

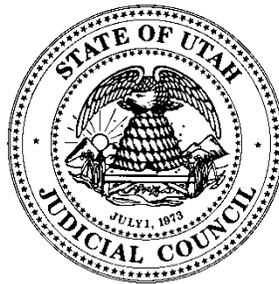


# Utah State Courts

---

## Language Access Plan

---



---

August 9, 2011

---

**The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.**

## Table of Contents

(1) Analysis under the federal law.....	5
(a) Number or proportion of LEP (Limited English Proficiency) persons in the eligible service population.....	5
(b) Frequency of contact with the program.....	8
(c) Nature and importance of the program. ....	8
(d) Resources available and costs. ....	9
(2) Language Access Plan.....	9
(a) Legal obligation: Provide interpreters to all LEP litigants and witnesses in all civil proceedings. The state likely complies with this legal obligation if it:.....	9
(1) Has a law, court rule, or other written statewide mandate requiring the appointment of an interpreter for all LEP parties and witnesses in all civil proceedings. ....	9
(2) Has a clear standard and guidelines for determining who is eligible for a court interpreter, including a presumption that anyone requesting an interpreter is eligible for one.....	10
(3) Has a clear procedure for appealing denials of interpreters. ....	10
(4) Denies interpreter waivers if they are not knowingly and voluntarily made, or if a court determines an individual has limited proficiency in English.....	11
(5) In each language in which interpreter services are commonly requested, in wording comprehensible to non-lawyers, informs all litigants, witnesses and others of their right to an interpreter, by: .....	11
(b) Legal obligation: Do not charge for interpreters, regardless of whether litigants can pay. The state likely complies with this legal obligation if it:.....	11
(1) Has a law, court rule or other written mandate requiring that when an interpreter is appointed, the court system or some other governmental entity—not the LEP individual—is responsible for paying.....	11
(2) Has a clear source of funding for interpreters.....	12
(c) Legal obligation: Ensure that interpreters are competent and act appropriately. The state likely complies with this legal obligation if it: .....	12
(1) Assesses ability before appointing an interpreter by:.....	12
(2) Ensures that interpreters remain competent by making continuing education available, and requiring interpreters to attend such trainings. ....	14
(3) Adopts and requires adherence to an interpreter ethics code;.....	14

(4) Maintains a pool of interpreters sufficient to meet the need;.....	15
(5) Uses telephonic interpretation only:.....	16
(6) Maintains records on the need and demand for interpreters. ....	16
(7) Uses census data and the court's records on the need and demand for interpreters to plan for future needs. ....	16
(8) Tells litigants whether their interpreters are credentialed, and when non-credentialed interpreters are assigned tells litigants whatever is known about the interpreter's interpreting abilities. ....	17
(9) Allows litigants and court personnel to challenge the appointment of interpreters on competence and ethics grounds. ....	17
(10) Has a disciplinary procedure for court interpreters which protects interpreters' due process rights.....	17
(11) Has a single office or individual within the court system with responsibility for implementing and overseeing the court interpreter program.....	19
(d) Legal obligation: Ensure that judges and court personnel who come into contact with LEP litigants or witnesses act appropriately. The state likely complies with this legal obligation if it: .....	19
(1) Trains judges in how to: .....	19
(2) Trains other court personnel who come into contact with the public in how to:..	19
(3) Bases performance evaluations of judges and other court personnel who come into contact with the public in part on skill in using interpreters.....	20
(4) Has a formal feedback process to process complaints from litigants and interpreters about how court interpretation is handled. ....	20
(e) Legal obligation: To the extent possible, ensure that LEP individuals receive the same treatment as other court participants, including by minimizing delays in their cases. The state likely complies with this legal obligation if it: .....	20
(1) Marks case files and scheduling documents with "interpreter needed" designations.....	20
(2) Includes on notice and summons documents issued to lawyers and pro se litigants language stating that they must notify court personnel immediately if an interpreter is needed. ....	20
(3) Includes data elements in case management systems to indicate whether litigants or witnesses need interpreters.....	21
(4) Concentrates interpreting work among as few individuals as possible. ....	21
(5) Calls interpreter cases promptly so the interpreter can move on to other courtrooms. ....	21

(6) Schedules interpreter cases in the same courtroom on specific days of the week or at specific times of the day ..... 21

(f) Translations ..... 22

**(1) Analysis under the federal law**

The Department of Justice guidelines describe four factors to help governments determine whether the standard of “reasonable steps to ensure meaningful access” by people with limited English proficiency (LEP) is being satisfied:

- number or proportion of LEP persons in the eligible service population;
- frequency of contact with the program;
- nature and importance of the program; and
- resources available and costs.

