

Agenda
Language Access Committee Meeting
 March 17, 2017
 12:00 – 1:30 p.m.

Administrative Office of the Courts
 Scott M. Matheson Courthouse
 450 South State Street
Council Room, 3rd Floor, N31

12:00	Welcome and Approval of Minutes	Discussion	Tab 1	Judge Romney
12:05	Finalize Employee Stipend Amendments <ul style="list-style-type: none"> • CJA Rule 3-306.01 • CJA Rule 3-306.04 • HR Policy 570 	Action	Tab 2 Tab 3 Tab 4	Keisa Williams
12:45	Interpreter Discipline <ul style="list-style-type: none"> • CJA Rule 3-306.05 • Code of Professional Responsibility for Court Interpreters 	Discussion/ Action	Tab 5 Tab 6	Keisa Williams
1:10	New Chair Election New Member Updates <ul style="list-style-type: none"> • Clerk of Court • Justice Court Judge • Defense Counsel 	Action		Keisa Williams
1:30	Adjourn			

Meeting Schedule:

May 4, 2017 (Exec. Dining Room)
 July 6, 2017 (Council Room)
 September 7, 2017 (Exec. Dining Room)
 November 2, 2017 (Exec. Dining Room)

Tab 1

Language Access Committee
Matheson Courthouse
Executive Dining Room
450 South State St.
Salt Lake City, Utah 84111

January 20, 2017

Draft

Members Present

Judge Rick Romney - Chair
Judge Su Chon
Mary Kaye Dixon
Michelle Draper
Megan Haney
Judge Mike Leavitt (via phone)
Maureen Magagna
Randall McUne
Miguel Medina
Russ Pearson
Bebe Vanek

Members Excused

Jennifer Andrus
Amine El Fajri
Gabriela Grostic

Staff

Keisa L. Williams
Jeni Wood - recording secretary

Guests

(1) Welcome and Minutes.

Judge Rick Romney welcomed the committee to the meeting and introduced himself. Judge Romney welcomed new defense counsel member, Bebe Vanek to the committee. Bebe Vanek introduced herself and expressed her gratitude for being allowed to serve on this committee. Each of the committee members introduced themselves. Judge Romney then addressed the November 18, 2016 minutes. With no changes, Maureen Magagna moved to approve the minutes. Randall McUne seconded the motion. The motioned carried unanimously.

(2)New Members and Term Limits.

Keisa Williams informed the committee that Rosa Oakes resigned from the AOC. Ms. Williams will be taking over Ms. Oakes' duties until a replacement is hired. Ms. Williams discussed term limits for committee members and noted that Judge Romney's and Maureen Magagna's six-year terms are up. They will need to be replaced after the next meeting. Ms. Williams expressed her gratitude for their service on the committee. Several other members have completed their first three-year term. Ms. Williams asked them to email her if they are willing to serve another term.

(3) Language Access Program Updates and ASL Subcommittee Update.

Ms. Williams discussed the subcommittee working on video equipment for ASL interpretations. At the last meeting, the subcommittee chose an option proposed by Jymn Edwards from IT. The subcommittee is proposing the use of two (2) small cameras on tripods that would allow IT to upload the video into the

court record. The video quality is very high so that signs and facial expressions can be seen clearly when zoomed in for an accurate review of the record. Each camera costs approximately \$800, with additional expenses for the tripod and case. Ms. Williams pulled ASL interpretation numbers in courts throughout the state to try and get an idea of which court buildings the cameras should be housed in. The committee felt that the numbers were inaccurate and discussed their experience with high-volume ASL locations. The committee identified Matheson, West Jordan, Ogden, and St. George as the courts with the most need for this equipment. Ms. Williams said the equipment should also be available for use in juvenile and justice courts. With most cases being set in advance, housing the equipment in hub locations should accommodate the need, with the least amount of expense. Ms. Magagna asked if they would only be available for trials. Ms. Williams said the equipment would be available for all hearings. Ms. Williams will put a budget packet together and once approved by Ray Wahl, it will be taken to the Judicial Council for approval.

Ms. Williams discussed out-of-state interpreters. Recently there was an incident where an out-of-state interpreter was scheduled to appear by phone, however, the judge decided not to use the interpreter. No one informed the interpreter and we were required to pay them to wait by the phone for two hours. This was a needless expense. Judge Su Chon suggested Ms. Williams attend the annual judicial conference to explain this, as well as train the TCE's and clerks.

