

**COURT INTERPRETER COMMITTEE  
MEETING MINUTES**

August 24, 2007  
Matheson Courthouse  
Salt Lake City, Utah

**Members Present:** Hon. Lynn Davis, Chair; Evangelina Burrows; Luther Gaylord; Peggy Gentles; Daryl Hague; Craig Johnson; Dinorah Judd; Deborah Kreeck Mendez; Hon. Frederic M. Oddone; Branden Putnam.

**Members Excused:** Hon. Brendan McCullagh; Brikena Ribaj; Carolyn Smitherman.

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

**Guests Present:** Three of the newly certified interpreters: Rachel Webb, Lirio Fernandez, and Travis Hyer; Gabriela Grostic, Brenda Lake, Grant Anderson.

**Welcome & Minutes**

Judge Davis welcomed all present. A **motion** by Judge Oddone to approve the minutes as prepared was seconded and carried unanimously.

Judge Davis extended a special welcome to new committee member, Evangelina Burrows, and to newly certified court interpreters, Rachel Webb, Travis Hyer, and Lirio Fernandez.

Tim Shea introduced Marianne O'Brien who replaced Mary Boudreau.

**Building Block Request for 2009**

Judge Davis noted he will be making the building block request to the Judicial Council on Wednesday, August 29<sup>th</sup>. One feature of it will be the advancement of the interpreter pay raise. The other feature will be highlighting court interpreter testing and training programs and the confidence he has in court interpreters.

Mr. Shea indicated he has been impressed with the hugely successful pass rate of interpreter tests, attributing that to a combination of students' qualifications as well as the instructors and their ability to prepare students for the examination.

**Assessing Interpreter Fees as Costs**

Judge Davis distributed copies of two memos concerning court fees prepared by Brent Johnson on August 15, 2001 and on July 20, 2004. He noted the statutory language is somewhat muddy. Judge Davis reviewed the second paragraph on the second page of the 2001 memo with the group. He noted the problem lies in the fact that the costs imposed are not automatically illegal,

but probably should not be done and probably cannot be enforced. Judge Davis is attempting to contact Brent Johnson to see if there has been any changes since the memos were written.

Luther Gaylord said his understanding of the rule is that courts can recoup interpreter costs by ordering defendants to pay them, but only for the actual costs.

Judge Davis asked interpreters on this committee if they have seen any cases of an automatic or standardized request from any court regarding interpreter fees. Some mentioned that fees were imposed on defendants who did not show up. Salt Lake City Justice Court, Taylorsville Justice Court, and South Ogden Justice Court are examples of this. In the Clinton Justice Court, an automatic fee is imposed of \$25.

Peggy Gentles suggested that court clerks could be called directly to ask them what procedures they follow in imposing fees.

After further discussion, Judge Davis summarized that additional, specific information will be obtained from Mr. Shea, Ms. Oakes, Ms. Mendez, and interpreters in the field and this will be discussed at the next meeting, before the issue is taken to the Board of Justice Court Judges.

### **Voting Membership for Agency for Interpreters for the Deaf**

Judge Davis noted that Jennifer Storrer, the ALS interpreter trainer for the Utah Interpreter Program has attended many of this committee's meetings as an invited guest. Her inclusion as a voting committee member has been discussed but nothing has been finalized.

Mr. Shea said he would not recommend it because the courts do not regulate interpreting for the deaf – it is a state regulated agency. While Ms. Storrer's contributions to the committee are worthwhile, the committee does not have a need for another voting member. Ms. Mendez expressed that others on the committee are not regulated by the court either so that should not be a factor.

Judge Davis stated if Ms. Storrer wanted to raise the issue, for example, that judges are not sensitive to the needs of sign language interpreters in specific ways, where else would this issue be brought except to this committee? She would not need to be a voting member to bring that to the committee's attention. If the committee decides to make her a voting committee member, the recommendation will need to be taken to the Policy and Planning Committee, and if approved, to the Judicial Council for approval.

