

**COURT INTERPRETER COMMITTEE  
MEETING MINUTES**

September 26, 2008  
Matheson Courthouse  
Salt Lake City, Utah

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

**Members Excused:** Hon. Frederic M. Oddone; Jennifer Storrer; Hon. Vernice Trease.

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

**Approval of minutes:**

Tim Shea, welcomed all present. A motion by Deborah Kreeck Mendez to approve the meeting minutes of 5/30/08 as prepared was seconded, and carried unanimously.

**Rule 3-306 amendments**

Mr. Shea included the changes approved by the committee at the last meeting.

Lines 104-105: Luther Gaylord noted that some judges want continuity from one hearing to the next and prefer that the same interpreter be used for each hearing on the same case. The committee agreed the interpreter coordinator should be scheduling the same interpreter in these cases and lines 104-105 are not necessary. Mr. Shea will remove those from the draft.

Lines 83-85 and lines 123-125 concerning interpreter for witnesses in civil cases: The committee had questions about what would happen in instances of medical malpractice or financial issues. If the judge or jury is going to have to make decisions based on the witness, this is critical. The committee felt that unintended consequences could occur with this new requirement. It was also expressed that if more preparation by the interpreter in certain cases is warranted, the interpreter should be able to charge more. It may be that issues should be handled between parties. The consensus of the committee is that this needs more study and should not be decided right now. Civil lawyers and judges who have dealt with these circumstances should probably be queried. Mr. Shea will research how often this occurs and in the meantime, will take these lines out of the draft.

Lines 109-112 on assessing the cost of an interpreter: Mr. Shea asked the committee if they saw any benefit to identifying subsequent provisions to the law that govern when and how to assess costs. Many believe this should not be done, but state law does permit it. The committee agreed it is good to have the references because many people do this without concern for the rules and this reminds them there are parameters.

Lines 133-191 on discipline: Mr. Shea indicated that the court's HR policies do not offer much help in this area. Jennifer Storrer sent some information about the discipline process in her organization. The general approach is to indicate what the discipline can consist of. The rest of the paragraphs are a description of the process. Forms have not yet been developed for this.

Luther Gaylord referred to lines 158-159 and 172-173, and 180 regarding notice. He suggested notices should be limited to the program manager and they should be mailed, not emailed. Many interpreters do not check their email regularly and could get into trouble because they missed the message. Mr. Shea will remove “email” from the text.

(8)(E) lines 163-169. Mr. Gaylord noted that if there is mediation, there is a certain cost associated with that. Peggy Gentles noted if it is part of a process this committee has set up and is about a credential the committee gives, the court should pay for it. Mr. Shea stated it has never come to a point where a professional mediator is needed. Most discipline processes in other areas have a mediation component.

Deborah Kreeck Mendez asked who pays for mediation in cases that involve medical or police issues. Mr. Shea said he does not know and will do more research on that.

(8)(F) lines 170-176. Ms. Mendez expressed that it is intimidating for a person who files a complaint to have to appear before the whole committee. Mr. Gaylord said speaking from the perspective of an interpreter, if someone is going to the trouble to file a complaint against him, he would want the entire committee to hear the person’s testimony. Mr. Shea noted that unless otherwise specified, it would be a quorum of this committee, which is the majority (half plus one). It has never gone that far. A closed meeting would be recorded, but the record is private.

(8)(G) Lines 177-180. It was asked if this is an administrative agency appeal. Mr. Shea said it may not strictly be an administrative appeal. Ms. Gentles asked where the jurisdiction is if it does not fall in the administrative area. Mr. Gaylord noted that the current rule specifically gives the right to the interpreter to appeal the decision to the Judicial Council. There is no mention of it now. Ms. Mendez noted that in an agency decision, it can be appealed and it is not that formal. The interpreter could sue, if s/he wanted. The nature of the evidence and the standard of proof are not mentioned.

Mr. Gaylord asked if an interpreter is brought before the committee with counsel and the attorney objects on behalf of the interpreter to the introduction of certain evidence, how Judge Trease, as chair of this committee would rule. Is there anything to guide her in terms of making rules on any of the objections? Mr. Shea responded no. It is in the nature of an interview. He asked if Mr. Gaylord would like the language that was taken out to be reinstated.

Mr. Gaylord indicated he is more comfortable with the draft as it is, but is wondering if it ended up being a battle about what evidence will be allowed in and what evidence will not, where the chair of the committee would look - civil cases, criminal law or where – for guidance.