Ms. Williams discussed remote interpretation capabilities via Vidyo. There is a room on the 2nd floor of Matheson for remote interpreting and thus far it has been used successfully in Moab and St. George. Ms. Williams said sometimes defense attorneys may need an interpreter at the table for privileged interpretations. IT recommended using a separate laptop at the defense table for this purpose, however, that hasn't yet been tested. Judge Chon said attorneys have to remember to mute the microphones when they are speaking with their clients. This is a training issue. Mr. McUne said it's important that courts have the available bandwidth for these remote interpretations. Ms. Williams said she will mention the need for more bandwidth and Vidyo capabilities in every courtroom to Ray Wahl when they meet, however, the budget may not accommodate such a large request.

(4) Employee Stipend Policy.

Ms. Williams reviewed the amendments to CJA Rule 3-306.04 and HR policy 570 recommended by the committee at the last meeting.

Ms. Williams first discussed CJA Rule 3-306.04. After a brief discussion, the committee decided to make additional changes to add more clarity and to create a definitions section describing things such as "staff interpreter" and "court interpreter." They also agreed to combine sections (2)(C) and (1)(G). Ms. Williams will revise the rule and present it to the committee at the next meeting for final approval.

Ms. Williams next discussed HR policy 570. Ms. Williams added a section to explain the Oral Proficiency Interview (OPI) requirement. Ms. Williams encouraged TCEs to hire employees who are able to speak multiple languages to accommodate for limited resources. To assist with this process, HR has extended authorization so TCEs can make conditional employment offers, subject to passing the OPI. Judge Chon said her employee was told he had to wait until after probation to take the test. Ms. Magagna said it is her understanding employees can take the test after they attend new employee orientation. Ms. Williams recommended amending section 1.1. The committee discussed giving TCE's the discretion to allow the additional stipend testing on a case-by-case basis. Russell Pearson said he has

an employee who receives the stipend but can go a month without ever using it. Ms. Magagna said she has more than one employee who spends her entire day speaking in other languages. Ms. Haney said she understands an employee can only take the test once a year if they fail. Additionally, she doesn't believe the test is specific to legal or court terms/situations. Ms. Williams said the courts will only pay for the test once a fiscal year, however, court employees can take it more often at their own expense, which she believes is \$50. Ms. Williams will consider amending the policy to explain this with more detail. Bebe Vanek suggested amending the policy to "require" fluency rather than "prefer" fluency. Mr. Pearson said the larger districts require it, where the smaller districts prefer it, due to a lack of available applicants.

Ms. Williams explained the OPI. She said Ms. Haney is correct. The test is not court-specific, but rather is general in nature. Alta, the company who created and administers the tests is a nationally recognized company in language testing. Alta claims that the testing is general in nature for the purposes of direct exchanges. Ms. Williams said she will research other courts to see if they are using the Alta Test or if they came up with their own. Judge Chon said the NCSC followed Alta's advice and agreed that this test is the minimum required for direct exchanges.

Ms. Williams mentioned she now has access to NCSC's database of interpreters. This will be very beneficial for rare languages. Additionally, she is now on the national email listserv.

(5) Other Business.

Training and Education

Judge Chon said she believes the committee needs to attend the annual bar conferences and put more emphasis and effort into training and equipment. Judge Chon believes judges need to be trained on how to handle hearings when there are interpreters present. She suggested someone provide judicial training on this at the judges' conferences.

Ms. Williams stated that Rosa Oakes was working with the judicial education team to develop judicial training on interpreters. Ms. Williams will speak with Tom Langhorne to confirm. Ms. Vanek stated training for attorneys would be helpful as well. Ms. Williams will make contact with Connie Howard about creating CLEs. Judge Chon said she would like to get more information to determine exactly what issues need to be addressed before the committee begins developing training.

Judge Chon is concerned that the current headsets are not properly recorded on the official court record. Ms. Williams will investigate this concern.

Last Minute Cancellations

Judge Mike Leavitt said a persistent problem in St. George is attorneys requesting interpreters for a hearing/trial date, then settling the case prior to the hearing without notifying either the court or the interpreter. Judge Chon mentioned that she always asks if there is a need for an interpreter at the beginning of a case. Mary Dixon said in her district, the requests usually come very close to trial. The committee discussed how this issue would be best addressed in the future to avoid last minute requests.

