

**COURT INTERPRETER COMMITTEE
MEETING MINUTES**

November 16, 2007
Matheson Courthouse
Salt Lake City, Utah

Members Present: Hon. Lynn Davis, Chair; Evangelina Burrows; Luther Gaylord; Peggy Gentles; Daryl Hague; Craig Johnson; Deborah Kreeck Mendez; Hon. Karlin Myers; Dinorah Padro; Carolyn Smitherman.

Members Excused: Hon. Frederic M. Oddone; Branden Putnam; Brikena Ribaj.

Guest: Jennifer Storrer; Grant Anderson; Rachel Webb

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

Welcome & Minutes

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

Recoupment of Interpreter Fees

Judge Davis distributed a copy of an opinion from Brent Johnson on assessing court interpreter fees. At the last committee meeting, there was a motion that Judge Davis send an email to all judges apprising them of Mr. Johnson's opinion. He made a presentation to the Judicial Council a few days ago where considerable time was spent on the interpreter fee issue. The Judicial Council agreed with the first paragraph as it relates to the issue of due process, regardless of the rule that allows costs to be assessed. There was some question about whether this will come back before the Judicial Council for modification of Rule 3-306.

Deborah Kreeck Mendez sent Mr. Johnson's opinion to the criminal defense bar, and several made arguments on the due process issue. The overwhelming response was fees were usually assessed on unrepresented persons. Represented people do not pay for interpreters. Several justice courts were identified as assessing fees only to the unrepresented litigants.

Judge Davis stated that after the presentation to the Judicial Council, Tim Shea emailed him to request that a law clerk be asked to look at the document, focusing primarily on Utah cases, which was done. Based on that, Mr. Shea prepared a modified email that would go to all judges statewide. Judge Davis distributed a copy of that email to the group.

Discussion ensued after the group read the email.

Judge Myers said some smaller, rural courts meet weekly with local government where the budget is discussed. He asked if it is known why interpreter fees are being assessed in justice courts. Is it because the mayor or county commissioners requested the fees be collected? Judge Davis responded he does not know what the directive might be or if economic pressure is being placed on judges either by the municipality or the county government. He asked Judge Myers if he has a sense of how often fees are imposed. Judge Myers responded he imposes them in every case.

Ms. Kreek-Mendez asked if anyone can go to jail for not paying the fee. Judge Myers responded he does not send anyone to jail. Ms. Kreek-Mendez stated she is aware that in some courts, some people are going to jail for not paying the interpreter fees. Many are not represented, and are non-English speaking and uneducated. Perhaps justice courts should be helped financially to prevent this from impacting people who are unable to pay the fee, or who choose not to use an interpreter because they cannot afford the fee. Some people will pretend they do not need an interpreter when they do, or will go to jail because they do not pay the fee.

Jennifer Storrer added that there is also a risk that people will bring their own interpreter, someone who is not qualified to interpret.

Professor Hague suggested perhaps what this committee should be doing is recommending that the definition of costs no longer include payment of interpreter fees, and then see if a way can be found to help pay the fees.

Judge Davis put forth some options:

1. Rather than send the directive out to judges, send it to the Board of Justice Court Judges for discussion.
2. Make a recommendation to the Policy and Planning Committee regarding application of the rule itself.
3. Disseminate the letter but put the issue back on the agenda for the next committee meeting and have someone from the Justice Court Board attend.
4. Have Tim Shea address it again.

Ms. Kreek-Mendez suggested it may be smoother if it was sent to the Board of Justice Court Judges for discussion and comments.

Peggy Gentles expressed that though the committee can be sympathetic to the concerns of the localities that are supporting justice courts, it does not change the fact that the fees should not be assessed. The fact that it causes problems for justice courts is understandable, and institutionally, perhaps it needs to be decided this is the cost of having a justice court in a community. It should not go to the Board of Justice Court Judges with the implication that if they feel it is too painful to them, it will not be changed.

Judge Davis reiterated that it is a due process, constitutional issue.

Ms. Gentles stated that if it is clear the judges cannot assess it, judges would not have to engage in conversation with the local funding agencies when there is concern from local governments about why the fees are not being collected.

Judge Davis expressed that justice court judges could tell cities or counties that it is a due process issue and judges who violate it may be subject to civil rights claims. Judge Myers asked if the statute includes allowable interpreter fee assessments, and if so, it cannot be stopped from occurring until that is changed. Judge Davis stated that as a due process issue, it overrides or trumps the language of the state statute.

Ms. Gentles noted the justice courts are in a difficult position if they receive the email saying they may be violating someone's due process rights when there is something in the statute that allows it. The Judicial Council is concerned about it, and perhaps a housekeeping bill would need to be filed to change the statute.

