

Agenda

Court Interpreter Committee

January 28, 2011
12:00 to 1:30 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Education Room, Suite N31

Welcome and approval of minutes	Tab 1	Judge Vernice Trease
Review of application denial	Tab 2	Tim Shea
Recognition of Judge Karlin Myers, Branden Putnam, Carolyn Smitherman		Judge Vernice Trease
Introduction of Ghulam Hasnain		Judge Vernice Trease
Remote interpretation		Rosa Oakes
Recruiting and training		Tim Shea
Implementation of Policy and Planning Committee recommendations	Tab 3	Tim Shea

Committee Web Page: <http://www.utcourts.gov/committees/CourtInterpreter/>

Meeting Schedule: Matheson Courthouse, 12:00 to 1:30, Judicial Council Room

April 22, 2011

July 29, 2011

October 28, 2011

Tab 1

Minutes		Cout Interpreter Committee	
October 15, 2010		Council Room	
Members Present		Member Excused	
Evangelina Burrows		Judge Trease	
Jennifer Storrer		Judge Noonan	
Craig Johnson		Deborah Kreek-Mendez	
Judge Myers			
Prof. Daryl Hague			
Wendell Roberts			
Dinorah Padro			
Luther Gaylord			
Branden Putnam			
Staff: Tim Shea and Rosa Oakes			
Guests:			
Topic: Approve minutes of January 22, 2010			
Discussion:			
Motion: Craig moved to approve; Luther seconded			
Vote: Yes 9		No Abstain	
		Motion: Passed X Failed	
Topic: Accounting Manual Changes		By Tim Shea	
<p>Tim reviewed the proposed changes to the Accounting Manual which include:</p> <ol style="list-style-type: none"> 1) Addition to minimum pay based on miles traveled 50 – 74 miles = 3 hours. 2) Afternoon assignments in the same courthouse as morning shall be considered a new assignment with a minimum guaranteed fee based on travel in the morning. 3) On-call interpreter services for jury deliberations based on long periods, intermediate periods, and short periods. 4) Cancellation notice change - 48 hours (previously 2 business days) 5) Legal proceedings less than 6 hours - if notice is given between 12 and 48 hours prior to start time, interpreter is paid 1 hour. If notice is given less than 12 hours, interpreter is paid minimum fee. 			
Motion: Evangelina moved to approve; Luther seconded			
Vote: Yes 9		No Abstain	
		Motion: Passed X Failed	
Topic: Remote Interpreting		By Rosa Oakes	
<p>Rosa reported on the installation of remote interpreting equipment in Richfield and Vernal. The Vernal system is a mobile cart with speakers and the Richfield system is integrated into the courtroom sound system, for comparison purposes. Training was held in Vernal with vendor representatives and Richfield has conducted “dry runs” with court personnel which have resulted in minor adjustments to the system. Interpreters will be further trained in how the systems work and will provide interpreting from an office set-up in the Matheson courthouse.</p>			
Topic: Interpreter Training for 2011		By Rosa Oakes	

Rosa informed the committee on the 2011 interpreter testing and training schedule. The contract with Source Language Solutions expired and after conducting the bid process, Agustin Delamora was awarded the training contract for the next 2 years (may be extended for 2 years). The training will be offered in a language-neutral format and instead of the “test preparation” workshop, Agustin will give an “advanced skill-building” workshop.

Topic: Judicial Council’s Title VI Efforts

By Tim Shea

Tim reported on the move to provide interpreters in all civil matters in the courts possibly beginning as soon as April 1, 2011. This will impact how interpreters are scheduled, the coordinators’ workloads as well as the budget.

Motion:

Topic: Fiscal Year 2010 Report

By Tim Shea

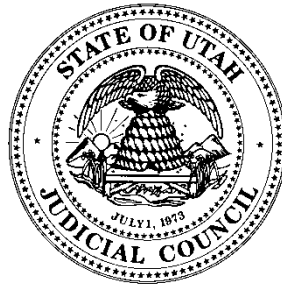
Tim has been working on methods of obtaining accurate information through CORIS and CARE for purposes of reporting on interpreter usage. He foresees providing the information on the annual report and/or on the court’s website. Tim’s efforts were represented on graphs that clearly demonstrate the increase in cases requiring interpreter services.

