

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

May 19, 2017

Members Present

Michelle Draper - Chair
Mary Kaye Dixon
Monica Greene
Gabriela Grostic
Judge Mike Leavitt (via phone)
Randall McUne
Miguel Medina
Russ Pearson (via phone)
Judge Kelly Schaeffer-Bullock

Members Excused

Jennifer Andrus
Judge Su Chon
Amine El Fajri
Megan Haney
Lynn Wiseman

Staff

Keisa L. Williams
Jeni Wood - recording secretary

Guests

(1) Welcome.

Michelle Draper welcomed the committee to the meeting. Ms. Draper then addressed the March 17, 2017 minutes. With no changes, Miguel Medina moved to approve the minutes. Randall McUne seconded the motion. The motion carried unanimously.

Ms. Draper welcomed the new members, Monica Greene, Judge Kelly Schaeffer-Bullock. Ms. Draper noted Lynn Wiseman, the third new member, was not able to attend this meeting due to a previously scheduled vacation. Ms. Draper asked the current members to introduce themselves.

(2) New Language Access Program Coordinator starts June 5, 2017.

Ms. Williams informed the committee Kara Mann from West Virginia will join the Utah State Courts Interpreter program on June 5, 2017. Ms. Williams noted Ms. Mann is working with the interpreter program in West Virginia and is excited to come here.

Ms. Williams briefly discussed the court interpreter coordinator all-day meeting held on May 17, 2017. Ms. Williams stated the meeting went very well and included many justice court coordinators.

(3) Policy Memo on the Use of Conditionally Approved Interpreters.

Ms. Williams next discussed the conditionally approved interpreters. Ms. Williams noted the various courts throughout Utah are handling the conditionally approved interpreters differently. Ms. Williams said many of these interpreters have no training at all and many have not completed a background check. Ms. Williams stated in rule 3-306.04 the judges are required to appoint and create a legal finding on the record for the conditionally approved interpreters. Ms. Williams said she is changing the rule so that judges cannot delegate this authority. Ms. Williams said the judge must make a finding on the record that covers three criteria: skills, knowledge and familiarity of the language. Ms. Williams said there is a conflict of interest and bias in having someone from the courtroom, such as a relative, interpret. Ms. Williams said she discussed with the coordinators that the

conditionally approved interpreters are case specific, not interpreter specific. Therefore, there must be a finding on the record, only once, for each case.

Ms. Williams said she explained to the coordinators what the requirements are. Ms. Williams explained this at the District Court Judges Conference earlier today. Gabriela Grostic said she wonders if the judges are resistant to a finding on the record because they do not know whether that person is qualified or not. Ms. Grostic said it may be beneficial to discuss possible scenarios, such as taking the oath on the record. Ms. Grostic said the courtrooms could have an ethics form for each of them to review as well. Ms. Williams noted the oath is on the conditionally approved form. Judge Schaeffer-Bullock said the background checks seem time consuming if the judge has to order this and follow up on it. Additionally, she was concerned for immigrants that they have no records. Ms. Williams said the process is that the coordinators receive notice that an interpreter is needed in a rare language. The coordinator exhausts all efforts; they then contact Keisa Williams to seek out of state interpreters. The out of state interpreters come to Utah to interpret. For in state interpreters of rare language that are not certified with the courts, they complete a conditionally approved application which then gets forwarded to Keisa Williams for an background check. Ms. Williams stated she then must decide on a case-by-case basis if the results are acceptable. The main criteria is if there is a felony most likely they will be denied. However, if it is a crime of moral turpitude, there are no exceptions. Ms. Williams said in speaking with Brent Johnson he noted that studies have shown people with felonies are more apt to do a good job because they are thankful for the job. Judge Schaeffer-Bullock said if someone with a conviction then interprets for someone who is being charged with the same crime they may have a conflict. Ms. Grostic said for conditionally approved interpreters with a rare language the rules could be adjusted to give more leniency to judges who may need to dig deeper into an interpreter's background. Ms. Williams said it's very important for the judges to make a finding on the record. Ms. Williams said something must be in place to avoid using interpreters who are not qualified. Monica Greene said in the juvenile court she has seen a mother's child interpret each time at the hearings. Ms. Grostic said the federal courts never have an issue finding an interpreter. Ms. Williams said it's difficult enough for an adult. Ms. Greene noted in that situation, it's not in the child's best interest to interpret to his mom that he is in trouble. Ms. Williams said using Language Line would be more efficient and more acceptable in those scenarios.