Following discussion, Craig Johnson made a motion to refer the email document to the Board of Justice Court Judges for practicality purposes and feedback, keeping in mind that it is a due process issue and that other avenues will be pursued through the legislature to modify the statute. The motion was seconded and carried unanimously.

Judge Davis will write a cover letter and take it and the email directive to the attention of Rick Schwermer, Brent Johnson, Tim Shea, and to the Board of Justice Court Judges and tell them the committee anticipates that the implementation of it will require the modification of both the rule and the statute. He will get their feedback and go from there. In the meantime, the email directive will not be circulated to the judges.

Judge Myers indicated that in many rural areas, the illegal aliens are a big issue with people. People are going to say why should my tax dollars go to pay for an illegal alien's interpreter fees? The illegal aliens should at least be able to pay that.

Ms. Kreek-Mendez said it is not those that are illegal and being deported that the court must worry about. It is those that have lawful grounds to be in the U.S. and are not going to be deported. Their due process is the issue.

Report to the Judicial Council

Judge Davis reported that he advised the Judicial Council that Judge Myers is now a member of the committee, and then spent considerable time answering questions about the assessment of the court interpreter fee. He encouraged members of the Judicial Council who are active judges to thank court interpreters at the end of hearings and trials.

Rosa Oakes reported the Judicial Council was receptive to the idea of scheduling court interpreters the way it is done in 3rd district with the interpreter coordinator functioning in that role, using Groupwise, CARE, and CORIS. A meeting has been set up with the CARE technology people to get that program ready.

Luther Gaylord asked if in the near future interpreter coordinators in the other districts will be doing the same thing done by the interpreter coordinator in the 3rd district. Ms. Oakes responded that is the goal. Another meeting is scheduled with the TCEs to decide how to set it up.

ASL Committee Member

Judge Davis reported that the Policy and Planning Committee approved the addition of a membership slot on the Court Interpreter Committee for a representative from ASL. Jennifer Storrer was approved by the Policy and Planning Committee to be the ASL representative. The next step is Judicial Council approval.

Distance Interpretation

Ms. Oakes indicated that last year, the Judicial Council asked the committee to research information on remote interpretation to bring interpreters into the courtroom when they are off site. She has conducted research and reported back at the previous committee meeting that nothing suitable has been found. Since then, she found a company called BIAMP and asked that they provide a presentation. Kim Allard, Director of Court Services, was brought in and it was found that the court already has a lot of BIAMP equipment installed, so it can easily be incorporated to allow for remote interpreting in most of the courthouses. Kim Allard is working on the bid to have this installed in two pilot courts in 3rd district at the Tooele and West Jordan courthouses. This will be used for arraignments and pre-trials only, not for trials. Court interpreters will be used. After three months, the judges and clerks will evaluate the program. It will be installed statewide if it works well. Interpreters can phone in from their own phone at home. The program allows simultaneous interpretation. This system is currently being used in Colorado and Florida.

Following discussion where a number of concerns were raised, Judge Davis asked that Ms. Oakes provide a demonstration at the next committee meeting so that the group can see the mechanics of how it works, and then concerns will be addressed. Judge Davis noted there could be constitutional issues involved.

Ms. Kreeck-Mendez raised the issue of possible security concerns in the holding cell with a headset being allowed in. Ms. Oakes stated she will check that out.

Judge Davis agreed that judges will need to understand its limitations and most judges will prefer live interpreters, but with a demonstration, many of the questions raised can be answered. He asked that Ms. Oakes check the possibility of having the 8th district as a rural court, participate as part of the pilot, since the judges in 8th district have been utilizing intercom phones for interpretation for a few years now.

Case Law Handout

Judge Davis distributed recent case law cases to the group for their review.

Court Interpreter Brochures

Ms. Oakes distributed draft copies of brochures about how court interpretation works in the courts, written in English and in Spanish, to the group. Interpreter Rachel Webb, pushed for this to be done. Ms. Oakes is requesting feedback from the committee on the brochures.

Ms. Kreeck-Mendez asked that Ms. Oakes send some to the law offices and justice court prosecutors for distribution once they are in final format.

The group suggested they also be made up into Vietnamese and Pacific Island languages.

Rachel Webb said she would like to give a copy to counsel when she meets them and inform them that she will give a copy to her Spanish speaking clients as well.

Ms. Kreeck-Mendez pointed out that there are defendants who are uneducated and cannot read. Clients should be asked if they are able to read, and if they cannot, this should be read to them.

Judge Davis asked the group to read through the brochures before the next meeting on January 25, 2008, so they will be able to give feedback at that time.

Ms. Oakes will email the brochures to committee members.

Other Business

Professor Hague asked to be on the next agenda to obtain suggestions, especially from interpreters as to what kind of tasks they want to have modeled for the approved interpreter training that is being generated for the less common languages. Some suggestions were given by the group, which were noted by Professor Hague. More suggestions could be forthcoming.

The meeting was adjourned.