

Agenda
Language Access Committee Meeting
 March 19, 2021
 12:00 – 2:00 p.m.

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

12:00	Welcome New Member, Discussion, and Approval of Minutes	Discussion/ Action	Tab 1	Judge Leavitt
12:05	Proposed Court Rule on Recorded Evidence <ul style="list-style-type: none"> • Past memo on recorded evidence 	Discussion/ Action	Tab 2 Tab 3	Kara Mann
12:35	Translation Memo	Discussion/ Action	Tab 4	Kara Mann
1:00	Reauthorization Memo	Discussion/ Action	Tab 5	Kara Mann
1:20	2020 Committee Report	Discussion/ Action	Tab 6	Kara Mann
1:40	Continuing Education <ul style="list-style-type: none"> • Gap in knowledge of courses approved for credit 	Discussion/ Action		Kara Mann
2:00	Adjourn			Judge Leavitt

2021 Meeting Schedule:

- May 21, 2021
- July 9, 2021
- September 17, 2021
- November 19, 2021

Tab 1

Language Access Committee
Videoconference Webex

January 15, 2021

Draft

Members Present

Evangelina Burrows
Yadira Call
Rory Jones
Judge Michael Leavitt
Russ Pearson
Judge Kelly Schaeffer-Bullock
Judge Michael Westfall
Lynn Wiseman- Chair

Members Excused

Amine El Fajri

Guests

Jonathan Puente

Staff

Kara Mann

(1) Welcome

Lynn Wiseman welcomed committee members to the meeting. Ms. Wiseman addressed the September 18, 2020 minutes. Judge Michael Leavitt moved to approve the minutes. Rory Jones seconded the motion. The motion carried unanimously.

(2) Introduction- Director of the Office of Fairness and Accountability

Kara Mann introduced Jonathan Puente, the new Director of the Office of Fairness and Accountability. Mr. Puente explained his new role with Utah State Courts is to shrink the access to justice gap and expressed that he looked forward to working with the committee.

(3) Updates and News

Ms. Mann provided information to the committee on the Interpreter Credentialing Subcommittee. Ms. Mann shared the subcommittee approved of a workaround solution to offering interpreter testing and training requirements remotely online, except for two exams. Ms. Mann advised she had received an exemption to offer the English Written Exam and the Oral Proficiency Exam in-person, as required by the National Center for State Courts, from the Management Committee.

(4) ASL Committee Vacancy

Ms. Mann shared she had again emailed the ASL court approved interpreters to see if anyone had an interest in serving on the committee for the vacant position. Ms. Mann advised that Chip Royce expressed an interest in serving on the committee.

Russ Pearson motioned to nominate Chip Royce to serve on the Language Access Committee to the Management Committee. Ms. Wiseman seconded and the motion passed unanimously.

(5) Committee Chair Nominations

Ms. Mann shared that the current chair of the committee, Ms. Wiseman, would be retiring before the committee's next meeting. Ms. Mann shared a document on Webex that outlined each committee member's end date and if they could serve a second term.

Judge Michael Westfall motioned to nominate Judge Leavitt for a one year appointment as chair of the committee. Judge Kelly Schaeffer-Bullock seconded. Judge Leavitt accepted the nomination and the motion carried unanimously.

(6) Proposed Reciprocity Rule

Ms. Mann reminded the committee that there was a question on if approved interpreters should be included in the reciprocity rule. Ms. Mann shared she looked at the history of the reciprocity policy, and it included approved interpreters dating back to at least January 12, 2014, which was the farthest back she could find a record of the policy. Ms. Mann shared she researched other states and found no evidence of a state offering reciprocity for any credentialing other than for certified interpreters.

After discussion, Judge Leavitt motioned to remove approved interpreters from the reciprocity rule. Judge Westfall pointed out a grammatical issue with the removal of the approved interpreter section from the rule. Judge Leavitt motioned to remove approved interpreters from the rule and to approve grammatical changes to the rule. Judge Westfall seconded the motion. The motion passed unanimously.