Ms. Williams said she is working on recruiting and using remote interpreting when possible. Ms. Williams said she is training judges and courts. Judge Schaeffer-Bullock said most judges don't know when it's appropriate to use remote interpreting. Ms. Williams said some of the courtrooms have video capabilities. Currently some courtrooms have this installed, however, some still have the video capabilities on a cart that must be moved from room to room. Miguel Medina noted that some cases where the interpreter travels to the courthouse for a appearance hearing, which he believes could easily have been done remotely. Randall McUne noted often they get cut off when doing video interpreting. Russ Pearson said he has found clear audio the best from using a phone. It did require everyone to speak slower but it was very clear and everyone understood what transpired in the hearing. Ms. Grostic said they use telephonic interpreting regularly. Judge Schaeffer-Bullock said there is an issue of nonverbal communication. Judge Schaeffer-Bullock is concerned the body language and nonverbal cues could alter the interpretation if using a telephone. Ms. Williams said if telephonic doesn't end up working the judge could always reschedule the hearing.

Mary Kaye Dixon said this shouldn't be time-consuming to make a ruling on conditionally approved interpreters. Mr. McUne said if the language isn't Spanish they must seek out interpreters elsewhere since they are so remote. Ms. Williams said this is where the judge must make a judgment call on how serious in nature the hearing is, such as an appearance hearing or a trial. Ms. Williams said Judge Pullan would like the interpreter to say they meet the requirements on the record. Ms. Williams and Brent Johnson believe that's delegating the judge's duties. Ms. Draper said conditionally approved interpreters don't know what the requirements are so they can't possibly know if they qualify. Mr. McUne said this isn't a bad question to ask but the answer is not the end, the judge still needs to be cognizant of what is going on in their courtroom with interpreting. Ms. Williams said partially she agrees with Judge Pullan in that the judge should be asking questions of the interpreter to determine qualifications. Judge Schaeffer-Bullock noted a good question might be if the interpreter knows the defendant. Mr. McUne said it's not all about the education level of the interpreter, he knows some interpreters who do not

have a high education level but they interpret in courtrooms very professionally and with accuracy. Ms. Williams said perhaps the committee can help with the conditionally approved forms by emailing Keisa Williams any questions they would like to have on there that might better help a judge make a decision.

Ms. Williams discussed the interpreter oaths. Ms. Williams noted in ASL a judge must administer an oath at each hearing, however, there is no oath given for any languages. Ms. Grostic said interpreters should be given the oath at every hearing. Ms. Grostic said all contracted interpreters in the federal court are administered the oaths at each hearing. Ms. Williams said this could even be on a bench card. Ms. Dixon said her judges don't administer oaths. Ms. Dixon said they've had interpreters there for many years so the judges know their qualifications. Mr. Medina said this hasn't happened in many years in the Third District Court for him. Judge Schaeffer-Bullock noted this seems bias from one judge to another. Judge Mike Leavitt said he administers the oath to interpreters when his clerk notifies him that the interpreter is not certified. He relies on his clerk to notify him. Judge Leavitt said a bench card would be very helpful to judges because most of them are unaware of the procedures. Ms. Williams said the conditionally approved applications, with redacted information, will be available online for the courts. Mr. McUne said in the court he practices in the oaths are administered a lot, even to police officers who come in often to testify. Ms. Draper said there is a lot of liability with family members interpreting. Judge Schaeffer-Bullock noted this is an everyday life for family to interpret. Ms. Greene noted the oaths were read many years ago but it seems like they are not doing them as often.

Ms. Dixon said she would like to see the form amended as well as a bench card. Ms. Greene agreed the form should be amended. Ms. Greene noted if these forms are done in advance perhaps they could be given to the judge to decide before the hearing. Ms. Draper said she believes the form should be more specific. Ms. Dixon said many times the need for an interpreter does not come up until a day or so before the hearing. Mr. McUne is concerned if the form is too long that may sway interpreters away. Ms. Williams will prepare a draft amended form and bench card and circulate them within the committee. Ms. Draper said questions such as "do you have any concerns with the communication established with the patron."

Ms. Williams noted Kara Mann has expressed some good ideas for recruitment.

(4) Rule Drafts: CJA Rule 3-306.01, CJA Rule 3-306.03 and CJA Rule 3-306.05.

Ms. Williams noted the committee has already approved the changes to 3-306.01. There being one change, Ms. Williams presented the revised rule to the committee. The committee briefly discussed the term referee. The committee discussed the processes probation officers should use to utilize an interpreter. Mr. Pearson said he has concerns with probation officers bringing on interpreters for out of court meetings. Mr. Pearson said often the probation officers are not meeting with the defendant but instead meeting with their families. Mr. Pearson requires his probation officers to get his prior approval before they use financial resources. Mr. Pearson said this might be a good topic for the juvenile TCE meeting. Mr. Pearson said the probation officers are allowing families during the informal meetings.

Ms. Williams said she will revise the rule and present it to the committee at the next meeting.

(5) Summer Meeting Addition.

Ms. Williams said she will send out a Doodle invite for the committee to meet in the summer with all of the issues that need to be discussed. The committee will look at June or August.

(6) Other Business.

Ms. Grostic noted the subcommittee discipline panel has not met yet. They will discuss this with Ms. Williams today. There being no further business, the meeting adjourned at 1:30 pm.