

Agenda
Language Access Committee Meeting
 May 18, 2018
 12:00 – 2:00 p.m.

Administrative Office of the Courts
 Scott M. Matheson Courthouse
 450 South State Street
Executive Dining Room, W18A

12:00	Welcome and Approval of Minutes	Discussion	Tab 1	Michelle Draper
12:05	Second Language Stipend Update	Discussion		Kara Mann
12:15	CONFIDENTIAL- Committee Member Search	Discussion	Tab 2	Kara Mann
12:30	<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 3	Kara Mann
1:50	Next Meeting Date	Discussion		Kara Mann
2:00	Adjourn			Michelle Draper

2018 Meeting Schedule:

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

March 16, 2018

Draft

Members Present

Michelle Draper - Chair
Mary Kaye Dixon
Amine El Fajri
Monica Greene
Megan Haney
Chris Kunej
Randall McUne
Miguel Medina
Judge Kelly Schaeffer-Bullock
Lynn Wiseman

Members Excused

Jennifer Andrus
Judge Su Chon
Judge Michael Leavitt
Russ Pearson

Staff

Kara Mann

Guests

Ray Wahl

(1) Welcome.

Michelle Draper welcomed the committee to the meeting and welcomed new committee member Chris Kunej. Ms. Draper asked the current committee members to introduce themselves.

Ms. Draper then addressed the January 19, 2018 minutes. With no changes, Mary Kaye Dixon moved to approve the minutes. Megan Haney seconded the motion. The motion carried unanimously.

(2) Committee Presentation to Judicial Council

Ms. Draper informed the committee that on February 26, 2018, she and Kara Mann presented the yearly update on the Language Access Committee to the Judicial Council. Ms. Draper shared the Council did ask about Justice Courts and if they were in compliance with providing court interpreters. Randall McUne asked why Justice Courts see the highest number of spoken language interpreters but the lowest number of sign language interpreters. Ms. Draper shared the majority of her work as an ASL interpreter is in Justice Courts, and theorized that perhaps Justice Courts aren't properly tracking their ASL interpreter usage. Ms. Mann shared she did not know how Justice Courts tracked their ASL interpreter usage, but that she could ask Court Services for more information. Ms. Draper suggested perhaps it is because numerous courts go through interpreter agencies for ASL and that contributes to courts not properly tracking the interpreter usage.

Ray Wahl asked if the committee would like information on the budget for court interpreters. Ms. Draper asked him to please share any information that he could with the committee. Mr. Wahl explained there is a Juror/Witness/Interpreter account that has special guidelines on what can be spent

from the account. Mr. Wahl shared it is a special account because it can be overspent due to courts not knowing how many juries, witnesses, or court interpreters will be needed in a year. Mr. Wahl shared that once a year he meets with the Board of Examiners, which includes the Governor, Attorney General, and the State Auditor. Mr. Wahl shared when courts overspend that account he has to explain how much was spent, the Board of Examiners have to authorize payment for the overspent amount, and then the legislature has to fund that money to the courts. Mr. Wahl shared that for the last eighteen years the legislature has never approved any ongoing money, but rather just one-time approval money to repay the courts for what has already been spent. Mr. Wahl explained that this year the legislature approved ongoing money for the account so that the courts wouldn't have a deficit like this past year. Ms. Dixon asked what the budget was for interpreters specifically. Ms. Mann shared that the account budget is not just for court interpreters, but also for jurors and witnesses.

Judge Schaeffer-Bullock asked how interpreters are provided for jurors since jurors show up in the morning and then the trial begins that day. Ms. Draper explained the potential deaf juror would be responsible for notifying the court in advance an interpreter is needed. Ms. Draper suggested adding to the Summons instructions on if a court interpreter is needed. Mr. Wahl shared the Summons does have information about what to do if an interpreter is needed. Ms. Mann agreed with Mr. Wahl and explained the Court Forms Committee just reviewed the Summons and also made the form bilingual in English and Spanish as well.

