

Agenda
Language Access Committee Meeting
May 19, 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 New Members and Approval of Minutes	Discussion	Tab 1	Michelle Draper
12:10	New Language Access Program Coordinator starts June 5, 2017	Information		Keisa Williams
12:15	Policy Memo on the Use of Conditionally Approved Interpreters	Discussion	Tab 2	Keisa Williams
12:35	<u>Rule Drafts:</u> <ul style="list-style-type: none">• CJA Rule 3-306.03• CJA Rule 3-306.05	Discussion / Action	Tab 3	Keisa Williams
1:10	Summer meeting addition	Action		Keisa Williams
1:30	Adjourn			Michelle Draper

Meeting Schedule:
September 15, 2017
November 17, 2017

Tab 1

LANGUAGE ACCESS COMMITTEE

May 16, 2017

<p>Keisa L. Williams Administrative Office of the Courts P.O. Box 140241 Salt Lake City, Utah 84114-0241 Tel: 801-578-3821 keisaw@utcourts.gov Term start: May 2, 2016 Term end: Staff</p>	<p>Michelle Draper - CHAIR ASL Interpreter 1624 W. Plum Creek Drive West Jordan, Utah 84088 Tel: 801-598-3555 michelleddraper@gmail.com Term start: April 28, 2014 Term end: April 28, 2020</p>	<p>Jennifer Andrus, Ph.D. Asst. Professor of Rhetoric & Writing Univ. of Utah, 255 Central Campus Dr. Rm. 3700 Salt Lake City, Utah 84112 Tel: 801-703-4102 j.andrus@utah.edu Term start: April 30, 2015 Term end: April 30, 2018</p>
<p>Judge Su Chon Third District Court 450 South State St P.O. Box 1860 Salt Lake City, UT. 84114-1860 Tel: 801-238-7099 sjchon@utcourts.gov Term start: April 28, 2014 Term end: April 28, 2020</p>	<p>Mary Kaye Dixon Judicial Assistant Second District Court 2525 Grant Avenue Ogden, UT. 84401 Tel: (801) 395-1058 marykayd@utcourts.gov Term start: March 14, 2014 Term end: March 13, 2020</p>	<p>Amine El Fajri 3717 S. Appleseed Road Salt Lake City, Utah 84119 Tel: 801-326-9525 fajri2000@hotmail.com Term start: April 30, 2015 Term end: April 30, 2018</p>
<p>Monica Diaz Greene Attorney, Utah Juvenile Defender Attorneys 8 East Broadway, Suite 500 Salt Lake City, Utah 84111 Tel: 801-521-5225 mdgreene@ujda.org Term start: April 24, 2017 Term end: April 24, 2020</p>	<p>Gabriela Grostic 11679 S. Auburn Fields Way Draper, Utah 84088 Tel: 801-524-3000 ext 324 grostic@msn.com Term start: October 27, 2014 Term end: October 27, 2017</p>	<p>Megan Haney 3rd Dist. Probation Officer 8080 S. Redwood Rd. West Jordan, Utah 84088 Tel: 801-233-9665 meganh@utcourts.gov Term start: December 16, 2013 Term end: December 15, 2019</p>
<p>Judge Mike Leavitt Fifth District Juvenile Court 206 West Tabernacle, Ste 125 St. George, UT. 84770 Tel: 435-986-5730 mleavitt@utcourts.gov Term start: April 25, 2016 Term end: April 25, 2019</p>	<p>Randall McUne Attorney Cedar City Corp. 10 N. Main St. Cedar City, Utah 84720 Tel: 435-586-2953 randallm@cedarcity.org Term start: March 15, 2013 Term end: June 1, 2019</p>	<p>Miguel Medina Staff Interpreter Third District Court 450 South State Salt Lake City, Utah 84111 Tel: 801-641-1667 miguelm@utcourts.gov Term start: April 30, 2012 Term end: April 30, 2018</p>
<p>Russ Pearson TCE - Eighth District Eighth District Court 920 East Highway 40 Vernal, Utah 84078 Tel: (435) 781-9301 russellp@utcourts.gov Term start: April 1, 2016 Term end: April 1, 2019</p>	<p>Lynn Wiseman Clerk of Court - 2nd District Juvenile Court 165 20th St Ogden, UT 84401 Tel: 801-334-4779 Cell: 801-920-3640 lynnw@utcourts.gov Term start: April 24, 2017 Term end: April 24, 2020</p>	<p>Judge Kelly Schaeffer-Bullock Highland Justice Court 5400 West Civic Center Dr., Ste 4 Highland, UT 84003 Tel: (801) 756-5751 Kelly@highlandcity.org Term start: April 24, 2017 Term end: April 24, 2020</p>