Conflicts of Interest

Ms. Draper expressed concern about inherent conflicts of interest for interpreters who are asked to interpret for defense attorneys and/or multiple stages of case for a particular defendant. For example, ASL interpreters are not allowed to interpret for a police interrogation and then during court proceedings/trials for the same individual. Interpreters may unintentionally bring in information from one encounter to the next. Ms. Williams will ensure conflict of interest training is included in the ethics training requirements for interpreters.

ADA Accommodation

Ms. Draper believes it is an ADA issue if the court does not provide an ASL interpreter for a party's parent or a court observer. Ms. Draper said since the court is open, then we must provide services. Ms. Williams said she will discuss this with Brent Johnson, who handles all ADA requests for the court.

The next meeting is scheduled for March 17, 2017. There being no further business, the meeting adjourned at 1:27 pm.

Tab 2

1 **Rule 3-306.01. Language access definitions.**

2
3 **Intent:**

4 To define terms used in rules 3-306.01 through 3-306.05.

5
6 **Applicability:**

7 This rule shall apply to terms used in rules 3-306.01 through 3-306.05.

8
9 **Statement of the Rule:**

10 (1) “Appointing authority” means a judge, commissioner, referee or juvenile probation officer, or
11 delegate thereof.

12
13 (2) “Approved interpreter” means a person who has been rated as “superior” in testing and has
14 fulfilled the requirements established in paragraph (3).

15
16 (3) “Certified interpreter” means a person who has successfully passed the examination of the
17 Consortium for Language Access in the Courts and has fulfilled the requirements established in
18 paragraph (3).

19
20 (4) “Committee” means the Language Access Committee established by Rule 1-205.

21
22 (5) “Conditionally-approved interpreter” means a person who, in the opinion of the appointing
23 authority after evaluating the totality of the circumstances, has language skills, knowledge of
24 interpreting techniques, and familiarity with interpreting sufficient to interpret the legal
25 proceeding. A conditionally approved interpreter shall read and is bound by the Code of
26 Professional Responsibility and shall subscribe the oath or affirmation of a certified interpreter.

27
28 (6) “Code of Professional Responsibility” means the Code of Professional Responsibility for
29 Court Interpreters set forth in Code of Judicial Administration Appendix H. An interpreter may
30 not be required to act contrary to law or the Code of Professional Responsibility.

31
32 (7) “Court interpreter” means an approved, certified, registered or conditionally-approved
33 interpreter authorized to interpret during judicial proceedings.

34
35 (8) “Direct verbal exchange” means a normal conversation between a person with limited
36 English proficiency and a court interpreter or court employee receiving a stipend pursuant to
37 these rules.

38
39 (9) “Employee” means an individual employed by the Utah Court System in any capacity other
40 than as a staff interpreter.

41
42 ~~(7)~~(10) “Legal proceeding” means a proceeding before the appointing authority, court-annexed
43 mediation, communication with court staff, and participation in mandatory court programs. Legal
44 proceeding does not include communication outside the court unless permitted by the appointing
45 authority.

46

47 ~~(8)~~(11) “Limited English proficiency” means the inability to understand or communicate in
48 English at the level of comprehension and expression needed to participate effectively in legal
49 proceedings.

50

51 ~~(9)~~(12) “Registered interpreter” means a person who interprets in a language in which testing is
52 not available and who has fulfilled the requirements established in paragraph (3) other than
53 paragraph (3)(A)(vi).

54

55 (13) “Staff interpreter” means an individual employed by the Utah Court System solely for the
56 purpose of providing interpretation services.

57

58 (10) “Testing” means using an organization approved by the committee that uses the American
59 Council on the Teaching of Foreign Languages (ACTFL) scale.

60

61 Effective May 1, 2016

Tab 3

Rule 3-306.04. Interpreter appointment, payment, and fees.

Intent:

To state the policy of the Utah courts to secure the rights of people under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. in legal proceedings who are unable to understand or communicate adequately in the English language.

To outline the procedures for appointment and payment of interpreters for legal proceedings.
To provide certified interpreters in legal proceedings in those languages for which a certification program has been established.

Applicability:

This rule shall apply to legal proceedings in the courts of record and not of record. This rule shall apply to interpretation for non-English speaking people and not to interpretation for persons with a hearing impairment, which is governed by Utah and federal statutes.

