

Agenda
Language Access Committee Meeting
 June 30, 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 Member (Lynn Wiseman) and Approval of Minutes	Discussion	Tab 1	Michelle Draper
12:10	Introduce Language Access Program Coordinator & discuss Program leadership change	Information		Keisa Williams Kara Mann
12:14	Bench Card on Interpreters	Discussion / Action	Tab 2	Kara Mann Keisa Williams
12:15	Conditionally Approved Interpreter Application Form	Discussion / Action	Tab 3	Keisa Williams
12:35	<u>Rule Drafts:</u> <ul style="list-style-type: none"> • CJA Rule 3-306.01 • CJA Rule 3-306.02 • CJA Rule 3-306.03 • CJA Rule 3-306.04 • CJA Rule 3-306.05 	Discussion / Action	Tab 4	Keisa Williams
1:30	Adjourn			Michelle Draper

Meeting Schedule:

September 15, 2017
 November 17, 2017

2018:

January 19, 2018
 March 16, 2018
 May 18, 2018
 July 20, 2018
 September 21, 2018
 November 16, 2018

Tab 1

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

May 19, 2017

Draft

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 and 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 that Kara Mann, from West Virginia will join the Utah State Courts Interpreter program as the Program Coordinator on June 5, 2017. Ms. Williams noted Ms. Mann has been managing the interpreter program in West Virginia for several years and will bring great experience and enthusiasm to Utah.

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, for the first time, included many justice court coordinators.

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

Ms. Williams next discussed the Court's policy on the use of conditionally approved interpreters. Ms. Williams noted that courts throughout the state are handling conditionally approved interpreters differently. Ms. Williams said most of these interpreters have no training at all and many have not completed a background check. Ms. Williams stated that pursuant to CJA Rule 3-306.04, judges are required to make a legal finding on the record before appointing a conditionally approved interpreter. Ms. Williams said currently, the rules define "appointing authority" fairly broadly and allow judges to delegate their appointing authority. Ms. Williams said she and Brent Johnson feel the rule should be changed to limit the individuals listed as appointing authorities and to remove the ability of judges to delegate. Ms. Williams said there is a higher potential of a real conflict of interest and/or bias when a relative of the litigant is allowed to interpret. Ms. Williams said the finding required under the rule is case *and* interpreter specific. Therefore, there must be a finding on the record for each case and each conditionally approved interpreter assigned to that case.

Ms. Williams presented the policy at the annual coordinators' meeting and the District Court Judges Conference. Gabriela Grostic said she wonders if the judges are resistant to making 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 that the oath is included 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 with no records. Ms. Williams said the process is that the coordinators receive notice that an interpreter is needed in a rare language. The coordinator is to exhaust all efforts to find a certified, approved, or registered interpreter first. They can contact Keisa Williams for out-of-state interpreters, which can be flown in to Utah for in-person interpretation or can interpret remotely. If a certified, approved, or registered interpreter is unavailable, a conditionally approved interpreter can be used, but the interpreter must complete an application form which then gets forwarded to Keisa Williams for a background check, or the background check can be run by the district if they have the resources to do so. The main criteria for background checks is whether the existence of a felony offense - which would disqualify an interpreter in most cases, and whether they have committed a crime of moral turpitude - which should be decided on a case-by-case basis. Judge Schaeffer-Bullock said if someone with a conviction is appointed to interpret for someone 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 and the rule allows them some discretion in appointment. Monica Greene said oftentimes in the juvenile court, minors are allowed to interpret for their parents during hearings, even when it is a disciplinary hearing for the minor. Ms. Greene noted in that situation, it's not in the child's best interest to interpret for his parent that he is in trouble. Ms. Williams said it's difficult enough for an adult to interpret completely and accurately because many terms do not have a direct translation and legal terms can be complex. 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 working to develop training judges, coordinators and clerks. 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, but others do not. Miguel Medina noted that staff interpreters are being asked to travel to 8th district for simple court hearings, which could be handled remotely. Randall McUne noted that bandwidth is often an issue in more rural districts when attempting to use Vidyo. 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 in federal court. Judge Schaeffer-Bullock said the issue with telephonic interpretation is that you miss all the nonverbal communication. Judge Schaeffer-Bullock is concerned that the body language and nonverbal cues could alter the interpretation.