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

March 17, 2017

Draft

Members Present

Judge Rick Romney - Chair
Jennifer Andrus
Judge Su Chon (via phone)
Mary Kaye Dixon
Michelle Draper
Amine El Fajri
Gabriela Grostic
Megan Haney
Maureen Magagna
Randall McUne
Miguel Medina
Russ Pearson

Members Excused

Judge Mike Leavitt
Bebe Vanek

Staff

Keisa L. Williams
Jeni Wood - recording secretary

Guests

(1) Welcome.

Keisa Williams noted Judge Romney would be late; therefore, Randall McUne welcomed the committee to the meeting. Mr. McCune then addressed the January 20, 2017 minutes. With no changes, Megan Haney moved to approve the minutes. Mary Kay Dixon seconded the motion. The motion carried unanimously.

(2) Finalize Employee Stipend Amendments.

Ms. Williams initially discussed her amendments to the definition section of CJA Rule 3-306.01, per the committee's request at the January meeting. Ms. Williams opened the conversation to the floor to discuss the definitions as presented. Judge Su Chon recommended changes to better clarify the "court interpreter" definition. After brief discussion, the committee agreed to the change. The committee next discussed the definition of "staff interpreter." There were no changes to that section. Judge Chon asked about the meaning behind "normal conversation." Maureen Magagna stated that the court staff is already aware they are not allowed to offer legal advice; therefore, they are very clear on what simple, normal language means.

The committee next discussed the amendments to CJA Rule 3-306.04. Mr. McUne asked if this was defined in the Human Resources Manual. Russell Pearson said Brent Johnson discusses these issues in his ethics classes. Judge Chon recommended citing to the Human Resource Policy in the definition. Ms. Williams discussed that court employees are not allowed to interpret during legal proceedings unless they meet certain requirements. Ms. Williams noted that if an employee speaks a very rare language, exceptions can be made. Mr. Pearson reviewed with the committee the Human Resources Code of Personal Conduct 500 regarding legal advice by court employees. The committee continued to discuss the various changes to this rule. Gabriela Grostic asked if court employees with stipends are bound by the same attorney/client privilege as interpreters. Michelle Draper said

yes they are all bound the same as our staff interpreters. Mr. McUne suggested speaking with the State Bar about defining legal advice. Ms. Magagna said she trains her staff that when someone asks questions such as “should I,” it is a red flag that a response might be misunderstood as legal advice. Mr. Medina said the staff interpreters get legal questions on a regular basis. He doesn’t see a conflict of interest in answering basic questions. Jennifer Andrus said there should be exceptions due to the lack of available interpreters. Ms. Draper said if it is a dual-relationship such as a clerk being in court and then interpreting in that same courtroom, there is a conflict of interest. Ms. Williams said in the context of an employee who speaks a rare language and is authorized to interpret during legal proceedings, other than in a dual-relationship status, she doesn’t see a conflict of interest. Judge Chon agreed with Ms. Williams, giving the example of having no interpreters available, then the court using a stipend employee to interpret. Judge Chon said the stipend employees give information all the time on things such as explaining a docket or document but still not giving legal advice and guidance. Ms. Williams said she can bring individual cases to the committee as needed. Ms. Grostic said she was concerned about employees not being certified. Ms. Williams explained certified interpreters are always the first choice. Ms. Williams explained the order in which interpreters are assigned. Ms. Dixon said with these changes she believes judges should be trained as well. Ms. Williams said she is planning on developing training for judges, TCE’s, clerks of court, judicial assistants, and court personnel. Ms. Magagna asked about the availability of stipends. The committee briefly discussed the importance of employees being required to pass the OPI in order to receive a stipend. Ms. Williams said she believes there should be follow-up training for employees who receive the stipend. Mr. Pearson agreed this is an issue.

