

1 Rule 3-306. Court Interpreters.

2 Intent:

3 To state the policy of the Utah courts to secure the rights of people in legal
4 proceedings who are unable to understand or communicate adequately in the English
5 language.

6 To outline the procedure for certification, appointment, and payment of court
7 interpreters.

8 To provide certified interpreters in legal proceedings in those languages for which a
9 certification program has been established.

10 Applicability:

11 This rule shall apply to legal proceedings in the courts of record and not of record.
12 This rule shall apply to interpretation for non-English speaking people and not to
13 interpretation for the hearing impaired, which is governed by Utah statutes.

14 Statement of the Rule:

15 (1) Definitions.

16 (1)(A) "Appointing authority" means a judge, commissioner, referee or juvenile
17 probation officer, or delegate thereof.

18 (1)(B) "Approved interpreter" means a person who has fulfilled the requirements
19 established in paragraph (3).

20 (1)(C) "Certified interpreter" means a person who has fulfilled the requirements
21 established in paragraph (3).

22 (1)(D) "Committee" means the Court Interpreter Committee established by Rule 1-
23 205.

24 (1)(E) "Conditionally-approved interpreter" means a person who, in the opinion of the
25 appointing authority after evaluating the totality of the circumstances, has language
26 skills, knowledge of interpreting techniques, and familiarity with interpreting sufficient to
27 interpret the legal proceeding. A conditionally approved interpreter shall read and is
28 bound by the Code of Professional Responsibility and shall subscribe the oath or
29 affirmation of a certified interpreter.

30 (1)(F) "Code of Professional Responsibility" means the Code of Professional
31 Responsibility for Court Interpreters set forth in Code of Judicial Administration

32 Appendix H. An interpreter may not be required to act contrary to law or the Code of
33 Professional Responsibility.

34 (1)(G) "Legal proceeding" means a proceeding before the appointing authority. Legal
35 proceeding does not include communication outside the court unless permitted by the
36 appointing authority.

37 (2) Court Interpreter Committee. The Court Interpreter Committee shall:

38 (2)(A) research, develop and recommend to the Judicial Council policies and
39 procedures for interpretation in legal proceedings and translation of printed materials;

40 (2)(B) issue informal opinions to questions regarding the Code of Professional
41 Responsibility, which is evidence of good-faith compliance with the Code; and

42 (2)(C) discipline court interpreters.

43 (3) Application, training, testing, roster.

44 (3)(A) Subject to the availability of funding, and in consultation with the committee,
45 the administrative office of the courts shall establish programs to certify and approve
46 court interpreters in the non-English languages most frequently needed in the courts.
47 The administrative office shall publish a roster of certified interpreters and a roster of
48 approved interpreters. To be certified or approved, an applicant shall:

49 (3)(A)(i) file an application form approved by the administrative office;

50 (3)(A)(ii) pay a fee established by the Judicial Council;

51 (3)(A)(iii) pass a background check;

52 (3)(A)(iv) complete training as required by the administrative office;

53 (3)(A)(v) obtain a passing score on the court interpreter's test(s) as required by the
54 administrative office;

55 (3)(A)(vi) complete 10 hours observing a certified interpreter in a legal proceeding;

56 (3)(A)(vii) complete 10 hours of mentoring in the target language showing
57 increasingly independent responsibility for interpretation; and

58 (3)(A)(viii) take and subscribe the following oath or affirmation: "I will make a true
59 and impartial interpretation using my best skills and judgment in accordance with the
60 Code of Professional Responsibility."

61 (3)(B) A person who is certified in good standing by the federal courts or by a state
62 having a certification program that is equivalent to the program established under this

63 rule may be certified without complying with paragraphs (3)(A)(iv) through (3)(A)(vii) but
64 shall pass an ethics examination and otherwise meet the requirements of this rule.

65 (3)(C) No later than December 31 of each even-numbered calendar year, certified
66 and approved interpreters shall pass the background check for applicants, and certified
67 interpreters shall complete at least 16 hours of continuing education approved by the
68 administrative office of the courts.

69 (4) Appointment.