Mary Kaye Dixon said completing the form and background check for conditionally approved interpreters shouldn't be time-consuming. 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 some feedback she received from judges is that conditionally approved interpreters should state on the record that meet the requirements of the rule, rather than the judge making a finding. Ms. Williams and Brent Johnson disagree because that would constitute delegation of a clearly judicial duty. Ms. Draper said conditionally approved interpreters likely won't understand what the requirements mean, so they couldn't possibly know if they qualify. Mr. McUne said judges need to be cognizant of what is going on in their courtroom with interpreters. Ms. Williams said she agrees that judges 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 revise the conditionally approved form with additional or different questions that might assist judges in making the requisite finding.

Ms. Williams discussed the interpreter oaths. Ms. Williams noted that by statute, deaf (ASL) interpreters must be sworn in before each hearing; however, there is nothing in the statute or rules requiring an oath for spoken language interpreters. Ms. Williams noted that each spoken language interpreter signs an oath, which is kept on file in the AOC. In a discussion with Brent Johnson, he noted that while the oath is not required, it is good practice for judges to administer it at least when the proceeding is complex or serious in nature and when the interpreter is inexperienced or used rarely. Ms. Grostic said interpreters should be given the oath at every hearing. Ms. Grostic said all contracted interpreters in the federal court are administered oaths at each hearing. Ms. Williams said this could even be included on a judicial 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 that the practice seems different 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 e-filed as private records, and provided to the judge at the beginning of the proceeding. 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 that family member interpretation is an everyday occurrence in most courtrooms. Ms. Greene noted the oaths were read many years ago, but it seems like they are not doing them as often now.

Ms. Dixon said she would like to see the form amended, in addition to a bench card. Ms. Greene agreed the form should be amended. Ms. Draper said she believes the form should be more specific. Mr. McUne is concerned if the form is too long, interpreters may be less willing to complete it. Ms. Williams will prepare a draft amended form and bench card and circulate them within the committee. Ms. Draper suggested questions such as, "Have you attempted to establish communication with the patron and do you have any concerns with your ability to accurately interpret for them or their ability to understand you?"

(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 process probation officers should use to utilize an interpreter. Mr. Pearson said he has concerns with probation officers assigning interpreters for out-of-court meetings because it affects TCE budgets. 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 to interpret during informal meetings. The committee determined that a more thorough revision of all the interpreter rules is necessary.

Ms. Williams said she will revise the rules and present them to the committee at the next meeting.

(5) Summer Meeting Addition.

Ms. Williams suggested that committee hold at least one summer meeting due to all the issues that need to be addressed. The committee agreed and asked Ms. Williams to send out a Doodle invite for June or August.

(6) Other Business.

There being no further business, the meeting adjourned at 1:30 pm.

Tab 2



Working with Limited English Proficiency Court Participants and Spoken Language Interpreters

BENCH CARD

Federal Law and Utah Court Rules on Spoken Language Interpreters

In accordance with [CJA Rule 3-306](#) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et. seq.), Utah Courts must provide qualified court interpreters for court participants who are unable to understand or communicate adequately in English.

If a judge or commissioner 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** as stated in [CJA Rule 3-306.04\(1\)](#).

Utah Courts must provide qualified court interpreters for all legal proceedings, including:

- Any proceeding before the Appointing Authority
- Court-Annexed Mediation
- Mandatory Court Programs

Limited English proficiency (LEP) participants who have the right to an interpreter include defendants, parents/guardians of a minor who is involved in criminal proceedings, witnesses, and victims.

The appointing authority will appoint one interpreter for all participants with limited English proficiency, unless the judge determines that the participants have adverse interest, or that due process, confidentiality require that there be additional interpreters.

LEPs cannot be required to arrange for their own interpreters, nor can their attorneys be required to arrange for an interpreter.

As defined by [CJA Rule 3-306.01\(8\)](#), limited English proficiency means the inability to understand or communicate in English at the level of comprehension and expression needed to participate effectively in legal proceedings.

Evaluating the Need for an Interpreter

Always assume there is a genuine need when an attorney or defendant tells the court that a party requires an interpreter.

If the court doubts a party's English proficiency, a *voir dire* can determine fluency/understanding of the non-English speaker through questions, such as:

- When is your birthday? How old are you? When were you born?
- What kind of work do you do?
- Please describe items you see here in the courtroom.