Statement of the Rule:

(1) Appointment.

(1)(A) Except as provided in paragraphs (1)(B), (1)(C) and (1)(D), if the appointing authority determines that a party, witness, victim or person who will be bound by the legal proceeding has a primary language other than English and limited English proficiency, the appointing authority shall appoint a certified interpreter in all legal proceedings. A person requesting an interpreter is presumed to be a person of limited English proficiency.

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

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

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

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

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

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

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

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

(1)(G) Court employees may not interpret during legal proceedings, unless they meet the requirements otherwise defined for conditionally-approved interpreters and by complying with the requirements under paragraph (1)(D) and providing notice to Human Resources and the Language Access Program Manager. The employee will be paid the wage and benefits of the employee's grade and not the fee established by this rule.

(1)(F)(H) ~~No Court interpreters~~ is are not required needed for a direct verbal exchanges between a the person and a court staff employee if:

(1)(H)(i) the a court staff employee can fluently speak the language understood by the person,

(1)(H)(ii) the court employee has passed the Oral Language Proficiency Interview in that language, and

(1)(H)(iii) the state court employee is acting within the guidelines established in the Human Resources Policies and Procedures.

(1)(I) If a direct verbal exchange is required and the no court staff employee does not meeting the requirements outlined above is available speak the language understood by the person, the interpreter coordinator may appoint a certified, An approved, registered or conditionally approved interpreter ~~may be appointed if the court staff does not speak the language understood by the person.~~

(2) Court employees as interpreters. A court employee may not interpret legal proceedings except as follows: Staff Interpreters.

(2)(A) A court may hire an employee as a staff interpreter for the court. The employee will be paid the wages and benefits of the employee's grade and not the fee established by this rule. If the language is a language for which certification in Utah is available, the employee must be a certified interpreter. If the language is a language for which certification in Utah is not available, the employee must be an approved interpreter. The employee must meet the continuing education requirements of an employee, but at least half of the minimum requirement must be in improving interpreting skills. The employee is subject to the discipline process for court personnel, but the grounds for discipline include those listed in rule 3-306.05.

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

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

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

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

(6) Payment.

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

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

(7) Fees.

(7)(A) Every three years, the Judicial Council shall review a market survey conducted by the Language Access Program Manager and shall set the fees and expenses to be paid to interpreters during the following three fiscal years by the courts of record. Payment of fees and expenses shall be made in accordance with the Courts Accounting Manual.

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

Effective May 1, 2016

Tab 4

Human Resources Policy
SECOND LANGUAGE STIPENDS 570

SCOPE

This policy applies to all court employees.

POLICY AND PROCEDURE

Minimum Qualifications.

1.1 ~~The~~ Except for 1.4 below, ~~the~~ employees must have completed the New Employee Orientation prior to applying for a Second Language Stipend.

1.2 ~~The e~~Employees must demonstrate the required level of proficiency on the Oral Language Proficiency Exam Interview (OPI).

1.3 An employee receiving a Second Language Stipend will be subject to recertification on a periodic basis not to exceed three (3) years.

1.4 Court Executives may authorize potential employees' application to sit for the Oral Language Proficiency Interview as a condition of employment for a position where fluency in a second language is preferred or required.

Application Process.

2.1 All employees applying for a Second Language Stipend shall complete the following process:

- Complete the Second Language Stipend application and Agreement with the appropriate information and approving signatures and submit to the Court Interpreter Program Coordinator; and
- Complete and pass the Oral Proficiency Exam Interview (OPI).

2.2 If an employee internally transfers from one District to another, the Second Language Stipend will not transfer with the employee. As outlined in Section 2.1, the employee must reapply for a Second Language Stipend within the new District.

Availability and Removal.

3.1 The Second Language Stipend is an extra benefit requested by the employee and the Court Executive based on need and it is not considered part of an employee's base salary.

3.2 An employee's Second Language Stipend can be reassigned, reduced or removed at any time and for any reason.

3.3 A request for a Second Language Stipend can be approved or denied based on the availability of funds and/or slots.

Usage

4.1 The Court Executive or designee shall approve and monitor all employee recipients of the Second Language Stipend.

4.2 The Second Language Stipend is subject to the following usage guidelines:

- The employee must be reasonably available and use the second language skills on a regular basis.
- The employee shall provide interpreting in a Court proceeding only as outlined in Rule ~~3-306(11)~~ 3-306.04.