70 (4)(A) Except as provided in paragraphs (4)(B), (4)(C) and (4)(D), if the appointing
71 authority determines that a party, witness, victim or person who will be bound by the
72 action has a limited ability to understand and communicate in English, the appointing
73 authority shall appoint a certified interpreter in legal proceedings in the following cases:

74 (4)(A)(i) criminal cases;

75 (4)(A)(ii) preliminary inquiries and cases filed on behalf of the state under Title 78A,
76 Chapter 6, Juvenile Court Act of 1996;

77 (4)(A)(iii) cases filed against the state pursuant to Utah Rule of Civil Procedure
78 65B(b) or 65C;

79 (4)(A)(iv) cases filed under Title 62A, Chapter 5, Part 3 Admission to Mental
80 Retardation Facility;

81 (4)(A)(v) cases filed under Title 62A, Chapter 15, Part 6, Utah State Hospital and
82 Other Mental Facilities;

83 (4)(A)(vi) cases filed under Title 75, Chapter 5, Parts 2, 3, and 4;

84 (4)(A)(vii) cases filed under Title 77, Chapter 3a, Stalking Injunctions;

85 (4)(A)(viii) cases filed under Title 78B, Chapter 7, Protective Orders; or

86 (4)(A)(ix) other cases in which the appointing authority determines that the court is
87 obligated to appoint an interpreter.

88 (4)(B) An approved interpreter may be appointed if no certified interpreter is
89 reasonably available.

90 (4)(C) A conditionally-approved interpreter may be appointed if the appointing
91 authority, after evaluating the totality of the circumstances, finds that:

92 (4)(C)(i) the prospective interpreter has language skills, knowledge of interpreting
93 techniques and familiarity with interpreting sufficient to interpret the legal proceeding;
94 and

95 (4)(C)(ii) appointment of the prospective interpreter does not present a real or
96 perceived conflict of interest or appearance of bias; and

97 (4)(C)(iii) neither a certified nor an approved interpreter is reasonably available or
98 the gravity of the legal proceeding and the potential consequence to the person are so
99 minor that delays in obtaining a certified or approved interpreter are not justified.

100 (4)(D) No interpreter is needed for a direct verbal exchange between the person and
101 a probation officer if the probation officer can fluently speak the language understood by
102 the person. An approved or conditionally approved interpreter may be appointed for a
103 juvenile probation conference if the probation officer does not speak the language
104 understood by the juvenile.

105 (5) Payment.

106 (5)(A) In cases described in paragraph (4), the interpreter fees and expenses shall
107 be paid by the administrative office of the courts in courts of record and by the
108 government that funds the court in courts not of record. The court may assess the
109 interpreter fees and expenses as costs to a party as provided by law. (Utah
110 Constitution, Article I, Section 12, Utah Code Sections 77-1-6(2)(b), 77-18-7, 77-32a-1,
111 77-32a-2, 77-32a-3, 78B-1-146(3) and URCP 54(d)(2).)

112 (5)(B) The courts will pay for:

113 (5)(B)(i) one interpreter for non-English speaking defendants and non-English
114 speaking witnesses;

115 (5)(B)(ii) a separate interpreter for each non-English speaking defendant and/or
116 witness if the judge determines that one non-English speaking person has an interest
117 adverse to the others, or the judge determines that due process, confidentiality, or other
118 circumstances require that there be separate interpreters; or

119 (5)(B)(iii) two interpreters for person(s) requiring an interpreter if the judge
120 determines that the legal proceeding is so long that two interpreters are required to
121 alternate duties.

122 (6) Waiver. A person may waive an interpreter if the appointing authority approves
123 the waiver after determining that the waiver has been made knowingly and voluntarily. A
124 person may retract a waiver and request an interpreter at any time. An interpreter is for
125 the benefit of the court as well as for the non-English speaking person, so the
126 appointing authority may reject a waiver.

127 (7) Removal from legal proceeding. The appointing authority may remove an
128 interpreter from the legal proceeding for failing to appear as scheduled, for inability to
129 interpret adequately, including a self-reported inability, and for other just cause.

130 (8) Discipline.

131 (8)(A) An interpreter may be disciplined for:

132 (8)(A)(i) knowingly making a false interpretation in a legal proceeding;

133 (8)(A)(ii) knowingly disclosing confidential or privileged information obtained in a
134 legal proceeding;

135 (8)(A)(iii) knowingly failing to follow standards prescribed by law, the Code of
136 Professional Responsibility and this rule;

137 (8)(A)(iv) failing to pass a background check;

138 (8)(A)(v) failing to meet continuing education requirements;

139 (8)(A)(vi) conduct or omissions resulting in discipline by another jurisdiction; and

140 (8)(A)(vii) failing to appear as scheduled without good cause.

141 (8)(B) Discipline may include:

142 (8)(B)(i) permanent loss of certified or approved credentials;

143 (8)(B)(ii) temporary loss of certified or approved credentials with conditions for
144 reinstatement;

145 (8)(B)(iii) suspension from the roster of certified or approved interpreters with
146 conditions for reinstatement;

147 (8)(B)(vi) prohibition from serving as a conditionally approved interpreter;

148 (8)(B)(v) suspension from serving as a conditionally approved interpreter with
149 conditions for reinstatement; and

150 (8)(B)(vi) reprimand.