Tab 3



Utah State Courts

Court Interpreters
Report to the Judicial Council
by the Policy and Planning Committee



November 22, 2010

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(b) Determine whether a particular interpreter is competent,	19
(c) Use interpreters effectively, and	19
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(a) Determine whether a party or witness needs the assistance of an interpreter,	19
(b) Determine whether a particular interpreter is competent, and	19
(c) Use interpreters effectively.	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.	19
(4) Has a formal feedback process to process complaints from litigants and interpreters about how court interpretation is handled.	19
(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
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(1) Summary of key recommendations

- Extend Rule 3-306 to all legal proceedings.
- Establish a procedure to review denial of an interpreter.
- Establish a procedure to review denial of a claim of impecuniosity.
- Improve notice of the right to an interpreter.
- Monitor and meet the need for interpreter coordinators (schedulers).
- Improve training and testing for interpreters in languages other than Spanish.
- Improve training and testing for credentials other than “certified.”
- Improve training for court personnel.

(2) Federal law

A letter from the Assistant Attorney General (See [Section 6.](#)) advises that federal law requires, as a condition of receiving federal funds, the appointment, without cost, of an interpreter in all court proceedings in which a person of limited English proficiency (LEP) is involved. Although the federal government does not have the authority to direct how the states run their courts, the federal spending authority very clearly includes the authority to attach conditions to the receipt of funds. Conceptually, this issue is no different from the federal government requiring the states to adopt a minimum drinking age of 21 as a condition for receiving federal funds for highway construction.

Title VI of the Civil Rights Act does not itself expressly require that court hearings be interpreted or that forms be translated. Rather, several additional laws come into play. Section 601 of Title VI is simply a non-discrimination clause: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Under the 28 Code of Federal Regulations Part 42:

- The term “program” includes any “program, project, or activity for the provision of services ... to individuals ... including ... disposition”
- “Disposition” is defined to mean “any treatment, handling, decision, sentencing, confinement, or other prescription of conduct.”
- “Federal financial assistance” includes grants.
- Anything required of the United States is required of the states and their political subdivisions,

Title VI prohibits only intentional discrimination, but the CFR prohibits actions that have the effect of discrimination, a much broader standard. The hook for requiring adherence to federal requirements is federal money. A governmental entity that receives federal money has to comply with the federal law, even if the money received has nothing to do with the program in question.

Executive Order 13166 requires federally funded programs to improve access to “persons who, as a result of national origin, are limited in their English proficiency.” Finally, the Department of Justice, which is charged with enforcing the Executive Order, has developed guidelines for its implementation.

The DOJ 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.

The federal courts do not have to comply with the standards established for state and local governments because the federal courts operate under a different statute, Court Interpreters Act, 28 U.S.C. §§ 1827 and 1828. FRCP 43 permits the court to allocate the cost of an interpreter in civil cases among the parties, but the DOJ does not permit a state the same discretion. The DOJ has successfully challenged the Maine state court rule, which was almost verbatim the same as the federal court rule.

It is at least arguable that the Assistant Attorney General’s letter requires more than do the DOJ guidelines. The guidelines require “reasonable steps to ensure meaningful access” and establish the four factors described below for determining whether that goal is being reached. The letter appears to require a free interpreter even if the person for whom an interpreter is provided can pay for that service.

Number or proportion of LEP (Limited English Proficiency) persons. 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 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 margin of error is quite large.