(7) Continuing Education Requirement

Ms. Mann reminded the committee that an extension had been granted for the current continuing education reporting period to June 30, 2021 due to the COVID-19 pandemic. Ms. Mann asked the committee if the next reporting period should run July 1, 2021 to December 31, 2022, or if it should be extended from July 1, 2021 to December 31, 2023. Ms. Mann expressed that the reporting period usually coincided with the calendar year, and suggested the next cycle should end on December 31st to get the reporting period back to ending when a calendar year ends.

Yadira Call advised that there were many online opportunities now for certified interpreters to meet the 16 hours of continuing education requirement. Judge Leavitt motioned to have the next reporting period run from July 1, 2021 to December 31, 2022. Judge Schaeffer-Bullock seconded and the motion passed unanimously.

Ms. Call asked if an interpreter had completed their hours for the current reporting period, could any classes they take before June 30, 2021, count towards the next reporting period. Judge Leavitt amended his motion to include that any interpreter who has complete their 16 hours of continuing education can take courses before the current reporting period ends and have it apply towards the next reporting cycle running July 1, 2021 to December 31, 2022. Judge Westfall seconded the motion and the motion passed unanimously.

Ms. Mann asked the committee if there should be a limit on how many hours an interpreter can complete from one company or provider. Ms. Call shared that she will take numerous classes from one instructor if she likes their teaching style and informed the committee that some companies have multiple instructors working for the company offering the classes. After further discussion the committee determined as long as the classes have been approved for continuing education credit, there should not be a limit on how many hours an interpreter takes from one company or provider.

(6) Adjourn

There being no further business, the meeting adjourned at 12:58 p.m.

Tab 2

1 **3-306.07. Interpreting and Translating Recorded Evidence**

2

3 **Intent:**

4 To outline the standards for interpreting and translating recorded evidence in accordance with
5 best practices and the Code of Professional Responsibility for Court Interpreters.

6

7 **Applicability:**

8 This rule applies to legal proceedings in courts of record and not of record and is subject to the
9 requirements in Rule 3-306.04

10

11 **Statement of the Rule:**

12 **(1) Definitions**

13 (1)(A) “Court Interpreters” means a certified, approved, registered, or conditionally approved
14 interpreter provided by Utah courts.

15

16 (1)(B) “Interpret” means to communicate spoken words or sign language orally in a
17 language other than the original language.

18

19 (1)(C) “Recorded Evidence” means evidence submitted to the court in an audio or video file
20 format, including but not limited to videos, dash-cam video, lapel video, belt tapes, wiretaps,
21 and cell phone audio and video recordings.

22

23 (1)(D) “Source Language” means the original language used in a written record or audio or
24 video file.

25

26 (1)(E) “Target Language” means the language into which a written record or audio or video
27 file is transcribed or translated.

28

29 (1)(F) “Transcribe” means creating a written record of an audio or video file in the source
30 language.

31

32 (1)(G) “Transcription” is the written record of an audio or video file transcribed into the
33 source language.

34

35 (1)(H) “Translate” means converting a written record in one language to an equivalent
36 written record in another language.

37

38 **(2) Recordings in English.** The party submitting recorded evidence in the English language
39 shall provide a transcription of the recorded evidence.

40 (2)(A) The court shall have the transcription translated into the target language.

41

42 (2)(A)(i) **Courts of record.** Courts of record shall contact the Language Access Program
43 Coordinator to arrange the translation. The Language Access Program Coordinator shall

44 ensure the translation is conducted by a certified interpreter or a member of the
45 American Translators Association.

46
47 (2)(A)(ii) **Courts not of record.** Courts not of record shall arrange for the translation and
48 ensure the translation is conducted by a certified interpreter or a member of the
49 American Translators Association.

50

51 **(3) Recordings not in English.**

52
53 (3)(A) A party submitting recorded evidence in a language other than English must
54 transcribe the recorded evidence into its source language and provide the court with the
55 transcription in the source language and an English translation of the recorded evidence.