Administration.

5.1 The Court Interpreter Program Coordinator is responsible for making available the appropriate forms, managing the Oral Proficiency Interview ~~Exam~~ contract, and arranging for the test taking of the Oral Proficiency Interview ~~Exam~~.

5.2 The Human Resources Department is responsible for the electronic tracking of stipend recipients, positions, locations, and employment status (full time or part-time).

5.3 The application, agreement, test and test results shall be kept in the official employee personnel file housed with the Human Resources Department as well as in electronic form.

5.4 The Second Language Stipend is dispersed in each recipient's bi-weekly paycheck, with the amount based on their employment status of full time or part-time and pro-rated accordingly.

Tab 5

Rule 3-306.05. Interpreter removal, discipline, and formal complaints.

Intent:

To outline the procedures for interpreter removal and discipline.

Applicability:

This rule shall apply to the Language Access Program Manager, the Language Access Program Coordinator, the Language Access Committee, interpreter coordinators and contract interpreters.

Statement of the Rule:

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

(2) Discipline.

(2)(A) An interpreter may be disciplined for:

- (2)(A)(i) knowingly making a false interpretation in a legal proceeding;
- (2)(A)(ii) knowingly disclosing confidential or privileged information obtained in a legal proceeding;
- (2)(A)(iii) knowingly failing to follow standards prescribed by law, the Code of Professional Responsibility and this rule;
- (2)(A)(iv) failing to pass a background check;
- (2)(A)(v) failing to meet continuing education requirements;
- (2)(A)(vi) conduct or omissions resulting in discipline by another jurisdiction;
- (2)(A)(vii) failing to appear as scheduled without good cause;
- (2)(A)(viii) unprofessional behavior toward a client, judge, court staff, court security, or Language Access Committee member; and
- (2)(A)(ix) being charged with, or convicted of, a crime.

(2)(B) Discipline may include:

- (2)(B)(i) permanent loss of certified or approved credentials;
- (2)(B)(ii) temporary loss of certified or approved credentials with conditions for reinstatement;
- (2)(B)(iii) suspension from the roster of certified or approved interpreters with conditions for reinstatement;
- (2)(B)(iv) prohibition from serving as a conditionally approved interpreter;
- (2)(B)(v) suspension from serving as a conditionally approved interpreter with conditions for reinstatement; and
- (2)(B)(vi) reprimand.

(3) As long as he or she complies with rule 3-306.04, an interpreter coordinator has the discretion to decline to assign an interpreter listed on the statewide interpreter roster.

(4) Filing of formal complaints.

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

(4)(B) A formal complaint shall be filed with the Language Access Program Coordinator. However, the Language Access Program Coordinator may file a formal complaint with the Language Access Program Manager, in which case, the program manager will fulfill the program coordinator's responsibilities under this rule.

(4)(C) The complaint shall allege an act or omission for which an interpreter can be disciplined or that violates this rule. The complaint shall be in writing and signed. The complaint may be in the native language of the complainant, which the AOC shall translate in accordance with this rule. The complaint shall describe the circumstances of the act or omission, including the date, time, location and nature of the incident, and the persons involved.

(5) Investigation by program coordinator.

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

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

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

(5)(C)(i) The interpreter shall answer the complaint within 30 days after the date the complaint is mailed or the allegations in the complaint will be deemed to be true and correct. The answer shall admit, deny or further explain each allegation in the complaint.

(5)(C)(ii) Unless the program coordinator determines the allegation in the formal complaint to be egregious, the interpreter shall remain on the court interpreter roster until a final decision on discipline has been made.

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

(5)(C)(iv) When the investigation of the formal complaint is complete, the program coordinator shall notify the interpreter, in writing, of the proposed resolution. Within 15 days of the proposed resolution, the interpreter shall, in writing, either accept the discipline by consent or request a hearing by a panel of the Language Access Committee. If the interpreter fails to respond to the program coordinator's proposed resolution, or fails to request a hearing within 15 days, the interpreter will be deemed to have stipulated to the proposed resolution.

(6) Hearing by panel.

(6)(A) The program coordinator shall notify the chair of the Language Access Committee if the interpreter requests a hearing by a panel. The chair of the Language Access Committee shall assign three members of the Committee, including one interpreter, to serve on the panel for the hearing, and shall assign one of the panel members to chair the hearing. The chair of the panel is responsible for sending notice to the interpreter, the complainant and the program coordinator.