(3) Guide on Conditionally-Approved Interpreters

Ms. Mann reminded the committee that at the last meeting the committee voted to develop a guideline on best practices for conditionally-approved interpreters. Ms. Mann explained the layout of the document and that she included the necessary steps to be completed before, during, and after a proceeding with conditionally-approved interpreters. Ms. Mann also explained she decided to include a frequently asked questions section to the document to address common questions on conditionally-approved interpreters from judges and court employees. Ms. Mann shared she plans to include this document in the manual she is developing for Interpreter Coordinators and for the court interpreters section of the handbooks for Presiding Judges, TCEs, and Clerks of Court.

Mr. Kunej asked how often conditionally-approved interpreters are used for court proceedings. Ms. Mann shared it really depends on the language, as for Spanish it never happens but for Burmese, the only interpreters within the state are all conditionally-approved. Mr. Kunej asked if conditionally-approved interpreters are used rarely overall. Ms. Mann explained she believes conditionally-approved interpreters are used more frequently than the committee knows about. Mr. McUne shared conditionally-approved interpreters are probably used more than expected outside of the Wasatch Front. Ms. Mann agreed that providing certified interpreters in the more rural areas of the state is a struggle for the courts.

Judge Schaeffer-Bullock asked about the possibility of video interpreting for the rural areas of the state, even for common languages since most interpreters are located in the Wasatch Front. Ms. Mann explained it is called video remote interpreting, or VRI for short, and that Matheson has two rooms dedicated to video remote interpreting. Ms. Mann also informed the committee that VRI is a national conversation all states are having at the moment and that the National Center for State Courts has an on-going VRI project. Judge Schaeffer-Bullock advised that Justice Courts need to know about the possibility of using interpreters by VRI at Matheson as she believes more courts would be using this technology if they knew it existed. Ms. Mann cautioned that arrangements have would still have to be

made so that an interpreter is present to interpret remotely, so VRI wouldn't solve the problem of courts not knowing a party needs an interpreter until the party is in court. Judge Schaeffer-Bullock questioned if an interpreter couldn't be available "on-call" to interpret by VRI for last minute requests from judges, as this is an issue happening throughout the state. Mr. Wahl asked if everyone is aware that special equipment is needed for VRI. Judge Schaeffer-Bullock shared she thought every court has to have the necessary equipment already in order to remote access the jails and asked if video remote interpreters would use the same system. Ms. Mann advised that she believes the access that is required for remote access to jails is more secure than the program used for VRI, and she believes a different program is used for VRI in Matheson. Mr. Wahl said it could be explored but just wants everyone to be aware special equipment is needed. Judge Schaeffer-Bullock suggested researching the statistics to see if VRI would be a viable option for courts. Monica Greene advised she used VRI when she was with a client in jail and that the technology worked but it wasn't as easy to communicate with her client or with the interpreter through the technology. Ms. Greene advised VRI would be great for a new court date but not for access to the courts. Judge Schaeffer-Bullock clarified she sees VRI as being useful for the initial hearing, not for longer hearings or trials. Ms. Mann advised Language Line could always be used to inform the defendant that the hearing is being rescheduled so that an interpreter can be present. Ms. Mann shared she understood Judge Schaeffer-Bullock's position, but that there are multiple components that need to be considered. Ms. Draper shared hospitals frequently use iPads for video remote interpreting, but that it's not the preferred method by patients. Mr. Kunej shared one national vendor for VRI leads to a lot of issues, and that VRI has been a national topic for a while. Mr. McUne asked what our court system could do with the technology we already have, rather than waiting for the national conversation to come up with the solution. Judge Schaeffer-Bullock shared Vidyo is being used now and allows for multiple parties to be connected at once. Ms. Mann advised she would look into the systems currently in place to see what options are available to address some of the needs for an interpreter.

Ms. Draper asked if there are any questions on the guidelines. Mr. McUne questioned if the word "elder" should be used under frequently asked questions since that term has a different meaning in different cultures, including in Utah. Ms. Mann shared she was trying to use "elder" as an example of someone from the community who speaks the language, but that she would change the word to clear up any confusion. Ms. Greene asked if the use of family members as interpreters should be addressed in the frequently asked questions section. Ms. Mann agreed family members should not be used and she would include that information in the last section.

