

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

September 21, 2018

**Members Present**

Amine El Fajri  
Monica Greene  
Megan Haney  
Chris Kunej  
Randall McUne  
Russ Pearson  
Judge Kelly Schaeffer-Bullock  
Lynn Wiseman

**Members Excused**

Judge Su Chon  
Michelle Draper - Chair  
Mary Kaye Dixon  
Judge Mike Leavitt

**Staff**

Kara Mann

**(1) Welcome.**

Randall McUne welcomed the committee to the meeting and shared the committee chair was not able to attend the meeting. Mr. McUne then addressed the May 18, 2018 minutes. Mr. McUne suggested correcting the minutes under item 2, to clarify the wait time for employees who do not pass the required assessment for the second language stipend was changed from six months to three months, and one year to six months. With the suggested change, Judge Kelly Schaeffer-Bullock moved to approve the minutes. Russ Pearson seconded the motion. The motion carried unanimously.

**(2) New Committee Member Update.**

Ms. Mann shared Yadira Call was appointed by the Judicial Council to the committee. Ms. Mann reminded everyone that Yadira will be on the committee as a certified court interpreter.

**(3) ASL Video Equipment Update.**

Ms. Mann reminded the committee that §78B-1-211 allows for ASL interpreting to be captured by video and made part of the official court record. Ms. Mann said the selected video equipment was recommended to the AOC by the committee's ASL subcommittee comprised of committee chair Michelle Draper, CDI interpreter Trent Marsh, court approved ASL interpreter Jennifer Storrer, AOC IT employee Jymn Edwards, and herself. Ms. Mann informed the committee that the AOC had purchased the video equipment for 14 courthouse locations throughout the state, which was more than the four locations the committee recommended. Ms. Mann showed the committee the equipment that would be in each ASL kit, with each kit including two GoPro cameras, two extra batteries, two power cords, and a second bag for the two tripods. Ms. Mann shared that each of the selected locations to receive an ASL kit are Brigham City, Farmington, Fillmore, Logan, Matheson, Ogden, Ogden Juvenile, Orem,

Price, Provo, Richfield, St. George, Vernal, and West Jordan. Ms. Mann advised she is working on instructions that will be included in the kits for the equipment.

Judge Schaeffer-Bullock asked if Justice Courts will be able to borrow the equipment from one of the locations to use in the local justice court if the ASL kit isn't being used in the district or juvenile court. Ms. Mann advised that she would look into if that is an option. Lynn Wiseman asked how the video that's recorded will be made part of the official record. Ms. Mann shared that it will have to be uploaded onto a desktop and then IT will need to be contacted to move the file to the court record. Ms. Mann said the instructions will also include what needs to be completed after the hearing for that process. Russ Pearson asked when the districts can expect to receive the equipment. Ms. Mann shared she was optimistically hoping to have the equipment rolled out in a month to six weeks. Judge Schaeffer-Bullock asked who would be responsible for the equipment at each location. Ms. Mann advised the district's interpreter coordinator would be responsible for the locations where the coordinators work. For all other locations, she expects TCEs to decide who should be responsible. Judge Schaeffer-Bullock asked who the courts contact if there is an issue with the equipment or if something needs to be replaced. Ms. Mann advised most likely she would be the main contact.

#### **(4) English Written Exam Policy.**

Ms. Mann shared the English Written Exam is offered four times a year, every three months, and it is one of the first requirements to become a court interpreter. However, there is not a formal policy regarding a waiting period or the number of attempts allowed for potential interpreters. Ms. Mann shared there are candidates who sign up to take the exam every time that it is offered but who cannot pass the exam. Ms. Mann reviewed the meeting materials on other states' English Written Exam policy, as well as National Center for State Courts' recommendation. Ms. Mann asked the committee to consider creating a policy on a mandatory waiting period or a limit on the number of attempts allowed for the exam.

Judge Schaeffer-Bullock asked if the states listed are the only states with a policy for the exam. Ms. Mann explained those listed are the states who responded to the question regarding their policy on the English Written Exam, so states not listed may or may not have a policy in place. Judge Schaeffer-Bullock asked how often the exam is offered. Ms. Mann shared it is offered four times a year, every three months, in locations throughout the state. Mr. McUne asked if states offer other exams or if it is the same exam in every state. Ms. Mann shared the exam has two versions, but each state is offering the same two versions of the exam. Judge Schaeffer-Bullock asked if the exam results from another state would be accepted in Utah. Ms. Mann said that since there isn't a policy, the scores would be accepted if the candidate lived in Utah and the scores are less than two years old as the Language Access Program does not have a policy barring accepting scores from other states. Amine El Fajri asked if the English Written Exam should only be offered twice a year, around the time when orientation is offered. Monica Greene stated she's concerned offering the exam just twice a year would limit rare language interpreters. Judge Schaeffer-Bullock asked what the real concern is if a candidate chooses to re-test every time the exam is offered, and asked if the concern is the cost. Ms. Mann explained that Utah signs a Memorandum of Understanding with NCSC, and the state pays a fee to NCSC that would not change regardless of how many times the exam is offered. Ms. Mann also explained that the exam is offered in eight locations throughout the state, and the interpreter coordinators, who are court employees, proctor the exams. Mr. McUne asked why NCSC recommends a six-month waiting period then if it's not a cost issue.

