

Agenda
Language Access Committee Meeting
 March 16, 2018
 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 New Member and Approval of Minutes	Discussion	Tab 1	Michelle Draper
12:05	Committee Presentation to Judicial Council	Information	Tab 2	Michelle Draper
12:15	Guide on Conditionally Approved Interpreters	Discussion/ Action	Tab 3	Kara Mann
1:00	Standing Order of Appointment for Conditionally Approved Interpreters	Discussion/ Action	Tab 4	Kara Mann
1:20	<u>Rule Drafts:</u> <ul style="list-style-type: none"> • CJA Rule 3-306.02 • CJA Rule 3-306.04 	Discussion/ Action	Tab 4	Kara Mann
2:00	Adjourn			Michelle Draper

2018 Meeting Schedule:

May 18, 2018
 July 20, 2018
 September 21, 2018
 November 16, 2018

Tab 1

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

January 19, 2018

Draft

Members Present

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

Members Excused

Jennifer Andrus
Judge Kelly Schaeffer-Bullock

Staff

Kara Mann

Guests

Crystal Powers (representing Lynn Wiseman)

(1) Welcome.

Michelle Draper welcomed the committee to the meeting. Ms. Draper then addressed the November 17, 2017 minutes. With no changes, Monica Greene moved to approve the minutes. Randall McUne seconded the motion. The motioned carried unanimously.

(2) Confidential- Committee Member Search Update.

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

(3) Conditionally Approved Application Form.

Kara Mann informed the committee she had made all recommended changes to the conditionally approved form that was discussed at the last meeting. However, Ms. Mann wants the committee to hear the feedback Judge Su Chon had received on the conditionally approved interpreter process. Judge Chon shared other third district judges had expressed their reluctance in being able to review the form and appoint the conditionally approved interpreter on the record when their criminal case dockets are so stacked. Judge Chon advised the judges are asking the committee consider a rule change, or for the committee or the program coordinator to do an initial approval of the interpreter. Judge Chon advised third district judges want the process to be easier with their calendars, but that she wasn't sure how much of a problem this is in the other judicial districts. Russell Pearson shared that conditionally approved interpreters are used but not frequently. Ms. Greene asked how anyone other than the judge or the judge's staff would know the type of proceeding in order to conditionally approve the interpreter. Judge Michael Leavitt asked why a judge couldn't review the form in

advance, even with a large calendar like a Law and Motion calendar. Judge Chon shared judges want someone to primarily review the form and approve the interpreter and then the judges could review the form prior to any complex proceedings like a sentencing hearing or a trial. Amine El Fajri suggested using a certified or approved interpreter to do an initial approval of the individual by reviewing the form and briefly speaking with the individual to assess their skill level. Ms. Mann shared the credentialing of an interpreter as conditionally approved is because there aren't any other interpreters available in that language, so there wouldn't be a certified or approved interpreter who could check their skill level. Ms. Mann advised the conditionally approved credentialing is used in various ways, such as when interpreters are flown in from out of state, or when a prescreened interpreter located out of state is arranged to telephonically interpret. Ms. Mann clarified the conditionally approved credential does not apply to Language Line interpreters. Judge Leavitt reminded the committee that currently the individual says they are able to interpret and the court believes them without any independent verification. Ms. Draper asked if the purpose of the form isn't to notify all parties involved that the interpreter is not highly credentialed. Judge Chon asked if the court rule couldn't be tweaked for criminal judges do not have to go through the conditionally approved process when it's simply to reschedule the hearing or something minor. Judge Leavitt advised there cannot be different procedures in place regarding how conditionally approved interpreters are used since there's no way to distinguish between substantive hearings and procedural hearings. Mary Kaye Dixon asked if a judge approves and appoints the conditionally interpreter on the record once for a case, then would it not apply to every subsequent proceeding in that case. Ms. Dixon advised that the judges would only be required to review the form on the record once for a case. Judge Chon asked if the Language Access Program Coordinator could complete a preliminary approval of the interpreter. Ms. Greene asked if the parties are informed when the interpreter is a conditionally approved interpreter. Judge Leavitt advised going back to the judges and clarifying the process for using conditionally approved interpreters, while still having the judges complete the approval process. Judge Chon questioned the process for when someone comes to the courtroom and completes the application on the spot. Judge Leavitt shared then the individual can fill out the form with the clerk and the hearing can be delayed or rescheduled in order for the background check to be completed. Judge Chon advised criminal judges have stacked calendars and their clerks aren't going to have the time to go over the conditionally approved form with the individual. Ms. Greene suggested separating out telephonic interpreters to be classified as a separate credentialing. Ms. Dixon advised she ensured the form is filled out and the background check is completed before passing the form to judge. The judge makes the necessary findings on the record once, before she redacts the personal information and adds it to the case file. Ms. Dixon shared then the judge has already issued a finding for the any future proceeding in the case. Judge Leavitt suggested having a separate standing order form prepared for judges that they can have readily available. Judge Chon asked where in the rules it states conditionally approved interpreters must have a background check. Ms. Mann shared CJA 3-306.03(1)(C) has pass a background check, but that it only applies to certified, approved, and registered interpreters. Judge Leavitt shared that for a last minute, emergency proceeding the background check could be unnecessary. Ms. Draper advised using interpreters without a background check would leave the LEP vulnerable. After further discussion, Judge Leavitt motioned to table the issue to have Ms. Mann devise a best practices guideline for how courts are to work with the Conditionally Approved Application form in order to minimize the judge's need to review the form on the record, and to speak with Keisa Williams about necessary amendments to the court rules. Mr. McUne seconded the motion. The motion carried unanimously.

