

1 **Rule 3-306. Court interpreters.**

2 Intent:

3 To state the policy of the Utah courts to secure the rights of people [under Title VI of](#)
4 [the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq.](#) in legal proceedings who are
5 unable to understand or communicate adequately in the English 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 [been rated as "superior" in](#)
19 [the Oral Proficiency Interview conducted by Language Testing International and has](#)
20 fulfilled the requirements established in paragraph (3).

21 (1)(C) "Certified interpreter" means a person who has [successfully passed the](#)
22 [examination of the Consortium for Language Access in the Courts and has](#) fulfilled the
23 requirements established in paragraph (3).

24 (1)(D) "Committee" means the Court Interpreter Committee established by Rule 1-
25 205.

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

32 (1)(F) “Code of Professional Responsibility” means the Code of Professional
33 Responsibility for Court Interpreters set forth in Code of Judicial Administration
34 Appendix H. An interpreter may not be required to act contrary to law or the Code of
35 Professional Responsibility.

36 (1)(G) “Legal proceeding” means a proceeding before the appointing authority,
37 [court-annexed mediation, communication with court staff, and participation in mandatory](#)
38 [court programs](#). Legal proceeding does not include communication outside the court
39 unless permitted by the appointing authority.

40 [\(1\)\(H\) “Limited English proficiency” means the inability to understand or](#)
41 [communicate in English at the level of comprehension and expression needed to](#)
42 [participate effectively in legal proceedings.](#)

43 [\(1\)\(I\) “Registered interpreter I” means a person who interprets in a language in](#)
44 [which testing by the Consortium for Language Access in the Courts or Language](#)
45 [Testing International is not available and who has fulfilled the requirements established](#)
46 [in paragraph \(3\) other than paragraph \(3\)\(A\)\(v\).](#)

47 [\(1\)\(J\) “Registered interpreter II” means a person who interprets in a language in](#)
48 [which testing by the Consortium for Language Access in the Courts or Language](#)
49 [Testing International is available and who has fulfilled the requirements established in](#)
50 [paragraph \(3\) other than paragraph \(3\)\(A\)\(v\).](#)

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

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

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

56 (2)(C) discipline court interpreters.

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

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

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

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

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

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

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

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

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

74 (3)(B) A person who is certified in good standing by the federal courts or by a state
75 having a certification program that is equivalent to the program established under this
76 rule may be certified without complying with paragraphs (3)(A)(iv) through (3)(A)(vii) but
77 shall pass an ethics examination and otherwise meet the requirements of this rule.

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

82 (4) Appointment.

83 (4)(A) Except as provided in paragraphs (4)(B), (4)(C) and (4)(D), if the appointing
84 authority determines that a party, witness, victim or person who will be bound by the
85 legal proceeding has a primary language other than English and limited ability to
86 understand and communicate in English proficiency, the appointing authority shall
87 appoint a certified interpreter in the following cases: all legal proceedings. A person
88 requesting an interpreter is presumed to be a person of limited English proficiency.

89 ~~(4)(A)(i) criminal cases;~~

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

92 ~~(4)(A)(iii) cases filed against the state pursuant to Utah Rule of Civil Procedure~~
93 ~~65B(b) or 65C;~~

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

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

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

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

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

101 ~~(4)(A)(ix) cases filed under Title 26, Chapter 6b, Communicable Diseases–~~
102 ~~Treatment, Isolation, and Quarantine Procedures; or~~

103 ~~(4)(A)(x) other cases in which the appointing authority determines that the court is~~
104 ~~obligated to appoint an interpreter.~~

105 (4)(B) An approved or registered interpreter may be appointed if no certified
106 interpreter is reasonably available.

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

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

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

114 (4)(C)(iii) ~~neither~~ a certified, ~~nor an~~ approved, or registered interpreter is not
115 reasonably available or the gravity of the legal proceeding and the potential
116 consequence to the person are so minor that delays in obtaining a certified or approved
117 interpreter are not justified.

118 (4)(D) No interpreter is needed for a direct verbal exchange between the person and
119 ~~a probation officer court staff~~ if the ~~probation officer court staff~~ can fluently speak the
120 language understood by the person. An approved, registered or conditionally approved
121 interpreter may be appointed ~~for a juvenile probation conference~~ if the ~~probation officer~~
122 ~~court staff~~ does not speak the language understood by the ~~juvenile person~~.

123 (4)(E) The appointing authority will appoint one interpreter for all participants with
124 limited English proficiency, unless the judge determines that the participants have

125 adverse interests, or that due process, confidentiality, the length of the legal proceeding
126 or other circumstances require that there be additional interpreters.

127 (4)(F) A person whose request for an interpreter has been denied may apply to
128 review the denial. The application shall be decided by the presiding judge. If there is no
129 presiding judge or if the presiding judge is unavailable, the clerk of the court shall refer
130 the application to any judge of the court or any judge of a court of equal jurisdiction. The
131 application must be filed within 20 days after the denial.

