

**COURT INTERPRETER COMMITTEE
MEETING MINUTES**

March 28, 2008
Matheson Courthouse
Salt Lake City, Utah

Members Present: Hon. Vernice Trease, Chair; Evangelina Burrows; Luther Gaylord; Peggy Gentles; Daryl Hague; Craig Johnson; Hon. Karlin Myers; Dinorah Padro; Branden Putnam; Carolyn Smitherman; Jennifer Storrer.

Members Excused: Deborah Kreeck Mendez ; Brikena Ribaj; Hon. Frederic M. Oddone.

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

Welcome

Judge Vernice Trease, the new committee chair, introduced herself to the committee, and the committee introduced themselves to her.

Approval of minutes

A motion by Peggy Gentles to approve the meeting minutes of 1/25/08 as prepared was seconded, and carried unanimously.

Model tasks for approved interpreters

Daryl Hague indicated model tasks for approved interpreter training for languages other than Spanish have been suggested, but there may be more the committee wants to include. The grant will be done through the Humanities Department at BYU that specializes in test development. The examiner would not need to be present during the testing. Following the test, the performance is reviewed by an evaluator.

Following discussion, the committee determined there are three areas that should be included in the model tasks: Rule 11 colloquy, protective orders and detention hearings.

Dinorah Padro stated the actual reporting on the certification test in Spanish took about 8 minutes. It takes about 25 minutes for the oral interview. Professor Hague stated he does not think anyone would need to be observed for 25 minutes.

Mr. Shea asked if this is intended to be used for approved Spanish interpreters. Ms. Oakes responded that it has not been discussed, but it may be a better way of testing than we have now.

The committee discussed how court terminology could be handled. Points made:

- There could be a handout with frequent terminology that the interpreter could research.
- There would be different glossaries for different languages.
- Many courts outside of Utah already have glossaries in several languages.
- The interpreters could be provided with the English terminology they are likely to encounter in the three types of proceedings and it would be up to them to find the equivalent in their language.
- The process needs to be made easier for interpreters, not more difficult.

Ms. Oakes suggested that the interpreters take the written exam, receive some training, and then take the oral exam.

Mr. Gaylord suggested that they take some scenarios that already exist on the record and include them in the grant application, and then when the money is secured, produce our own. Mr. Shea will follow up with making arrangements for the transcript of hearings already held, and will talk with Dan Becker about a letter supporting the grant application. Those will be sent to Professor Hague. Professor Hague will speak with Jerry Larson.

District-wide coordinators

Ms. Oakes reported there now are district-wide coordinators doing the scheduling for each district. CORIS and CARE have been programmed to send an automated message to the interpreter coordinator, who schedules interpreters for juvenile court and district court. An all-day training was held with the coordinators in which they learned how to schedule in Groupwise. There have been a few bugs that needed to be worked out, but otherwise the scheduling is going well.

Ms. Padro asked if there is a review process involved in this scheduling. Mr. Shea indicated they are watching the implementation. Ms. Oakes has made herself available to the interpreter coordinators. If there are further steps to simplify the process, those will be explored. No efforts will be initiated to further reduce the number of interpreter coordinators.

Ms. Oakes noted that when glitches occur, it is largely a training issue. Because CORIS and CARE are generating automated messages through Groupwise, all interpreters are going onto a master calendar for the district. Everyone has access to the master calendar and can look at the calendar to see the name of the interpreter who will be coming for a particular case.

Mr. Gaylord raised the issue of what should be done when a juvenile judge asks if the interpreter in the courtroom at the time for the detention hearing is available to interpret at the next court date for that juvenile. Having been instructed to only accept assignments from interpreter coordinators, this puts interpreters in a difficult spot.

Mr. Shea responded that the juvenile court has a preference that the interpreter who is in the initial hearing remain with the case, much like the prosecutor remains with the case. That is permissible. It was never intended for the new scheduling process would interfere with that.

Ms. Oakes added that the group of judges and clerks decided when that happens, the clerk will send a separate email to the interpreter coordinator to let her know that the next hearing on the juvenile has been scheduled with the interpreter so the interpreter coordinator will not schedule another interpreter.

Distance interpretation

Ms. Oakes indicated the pilot for the long distance interpreting project was to be done in 3rd district in West Jordan and Tooele, and a bid was put out for software and equipment. General Communications won the bid. When the company went to West Jordan to see what equipment was already in place, West Jordan informed them they are having problems with their audio visual equipment. They do not want another vendor tinkering with anything until this has been resolved. It is expected the long distance interpreting can move forward next month.

Rule 3-306 amendments

Tim Shea indicated that because he was unable to attend the last meeting, Ms. Oakes shared the group's comments with him and he made some edits to the rule based on that. He directed the group to section (10)(A) in the rule about court employees as interpreters. This would be a new policy and is something that courts have never had. The broad outline is that the courts could hire interpreters as employees, paid by the state, and in the justice courts would be county or municipal employees, with the benefits that go with it. The interpreter would have to have the highest credentials in any particular language to be hired. This would follow the policy in many other states. It would establish a policy, but not a budget.

Peggy Gentles indicated that the secondary employment policy in the state courts would not allow (10)(B). The court executives looked at this idea when it was first proposed and they are opposed to it. It is an unnecessary impingement into the court's operations. A full time employee cannot be approved to do this. Ms Gentles made a motion to strike (10)(B) from the proposal. The motion was seconded and carried unanimously.

Section (10)(C) was reviewed. First hand communications by clerks over the counter who speak a language would not be governed by the rule. In brief hearings, clerks or probation officers who speak a language could not participate.

Judge Myers asked if there could be some exceptions to use a court employee who speaks a language in such circumstances as on a Friday night and someone is passing through the area and cannot come back on another day.

