

Agenda

Court Interpreter Committee

September 28, 2012
12:00 to 1:30 p.m.

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

Welcome and approval of minutes	Tab 1	Judge Vernice Trease
Appeal	Tab 2	Judge Vernice Trease
Minimum notice of cancelation	Tab 3	Tim Shea
Education	Tab 4	Tom Langhorne Kris Prince Polly Schnaper

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

Meeting Schedule: Matheson Courthouse, Judicial Council Room, 12:00 to 1:30 unless otherwise stated.

November 16, 2012

January 25, 2013

March 22, 2013

May 17, 2013

July 19, 2013

September 27, 2013

November 15, 2013

Tab 1

Meeting Date	Court Interpreter Committee	
July 27, 2012	Education Room	
Members Present	Member Excused	
Judge Rick Romney	Judge Mary Noonan	
Judge Vernice Trease	Craig Johnson	
Jennifer Andrus	Dinorah Padro	
Evangelina Burrows	Jennifer Storrer	
Robert Engar		
Ghulam Hashain		
Greg Johnson		
Maureen Magagna		
Miguel Medina		
Wendell Roberts		
Staff: Tim Shea, Rosa Oakes		
Guests: Luther Gaylord, Kristine Prince, Tom Langhorne		
Topic: Approve minutes of January 27, 2012		
Discussion: No changes were made to the January minutes. Judge Vernice Trease asked the members to introduce themselves. Jennifer Andrus introduced herself as a new member. As well as, Robert Engar and Miguel Medina.		
Motion: Judge Rick Romney moved to approve the minutes. Maureen Magagna seconded the motion.		
Vote: Yes		Motion: Passed
Topic: Administrator's Report		By Rosa Oakes
<p>Rosa stated that she recently tested 12 people for interpreters (10 in Spanish, 1 in Bosnian, and 1 in Russian) with the certification exam that comes to us from the National Center for State Courts. Two of the Spanish speakers passed and are now interpreters for the Utah state courts. There was good feed back regarding the out-of-state trainers. There are now five remote interpreting systems across the state. There is two offices at the Matheson. There are some difficulties with the Roosevelt and Manti sites with the switching of the sound system between the main speakers and the headset that the defendant wears. This problem is being addressed.</p> <p>Rosa explained more in depth so the new members could more easily understand the process.</p> <p>Tim explained a collaboration between the Third District and the Eighth District. Evangelia Burrows is scheduling the interpreters for the Eighth District. The staff interpreters are used whenever possible. Although the Eighth District judges have the final say if they prefer an on-site interpreter. The Third District now has four staff interpreters. Miguel Medina said he commuted to the Eighth District for a hearing last week. He is concerned about the two and a half hour travel in the winter. Ms. Burrows stated that it is a learning process but is going fine. The cases have all been criminal cases, not civil.</p> <p>The Vernal and Roosevelt remote interpreter sites are working well. The courts are trying to schedule the hearings that require an interpreter together.</p>		

The last strategic planning was from September, 2006. Judge Trease stated that it might be helpful to review the issues and look forward to improvements.

Tim explained one of the articles he has provided was published by the National Center for State Courts. The article explains Delaware's interpreter program. Tim thought it was a good article that might present this committee with ideas for Utah's program. The second document was from Rhode Island. It is an executive order from the Supreme Court. The Rhode Island document included information on a developed rule of privilege. He suggested that Utah could also develop this rule or a similar one.

Tim spoke with Dan Becker about meeting more frequently to keep the committees energy and continuity up.

Judge Trease said the website is great but maybe the committee could look at more public outreach.

Ghulam Hashain expressed concerns about what already exists for awareness programs. He expressed both ethnic and gender issues between the interpreter and the defendant. The quality of interpreters needs to be addressed, as well as, the training needed prior to sending people out to the public. How to utilize the skill sets of interpreters. A member suggested adding training on the social aspects of communication and interpreting.

The committee discussed the training parameters. Tom Langhorne and Kristine Prince joined the committee in the discussion. Tom suggested an assessment to determine the needs in specific areas. Additionally, Tom suggested a two day interpreter training specific to the needs of the Utah courts. He distributed the National Center for State Courts model curriculum for training on interpreters. He also handed out the Utah Judicial Institute curriculum outline for justice court judges. Tom would like to develop a more formal training to include both interpreters and court employees. Judge Trease stated that she would like to get additional input from interpreters. She also wanted to clarify that the training would not be language specific.

Judge Trease would like interpreters to become familiar with standard court paperwork such as model jury instructions and rules of evidence which can be very helpful for both the interpreter and others involved during hearings and trials.