LEPs do not waive their right to a court interpreter just because they do not request one. The court must provide an interpreter if it becomes apparent the LEP does not comprehend the proceeding.

LEPs do not lose their right to an interpreter because they speak or understand some English.

Finding an Interpreter

If an interpreter is needed, courts must assign the highest qualified interpreter available. Depending on the gravity of the proceeding, the court should consider re-scheduling a proceeding if a certified or approved interpreter is not available.

From the highest to lowest qualifications, Utah Court Interpreters are credentialed as:

- **Certified:** Interpreters who are the highest qualified and have completed all testing requirements
- **Approved:** Interpreters who are the next most qualified and have passed some of the testing requirements
- **Registered I:** Interpreters who completed the basic requirements but are unable to become certified or approved due to the lack of examinations available in their language
- **Conditionally Approved:** Individuals who complete an application and a background check but have no formal training in legal interpreting

A conditionally-approved interpreter may only be appointed if the appointing authority, **after evaluating the totality of the circumstances**, makes the requisite findings in accordance with [CJA Rule 3-306.04\(1\)\(D\)](#).

It is recommended that judges/commissioners use the Conditionally Approved Interpreter Appointment 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. The Conditionally Approved Interpreter Appointment Form can be found on the Court's website at http://www.utcourts.gov/resources/interp/docs/Conditional_Application.pdf.

Contact your district's Interpreter Coordinator to arrange for an interpreter. Judges, attorneys, bailiffs, and court personnel should not act as interpreters in court proceedings due to conflict of interest.

Family members, including minor children, and friends should be avoided from being used as interpreters.

Assuring Optimal Interpretation

The judge or commissioner should:

- Assign more than one interpreter for a proceeding requiring continuous simultaneous interpreting that is scheduled for half a day or longer
- Schedule regular breaks during longer proceedings as court interpreting is strenuous

Interpreter's Role in the Court

The interpreter's job is to give a complete and accurate interpretation or translation, without changing, omitting, or adding anything to what is said or written. Interpreters **cannot** give legal advice or **explain** legal advice to LEPs.

Bilingual Court Employees

Each district has a specific number of small stipends for court employees who speak a second language. These court employees have passed an application and the required Language Proficiency Interview. They are only to be used in specific situations, including:

- Assisting at the front counter
- Informing the LEP when the next hearing is scheduled, if the hearing has been continued, etc.

They **cannot** be used to:

- Interpret any legal proceedings
- Interpret any mandatory court ordered programs
- Interpret for court-annexed mediation
- Explain legal advice

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?"

Tab 3

CONDITIONALLY-APPROVED COURT INTERPRETER APPLICATION FORM

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

Native Language:

Acquired Language:

Last Name:

First Name:

Middle Name:

Social Security Number:

Date of Birth:

Gender:

Mailing Address:

City:

State:

Zip Code:

E-mail Address:

Home Phone:

Cell Phone:

Work Phone:

Driver's License Number and Issuing State

Do you agree to undergo a criminal background investigation?

Yes

No

Have you ever been convicted of a criminal offense?

Yes

No

If Yes, please explain:

**EDUCATION IN ENGLISH: What is your highest level of schooling/degree in ENGLISH?
Enter the name of the degree or the total number of years of formal schooling completed.**

EDUCATION IN 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 closes United States Equivalent.

Can you READ the acquired language?

No
Yes

Can you WRITE the acquired language?

No
Yes

Do you know legal terminology? If yes, how did you learn it?

**Do you know the person
requiring an interpreter?**

If yes, please explain how you know them.

Yes
No

Have you established communication with the court patron requiring an interpreter?

Yes
No

If yes, do you believe the person understands you and that you will be able to accurately interpret for that person during the court proceeding? Please explain.

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

Yes
No

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

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."

I understand that if approved, 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 investigation 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 or relating to my background investigation.

Signature:

Date:

BELOW THIS LINE TO BE FILLED OUT BY COURT PERSONNEL ONLY

Date:

Court:

Case Number:

Case Name:

Local Appointing Authority Title:

Approved?

