the ethics class and to others who have taught since the beginning of the calendar year. In addition, anyone presenting in a class is considered an instructor. Whoever is organizing class will be relied on to name the presenters in the class so they can receive credit.

Ms. Padro asked if presenters can receive double credit for study groups. Mr. Shea responded they can, as long as the study group is approved and open to all interpreters.

Ms. Oakes will look through past presentations that have been made by interpreters to ascertain those interpreters who can receive retroactive credit for presenting and for participation in a class or study group.

### **Strategic Plan – Next Steps**

Mr. Shea asked the committee which topics in the committee's strategic plan they would like to address next, noting this is an ongoing effort that is never finished. Ms. Oakes has developed a working paper on a mentoring program to be added to the initial training qualifications of a new interpreter.

Mr. Gaylord asked Ms. Oakes what the number of certified interpreters is. Ms. Oakes responded there are 43, but not all are working on a regular basis.

Discussion ensued with the following points made:

- Some attorneys are rumbling that the quality of interpreting by the newly certified interpreters is not as good as the seasoned certified interpreters.
- The certified interpreters who are making a living from their interpreter work are receiving less work because of the increased number of certified interpreters. The number of certified Spanish interpreters is getting to the saturation point.
- There will be attrition in the number of certified interpreters.
- Newly certified interpreters are more tentative and need to learn on the job. They will become more comfortable as they gain experience. They have only been certified for a few months.
- There could be a seniority system.
- Give priority to interpreters already serving the courts over those who are interested in one day serving the courts.
- There could be a limitation on the number of times Spanish certification exams are offered so they are offered every 2 or 3 years instead of every year.
- The federal government offers interpreter certification every other year.

Deborah Kreeck-Mendez indicated that a few months ago her office was waiting and waiting for more certified interpreters to be available. Now there is good availability. She asked if good interpreters are called to work more often.

Evangelina Burrows indicated that this hinges a lot on which interpreter calls back. Many do not respond to emails or phone calls. Sometimes a certified interpreter will leave the country for a few weeks. Then she calls a different group of interpreters from outlying areas.

Ms. Padro stated that in the 4<sup>th</sup> district many certified interpreters are not working as much and are wondering why.

Mr. Gaylord indicated there is always going to be a certain amount of conflict because interpreters try to be as busy as possible in order to have steady income. The courts need availability of interpreters and the AOC has made an effort to get more certified interpreters on the roster. He said he has not been as busy in the past 6 weeks as previously, and that could be because there are more certified interpreters competing for the work.

Ms. Padro indicated she has had to work more in the private sector of late to support her family.

Mr. Shea stated there has always been one aspect of the interpreter program that he has not been comfortable with: tinkering with the marketplace. There is no doubt the AOC has made a definite effort to approve the availability of certified Spanish interpreters, and there is not a certification program for other languages. Maybe it is time to concentrate on certification for another language.

Discussion ensued with the following points made:

- Let the newly certified Spanish interpreters get seasoned and delay adding more for now.
- Certified interpreters need to be assured there is enough work for them in the courts that they do not have to look elsewhere.
- Lack of money prevents offering certification in other languages. There is one certified Vietnamese interpreter but no certification has been offered for other Vietnamese interpreters.

- There are many Arabic interpreters and perhaps they should have an opportunity for certification.

Ms. Oakes indicated that non-language specific training for interpreters is available. Then interpreters would take the examination in their language. If Utah did it this way, we would have to say we have a certification program in all those languages. Then the certified interpreters would get a raise. The rest would be approved interpreters and their amount of money would drop because their language has become certified. In order to do anything like this, the budget would need to be reviewed.

Mr. Gaylord asked Ms. Burrows if she is scrambling for interpreters or if her needs are covered. Ms. Burrows responded that her problem is with last minute requests, usually in juvenile court. She said she receives a lot of requests the morning an interpreter is needed.

Ms. Oakes stated that is an issue when clerks are failing to make the request. She indicated this is a problem statewide. It is an education and training issue for clerks and judges.

