

Rule 3-306.01. Language access definitions, in the courts.**Intent:**

~~To define terms used in rules 3-306.01 through 3-306.05.~~

~~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 procedure for certification, 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 terms used in rules 3-306.01 through 3-306.05, 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 and federal statutes.~~

Statement of the Rule:~~(1) Definitions.~~

~~(1)(A)~~ (A) "Appointing authority" means a judge, commissioner, referee or juvenile probation officer, or delegate thereof.

~~(1)(B)~~ (B) "Approved interpreter" means a person who has been rated as "superior" in testing and has fulfilled the requirements established in paragraph (3).

~~(1)(C)~~ (C) "Certified interpreter" means a person who has successfully passed the examination of the Consortium for Language Access in the Courts and has fulfilled the requirements established in paragraph (3).

~~(1)(D)~~ (D) "Committee" means the Language Access Committee established by Rule 1-205.

~~(1)(E)~~ (E) "Conditionally-approved interpreter" means a person who, in the opinion of the appointing authority after evaluating the totality of the circumstances, has language skills, knowledge of interpreting techniques, and familiarity with interpreting sufficient to interpret the legal proceeding. A conditionally approved interpreter shall read and is bound by the Code of Professional Responsibility and shall subscribe the oath or affirmation of a certified interpreter.

~~(1)(F)~~ (F) "Code of Professional Responsibility" means the Code of Professional Responsibility for Court Interpreters set forth in Code of Judicial Administration Appendix H. An interpreter may not be required to act contrary to law or the Code of Professional Responsibility.

~~(1)(G)~~ (G) "Legal proceeding" means a proceeding before the appointing authority, court-annexed mediation, communication with court staff, and participation in mandatory court programs. Legal proceeding does not include communication outside the court unless permitted by the appointing authority.

37 | ~~(18)(H)~~ "Limited English proficiency" means the inability to understand or communicate in English at
38 | the level of comprehension and expression needed to participate effectively in legal proceedings.

39 | ~~(19)(H)~~ "Registered interpreter" means a person who interprets in a language in which testing is not
40 | available and who has fulfilled the requirements established in paragraph (3) other than paragraph
41 | (3)(A)(vi).

42 | ~~(10)(J)~~ "Testing" means using an organization approved by the committee that uses the American
43 | Council on the Teaching of Foreign Languages (ACTFL) scale.

44 | ~~(2) Language Access Committee. The Language Access Committee shall:~~

45 | ~~(2)(A) research, develop and recommend to the Judicial Council policies and procedures for~~
46 | ~~interpretation in legal proceedings and translation of printed materials;~~

47 | ~~(2)(B) issue informal opinions to questions regarding the Code of Professional Responsibility, which is~~
48 | ~~evidence of good faith compliance with the Code; and~~

49 | ~~(2)(C) discipline court interpreters.~~

50 | ~~(3) Application, training, testing, roster.~~

51 | ~~(3)(A) Subject to the availability of funding, and in consultation with the committee, the administrative~~
52 | ~~office of the courts shall establish programs to certify and approve interpreters in English and the non-~~
53 | ~~English languages most frequently needed in the courts. The administrative office shall publish a roster of~~
54 | ~~certified, approved, and registered interpreters. To be certified, approved or registered, an applicant shall:~~

55 | ~~(3)(A)(i) file an application form approved by the administrative office;~~

56 | ~~(3)(A)(ii) pay a fee established by the Judicial Council;~~

57 | ~~(3)(A)(iii) pass a background check;~~

58 | ~~(3)(A)(iv) provide proof that the applicant is a Utah resident;~~

59 | ~~(3)(A)(v) complete training as required by the administrative office;~~

60 | ~~(3)(A)(vi) obtain a passing score on the court interpreter's test(s) as required by the administrative~~
61 | ~~office;~~

62 | ~~(3)(A)(vii) complete 10 hours observing a certified interpreter in a legal proceeding; and~~

63 | ~~(3)(A)(viii) take and subscribe the following oath or affirmation: "I will make a true and impartial~~
64 | ~~interpretation using my best skills and judgment in accordance with the Code of Professional~~
65 | ~~Responsibility."~~

66 | ~~(3)(B) A person who is certified in good standing by the federal courts or by a state having a~~
67 | ~~certification program that is equivalent to the program established under this rule may be certified without~~
68 | ~~complying with paragraphs (3)(A)(v) through (3)(A)(viii) but shall pass an ethics examination and~~
69 | ~~otherwise meet the requirements of this rule.~~

