

**Agenda**  
**Language Access Committee Meeting**  
 January 19, 2018  
 12:00 – 2:00 p.m.

Administrative Office of the Courts  
 Scott M. Matheson Courthouse  
 450 South State Street

**Executive Dining Room, 1<sup>st</sup> Floor, W18A**

12:00	Welcome and Approval of Minutes	Discussion	Tab 1	Michelle Draper
12:05	CONFIDENTIAL- Committee Member Search Update	Information		Kara Mann
12:10	Conditionally Approved Application Form	Discussion	Tab 2	Kara Mann
12:30	CONFIDENTIAL- Interpreter Feedback Survey Results	Discussion/ Action	Tab 3	Kara Mann
1:00	<u>Rule Drafts:</u> <ul style="list-style-type: none"> <li>• CJA Rule 3-306.02</li> <li>• CJA Rule 3-306.04</li> </ul>	Discussion/ Action	Tab 4	Kara Mann
2:00	Adjourn			Michelle Draper

**2018 Meeting Schedule:**

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

November 17, 2017

**Draft**

**Members Present**

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

**Members Excused**

Jennifer Andrus

**Staff**

Kara Mann

**Guests**

**(1) Welcome.**

Kara Mann welcomed the committee to the meeting and advised the chair of the committee was on her way. Ms. Mann then addressed the September 15, 2017 minutes. With no changes, Monica Greene moved to approve the minutes. Lynn Wiseman seconded the motion. The motioned carried unanimously.

**(2) Confidential- Committee Member Search.**

The committee went off the record to discuss the committee member search.

**(3) Conditionally Approved Application Form.**

Ms. Mann reminded the committee of the current form format before reviewing the proposed new form. Ms. Mann explained the form was reformatted to make it cleaner and to add four new fields. Ms. Mann explained the first new field for driver's license number and issuing state was added for background check purposes. Ms. Mann explained the next new field asked if the individual knows legal terminology, and if so, how did they learn it. The third new field asks if the individual knows the person requiring an interpreter, while the last new field asks if the individual has established communication with the court patron requiring an interpreter. Ms. Mann expressed that at first she wasn't sure about adding the last field, but if the form was completed at the time of the hearing then it would be beneficial for the judge to know if communication could be established. Mary Kaye Dixon asked about the field located below the criminal background investigation and questioned why the form would ask the interpreter to explain. Randall McUne advised that question is actually for the criminal offense question so the individual could explain if they had a criminal background. Judge Kelly Schaeffer-Bullock asked if perhaps both questions should have space for explanations so that if the individual refuses a criminal background investigation there would be space to explain why. Ms. Mann shared it is in the court rules that interpreters must successfully undergo a background check so if someone select no they would be automatically disqualified. Judge Schaeffer-Bullock suggested including that language on the form. Michelle Draper asked if it is called a background investigation or if it's called a background check. Ms. Mann explained on the original form it is called a background investigation. Ms. Draper shared investigation sounds more intense and rigorous than a check. Ms. Mann asked if the committee would like for investigation to be replaced by check. Ms. Draper suggested rewording the background question to "I do agree to undergo a criminal background check". Judge Mike Leavitt suggested rewording the established communication question to "have you already

established communication". Russ Pearson shared the individual might have interpreted at a previous hearing for the same individual and would know if communication had been established. Ms. Dixon motioned to approve the form with the included changes. Judge Schaeffer-Bullock seconded the motion. The motion carried unanimously.

#### **(4) CJA Rule Drafts.**

Ms. Mann reminded the committee there are four court rules pertaining to court interpreters and shared all four have proposed changes. Ms. Mann advised CJA 3-306.01 defines terms relating to language access and the proposed changes are minor clarifications, in addition to adding definitions for court interpreter, employee, and staff interpreter. Ms. Mann explained adding the definitions clarify each role and how they work within the court. Judge Schaeffer-Bullock asked if there was ever a time when the term court interpreter applies to staff interpreters in the court rules. Judge Schaeffer-Bullock advised there should not be any ambiguity as to what applies to court interpreters or staff interpreters. Ms. Mann agreed the new definitions are included to differentiate between staff interpreters and court interpreters. Ms. Mann shared she would review the rules to ensure any requirement of an interpreter includes both court interpreters and staff interpreters. Miguel Medina advised that staff interpreters must meet the same requirements that court interpreters are required to meet. Ms. Wiseman motioned to approve court rule 3-306.01. Ms. Dixon seconded the motion. The motion carried unanimously.

Ms. Mann advised CJA 3-306.02 sets the guidelines for the Language Access Committee and has minimal changes in an effort to clarify the existing court rule. Ms. Greene suggested adding staff interpreters to CJA 3-306.02(3). Ms. Draper questioned if the committee would have the authority to discipline staff interpreters since they are court employees. Mr. McUne asked if staff interpreters would be disciplined by HR. Judge Schaeffer-Bullock suggested speaking with HR to determine their role and the committee's role on discipline. Mr. Medina questioned if a complaint was filed against a staff interpreter would the committee handle it or would HR. Mr. McUne suggested an infraction leading to being fired would not necessarily be an infraction where certification would be revoked. Judge Schaeffer-Bullock asked if a complaint against staff interpreters is filed would it need to be passed along to HR. Mr. McUne asked if there was an investigation, what information would the committee be allowed to share with HR. Judge Schaeffer-Bullock questioned what HR would be allowed to share with the committee. Ms. Mann shared she would speak with HR to determine the committee's role and HR's role in disciplinary actions with staff interpreters. Ms. Draper asked if a staff interpreter could interpret for a justice court. Mr. Medina clarified staff interpreters can only interpret in district and juvenile courts for Third District and Eight District, but that contract interpreters could contract with any court in the state. Ms. Mann clarified staff interpreters are technically Third District employees who receive their assignments from the Third District Interpreter Coordinator. Ms. Draper asked if there was an HR policy specifically for staff interpreters that the court rule could reference. Mr. Medina shared there is not a HR policy specifically for staff interpreters. Ms. Draper advised since staff interpreters are new, perhaps HR could create a policy that would include the communication between the committee and then the rule could refer to that policy. Mr. McUne reminded the committee that one of the court rules does refer to one of HR's policy in a general concept. Mr. McUne shared staff interpreters have the rights and responsibilities provided in the Utah State Court Human Resource policies and they are bound by those policies. Ms. Dixon asked when staff interpreters were first hired, which Mr. Medina shared was in 2011.