Ms. Williams next discussed proposed changes to the Human Resources Policy Second Language Stipends 570. Ms. Williams explained the changes and the reasoning behind the changes. The committee discussed how many times an employee can take the stipend test and who pays for it. The committee agreed to change the process to allow employees to take the test once every fiscal year at the court’s expense. If the applicant fails and wants to take any additional tests within that year, the applicant must pay for the testing. The committee made changes to the manual during the discussion. Ms. Williams explained that there are now two options for testing, online for \$70 (for a list of specified languages), or over the phone at \$135 for most languages. Ms. Dixon said once she sets up a live test, she leaves the room. Ms. Williams noted this could be a concern if someone had accessibility to cheat. Ms. Grostic said there is also the concern of someone else taking the test for them.

Mr. Medina moved to approve the changes to CJA Rule 3-306.01, CJA Rule 3-306.04 and the Human Resources Second Language Stipend 570 and recommend their approval by the Policy and Planning Committee. Mr. McUne seconded the motion. The motion carried unanimously.

(3) Interpreter Discipline.

The recording was stopped. Ms. Williams discussed a formal complaint that was filed against an interpreter. Judge Romney asked for volunteers to be on the panel. Ms. Grostic, Ms. Haney and Mr. Medina volunteered. They were excused from the room.

Ms. Williams explained to the remaining members that this discussion was confidential. Ms. Williams discussed the details of the complaint and the case involved.

Ms. Williams said Brent Johnson recommends that the discipline process be amended. Currently any discipline/complaints would go to the Court Interpreter Program Coordinator. That person would then make a decision on the disciplinary action. The interpreter may appeal to a 3-person panel of the committee and then appeal again to the committee as a whole. Mr. Johnson and Ms. Williams recommend that all complaints, especially of this magnitude go to the committee or a panel of the committee. Ms. Williams doesn’t believe one person alone should make the decision without ever discussing it with anyone else. Mr. Pearson agreed that the 3-person panel would be an effective and balanced manner. Ms. Draper said ASL interpreters have a similar process. They have a standing three-person disciplinary subcommittee who hear and decide all matters, with an appeal right to the larger group. Judge Romney said he can see the advantage with having the committee

involved. Ms. Williams noted in the past the program coordinator made decisions without discussing it with the committee, therefore, the committee never knew the complaints existed. Ms. Williams said documentation is also critical. Ms. Williams said many people were simply disciplined without documentation. Unfortunately, we can only go forward from here. Mr. Pearson confirmed this is for interpreters who are not employees. Ms. Williams is proposing amendments to CJA Rule 3-306.05. She wanted to address this with the committee before she makes the proposed changes.

Ms. Williams explained the rule amendment process. Once rules have been approved by this committee, they will go to the Policy and Planning Committee for approval. Once approved by Policy & Planning, they go to the Management Committee and Judicial Council for approval and sent out for a 45-day comment period. After comment, the rule goes back to Policy & Planning for revisions, at which point they may send it back to this committee for amendments. Once approved, the rules go back to the Judicial Council for final approval. Judge Chon wanted to confirm that there should be only one appeal right for the disciplinary process. The committee determined that all formal disciplinary complaints should first go to a 3-person panel and then can be appealed to the committee as a whole – minus the panel members. Mr. McUne recommends that the panel bring any issues to the committee.

Ms. Grostic, Ms. Haney and Mr. Medina returned and the recording began again. Ms. Williams explained to the returning members the proposed changes to the disciplinary process in CJA Rule 3-306.05. Ms. Williams will present the proposed amendments at the next meeting. Ms. Williams explained that for this incident the complaint will be sent directly to the panel. After a decision is made, the interpreter can appeal to the full committee; therefore the committee will not see the complaint unless it has been appealed.