(4) Standing Order of Appointment for Conditionally-Approved Interpreters.

Ms. Mann reminded the committee that at the last meeting the idea to develop a standing order for conditionally-approved interpreters was introduced. The judge would fill out the form instead of making the requisite findings verbally on the record and it would be filed in the case file. Ms. Mann advised that she had Keisa Williams, Associate General Counsel review the form, and shared that Ms. Williams thought the form was a good idea and that she approved the form. Ms. Mann shared she included the requisite findings under the court rules in the form, along with the background check requirement. Ms. Mann explained there was a section for the interpreter's name and the name of the court patron who the interpreter will be appointed to assist. Judge Schaeffer-Bullock suggested reformatting the form because the judge's signature block is alone on a separate page. Mr. McUne suggested naming the interpreter once, and then in the second paragraph referencing "the above-named interpreter". Ms. Mann advised the information should stay the same but that the look of the form could change because of the court forms process. Lynn Wiseman suggested simplifying "name of

requester” to “requester”. Megan Haney moved to approve the form with the suggested changes. Ms. Wiseman seconded the motion. The motion carried unanimously.

(5) Rule Drafts.

Ms. Mann asked the committee to table the discussion until the next meeting so that the committee could review all proposed changes at once, rather than separately. Ms. Haney asked if there was a record of all previously approved changes that the committee could review, rather than the committee debating a proposed change again. Ms. Mann shared she would create a document based on past committee minutes on the committee approved changes to the court rules. The committee agreed to table the discussion until the next meeting.

(6) Other Business.

There being no further business, the meeting adjourned at 1:14 pm.

Tab 2

Confidential

Tab 3

Past Committee Decisions Regarding CJA Rules 3-306.01-.05

CJA Rule 3-306.01-

- Committee voted to create a definitions section for terms, including, “staff interpreter” and “court interpreters” to add more clarity. (1.20.17 meeting)
- Committee voted to include new definitions, with a change to better clarify “court interpreter”. (3.17.17 meeting)
- Committee discussed the term “staff interpreter” and made no changes to the definition. (3.17.17 meeting)
- Committee discussed “normal conversation” and made no changes. (3.17.17 meeting)
- Committee discussed “referee” and decided to review at the next meeting. (3.17.17 meeting)
- Committee discussed the process probation officers should use to utilize an interpreter and if they should be included in the term “appointing authority”. (5.19.17 meeting)
- Committee voted to approve the rule draft changes. (11.17.17)

CJA Rule 3-306.02-

- Committee discussed if the committee would have the authority to discipline staff interpreters. (11.17.17 meeting)

CJA Rule 3-306.03-

- Committee discussed the proposed addition “Court interpreters listed on the statewide roster are not employees of the court and are not entitled to appointments for legal proceedings. Interpretation appointments are a privilege, not a right. Interpreter appointments made in compliance with these rules are within the sole discretion of the administrative office of the courts.” (11.17.17 meeting)
- Committee voted to approve the proposed addition with the removal of the second sentence. “Court interpreters listed on the statewide roster are not employees of the court and are not entitled to appointments for legal proceedings. Interpreter appointments made in compliance with these rules are within the sole discretion of the administrative office of the courts.” (11.17.17 meeting)

CJA Rule 3-306.04-

- Committee discussed court employees who receive the second language stipend should not allowed to interpret a proceeding under any circumstance (11.18.16 meeting)
- Committee discussed changes to 3-306.04(1)(F) and (2)(A) on court employees who receive the second language stipends. (11.18.16)

- Committee voted to clarify the role of a second language stipend employee. (11.18.16 meeting)
- Committee voted to combine original sections (2)(C) and (1)(G) on court employees as interpreters. (1.20.17 meeting)
- Committee voted to allow court employees to interpret during a legal proceeding if the employee speaks a very rare language. (3.17.17 meeting)

CJA Rule 3-306.05-

- Committee did not review CJA Rule 3-306.05 according to the official minutes, dating back to 2015.

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
18 the Council 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 a certified, approved, registered or conditionally-approved
34 interpreter authorized to interpret during judicial proceedings.