Approving Authority Signature:

Yes
No

Tab 4

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

2
3 **Intent:**

4 To define terms used in Code of Judicial Administration (CJA) Rules 3-306.01 through 3-
5 306.05.

6
7 **Applicability:**

8 This rule shall apply to terms used in CJA Rules 3-306.01 through 3-306.05.
9

10 **Statement of the Rule:**

11 (1) “Appointing authority” means a judge, commissioner, senior judge or judge pro tem ~~referee~~
12 ~~or juvenile probation officer, or delegate thereof.~~

13
14 (2) “Approved interpreter” means a person who has been rated as “superior” in testing and has
15 fulfilled the requirements established in CJA Rule 3-306.03 ~~paragraph (3).~~

16
17 (3) “Certified interpreter” means a person who has successfully passed the examination of the
18 Consortium for Language Access in the Courts and has fulfilled the requirements established
19 in CJA Rule 3-306.03 ~~paragraph (3).~~

20
21 (4) “Committee” means the Language Access Committee established by CJA Rule 1-205.
22

23 (5) “Conditionally-approved interpreter” means a person who, in the opinion of the appointing
24 authority after evaluating the totality of the circumstances, has language skills, knowledge of
25 interpreting techniques, and familiarity with interpreting sufficient to interpret the legal
26 proceeding. A conditionally approved interpreter shall read and is bound by the Code of
27 Professional Responsibility and shall subscribe the oath or affirmation of a certified interpreter.
28

29 (6) “Code of Professional Responsibility” means the Code of Professional Responsibility for
30 Court Interpreters set forth in Code of Judicial Administration Appendix H. An interpreter may
31 not be required to act contrary to law or the Code of Professional Responsibility.
32

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

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

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

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

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

51
52 ~~(9)~~(12) “Registered interpreter” means a person who interprets in a language in which testing is
53 not available and who has fulfilled the requirements established in ~~paragraph (3)~~ CJA Rule 3-
54 306.03, other than paragraph ~~(3)(A)(vi)~~(1)(F).

55
56 (13) “Staff interpreter” means a certified court interpreter employed by the Utah Court System
57 solely for the purpose of providing interpretation and translation services.

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

61
62 **Rules 3-306.02. Language Access Committee.**

63
64 **Intent:**
65 To outline the responsibilities of the Language Access Committee.

66
67 **Applicability:**
68 This rule applies to the Language Access Standing Committee of the Judicial Council.

69
70 **Statement of the Rule:**
71 The Language Access Committee shall:

- 72
73 (1) research, develop and recommend to the Judicial Council policies and procedures for
74 interpretation in legal proceedings and translation of printed materials;
75
76 (2) issue informal opinions to questions regarding the Code of Professional Responsibility,
77 which is evidence of good-faith compliance with the Utah Code; and
78
79 (3) discipline court interpreters as provided by CJA Rule 3-306.05.

80
81 **Rule 3-306.03. Interpreter credentialing.**

82
83 **Intent:**
84 To outline the procedure for credentialing of interpreters for legal proceedings.

85
86 **Applicability:**
87 This rule shall apply to legal proceedings in ~~the~~ courts of record and not of record. This rule shall
88 apply to interpretation for non-English speaking people and not to interpretation for persons with
89 a hearing impairment, which is governed by Utah Code and federal statutes.

90
91 **Statement of the Rule:**

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

97
98 (1)(A) file an application form approved by the administrative office;

99 (1)(B) pay a fee established by the Judicial Council;

100 (1)(C) pass a background check;

101 (1)(D) provide proof that the applicant is a Utah resident;

102 (1)(E) complete training as required by the administrative office;

103 (1)(F) obtain a passing score on the court interpreter's test(s) as required by the administrative
104 office;

105 (1)(G) complete 10 hours observing a certified interpreter in a legal proceeding; and

106 (1)(H) take and subscribe the following oath or affirmation: "I will make a true and impartial
107 interpretation using my best skills and judgment in accordance with the Code of Professional
108 Responsibility."

109
110 (2) A person who is certified in good standing by the federal courts or by a state having a
111 certification program that is equivalent to the program established under this rule may be
112 certified without complying with paragraphs (1)(A) through (1)(H), with the exception of
113 paragraph (1)(C), but shall pass an ethics examination and otherwise meet the requirements of
114 this rule.

115
116 (3) A person credentialed under this rule has an ongoing obligation to immediately report to the
117 program coordinator any criminal charges or convictions the interpreter has and any Utah State
118 Court cases the interpreter is personally involved in as a party.