Tom discussed the financial arrangements needed for those who are not required to have continued legal education. Tim addressed the current continuing education offered. The committee agreed with Tom's suggestions. He will take this to the standing Committee on Judicial Education.

Kristine Prince discussed participating in training next April at the justice court judges conference.

Judge Trease stated that the committee will continue to discuss the training issue as well as getting feedback from outside sources.

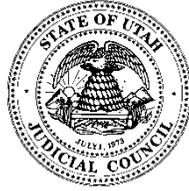
Topic: Meeting adjourned

By Tim Shea

Judge Trease discussed meeting every other month. The committee agreed with this. The committee agreed to the fourth Friday of the month. The upcoming dates are September 28, November 16 (due to the holiday), January 25, 2013, March 22, 2013, May 17, 2013 (due to the holiday), July 19, 2013 (due to the holiday), September 27, 2013, and November 16 (due to the holiday). Rosa will send an email as well as Tim listing the dates on the committees website. Tim reminded the committee the currently scheduled meeting in October will be cancelled. The meeting adjourned at 1:30 p.m.

Tab 2

Tab 3



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Court Interpreter Committee
From: Tim Shea *T. Shea*
Date: September 21, 2012
Re: Minimum time for cancelation of an assignment

In January 2010 the committee recommended and the Judicial Council ultimately approved an amendment to the court accounting manual changing the minimum time for cancelation of an assignment, after which the court would pay a calculated fee, from "two business days" to "48 hours." See

<http://www.utcourts.gov/committees/CourtInterpreter/materials/2010-01-22.pdf#page=13>, lines 140 - 146 and lines 163 - 164.

Under the policy if the coordinator cancels an assignment more than 48 hours before the scheduled start of the hearing, the courts do not pay the interpreter for the assignment. If the assignment is canceled less than 48 hours before the hearing, the court pays the interpreter a fee calculated on the notice actually given and whether the hearing was scheduled for more than or fewer than six hours.

An interpreter has asked that we clarify whether the current policy means 48 business hours or 48 elapsed hours. The few times the issue has been raised, we have used elapsed hours. There might be a perception that the committee intended 48 business hours because the change was from two business days. However, time measured in hours is usually considered to be elapsed hours. Forty-eight business hours would be on the order of three days. The committee's minutes do not indicate a discussion on this point.

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 4

**ADMINISTRATIVE OFFICE OF THE COURTS
UTAH JUDICIAL INSTITUTE**

**CURRICULUM OUTLINE FOR TRAINING JUDGES ON
“WORKING WITH FOREIGN LANGUAGE COURT INTERPRETERS”**

WORKING DOCUMENT

Draft

I. WHEN SHOULD AN INTERPRETER BE APPOINTED?

- A. Many individuals have enough proficiency in a second language to communicate at a very basic level. But participation in court proceedings requires far more than a very basic level of communicative capability. For non-English speaking criminal defendants to testify in their own defense, they must be able to:
1. Accurately and completely describe persons, places, situations, events;
 2. Tell “what happened” over time;
 3. Request clarifications when questions are vague or misleading; and
 4. During cross-examination:
 - a. Recognize attempts to discredit their testimony
 - b. Refuse to confirm contradictory interpretations of facts, and
 - c. Defend their position.
 5. Non-English speaking defendants must comprehend the details and the subtle nuances of both questions and answers spoken in English during testimony.
 6. In non-evidentiary proceedings that involve determination of custodial status, advisement of rights, consideration of sentences and articulation of obligations and responsibilities established in court orders, non-English speaking persons must receive the same consideration as native speakers of English.

- B. When a party does not request an interpreter, but appears to have a limited ability to communicate in English, the court should conduct a brief voir dire to determine the extent of the disability. Avoid questions that can be answered with “yes” and “no.” Include questions that ask for what, where, who, when, that call for describing people, places, events, or a narration (tell what happened).
- C. Great caution should be exercised before permitting waiver of a right to an interpreter. The judge should not allow a person who has a limited proficiency in English to waive the use of an interpreter unless the person requests a waiver in writing and in the person’s native language.
- D. At any stage of the case or proceeding, a person who has waived an interpreter should be allowed to retract a waiver and receive the services of an interpreter for the remainder of the case or proceeding.