Mr. Shea indicated that interpreter coordinators try to schedule interpreters who are closest to the courthouse to save on travel costs, but there are some rural areas where there are no interpreters. Interpreter coordinators schedule interpreters as they see fit. The AOC does not interfere in that.

Discussion ensued with the following points made:

- Raise the qualifications to another level above the current certified level.
- Some states have master level interpreters.
- Employ an in-court grading system of interpreters.
- Currently there is no process for evaluating an interpreter. Maybe a process for this could be developed.
- Lawyers grading interpreters would be inconsistent.
- Defendants and witnesses may provide more consistent reviews.

Mr. Shea and Ms. Oakes will generate some specific numbers and provide those at the next meeting so the committee can better evaluate whether it is necessary to pursue certification in languages other than Spanish. Even in the absence of a huge demand for a certain language, certification in it could provide some kind of measure of quality. With approved interpreters there is currently no measure of quality. If the number are so dramatic that certification in another language is not pursued, maybe the effort would be to beef up the approval process with some kind of examination that ensures at least minimal competence.

### **Rule 3-306**

Mr. Shea asked the group to email him with any comments or observations. This draft includes the most recent changes talked about at the last meeting. It will be taken to the Boards for review.

### **Report to Council Preview**

Rosa Oakes prepared a PowerPoint of Judge Trease's report to the Judicial Council. This was to be shown to the committee today, but because of lack of time, it was not shown.

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:** Interpreter Committee  
**From:** Tim Shea *TS*  
**Date:** January 20, 2009  
**Re:** Rule 3-306

I have met with all three Boards of Judges, and the meetings have gone well. As a result of those discussions, I am proposing several amendments to the draft of Rule 3-306 that you approved. I believe all but one of the changes are in keeping with your objectives.

The easy changes first:

Lines 16-17; 38-39. It was pointed out that "presiding officer" in all other contexts refers to the chief justice as presiding officer of the Judicial Council, so we should probably go back to the more familiar "appointing authority." Changing was my idea in the first place and probably a poor one.

Line 32-33. One judge suggesting recognizing laws other than the Interpreters' Code of Professional Responsibility. And a few judges were concerned that a judicial direction to an interpreter might be claimed as grounds for a complaint to the Judicial Conduct Commission even though it might be a disputed interpretation of the Code. Changing the phrasing seemed to satisfy.

Lines 34-37. The proposed change is intended only to remove an ambiguity. The earlier draft seemed to contemplate personal conversations between the interpreter and the client.

Line 43. Some judges expressed concern about the weight to be given to opinions issued by the committee. I've suggested "informal" opinions based on the role of the Ethics Advisory Committee to issue informal opinions interpreting the Code of Judicial Conduct. In that context, an informal opinion is evidence of good faith compliance with the Code, but is not binding.

Lines 192-196. The Consortium advises that they are no longer going to publish interpreter discipline.

Lines 216-217. The Board of Justice Court Judges observed that there is no reason to exclude an employee-interpreter from the list of certified and approved interpreters.

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.

There may be some benefit to being on the list and yet still conform to the state courts' secondary employment policies. Even after striking this sentence, an employee-interpreter would not be permitted to interpret in the state courts under the traditional arrangements because the Court Employee Code of Conduct prohibits an employee from contracting with the court apart from the employee contract. HR Policy 10.4.4. Local government regulations might permit that arrangement.

Now for the difficult one:

Lines 200-205. This change would essentially return the proposal to the current policy. The Judicial Council sets the fee paid by the state courts, and each local government sets the fee paid by its justice court.

The Board of Justice Court Judges opposes the Judicial Council setting one fee to be paid by all local courts. They argue that setting one fee would be contrary to federal law. By the time I met with them, I had already proposed that the Council set a minimum fee that would allow a justice court to pay more. That might remove the price fixing argument, but they still oppose the Council setting a fee for local government. They propose instead that the appropriate use of certified interpreters be a factor for renewal of a justice court.