Mr. Shea indicated there is an exception now that is subject to a lot of differing interpretations. The policy of the existing rule is to require judges to use certified interpreters, but the exceptions are drafted in such a way that, using a court employee has become fairly common in some courts, and often inappropriately so. The proposal, as drafted, would say this cannot be done. Certified, approved or conditionally approved interpreters can be used, but not a court employee.

Judge Myers said this is a problem in a rural justice court. Perhaps there could be an exception for worst case scenarios. We are trying to protect defendants but hurt them by telling them they must return in order to get the most qualified interpreter. Ms. Padro suggested these may be rare situations. Judge Myers agreed they are.

Mr. Shea stated it does not have to be the most qualified interpreter. There is a part of the rule that permits a conditionally approved interpreter to be used, if in the judge's discretion, the nature of the hearing is such that a conditionally approved interpreter can interpret the hearing so the defendant is not losing any rights or responsibilities. Nothing done so far removes any of that.

Mr. Gaylord indicated the purpose of having interpreters in the courts is to put people on equal footing so their rights are not trampled. If they are going to be severely inconvenienced by having to make a trip back to Utah from Colorado or Arizona two weeks later because of a rule that a certain kind of interpreter is needed vs. a court employee who speaks Spanish, that is a problem. The other side of that is a justice court where there are at least 9 certified interpreters within a 25 mile radius and they are never called to interpret. Instead, the court uses the in-court clerk as an interpreter. It is convenient, and they do not have to pay, but it does not follow the rule as it is currently written. That was part of the consideration in drafting the changes.

Judge Trease suggested reframing the rule to list the considerations that a judge needs to make before allowing a court employee to interpret. There could be several factors to consider such as the distance from the courthouse an interpreter is and due process or constitutional rights.

Ms. Oakes asked Judge Myers if such interpretations could be handled by phone. Judge Myers replied his courtroom does not have a phone.

Mr. Gaylord indicated there is also an issue surrounding mixing of roles. He expressed concern for the potential for abuse because court employees are not as independent as contract interpreters, and ultimately the in-court clerk is answerable to the judge. There is a potential to subtly influence proceedings. Being both a court clerk and an interpreter seems complicated and problematic. It's one thing if a court wants to hire independent contract interpreters as staff interpreters to be there every day, all day, and interpret when needed, vs. that interpreter also having other court duties.

Mr. Shea noted that a staff court interpreter would be responsible for doing whatever is in their job description, one of which would be interpreting, but could include other duties. He anticipates that such an employee's duties would focus first on interpretation, and second on tasks related to interpretation, such as training and translation. A staff interpreter should be used to highest and best use. This policy would not preclude a clerk from being the staff interpreter if s/he is willing to work for that amount of money and is a certified interpreter. Mr. Shea stated he does not see an issue with the court being the institution that provides the staff interpreter regardless of what that interpreter's other duties may be.

Mr. Gaylord said it could be problematic if the staff interpreter takes a fine payment from a defendant that 2 weeks earlier s/he was interpreting for in court. Ms. Gentles agreed this could be an appearance problem and undermine the defendant's confidence in the system.

Judge Trease asked what about an instance where a Spanish-speaking defendant enters a plea and files a motion to withdraw his plea, claiming his rights were not explained to him properly by the interpreter and the interpreter becomes a witness in court. Can hearings be held with a court employee being a witness?

Mr. Shea responded court personnel are occasionally witnesses now, albeit very infrequently. Ms. Gentles noted it would become problematic if it was frequent.

Judge Myers expressed that as the justice court representative on this committee, he is concerned that in the rural justice courts a judge be able to decide it may be in the best interest of the defendant to have a Spanish speaking clerk interpret minor things.

Mr. Gaylord expressed that the professionalism and detachment an interpreter must maintain can be blurred when hired as a staff interpreter who is serving as both an interpreter and performing other functions.

Mr. Shea indicated that the interpreter's role in the court room is one that needs to be protected. That is where most of the visible interaction occurs and professional detachment is very important. In terms of court personnel interacting with a client in a setting outside the courtroom in the normal course of other duties, he does not see how a transaction like that is seen as expressing some type of bias or favoritism. The interpreter is still a member of the court, which itself is detached and neutral.

Judge Myers expressed there are circumstances that come up in court, besides interpreters, that rely solely on the person's ability to act professionally. That is the case with judges working with attorneys, where some are very familiar and some are not as able to maintain a professional appearance. It is not just court interpreter situations where that can occur.

Following discussion, Peggy Gentles made a motion that the rule include as a draft, some contemplation that a court can hire an interpreter as a court interpreter employee rather than using independent interpreter contractors without necessarily approving the language that has been drafted so far, and

without addressing the issue of the employee that is hired performing other court duties besides interpretation. The motion was seconded and carried unanimously.

Mr. Shea will draft some language that will address the exceptional circumstances of using court employees as interpreters that does not leave the door open to abuse. Discussion on the rest of the rule will be deferred.

Court reporter member of committee

Mr. Shea asked the group if they want a court reporter on the committee. Ms. Gentles noted that real time reporting as an accommodation for the ADA for someone who cannot hear does not come up very often.

Mr. Gaylord asked will an ASL interpreter be arranged for deaf individual in most cases? Ms. Gentles replied not in all cases. But a court reporter would be employed and what is being said can be read off the court reporter's computer.

Mr. Shea said his recommendation is that the committee does not influence policies regarding language interpreters. However, Jennifer Storrer, the ASL representative on this committee had to leave the meeting before this topic was discussed, and because input from her is wanted, discussion on the topic will be deferred to the May 30 meeting.

The meeting was adjourned.