Ms. Mann reminded the committee CJA 3-306.03 covers interpreter credentialing. Ms. Mann advised the major change to the court rule clarifies that court interpreters are not employees and they do not have the right to an appointment to interpret. Ms. Mann shared there has been pushback from interpreters about this addition. Mr. Amine El Fajri shared he had received multiple emails about this issue. Ms. Dixon shared she believed all contract interpreters know they don't have a right to interpret and the language is disrespectful and should be reworded if it has to be included. Ms. Dixon advised there needs to be a joint respect between the AOC and interpreters, which the proposed addition does not reflect. Ms. Wiseman asked if only the last sentence could be used. Ms. Greene asked if only the second sentence could be removed, leaving in the first sentence that court interpreters are not state employees. Ms. Draper voiced her support in taking out the second sentence. Judge Schaeffer-Bullock asked is there a deeper problem that elicited the strong reaction, as reminding someone that interpreting is a privilege, not a right, isn't condescending but similar to rules that bound a driver's license. Judge Leavitt advised that the language is very good for a handbook for interpreters or some instructional form outside of the rules, but he doesn't know if it needs to be included in the rules as a legal document. Ms. Draper advised as a freelance interpreter most interpreters are social service oriented individuals and the strong language hits at their emotions. Ms. Greene asked if the committee could ask for feedback from the interpreters. Ms. Mann agreed asking for feedback could be beneficial for the committee and asked for clarification as to what areas the committee wanted feedback in. Ms. Greene suggested asking what areas are working and any recommendations for improvements. Ms. Draper advised it appeared as if the committee was comfortable with the addition if the second sentence was removed. Mr. McUne recommended following Judge Leavitt's recommendation. Ms. Draper asked if "entitled" could be replaced with "guaranteed" in the first sentence. Judge Leavitt shared he believed the rule should be as succinct as possible. Judge Schaeffer-Bullock shared removing or changing the word entitled could remove clarity. Judge Schaeffer-Bullock asked if we remove the second sentence, which seems to be the crux of the issue with

interpreters, does the word entitled need to be changed in the first sentence. Ms. Greene reminded the committee they've reviewed this rule before and have discussed the importance of including interpreters not being entitled to appointments for legal proceedings. Mr. Pearson advised reminding interpreters they are not entitled to work began when the positions of staff interpreters were added and contract interpreters were not happy. Judge Schaeffer-Bullock shared the program's first duty is to the state, and if there is money to be saved by using staff interpreters rather than contract interpreters then that is what must be done. Ms. Draper asked if anyone had a motion based on the committee's discussion or if more contemplation would be needed. Ms. Megan Haney motioned to approve the proposed addition as written with the removal of the second sentence. Judge Schaeffer-Bullock seconded the motion. Judge Leavitt suggested removing "appointments made in compliance with these rules" from the third sentence. Ms. Draper advised as a freelance interpreter she worried if it stated that appointments were made within the sole discretion of the AOC that favoritism would come in, but by including it then the AOC must also comply with the rule. Mr. Pearson advised he thought including that appointments will be made in compliance with the rules gives an insurance to contract interpreters that the court will make the right assignments and will follow their own rules. Ms. Draper asked for a revote in light of the further discussion. Ms. Haney motioned to approve the proposed addition as written with the removal of the second sentence. Judge Schaeffer-Bullock seconded the motion. The motion carried with Judge Leavitt voting nay.

**(5) Confidential- Interpreter Disciplinary Action.**

The committee went off the record. Ms. Draper appointed three committee members to panel an interpreter disciplinary hearing.

**(6) Other Business.**

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

# Tab 2

# 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 check?**

**Yes**

**No**

**Have you ever been convicted of a criminal offense?**

**Yes**

**No**

**If you have been convicted of a criminal offense, 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?**

**Yes**

**No**

**Can you WRITE the acquired language?**

**Yes**

**No**

**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 already 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**

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**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."**

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**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:**

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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 3**

**Confidential**

# Tab 4

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

**Intent:**

To outline the responsibilities of the Language Access Committee.

**Applicability:**

This rule applies to the Language Access Standing Committee of the Judicial Council.

**Statement of the Rule:**

The Language Access Committee shall:

- (1) research, develop and recommend to the Judicial Council policies and procedures for interpretation in legal proceedings and translation of printed materials;
- (2) issue informal opinions to questions regarding the Code of Professional Responsibility, which is evidence of good-faith compliance with the [Utah](#) Code; and
- (3) discipline court interpreters as ~~provided by~~ [outlined in CJA R](#)ule 3-306.05.

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

#### **Intent:**

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

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

#### **Applicability:**

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

#### **Statement of the Rule:**

##### (1) Appointment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Payment.

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

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

(7) Fees.

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

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