35
36 (8) “Staff interpreter” means a certified court interpreter employed by the Utah Court System
37 solely for the purpose of providing interpretation and translation services.

38
39 (9) “Direct verbal exchange” means a normal conversation between a person with limited
40 English proficiency and a court interpreter or court employee receiving a stipend pursuant to
41 these rules.

42
43 (10) “Employee” means an individual employed by the Utah Court System in any capacity other
44 than as a staff interpreter.
45

46 ~~(7)~~(11) “Legal proceeding” means a ~~proceeding~~ specific case or calendar conducted before the
 47 appointing authority, court-annexed mediation, communication with court staff in court, and
 48 participation in mandatory court programs. Legal proceeding does not include communication
 49 outside the court unless ~~permitted by~~ ordered by the appointing authority.

50
 51 ~~(8)~~(12) “Limited English proficiency” means the inability to understand or communicate in
 52 English at the level of comprehension and expression needed to participate effectively in legal
 53 proceedings.

54
 55 ~~(9)~~(13) “Registered interpreter” means a person who interprets in a language in which testing is
 56 not available and who has fulfilled the requirements established in ~~paragraph (3)~~ CJA Rule 3-
 57 306.03, other than paragraph ~~(3)(A)(vi)~~ (1)(F).

58
 59 ~~(10)~~(14) “Testing” ~~means using~~ is conducted by an organization approved by the committee that
 60 uses 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. Interpreter appointments made in compliance
142 with these rules are within the sole discretion of the administrative office of the courts.
143

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

146 **Intent:**
147

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

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

156 **Applicability:**
157

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

162 **Statement of the Rule:**
163

164 (1) Appointment.
165

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

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

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

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

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

185
186 (1)(D)(ii) appointment of the prospective interpreter does not present a real or
187 perceived conflict of interest or appearance of bias; and

188
189 (1)(D)(iii) a certified, approved, or registered interpreter is not reasonably
190 available or the gravity of the legal proceeding and the potential consequence to
191 the person are so minor that delays in obtaining a certified or approved interpreter
192 are not justified.

193
194 (1)(E) The appointing authority may appoint an interpreter with certified or approved or
195 equivalent credentials from another state if the appointing authority finds that the
196 approved, registered or conditionally approved interpreters who are reasonably available
197 do not have the language skills, knowledge of interpreting techniques, or familiarity with
198 interpreting sufficient to interpret the legal proceeding. The appointing authority may
199 consider the totality of the circumstances, including the complexity or gravity of the legal
200 proceeding, the potential consequences to the person of limited English proficiency, and
201 any other relevant factor.

202
203 (1)(G)(F) The appointing authority will appoint one interpreter for all participants with
204 limited English proficiency, unless the judge determines that the participants have
205 adverse interests, or that due process, confidentiality, the length of the legal proceeding or
206 other circumstances require that there be additional interpreters.

207
208 (1)(G) Court employees may not interpret during legal proceedings, unless they meet the
209 requirements otherwise defined for conditionally-approved interpreters, by complying
210 with the requirements under paragraph (1)(D), and providing notice to Human Resources
211 and the Language Access Program Coordinator. The employee will be paid the wage and
212 benefits of the employee's grade and not the fee established by this rule.

213
214 (1)(F)(H) ~~No Court interpreters~~ is are not required needed for a direct verbal exchanges
215 between a the person and a court staff employee if:

216
217 (1)(H)(i) the a court staff employee can fluently speak the language understood by
218 the person,

219
220 (1)(H)(ii) the court employee has passed the Oral Language Proficiency Interview
221 in that language, and

222
223 (1)(H)(iii) the state court employee is acting within the guidelines established in
224 the Human Resources Policies and Procedure, Section 5, Personal Conduct,
225 Second Language Stipend 570.

226

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

232
233

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

236

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

246

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

254

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

260

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

266

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

270

271 (6) Payment.

272

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

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

286 (7) Fees.