**(a) Number or proportion of LEP (Limited English Proficiency) persons in the eligible service population.**

In the courts, "eligible service population" includes the public at large, citizens and non-citizens, because just about anyone can sue or be sued in criminal and civil court. The U.S. Census Bureau report for the 2000 census estimates the following number and percent of people over age 5 has the described command of English based on their primary language.

	Total	Speak English very well		Speak English well		Speak English not well		Speak English not at all	
	Number	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Speak language other than English	253,250	147,560	58.3	50,790	20.1	39,360	15.5	15,540	6.1
Spanish or Spanish Creole	150,245	78,840	52.5	28,645	19.1	28,775	19.2	13,980	9.3
Other Indo-European languages	49,865	36,710	73.6	8,185	15.9	4,500	9.0	475	0.9
French (incl Patois, Cajun)	7,905	6,150	77.8	975	12.3	765	9.7	15	0.2
French Creole	195	155	79.5	15	7.7	25	12.8	0	0.0
Italian	2,815	2,280	81.0	400	14.2	135	4.8	0	0.0
Portuguese or Portuguese Creole	5,715	4,345	76.0	890	15.6	425	7.4	60	1.1
German	12,095	9,455	78.2	1,700	14.1	885	7.3	55	0.5
Yiddish	50	45	91.8	4	8.2	0	0.0	0	0.0
Other West Germanic languages	2,545	2,040	80.3	360	14.2	130	5.1	10	0.4
Scandinavian languages	3,280	2,730	83.2	440	13.4	110	3.4	0	0.0
Greek	1,925	1,515	78.5	275	14.3	135	7.0	4	0.2

	Total	Speak English very well		Speak English well		Speak English not well		Speak English not at all	
	Number	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Russian	3,095	1,920	62.0	720	23.3	385	12.4	70	2.3
Polish	920	685	74.5	165	17.9	70	7.6	0	0.0
Serbo-Croatian	3,190	1,195	37.5	930	29.2	925	29.0	140	4.4
Other Slavic languages	895	750	83.3	105	11.7	30	3.3	15	1.7
Armenian	605	410	67.8	140	23.1	45	7.4	10	1.7
Persian	1,055	625	59.0	300	28.3	110	10.4	25	2.4
Gujarathi	115	60	50.0	50	41.7	10	8.3	0	0.0
Hindi	875	635	73.0	175	20.1	50	5.8	10	1.2
Urdu	675	500	74.6	90	13.4	70	10.5	10	1.5
Other Indic languages	695	435	62.1	180	25.7	75	10.7	10	1.4
Other Indo-European languages	1,220	790	64.8	275	22.5	125	10.3	30	2.5
Asian and Pacific Island languages	37,805	21,495	56.9	10,610	28.1	4,965	13.1	735	1.9
Chinese	7,095	3,525	49.7	2,250	31.7	1,050	14.8	265	3.7
Japanese	5,030	3,405	67.7	1,120	22.3	455	9.1	50	1.0
Korean	3,215	1,595	49.5	1,060	32.9	535	16.6	30	0.9
Mon-Khmer, Cambodian	1,530	870	57.1	395	25.9	235	15.4	25	1.6
Miao, Hmong	235	150	64.1	50	21.4	30	12.8	4	1.7
Thai	835	415	49.8	350	42.0	65	7.8	4	0.5
Laotian	2,220	1,070	48.2	795	35.8	335	15.1	20	0.9
Vietnamese	5,200	1,975	37.9	1,640	31.5	1,330	25.6	260	5.0
Other Asian languages	760	475	62.6	210	27.7	70	9.2	4	0.5
Tagalog	2,685	1,945	72.4	620	23.1	110	4.1	10	0.4
Other Pacific Island languages	9,000	6,070	67.5	2,120	23.6	745	8.3	60	0.7
Other languages	15,335	10,515	68.6	3,355	21.9	1,120	7.3	350	2.3
Navajo	9,375	6,165	65.8	2,360	25.2	620	6.6	225	2.4
Other Native North American languages	1,500	1,295	86.4	155	10.3	45	3.0	4	0.3