Ms. Mann stated that she believes NCSC's concern is with candidates becoming too familiar with the exams if there isn't a mandatory waiting period. Mr. Pearson asked if offering the exam less times in a year would create an issue in having enough space for test candidates. Ms. Mann stated that having enough space at exam time could be an issue, especially at the locations where there are a higher number of test candidates. Ms. Mann expressed that she believes having the exam offered only twice a year would cause delays for candidates who don't have an issue in passing the exam as they would have to wait longer. Mr. McUne suggested limiting the number of attempts allowed. Ms. Greene said she would not want to limit the total amount of attempts allowed in a lifetime, but rather the attempts allowed in a yearly cycle.

Mr. McUne motioned for an official policy to be drafted, which allows candidates two attempts at the English Written Exam in a one year cycle, with any requests to allow more than two attempts to be considered by the committee. Lynn Wiseman seconded, and the motion carried unanimously.

#### **(5) Review of Utah Code 78B-1-146(3)**

Ms. Mann next discussed §78B-1-146(3), and how the code allows for judges to assess interpreting fees to court patrons. Ms. Mann shared that interpreter costs have been assessed in at least three cases that she knows of. Mr. McUne asked if the fees are assessed in cases where it becomes apparent that the court patron does not need an interpreter. Ms. Mann said with one case there was a need for an interpreter, but the case settle right before trial. Mr. McUne said it's similar to cases where defendants are assessed the jury fees due to a last minute plea deal. Mr. El Fajri shared that he discussed the statute with other court interpreters who agreed it against Department of Justice regulation. Mr. El Fajri said the cost of court interpreters is a cost of doing business for Utah State Courts, and those costs should not trickle down to the court patron. Judge Schaeffer-Bullock stated costs could be assessed for the nonuse of the interpreter. Chris Kunej asked if the assessing the fees to the court patron isn't a punishment for needing an interpreter. Ms. Greene said that the DOJ explicitly says that if a state is going to accept federal money then interpreters cannot be charged to the court patron.

Mr. McUne noted the committee does not have the authority to change state statute; the committee could at most recommend changes to court rules. Mr. McUne further said Federal Registry 50123 states recipients should "generally" offer interpreters free of cost, not that recipients must. Ms. Mann pointed out that the Federal Registry also states that's "particularly true" for courts. Mr. McUne said the Federal Registry says should not, not shall not, which can be a legal argument. Mr. McUne suggested changing the court rules to clarify the particular situations when interpreter costs could be assessed to the court patrons. Ms. Greene pointed out that in the letter the Assistant Attorney General sent out it was clear that court interpreters are a civil rights issue under Title VI. Mr. McUne stated though that the committee does not have the authority to change the statute. Ms. Mann shared the legal department in the AOC advised the first step is to bring the statute to the Language Access Committee's attention, and for the committee to consider the issue and make a recommendation. Mr. Kunej noted that other states have had DOJ investigations because of court interpreters, including Colorado. Judge Schaeffer-Bullock advised that even with the letter from the DOJ, there is nothing prohibiting a non-usage interpreter costs to be imposed. Judge Schaeffer-Bullock clarified if the fees assessed are only for an unused interpreter, then the cost of what the DOJ calls "meaningful interpretation" isn't being assessed to the individual. Judge Schaeffer-Bullock said it is best practices, especially for courts, to not charge for interpreting services, but there isn't anything explicitly prohibiting courts from doing so. Ms. Greene advised the statute is still in violation as it allows assessing the fee in all scenarios, not just for the non-usage of an interpreter.

Mr. McUne expressed the committee should not make a specific recommendation as to what the final language should be. Mr. McUne suggested sending the statute to the AOC legislative liaison stating the committee believes the current language of this statute may contradict DOJ requirements. Judge Schaeffer-Bullock suggested a carefully worded statement requesting the statute be examined, as well as trainings for judges on why interpreter costs should not be assessed even though the statute currently allows it. Mr. Kunej suggested an official memo be sent out. Mr. McUne agreed a memo could be a stopgap until the statute is examined by the legislature. Mr. McUne expressed if the legislature does not address the statute, then the committee could create a court rule defining when a judge can assess the costs. Mr. Pearson suggested having the statute included the AOC cleanup bill.

Ms. Greene motioned for the committee to recommend the AOC review the statutory language to ensure it does not contradict Department of Justice requirements and to take any necessary corrective actions. Mr. McUne seconded the motion, and the motion passed unanimously.

**(6) Conditionally Approved Interpreter Order Form.**

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

**(7) 2019 Meeting Dates.**

Ms. Mann discussed the 2019 meeting dates with the committee. Ms. Mann asked if the July meeting could be scheduled a week earlier to avoid having the meeting the Friday before Pioneer Day. Mr. McUne suggested emailing the committee to see if moving the meeting would be an issue.

**(6) Other Business.**

There being no further business, the meeting adjourned at 1:48 pm.