Besides the comity argument, the Board argues that interpreters and local courts should have the freedom to contract, and that the policy should not prohibit a willing interpreter from working for less than the state courts pay. We have not done an exhaustive survey, but of those justice courts that responded to our inquiry, most pay the state rate. Some pay more, and some pay less. Only a few pay substantially less.

Encl. Rule 3-306

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, which is governed by Utah statutes.

14 Statement of the Rule:

15 (1) Definitions.

16 (1)(A) "Appointing authority" means a judge, commissioner, referee or juvenile  
17 probation officer, or delegate thereof.

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

20 (1)(C) "Certified interpreter" means a person who has fulfilled the requirements  
21 established in paragraph (3).

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

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

30 (1)(F) "Code of Professional Responsibility" means the Code of Professional  
31 Responsibility for Court Interpreters set forth in Code of Judicial Administration

32 Appendix H. ~~No person shall request or direct a court interpreter to~~ An interpreter may  
33 not be required to act contrary to law or the Code of Professional Responsibility.

34 (1)(G) "Legal proceeding" means a proceeding before the ~~presiding officer~~ appointing  
35 authority. Legal proceeding does not include ~~a conference between the non-English~~  
36 ~~speaking person and the interpreter communication~~ outside the court unless ordered by  
37 the ~~presiding officer~~ appointing authority.

38 ~~(1)(G) "Presiding officer" means a judge, commissioner, referee or juvenile probation~~  
39 ~~officer.~~

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

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

43 (2)(B) issue informal opinions to questions regarding the Code of Professional  
44 Responsibility; and

45 (2)(C) discipline court interpreters.

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

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

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

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

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

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

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

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

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

61 (3)(A)(viii) take and subscribe the following oath or affirmation: “I will make a true  
62 and impartial interpretation using my best skills and judgment in accordance with the  
63 Code of Professional Responsibility.”

64 (3)(B) A person who is certified in good standing by the federal courts or by a state  
65 having a certification program that is equivalent to the program established under this  
66 rule may be certified without complying with paragraphs (3)(A)(iv) through (3)(A)(vii) but  
67 shall pass an ethics examination and otherwise meet the requirements of this rule.

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

72 (4) Appointment.

73 (4)(A) Except as provided in paragraphs (4)(B), (4)(C) and (4)(D), if the presiding  
74 officerappointing authority determines that a party, witness, victim or person who will be  
75 bound by the action has a limited ability to understand and communicate in English, the  
76 presidingofficerappointing authority shall appoint a certified interpreter in legal  
77 proceedings in the following cases:

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

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

81 (4)(A)(iii) cases filed against the state pursuant to Utah Rule of Civil Procedure  
82 65B(b) or 65C;

83 (4)(A)(iv) cases filed under Title 62A, Chapter 5, Part 3 Admission to Mental  
84 Retardation Facility;

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

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

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

89 (4)(A)(viii) other cases in which the presidingofficerappointing authority determines  
90 that the court is obligated to appoint an interpreter.

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

93 (4)(C) A conditionally-approved interpreter may be appointed if the presiding  
94 officerappointing authority, after evaluating the totality of the circumstances, finds that:

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

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

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

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

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

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

134 (8) Discipline.

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

136 (8)(A)(i) knowingly making a false interpretation in a legal proceeding;

137 (8)(A)(ii) knowingly disclosing confidential or privileged information obtained in a  
138 legal proceeding;

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

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

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

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

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

145 (8)(B) Discipline may include:

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

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

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

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

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

154 (8)(B)(vi) reprimand.

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

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

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

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

181 (8)(G) The committee shall decide whether there is sufficient evidence of the alleged  
182 conduct or omission, whether the conduct or omission violates this rule, and the

183 discipline, if any. The chair shall issue a written decision on behalf of the committee  
184 within 30 days after the hearing. The program manager shall mail a copy of the decision  
185 to the interpreter.

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

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

199 (9) Fees.

200 (A) In April of each year the Judicial Council shall set the ~~minimum~~ fees and  
201 expenses to be paid during the following fiscal year by the courts of record for the cases  
202 identified in Paragraph (4)(A). Payment of fees and expenses shall be made in  
203 accordance with the Courts Accounting Manual.