119
120 (4) When the interpreter speaks a rare language and the courts currently lack credentialed
121 interpreters in that language, the Language Access Committee may, for good cause shown,
122 exempt an interpreter from meeting one or both of the requirements listed in subparagraph (1)(B)
123 and (1)(F). An interpreter seeking an exemption shall make a written request, outlining the
124 reasons for the exemption, to the Language Access Program Coordinator. The Language Access
125 Committee shall consider the request at its next meeting following the request, and may require
126 the interpreter making the request to appear at the meeting or to provide more information.

127
128 (5) If an exemption is granted, the interpreter shall meet the conditions set by the committee and
129 shall apply for an extension of the exemption annually, or as otherwise required by the
130 committee.

131
132 (6) No later than December 31 of each even-numbered calendar year, certified, approved, and
133 registered interpreters shall pass the background check for applicants, and certified interpreters
134 shall complete at least 16 hours of continuing education approved by the administrative office of
135 the courts.

136

137 (7) With the exception of staff interpreters who are employees of the courts, court interpreters,
138 including those listed on the statewide roster, are independent contractors.
139

140 (8) Court interpreters listed on the statewide roster are not employees of the court and are not
141 entitled to appointments for legal proceedings. Interpretation appointments are a privilege, not a
142 right. Interpreter appointments made in compliance with these rules are within the sole
143 discretion of the administrative office of the courts.
144

145 **Rule 3-306.04. Interpreter appointment, payment, and fees.**
146

147 **Intent:**
148

149 To state the policy of the Utah courts to secure the rights of people under Title VI of the Civil
150 Rights Act of 1964, 42 U.S.C. 2000d, et seq. in legal proceedings who are unable to understand
151 or communicate adequately in the English language.
152

153 To outline the procedures for appointment and payment of interpreters for legal proceedings.
154 To provide certified interpreters in legal proceedings in those languages for which a certification
155 program has been established.
156

157 **Applicability:**
158

159 This rule shall apply to legal proceedings in ~~the~~ courts of record and not of record. This rule shall
160 apply to interpretation for non-English speaking people and not to interpretation for persons with
161 a hearing impairment, which is governed by Utah Code and federal statutes.
162

163 **Statement of the Rule:**
164

165 (1) Appointment.
166

167 (1)(A) Except as provided in paragraphs (1)(B), (1)(C) and (1)(D), if the appointing
168 authority determines that a party, witness, victim or person who will be bound by the
169 legal proceeding has a primary language other than English and limited English
170 proficiency, the appointing authority shall appoint a certified interpreter in all legal
171 proceedings. A person requesting an interpreter is presumed to be a person of limited
172 English proficiency.
173

174 (1)(B) An approved interpreter may be appointed if no certified interpreter is reasonably
175 available.
176

177 (1)(C) A registered interpreter may be appointed if no certified or approved interpreter is
178 reasonably available.
179

180 (1)(D) A conditionally-approved interpreter may be appointed if the appointing authority,
181 after evaluating the totality of the circumstances, finds that:
182

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

186
187 (1)(D)(ii) appointment of the prospective interpreter does not present a real or
188 perceived conflict of interest or appearance of bias; and

189
190 (1)(D)(iii) a certified, approved, or registered interpreter is not reasonably
191 available or the gravity of the legal proceeding and the potential consequence to
192 the person are so minor that delays in obtaining a certified or approved interpreter
193 are not justified.

194
195 (1)(E) The appointing authority may appoint an interpreter with certified or approved or
196 equivalent credentials from another state if the appointing authority finds that the
197 approved, registered or conditionally approved interpreters who are reasonably available
198 do not have the language skills, knowledge of interpreting techniques, or familiarity with
199 interpreting sufficient to interpret the legal proceeding. The appointing authority may
200 consider the totality of the circumstances, including the complexity or gravity of the legal
201 proceeding, the potential consequences to the person of limited English proficiency, and
202 any other relevant factor.

203
204 (1)(G)(F) The appointing authority will appoint one interpreter for all participants with
205 limited English proficiency, unless the judge determines that the participants have
206 adverse interests, or that due process, confidentiality, the length of the legal proceeding or
207 other circumstances require that there be additional interpreters.