287
288 (7)(A) Every three years, the Judicial Council shall review a market survey conducted by
289 the Language Access Program ~~Coordinator~~^{Manager} and shall set the fees and expenses to
290 be paid to court interpreters during the following three fiscal years by the courts of
291 record. Payment of fees and expenses shall be made in accordance with the Courts
292 Accounting Manual.
293

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

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

298
299 **Intent:**

300 To outline the procedures for interpreter removal and discipline.
301
302

303 **Applicability:**

304
305 This rule shall apply to the Language Access Program ~~Manager, the Language Access Program~~
306 ~~Coordinator, the Language Access Committee, interpreter~~
307 ~~coordinators, and contract~~ court interpreters, and staff interpreters.
308

309 **Statement of the Rule:**

310
311 (1) Removal from legal proceeding. The appointing authority may remove an interpreter from
312 the legal proceeding for failing to appear as scheduled, for inability to interpret adequately,
313 including a self-reported inability, for unprofessional behavior, for a violation of these rules or
314 the Code of Professional Responsibility, and for other just cause.
315

316 (2) Discipline for court interpreters.

317
318 (2)(A) A court interpreter may be disciplined for:

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

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

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

345
346 (4) Filing of formal complaints.

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

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

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

364

365 (5) Investigation by program coordinator.

366

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

371

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

375

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

380

381 (6) Language Access Discipline Subcommittee.

382

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

386

387 (6)(B) The subcommittee members shall be appointed by the chair of the Language
388 Access Committee and shall meet as necessary to resolve formal complaints against court
389 interpreters pursuant to this rule. The chair shall assign one of the panel members to chair the
390 subcommittee. The chair of the subcommittee is responsible for sending the notices required
391 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 court 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 court interpreter shall answer the complaint within
398 30 calendar days after the date the complaint is mailed or the allegations in the complaint
399 will be deemed to be true and correct. The answer shall admit, deny or further explain
400 each 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 court interpreter shall remain on
404 the 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,
417 the court 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 court interpreter, and the complainant, in writing, of its decision
422 and the findings of fact supporting it. The subcommittee may discipline the court
423 interpreter as provided under paragraph (2)(B), including permanently removing the court
424 interpreter’s credentials. ~~When the investigation of the formal complaint is complete, the~~
425 ~~program 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 court interpreter shall, in writing, either accept the discipline by consent or ~~request a~~
429 ~~hearing by a panel of the Language Access Committee~~ appeal the decision to the
430 Language Access Committee by sending a written request to chair of the subcommittee.
431 If the 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,
433 the court interpreter will be deemed to have stipulated to the ~~proposed~~
434 ~~resolution decision~~.
435

436 ~~(6)(7)~~ Subcommittee Hearings by panel.
437

438 ~~(6)(7)(A) The program coordinator shall notify the chair of the Language Access~~
439 ~~Committee if the interpreter requests a hearing by a panel. The chair of the Language~~
440 ~~Access Committee shall assign three members of the Committee, including one~~
441 ~~interpreter, to serve on the panel for the hearing, and shall assign one of the panel~~
442 ~~members to chair the hearing. The chair of the panel is responsible for sending notice to~~
443 ~~the interpreter, the complainant and the program coordinator.~~
444

445 ~~(6)(B)~~ If the Discipline Subcommittee chooses to hold a hearing, ~~The hearing before the~~
446 ~~panel~~ is private and closed to the public. The hearing shall be recorded. The hearing is
447 informal and is not governed by the Rules of Civil Procedure and the Rules of Evidence.
448 The court interpreter, the complainant, and the program coordinator may attend the
449 hearing. The court interpreter and the program coordinator may each bring counsel to the
450 hearing. The chair may limit others in attendance to those persons reasonably necessary
451 to the proceedings. The program coordinator and the court interpreter may submit
452 exhibits and call witnesses. ~~Panel Subcommittee~~ members and staff may not disclose or
453 discuss information or materials outside of the meeting except with others who
454 participated in the meeting or with a member of the ~~panel~~ subcommittee.
455

456 ~~(6)(C)~~ (7)(B) If any party fails to appear, the ~~panel~~ subcommittee may proceed on the
457 evidence before it. If the complainant, or the complainant's counsel, fails to appear,
458 the ~~panel~~ subcommittee may dismiss the Formal Complaint.
459