70 | ~~(3)(C) No later than December 31 of each even-numbered calendar year, certified, approved, and~~
71 | ~~registered interpreters shall pass the background check for applicants, and certified interpreters shall~~
72 | ~~complete at least 16 hours of continuing education approved by the administrative office of the courts.~~

73 | ~~(4) Appointment.~~

74 ~~(4)(A) Except as provided in paragraphs (4)(B), (4)(C) and (4)(D), if the appointing authority~~
75 ~~determines that a party, witness, victim or person who will be bound by the legal proceeding has a~~
76 ~~primary language other than English and limited English proficiency, the appointing authority shall appoint~~
77 ~~a certified interpreter in all legal proceedings. A person requesting an interpreter is presumed to be a~~
78 ~~person of limited English proficiency.~~

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

80 ~~(4)(C) A registered interpreter may be appointed if no certified or approved interpreter is reasonably~~
81 ~~available.~~

82 ~~(4)(D) A conditionally approved interpreter may be appointed if the appointing authority, after~~
83 ~~evaluating the totality of the circumstances, finds that:~~

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

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

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

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

98 ~~(4)(F) No interpreter is needed for a direct verbal exchange between the person and court staff if the~~
99 ~~court staff can fluently speak the language understood by the person and the state court employee is~~
100 ~~acting within guidelines established in the Human Resources Policies and Procedures. An approved,~~
101 ~~registered or conditionally approved interpreter may be appointed if the court staff does not speak the~~
102 ~~language understood by the person.~~

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

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

111 ~~(5) Payment.~~

112 ~~(5)(A) The fees and expenses for language access shall be paid by the administrative office of the~~
113 ~~courts in courts of record and by the government that funds the court in courts not of record. The court~~
114 ~~may assess the fees and expenses as costs to a party as otherwise provided by law. (Utah Constitution,~~
115 ~~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-~~
116 ~~146(3), URCP 54(d)(2), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and~~
117 ~~regulations and guidance adopted under that title.)~~

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

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

126 ~~(7) Removal from legal proceeding. The appointing authority may remove an interpreter from the legal~~
127 ~~proceeding for failing to appear as scheduled, for inability to interpret adequately, including a self-reported~~
128 ~~inability, and for other just cause.~~

129 ~~(8) Discipline.~~

130 ~~(8)(A) An interpreter may be disciplined for:~~

131 ~~(8)(A)(i) knowingly making a false interpretation in a legal proceeding;~~

132 ~~(8)(A)(ii) knowingly disclosing confidential or privileged information obtained in a legal proceeding;~~

133 ~~(8)(A)(iii) knowingly failing to follow standards prescribed by law, the Code of Professional~~

134 ~~Responsibility and this rule;~~

135 ~~(8)(A)(iv) failing to pass a background check;~~

136 ~~(8)(A)(v) failing to meet continuing education requirements;~~

137 ~~(8)(A)(vi) conduct or omissions resulting in discipline by another jurisdiction; and~~

138 ~~(8)(A)(vii) failing to appear as scheduled without good cause.~~

139 ~~(8)(B) Discipline may include:~~

140 ~~(8)(B)(i) permanent loss of certified or approved credentials;~~

141 ~~(8)(B)(ii) temporary loss of certified or approved credentials with conditions for reinstatement;~~

142 ~~(8)(B)(iii) suspension from the roster of certified or approved interpreters with conditions for~~
143 ~~reinstatement;~~

144 ~~(8)(B)(iv) prohibition from serving as a conditionally approved interpreter;~~

145 ~~(8)(B)(v) suspension from serving as a conditionally approved interpreter with conditions for~~
146 ~~reinstatement; and~~

147 ~~(8)(B)(vi) reprimand.~~

148 ~~(9) Complaints.~~

149 ~~(9)(A) Any person may file a complaint about a matter for which an interpreter can be disciplined. A~~
150 ~~party, witness, victim or person who will be bound by a legal proceeding, may file a complaint about the~~
151 ~~misapplication of this rule.~~

152 ~~(9)(B) The complaint shall allege an act or omission for which an interpreter can be disciplined or that~~
153 ~~violates this rule. The complaint shall be in writing and signed and filed with the program coordinator. The~~
154 ~~complaint may be in the native language of the complainant, which the AOC shall translate in accordance~~
155 ~~with this rule. The complaint shall describe the circumstances of the act or omission, including the date,~~
156 ~~time, location and nature of the incident and the persons involved.~~

