

1 **Rule 3-306.** ~~Court interpreters~~ Language access in the courts.

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 for legal proceedings.

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 persons with a hearing-impaired impairment~~, which is governed by
14 Utah and federal statutes.

15 Statement of the Rule:

16 (1) Definitions.

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

19 (1)(B) "Approved interpreter" means a person who has been rated as "superior" in
20 ~~the Oral Proficiency Interview conducted by Language Testing International-testing~~ and
21 has fulfilled the requirements established in paragraph (3).

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

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

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

31 bound by the Code of Professional Responsibility and shall subscribe the oath or
32 affirmation of a certified interpreter.

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

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

41 (1)(H) "Limited English proficiency" means the inability to understand or
42 communicate in English at the level of comprehension and expression needed to
43 participate effectively in legal proceedings.

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

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

52 (1)(K) "Testing" means using an organization approved by the committee that uses
53 the American Council on the Teaching of Foreign Languages (ACTFL) scale.

54 (2) ~~Court Interpreter Language Access~~ Committee. The ~~Court Interpreter Language~~
55 ~~Access~~ Committee shall:

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

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

60 (2)(C) discipline court interpreters.

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

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

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

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

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

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

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

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

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

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

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

87 (4) Appointment.

88 (4)(A) Except as provided in paragraphs (4)(B), (4)(C) and (4)(D), if the appointing
89 authority determines that a party, witness, victim or person who will be bound by the
90 legal proceeding has a primary language other than English and limited English

91 proficiency, the appointing authority shall appoint a certified interpreter in all legal
92 proceedings. A person requesting an interpreter is presumed to be a person of limited
93 English proficiency.

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

96 (4)(C) A registered interpreter may be appointed if no certified or approved
97 interpreter is reasonably available.

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

100 (4)(D)(i) the prospective interpreter has language skills, knowledge of interpreting
101 techniques and familiarity with interpreting sufficient to interpret the legal proceeding;
102 and

103 (4)(D)(ii) appointment of the prospective interpreter does not present a real or
104 perceived conflict of interest or appearance of bias; and

105 (4)(D)(iii) a certified, approved, or registered interpreter is not reasonably available
106 or the gravity of the legal proceeding and the potential consequence to the person are
107 so minor that delays in obtaining a certified or approved interpreter are not justified.

108 (4)(E) The appointing authority may appoint an interpreter with certified or approved
109 or equivalent credentials from another state if the appointing authority finds that the
110 approved, registered or conditionally approved interpreters who are reasonably
111 available do not have the language skills, knowledge of interpreting techniques, or
112 familiarity with interpreting sufficient to interpret the legal proceeding. The appointing
113 authority may consider the totality of the circumstances, including the complexity or
114 gravity of the legal proceeding, the potential consequences to the person of limited
115 English proficiency, and any other relevant factor.

116 ~~(4)(E)-(4)(F)~~ No interpreter is needed for a direct verbal exchange between the
117 person and court staff if the court staff can fluently speak the language understood by
118 the person and the employee is acting within guidelines established in the Human
119 Resources Policies and Procedures. An approved, registered or conditionally approved

120 interpreter may be appointed if the court staff does not speak the language understood
121 by the person.

122 ~~(4)(F)~~ (4)(G) The appointing authority will appoint one interpreter for all participants
123 with limited English proficiency, unless the judge determines that the participants have
124 adverse interests, or that due process, confidentiality, the length of the legal proceeding
125 or other circumstances require that there be additional interpreters.

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

131 (5) Payment.

132 (5)(A) The ~~interpreter~~ fees and expenses for language access shall be paid by the
133 administrative office of the courts in courts of record and by the government that funds
134 the court in courts not of record. The court may assess the ~~interpreter~~ fees and
135 expenses as costs to a party as otherwise provided by law. (Utah Constitution, Article I,
136 Section 12, Utah Code Sections 77-1-6(2)(b), 77-18-7, 77-32a-1, 77-32a-2, 77-32a-3,
137 78B-1-146(3), ~~and~~ URCP 54(d)(2), and Title VI of the Civil Rights Act of 1964, 42 U.S.C.
138 2000d, et seq., and regulations and guidance adopted under that title.)

139 (5)(B) A person who has been ordered to pay ~~for an interpreter fees and expenses~~
140 for language access ~~after filing an affidavit of impecuniosity~~ may apply to the presiding
141 judge to review the order. If there is no presiding judge, the person may apply to any
142 judge of the court or any judge of a court of equal jurisdiction. The application must be
143 filed within 20 days after the ~~denial order~~.

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

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

152 (8) Discipline.

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

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

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

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

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

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

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

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

163 (8)(B) Discipline may include:

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

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

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

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

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

172 (8)(B)(vi) reprimand.

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

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

180 (9) Complaints.

181 (9)(A) Any person may file a complaint about a matter for which an interpreter can be
182 disciplined. A party, witness, victim or person who will be bound by a legal proceeding,
183 may file a complaint about the misapplication of this rule.

184 (9)(B) The complaint shall allege an act or omission for which an interpreter can be
185 disciplined or that violates this rule. The complaint shall be in writing and signed and
186 filed with the program coordinator. The complaint may be in the native language of the
187 complainant, which the AOC shall translate in accordance with this rule. The complaint
188 shall describe the circumstances of the act or omission, including the date, time,
189 location and nature of the incident and the persons involved.