II. USE OF QUALIFIED INTERPRETERS

- A. It is inefficient for trial judges to be responsible for the *ad hoc* determination of interpreter qualifications in the courtroom. Determination of the qualifications of court interpreters is the responsibility of the AOC Interpreter Court Program Coordinator who has tested for an interpreter’s language proficiency.
- B. Circumstances may arise, especially in the rural areas of the state, when a judge is asked to accept the services of an individual whose language skills have not been previously evaluated. When the court is obliged to accept the services of an individual whose skills are untested, it is recommended that the judge establish the following on the record:
 - 1. The interpreter communicates effectively with the officers of the court and the person(s) who receive(s) the interpreting services.
 - 2. The interpreter knows and understands the Code of Professional Responsibility for Interpreters and promises to comply with it.
 - 3. The interpreter takes the same oath that all interpreters must take in a court proceeding.

III. UTAH'S CREDENTIALING OF COURT INTERPRETERS

- A. Overview of interpreter qualifications, including
 1. Categories of interpreters; (e.g., certified, approved, registered, and conditionally approved)
 2. Training program for foreign language interpreters; and
 3. Testing and the Council on Language Access in the Courts.
- B. Utah's policy on the use of interpreters
 1. Rule 3-306 including
 - a. Practical issues in rural areas;
 - b. Use of CourtCom;
 - c. Remote interpreting - guidelines and tips;
 - d. Interpreters' Code of Professional Responsibility.
- C. Role of the Court Interpreter Standing Committee
- D. Interpreters as independent contractors, including
 1. Fees;
 2. Payments (reimbursement and billing process);
 3. Responsibility of costs for interpreting services;
 3. Travel (mileage); and
 4. How to schedule a court interpreter
- E. Interpreter resources in Utah
- F. Judges' checklist or bench guide

IV. INTERPRETER'S OATH

- A. Every interpreter used in the court should be required to swear an “oath of true interpretation.”
- B. Interpreters who are used regularly but who are not court employees can keep their oath on file at the AOC.
- C. In the case of trials, it is recommended that the oath always be administered orally to interpreters in the presence of the jury to reinforce the jury's awareness of the role of the interpreters.
- D. For interpreters who are used only intermittently, the interpreter should be sworn in at the beginning of the proceeding or at the beginning of the day's work in a given courtroom.

V. THE ROLE OF THE INTERPRETER

- A. The judge should explain (before the proceeding begins) the role and responsibilities of interpreters to all courtroom participants in court proceedings.
 - 1. The interpreter's only function is to help the court, the principal parties in interest and the attorneys to communicate effectively with one another.
 - 2. The interpreter may not give legal advice, answer questions about the case, or help anyone in any other way except to facilitate communication.
 - 3. If a person who is using the services of the interpreter has questions, those questions should be directed to the court or an attorney through the interpreter; the interpreter is not permitted to answer questions, only to interpret them.
 - 4. If someone cannot communicate effectively with or understand the interpreter, that person should tell the court or presiding officer of the court.
- B. The judge should advise every witness of the role of the interpreter. As the judge gives the advisement, the interpreter simultaneously interprets it for the witness. The clarification should cover the following points:

1. Everything the witness says will be interpreted faithfully;
2. The witness must speak to the person who asks the question, not to the interpreter;
3. The witness should respond only after having heard the entire question interpreted into his or her own language;
4. The witness should speak clearly and loudly so that everyone in the court can hear; and
5. If the witness cannot communicate effectively with the interpreter, she or he should tell the court or the presiding officer of the court.

VI. BEST PRACTICES FOR JUDGES USING COURT INTERPRETERS

- A. The judge should keep the room as quiet as possible and allow only one person to speak at a time.
- B. Interpreters should never use the pronoun “I” to refer to themselves when speaking in order to avoid confusion. The interpreter should always speak in the third person and identify her or himself as “the interpreter.”
- C. Judges should speak and assure that others speak at a volume and rate that can be accommodated by the interpreter.
- D. Judges should ensure that the interpreter has conversed briefly with the non-English speaking person to be certain that the interpreter and the party or witness are able to communicate adequately.
- E. Before a trial begins
 1. Any time an interpreter is required for a jury trial, the judge should advise the jurors of:
 - a. The role and responsibilities of interpreters; and
 - b. The nature of evidence taken through an interpreter.
 2. When a case involves a non-English speaking party, the judge should instruct the panel of jurors before voir dire begins that an interpreter is sitting at counsel table to enable the party to understand the proceedings.