After discussion, Ms. Mendez made a **motion** to allow Jennifer Storrer or other ASL representative to be a voting member of the Standing Committee of Court Interpreters. The motion was seconded and carried unanimously.

### **Future Meeting Dates**

Judge Davis noted the future meetings are listed on the agenda and are available online as well. The group consensus is to leave the meetings as scheduled, even though it means meeting next month, which is out of the every other month sequence.

### **Case Law Updates**

Judge Davis distributed copies of, and reviewed, the most recent cases involving interpreters nationwide.

### **Training and Testing Report**

Rosa Oakes reported that 18 participated in the English diagnostic test in July in Spanish, Portuguese, Chinese, Samoan, Polish, and Bosnian. Of those participants, 8 passed both parts of the test. Judge Davis said he will relay this information to the Judicial Council since it shows the depth of interpreter need in the courts.

Mr. Gaylord indicated that he was involved in the process of getting the instructors for the most recent skills building classes. The students felt they were exceptional instructors. He asked if the AOC has a set plan for when the skill building classes will be given again and if the instructors will be the same. Ms. Oakes responded the skills-building classes will be held annually. The court has a contract with the instructors for two years and the same group will instruct next year. The class cost is \$150 for 5 days; \$100 for the two-day orientation; \$200 for the test; \$400 for those who live out of state to take the test.

### **Hiring Interpreters as Court Employees**

Mr. Shea presented the draft rule regarding court employees as interpreters. The issue is: should our policies permit courts to hire interpreters as employees? It would be new ground for Utah, but there are at least 10 consortium states that have interpreter employees.

Currently the rule sort of prohibits and sort of permits employees to interpret. The interpretation of that varies. It is not adequate as far as a bright line test. The proposal is to prohibit court employees from interpreting except under two circumstances:

1. The person is hired full time as a court employee and his/her principal job is to interpret for the court. This rule does not provide the money to do that but provides the authority to do it.
2. The person is a court employee who interprets as secondary employment. This rule would codify an existing practice.

Mr. Gaylord stated he thought there was a bright line and that the rule explicitly says court employees shall not be used as interpreters.

Ms. Gentles read from the Rule that “court employees may serve as conditionally approved interpreters if it does not take them away from their regular duties.” She noted it says something similar for approved interpreters but not for certified interpreters.

Branden Putnam was asked if he is ever asked to provide interpreting. He responded that he has talked with the judges and explained to them why he should not interpret, but if the judge insists, he does it.

Mr. Gaylord indicated this happens frequently. Sometimes it even occurs in court with probation officers. Additionally, some justice courts do not ever hire approved or certified interpreters, but use a staff employee as the interpreter. He expressed his opinion that the genesis for the rule was because of such practices occurring in some courts.

Mr. Shea expressed the existing rule can be interpreted differently by different people. There is no leverage to argue the point. The committee identified the employment of court interpreters in its strategic plan. Amending Rule 3-306 is the mechanism to make that happen.

Judge Davis agreed, stating that the genesis of the rule was the strategic plan and looking at the possibility of the professionalization of the court interpreter program that might match those in some other states.

Ms. Gentles said that the committee can put whatever it wants in the rule, but that does not mean she can create a court interpreter position in her district. Ms. Gentles expressed that her concern is that the draft sounds like the court has the ability to do more than it can do. The concept in the rule is that it is more efficient to have a staff interpreter rather than contract interpreters. The downside to having a staff interpreter is how much time will the interpreter be used for interpreting? It is something to consider. A rule like this does not change the personnel system.

Mr. Shea indicated he is trying to give permission to courts to hire a court interpreter as an employee. There is no money attached to this.

Mr. Gaylord said, putting aside whatever the genesis for the rule may have been, he has some concerns for potential for abuse in mixing roles. Employees are not independent in the way contract interpreters are. To the extent a person becomes part of a system, independence is lost. If an employee interpreter must answer to the same judge every day, it creates the potential for abuse. Mr. Gaylord noted there are staff interpreters in other states, and those states seem to have worked out the glitches. As a court interpreter employed by the courts, it would be nice to have a benefits package.