56

57 (3)(B) A party submitting evidence recorded in sign language must interpret the recording
58 into spoken English, transcribe the interpretation, and provide the court with the transcription
59 in English.

60

61 **(4) Review prior to proceeding.**

62 (4)(A) Court interpreters assigned to a given legal proceeding shall inform the judge if they
63 are unable to provide an on-site simultaneous interpretation of recorded evidence due to
64 issues such as the length of the recording, the quality of the recording, the number of
65 speakers in the recording, the technical nature of the recording, or the specialization of
66 vocabulary or content of the recording.

67

68 (4)(B) Whenever possible and in a manner approved by the court, court interpreters shall be
69 afforded the opportunity to review recorded evidence intended to be presented in court
70 outside of the legal proceeding.

71

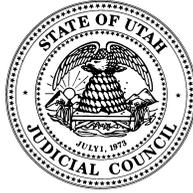
72 **(5) Expert Witnesses.**

73
74 (5)(A) Court interpreters assigned to interpret during a proceeding shall not be called as
75 expert witnesses in that proceeding to evaluate or testify regarding the quality of an
76 interpretation, transcription, or translation of recorded evidence conducted by another
77 interpreter.

78

79 (5)(B) The party contesting an interpretation, transcription, or translation of recorded
80 evidence is responsible for retaining a qualified individual to serve as an expert witness
81 during the proceeding in accordance with Utah Rules of Evidence.

Tab 3



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

March 16, 2021

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Policy and Planning Committee
FROM: Kara Mann, Language Access Program Coordinator
RE: Guidelines for Interpreting Recorded Evidence

As the use of dash-cam video, lapel video, belt tapes, social media, wiretaps, and cell phone audio and video recordings in court proceedings increases, the demand on spoken and sign language interpreters to provide on-the-spot interpretations of these materials has greatly increased. The guidelines herein seek to balance best practices for interpreters, with the challenges a court faces when confronted with recorded materials that require interpretation or translation.

The court should not ask onsite interpreters to provide instantaneous interpretations of audio or video recordings. On-demand interpretation or translation of complex recorded or written materials is often in conflict with recognized best practices and with the Code of Professional Responsibility for Court Interpreters. Best practices are designed to create the greatest degree of accuracy when interpreting and translating court proceedings and documents.

Materials in a Language Other than English

To ensure accuracy, sound and video files that a party intends to use in court should first be transcribed in its source language and then translated to English by the party introducing the recording. Materials presented in sign language require the same steps in the opposite order – they must first be interpreted into spoken English, then the interpretation transcribed into written form.¹ This process must take place prior to presentation of the materials in court. Parties wishing to use the materials are responsible for assuring the materials are properly prepared in English and for paying the cost of such preparation.² In accordance with the National

¹ Onsite Simultaneous Interpretation of a Sound File is Not Recommended, National Association of Judiciary Interpreters and Translators (NAJIT), 2006.

² See CJA 3-306.04

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efficient, and independent system for the advancement of justice under the law.**

Association of Judiciary Interpreters and Translators (NAJIT), the standard unit of measure for transcription and translation of a recording is one hour of work for each one minute of sound.

It is recommended that judges look to the Utah Rules of Evidence to determine whether the offering party should be required to establish its translation witness's expertise in both English and the language other than English, the witness's ability to translate from one to the other, and the witness's attestation to the accuracy of the translation.

Once approved by the parties and ruled admissible by the court, the written English rendition and a copy of the original material should be provided to the assigned court interpreter before the scheduled proceeding, ensuring the interpreter has sufficient time to prepare.

Materials in English

Audio and video files recorded in English that will be played in open court for a case involving a Limited English Proficiency (LEP) or deaf or hard of hearing party should be reviewed prior to the proceeding by the interpreter(s) who will be providing language services for that hearing.