208
209 (1)(G) Court employees may not interpret during legal proceedings, unless they meet the
210 requirements otherwise defined for conditionally-approved interpreters, by complying
211 with the requirements under paragraph (1)(D), and providing notice to Human Resources
212 and the Language Access Program Coordinator. The employee will be paid the wage and
213 benefits of the employee's grade and not the fee established by this rule.

214
215 (1)(F)(H) No Court interpreters is are not required needed for a direct verbal exchanges
216 between a the person and a court staff employee if:

217
218 (1)(H)(i) the a court staff employee can fluently speak the language understood by
219 the person,

220
221 (1)(H)(ii) the court employee has passed the Oral Language Proficiency Interview
222 in that language, and

223
224 (1)(H)(iii) the state court employee is acting within the guidelines established in
225 the Human Resources Policies and Procedure, Section 5, Personal Conduct,
226 Second Language Stipend 570.

227

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

233
234
235 (2) Court employees as interpreters. A court employee may not interpret legal proceedings
236 except as follows. Staff Interpreters.

237
238 (2)(A) A court may hire an employee as a staff interpreter for the court. The employee
239 will be paid the wages and benefits of the employee's grade and not the fee established
240 by this rule. If the language is a language for which certification in Utah is available, the
241 employee must be a certified interpreter. If the language is a language for which
242 certification in Utah is not available, the employee must be an approved interpreter. The
243 employee must meet the continuing education requirements of an employee, but at least
244 half of the minimum requirement must be in improving interpreting skills. The employee
245 is subject to the discipline process for court personnel, but the grounds for discipline
246 include those listed in CJA R rule 3-306.05.

247
248 (2)(B) A state court employee employed as an staff interpreter has the rights and
249 responsibilities provided in the Utah state court human resource policies, including the
250 Code of Personal Conduct. ~~The, and the~~ Court Interpreters' Code of Professional
251 Responsibility also applies. A justice court employee employed as an staff interpreter has
252 the rights and responsibilities provided in the county or municipal human resource
253 policies, including any code of conduct. ~~The, and the~~ Court Interpreters' Code of
254 Professional Responsibility also applies.

255
256 (3) Review of denial of request for interpreter. A person whose request for an interpreter has
257 been denied may apply for review of the denial. The application shall be decided by the
258 presiding judge. If there is no presiding judge or if the presiding judge is unavailable, the clerk
259 of the court shall refer the application to any judge of the court or any judge of a court of equal
260 jurisdiction. The application must be filed within 20 days after the denial.

261
262 (4) Waiver. A person may waive an interpreter if the appointing authority approves the waiver
263 after determining that the waiver has been made knowingly and voluntarily. A person may
264 retract a waiver and request an interpreter at any time. An interpreter is for the benefit of the
265 court as well as for the non-English speaking person, so the appointing authority may reject a
266 waiver.

267
268 (5) Translation of court forms. Forms must be translated by a team of at least two people who are
269 interpreters certified under this rule or translators accredited by the American Translators
270 Association.

271
272 (6) Payment.

273

274 (6)(A) The fees and expenses for language access shall be paid by the administrative
275 office of the courts in courts of record and by the government that funds the court in
276 courts not of record. The court may assess the fees and expenses as costs to a party as
277 otherwise provided by law. (Utah Constitution, Article I, Section 12, Utah Code Sections
278 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
279 Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and regulations and
280 guidance adopted under that title.)
281

282 (6)(B) A person who has been ordered to pay fees and expenses for language access may
283 apply to the presiding judge to review the order. If there is no presiding judge, the person
284 may apply to any judge of the court or any judge of a court of equal jurisdiction. The
285 application must be filed within 20 days after the order.
286

287 (7) Fees.
288

289 (7)(A) Every three years, the Judicial Council shall review a market survey conducted by
290 the Language Access Program ~~Coordinator~~ ~~Manager~~ and shall set the fees and expenses to
291 be paid to interpreters during the following three fiscal years by the courts of record.
292 Payment of fees and expenses shall be made in accordance with the Courts Accounting
293 Manual.
294

295 (7)(B) The local government that funds a court not of record shall set the fees and
296 expenses to be paid to interpreters by that court.
297

298 **Rule 3-306.05. Interpreter removal, discipline, and formal complaints.**
299