204 (B) The local government that funds a court not of record shall set the fees and  
205 expenses to be paid by the court not of record for the cases identified in Paragraph (4).

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

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

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

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

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

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

233

# Tab 3



## Administrative Office of the Courts

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

### MEMORANDUM

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

**To:** Court Interpreter Committee  
**From:** Tim Shea *TS*  
**Date:** January 20, 2009  
**Re:** Interpreter Fee Structure

In its strategic plan, the Court Interpreter Committee identified that it wanted to “[r]e-examine the structure for interpreter fees.” The committee’s motivation was the complexity of the current structure and the inequities that it produces for both the courts and the interpreters. Under the current plan:

- time is rounded up to the next half-hour, so a difference of one-minute interpreting time can result in as much as a 30-minute difference in pay;
- minimum fees are quantum jumps based on distance traveled to the courthouse, so a difference of one-mile can result in as much as a two-hour difference in payment, yet in some circumstances a 100-mile difference might have no impact;
- even though minimum fees are based on distance traveled, an interpreter taking a morning and afternoon assignment in a single courthouse might receive a minimum fee larger than an interpreter who travels to a second courthouse;

In addition to the inequities, the components and conditions of what qualifies for payment are so complex that we ourselves cannot consistently calculate the correct amount. Under the current plan:

- we include round-trip miles to calculate mileage reimbursement, but only one-way miles to calculate the minimum fee;
- we subtract 25 miles from the round-trip calculation but not from the one-way calculation;
- our policy is so poorly written that multiple interpretations on several points are possible;
- our forms do not always agree with our policy;
- we spend time arguing with interpreters over the correctness of payments resulting in animosity and wasted time.

Dinorah Padro, Juanita Patino, Luther Gaylord, Ngoc-Nu Dang, Rachel Webb, Rosa Oakes, Marianne O’Brien, and I have met several times to develop this proposed fee

structure, which is based on time plus mileage. The principal feature is that, instead of minimum fees based on distance, time would include travel time.

The proposal supports the sound policy of encouraging interpreters to travel to remote courthouses, as does our current policy, but it does so (unlike our current policy) in a direct linear relation to the distance traveled. The proposal should not adversely affect interpreters who want to take mostly local assignments. Although there is only one minimum fee per day, the waiting time for which there is a payment has been doubled. I believe that the proposed fee structure is simple, and with appropriate forms, it will be simple to calculate the correct payment.

### **Summary of Proposed Fee Structure**

#### **Retain the following policies:**

1. Types of cases in which the courts pay for an interpreter.
2. One or two interpreters at the discretion of the judge.
3. Pay the interpreter from the time the hearing is scheduled to start, unless the delay is due to the interpreter's absence.
4. Payment for interpreting outside the court requires an express order.
5. Mileage is reimbursed at the state rate.
6. If a court limits its assignments to interpreters living within a certain distance from the courthouse, the interpreter can waive travel time and mileage to qualify for assignments.
7. Time is paid at the rate determined by the interpreter's credentials that will be used at the courthouse the interpreter is going to. (Needed for interpreters who are certified in Spanish and approved in other languages.)
8. The interpreter is reimbursed for approved common carrier, lodging and per diem.

#### **Change the following policies:**

9. Retain only a one-hour minimum guaranteed fee, which will almost always be exceeded in any event. Otherwise, eliminate guaranteed fees and the 25-mile deduction.
10. Instead, pay the interpreter for travel time plus mileage: one circuit each day coming from and going to home base plus travel between courthouses.
11. After the first hour, the accumulated time is rounded up to the next 6-minute increment. (currently rounded up to next half-hour)
12. Pay the interpreter for time between hearings up to two hours total, overlapping morning and afternoon if necessary, but excluding the lunch hour. (Currently paid for one hour maximum waiting time between hearings in the same courthouse.)
13. Travel time and mileage are paid by the court the interpreter is going to. Except that the last court visited pays for going home. (Relevant only if the interpreter goes from a court of record to a court not of record, or vice versa.)
14. If an interpreter is being paid for waiting, the interpreter is expected to be available for assignments, but can be released. (If an interpreter is scheduled for two non-contiguous hearings at a courthouse, this will restrict the interpreter's ability to take an assignment at a different courthouse.)