(4) Confidential- Interpreter Feedback Survey Results

The committee went off the record to discuss the interpreter feedback survey results.

(5) CJA Rule Drafts.

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

(6) Other Business.

There being no further business, the meeting adjourned at 1:49 pm.

Tab 2

Utah Language Access Committee Report to Utah Judicial Council

February 26, 2018

I. Spoken Interpreter Usage in Fiscal Year 2017

Spoken Language Interpreters	
District Court	5,449
Juvenile Court	4,380
Justice Court	6,402
Total	16,231

District Usage of Spoken Language Interpreters *excludes Justice Court	
1 st	365
2 nd	1,383
3 rd	4,621
4 th	2,505
5 th	551
6 th	150
7 th	37
8 th	75
Youth Parole Authority	142

Top Requested Languages	
Spanish	14,176
Arabic	419
Vietnamese	179
Somali	159
Portuguese	96
Farsi	96
Mandarin	85

II. Sign Language Interpreter Usage in Fiscal Year 2017

Sign Language Interpreters	
District Court	47
Juvenile Court	103
Justice Court	38
Total	188

District Usage of Sign Language Interpreters *excludes Justice Court	
1 st	24

2 nd	16
3 rd	41
4 th	67
5 th	2
6 th	0
7 th	0
8 th	0

III. Completed Projects

- Created and distributed a Bench Card on Spoken Language Interpreters
- Created and distributed a Bench Card on Sign Language Interpreters
- Revised the Conditionally-Approved Court Interpreter Appointment Form
- Revised court's webpage on How to Become a Court Interpreter to make it more user friendly for interpreter candidates.
- Revised the AOC's translation policy regarding court forms to reflect only forms used statewide would be translated, and district-specific forms would not be.

Additionally-

New Chair elected, Michelle Draper, ASL Interpreter

New Language Access Program Coordinator hired, Kara Mann

IV. On-Going Projects

- Selecting video equipment to capture ASL on the record
- Proposed revision to Human Resource Policy 570-Second Language Stipend
- Proposed extensive revisions to CJA Rules 3-306.01-.05

V. On-Going Training Projects

- Creating a handbook for Interpreter Coordinators
- Annual training for Interpreter Coordinators
- Developing a training video for new judges
- Drafting a section on interpreters to be added to the manual for presiding judges
- Drafting a section on interpreters and interpreter coordinators to be included in the TCE and Clerks of Court handbooks currently being created by the Education Department

VI. Future Projects

- Draft and approve a comprehensive translation policy to be included in the court rules
- Update the Language Access Plan, which has not been updated since it was approved in 2011

Tab 3

Using a Conditionally-Approved Interpreter

Prior to the scheduled proceeding:

- The clerk will receive the completed Conditionally-Approved Interpreter Appointment Form from your district's Interpreter Coordinator.
- Clerks should check with the Interpreter Coordinator that the conditionally-approved interpreter has passed a background check if the Interpreter Coordinator does not supply the clerk with that information.
- Clerks must provide the form to the judge or commissioner for review prior to the proceeding.

During the proceeding:

- The judge or commissioner must make the requisite findings and approve the conditionally-approved interpreter on the record.
- The judge or commissioner must inform all parties involved in the proceeding that the interpreter is conditionally-approved.
- The judge or commissioner must administer the oath for the conditionally-approved interpreter.