(6)(B) The hearing before the panel is private and closed to the public. The hearing shall be recorded. The hearing is informal and is not governed by the Rules of Civil Procedure and the Rules of Evidence. The interpreter, the complainant, and the program coordinator may attend the hearing. The interpreter and the program coordinator may each bring counsel to the hearing. The chair may limit others in attendance to those persons reasonably necessary to the proceedings. The program coordinator and the interpreter may submit exhibits and call witnesses. Panel members and staff may not disclose or discuss information or materials outside of the meeting except with others who participated in the meeting or with a member of the panel.

(6)(C) If any party fails to appear, the panel may proceed on the evidence before it. If the complainant fails to appear, the panel may dismiss the Formal Complaint.

(6)(D) The panel shall determine by a majority whether there is a preponderance of evidence of the alleged conduct or omission, and whether the alleged conduct or omission violates this rule or the Code of Professional Responsibility. Within 30 days, the panel chair will inform the program coordinator, the interpreter, and the complainant, in writing, of its decision and the findings of fact supporting it. The panel may discipline the interpreter as provided under paragraph (2)(B), including permanently removing the interpreter's credentials.

(6)(E) The interpreter may appeal the decision to the Language Access Committee by sending a written request to the program coordinator within 15 days of the date of the panel's decision.

(7) Appeal hearing before the Language Access Committee.

(7)(A) The committee chair and at least one interpreter member shall attend the hearing before the Language Access Committee. If a committee member is the complainant or the

interpreter, the committee member is recused. Members of the panel are also recused. The program coordinator shall mail notice of the date, time and place of the hearing to the interpreter and the complainant. At least 6 days before the hearing, the interpreter and program coordinator may submit briefs and exhibits, which the committee shall review. The information the committee may consider is limited to information presented to the panel. The hearing is closed to the public. Committee members and staff may not disclose or discuss information or materials outside of the meeting except with others who participated in the meeting or with a member of the Committee. The committee may review records and interview the interpreter, the complainant and witnesses. A record of the proceedings shall be maintained but is not public.

(7)(B) The committee shall decide whether the panel abused its discretion in making its decision. If the committee determines the panel abused its discretion, the committee may dismiss the Formal Complaint or discipline the interpreter differently as appropriate. If the committee determines that the panel did not abuse its discretion, the interpreter shall be disciplined according to the panel's decision. The chair of the committee, or the chair's designee, shall issue a written decision and analysis on behalf of the committee within 30 days after the hearing. The program coordinator shall mail a copy of the decision to the interpreter. The committee's decision is final.

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

(8) If the interpreter is certified in Utah under rule 3-306.03(1), the program coordinator, panel or committee may report any final findings and sanction to other agencies and certification authorities in other jurisdictions.

Effective May 1, 2016

Tab 6

Appendix H. Code of Professional Responsibility for Court Interpreters

Introduction

This Code is based on the "Model Code of Professional Responsibility for Interpreters in the Judiciary" developed by the National Center for State Courts with grant funding from the State Justice Institute, as set forth in the publication, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, Copyright 1995, National Center for State Courts.

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier.¹ As officers of the court, interpreters help ensure that such persons may enjoy equal access to justice, and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

Applicability

This code shall guide and be binding upon all persons, agencies and organizations who administer, supervise use, or deliver interpreting services to the judiciary.

COMMENT

The black letter principles of the Model Code on which this Code is based are principles of general application that are unlikely to conflict with specific requirements of rule or law in the states, in the opinion of the code's drafters. Therefore, the use of the term "shall" is reserved for the black letter principles. Statements in the commentary use the term "should" to describe behavior that illustrates or elaborates upon the principles. The commentaries are intended to convey what the drafters of this model code believe are probable and expected behaviors. Wherever a court policy or routine practice appears to conflict with the commentary in this code, it is recommended that the reasons for the policy as it applies to court interpreters be examined.

Canon 1. Accuracy and completeness.

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

COMMENT

The interpreter has a twofold duty: (1) to ensure that the proceedings in English reflect precisely what was said by a non-English speaking person, and (2) to place the non-English speaking person on an equal footing with those who understand English. This creates an obligation to

¹ A non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence would understand.

conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore, interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word" or literal oral interpretations are not appropriate when they distort the meaning of the source language, but every spoken statement - even if it appears non-responsive, obscene, rambling, or incoherent - should be interpreted. This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions. If the need arises to explain an interpreting problem (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. Interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions, or dramatic gestures.