Court interpreters assigned to a given proceeding shall inform the judge if they are unable to provide an on-site interpretation of audio or video recordings. This can be due to:

- Length of material
- Quality of recording
- Number of speakers or signers
- Variety of accents or regional variations
- Sufficiency of contextual information
- Degree of deviation from standard forms of language
- Level of audio or video intrusions and distractions
- Degree of technicality or specialization of vocabulary and content
- Lack of opportunity to request clarification of a word or an ambiguity

The judge should consider the interpreter's opinion and decide whether to proceed with the case. The factors listed above are the types of considerations which should also be taken into account when determining whether brief and/or non-complex material permits on-site interpretation or, if not, establishing a reasonable amount of time necessary for the interpreter to accurately interpret the materials.

Interpreters as Expert Witnesses

Court Interpreters assigned to interpret during a given proceeding shall not be used as expert witnesses to evaluate, during that proceeding, the quality of a previously completed interpretation or translation provided for audio, video or written material originally in a language other than English. The party wishing to question or evaluate the quality of an interpretation or translation for the record shall arrange for a qualified individual to serve as an expert witness during the proceeding in accordance with Utah Rules of Evidence.

Tab 4



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

March 5, 2021

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Court Forms Committee and Stylistics Subcommittee

FROM: The Language Access Program and the Language Access Committee

RE: Considerations for Translating Court Forms

The Court Forms Committee is tasked with identifying which court forms should be translated pursuant to CJA Rule 3-117. Translating court forms is essential to providing access to justice, as a lack of awareness that a right or service exists effectively denies limited English proficiency (LEP) individuals meaningful access to Utah State Courts.

The first step is to identify what court forms are “vital” for providing meaningful access to the LEP populations that the courts serve. The Department of Justice (DOJ) provides the following four factors¹ as guidance when considering meaningful access by LEP persons to critical services.

- (1) The number or proportion of LEP persons eligible to be served
- (2) The frequency with which LEP individuals come in contact
- (3) The nature and importance of the program, activity, or service provided
- (4) The resources available and the costs

Determining if a court form is vital or not can depend upon the importance of the form and the consequences the LEP person would incur if that information is not provided accurately or promptly.

The following four parameters are suggested for the Court Forms Committee to consider as procedures for recommending which forms should be translated into other languages.

I. Prioritizing Court Forms Based on Case Type

¹ See 67 Fed. Reg. 41455, 41463 (June 18, 2002).

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efficient, and independent system for the advancement of justice under the law.

The translation of court forms should be prioritized based on the case types that the forms serve and the forms’ potential effect on parties and their families. Essentially, this can be accomplished by asking the three following questions.

1. What forms are vital to proceedings that affect personal freedom?
2. What forms are vital to proceedings that affect minor children or other vulnerable individuals?
3. What forms are vital to proceedings that affect property or money?

Using those questions above, the following case types have been identified.

Issue / Effect	Relevant Case Types
Personal Freedom	Criminal, Mental Health, and Juvenile Matters
Loss of Immigration Status	Criminal, Protective Orders, Civil, and Juvenile Matters
Loss of Children	Custody, Domestic Relations, and Juvenile Matters
Safety	Protective Orders
Loss of Home, Money, or Property	Landlord/Tenant, Eviction, and Small Claims

Strong considerations should be given to first translating court forms that affect personal freedom or the loss of custody for minor children.

The committee should also consider translating forms for the case types above with a high number of self-represented litigants. According to court data on self-represented litigants, the highest case types involving at least one self-represented party are:

- Debt Collection
- Divorce/Annulment
- Eviction
- Protective Orders

II. Prioritizing Languages for Translations

After deciding which forms should be translated, the DOJ factors should again be used to determine which languages the forms should be translated into. To help facilitate the committee in making that determination, here are the ten most requested spoken languages from Fiscal Year 2020.

Top Requested Languages	Number of Proceedings
Spanish	9,245
Arabic	217
Marshallese	130
Somali	126
Mandarin*	101
Swahili	92
Vietnamese	88
Farsi	76

French	61
Portuguese	55

*The language of Mandarin refers to the oral language, while Chinese refers to the written language.