Language spoken at home by ability to speak English - Age 5 years and over

	Estimate	Percent	Margin of Error
Total:	294,940	100.0%	±0.2%
Speak only English	102,845	34.9%	±7.1%
Speak Spanish	190,866	64.7%	±3.8%
Speak English "very well"	102,072	34.6%	±6.7%
Speak English "well"	37,842	12.8%	±10.6%
Speak English "not well"	35,340	12.0%	±11.4%
Speak English "not at all"	15,612	5.3%	±16.8%
Speak other language	1,229	0.4%	±59.8%

Source: U.S. Census Bureau

There appears to be no census data about languages other than Spanish, but we 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%
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%
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%

Language	2008	2009	2010
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%
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%	

Frequency of contact with the program. We do not have any data on the frequency with which the people of limited English proficiency use the court.

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, such as particular educational programs in a correctional facility or the communication of Miranda rights, can serve as strong evidence of the program's importance.” For example, Utah law requires that divorcing parents take a divorce education program.

The DOJ position is that civil rights and remedies are just as important as criminal rights and sanctions. And civil actions are compulsory if one wants to enforce civil rights and remedies.

Resources available and costs. The DOJ guidelines describe a basic cost-benefit analysis.

(3) Brennan Center Report

In 2009 the Brennan Center for Justice published [*Language Access in State Courts*](#). It compares the programs of many states, including Utah, to the authors' interpretation of what is required by the federal law. One can take issue with some of the interpretations of federal law, and some states have taken issue with the accuracy of the comparisons. And the report frames as probable requirements some features better described as best practices. In any event, we have used the checklist contained in the Brennan Center report as an organizing tool for evaluating the Utah interpreter program and comparing it to the federal law.

In the sections that follow, we have quoted each of the six “legal obligations” described in the Brennan Center report and each of the several features a state must have to satisfy those obligations. We then briefly describe the features of the Utah interpreter program in each area and describe our recommended changes, if any. In some sections, we have described any special considerations required by the different circumstances of the justice court. Finally, we refer to any changes in draft Rule 3-306 needed to implement the recommendations. (Not all recommended changes require that the rule be changed.)

(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.

UTAH INTERPRETER PROGRAM

The Utah program requires that an interpreter be appointed in cases in which the court pays for the interpreter: all criminal, all juvenile, and certain civil cases (i.e., quasi-criminal cases under URCP 65B and 65C; personal liberty cases such as civil commitments, guardianship and conservatorship, and personal safety cases such as cohabitant abuse and stalking).

RECOMMENDATION

Rule 3-306 should require the court to appoint a certified (or other appropriately qualified) interpreter in all cases. The interpreter should be a certified interpreter in most hearings. Not just the person of limited English proficiency, but also the court has an interest in the quality of the interpretation and in expediting the 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 interpreter or a conditionally approved interpreter. These exceptions should apply in the new cases as well.

We reached the conclusion that a well-qualified interpreter should be appointed whenever one is needed early in our discussions. After discussions spread over several meetings, and despite the clear directions from the Assistant Attorney General, we remain convinced that, if a person can pay for an interpreter, they should do so. All of the arrangements and the initial cost will be borne by the court. This in effect will extend to legal proceedings in all cases, the model that has served so well in criminal, juvenile and select civil cases.

RULE 3-306

- Lines 40-42
- Lines 83-88

(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.

UTAH INTERPRETER PROGRAM

The Utah program has no expressly stated presumption. Rule 3-306 mandates appointment “if the appointing authority determines that a party, witness, victim or person who will be bound by the legal proceeding has a limited ability to understand and communicate in English....” There are no guidelines for how to make that decision.

RECOMMENDATION

We recommend a small amendment to the standard for determining who is eligible for a court interpreter. Rule 3-306 probably already satisfies this requirement, but the amendment will mirror more closely the language agreed upon between the DOJ and Maine.

There seems to be little value to guidelines for making the decision about who is eligible. The Brennan Center report offers none. Whether a person has limited English proficiency is seldom a close question.

We recommend an express presumption that a person requesting an interpreter is a person of limited English proficiency. This is already the practice in Utah.

RULE 3-306

- Lines 40-42
- Lines 83-88

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

UTAH INTERPRETER PROGRAM

The Utah program has no expressly stated appeal procedures. The rule being silent, an order denying an interpreter would be reviewed like any other interlocutory order. In the courts of record, the appointment of an interpreter is universally handled as an administrative matter, and no order is ever entered. In such a case, the person would have to file a petition for a writ of mandamus.