3. It is also important to determine whether prospective jurors are affected by the presence of an interpreter: do they hold prejudices against people who don't speak English? Do they speak a foreign language that will be used during the proceeding? If so, will they be able to pay attention only to the interpretation?
 4. After a jury is impaneled and before a trial begins, the judge should instruct jurors as part of the pre-trial instructions that they may not give any weight to the fact that a principal party in interest has limited or no proficiency in English and is receiving the assistance of an interpreter.
- F. When a trial involves witness interpreting, the judge should give instructions to jurors before the witness interpreting begins that include the following points:
1. Jurors must treat the interpretation of witness's testimony as if the witness had spoken English and no interpreter were present;
 2. Jurors must not evaluate a witness's credibility positively or negatively due to the fact that his or her testimony is being given through an interpreter;
 3. Jurors who speak a witness's language must ignore what is said in that language and treat as evidence only what the interpreter renders in English. Such jurors must ignore all interpreting errors they think an interpreter may have made.
- G. As in any proceeding, the judge should keep the room as quiet as possible and allow only one person to speak at a time.
1. Interpreter should never use the pronoun "I" to refer to themselves while speaking, in order to avoid confusion on the record. The interpreter should speak in the third person and identify her or himself as "the interpreter."
 2. Judge should permit witness interpreters to use appropriate signals to regulate speakers when the length of an utterance approaches the outer limit of the interpreters' capacity for recall.
 3. Make sure that the interpreter can easily hear and see the proceedings.

4. The judge should ensure that the interpreter has conversed briefly with the non-English speaking person to be certain that the interpreter and the party or witness are able to communicate adequately.

VII. ERRORS DURING WITNESS INTERPRETING

- A. When an interpreter discovers his or her own error, the interpreter should correct the error at once. If an interpreter becomes aware of an error after the testimony, he or she should request a bench or side bar conference with the court to explain the problem.
- B. When an error is suspected by the judge, an attorney, or another officer of the court besides the interpreter, that person should bring the matter to the attention of the judge at the earliest convenient opportunity.
- C. The following steps are recommended:
 1. The judge should first determine whether the issue surrounding the allegedly inaccurate interpretation is substantial or potentially prejudicial and requires determination.
 2. If the judge agrees that the error is substantial or could be prejudicial, then the judge should refer the matter first to the interpreter for reconsideration. If this does not resolve the problem, evidence from other expert interpreters or any other linguistic expert the judge may select should be sought.
 3. The judge should make the final determination as to the correct interpretation, and amend the record accordingly and advise the jury.

VIII. MODES OF INTERPRETING

- A. The mode of interpreting to be used at any given time (consecutive or simultaneous) depends on the types of communication to be interpreted within a proceeding.
 1. The simultaneous mode of interpreting should be used for a person who is listening only. This is the normal mode for interpreting proceedings. An interpreter should interpret in the simultaneous mode in the following situations:

- a. For a defendant when testimony is being given by another witness;
 - b. For a defendant or witness when the judge is in dialog with an officer of the court or any other person other than the defendant or the witness;
 - c. For a defendant when the court is addressing the jury or any other person present in the courtroom, or
 - d. For any non-English speaking party when the judge is speaking directly to the person without interruption or regular call for responses.
- B. The consecutive mode of interpreting should be used when a non-English speaking person is giving testimony or when the judge or officer of the court is communicating directly with such a person and is expecting responses.
- C. The summary mode of interpretation should not be used. It is most often resorted to only by unqualified interpreters who are unable to keep up the consecutive or simultaneous modes.

IX. MULTIPLE NON-ENGLISH SPEAKING DEFENDANTS IN THE SAME TRIAL

When two or more defendants who need an interpreter speak the same language, interpreting equipment should be used to provide simultaneous interpretation of the proceeding.

X. PREVENTING INTERPRETER FATIGUE

- A. The United Nations standard for replacing interpreters with a co-interpreter is every 45 minutes.
- B. For any proceeding lasting longer than thirty minutes of continuous simultaneous interpretation, two interpreters should be assigned so they can relieve each other at periodic intervals to prevent fatigue.

XI. USE OF LANGUAGES OTHER THAN ENGLISH BY JUDGES, ATTORNEYS OR OTHER PARTICIPANTS

- A. Some judges and attorneys are bilingual; however, they should not function as interpreters during proceedings.
- B. Judges and other court participants should speak in English at all times during proceedings.
- C. Attorneys should use English during all proceedings at all times, except in confidential communication with a client.
- D. Attorneys should not be permitted to function as interpreters for parties they represent.
- E. Court personnel or bailiffs who are bilingual should not be permitted to function as interpreters.

XII. CULTURAL SENSITIVITIES

(To be developed by the Committee)

Material taken from:

Administrative Office of the Utah Courts, Utah Judicial Institute, Justice Court Judges Curriculum Development Subcommittee Curriculum Outline on “Working With Foreign Language Court Interpreters,” Kristine Prince, 2007

Judges’ Guide to Standards for Interpreted Proceedings, National Center for State Courts

Training on Limited English Proficiency Survey Results, State of Connecticut Judicial Branch, 2012

Draft