The DOJ requires Utah State Courts to look not only at who was served by the courts but who potentially could be encountered by the courts through examining other available state data. In looking at available data from the US Census Bureau, which does not include information from the 2020 Census, the top three languages spoken in Utah are English, Spanish, and Portuguese. Additionally, the Utah State Board of Education reports the top languages spoken in the home for pre-K through secondary school for English learners are Arabic, Chinese, Portuguese, Somali, Spanish, and Vietnamese. This data coincides with the courts' data, as all of the languages are within the top ten most requested languages for court interpreters.

The committee should consider the likelihood of the courts encountering these LEP populations, even if the current data from the courts reports a low need for court interpreters in those languages.

III.Costs

Costs should also be considered when determining which identified forms should be translated into other languages. Because the DOJ recognizes that costs will be a factor in translating vital documents, including court forms, they do offer the following safe harbor provisions.

- (1) The DOJ recipients provides translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population eligible to be served or encountered. Translations of other documents can be provided orally if needed; or
- (2) If there are fewer than 50 persons in a language group that reaches the five percent threshold, the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

Based on the four factor analysis, the data in section II, and the safe harbor provisions, the committee should translate identified court forms into Spanish due to the high volume of Spanish speaking court patrons encountered by the courts. The committee should also consider having court forms, specifically court forms that affect personal freedom and the loss of children, available in Arabic, Chinese, Portuguese, Somali, and Vietnamese.

IV.Method of Translation

Lastly, the committee should consider how the translations would be completed. Currently, when the Court Forms Committee requests for a court form to be translated, the Language Access Program has the court staff Spanish interpreters translate the court forms around their in-court interpreting schedules. Translations for all other languages are completed on a contracted basis by either court certified interpreters or translators who are members of the American Translators Association. Because only the occasional court form has been requested in the past, the costs and time required have been minimal.

The Language Access Program alone does not currently have the budget or manpower to translate a large number of court forms, especially if there is a high volume of forms identified for translation. Based on these factors, the current process will not work if there are a large number of court forms that the committee identifies as needing to be translated. This is not to discourage the committee from translating forms, as providing translations of court forms is meaningful access to justice for LEP individuals. But rather, the committee needs to take into consideration that the current process will not be able to support the translation of numerous court forms at once as a factor in the decision making process.

Tab 5



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

March 16, 2021

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Management Committee/ Judicial Council

FROM: Kara J. Mann

RE: Language Access Committee Reauthorization

The Language Access Committee is requesting to be reauthorized as a standing committee for another six years in accordance with CJA Rule 1-205(1)(D). The Language Access Committee provides immense support and work for Utah State Courts. A sampling of the work the committee has completed within the past six years includes:

- Creating and distributing a bench card on spoken language interpreters
- Creating and distributing a bench card on sign language interpreters
- Creating a handbook for Interpreter Coordinators
- Drafting an English Written Exam policy for interpreter candidates
- Recommending the video equipment purchased to capture ASL on the record
- Proposing revisions to Human Resource Policy 570-Second Language Stipend
- Proposing revisions to the Court's Accounting Manual Section 09-00.00
- Proposing revisions to the CJA Rules 3-306.01-.05
- Reviewing the court employee second language stipend scoring requirement
- Completing a survey of second language stipend employees
- Revising the Code of Professional Responsibility for Court Interpreters Exam
- Digitizing interpreter files
- Reviewing 11 formal complaints filed against court interpreters
- Creating and distributing a guide on resuming court operations for court interpreters due to the COVID-19 pandemic
- Determining how the courts can offer interpreter testing and training requirements during the COVID-19 pandemic

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efficient, and independent system for the advancement of justice under the law.**

Utah continues to see exponential population growth, which includes a growing non-English speaking population within the state. This directly impacts the courts, as there will only be an increased demand for court interpreters. Consequently, the need will remain for a committee or other body to review, research, and update Utah State Courts' language access policies and practices.

The Language Access Committee asks to be reauthorized with the committee's focus continuing to be on researching and developing policies and procedures for interpretation in legal proceedings and translation of printed materials, with any necessary recommendation going to the Judicial Council; issuing informal opinions to questions regarding the Code of Professional Responsibility; and disciplining court interpreters as provided by CJA Rule 3-306.05.