Ms. Williams reviewed section 5 of CJA Rule 3-306.05 with the committee, regarding the program coordinator. Ms. Williams noted the 3-person panel can meet with the interpreter or not. Once a decision has been made, a letter needs to be sent to the interpreter. Ms. Williams explained that the letter she sent the interpreter was a basic letter explaining the 30-day response time and she included a copy of the full complaint. Judge Chon suggested for the hearing panel if they were going to bring in the interpreter and the witnesses, to make sure they sent out separate emails and not include the interpreter on the same email as the witnesses. She said it's important the hearing panel not discuss things with the witnesses. Judge Chon said the committee should always hold themselves to a high standard. Mr. McUne recommended that Ms. Williams' response letter to the interpreter should state her recommendation that the disciplinary action be decided by a 3-person panel. Ms. Williams agreed. Ms. Williams said once she gets back the written response from the interpreter she will distribute the materials to the panel. The committee agreed that the more information provided to the interpreter up front would be better. Ms. Williams said she will send the interpreter the audio recording and a very specific letter referencing CJA Rule 3-306.05. The committee further discussed potential changes to the rule, giving advice to Ms. Williams for her proposal.

Judge Romney said interpreters have the right to appear if they choose. Ms. Grostic said allowing the interpreter to present their case shows professionalism on the court's part. Mr. McUne said if the committee allows an interpreter to speak, then the panel members would be excused.

(4) New Chair Election.

Ms. Williams presented Judge Romney and Maureen Magagna with certificates. They were thanked for their service to the committee. Ms. Williams addressed the 3 open memberships: defense attorney (replacement for Bebe Vanek), justice court judge and clerk of court. Ms. Williams presented Lynn Wiseman as the new clerk of court member and Monica Green as the new defense attorney member. Ms. Williams stated that the Board of Justice Court Judges would be meeting the day before the Management Committee meeting to nominate a replacement justice court judge for this committee. Ms. Williams proposed that the Language Access Committee accept and forward the name of the judge selected by the board.

Ms. Dixon moved to accept Lynn Wiseman and Monica Green as new members and to approve and recommend whichever justice court judge was nominated by the Board of Justice Court Judges on April 10th. Jennifer Andrus seconded the motion. The motion passed unanimously.

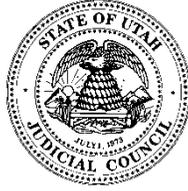
Ms. Williams noted that two (2) members had been nominated to sit as the new Chair for this committee - Judge Chon and Michelle Draper. Judge Romney asked Judge Chon and Ms. Draper if they were willing to serve as chairs, if elected. Both agreed and were excused. The committee discussed and voted on the nominations and Michele Draper was selected.

(5) Other Business.

Mr. McUne noted that Ms. Williams had included the wrong committee dates on the agenda. The next meeting is scheduled for May 19, 2017.

There being no further business, the meeting adjourned at 1:45 pm.

Tab 2



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Interpreter Coordinators, TCEs, Clerks of Court, AOC Management, Judges, Justice Courts
From: Keisa L. Williams 
Date: May 3, 2017
Re: Policy on the Use of Conditionally Approved Interpreters

The purpose of this memo is to clarify the Court's policy on the use of conditionally approved interpreters for legal proceedings. As you know, the Court engages in a detailed [credentialing process](#) for court interpreters. There are three (3) levels of qualification:

1. **Certified** - Our most highly qualified interpreters. In addition to the basic requirements (Court Application, English Written Test, Interpreter Code of Professional Responsibility Test, 2-Day Orientation, Background Check, and 10 Hours of Court Observation), a certified interpreter has completed a five-day training course and passed an Oral Proficiency Examination (OPE) created by the National Center for State Courts. The OPE is a rigorous three-part examination on the modes of interpretation.
2. **Approved** - Our second most qualified interpreters. In addition to the basic requirements, an approved interpreter has passed an Oral Proficiency Interview (OPI). The OPI is not as difficult as the OPE, but does provide a fairly accurate assessment of an interpreter's abilities.
3. **Registered** - These interpreters have completed the basic requirements, but there are no examinations available in their language, so they are unable to become certified or approved. As soon as testing becomes available in their language, they must pass the exam(s) or will be removed from the list.