460 ~~(6)(D)~~ The ~~panel~~ shall determine by a majority whether there is a preponderance of
461 evidence of the alleged conduct or omission, and whether the alleged conduct or omission
462 violates this rule or the Code of Professional Responsibility. ~~Within 30 days, the panel~~
463 ~~chair will inform the program coordinator, the interpreter, and the complainant, in~~
464 ~~writing, of its decision and the findings of fact supporting it. The panel may discipline the~~
465 ~~interpreter as provided under paragraph (2)(B), including permanently removing the~~
466 ~~interpreter's credentials.~~
467

468 ~~(6)(E)~~ The interpreter may appeal the decision to the Language Access Committee by
469 sending a written request to the program coordinator within 15 days of the date of the
470 panel's decision.
471

472 ~~(7)~~(8) Appeal hearing before the Language Access Committee.
473

474 ~~(7)~~(8)(A) The committee chair and at least one interpreter member shall attend the
475 hearing before the Language Access Committee. If a committee member is the
476 complainant or the interpreter, the committee member is recused. Members of
477 the ~~panel~~subcommittee are also recused. The program coordinator shall mail notice of the
478 date, time and place of the hearing to the court interpreter and the complainant. At least
479 6 business days before the hearing, the court interpreter and program coordinator may
480 submit briefs and exhibits, which the committee shall review. The information the
481 committee may consider is limited to information presented to the ~~panel~~ subcommittee.
482 The hearing is closed to the public. Committee members and staff may not disclose or
483 discuss information or materials outside of the meeting except with others who
484 participated in the meeting or with a member of the Committee. The committee may
485 review records and interview the court interpreter, the complainant and witnesses. A
486 record of the proceedings shall be maintained but is not public.
487

488 ~~(7)~~(8)(B) The committee shall decide whether the ~~panel~~ subcommittee abused its
489 discretion in making its decision. If the committee determines
490 the ~~panel~~ subcommittee abused its discretion, the committee may dismiss the Formal
491 Complaint or discipline the court interpreter differently as appropriate. If the committee
492 determines that the ~~panel~~ subcommittee did not abuse its discretion, the court interpreter
493 shall be disciplined according to the ~~panel's~~ subcommittee's decision. The chair of the
494 committee, or the chair's designee, shall issue a written decision ~~and analysis~~ on behalf of
495 the committee within 30 calendar days after the hearing. The program coordinator shall
496 mail a copy of the decision to the court interpreter. The committee's decision is final.
497

498 ~~(7)~~(8)(C) The court interpreter may review and, upon payment of the required fee, obtain
499 a copy of any records to be used by the committee. The court interpreter may attend all of
500 the hearing except the committee's deliberations. The court interpreter may be
501 represented by counsel and shall be permitted to make a statement, ~~call and interview the~~

502 ~~complainant and witnesses~~, and comment on the claims and evidence.
503 The court interpreter may obtain a copy of the record of the hearing upon payment of the
504 required fee.

505
506 ~~(8)~~ (9) If the court interpreter is certified in Utah under CJA Rule 3-306.03~~(12)~~, the program
507 coordinator, ~~panel~~ subcommittee or committee may report any final findings and sanction to
508 other agencies and certification authorities in other jurisdictions.

509

510 (10) Discipline for staff interpreters

511

512 (10)(A) Any person may file a formal complaint against a staff interpreter about a matter
513 for which an interpreter can be disciplined. A party, witness, victim or person who will be
514 bound by a legal proceeding, may file a formal complaint about the misapplication of this
515 rule.

516

517 (10)(B) Any formal complaint filed against a staff interpreter about a matter for which an
518 interpreter can be disciplined will be handled solely by Utah State Courts Human
519 Resources.

520

521 (10)(C) A formal complaint against a staff interpreter shall be filed with the Utah State
522 Courts Human Resources or the Language Access Program Coordinator. Any formal
523 complaint filed with the Language Access Program Coordinator will be given directly to
524 Utah State Courts Human Resources.

525

526 (10)(D) Staff interpreters shall be disciplined in accordance with Utah State Courts
527 Human Resources Policies and Procedures.

528

529 Effective ~~May 1, 2016~~