	Total	Speak English very well		Speak English well		Speak English not well		Speak English not at all	
	Number	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Hungarian	435	390	89.9	40	9.2	4	0.9	0	0.0
Arabic	1,655	1,075	65.2	315	19.1	225	13.6	35	2.1
Hebrew	255	205	78.9	35	13.5	20	7.7	0	0.0
African languages	1,370	810	59.1	355	25.9	155	11.3	50	3.7
Other and unspecified languages	750	575	76.7	95	12.7	45	6.0	35	4.7

Source: US Census Bureau, Census 2000 Internet Release Date: October 29, 2004 (revised 2/06). Table 46a. Utah -- Ability to Speak English by Language Spoken at Home for the Population 5 Years and Over: 2000

The U.S. Census Bureau estimates that in 2009, the latest year for which extrapolations from the 2000 census are available, the Hispanic population in Utah was about 295,000 people over age 5. Of those, approximately 191,000 speak Spanish at home. Of those, approximately 51,000 speak English "not well" or "not at all." However, the reported margins of error are quite large.

	Estimate	Margin of Error
Total Hispanic or Latino population in Utah	294,940	+/-661
Speak only English	102,845	+/-7,320
Speak Spanish:	190,866	+/-7,309
Speak English "very well"	102,072	+/-6,829
Speak English "well"	37,842	+/-4,009
Speak English "not well"	35,340	+/-4,019
Speak English "not at all"	15,612	+/-2,628
Speak other language	1,229	+/-735

Source: U.S. Census Bureau, 2009 American Community Survey. Table B16006. Language spoken at home by ability to speak English for the population 5 years and over (Hispanic or Latino)

The courts also have reliable data on the distribution of interpreter use in Utah during FY 2008 through FY 2010:

Language	2008	2009	2010
Spanish	86.27%	87.48%	85.55%
ASL	3.91%	2.39%	4.59%
Arabic	1.36%	1.59%	1.53%
Vietnamese	1.48%	1.60%	1.50%
Tongan	0.68%	1.01%	1.20%
Samoan	0.68%	0.41%	0.73%
Bosnian	0.59%	0.47%	0.53%
Laotian	0.16%	0.38%	0.47%
Somali	0.29%	0.38%	0.43%

Language	2008	2009	2010
Portuguese	0.36%	0.17%	0.43%
Navajo	0.46%	0.43%	0.37%
French	0.25%	0.27%	0.28%
Korean	0.13%	0.43%	0.25%
Russian	0.60%	0.68%	0.25%
Dinka	0.05%	0.11%	0.23%
Swahili	0.06%	0.08%	0.17%
Burmese	0.08%	0.11%	0.16%
Cambodian	0.65%	0.48%	0.15%

Language	2008	2009	2010
Farsi	0.74%	0.37%	0.14%
Tagalog	0.08%	0.02%	0.14%
Nuer	0.06%	0.10%	0.08%
Chinese	0.15%	0.32%	0.08%
Kirundi	0.02%	0.04%	0.07%
Panjabi	0.04%	0.01%	0.07%
Thai		0.03%	0.07%
Hindi	0.04%	0.06%	0.07%
Japanese	0.04%		0.06%
Tigrigna		0.07%	0.05%
Mandarin	0.09%	0.07%	0.04%
Tibetan	0.04%	0.04%	0.04%
Cantonese	0.05%		0.03%
Marshallese	0.11%	0.08%	0.03%
Chuukese	0.03%	0.04%	0.03%
Nepalese		0.02%	0.02%
Indonesian		0.01%	0.02%
Romanian		0.03%	0.02%
Armenian			0.02%
Liberian		0.01%	0.02%
Amharic	0.02%	0.02%	0.02%
German	0.03%		0.01%

Language	2008	2009	2010
Maay			0.01%
Mabaan	0.04%	0.01%	0.01%
Unknown	0.003%		0.01%
Karen			0.01%
Mongolian	0.01%	0.01%	0.01%
Yapese			0.01%
Krahn			0.004%
Zigula		0.05%	0.003%
Croatian	0.003%	0.004%	
Polish	0.004%		
Pohnpeian	0.02%		
Mende	0.02%		
Gujarati	0.04%		
Bulgarian	0.06%		
Italian	0.09%	0.05%	
Albanian	0.12%	0.02%	
Swedish		0.003%	
Czech		0.01%	
Yupik		0.01%	
Urdu		0.03%	
Source: FINET			

**(b) Frequency of contact with the program.**

The courts do not have any data on the frequency with which the general population or people of limited English proficiency use the court.