Conditionally approved interpreters have only completed an application and a background check. They have not been tested and many have not received formal training in court interpretation. These individuals are only meant to be appointed on a case-by-case basis, for extremely rare languages, and when all other resources have been exhausted.

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

Court interpreting requires extensive knowledge and skill in both the source and target language. Being bilingual is not enough. Even people who are fluent in two languages often do not have a sufficient command of both languages, sufficient legal and technical vocabulary in both languages, and sufficient interpreting skill to interpret in a courtroom.

The level of expertise required for court interpreting is much greater than that required in everyday conversation. A court interpreter must be able to interpret accurately for individuals with a high level of education and a large vocabulary, as well as for people with very limited language skills, without changing the language register of the speaker. The interpreter must also possess excellent mental skills, including the ability to accurately convert the source language into the target language, and vice versa, often with only an instant to choose equivalent words and phrases.

In accordance with [CJA Rule 3-306.04\(1\)\(D\)](#), a conditionally-approved interpreter may only be appointed if the appointing authority, after evaluating the totality of the circumstances, finds that:

1. the prospective interpreter has language skills, knowledge of interpreting techniques and familiarity with interpreting sufficient to interpret the legal proceeding;
2. appointment of the prospective interpreter does not present a real or perceived conflict of interest or appearance of bias; and
3. 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.

In order to facilitate the proper appointment of conditionally approved interpreters, the Court has created a **Conditionally Approved Interpreter Appointment Form** (attached). Prior to the scheduled proceeding:

- the form must be completed and signed by the proposed interpreter,
- a copy of the form must be sent to the Language Access Program Coordinator,
- a background check must be completed,
- the form should be filed in the official court record as “private” pursuant to [CJA Rule 4-402.02\(4\)](#), and
- the form must be provided to the judge presiding over the proceeding.

It is recommended that judges/commissioners use the form to make the requisite findings under CJA Rule 3-306.04(1)(D)), on the record, each time a conditionally approved interpreter is used. Interpreter coordinators may keep a copy of the form on file for use in future cases, however, the requisite findings should be made by the judge/commissioner for each case.

Court employees who speak rare languages may be used to interpret during legal proceedings on a conditionally approved basis, if the employee receives prior approval from:

- their direct supervisor,
- TCE,
- HR, and
- the Language Access Program Coordinator.

As with all conditionally approved interpreters, the Conditionally Approved Appointment Form must be completed for court employees as well and sent to the individuals noted above. Coordinators should ensure judges are made aware that the applicant is a court employee.

Because the risks for conflicts of interest are higher when a court employee is used, special attention should be paid by the coordinator, employee and judge to ensure the employee does not have a conflict of interest related to that particular proceeding. It is recommended that judges disclose the interpreter's employment status on the record to obtain any necessary waivers from the parties.

Employees will be paid their regular wage. No additional money or leave time is authorized. The employee's supervisor must be willing to allow them to conduct their regular "work time" at the legal proceeding.

I will be working with the new Language Access Program Coordinator to create bench cards and specialized training for judges, clerks, judicial assistants and interpreter coordinators. If you have comments, questions, thoughts or suggestions, please send them to me via email at keisaw@utcourts.gov and I will do my best to address them in a timely manner.

Sincerely,
Keisa Williams
Associate General Counsel

Encl: Conditionally Approved Appointment Form



CONDITIONALLY-APPROVED COURT INTERPRETER APPOINTMENT FORM

Please type or print legibly. Answer all questions fully. Please enter "None" for any blank responses.

Native Language: _____ Acquired Language: _____

Your Full Legal Name: _____

(Last Name, First Name, Middle Name)

Social Security Number: _____ Date of Birth: _____

Mailing Address: _____

(Street, City, State, Zip Code)

E-mail Address: _____

Daytime telephone number(s) with area code: _____ Work: _____ Cell: _____
Home: _____

Your gender: Male Female

1. Formal Education in English

What is your highest level of schooling / degree? Enter the name of the degree or the total number of years of formal schooling completed.