RECOMMENDATION

There are two issues that might be subject to review: whether the person is sufficiently limited in English proficiency that an interpreter is needed; and whether the person is impecunious. The standards for impecuniosity and limited English proficiency should be generous. Amend Rule 3-306 to permit a person whose request for an interpreter or request for waiver of the interpreter fee has been denied to have the denial reviewed by the presiding judge. Requiring the presiding judge to review an impecuniosity decision in this context should not extend to other impecuniosity decisions (e.g., waiver of filing fees, appointment of counsel, etc.). If a court has no presiding judge, review should be by any other judge.

RULE 3-306

- Lines 127-131
- Lines 149-152

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

UTAH INTERPRETER PROGRAM

Rule 3-306(6) states: “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.”

RECOMMENDATION

No change.

(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; site;**
- (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.

UTAH INTERPRETER PROGRAM

The state court courthouses are supposed to have “I speak ...” pamphlets available at counters. These pamphlets have “I speak _____.” written in several languages. A person of limited English proficiency finds their language, points it out to the clerk, and the clerk can arrange for an interpreter in that language. Compliance is uncertain. The justice courts were not included when the pamphlets were distributed.

Newly created self-help webpages include information about interpreters and links to the interpreter webpage.

RECOMMENDATION

Develop procedures to identify, as early as possible, the parties who need an interpreter: webpages, coversheets, summonses, notices of hearings, etc. Record the need in CORIS and CARE. Once the need is recorded, CORIS and CARE automatically send an email to the interpreter coordinator (scheduler) of what language is needed when the hearing is scheduled. See the discussion under [Section \(e\)\(1\)](#).

Take the steps suggested in the Brennan Center report and other appropriate steps to advertise the Utah program.

(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.

UTAH INTERPRETER PROGRAM

The courts currently pay the interpreter in cases that involve a person’s personal safety and cases in which there is a potential loss of liberty:

- admission to mental retardation facility or to the Utah State Hospital
- child welfare and delinquency cases
- criminal cases
- guardianship and conservatorship
- isolation and quarantine for public health
- petitions for post conviction relief and extraordinary writs
- stalking injunctions, protective orders, and child protective orders

The courts pay the interpreter in the first instance. 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. Practice is mixed. Many courts never seek to recoup the interpreter’s fee.

RECOMMENDATION

The committee recommends that the court appoint the interpreter and pay their fee in the first instance, but the court should be able to recoup the cost from the party or apportion the cost among the parties, unless a party is impecunious or the interpretation is by a staff interpreter.

The courts should amend their existing impecuniosity forms to add waiver of an interpreter's fee. Recoupment statutes would not have to be amended should be amended.

Interpreter fees paid by the parties should be the same as set by the Judicial Council or local authority.

RULE 3-306

- Lines 83-88
- Lines 133-138

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

UTAH INTERPRETER PROGRAM

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 we perennially advise the Legislature. Estimating with any accuracy how much the additional interpreter time will cost is impossible, but we anticipate the cost will be significant.

RECOMMENDATION

No change.

JUSTICE COURT CONSIDERATIONS

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. The need for interpreters will grow, both naturally and as a result of these changes, at a time when budgets are being reduced.

(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:

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

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

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

(1)(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);

(1)(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

(1)(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).

UTAH INTERPRETER PROGRAM

“Certified” interpreters are trained and tested in a way sufficient to meet these requirements. In 2010 the AOC changed the training curriculum to be language neutral, to better enable certification in languages other than Spanish. Part of the training cost is subsidized by the Council; part is tuition paid by the interpreter. The training is required before taking the examination offered by the National Center for State Courts’ Consortium for Language Access in the Courts.

“Approved” interpreters participate in a one-day workshop. There is an English diagnostic test for approved Spanish interpreters, but not for other languages.

