

1 **Rule 3-306.04. Interpreter appointment, payment, and fees.**

2 **Intent:**

3 To state the policy of the Utah courts to secure the rights of people under Title VI of the Civil Rights
4 Act of 1964, 42 U.S.C. 2000d, et seq. in legal proceedings who are unable to understand or communicate
5 adequately in the English language.

6 To outline the procedures for appointment and payment of interpreters for legal proceedings.

7 To provide certified interpreters in legal proceedings in those languages for which a certification
8 program has been established.

9 **Applicability:**

10 This rule shall apply to legal proceedings in the courts of record and not of record. This rule shall
11 apply to interpretation for non-English speaking people and not to interpretation for persons with a
12 hearing impairment, which is governed by Utah and federal statutes.

13 **Statement of the Rule:**

14 (1) Appointment.

15 (1)(A) Except as provided in paragraphs (1)(B), (1)(C) and (1)(D), if the appointing authority
16 determines that a party, witness, victim or person who will be bound by the legal proceeding has a
17 primary language other than English and limited English proficiency, the appointing authority shall appoint
18 a certified interpreter in all legal proceedings. A person requesting an interpreter is presumed to be a
19 person of limited English proficiency.

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

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

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

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

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

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

32 (1)(E) The appointing authority may appoint an interpreter with certified or approved or equivalent
33 credentials from another state if the appointing authority finds that the approved, registered or
34 conditionally approved interpreters who are reasonably available do not have the language skills,
35 knowledge of interpreting techniques, or familiarity with interpreting sufficient to interpret the legal
36 proceeding. The appointing authority may consider the totality of the circumstances, including the

37 complexity or gravity of the legal proceeding, the potential consequences to the person of limited English
38 proficiency, and any other relevant factor.

39 (1)(F) No interpreter is needed for a direct verbal exchange between the person and court staff if
40 the court staff can fluently speak the language understood by the person and the state court employee is
41 acting within guidelines established in the Human Resources Policies and Procedures. An approved,
42 registered or conditionally approved interpreter may be appointed if the court staff does not speak the
43 language understood by the person.

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

48 (2) Court employees as interpreters. A court employee may not interpret legal proceedings except as
49 follows.

50 (2)(A) A court may hire an employee interpreter. The employee will be paid the wages and
51 benefits of the employee's grade and not the fee established by this rule. If the language is a language for
52 which certification in Utah is available, the employee must be a certified interpreter. If the language is a
53 language for which certification in Utah is not available, the employee must be an approved interpreter.
54 The employee must meet the continuing education requirements of an employee, but at least half of the
55 minimum requirement must be in improving interpreting skills. The employee is subject to the discipline
56 process for court personnel, but the grounds for discipline include those listed in this rule.

57 (2)(B) A state court employee employed as an interpreter has the rights and responsibilities
58 provided in the Utah state court human resource policies, including the Code of Personal Conduct, and
59 the Court Interpreters' Code of Professional Responsibility also applies. A justice court employee
60 employed as an interpreter has the rights and responsibilities provided in the county or municipal human
61 resource policies, including any code of conduct, and the Court Interpreters' Code of Professional
62 Responsibility also applies.

63 (2)(C) A court may use an employee as a conditionally-approved interpreter under paragraph
64 (1)(D). The employee will be paid the wage and benefits of the employee's grade and not the fee
65 established by this rule.

66 (3) Review of denial of request for interpreter. A person whose request for an interpreter has been
67 denied may apply to review the denial. The application shall be decided by the presiding judge. If there is
68 no presiding judge or if the presiding judge is unavailable, the clerk of the court shall refer the application
69 to any judge of the court or any judge of a court of equal jurisdiction. The application must be filed within
70 20 days after the denial.

71 (4) Waiver. A person may waive an interpreter if the appointing authority approves the waiver after
72 determining that the waiver has been made knowingly and voluntarily. A person may retract a waiver and

73 request an interpreter at any time. An interpreter is for the benefit of the court as well as for the non-
74 English speaking person, so the appointing authority may reject a waiver.

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

77 (6) Payment.

78 (6)(A) The fees and expenses for language access shall be paid by the administrative office of
79 the courts in courts of record and by the government that funds the court in courts not of record. The court
80 may assess the fees and expenses as costs to a party as otherwise provided by law. (Utah Constitution,
81 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-
82 146(3), URCP 54(d)(2), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and
83 regulations and guidance adopted under that title.)

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

88 (7) Fees.

89 (7)(A) Every three years, the Judicial Council shall review a market survey conducted by the
90 Language Access Program Manager and shall set the fees and expenses to be paid to interpreters during
91 the following three fiscal years by the courts of record. Payment of fees and expenses shall be made in
92 accordance with the Courts Accounting Manual.

93 (7)(B) The local government that funds a court not of record shall set the fees and expenses to be
94 paid to interpreters by that court.