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?"

After the proceeding:

- The clerk must redact the conditionally-approved interpreter's social security number, address, and telephone number from the Conditionally-Approved Court Interpreter Appointment Form.
- The clerk must file the form in the official court record as "private" pursuant to CJA Rule 4-402.02(4).

Frequently Asked Questions

What is a conditionally-approved interpreter?

A conditionally-approved interpreter is the lowest credentialing for court interpreters. Conditionally approved interpreters complete an application and a background check but many have no formal training in legal interpreting.

In contrast, certified interpreters, the highest credentialing for court interpreters, must complete numerous training and testing requirements, including passing the Oral Proficiency Exam which has a 20% national pass rate.

Who is considered a conditionally-approved interpreter?

- An in-person interpreter who lives in Utah but has only completed the Conditionally-Approved Court Interpreter Appointment Form and passed a background check.
- An interpreter who travels to Utah from out of state to interpret a proceeding.
- A prescreened interpreter located out of state who is specifically scheduled to telephonically interpret. (This does not apply to Language Line.)

Are interpreters from Language Line considered conditionally-approved?

No, because Language Line interpreters have not completed the Conditionally-Approved Court Interpreter Appointment Form and have not completed a background check. Language Line has thousands of telephonic interpreters and the court cannot guarantee the skills and abilities of the interpreter who might be encountered when the court calls Language Line.

When should the court use a conditionally-approved interpreter?

A conditionally-approved interpreter can only be used if a certified, approved, or registered interpreter is not reasonably available and all other resources have been exhausted. Conditionally-approved interpreters are to be used on a case by case basis for languages of a lesser diffusion. In the past requests for Chukkesse, Rohingya, and Q'anjob'al interpreters have been filled by conditionally-approved interpreters.

What are the requisite findings that a judge must make on the record?

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

1. the prospective interpreter has language skills, knowledge of interpreting techniques and familiarity with interpreting sufficient to interpret the legal proceeding;
2. appointment of the prospective interpreter does not present a real or perceived conflict of interest or appearance of bias; and
3. a certified, approved, or registered interpreter is not reasonably available or the gravity of the legal proceeding and the potential consequence to the person are so minor that delays in obtaining a certified or approved interpreter are not justified.

What's the purpose of the Conditionally-Approved Court Interpreter Appointment Form?

The form is designed to help judges or commissioners make their decision on if the interpreter has the language skills and interpreting knowledge necessary to efficiently interpret the legal proceeding.

Does the judge have to go through the requisite findings and approval process if the same conditionally approved interpreter is going to be used?

Judges must make the requisite findings and appoint the conditionally approved interpreter on the record. Once the conditionally-approved interpreter has been appointed they are eligible to interpret in any subsequent proceedings for that case and the judge does not need to make the requisite finding on the record again.

If a different conditionally-approved interpreter is used for a proceeding during the case then the judge must make the requisite findings and appoint that interpreter on the record before they can begin to interpret the proceeding.

What if an individual comes forward willing to interpret and a court interpreter hasn't been found?

If an individual, such as an elder in the community, comes forward in court offering to interpret the proceeding and a court interpreter, including conditionally-approved interpreters, has not been located, the court must follow these steps before allowing the individual to interpret.

- The Conditionally-Approved Court Interpreter Appointment Form must be completed and signed by the interpreter.
- A copy of the form must be sent to the Language Access Program Coordinator.
- A background check must be completed.
- The form must be provided to the judge presiding over the proceeding.

Mostly likely the proceeding will have to be delayed or rescheduled in order to allow for the background check to be completed.

Tab 4

In the [] District [] Juvenile [] Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

Conditionally Approved Interpreter Appointment Order

Plaintiff/Petitioner

v.

Defendant/Respondent

Case Number

Judge

Commissioner (domestic cases)

The court, having reviewed the Conditionally Approved Court Interpreter Appointment Form and being fully informed,

The court finds

_____ (name of interpreter)

- has the language skills and familiarity with interpreting to interpret the legal proceeding;
- has successfully passed a background check;
- does not present a real or perceived conflict of interest; and
- a certified, approved, or registered interpreter is not reasonably available .

The court orders

_____ (name of interpreter) is

appointed to assist _____ (name of requestor) who is a

[] Party

[] Witness

[] Other _____ (describe.)

during the in-court proceedings for this case.

Judge's signature may instead appear at the top of the first page of this document.

Date

Signature ► _____
Judge _____

Tab 5

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~~^{Manager} 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.