Mr. Shea responded he is not sure, but likely to quorums like this one. In the end, it is really not evidence since it is not under oath. Ms. Mendez asked if this committee is an investigative body making a decision based on investigation, or if each side presents their story and the committee then makes a decision. Mr. Shea said the latter is a better description, but part of that process would be that each individual member would have to come to the conclusion of who is telling the truth. Individually, committee members would have to make those decisions so in that sense it is an investigative body.

Ms. Mendez asked where the committee gets its authority. Mr. Shea responded the authority comes from this rule. The Judicial Council is responsible for the credentials. This model is recognized and is common and recommended by the Consortium, which is a collection of states under the umbrella of the National Center for State Courts.

Mr. Shea indicated that another model is for interpreters to have a licensing board with DOPL, just like beauticians and barbers do. The current and proposed model for interpreters is similar to the one court-

annexed mediators. There is Judicial Council rule establishing minimum requirements to be a mediator on the court roster. There is a sanction process that ends with the loss of credentials.

Mr. Gaylord asked if the interpreter was de-credentialed, whether the interpreter has a right to appeal that to a higher body. Mr. Shea said it would not be an appeal, but the interpreter could sue in district court. It cannot be treated as the next level of review as would district court review of agency action. There are statutes that govern that. In our situation, the interpreter would have to craft a civil complaint for damages or injunctive relief based on a statutory or common law theory of relief.

Ms. Mendez asked if the quorum must include the chair of this committee. Dinorah Padro suggested the quorum should also include at least one interpreter representative. Ms. Gentles suggested the committee would not want the content of votes to be publicized. Professor Hague suggested a statement about confidentiality should be added.

Following discussion, Mr. Shea indicated he will add provisions that the chair and at least one interpreter representative be part of the quorum and will copy the Judicial Council's confidentiality language that states that if the meeting is closed, the committee members can only talk with others who attended the meeting.

(8)(I) - on reporting discipline to the Consortium. Judge Myers asked, if the Consortium gave Utah notice that there was an interpreter from another state who was suspended, whether Utah would act without their own hearing.

Ms. Mendez noted that the Utah Bar does not license out of state attorneys in Utah, but rather allows them to use their license from another state to practice in Utah. It is like a driver's license. I cannot use my Utah driver's license to drive in Idaho if I am a resident there.

Mr. Shea indicated the analogy of the bar license and driver's license are good ones. Utah does recognize, and this draft would continue the existing policy, that if a person has interpreting credentials in another state with a qualification process that is similar to Utah's (consortium states, California and a few other states with high quality requirements), that the interpreter would be allowed to interpret in Utah. He does not know, however, whether Utah's credentials are given to the interpreter or if Utah relies on the credentials from the other state. He will check with Ms. Oakes to see what the current practice is.

Mr. Gaylord asked if a disciplinary procedure were to take place in Utah and the certification came from another jurisdiction, would the other state sanction or remove the interpreter's credentials. Mr. Shea responded that he does not know. The discipline would be reported to the Consortium, and they would let the member states decide what to do with that information. Judge Myers has asked the reverse of that question: What does Utah do if someone reports discipline from another state to Utah?

Ms. Mendez said that if Utah does nothing about it and the interpreter violates in Utah, the state is exposed to liability. Mr. Shea indicated that this is a question that is not answered in the current draft. Mr. Gaylord expressed concern if Utah does not have a way to sanction an interpreter with credentials from another jurisdiction.

Mr. Shea stated that currently there is no provision for reporting the sanction to the jurisdiction that licensed the interpreter, only to the Consortium. Ms. Mendez stated that a provision is needed to make sure misconduct is reported and that Utah respond if discipline is reported to the Consortium.

Ms. Gentles noted that lines 60-63 speak to certifying people that have interpreter certifications elsewhere. She suggested something be added that if the interpreter no longer meets those requirements s/he does not have the Utah certification anymore.

Ms. Padro asked whether Utah courts should be contacting the jurisdiction in which interpreter is certified to make sure they are in good standing before they are certified in Utah. Judge Myers agreed that should be done. Ms. Gentles suggested that we should check on certification from the non-consortium states. Mr. Shea will speak with Rosa Oakes and Dustin Treanor about building that into the background check.

(9) Fees. Ms. Gentles suggested this be clarified so it does not imply that we are setting the fees that interpreters are supposed to be paid in civil cases.

Mr. Shea briefly summarized the changes to the rule. Many changes were cosmetic, but there are some significant policy changes as well. He will circulate another draft, incorporating today's discussion, and members can send any further feedback to him. The next step may be to take it to the Boards rather than publish it for comment. The committee agreed with this.

Ms. Gentles asked if this can be done before the next committee meeting in November. Mr. Shea responded he will try to get it to the Boards before then.

The next meeting will be on November 21 at noon in the executive dining room. The meeting was adjourned.