**(c) Nature and importance of the program.**

The Code of Federal Regulations defines "program" to include any "disposition" and defines "disposition" to include "any treatment, handling, decision, sentencing, confinement, or other prescription of conduct." The definition is broad enough to include any civil case.

The DOJ guidelines provide: "A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State, or local entity to make an activity compulsory ... can serve as strong evidence of the program's importance." The only court process that might be considered "life-threatening," at least in an emergency sense, is a cohabitant abuse case. But certainly any case, however minor, has to be considered "serious." As for compulsory activities, other than attendance at court hearings and court conferences, a pair of statutes require that divorcing parents take a divorce orientation course and a divorce education course. A court rule requires

that many civil parties engage in or opt out of mediation. In some civil and some juvenile court cases, a good faith attempt to mediate is mandatory.

**(d) Resources available and costs.**

The DOJ guidelines describe a basic cost-benefit analysis.

**(2) Language Access Plan**

This plan is based on the checklist provided in [Language Access in State Courts](#) (2009), by the Brennan Center for Justice, whose recommendations are quoted in the “black letter” section titles.

The Utah courts have been building the court interpreter program since 1995, as one of the first eight states to join the National Center for State Courts’ Consortium for State Court Interpreters. The program has been guided by the Utah Judicial Council, its Court Interpreter Committee, its Policy and Planning Committee and various plans developed and implemented along the way.

Consequently, many of the elements for a successful program suggested by the Brennan Center for Justice are already in place; many of them for a long time. For these elements, this plan describes the existing program. There is little or no further planning required, only continuing to do.

Indeed, the Utah court interpreter program is at a plateau of sorts. Having accomplished nearly all of the objectives identified by the Brennan Center for Justice, the primary planning responsibilities in this document fall to the Court Interpreter Committee to continue to investigate and consider recommendations on how to improve:

- public information and outreach;
- recruitment and training of qualified interpreters;
- interpreter competence, compensation, availability and accountability;
- education of judges and employees; and
- translations.

**(a) Legal obligation: Provide interpreters to all LEP litigants and witnesses in all civil proceedings. The state likely complies with this legal obligation if it:**

**(1) Has a law, court rule, or other written statewide mandate requiring the appointment of an interpreter for all LEP parties and witnesses in all civil proceedings.**

Rule 3-306:

(4)(A) [I]f the appointing authority determines that a party, witness, victim or person who will be bound by the legal proceeding has a primary language other than English and limited English proficiency, the appointing authority shall appoint a certified interpreter in

all legal proceedings. A person requesting an interpreter is presumed to be a person of limited English proficiency.

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

In certain circumstances identified in Rule 3-306, the appointing authority has discretion to balance the qualifications of the interpreter with the complexity and importance of the hearing, and so appoint an "approved," "registered" or "conditionally approved" interpreter.

No interpreter is needed for a direct verbal exchange between the person and court staff if the court staff can fluently speak the language understood by the person. Otherwise an approved or registered interpreter can be appointed.

**(2) Has a clear standard and guidelines for determining who is eligible for a court interpreter, including a presumption that anyone requesting an interpreter is eligible for one.**

Rule 3-306:

(4)(A) [I]f the appointing authority determines that a party, witness, victim or person who will be bound by the legal proceeding has a primary language other than English and limited English proficiency, the appointing authority shall appoint a certified interpreter in all legal proceedings. A person requesting an interpreter is presumed to be a person of limited English proficiency.

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

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

**(3) Has a clear procedure for appealing denials of interpreters.**

Rule 3-306(4)(G) "A person whose request for an interpreter has been denied may apply to review the denial. The application shall be decided by the presiding judge. If there is no presiding judge or if the presiding judge is unavailable, the clerk of the court shall refer the application to any judge of the court or any judge of a court of equal jurisdiction. The application must be filed within 20 days after the denial."

**(4) Denies interpreter waivers if they are not knowingly and voluntarily made, or if a court determines an individual has limited proficiency in English.**

Rule 3-306(6): "A person may waive an interpreter if the appointing authority approves the waiver after determining that the waiver has been made knowingly and voluntarily. A person may retract a waiver and request an interpreter at any time. An interpreter is for the benefit of the court as well as for the non-English speaking person, so the appointing authority may reject a waiver."