Tab 6

Utah Language Access Committee Report to Utah Judicial Council

April 26, 2021

I. Interpreter Usage in Fiscal Year 2020

Court	Number of Proceedings
District Court	5,039
Juvenile Court	3,711
Justice Court	6,173
Total	14,923

District Usage of Interpreters	District Court	Juvenile Court	Justice Court
1 st	243	89	389
2 nd	570	496	801
3 rd	2,084	1,371	3,288
4 th	1,502	1,329	1,196
5 th	508	85	382
6 th	66	178	47
7 th	37	4	57
8 th	29	14	13
Youth Parole Authority		145	

II. Providing Interpreters: FY19 vs FY20

Court	FY 2019	FY 2020	Growth Percentage
District Court	6,273	5,039	-20%
Juvenile Court	4,144	3,711	-10%
Justice Court	7,525	6,173	-18%
Total	17,942	14,923	-17%

*The decrease in growth coincides with the drop in the number of proceedings held in FY20, most likely due to the COVID-19 pandemic. There was a similar -17% decrease in the total proceedings held in FY20.

III. Most Requested Languages in Fiscal Year 2020

Top Requested Languages	
Spanish	9,245
American Sign Language	3,916
Arabic	217
Marshallese	130
Mandarin	101

IV. Interpreter Exam Results

English Written Exam

Date	Number of Candidates	Passed
January 2020	9	4
March 2021	6	TBD

Oral Proficiency Exam

Date	Number of Candidates	Passed
January 2020	7	1
April 2021	4	TBD

V. Interpreters Added to the Roster

Certified interpreters

Language	Number
Spanish	1

Approved interpreters

Language	Number
French	1
Mandarin	1
Spanish	1

Registered interpreters

Language	Number
Cantonese	1

VI. Committee Members

- Judge Michael Leavitt, Fifth District Juvenile Court- Chair
- Yadira Call, Certified Court Interpreter
- Evangelina Burrows, Third District Interpreter Coordinator
- Amine El Fajri, Certified Court Interpreter
- Rory Jones, Chief Probation Officer, Seventh District
- Russell Pearson, Trial Court Executive, Eighth District
- Chip Royce, Court Approved American Sign Language Interpreter
- Judge Kelly Schaeffer-Bullock, Highland Justice Court
- Judge Michael Westfall, Fifth District Court

- Staffed By: Kara Mann, Language Access Program Coordinator, AOC
Jeni Wood, Recording Secretary (when available)

The Committee meets every other month on the third Friday for two hours.

VII. Completed Projects

- Revised the current continuing education reporting cycle for certified interpreters due to the COVID-19 pandemic
- Created and distributed a guide on resuming court operations for court interpreters due to the COVID-19 pandemic
- Determined how the courts can offer interpreter testing and training requirements during the COVID-19 pandemic
- Created a second language stipend assessment survey for court employees
- Compiled a report on the second language stipend for TCEs
- Suggested improvements to the second language stipends for TCEs
- Drafted a proposed rule on reciprocity
- Reviewed and proposed revisions to the Court's Accounting Manual Section 09-00.00

VIII. On-Going Projects

- Updating the Language Access Plan
- Drafting a new court rule to address interpreting recorded evidence
- Revising the court interpreter invoice

IX. Future Projects

- Reviewing the hourly pay for contract interpreters in order to make a recommendation
- Creating a mentoring program for approved interpreters

X. Looking Forward- Challenges

- The backlog of proceedings due to COVID-19 and how that will place a strain on the available interpreter resources for the courts.
- The low number of approved Spanish interpreters who are passing NCSC's Oral Proficiency Exam to become certified court interpreters.
- The pay for interpreters of languages of lesser diffusion. The pay often isn't enough of an incentive for languages that are rarely requested.
- The shortage of CART service providers within Utah. CART services are provided for those who are deaf or hard-of-hearing, but do not know American Sign Language.