15. Develop a uniform cancelation and early termination policy. (Policy remains the same for early termination and cancelation of hearings of more than 6 hours. Cancelation of hearings under 6 hours will be part of this same policy.)
16. Travel time and mileage is as calculated by the AOC charts, unless the interpreter shows extraordinary circumstances. (We have prepared a spreadsheet with all courthouse-to-courthouse distances and times (courts of record only so far) based on the distances and times calculated by mapquest.)
17. Waiting for a jury verdict (or other on-call circumstances). At the direction of the appointing authority:
  - a. Release and return. Usually for long periods. Return to courthouse is treated as a regular assignment. Interpreter is not expected to wait for the court's call and is not paid during the interim.
  - b. On-call away from the courthouse. Usually for intermediate periods. Paid 1 hour for every 2 or fractions thereof up to a maximum of 6 paid hours (12 elapsed hours). Return to courthouse treated as a regular assignment.
  - c. Waiting at the courthouse. Usually for short periods. Paid in full.

Encl. Accounting Manual

1 Court Interpreters

2 Purpose:

3 To outline the policies and procedures regarding payment of interpreters in courts of  
4 record and courts not of record for non-English speaking persons and for hearing-  
5 impaired persons.

6 Policy:

7 INTERPRETERS FOR NON-ENGLISH SPEAKING PERSONS

8 A. The courts will pay interpreter fees and expenses as authorized by Rule 3-306.

9 B. Hourly Rates

10 The courts will pay the following rates for a certified, approved, or conditionally  
11 approved interpreter. The courts will not pay interpreters who are not certified,  
12 approved, or conditionally approved. These rates do not apply to a court employee.

Credentials	Hourly Rate
Certified	\$38.63
Approved in languages for which there is no certification program	\$33.10
Approved in languages for which there is a certification program	\$24.82
Conditionally Approved in languages for which there is no certification program	\$24.82
Conditionally Approved in languages for which there is a certification program	\$18.03

13 C. Time

14 1. The courts will pay for time interpreting in legal proceedings from the scheduled  
15 start or actual start of the proceeding, whichever is earlier, until the end of the  
16 proceeding. If the scheduled start is delayed because of the interpreter’s absence, the  
17 interpreter will be paid for time interpreting from the actual start of the legal proceeding  
18 until the end of the proceeding.

19 2. The courts will pay for time traveling in one circuit from and to the interpreter’s  
20 home base and between courthouses.

21 3. The courts will pay for time waiting between legal proceedings, up to 2 hours per  
22 day, but not including the lunch hour. Travel time is not included in waiting time.

23 D. Mileage

24 The courts will pay reimbursement, at the same rate as state employees, for each  
25 mile traveled in one circuit from and to the interpreter's home base and between  
26 courthouses.

27 E. Calculations

28 1. If the sum of all time calculations is one hour or less, the interpreter will be paid for  
29 one hour. If the sum of all time calculations is more than one hour, the interpreter will be  
30 paid in 6-minute increments.

31 2. Travel time and distance shall be calculated in accordance with charts prepared  
32 by the Administrative Office of the Courts, unless the appointing authority finds good  
33 cause for an exception.

34 3. Travel time is paid at the rate determined by the interpreter's language credentials  
35 that will be used at the legal proceeding the interpreter is going to. Travel time to the  
36 interpreter's home base is paid at the rate determined by the interpreter's language  
37 credentials used at the final legal proceeding of the day. Interpreting time and waiting  
38 time are paid at the rate determined by the interpreter's language credentials that will be  
39 used at the legal proceeding.

40 4. The court that the interpreter travels to will pay the waiting or travel time and  
41 mileage reimbursement to that courthouse. The court with the last assignment of the  
42 day will pay the travel time and mileage reimbursement to the interpreter's home base.