Gabriela Grostic was asked what her experience is as a hired staff interpreter for the federal court has been. She responded that she knew beforehand that she would be doing more than interpreting and would be doing some clerk work. She said she does not offer an opinion on a case if a judge asks her.

Judge Davis indicated there are about 10 states in the consortium that have staff interpreters. The committee's strategic plan looks to the future in terms of its ability to have staff interpreters who can interpret when they are needed and that they would be cost effective in the court system.

Ms. Gentles expressed that this does not get to Mr. Gaylord's issue about abuse in some courts of using a staff employee as an interpreter.

Mr. Gaylord said, if the committee is talking about looking to the future and possibly hiring certified interpreters as court staff, that is fine. If there is a back door being opened that would allow justice courts to hire someone as a clerk and then enlist that person in interpreter duties for the rest of the day, that serves to undermine the self-employed interpreters.

Ms. Gentles replied that the draft requires the employee to be certified, and if a certified interpreter wants to work at a justice court for \$9 an hour, that is his or her decision. All this committee should care about is the qualification of the interpreter.

Judge Davis stated he does not read the draft rule as undermining interpreters, but rather as advancing the committee's strategic plan relative to its future view.

Ms. Grostic was asked if she experiences a conflict of interest when she is interpreting in the immigration court, since she is an employee of that court who also has clerk duties. She responded there is no conflict of interest at all because she does not speak to either prosecuting or defending attorneys.

Ms. Gentles indicated there are ways to make sure everyone understands the ethical obligations, whether they are independent contractors or employees. It is a concern but can be addressed.

Ms. Oakes stated the Riverton City Justice Court sent an employee to the skills building workshops and paid for the training.

Ms. Gentles noted that second language stipends are paid to court employees who speak a language other than English to help people at the counters with questions. It is customer service. Those employees do not interpret in court.

Mr. Shea indicated that if the independence of interpreters needs to be addressed as part of this rule, that can be done. Judges do not ask employees to do things they know to be contrary to a code of conduct. He expressed that there is not a conflict of interest between an interpreter who happens to be a court employee, and the defendant, the defendant's counsel, prosecutors, and judges because the interpreter's only interest is to give an accurate restatement of what is being said. Their interests are not aligned with anyone in the case. It appears there is a practice in some courts to use court staff to interpret. The attempt to simply prohibit the practice is being eroded. Mr. Shea stated he agrees with Ms. Gentles that the court's interest is in ensuring the qualifications of those who interpret.

Mr. Gaylord asked if the justice courts are doing whatever they want, since the issue he brought to the attention of the AOC of the practice of using a staff employee exclusively as an interpreter in the Weber County Justice Court is in violation of the rule and has not been corrected.

Mr. Shea responded that the rule permits judicial discretion and no one is going to argue with judicial discretion.

Mr. Gaylord said that is not discretion, but rather a failure to exercise discretion. For example, if I am a judge who generally uses court interpreters but decide in a particular case I am going to use a probation officer as an interpreter for whatever reason, I can exercise that discretion. If my blanket rule is I never call interpreters, I use my clerk instead, that is not discretion. It is a failure to discern.

Judge Davis agreed.

Craig Johnson made a **motion** that language be drafted to incorporate conflicts of interest, perceived or otherwise, and any other problems with impartiality into the rule. The motion was seconded and carried unanimously.

Dinorah Judd said it may be useful to readdress education issues with the judges, including what would be unethical to ask of interpreters. Judge Davis responded that new judge orientation includes a presentation by him and by Ms. Oakes about interpretation issues. There are periodic attempts to provide further education to judges as well. Committee members should look for any opportunities to do so.

Ms. Judd said she educates judges and staff whenever she can, particularly when she hears of lines being crossed. Some interpreters may be better received in their educational attempts than others. How are interpreters protected in their attempts to educate?

Judge Davis stated that as the presiding judge in his district, some issues have been brought to him by an interpreter which he raises with the judges in the district. He hoped that district to district, this can be done without burning bridges with interpreters.