RECOMMENDATION

The Court Interpreter Committee recommends and we concur in the following:

Change the “approved” credentials to require testing by an Oral Proficiency Interview (OPI) if OPI offers testing in that language. The OPI examination is not as rigorous as the examination by the Consortium, but it is highly regarded. At least six other states require OPI testing for their credentials. As yet, there is no training for this test. Offer (but do not require) the certification training to OPI candidates.

Establish a new category of “Registered I” for interpreters who interpret in a language other than those tested by the Consortium or OPI and who meet our registration requirements.

Establish a new category of “Registered II” for interpreters who do not pass or do not take the available Consortium or OPI examinations but who meet our registration requirements.

RULE 3-306

- Lines 18-20
- Lines 43-50

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

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

UTAH INTERPRETER PROGRAM

Rule 3-306(4)(B) states: “An approved interpreter may be appointed if no certified interpreter is reasonably available.”

Rule 3-306(4)(C) states: “A conditionally-approved interpreter may be appointed if the appointing authority, after evaluating the totality of the circumstances, finds that:

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

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

(iii) neither a certified nor an approved interpreter is 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.”

RECOMMENDATION

Extend these considerations to evaluating the interpreter’s qualifications in civil cases.

JUSTICE COURT CONSIDERATIONS

The remote location of many justice courts, coupled with language needs that remain unidentified until a hearing, pressure the court to use approved or conditionally approved interpreters. The only alternative is to reschedule the hearing. The option to reschedule is sometimes given to the person of limited English proficiency.

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

UTAH INTERPRETER PROGRAM

Certified interpreters must have 16 hours of continuing education every 2 years. The AOC usually subsidizes a few hours of training every cycle, but the interpreters pay for most of their education opportunities. There is no continuing education requirement for approved interpreters, principally because the time and cost of the requirement may drive some individuals from the field.

RECOMMENDATION

Consider adding a continuing education requirement for “approved” and “registered” interpreters.

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

UTAH INTERPRETER PROGRAM

The Utah program adopts the model code recommended by the National Center for State Courts’ Consortium for Language Access in the Courts.

RECOMMENDATION

No change, but, after the experienced gained in the last 15 or 20 years, the model code should be re-evaluated.

(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.

UTAH INTERPRETER PROGRAM

There are more than enough certified Spanish interpreters to serve the current needs. There are probably enough certified Spanish interpreters to serve the expanded needs of these recommendations. Availability in other languages depends on the language. Even if an interpreter is readily available in a language other than Spanish, the interpreter's skills have not been tested. That should improve with OPI testing.

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

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.

We use interpreters from other states if no one sufficiently qualified in a language is available locally.

RECOMMENDATION

Keep a competitive fee.

Improve recruitment of interpreters in languages in which there are no approved interpreters.

JUSTICE COURT CONSIDERATIONS

Justice courts establish interpreter fees independent of the Judicial Council. Most pay the same as the state courts. Some pay more; some less. The fee interferes with availability of an interpreter only if the fee is so low that interpreters are not willing to take an assignment.

(5) Uses telephonic interpretation only:

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

(b) With proper equipment:

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

(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.

UTAH INTERPRETER PROGRAM

Remote interpretation is seldom used. The courts are installing the necessary equipment in Richfield and Vernal as part of a pilot program.

RECOMMENDATION

The recommendations in the Brennan Center report appear reasonable, but we do not yet have any experience with our pilot project. Investigate best practices and develop guidelines as part of the pilot project.

(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.

UTAH INTERPRETER PROGRAM

The first extensive evaluation of interpreter use was done for FY 2009, although expenditures in the jury/witness/interpreter line item have shown generally that demand for interpreters has been rising every year for at least the last five years. After Spanish, need drops off sharply. In FY 2010, 96.9% of Spanish interpretation in the state courts was by certified interpreters.

RECOMMENDATION

Review annually with Judicial Council.

(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.

UTAH INTERPRETER PROGRAM

The Utah program has no such requirement.

RECOMMENDATION

No change. There seems to be little purpose to the information unless we are going to allow the person to object to a particular interpreter and request another.