300 **Intent:**
301

302 To outline the procedures for interpreter removal and discipline.
303

304 **Applicability:**
305

306 This rule shall apply to the Language Access Program ~~Manager~~, ~~the Language Access Program~~
307 ~~Coordinator~~, the Language Access Committee, interpreter coordinators
308 and ~~contract~~ court interpreters.
309

310 **Statement of the Rule:**
311

312 (1) Removal from legal proceeding. The appointing authority may remove an interpreter from
313 the legal proceeding for failing to appear as scheduled, for inability to interpret adequately,
314 including a self-reported inability, and for other just cause.
315

316 (2) Discipline.
317

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

319 (2)(A)(i) knowingly making a false interpretation in a legal proceeding;

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

331
332 (2)(B) Discipline may include:
333 (2)(B)(i) permanent loss of certified or approved credentials;
334 (2)(B)(ii) temporary loss of certified or approved credentials with conditions for
335 reinstatement;
336 (2)(B)(iii) suspension from the roster of certified or approved interpreters with
337 conditions for reinstatement;
338 (2)(B)(iv) prohibition from serving as a conditionally approved interpreter;
339 (2)(B)(v) suspension from serving as a conditionally approved interpreter with
340 conditions for reinstatement; and
341 (2)(B)(vi) reprimand.

342
343 (3) As long as he or she complies with [CJA R](#) rule 3-306.04, an interpreter coordinator has the
344 discretion to decline to assign an interpreter listed on the statewide interpreter roster.

345
346 (4) Filing of formal complaints.

347
348 (4)(A) Any person may file a formal complaint about a matter for which an interpreter
349 can be disciplined. A party, witness, victim or person who will be bound by a legal
350 proceeding, may file a formal complaint about the misapplication of this rule.

351
352 (4)(B) A formal complaint shall be filed with the Language Access Program Coordinator.
353 However, the Language Access Program Coordinator may file a formal complaint ~~with~~
354 ~~the Language Access Program Manager~~ independently, in which case, the ~~program~~
355 ~~manager~~ Language Access Discipline Subcommittee will fulfill the program
356 coordinator's responsibilities under this rule.

357
358 (4)(C) The complaint shall allege an act or omission for which an interpreter can be
359 disciplined or that violates this rule. The complaint shall be in writing and signed. The
360 complaint may be in the native language of the complainant, which the AOC shall
361 translate in accordance with this rule. The complaint shall describe the circumstances of
362 the act or omission, including the date, time, location and nature of the incident, and the
363 persons involved.

364
365 (5) Investigation by program coordinator.

366
367 (5)(A) The program coordinator ~~may dismiss~~ shall investigate the complaint to determine
368 whether the complaint if it is plainly frivolous, insufficiently clear, or does not allege an
369 act or omission for which an interpreter can be disciplined or that does not violate this
370 rule.

371
372 (5)(B) If the complaint alleges that the court did not provide language access as required
373 by this rule, the program coordinator shall investigate and recommend corrective actions
374 that are warranted.

375
376 (5)(C) If the complaint alleges an act or omission for which the interpreter can be
377 disciplined, the program coordinator shall forward the complaint to the Language Access
378 Discipline Subcommittee. ~~mail the complaint to the interpreter at the address on file with~~
379 ~~the administrative office of the courts and proceed as follows:~~

380
381 (6) Language Access Discipline Subcommittee.

382
383 (6)(A) A three (3) member panel of the Language Access Committee shall sit as a
384 standing disciplinary subcommittee and shall consist of at least one (1) interpreter and one (1)
385 judge.

386
387 (6)(B) The subcommittee members shall be appointed by the chair of the Language
388 Access Committee and shall meet as necessary to resolve formal complaints against interpreters
389 pursuant to this rule. The chair shall assign one of the panel members to chair the subcommittee.
390 The chair of the subcommittee is responsible for sending the notices required under this rule.

391
392 (6)(C) Upon receipt of a formal complaint from the program coordinator, the
393 subcommittee shall mail the complaint to the interpreter at the address on file with the
394 administrative office of the courts and proceed as follows:

395
396 ~~(5)(C)(i)~~ (6)(C)(i) The interpreter shall answer the complaint within 30 calendar
397 days after the date the complaint is mailed or the allegations in the complaint will be
398 deemed to be true and correct. The answer shall admit, deny or further explain each
399 allegation in the complaint.