132 (5) Payment.

133 (5)(A) ~~In cases described in paragraph (4), the~~ The interpreter fees and expenses
134 shall be paid by the administrative office of the courts in courts of record and by the
135 government that funds the court in courts not of record. The court may assess the
136 interpreter fees and expenses as costs to a party as provided by law. (Utah
137 Constitution, Article I, Section 12, Utah Code Sections 77-1-6(2)(b), 77-18-7, 77-32a-1,
138 77-32a-2, 77-32a-3, 78B-1-146(3) and URCP 54(d)(2).)

139 ~~(5)(B) The courts will pay for:~~

140 ~~(5)(B)(i) one interpreter for non-English speaking defendants and non-English~~
141 ~~speaking witnesses;~~

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

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

149 (5)(B) A person who has been ordered to pay for an interpreter after filing an affidavit
150 of impecuniosity may apply to the presiding judge to review the order. If there is no
151 presiding judge, the person may apply to any judge of the court or any judge of a court
152 of equal jurisdiction. The application must be filed within 20 days after the denial.

153 (6) Waiver. A person may waive an interpreter if the appointing authority approves
154 the waiver after determining that the waiver has been made knowingly and voluntarily. A
155 person may retract a waiver and request an interpreter at any time. An interpreter is for

156 the benefit of the court as well as for the non-English speaking person, so the
157 appointing authority may reject a waiver.

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

161 (8) Discipline.

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

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

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

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

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

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

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

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

172 (8)(B) Discipline may include:

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

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

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

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

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

181 (8)(B)(vi) reprimand.

182 (8)(C) Any person may file a complaint in writing on a form provided by the program
183 manager. The complaint may be in the native language of the complainant, which the
184 AOC shall translate in accordance with this rule. The complaint shall describe in detail
185 the incident and the alleged conduct or omission. The program manager may dismiss
186 the complaint if it is plainly frivolous, insufficiently clear, or alleges conduct that does not

187 violate this rule. If the complaint is not dismissed, the program manager shall mail the
188 complaint to the interpreter at the address on file with the administrative office.

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

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

198 (8)(F) If the complaint is not resolved by stipulation, the program manager will notify
199 the committee, which shall hold a hearing. The committee chair and at least one
200 interpreter member must attend. If a committee member is the complainant or the
201 interpreter, the committee member is recused. The program manager shall mail notice
202 of the date, time and place of the hearing to the interpreter. The hearing is closed to the
203 public. Committee members and staff may not disclose or discuss information or
204 materials outside of the meeting except with others who participated in the meeting or
205 with a member of the Committee. The committee may review records and interview the
206 interpreter, the complainant and witnesses. A record of the proceedings shall be
207 maintained but is not public.

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

213 (8)(H) The interpreter may review and, upon payment of the required fee, obtain a
214 copy of any records to be used by the committee. The interpreter may attend all of the
215 hearing except the committee's deliberations. The interpreter may be represented by
216 counsel and shall be permitted to make a statement, call and interview the complainant

217 and witnesses, and comment on the claims and evidence. The interpreter may obtain a
218 copy of the record of the hearing upon payment of the required fee.

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

222 (9) Fees.

223 (9)(A) In April of each year the Judicial Council shall set the fees and expenses to be
224 paid to interpreters during the following fiscal year by the courts of record ~~for the cases~~
225 ~~identified in Paragraph (4)~~. Payment of fees and expenses shall be made in accordance
226 with the Courts Accounting Manual.

227 (9)(B) The local government that funds a court not of record shall set the fees and
228 expenses to be paid to interpreters by that court ~~for the cases identified in Paragraph~~
229 ~~(4)~~.

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

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

235 (11)(A) A court may hire an employee to be an interpreter. The employee will be
236 paid the wages and benefits of the employee's grade and not the fee established by this
237 rule. If the language is a language for which certification in Utah is available, the
238 employee must be a certified interpreter. If the language is a language for which
239 certification in Utah is not available, the employee must be an approved interpreter. The
240 employee must meet the continuing education requirements of an employee, but at
241 least half of the minimum requirement must be in improving interpreting skills. The
242 employee is subject to the discipline process for court personnel, but the grounds for
243 discipline include those listed in this rule.

244 (11)(B) A state court employee employed as an interpreter has the rights and
245 responsibilities provided in the Utah state court human resource policies, including the
246 Code of Personal Conduct, and the Court Interpreters' Code of Professional
247 Responsibility also applies. A justice court employee employed as an interpreter has the

248 rights and responsibilities provided in the county or municipal human resource policies,
249 including any code of conduct, and the Court Interpreters' Code of Professional
250 Responsibility also applies.

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

254