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

UTAH INTERPRETER PROGRAM

Rule 3-306(7) states: “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.” The authority to remove an interpreter from a hearing exists, and it has been exercised. Sometimes another participant in the hearing speaks enough Spanish to challenge an interpreter’s interpretation.

RECOMMENDATION

No change.

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

UTAH INTERPRETER PROGRAM

Rule 3-306(8) has appropriate disciplinary grounds and procedures.

RECOMMENDATION

No change.

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

UTAH INTERPRETER PROGRAM

The AOC assigns responsibility for the interpreter program to two people within the Legal Department. The Third Judicial District assigns responsibility for scheduling interpreters to one person for both the district court and juvenile court. The Judicial Council directed the other districts to do the same, but the Second and Fourth Judicial Districts have not. Justice court practices vary. The Council has included centralized, statewide scheduling as part of its budget efficiencies, but implementation is not now a priority.

RECOMMENDATION

The committee recommends that the courts continue with their current efforts.

Increasing the number of hearings in which interpreters are appointed will increase the workload of the coordinators who schedule the interpreters, but, without experience we cannot measure by how much. We must remain attuned to the coordinators’ needs and provide the resources necessary to succeed.

(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.

UTAH INTERPRETER PROGRAM

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

RECOMMENDATION

Improve training.

(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.

UTAH INTERPRETER PROGRAM

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

RECOMMENDATION

Improve training.

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

UTAH INTERPRETER PROGRAM

The Judicial Performance Evaluation Commission includes interpreters as potential respondents in judicial evaluation surveys.

RECOMMENDATION

No change.

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

UTAH INTERPRETER PROGRAM

The Utah program has no express “feedback” process for evaluating interpreters. Rule 3-306(8) establishes a complaint process. The Court Interpreter Committee’s strategic plan includes developing an evaluation process, but it has not been a priority. Informal complaints from participants in various hearings sometimes reach the AOC, and someone will meet with the interpreter if it is warranted.

RECOMMENDATION

Develop a more formal evaluation process as time permits.

(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.

UTAH INTERPRETER PROGRAM

The need for an interpreter and in what language are recorded in CORIS and CARE. When the judicial assistant schedules a hearing, CORIS or CARE automatically sends to the coordinator an email stating the need. The more difficult problem is not knowing that an interpreter is needed. This information must come from a source outside the courts. To have someone readily available on short notice, some of the metropolitan courts have begun scheduling an interpreter during peak times even if there is no known need.

RECOMMENDATION

Make improvements as they are identified by users.

(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.

UTAH INTERPRETER PROGRAM

Notice of right to an ASL interpreter is included on “Notice of Hearing” forms. Parties are directed to contact the clerk three days before the hearing.

RECOMMENDATION

Include appropriate notice on “Notice of Hearing” and other forms. Take other steps to advertize rights and requirements.

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

UTAH INTERPRETER PROGRAM

RECOMMENDATION

See the discussion under [Section \(e\)\(1\)](#).

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

UTAH INTERPRETER PROGRAM

Scheduling interpreters is left to local discretion. Some courts have clear favorites. Most spread the work among those who live in the area. Interpreter coordinators will go farther afield when required, usually because there is no interpreter in the community or because the local interpreters are not available.

RECOMMENDATION

No change, but continue to encourage courts to recognize the cost of travel by interpreters from outside the community.

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

UTAH INTERPRETER PROGRAM

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.

RECOMMENDATION

No change, but continue to encourage courts to schedule interpreters efficiently.

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

UTAH INTERPRETER PROGRAM

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. Scheduling all interpreter cases on specific days is contrary to some of the other recommendations in the Brennan Center report.

RECOMMENDATION

No change.

(f) Translations

DOJ Safe Harbor

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.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, correctional facilities should, where appropriate, ensure that prison rules have been explained to LEP inmates, at orientation, for instance, prior to taking disciplinary action against them.

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.

UTAH INTERPRETER PROGRAM

The courts meet the requirements for competent translators. 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.” We have never tried to translate our webpages and forms into any language other than Spanish.

