

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

2 **Intent:**

3 To outline the procedures for interpreter removal and discipline.

4 **Applicability:**

5 This rule shall apply to the Language Access Program Manager, the Language Access Program
 6 Coordinator, the Language Access Committee, interpreter coordinators and contract interpreters.

7 **Statement of the Rule:**

8 (1) Removal from legal proceeding. The appointing authority may remove an interpreter from the legal
 9 proceeding for failing to appear as scheduled, for inability to interpret adequately, including a self-reported
 10 inability, and for other just cause.

11 (2) Discipline.

12 (2)(A) An interpreter may be disciplined for:

13 (2)(A)(i) knowingly making a false interpretation in a legal proceeding;

14 (2)(A)(ii) knowingly disclosing confidential or privileged information obtained in a legal
 15 proceeding;

16 (2)(A)(iii) knowingly failing to follow standards prescribed by law, the Code of Professional
 17 Responsibility and this rule;

18 (2)(A)(iv) failing to pass a background check;

19 (2)(A)(v) failing to meet continuing education requirements;

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

21 (2)(A)(vii) failing to appear as scheduled without good cause;~~;~~

22 (2)(A)(viii) unprofessional behavior toward a client, judge, court staff, court security, or
 23 Language Access Committee member; and

24 (2)(A)(ix) being charged with, or convicted of, a crime.

25 (2)(B) Discipline may include:

26 (2)(B)(i) permanent loss of certified or approved credentials;

27 (2)(B)(ii) temporary loss of certified or approved credentials with conditions for reinstatement;

28 (2)(B)(iii) suspension from the roster of certified or approved interpreters with conditions for
 29 reinstatement;

30 (2)(B)(iv) prohibition from serving as a conditionally approved interpreter;

31 (2)(B)(v) suspension from serving as a conditionally approved interpreter with conditions for
 32 reinstatement; and

33 (2)(B)(vi) reprimand.

34 (3) As long as he or she complies with rule 3-306.04, an interpreter coordinator has the discretion to
 35 decline to assign an interpreter listed on the statewide interpreter roster.

36 ~~(34)~~ Filing of Formal Complaints.

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

40 (4)(B) A formal complaint shall be filed with the Language Access Program Coordinator.
41 However, the Language Access Program Coordinator may file a formal complaint with the Language
42 Access Program Manager, in which case, the program manager will fulfill the program coordinator's
43 responsibilities under this rule.

44 (34)(BC) The complaint shall allege an act or omission for which an interpreter can be disciplined
45 or that violates this rule. The complaint shall be in writing and signed ~~and filed with the program~~
46 ~~coordinator~~. The complaint may be in the native language of the complainant, which the AOC shall
47 translate in accordance with this rule. The complaint shall describe the circumstances of the act or
48 omission, including the date, time, location and nature of the incident, and the persons involved.

49 (5) Investigation by program coordinator.

50 (35)(CA) The program coordinator may dismiss the complaint if it is plainly frivolous, insufficiently
51 clear, or does not allege an act or omission for which an interpreter can be disciplined or that does not
52 violate this rule.

53 (35)(DB) If the complaint alleges that the court did not provide language access as required by
54 this rule, the program coordinator shall investigate and recommend corrective actions that are warranted.

55 (35)(EC) If the complaint alleges an act or omission for which the interpreter can be disciplined,
56 the program coordinator shall mail the complaint to the interpreter at the address on file with the
57 administrative office of the courts and proceed as follows:

58 (35)(EC)(i) The interpreter shall answer the complaint within 30 days after the date the
59 complaint is mailed or the allegations in the complaint ~~are will be~~ deemed to be true and correct. The
60 answer shall admit, deny or further explain each allegation in the complaint.

61 (5)(C)(ii) Unless the program coordinator determines the allegation in the formal complaint to
62 be egregious, the interpreter shall remain on the court interpreter roster until a final decision on discipline
63 has been made.

64 (35)(EC)(iii) The program coordinator may review records and interview the complainant, the
65 interpreter and witnesses. After considering all factors, the program coordinator may propose a
66 resolution, which the interpreter may stipulate to. The program coordinator may consider aggravating and
67 mitigating circumstances such as the severity of the violation, the repeated nature of violations, the
68 potential of the violation to harm a person's rights, the interpreter's work record, prior discipline, and the
69 effect on court operations.