190 (9)(C) The program coordinator may dismiss the complaint if it is plainly frivolous,
191 insufficiently clear, or does not allege an act or omission act or omission for which an
192 interpreter can be disciplined or that does not violate this rule.

193 (9)(D) If the complaint alleges that the court did not provide language access as
194 required by this rule, the program coordinator shall investigate and recommend
195 corrective actions that are warranted.

196 (9)(E) If the complaint alleges an act or omission for which the interpreter can be
197 disciplined, the program coordinator shall mail the complaint to the interpreter at the
198 address on file with the administrative office of the courts and proceed as follows:

199 ~~(8)(D)~~ (9)(E)(i) The interpreter shall answer the complaint within 30 days after the
200 date the complaint is mailed or the allegations in the complaint are ~~considered~~ deemed
201 true and correct. The answer shall admit, deny or further explain each allegation in the
202 complaint.

203 ~~(8)(E)~~ (9)(E)(ii) The program ~~manager~~ coordinator may review records and interview
204 the complainant, the interpreter and witnesses. After considering all factors, the program
205 ~~manager~~ coordinator may propose a resolution, which the interpreter may stipulate to.
206 The program ~~manager~~ coordinator may consider aggravating and mitigating
207 circumstances such as the severity of the violation, the repeated nature of violations,

208 the potential of the violation to harm a person's rights, the interpreter's work record,
209 prior discipline, and the effect on court operations.

210 ~~(8)(F)~~ ~~(9)(E)(iii)~~ If the complaint is not resolved by stipulation, the program ~~manager~~
211 ~~coordinator~~ will notify the committee, which shall hold a hearing. The committee chair
212 and at least one interpreter member must attend. If a committee member is the
213 complainant or the interpreter, the committee member is recused. The program
214 ~~manager-coordinator~~ shall mail notice of the date, time and place of the hearing to the
215 interpreter. The hearing is closed to the public. Committee members and staff may not
216 disclose or discuss information or materials outside of the meeting except with others
217 who participated in the meeting or with a member of the Committee. The committee
218 may review records and interview the interpreter, the complainant and witnesses. A
219 record of the proceedings shall be maintained but is not public.

220 ~~(8)(G)~~ ~~(9)(E)(iv)~~ The committee shall decide whether there is sufficient evidence of
221 the alleged conduct or omission, whether the conduct or omission violates this rule, and
222 the discipline, if any. The chair shall issue a written decision on behalf of the committee
223 within 30 days after the hearing. The program ~~manager-coordinator~~ shall mail a copy of
224 the decision to the interpreter.

225 ~~(8)(H)~~ ~~(9)(E)(v)~~ The interpreter may review and, upon payment of the required fee,
226 obtain a copy of any records to be used by the committee. The interpreter may attend
227 all of the hearing except the committee's deliberations. The interpreter may be
228 represented by counsel and shall be permitted to make a statement, call and interview
229 the complainant and witnesses, and comment on the claims and evidence. The
230 interpreter may obtain a copy of the record of the hearing upon payment of the required
231 fee.

232 ~~(8)(I)~~ ~~(9)(E)(vi)~~ If the interpreter is certified in Utah under Paragraph (3)(B), the
233 committee shall report the findings and sanction to the certification authority in the other
234 jurisdiction.

235 ~~(9)~~ ~~(10)~~ Fees.

236 ~~(9)(A)~~ ~~(10)(A)~~ In April of each year the Judicial Council shall set the fees and
237 expenses to be paid to interpreters during the following fiscal year by the courts of

238 record. Payment of fees and expenses shall be made in accordance with the Courts
239 Accounting Manual.

240 ~~(9)(B)~~ (10)(B) The local government that funds a court not of record shall set the
241 fees and expenses to be paid to interpreters by that court.

242 ~~(10)~~ (11) Translation of court forms. Forms must be translated by a team of at least
243 two people who are interpreters certified under this rule or translators accredited by the
244 American Translators Association.

245 ~~(11)~~ (12) Court employees as interpreters. A court employee may not interpret legal
246 proceedings except as follows.

247 ~~(11)(A)~~ (12)(A) A court may hire an employee ~~to be an~~ interpreter. The employee will
248 be paid the wages and benefits of the employee's grade and not the fee established by
249 this rule. If the language is a language for which certification in Utah is available, the
250 employee must be a certified interpreter. If the language is a language for which
251 certification in Utah is not available, the employee must be an approved interpreter. The
252 employee must meet the continuing education requirements of an employee, but at
253 least half of the minimum requirement must be in improving interpreting skills. The
254 employee is subject to the discipline process for court personnel, but the grounds for
255 discipline include those listed in this rule.

256 ~~(11)(B)~~ (12)(B) A state court employee employed as an interpreter has the rights and
257 responsibilities provided in the Utah state court human resource policies, including the
258 Code of Personal Conduct, and the Court Interpreters' Code of Professional
259 Responsibility also applies. A justice court employee employed as an interpreter has the
260 rights and responsibilities provided in the county or municipal human resource policies,
261 including any code of conduct, and the Court Interpreters' Code of Professional
262 Responsibility also applies.

263 ~~(11)(C)~~ (12)(C) A court may use an employee as a conditionally-approved interpreter
264 under paragraph (4)(C). The employee will be paid the wage and benefits of the
265 employee's grade and not the fee established by this rule.

266