2. Formal Education in the acquired language (if English is your acquired language, enter the information regarding your native language)

What is your highest level of schooling / degree? Enter the name of the degree or the total number of years of formal schooling completed. If your studies were completed abroad, enter the closest United States equivalent.

3. Read & Write (if no formal education)

Can you **read** the acquired language?

Can you **write** the acquired language?

4. Requirements in court interpreting

Do you understand that the law requires you to interpret everything said by all parties in court?

Have you read and understand the Interpreter's Code of Professional Responsibility?

5. Criminal Background Investigation

Have you ever been convicted of a criminal offense? Yes No

If yes, please explain:

Do you agree to undergo a criminal background investigation? Yes No

INTERPRETER'S OATH

"DO YOU SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL INTERPRET ACCURATELY, COMPLETELY AND IMPARTIALLY, USING YOUR BEST SKILL AND JUDGMENT IN ACCORDANCE WITH THE STANDARDS PRESCRIBED BY LAW AND THE CODE OF PROFESSIONAL RESPONSIBILITY FOR COURT INTERPRETERS."

If you are interested in work as a court interpreter beyond today's assignment, please go to our website at www.utcourts.gov click on court resources and interpreter information for complete information on how to become an approved interpreter.

I understand that I am approved to provide interpreter services on this date and matter only. The information I have provided on this form is true and correct to the best of my knowledge. I hereby authorize the courts to conduct a thorough background check including but not limited to references, employment record, and criminal record. I understand that all information will be kept confidential and released only to authorized individuals. I also understand that any falsification of data on my part will result in disqualification to interpret in the Utah Courts. I hereby release the courts from any civil or criminal liability arising from my background check.

Signature: _____ Date: _____

To be filled out by Court Personnel Only	
Date:	Court:
Case Name:	Case Number:
Approval granted <input type="checkbox"/> Approval denied <input type="checkbox"/>	
Local appointing authority:	Title:

Tab 3

Rule 3-306.03. Interpreter credentialing.

Intent:

To outline the procedure for credentialing of interpreters for legal proceedings.

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 [Code](#) and federal statutes.

Statement of the Rule:

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

- (1)(A) file an application form approved by the administrative office;
- (1)(B) pay a fee established by the Judicial Council;
- (1)(C) pass a background check;
- (1)(D) provide proof that the applicant is a Utah resident;
- (1)(E) complete training as required by the administrative office;
- (1)(F) obtain a passing score on the court interpreter's test(s) as required by the administrative office;
- (1)(G) complete 10 hours observing a certified interpreter in a legal proceeding;
and
- (1)(H) take and subscribe the following oath or affirmation: "I will make a true and impartial interpretation using my best skills and judgment in accordance with the Code of Professional Responsibility."

(2) A person who is certified in good standing by the federal courts or by a state having a certification program that is equivalent to the program established under this rule may be certified without complying with paragraphs (1)(A) through (1)(H), with the exception of paragraph (1)(C), but shall pass an ethics examination and otherwise meet the requirements of this rule.

(3) A person credentialed under this rule has an ongoing obligation to immediately report to the program coordinator any criminal charges or convictions the interpreter has and any Utah State Court cases the interpreter is personally involved in as a party.

(4) When the interpreter speaks a rare language and the courts currently lack credentialed interpreters in that language, the Language Access Committee may, for

good cause shown, exempt an interpreter from meeting one or both of the requirements listed in subparagraph (1)(B) and (1)(F). An interpreter seeking an exemption shall make a written request, outlining the reasons for the exemption, to the Language Access Program Coordinator. The Language Access Committee shall consider the request at its next meeting following the request, and may require the interpreter making the request to appear at the meeting or to provide more information.

(5) If an exemption is granted, the interpreter shall meet the conditions set by the committee and shall apply for an extension of the exemption annually, or as otherwise required by the committee.

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

(7) With the exception of staff interpreters who are employees of the courts, court interpreters, including those listed on the statewide roster, are independent contractors.