400
401 ~~(5)(C)(ii)~~ (6)(C)(ii) Unless the ~~program coordinator~~ subcommittee determines the
402 allegation in the formal complaint to be egregious, the interpreter shall remain on the
403 court interpreter roster until a final decision on discipline has been made.

404
405 ~~(5)(C)(iii)~~ (6)(C)(iii) The ~~program coordinator~~ subcommittee may review records
406 and interview the complainant, the interpreter and witnesses. The subcommittee may
407 make a decision by a review of the records or hold an informal hearing. After
408 considering all factors, the program coordinator may propose a resolution, which the
409 interpreter may stipulate to. The decision to hold a hearing is within the discretion of the
410 subcommittee. After the investigation is complete, the subcommittee shall determine by
411 a majority whether there is a preponderance of evidence of the alleged conduct or

412 omission, and whether the alleged conduct or omission violates this rule or the Code of
413 Professional Responsibility. The ~~program coordinator~~ subcommittee may consider
414 aggravating and mitigating circumstances such as the severity of the violation, the
415 repeated nature of violations, the potential of the violation to harm a person's rights, the
416 interpreter's work record, prior discipline, and the effect on court operations.

417
418 ~~(5)(C)(iv)~~ (6)(C)(iv) Within 30 calendar days of either the hearing or
419 subcommittee meeting in which the decision is made, the subcommittee will inform the
420 program coordinator, the interpreter, and the complainant, in writing, of its decision and
421 the findings of fact supporting it. The subcommittee may discipline the interpreter as
422 provided under paragraph (2)(B), including permanently removing the interpreter's
423 credentials. ~~When the investigation of the formal complaint is complete, the program~~
424 ~~coordinator shall notify the interpreter, in writing, of the proposed resolution.~~

425
426 (6)(C)(v) Within 15 calendar days of the proposed resolution decision, the
427 interpreter shall, in writing, either accept the discipline by consent or request a hearing by
428 a panel of the Language Access Committee appeal the decision to the Language Access
429 Committee by sending a written request to the subcommittee within 15 calendar days of
430 the date of the decision. If the interpreter fails to respond to the ~~program~~
431 ~~coordinator's~~ subcommittee's ~~proposed resolution decision,~~ or fails to request a hearing
432 within 15 calendar days, the interpreter will be deemed to have stipulated to the ~~proposed~~
433 ~~resolution decision.~~

434
435 ~~(6)(7)~~ (7) Subcommittee Hearings by panel.

436
437 ~~(6)(7)(A)~~ The ~~program coordinator~~ shall notify the chair of the Language Access
438 Committee if the interpreter requests a hearing by a panel. The chair of the Language
439 Access Committee shall assign three members of the Committee, including one
440 interpreter, to serve on the panel for the hearing, and shall assign one of the panel
441 members to chair the hearing. The chair of the panel is responsible for sending notice to
442 the interpreter, the complainant and the program coordinator.

443
444 ~~(6)(B)~~ If the Discipline Subcommittee chooses to hold a hearing, ~~the hearing before the~~
445 ~~panel~~ is private and closed to the public. The hearing shall be recorded. The hearing is
446 informal and is not governed by the Rules of Civil Procedure and the Rules of Evidence.
447 The interpreter, the complainant, and the program coordinator may attend the hearing.
448 The interpreter and the program coordinator may each bring counsel to the hearing. The
449 chair may limit others in attendance to those persons reasonably necessary to the
450 proceedings. The program coordinator and the interpreter may submit exhibits and call
451 witnesses. ~~Panel~~ Subcommittee members and staff may not disclose or discuss
452 information or materials outside of the meeting except with others who participated in the
453 meeting or with a member of the ~~panel~~ subcommittee.

454
455 ~~(6)(C)~~ (7)(B) If any party fails to appear, the ~~panel~~ subcommittee may proceed on the
456 evidence before it. If the complainant, or the complainant's counsel, fails to appear,
457 the ~~panel~~ subcommittee may dismiss the Formal Complaint.

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~~(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.

504 ~~(8)~~ (9) If the interpreter is certified in Utah under CJA Rule 3-306.03(~~1~~2), the program
505 coordinator, ~~panel~~ subcommittee or committee may report any final findings and sanction to
506 other agencies and certification authorities in other jurisdictions.

507

508 Effective ~~May 1, 2016~~ November 1, 2017