**(5) In each language in which interpreter services are commonly requested, in wording comprehensible to non-lawyers, informs all litigants, witnesses and others of their right to an interpreter, by:**

**(a) posting notice on the court system's website;**

**(b) prominently placing signs in clerks' offices, courtrooms, and all other public areas;**

**(c) ensuring that the first court employee to come into contact with litigants informs them of their right to an interpreter; and**

**(d) placing language on court documents and forms informing litigants of the right to an interpreter.**

Notice of the right to an interpreter and a form with which to request an interpreter in English, Spanish, and Vietnamese are linked from the court's front webpage.

Notice of the right to an interpreter in English and Spanish, has been added to: "Notice of Hearing" forms, subpoena forms, and the civil coversheet. Parties are directed to contact the clerk three days before the hearing.

Lawyers have been notified of the right of their clients to an interpreter in the Bar president's May 2011 electronic bulletin. The former chair of the Court Interpreter Committee is writing a longer article for publication in the Utah Bar Journal.

State court courthouses have "I speak ..." pamphlets available at counters.

**(b) Legal obligation: Do not charge for interpreters, regardless of whether litigants can pay. The state likely complies with this legal obligation if it:**

**(1) Has a law, court rule or other written mandate requiring that when an interpreter is appointed, the court system or some other governmental entity—not the LEP individual—is responsible for paying.**

Rule 3-306(5)(A) "The interpreter fees and expenses shall be paid by the administrative office of the courts in courts of record and by the government that funds the court in

courts not of record. The court may assess the interpreter fees and expenses as costs to a party as provided by law. (Utah Constitution, 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-1-146(3) and URCP 54(d)(2).)"

Rule 3-306 requires that the court pay the interpreter. The rule is not independent authority to impose that cost on the person needing the service. The rule recognizes that the Legislature has granted that authority to judges and refers to the rule establishing the procedures for doing so.

Under Sections 77-32a-2 and 78B-1-146, the court is permitted to recoup the fee from the person for whom the interpreter was provided, unless that person is impecunious. URCP 54(d)(2) establishes the procedure by which costs may be imposed.

**(2) Has a clear source of funding for interpreters.**

In the state courts, interpreter fees are paid from a single line item appropriation. Because there is no ability to control the demand for interpreters, the Legislature has given the state courts the authority to spend beyond the appropriation. This line item is perennially over budget, and the courts perennially advise the Legislature.

Unlike the state courts, many, perhaps all, justice courts are expected to provide interpreters within the budget appropriated by their county or municipal legislative authority.

**(c) Legal obligation: Ensure that interpreters are competent and act appropriately. The state likely complies with this legal obligation if it:**

**(1) Assesses ability before appointing an interpreter by:**

**(a) requiring court interpreters to possess a credential requiring them to demonstrate:**

**(a)(i) fluency in both languages;**

**(a)(ii) ability to maintain the legal meaning of the original source;**

**(a)(iii) facility in the particular interpretation skill needed in that particular case (i.e. simultaneous interpretation, consecutive interpretation, or sight translation of written materials);**

**(a)(iv) familiarity with the unique culture of the courtroom, any legal matters the interpreter will need to interpret, and the ethical duties of an interpreter; and**

**(a)(v) training in any special issues likely to arise in the case that requires special legal knowledge or additional skills (such as domestic violence).**

Rule 3-306

(1)(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)(B) “Approved interpreter” means a person who has been rated as “superior” in the Oral Proficiency Interview conducted by Language Testing International and has fulfilled the requirements established in paragraph (3).

After submitting an application form, all candidates must:

- pass a background check;
- pass an English Diagnostic Test;
- participate in one of the orientation workshops, either the Basic Orientation Workshop that is sufficient for candidates for Registered I and Registered II credentials, or the Advanced Orientation Workshop that is required for candidates for Certified credentials and available to candidates for Approved credentials;
- pass the test about the Code of Professional Responsibility for Court Interpreters; and
- complete 10 hours of observation in court with a Certified Court Interpreter.

#### Registered Interpreters

Candidates who complete these steps are classified as Registered I if they interpret in a language for which an Oral Proficiency Interview to be an Approved Court Interpreter is not available. Interpreters who complete these steps are classified as Registered II if they interpret in a language for which an Oral Proficiency Interview is available.