43 5. An interpreter may waive travel time and/or mileage reimbursement to qualify for  
44 participation in a rotation schedule.

45 F. Cancellation and early termination of legal proceedings

46 The courts will pay for canceled legal proceedings under the following conditions:

47 1. the interpreter is notified of the legal proceeding more than two business days  
48 before the scheduled start of the legal proceeding; and

49 2. the interpreter is notified of the cancellation less than two business days before the  
50 scheduled start of the legal proceeding; and

51 3. the cancellation is not due to the interpreter's absence.

52 If these conditions are met and the legal proceeding is canceled before the  
53 scheduled start, the court will pay for one hour, unless the proceeding is scheduled for 6  
54 hours or more. If the proceeding is canceled after the scheduled start, the court will pay

55 for time under paragraph C.1. If the proceeding is scheduled for 6 hours or more, the  
56 court will pay for 50% of the fee for the balance of the scheduled time up to a maximum  
57 of 6 hours. The courts will pay for travel time and mileage reimbursement for each mile  
58 actually and necessarily traveled if the interpreter is notified while in route to the legal  
59 proceeding.

60 G. On-call

61 1. Subject to the Code of Professional Responsibility, the interpreter must take  
62 assignments offered during any time the interpreter is being paid or forfeit the fee for  
63 that period of time. The interpreter will be paid one fee for that time. The appointing  
64 authority may release an interpreter if there are no assignments to offer.

65 2. If there is an extended delay in the interpreter's duties in a legal proceeding, (such  
66 as waiting for a jury to complete deliberations) the appointing authority may:

67 a. (usually for long periods) release the interpreter, in which case the interpreter has  
68 no obligation to the court and is not paid during the interim. A legal proceeding after the  
69 release is treated as a regular assignment.

70 b. (usually for intermediate periods) direct the interpreter to remain on-call, in which  
71 case the interpreter may leave the courthouse, but must be able to return within the time  
72 after notice specified by the appointing authority. The court will pay at the ratio of 1 hour  
73 for every 2 hours on-call or fractions thereof up to a maximum of 6 hours (12 hours on-  
74 call). A fraction of an hour is rounded up to the next hour. A legal proceeding after the  
75 on-call notice is treated as a regular assignment.

76 c. (usually for short periods) direct the interpreter to wait at the courthouse, in which  
77 case the court will pay for the actual waiting time.

78 H. Common carrier; lodging and per diem

79 Payment for travel by common carrier and for lodging and per diem expenses must  
80 be approved in advance by the appointing authority for a court not of record or by the  
81 deputy state court administrator for a court of record.

82 I. Request for payment

83 Interpreters in courts of record shall submit requests for payment on a form provided  
84 by the Administrative Office of the Courts. Interpreters in courts not of record shall  
85 submit requests for payment on a form provided by the court. All interpreters must

86 provide the Administrative Office of the Courts or the court not of record with a Utah  
87 taxpayer identification number or social security number prior to receiving payment.

88 INTERPRETERS FOR HEARING-IMPAIRED PERSONS

89 Interpreters for the hearing-impaired are governed by Utah Code Title 78B, Title 1,  
90 Part 2, and the Americans with Disabilities Act. The courts will pay for one interpreter for  
91 each hearing-impaired party, juror, witness or courtroom visitor in all criminal, civil, and  
92 juvenile proceedings. If a legal proceeding takes more than two hours, the courts will  
93 pay for two interpreters.

94 A. Scheduling

95 Courts should schedule an interpreter who has at least one of the following  
96 certifications in good standing:

97 State of Utah, Master Certificate;

98 Registry of Interpreters for the Deaf, Specialist Certificate: Legal;

99 Registry of Interpreters for the Deaf, Certified Deaf Interpreter; or

100 National Interpreter Certification, Master or Advanced Certificate,

101 and preferably has completed the AOC's workshop for approved interpreters.

