

Agenda
Language Access Committee Meeting
 November 17, 2017
 12:00 – 2:00 p.m.

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

12:00	Welcome and Approval of Minutes	Discussion	Tab 1	Michelle Draper
12:05	CONFIDENTIAL- Committee Member Search	Discussion / Action	Tab 2	Kara Mann
12:20	Conditionally Approved Application Form	Discussion/ Action	Tab 3	Kara Mann
12:40	<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	Kara Mann
1:45	CONFIDENTIAL- Interpreter Disciplinary Action	Discussion		Kara Mann Michelle Draper
2:00	Adjourn			Michelle Draper

2018 Meeting Schedule:

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

September 15, 2017

Draft

Members Present

Judge Su Chon
Michelle Draper - Chair
Mary Kaye Dixon
Amine El Fajri
Monica Greene
Gabriela Grostic
Judge Mike Leavitt (via phone)
Randall McUne
Miguel Medina
Judge Kelly Schaeffer-Bullock
Lynn Wiseman

Members Excused

Russ Pearson
Jennifer Andrus
Megan Haney

Staff

Kara Mann
Ray Wahl
Keisa L. Williams

Guests

(1) Welcome.

Michelle Draper welcomed the committee to the meeting. Ms. Draper welcomed new member Lynn Wiseman and asked current members to introduce themselves. Ms. Draper then addressed the May 19, 2017 minutes. With no changes, Judge Kelly Schaeffer-Bullock moved to approve the minutes. Mary Kaye Dixon seconded the motion. The motioned carried unanimously.

(2) Introduce Language Access Program Coordinator & Discussion on Leadership Change.

Keisa Williams introduced Kara Mann, the new Language Access Program Coordinator. Ms. Williams then discussed the change in leadership for the program. Ms. Williams clarified there would no longer be a program manager position but that she will stay in a legal advisor capacity to the program. Ms. Williams explained the program will no longer report to the legal department but will report directly to Ray Wahl. Ms. Williams explained she will no longer staff future committee meetings but will attend meetings as requested.

(3) Bench Cards on Interpreters.

Ms. Mann presented a bench card on spoken language interpreters. Ms. Mann explained each section of the bench card and why the information was important to include. Gabriela Grostic asked for clarification on what Assuming Optimal Interpretation on the bench card meant. Ms. Mann explained it is a best practice guideline for judges to ensure high-level interpreting, citing having more than one interpreter for a longer assignment as an example. Ms. Dixon shared she schedules multiple interpreters depending on the type of case and has them switch out every hour. Ms. Williams advised it depends on the complexity of the case, but that it is a judgement call. Miguel Medina agreed it does depend on the terminology or type of case.

Ms. Grostic asked how interpreters are made aware of how long they should interpret. Ms. Williams explained it is in their training and skills building classes. Ms. Williams asked Ms. Mann if she would be requiring interpreters besides those who are going through the certification process to attend the skills building workshops. Ms. Mann advised she's considered it, and reminded the committee of the various requirements for those who want to become a certified interpreter. Ms. Grostic questioned if interpreters should be required to take another orientation after interpreting for a number of years. Ms. Mann shared Ms. Williams discussed having a training every year for certified interpreters and agreed it would be beneficial to open

the training up to all interpreters. Ms. Williams clarified certified interpreters are required to complete continuing education credits every two years, but that none are offered by the program. Ms. Williams explained she had discussed having a two hour ethics training to address ethics specifically but agreed it would be a good idea to add additional training.

Judge Schaeffer-Bullock asked about the purpose of the second language stipend since according to the court rules court employees will be paid their employee wage and not the interpreter fee. Ms. Williams explained the stipend is an incentive and court employees receive the stipend for having the extra skill. Ray Wahl informed the committee most recipients work at the front counter or are probation officers. Monica Greene shared probation officers who receive the stipend usually receive additional work than what's assigned to them since they speak the language and their coworkers do not.

Ms. Grostic questioned if the wording of the first paragraph of the bench card was ambiguous. Ms. Grostic recommended having limited English proficiency as defined in the court rules instead. Ms. Mann explained the exact definition of limited English proficiency was already included on the bench card. Judge Su Chon advised the bench card was created for judges, not the public. Judge Mike Leavitt expressed he found the paragraph helpful as a marker for judges in deciding if an interpreter should be provided.

Ms. Greene moved to approve the spoken language interpreter bench card. Judge Schaeffer-Bullock seconded the motion. The motion carried unanimously.

Ms. Mann then presented the bench card on sign language interpreters and explained each section of the bench card. Ms. Dixon asked what auxiliary aids can be provided in the courtroom if a hard of hearing individual does not know sign language. Ms. Draper explained real time reporting is an option, where the hard of hearing individual sits beside a real time reporter who brings their equipment with them into the courtroom. Ms. Draper shared hard of hearing individuals typically verbalize for themselves, they just read the real time capturing to understand what is being said verbally in the courtroom.