#### Approved Interpreters

To become an Approved Court Interpreter, a candidate must complete the Basic Steps described above, and they must also take the Oral Proficiency Interview (OPI) offered by Language Testing International (LTI) and score a Superior rating. Candidates for Approved credentials are permitted to attend the Advanced Training, but it is not required.

A Superior rating means that the candidate must demonstrate the ability to:

- Speak the standard form of the language without using English or slang.
- Speak the language formally, as well as informally, from both concrete and abstract perspectives.
- Speak the language with a high level of accuracy and no pattern of error.
- State and support a point of view in extended discourse on topics of personal and general interest.
- Speculate and hypothesize about possible causes, outcomes, and/or occurrences in extended discourse.

#### Certified Interpreter

Certified Court Interpreters are the most highly trained and qualified interpreters. To become a Certified Court Interpreter, the candidate must complete the Basic Steps described above, they must attend the Advanced Training for Candidates for Approved and Certified Credentials described above, and they must also pass the Certification Examination of the Consortium for Language Access in the Courts.

**(b) relying on a non-credentialed interpreter only after trained, dedicated court staff assess the interpreter's qualifications.**

**(c) relying on judges or other court personnel to voir dire interpreters only as a matter of last resort.**

Rule 3-306:

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

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

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

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

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

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

**(2) Ensures that interpreters remain competent by making continuing education available, and requiring interpreters to attend such trainings.**

Rule 3-306(3)(C) No later than December 31 of each even-numbered calendar year, certified and approved interpreters shall pass the background check for applicants, and certified interpreters shall complete at least 16 hours of continuing education approved by the administrative office of the courts.

**(3) Adopts and requires adherence to an interpreter ethics code;**

Rule 3-306(3)(A)(vii) [A]n applicant shall ... take and subscribe the following oath or affirmation: "I will make a true and impartial interpretation using my best skills and judgment in accordance with the Code of Professional Responsibility."

**(4) Maintains a pool of interpreters sufficient to meet the need;**

**If the pool of interpreters is insufficient to meet the need, the state tries to attract interpreters by:**

**(a) Providing compensation at a rate similar to that provided by neighboring states, and by other employers in your state;**

**(b) Recruiting interpreters from professional organizations and from the community; and**

**(c) Establishing relationships with other states to create and access a shared pool of interpreters.**

There are 40 certified Spanish interpreters, which is sufficient to serve current and anticipated future needs.

Certified interpreters in languages other than Spanish are limited to:

- Navajo 2
- Russian 1
- Vietnamese 1

Use of approved Spanish interpreters is rare and use of conditionally approved Spanish interpreters is almost nonexistent:

Spanish Interpretation			
Year	Certified	Approved	Conditionally Approved
2008	92.7%	7.2%	0.2%
2009	94.1%	5.9%	0.0%
2010	96.9%	3.0%	0.1%

There being fewer of them, use of certified interpreters in languages other than Spanish represents a smaller percent of the total, but certified interpreters still represent a large majority of interpretations in those languages.

Navajo Interpretation			
Year	Certified	Approved	Conditionally Approved
2008	85%	0%	15%
2009	58%	6%	35%
2010	71%	0%	29%

Vietnamese Interpretation			
Year	Certified	Approved	Conditionally Approved
2008	79%	18%	3%
2009	80%	9%	11%
2010	77%	16%	8%

There are no statistics for the use of the certified Russian interpreter because she has been added to the roster only this year.

The state courts pay certified interpreters \$38.63/hour with a formula based on distance traveled for determining the minimum payment. In 2008 that amount was the median of

several western states and \$0.85/hour below the average. There are no benefits. The Committee periodically recommends increases to the fees. Because of budget cuts the last increase in court interpreter fees was in 2009.

Justice courts are not required to pay that amount, but many do. Some pay more; some less.

The courts use interpreters from other states if no one sufficiently qualified in a language is available locally. The courts use the AT&T Language Line as necessary.

Except for the federal government, the Judicial Council is the only organization in Utah offering credentials to interpreters. Interpreters commonly use court credentials to qualify in other service sectors. The Drivers License Division requires court credentials to translate foreign birth certificates and other identification. Interpreters are coming to the courts for training, credentials and opportunities even without recruiting. It seems that everyone else is looking to us to regulate the profession, so partnering with others does not yield any direct benefits to the courts.

