

1 **Rule 3-306. 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 interpreters
7 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 persons with a hearing impairment, which is governed by Utah and
14 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 testing and has 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 Language Access 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 is not available and who has fulfilled the requirements established in
45 paragraph (3) other than paragraph (3)(A)(v).

46 ~~(1)(J) "Registered interpreter II" means a person who interprets in a language in
47 which testing is available and who has fulfilled the requirements established in
48 paragraph (3) other than paragraph (3)(A)(v).~~

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

51 (2) Language Access Committee. The Language Access 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 interpreters in English and the non-English languages most frequently needed in the
61 courts. The administrative office shall publish a roster of certified, approved, and
62 registered interpreters. To be certified, approved or registered, 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 approved, and registered interpreters shall pass the background check for applicants,
80 and certified interpreters shall complete at least 16 hours of continuing education
81 approved by the 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 English
86 proficiency, the appointing authority shall appoint a certified interpreter in all legal
87 proceedings. A person requesting an interpreter is presumed to be a person of limited
88 English proficiency.

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

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

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

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

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

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

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

111 (4)(F) No interpreter is needed for a direct verbal exchange between the person and
112 court staff if the court staff can fluently speak the language understood by the person
113 and the state court employee is acting within guidelines established in the Human
114 Resources Policies and Procedures. An approved, registered or conditionally approved
115 interpreter may be appointed if the court staff does not speak the language understood
116 by the person.

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

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

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

126 (5) Payment.

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

134 (5)(B) A person who has been ordered to pay fees and expenses for language
135 access may apply to the presiding judge to review the order. If there is no presiding
136 judge, the person may apply to any judge of the court or any judge of a court of equal
137 jurisdiction. The application must be filed within 20 days after the order.

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

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

146 (8) Discipline.

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

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

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

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

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

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

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

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

157 (8)(B) Discipline may include:

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

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

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

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

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

166 (8)(B)(vi) reprimand.

167 (9) Complaints.

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

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

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

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

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

186 (9)(E)(i) The interpreter shall answer the complaint within 30 days after the date the
187 complaint is mailed or the allegations in the complaint are deemed true and correct. The
188 answer shall admit, deny or further explain each allegation in the complaint.

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

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

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

211 (9)(E)(v) The interpreter may review and, upon payment of the required fee, obtain a
212 copy of any records to be used by the committee. The interpreter may attend all of the
213 hearing except the committee's deliberations. The interpreter may be represented by
214 counsel and shall be permitted to make a statement, call and interview the complainant
215 and witnesses, and comment on the claims and evidence. The interpreter may obtain a
216 copy of the record of the hearing upon payment of the required fee.

217 (9)(E)(vi) If the interpreter is certified in Utah under Paragraph (3)(B), the committee
218 shall report the findings and sanction to the certification authority in the other
219 jurisdiction.

220 (10) Fees.

221 (10)(A) In April of each year the Judicial Council shall set the fees and expenses to
222 be paid to interpreters during the following fiscal year by the courts of record. Payment
223 of fees and expenses shall be made in accordance with the Courts Accounting Manual.

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

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

229 (12) Court employees as interpreters. A court employee may not interpret legal
230 proceedings except as follows.

231 (12)(A) A court may hire an employee interpreter. The employee will be paid the
232 wages and benefits of the employee's grade and not the fee established by this rule. If
233 the language is a language for which certification in Utah is available, the employee
234 must be a certified interpreter. If the language is a language for which certification in
235 Utah is not available, the employee must be an approved interpreter. The employee

236 must meet the continuing education requirements of an employee, but at least half of
237 the minimum requirement must be in improving interpreting skills. The employee is
238 subject to the discipline process for court personnel, but the grounds for discipline
239 include those listed in this rule.

240 (12)(B) A state court employee employed as an interpreter has the rights and
241 responsibilities provided in the Utah state court human resource policies, including the
242 Code of Personal Conduct, and the Court Interpreters' Code of Professional
243 Responsibility also applies. A justice court employee employed as an interpreter has the
244 rights and responsibilities provided in the county or municipal human resource policies,
245 including any code of conduct, and the Court Interpreters' Code of Professional
246 Responsibility also applies.

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