151 (8)(C) Any person may file a complaint in writing on a form provided by the program
152 manager. The complaint may be in the native language of the complainant, which the

153 AOC shall translate in accordance with this rule. The complaint shall describe in detail
154 the incident and the alleged conduct or omission. The program manager may dismiss
155 the complaint if it is plainly frivolous, insufficiently clear, or alleges conduct that does not
156 violate this rule. If the complaint is not dismissed, the program manager shall mail the
157 complaint to the interpreter at the address on file with the administrative office.

158 (8)(D) The interpreter shall answer the complaint within 30 days after the date the
159 complaint is mailed or the allegations in the complaint are considered true and correct.
160 The answer shall admit, deny or further explain each allegation in the complaint.

161 (8)(E) The program manager may review records and interview the complainant, the
162 interpreter and witnesses. After considering all factors, the program manager may
163 propose a resolution, which the interpreter may stipulate to. The program manager may
164 consider aggravating and mitigating circumstances such as the severity of the violation,
165 the repeated nature of violations, the potential of the violation to harm a person's rights,
166 the interpreter's work record, prior discipline, and the effect on court operations.

167 (8)(F) If the complaint is not resolved by stipulation, the program manager will notify
168 the committee, which shall hold a hearing. The committee chair and at least one
169 interpreter member must attend. If a committee member is the complainant or the
170 interpreter, the committee member is recused. The program manager shall mail notice
171 of the date, time and place of the hearing to the interpreter. The hearing is closed to the
172 public. Committee members and staff may not disclose or discuss information or
173 materials outside of the meeting except with others who participated in the meeting or
174 with a member of the Committee. The committee may review records and interview the
175 interpreter, the complainant and witnesses. A record of the proceedings shall be
176 maintained but is not public.

177 (8)(G) The committee shall decide whether there is sufficient evidence of the alleged
178 conduct or omission, whether the conduct or omission violates this rule, and the
179 discipline, if any. The chair shall issue a written decision on behalf of the committee
180 within 30 days after the hearing. The program manager shall mail a copy of the decision
181 to the interpreter.

182 (8)(H) The interpreter may review and, upon payment of the required fee, obtain a
183 copy of any records to be used by the committee. The interpreter may attend all of the

184 hearing except the committee's deliberations. The interpreter may be represented by
185 counsel and shall be permitted to make a statement, call and interview the complainant
186 and witnesses, and comment on the claims and evidence. The interpreter may obtain a
187 copy of the record of the hearing upon payment of the required fee.

188 (8)(I) If the interpreter is certified in Utah under Paragraph (3)(B), the committee
189 shall report the findings and sanction to the certification authority in the other
190 jurisdiction.

191 (9) Fees.

192 (A) In April of each year the Judicial Council shall set the fees and expenses to be
193 paid during the following fiscal year by the courts of record for the cases identified in
194 Paragraph (4). Payment of fees and expenses shall be made in accordance with the
195 Courts Accounting Manual.

196 (B) The local government that funds a court not of record shall set the fees and
197 expenses to be paid by that court for the cases identified in Paragraph (4).

198 (10) Translation of court forms. Forms must be translated by a team of at least two
199 people who are interpreters certified under this rule or translators accredited by the
200 American Translators Association.

201 (11) Court employees as interpreters. A court employee may not interpret legal
202 proceedings except as follows.

203 (11)(A) A court may hire an employee to be an interpreter. The employee will be
204 paid the wages and benefits of the employee's grade and not the fee established by this
205 rule. If the language is a language for which certification in Utah is available, the
206 employee must be a certified interpreter. If the language is a language for which
207 certification in Utah is not available, the employee must be an approved interpreter. The
208 employee must meet the continuing education requirements of an employee, but at
209 least half of the minimum requirement must be in improving interpreting skills. The
210 employee is subject to the discipline process for court personnel, but the grounds for
211 discipline include those listed in this rule. To avoid any appearance of impropriety, the
212 employee should not be assigned duties that might require contact with non-English
213 speaking people other than for interpretation.

214 (11)(B) A state court employee employed as an interpreter has the rights and
215 responsibilities provided in the Utah state court human resource policies, including the
216 Code of Personal Conduct, and the Court Interpreters' Code of Professional
217 Responsibility also applies. A justice court employee employed as an interpreter has the
218 rights and responsibilities provided in the county or municipal human resource policies,
219 including any code of conduct, and the Court Interpreters' Code of Professional
220 Responsibility also applies.

221 (11)(C) A court may use an employee as a conditionally-approved interpreter under
222 paragraph (4)(C). The employee will be paid the wage and benefits of the employee's
223 grade and not the fee established by this rule.

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