**(5) Uses telephonic interpretation only:**

**(a) For short proceedings or meetings, or instances in which a local interpreter is unavailable;**

**(b) With proper equipment:**

**(b)(i) interpreters must have a high-quality headset with a mute button, separate dual volume control, and an amplifier; and**

**(b)(ii) everyone expected to hear the interpretation or to have their speech interpreted should have their own headset, handset, or microphone; and**

**(c) After interpreter and court personnel are trained on telephone interpreting protocols.**

Remote interpretation with specialized telephonic hardware and software meeting these specifications is available as a pilot program in Manti, Moab, Roosevelt and Vernal.

**(6) Maintains records on the need and demand for interpreters.**

**(7) Uses census data and the court's records on the need and demand for interpreters to plan for future needs.**

Clerks record the presence of the interpreter at a hearing in CORIS or CARE. This information combined with other data elements in those case management systems allows reporting on the use of interpreters by:

- casetype
- hearing type
- location

- language
- interpreter credentials

This information is combined with the most recently available census data and reported annually to the Judicial Council, Boards of Judges, Trial Court Executives and the public.

**(8) Tells litigants whether their interpreters are credentialed, and when non-credentialed interpreters are assigned tells litigants whatever is known about the interpreter's interpreting abilities.**

The Utah program has no such requirement.

**(9) Allows litigants and court personnel to challenge the appointment of interpreters on competence and ethics grounds.**

Rule 3-306(7) The appointing authority may remove an interpreter from the legal proceeding for failing to appear as scheduled, for inability to interpret adequately, including a self-reported inability, and for other just cause.

**(10) Has a disciplinary procedure for court interpreters which protects interpreters' due process rights.**

Rule 3-306(8) Discipline.

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

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

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

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

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

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

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

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

(8)(B) Discipline may include:

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

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

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

(8)(B)(vi) prohibition from serving as a conditionally approved interpreter;

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

(8)(B)(vi) reprimand.

(8)(C) Any person may file a complaint in writing on a form provided by the program manager. The complaint may be in the native language of the complainant, which the AOC shall translate in accordance with this rule. The complaint shall describe in detail the incident and the alleged conduct or omission. The program manager may dismiss the complaint if it is plainly frivolous, insufficiently clear, or alleges conduct that does not violate this rule. If the complaint is not dismissed, the program manager shall mail the complaint to the interpreter at the address on file with the administrative office.

(8)(D) The interpreter shall answer the complaint within 30 days after the date the complaint is mailed or the allegations in the complaint are considered true and correct. The answer shall admit, deny or further explain each allegation in the complaint.

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

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

(8)(G) The committee shall decide whether there is sufficient evidence of the alleged conduct or omission, whether the conduct or omission violates this rule, and the discipline, if any. The chair shall issue a written decision on behalf of the committee within 30 days after the hearing. The program manager shall mail a copy of the decision to the interpreter.

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

(8)(I) If the interpreter is certified in Utah under Paragraph (3)(B), the committee shall report the findings and sanction to the certification authority in the other jurisdiction.

**(11) Has a single office or individual within the court system with responsibility for implementing and overseeing the court interpreter program.**

The Judicial Council has created a standing Court Interpreter Committee. The AOC assigns responsibility for the interpreter program to two people within the Legal Department. Processing interpreter invoices is assigned to one person in the Third Judicial District and to one person in the AOC for the rest of the state.

All judicial districts except the Second and Fourth have implemented the Judicial Council's directive to assign interpreter scheduling to one coordinator and backup. The Third Judicial District coordinator has no other responsibilities. The coordinators in other judicial districts have other responsibilities.

**(d) Legal obligation: Ensure that judges and court personnel who come into contact with LEP litigants or witnesses act appropriately. The state likely complies with this legal obligation if it:**

**(1) Trains judges in how to:**

- (a) Determine whether a party or witness needs the assistance of an interpreter,**
- (b) Determine whether a particular interpreter is competent,**
- (c) Use interpreters effectively, and**
- (d) Run courtrooms in which simultaneous or consecutive interpreting of testimony or proceedings is occurring.**

Regular judicial training is limited to new judge orientation. Interpreter topics have been part of the annual or spring conferences, but rarely.