A complete list of webpages that have been translated into Spanish, is on the court website at <http://www.utcourts.gov/howto/sp/>. We have not necessarily translated the forms associated with a topic even if we have translated the information about the topic. For example, all of the domestic violence information and forms have been translated, but in small claims, only the web information has been translated – not yet the forms.

If a form has been translated, the format being used is to have a separate English and Spanish form, rather than English and Spanish on the same form. The Spanish form can be laid side-by-side to see what the English form is asking for. In order to file the document with the court, the answers must be written in English on the English form.

The percentage of the courts’ website that is translated probably is going down. For the last few years, the courts have been rewriting much of the information on the website. Those efforts represent an improvement for pro se parties, but there has been no money to translate the new pages, and the translations of the old pages are being removed because they are out of date. We have been able to re-translate the domestic violence pages and forms and the small claims pages.

RECOMMENDATION

We recommend that the courts continue to professionally translate into Spanish as many webpages and forms as possible, prioritizing those that are the most vital. Historically, this expense has not been charged to the jury/witness/interpreter line item, because, unlike interpretation in the courtroom, the court has been able to control the pace at which the information and forms are translated. Given the efforts to enforce strict compliance with the federal law, that is no longer true. Translation of webpages

and forms seems as legitimate an expense for the jury/witness/interpreter line item as courtroom interpretation.

In addition, Google offers a tool that translates any webpage into several languages. The state website includes it: <http://www.utah.gov/translate.html>. The user drags and drops the translation link for any given language to the user's toolbar. Then, from any webpage, the user clicks on the translation link to translate the page into that language. In some browsers, the tool even works on Word and Adobe files (which are the formats for most of the court forms).

This tool is available to any web user who knows about it. The only question is whether we add to our website immediate access to it, like the state has done. We should do so. It is important that we include caveats and warnings about the quality of the translation. It appears that the quality of the Spanish translation is passable, but not nearly as good as our professionally translated pages. Still, a Spanish-speaking person will probably struggle less with the Google translation than with the English original. It appears that the quality of translations other than Spanish is poor.

If we include the tool on our website, we should include the instructions for its use in Spanish. If possible, the language buttons themselves should be labeled in the target language. The tool allows the user to "contribute a better translation." This feature appears to be community-based, like Wikipedia, which may present problems.

Rule 3-306(10) requires the courts to use a team of certified interpreters or translators to translate forms. That is sound policy. Since the Google translation is user-driven, adding the feature to our website does not violate this policy. We should continue to translate into Spanish, using professional interpreters and translators, the webpages and forms that we think might be most useful to Spanish-speaking people.

(4) Rule 3-306

1 **Rule 3-306. Court interpreters.**

2 Intent:

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

6 To outline the procedure for certification, appointment, and payment of court
7 interpreters.

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

10 Applicability:

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

14 Statement of the Rule:

15 (1) Definitions.

16 (1)(A) “Appointing authority” means a judge, commissioner, referee or juvenile
17 probation officer, or delegate thereof.

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

21 (1)(C) “Certified interpreter” means a person who has [successfully passed the](#)
22 [examination of the Consortium for Language Access in the Courts and has](#) fulfilled the
23 requirements established in paragraph (3).

24 (1)(D) “Committee” means the Court Interpreter Committee established by Rule 1-
25 205.

26 (1)(E) “Conditionally-approved interpreter” means a person who, in the opinion of the
27 appointing authority after evaluating the totality of the circumstances, has language
28 skills, knowledge of interpreting techniques, and familiarity with interpreting sufficient to
29 interpret the legal proceeding. A conditionally approved interpreter shall read and is

30 bound by the Code of Professional Responsibility and shall subscribe the oath or
31 affirmation of a certified interpreter.

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

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

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

43 (1)(I) “Registered interpreter I” means a person who interprets in a language in
44 which testing by the Consortium for Language Access in the Courts or Language
45 Testing International is not available and who has fulfilled the requirements established
46 in paragraph (3) other than paragraph (3)(A)(v).