70 (35)(EC)(iv) When the investigation of the formal complaint is complete, the program
71 coordinator shall notify the interpreter, in writing, of the proposed resolution. Within 15 days of the
72 proposed resolution, the interpreter shall, in writing, either accept the discipline by consent or request a
73 hearing by a panel of the Language Access Committee. If the complaint is not resolved by stipulation, the

74 ~~program coordinator will notify the committee, which shall hold a hearing.~~ If the interpreter fails to respond
75 to the program coordinator's proposed resolution, or fails to request a hearing within 15 days, the
76 interpreter will be deemed to have stipulated to the proposed resolution.

77 (6) Hearing by panel.

78 (6)(FA) The program coordinator shall notify the chair of the Language Access Committee if the
79 interpreter requests a hearing by a panel. The chair of the Language Access Committee shall assign
80 three members of the Committee, including one interpreter, to serve on the panel for the hearing, and
81 shall assign one of the panel members to chair the hearing. The chair of the panel is responsible for
82 sending notice to the interpreter, the complainant and the program coordinator.

83 (6)(GB) The hearing before the panel is private and closed to the public. The hearing shall be
84 recorded. The hearing is informal and is not governed by the Rules of Civil Procedure and the Rules of
85 Evidence. The interpreter, the complainant, and the program coordinator may attend the hearing. The
86 interpreter and the program coordinator may each bring counsel to the hearing. The chair may limit others
87 in attendance to those persons reasonably necessary to the proceedings. The program coordinator and
88 the interpreter may submit exhibits and call witnesses. Panel members and staff may not disclose or
89 discuss information or materials outside of the meeting except with others who participated in the meeting
90 or with a member of the panel.

91 (6)(HC) If any party fails to appear, the panel may proceed on the evidence before it. If the
92 complainant fails to appear, the panel may dismiss the Formal Complaint.

93 (6)(HD) The panel shall determine by a majority whether there is a preponderance of evidence of
94 the alleged conduct or omission, and whether the alleged conduct or omission violates this rule or the
95 Code of Professional Responsibility. Within 30 days, the panel chair will inform the program coordinator,
96 the interpreter, and the complainant, in writing, of its decision and the findings of fact supporting it. The
97 panel may discipline the interpreter as provided under paragraph (2)(B), including permanently removing
98 the interpreter's credentials.

99 (6)(JE) The interpreter may appeal the decision to the Language Access Committee by sending a
100 written request to the program coordinator within 15 days of the date of the panel's decision.

101 (7) Appeal hearing before the Language Access Committee.

102 (7)(KA) The committee chair and at least one interpreter member must shall attend the hearing
103 before the Language Access Committee. If a committee member is the complainant or the interpreter, the
104 committee member is recused. Members of the panel are also recused. The program coordinator shall
105 mail notice of the date, time and place of the hearing to the interpreter and the complainant. At least 6
106 days before the hearing, the interpreter and program coordinator may submit briefs and exhibits, which
107 the committee shall review. The information the committee may consider is limited to information
108 presented to the panel. The hearing is closed to the public. Committee members and staff may not
109 disclose or discuss information or materials outside of the meeting except with others who participated in
110 the meeting or with a member of the Committee. The committee may review records and interview the

111 interpreter, the complainant and witnesses. A record of the proceedings shall be maintained but is not
112 public.

113 ~~(7)(E)(iv)~~ The committee shall decide whether there ~~panel is sufficient evidence of the alleged~~
114 ~~conduct or omission, whether the conduct or omission violates this rule, abused its discretion in making its~~
115 ~~decision. If the committee determines the panel abused its discretion, the committee may dismiss the~~
116 ~~Formal Complaint or discipline the interpreter differently as appropriate. If the committee determines that~~
117 ~~the panel did not abuse its discretion, the interpreter shall be disciplined according to the panel's decision.~~
118 ~~and the discipline, if any.~~ The chair of the committee, or the chair's designee, shall issue a written
119 decision and analysis on behalf of the committee within 30 days after the hearing. The program
120 coordinator shall mail a copy of the decision to the interpreter. The committee's decision is final.

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

126 ~~(8) (3)(E)(vi)~~ If the interpreter is certified in Utah under ~~Paragraph (3)(B) rule 3-306.03(1),~~ the program
127 coordinator, panel or committee ~~shall~~may report any final findings and sanction to ~~the~~other agencies and
128 certification authorities ~~in the~~ other jurisdictions.