Ms. Gentles added that each district has a presiding judge with administrative responsibility that can handle interpreter issues. Judge Davis noted that interpreter coordinators could also help.

Ms. Judd asked how justice court judges and staff are educated, since they seem to have the most interpreter issues. Judge Davis agreed that more issues with interpreters are seen in justice courts. He expressed he would like to see how other states address some of the concerns that have been raised here. In the meantime, Mr. Shea will redraft the rule to include the issues raised here.

### **FLATS and OPI Testing**

Professors Daryl Hague and Brikena Ribaj have been researching some testing that could possibly help the courts with their interpreter testing. Today Professor Hague reported on the following:

1. FLATS testing is available at BYU and over the internet. It is a low level test designed to winnow the chaff from the grain initially. There is both an oral and written component to the test. The test cost is \$40 for each test. This is done in 50 languages, which includes all the major languages. Returned missionaries take this exam to earn some college credit.

2. OPI (Oral Proficiency Interview) testing is a creation of the American College to Teachers of Foreign Languages. It is an academic learners' scale in which there are several classifications: novice, intermediate, advanced, and superior. Within each of those categories there are low, mid, and high levels. Those on the advanced levels can answer hypothetical situations in the language. Those on the superior level can also respond to cultural questions in the language. Before missionaries are sent out, they reach at least the advanced level. BYU is not in a position to offer this testing to the courts. However, there is a group called Language Testing International that has a website and is a licensed provider of OPI. They market the OPI to various government agencies. The interview is the examination, takes 15 to 30 minutes, and is done telephonically. It must be proctored. It is \$139 per test.

Ms. Oakes indicated that the Tennessee court uses the OPI testing. The candidates who take the test come to the office and call in to the Language Testing International center.

3. SOPI – This is a test offered at BYU. It is the interview but is computerized so everyone is getting the same questions. The test-takers speak into a microphone and a certified reviewer reviews the answers. They try to achieve consistency in the live interview through the certification process.

4. The Language Testing Center at BYU has created and sold major diagnostic tests throughout the United States for many universities. The name of the program is Oral Testing Software. BYU can develop a test specifically designed to measure capabilities for court interpretation. They have done this for IHC. The program is a shell so appropriate questions would need to be created. What is intriguing about this is that it allows for all kinds of things. For example, the test-taker could look at a video clip and describe what is happening on the clip. This can measure vocabulary, intonation, accent, etc. Or, there could be a clip of a courtroom situation which the test-taker could interpret. It is likely a grant could be obtained for BYU to develop this with this committee if we choose to do it. After it is developed the cost would be free to the state as long as BYU maintains the intellectual property rights to it.

Professor Hague was asked how a team would be put together to write the tests. He responded the team consists mainly of people who are experts in test creation and design. BYU has two of the leading test designers in their language department in the nation that could do that. In the IHC software, all the items on the test were reviewed by professional medical interpreters. For Spanish, the courts are set and there is no reason to use this, but this would be valuable to use for languages other than Spanish.

Mr. Shea asked what level an approved interpreter should land on the OPI scale. Professor Hague responded an approved interpreter should be on at least the advanced high level. The scale would not be high enough for certification purposes in other languages. Ms. Oakes expressed it would be a good tool to use to prepare approved interpreters for the consortium's certification test.

Prof Hague was asked how long it might take to develop software for other languages. He responded it would probably about 6 months but the money to develop it would need to be in place first.

Mr. Shea indicated that he and Ms. Oakes have discussed for many months about how to come up with some kind of testing mechanism for approved languages. He said he is intrigued by the possibilities presented by Professor Hague. If the testing software has some capability to be court specific, he would like to pursue it.

Judge Davis said this will be explored further with Professor Hague.

### **Interpreter Payments**

Mr. Gaylord stated the immediate problem appears to have been resolved and all interpreters are receiving their payments timely. Further comments about interpreter payment will be reserved for the next meeting.

Judge Davis indicated that if committee members have other concerns as it relates to interpreter payments, those can be voiced at the next committee meeting.

The meeting was adjourned.