Judge Chon asked how the court can communicate with someone who is illiterate and hard of hearing. Ms. Grostic explained a universal interpreter along with a sign language interpreter had been used before in federal court. Ms. Dixon shared in Weber county they use CDI interpreters. Ms. Draper explained CDI stands for Certified Deaf Interpreter who is deaf and works along a certified hearing interpreter. Ms. Draper then explained a CDI interpreter is a native user of the language where the certified hearing interpreter is only going to know English and American Sign Language.

Ms. Williams advised for rare situation local courts should set the court date far in advance and communicate with the program coordinator to work out a solution. Judge Chon suggested adding who to contact for such situations under the additional resources section of the bench card. Ms. Dixon suggested having contact the local interpreter coordinator, as local courts aren't going to know who the program coordinator is. Amine El Fajri suggested adding who to contact on the spoken language interpreter bench card as well.

Randall McUne questioned if the paragraph on which deaf and hard of hearing court participants have the right to an interpreter is ambiguous since it specifies providing an interpreter for parents or guardians for juveniles involved in criminal proceedings. Ms. Draper explained providing a sign language interpreter is to provide access under the ADA, and in public court, anyone has the right to an interpreter, not just those involved in the proceeding. Mr. McUne suggested changing the end of the paragraph to parents/guardians of juveniles involved in a proceeding listed above and adding juveniles since they aren't specifically listed.

Ms. Grostic asked if multiple interpreters are scheduled for parties who have adverse interests and if so should be included on the bench card. Ms. Mann explained multiple interpreters are assigned if there is an adverse interest and it is included on the bench card.

Ms. Dixon asked Ms. Draper to clarify her earlier statement that anyone who comes into a public court has the right to a sign language interpreter. Ms. Draper explained access to the court is covered under ADA and any reasonable request must be accommodated. Ms. Draper asked what's the court's policy is on the ADA and questioned if it should be included on the bench card. Ms. Williams suggested adding "Court patrons may also qualify for a certified interpreter under the Court's ADA policy" at the end of the first paragraph. Judge Chon suggested bolding the language to grab judges' attention to this possibility.

Ms. Draper suggested adding mentally in addition to physically taxing on the interpreter, as interpreters will become mentally tired before becoming physically tired.

Ms. Draper asked why the second language stipend for court employees isn't included on the sign language interpreter bench card. Ms. Mann explained at the moment only spoken languages are eligible for the stipend but there is a paragraph stating court employees shouldn't act as an interpreter.

Ms. Draper question if stronger language should be used under Capturing the Interpretation on the Record to reflect the interpreting must be recorded. Ms. Williams advised the statute doesn't state that it must be captured but that it can be captured. Ms. Draper asked if the interpreter could motion to have it recorded. Ms. Williams explained under the statute only the judge or the parties can motion to have the interpretation recorded for the record.

Mr. McUne moved to approve sign language interpreter bench card with the discussed changes. Ms. Wiseman seconded the motion. The motioned carried unanimously.

(4) Confidential Request for Exception on Score for English Written Exam.

The committee went off the record. Ms. Mann discussed a request from a conditionally approved interpreter to have the passing rate lowered for the English Written Exam.

(5) Conditionally Approved Interpreter Application Form.

The committee tabled discussion until the next meeting due to time.

(6) CJA Rule Drafts.

The committee tabled discussion until the next meeting due to time.

(7) Other Business.

There being no further business, the meeting adjourned at 1:32 pm.

Tab 2

Confidential

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~~ ordered 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~~ outlined in 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 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

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

262

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

268

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

272

273 (6) Payment.

274

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, for unprofessional behavior, for a violation of these rules or
315 the Code of Professional Responsibility, and for other just cause.

316
317 (2) Discipline.

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

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

332
333 (2)(B) Discipline may include:

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

343
344 (3) As long as he or she complies with CJA Rrule 3-306.04, an interpreter coordinator has the
345 discretion to decline to assign an interpreter listed on the statewide interpreter roster.

346
347 (4) Filing of formal complaints.

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

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

358
359 (4)(C) The complaint shall allege an act or omission for which an interpreter can be
360 disciplined or that violates this rule. The complaint shall be in writing and signed. The
361 complaint may be in the native language of the complainant, which
362 the AOC administrative office of the courts shall translate in accordance with this rule.
363 The complaint shall describe the circumstances of the act or omission, including the date,
364 time, location and nature of the incident, and the persons involved.
365

366 (5) Investigation by program coordinator.

367

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

372

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

376

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

381

382 (6) Language Access Discipline Subcommittee.

383

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

387

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

392

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

396

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

401

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

405

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

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

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

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

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

436
437 ~~(6)(7)(A)~~ (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)~~ (7)(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~~(12)~~, 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