**(2) Trains other court personnel who come into contact with the public in how to:**

- (a) Determine whether a party or witness needs the assistance of an interpreter,**
- (b) Determine whether a particular interpreter is competent, and**
- (c) Use interpreters effectively.**

Clerks are trained how to add a language need in a case, but more intensive training is limited to interpreter coordinators (schedulers).

**(3) Bases performance evaluations of judges and other court personnel who come into contact with the public in part on skill in using interpreters.**

The Judicial Performance Evaluation Commission includes interpreters as potential respondents in judicial evaluation surveys. Skill in using interpreters should be a routine part of the evaluation of coordinators.

**(4) Has a formal feedback process to process complaints from litigants and interpreters about how court interpretation is handled.**

The Utah program has no express "feedback" process for evaluating interpreters. Rule 3-306(8) establishes a complaint process. Informal complaints from participants in various hearings sometimes reach the AOC, and someone will meet with the interpreter if it is warranted.

**(e) Legal obligation: To the extent possible, ensure that LEP individuals receive the same treatment as other court participants, including by minimizing delays in their cases. The state likely complies with this legal obligation if it:**

**(1) Marks case files and scheduling documents with "interpreter needed" designations.**

When the need for an interpreter becomes known, that need and in what language are recorded in CORIS and CARE. Thereafter, when the judicial assistant schedules a hearing, CORIS or CARE automatically sends to the coordinator an email stating the need. The coordinator finds and schedules an interpreter for the hearing.

The more difficult problem is not knowing that an interpreter is needed. This information must come from a source outside the courts. In criminal and juvenile cases, the information usually comes from an arresting authority or detention authority. For civil cases notice of right to an interpreter is included on the court's webpage, "Notice of Hearing" forms, subpoena forms, and the civil coversheet. Parties are directed to contact the clerk three days before the hearing.

To have someone readily available on short notice, some of the courts schedule an interpreter during peak times even if there is no known need.

**(2) Includes on notice and summons documents issued to lawyers and pro se litigants language stating that they must notify court personnel immediately if an interpreter is needed.**

Notice of right to an interpreter is included on the court's webpage, "Notice of Hearing" forms, subpoena forms, and the civil coversheet. Parties are directed to contact the clerk three days before the hearing.

**(3) Includes data elements in case management systems to indicate whether litigants or witnesses need interpreters.**

Clerks record the presence of the interpreter at a hearing in CORIS or CARE. This information combined with other data elements in those case management systems allows reporting on the use of interpreters by:

- casetype
- hearing type
- location
- language
- interpreter credentials

This information is combined with the most recently available census data and reported annually to the Judicial Council, Boards of Judges, Trial Court Executives and the public.

There are no plans at present to record whether it is a party, witness or other person who needs the interpreter.

**(4) Concentrates interpreting work among as few individuals as possible.**

Scheduling interpreters is left to local discretion. Coordinators appoint interpreters with whom they have a strong working relationship, who live in the area, and who can meet the court's schedule. Coordinators go farther afield when required, usually because there is no interpreter in the community or because the local interpreters are not available.

**(5) Calls interpreter cases promptly so the interpreter can move on to other courtrooms.**

Arranging interpreter cases on the calendar is left to local discretion. The courts face the same problems scheduling interpreters as they do with scheduling prosecutors and defense counsel and all of the other participants. Prioritizing one at the expense of the others does not serve the parties and witnesses.

**(6) Schedules interpreter cases in the same courtroom on specific days of the week or at specific times of the day.**

Arranging interpreter cases on the calendar is left to local discretion. With the current methods of case assignments, scheduling all interpreter hearings for any given day in one courtroom is not possible. Master calendaring cases around a language need has the same disadvantages as master calendaring around any other factor.

**(f) Translations**

The Brennan Center checklist does not include what translations are necessary to comply with Title VI, perhaps because the Department of Justice Guidelines include a "safe harbor" provision:

The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The DOJ recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered.

Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), 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.

....

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Rule 3-306(10) requires that translations be "by a team of at least two people who are interpreters certified under this rule or translators accredited by the American Translators Association."

A complete—and growing—list of webpages that have been translated into Spanish, is on the court website at <http://www.utcourts.gov/howto/sp/>. The courts will continue to translate webpages identified as a priority by the Self Help Center until money in the translation account runs out, and then begin again in the next fiscal year, giving priority to webpages over forms. The courts will continue to sight translate other documents as needed.