(8) Court interpreters listed on the statewide roster are not employees of the court and are not entitled to appointments for legal proceedings. Interpretation appointments are a privilege, not a right. Interpreter appointments made in compliance with these rules are within the sole discretion of the administrative office of the courts.

Effective May 1, 2016

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~~ court 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~~ shall investigate the complaint to determine whether 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 forward the complaint to the Language Access Discipline Subcommittee, ~~mail the complaint to the interpreter at the address on file with the administrative office of the courts, and proceed as follows:~~

(6) Language Access Discipline Subcommittee.

(6)(A) A three (3) member panel of the Language Access Committee shall sit as a standing disciplinary subcommittee and shall consist of at least one (1) interpreter and one (1) judge.

(6)(B) The subcommittee members shall be appointed by the chair of the Language Access Committee and shall meet as necessary to resolve formal complaints against interpreters pursuant to this rule. The chair shall assign one of the panel members to chair the subcommittee. The chair of the subcommittee is responsible for sending the notices required under this rule.

6(C) Upon receipt of a formal complaint from the program coordinator, the subcommittee 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)~~ 6(C)(i) The interpreter shall answer the complaint within 30 calendar 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)~~ 6(C)(ii) Unless the program coordinator ~~subcommittee~~ 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)~~ 6(C)(iii) The program coordinator ~~subcommittee~~ may review records and interview the complainant, the interpreter and witnesses. The subcommittee may make a decision by a review of the records or hold an informal hearing. After considering all factors, the program coordinator may propose a resolution, which the interpreter may stipulate to. The decision to hold a hearing is within the discretion of the subcommittee. After the investigation is complete, the subcommittee 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. The program coordinator ~~subcommittee~~ 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)~~ 6(C)(iv) Within 30 calendar days of either the hearing or subcommittee meeting in which the decision is made, the subcommittee will inform the program coordinator, the interpreter, and the complainant, in writing, of its decision and the findings of fact supporting it. The subcommittee may discipline the interpreter as provided under paragraph (2)(B), including permanently removing the interpreter's credentials. ~~When the investigation of the formal complaint is complete, the program coordinator shall notify the interpreter, in writing, of the proposed resolution.~~

6(C)(v) Within 15 calendar days of the proposed resolution decision, the interpreter shall, in writing, either accept the discipline by consent or request a hearing by a panel of the Language Access Committee appeal the decision to

the Language Access Committee by sending a written request to the subcommittee within 15 calendar days of the date of the decision. If the interpreter fails to respond to the program coordinator's subcommittee's proposed resolution decision, or fails to request a hearing within 15 calendar days, the interpreter will be deemed to have stipulated to the proposed resolution decision.

~~(6)~~ (7) Subcommittee Hearings by panel.

~~(6)~~ (7)(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) If the Discipline Subcommittee chooses to hold a hearing, ~~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 Subcommittee 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 subcommittee.

~~(6)~~ (C) (7)(B) If any party fails to appear, the panel subcommittee may proceed on the evidence before it. If the complainant fails to appear, the panel subcommittee 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)~~ (8) Appeal hearing before the Language Access Committee.

~~(7)~~(8)(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~~ subcommittee 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 business 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~~ subcommittee. 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)~~(8)(B) The committee shall decide whether the ~~panel~~ subcommittee abused its discretion in making its decision. If the committee determines the ~~panel~~ subcommittee abused its discretion, the committee may dismiss the Formal Complaint or discipline the interpreter differently as appropriate. If the committee determines that the ~~panel~~ subcommittee did not abuse its discretion, the interpreter shall be disciplined according to the ~~panel's~~ subcommittee'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 calendar days after the hearing. The program coordinator shall mail a copy of the decision to the interpreter. The committee's decision is final.

~~(7)~~(8)(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)~~ (9) If the interpreter is certified in Utah under rule 3-306.03(1), the program coordinator, ~~panel~~ subcommittee or committee may report any final findings and sanction to other agencies and certification authorities in other jurisdictions.

Effective May 1, 2016