The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding. Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

Canon 2. Representation of qualifications.

Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

COMMENT

Acceptance of a case by an interpreter conveys linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins causes a disruption of court proceedings and is wasteful of scarce public resources. It is, therefore, essential that interpreters present a complete and truthful account of their training, certification, and experience prior to appointment so the officers of the court can fairly evaluate their qualifications for delivering interpreting services.

Canon 3. Impartiality and avoidance of conflict of interest.

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

COMMENT

The interpreter serves as an officer of the court, and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties.

The interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Interpreters should maintain professional relationships with their clients and should not take an active part in any of the proceedings. The interpreter should discourage a non-English speaking party's personal dependence.

During the course of the proceedings interpreters should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. It is especially important that interpreters, who are often familiar with attorneys or other members of the courtroom work group, including law enforcement officers, refrain from casual and personal conversations with anyone in court that may convey an appearance of a special relationship or partiality to any of the court participants.

The interpreter should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

Should an interpreter become aware that a proceeding participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the appropriate judicial authority and counsel.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. Before providing services in a matter, court interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information.

The following are circumstances that are presumed to create actual or apparent conflicts of interest for interpreters where interpreters should not serve:

1. The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;
2. The interpreter has served in an investigative capacity for any party involved in the case;
3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;
4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case;
5. The interpreter has been involved in the choice of counsel or law firm for that case.

Interpreters should disclose to the court and other parties when they have previously been retained for private employment by one of the parties in the case.

Interpreters should not serve in any matter in which payment for their services is contingent upon the outcome of the case.

An interpreter who is also an attorney should not serve in both capacities in the same matter.

Canon 4. Professional demeanor.

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

COMMENT

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, interpreters should speak at a rate and volume that enables them to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible. Interpreters should work without drawing undue or inappropriate attention to themselves. Interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court.

Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings.

Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

Canon 5. Confidentiality.

Interpreters shall protect the confidentiality of all privileged and other confidential information.

COMMENT

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of her or his duties. It is especially important that the interpreter understand and uphold the attorney-client privilege which requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications.

Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

In the event that an interpreter becomes aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to an appropriate authority within the judiciary who is not involved in the proceeding and seek advice in regard to the potential conflict in professional responsibility.

Canon 6. Restriction of public comment.

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

Canon 7. Scope of practice.

Interpreters shall limit themselves to interpreting or translating and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

COMMENT

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only. Interpreters should refrain from initiating communications while interpreting unless it is necessary for ensuring an accurate and faithful interpretation.

Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances they should make it clear that they are speaking for themselves.

An interpreter may convey legal advice from an attorney to a person only while that attorney is giving it. An interpreter should not explain the purpose of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. The interpreter may translate language on a form for a person who is filling out the form, but may not explain the form or its purpose for such a person.

The interpreter should not personally serve to perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation counselors.

Canon 8. Assessing and reporting impediments to performance.

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

COMMENT

If the communication mode or language of the non-English-speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately, e.g., the court room is not quiet enough for the interpreter to hear or be heard by the non-English speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret. Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary.

Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.

Even competent and experienced interpreters may encounter cases in which routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter, e.g., the unscheduled testimony of an expert witness. When such instances occur, interpreters should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding officer.

Interpreters should refrain from accepting a case if they feel the language and subject matter of that case are likely to exceed their skills or capacities. Interpreters should feel no compunction about notifying the presiding officer if they feel unable to perform competently, due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

Interpreters should notify the presiding officer of any personal bias they may have involving any aspect of the proceedings. For example, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.

Canon 9. Duty to report ethical violations.

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

COMMENT

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations, or policies governing court

interpreters. It is incumbent upon the interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should turn to a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

Canon 10. Professional development.

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues, and specialists in related fields.

COMMENT

Interpreters must continually strive to increase their knowledge of the languages they work in professionally, including past and current trends in technical, vernacular, and regional terminology as well as their application within court proceedings.

Interpreters should keep informed of all statutes, rules of courts and policies of the judiciary that relate to the performance of their professional duties.

An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.