157 ~~(9)(C) The program coordinator may dismiss the complaint if it is plainly frivolous, insufficiently clear,~~
158 ~~or does not allege an act or omission for which an interpreter can be disciplined or that does not violate~~
159 ~~this rule.~~

160 ~~(9)(D) If the complaint alleges that the court did not provide language access as required by this rule,~~
161 ~~the program coordinator shall investigate and recommend corrective actions that are warranted.~~

162 ~~(9)(E) If the complaint alleges an act or omission for which the interpreter can be disciplined, the~~
163 ~~program coordinator shall mail the complaint to the interpreter at the address on file with the~~
164 ~~administrative office of the courts and proceed as follows:~~

165 ~~(9)(E)(i) The interpreter shall answer the complaint within 30 days after the date the complaint is~~
166 ~~mailed or the allegations in the complaint are deemed true and correct. The answer shall admit, deny or~~
167 ~~further explain each allegation in the complaint.~~

168 ~~(9)(E)(ii) The program coordinator may review records and interview the complainant, the interpreter~~
169 ~~and witnesses. After considering all factors, the program coordinator may propose a resolution, which the~~
170 ~~interpreter may stipulate to. The program coordinator may consider aggravating and mitigating~~
171 ~~circumstances such as the severity of the violation, the repeated nature of violations, the potential of the~~
172 ~~violation to harm a person's rights, the interpreter's work record, prior discipline, and the effect on court~~
173 ~~operations.~~

174 ~~(9)(E)(iii) If the complaint is not resolved by stipulation, the program coordinator will notify the~~
175 ~~committee, which shall hold a hearing. The committee chair and at least one interpreter member must~~
176 ~~attend. If a committee member is the complainant or the interpreter, the committee member is recused.~~
177 ~~The program coordinator shall mail notice of the date, time and place of the hearing to the interpreter. The~~
178 ~~hearing is closed to the public. Committee members and staff may not disclose or discuss information or~~
179 ~~materials outside of the meeting except with others who participated in the meeting or with a member of~~
180 ~~the Committee. The committee may review records and interview the interpreter, the complainant and~~
181 ~~witnesses. A record of the proceedings shall be maintained but is not public.~~

182 ~~(9)(E)(iv) The committee shall decide whether there is sufficient evidence of the alleged conduct or~~
183 ~~omission, whether the conduct or omission violates this rule, and the discipline, if any. The chair shall~~

184 ~~issue a written decision on behalf of the committee within 30 days after the hearing. The program~~
185 ~~coordinator shall mail a copy of the decision to the interpreter.~~

186 ~~(9)(E)(v) The interpreter may review and, upon payment of the required fee, obtain a copy of any~~
187 ~~records to be used by the committee. The interpreter may attend all of the hearing except the committee's~~
188 ~~deliberations. The interpreter may be represented by counsel and shall be permitted to make a statement,~~
189 ~~call and interview the complainant and witnesses, and comment on the claims and evidence. The~~
190 ~~interpreter may obtain a copy of the record of the hearing upon payment of the required fee.~~

191 ~~(9)(E)(vi) If the interpreter is certified in Utah under Paragraph (3)(B), the committee shall report the~~
192 ~~findings and sanction to the certification authority in the other jurisdiction.~~

193 ~~(10) Fees.~~

194 ~~(10)(A) In April of each year the Judicial Council shall set the fees and expenses to be paid to~~
195 ~~interpreters during the following fiscal year by the courts of record. Payment of fees and expenses shall~~
196 ~~be made in accordance with the Courts Accounting Manual.~~

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

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

201 ~~(12) Court employees as interpreters. A court employee may not interpret legal proceedings except~~
202 ~~as follows.~~

203 ~~(12)(A) A court may hire an employee interpreter. The employee will be paid the wages and benefits~~
204 ~~of the employee's grade and not the fee established by this rule. If the language is a language for which~~
205 ~~certification in Utah is available, the employee must be a certified interpreter. If the language is a~~
206 ~~language for which certification in Utah is not available, the employee must be an approved interpreter.~~
207 ~~The employee must meet the continuing education requirements of an employee, but at least half of the~~
208 ~~minimum requirement must be in improving interpreting skills. The employee is subject to the discipline~~
209 ~~process for court personnel, but the grounds for discipline include those listed in this rule.~~

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

216 ~~(12)(C) A court may use an employee as a conditionally-approved interpreter under paragraph (4)(C).~~
217 ~~The employee will be paid the wage and benefits of the employee's grade and not the fee established by~~
218 ~~this rule.~~