102 If an interpreter with such credentials is not available, the courts should schedule an  
103 interpreter who has at least one of the following certifications in good standing:

104 State of Utah, Intermediate Certificate;

105 Registry of Interpreters for the Deaf, Certificate of Interpretation;

106 Registry of Interpreters for the Deaf, Certificate of Transliteration; or

107 National Interpreter Certification, Certified Level,

108 and preferably has completed the AOC's workshop for approved interpreters.

109 Courts should try to schedule appointments 24 hours or more in advance, because  
110 last-minute appointments, scheduled on the same day that service is provided, may  
111 incur surcharges. Courts should first attempt to schedule appointments through the  
112 Utah Interpreter Program. If interpreters cannot be scheduled through the Utah  
113 Interpreter Program, their services may be secured in accordance with procurement  
114 policies through individual interpreters or through private agencies.

115 B. Cancellation

116 To avoid being billed for all of a scheduled appointment, notice of cancelation should  
117 be given at least 24 hours before the start of an assignment.

118 Cancelation payment policies for language interpreters are not applicable to  
119 interpreters for the hearing-impaired. Applicable cancelation payment policies are  
120 determined by the Utah Interpreter Program or by private agencies or interpreters from  
121 whom the service is secured.

122 C. Payment

123 Pursuant to Utah Code Section 78B-1-208, an interpreter appointed under this part  
124 is entitled to a reasonable fee for his or her services, including waiting time and  
125 reimbursement for necessary travel and subsistence expenses. The fee shall be based  
126 on a fee schedule for interpreters recommended by the Division of Rehabilitation  
127 Services or on prevailing market rates. Reimbursement for necessary travel and  
128 subsistence expenses shall be at rates provided by law for state employees.

129 Any invoice for interpreter fees submitted directly to AOC Purchasing that has not  
130 been signed by the district interpreter coordinator must be verified. An AOC Purchasing  
131 Agent will contact the district interpreter coordinator, who will check court records to  
132 ensure that the invoice or request is accurate and that the amount claimed is correct.  
133 The appointing authority will pay the agency that provides the interpreting service.

134

# Tab 4

1	Spanish	177
	Other	6
	Cambodian	5
	Navajo	4
	Vietnamese	4
	Burmese	2
	Deaf	2
	Laotion	2
	Korean	1
	Tongan	1
1 Total		204
2	Spanish	903
	Deaf	48
	Russian	16
	Other	11
	Tongan	10
	Korean	1
	Mandarin	1
	Samoan	1
2 Total		991
3	Spanish	3202
	Vietnamese	152
	Arabic	79
	Other	77
	Farsi	65
	Samoan	61
	Bosnian	39
	Tongan	39
	French	29
	Russian	25
	Somali	19
	Laotion	16
	Portuguese	12
	Deaf	11
	Nuer	9
	Albanian	6
	Mandarin	5
	Cambodian	4
	Hindi	3
	Japanese	3
	Urdu	2
	Burmese	1
	Korean	1
	Mongolian	1
3 Total		3861
4	Spanish	1464
	Russian	28
	Deaf	25
	Other	22
	Tongan	20
	Mandarin	9
	Navajo	8
	Korean	5
	Hindi	3
	Samoan	3
	Vietnamese	3
	Mongolian	2
	Portuguese	1
4 Total		1593

5	Spanish	544
	Deaf	13
	Mandarin	6
	Navajo	5
	Other	4
	Thai	3
	Laotion	1
5 Total		576
6	Spanish	75
6 Total		75
7	Spanish	52
	Navajo	2
7 Total		54
8	Spanish	120
	Deaf	3
8 Total		123
State	Spanish	6537
	Vietnamese	159
	Other	120
	Deaf	102
	Arabic	79
	Tongan	70
	Russian	69
	Farsi	65
	Samoan	65
	Bosnian	39
	French	29
	Mandarin	21
	Laotion	19
	Navajo	19
	Somali	19
	Portuguese	13
	Cambodian	9
	Korean	8
	Albanian	6
	Hindi	6
	Burmese	3
	Japanese	3
	Mongolian	3
	Thai	3
	Urdu	2
State Total		7468