47 (1)(J) “Registered interpreter II” means a person who interprets in a language in
48 which testing by the Consortium for Language Access in the Courts or Language
49 Testing International is available and who has fulfilled the requirements established in
50 paragraph (3) other than paragraph (3)(A)(v).

51 (2) Court Interpreter Committee. The Court Interpreter Committee shall:

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

54 (2)(B) issue informal opinions to questions regarding the Code of Professional
55 Responsibility, which is evidence of good-faith compliance with the Code; and

56 (2)(C) discipline court interpreters.

57 (3) Application, training, testing, roster.

58 (3)(A) Subject to the availability of funding, and in consultation with the committee,
59 the administrative office of the courts shall establish programs to certify and approve
60 court interpreters in the non-English languages most frequently needed in the courts.

61 The administrative office shall publish a roster of certified interpreters and a roster of
62 approved interpreters. To be certified or approved, an applicant shall:

63 (3)(A)(i) file an application form approved by the administrative office;

64 (3)(A)(ii) pay a fee established by the Judicial Council;

65 (3)(A)(iii) pass a background check;

66 (3)(A)(iv) complete training as required by the administrative office;

67 (3)(A)(v) obtain a passing score on the court interpreter's test(s) as required by the
68 administrative office;

69 (3)(A)(vi) complete 10 hours observing a certified interpreter in a legal proceeding;
70 and

71 (3)(A)(vii) take and subscribe the following oath or affirmation: "I will make a true and
72 impartial interpretation using my best skills and judgment in accordance with the Code
73 of Professional Responsibility."

74 (3)(B) A person who is certified in good standing by the federal courts or by a state
75 having a certification program that is equivalent to the program established under this
76 rule may be certified without complying with paragraphs (3)(A)(iv) through (3)(A)(vii) but
77 shall pass an ethics examination and otherwise meet the requirements of this rule.

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

82 (4) Appointment.

83 (4)(A) Except as provided in paragraphs (4)(B), (4)(C) and (4)(D), if the appointing
84 authority determines that a party, witness, victim or person who will be bound by the
85 legal proceeding has a primary language other than English and limited ability to
86 understand and communicate in English proficiency, the appointing authority shall
87 appoint a certified interpreter in the following cases: all legal proceedings. A person
88 requesting an interpreter is presumed to be a person of limited English proficiency.

89 ~~(4)(A)(i) criminal cases;~~

90 ~~(4)(A)(ii) preliminary inquiries and cases filed on behalf of the state under Title 78A,~~
91 ~~Chapter 6, Juvenile Court Act of 1996;~~

92 ~~(4)(A)(iii) cases filed against the state pursuant to Utah Rule of Civil Procedure~~
93 ~~65B(b) or 65C;~~

94 ~~(4)(A)(iv) cases filed under Title 62A, Chapter 5, Part 3, Admission to Mental~~
95 ~~Retardation Facility;~~

96 ~~(4)(A)(v) cases filed under Title 62A, Chapter 15, Part 6, Utah State Hospital and~~
97 ~~Other Mental Facilities;~~

98 ~~(4)(A)(vi) cases filed under Title 75, Chapter 5, Parts 2, 3, and 4;~~

99 ~~(4)(A)(vii) cases filed under Title 77, Chapter 3a, Stalking Injunctions;~~

100 ~~(4)(A)(viii) cases filed under Title 78B, Chapter 7, Protective Orders;~~

101 ~~(4)(A)(ix) cases filed under Title 26, Chapter 6b, Communicable Diseases—~~
102 ~~Treatment, Isolation, and Quarantine Procedures; or~~

103 ~~(4)(A)(x) other cases in which the appointing authority determines that the court is~~
104 ~~obligated to appoint an interpreter.~~

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

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

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

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

114 (4)(C)(iii) ~~neither~~ a certified, ~~nor an~~ or registered interpreter is not
115 reasonably available or the gravity of the legal proceeding and the potential
116 consequence to the person are so minor that delays in obtaining a certified or approved
117 interpreter are not justified.

118 (4)(D) No interpreter is needed for a direct verbal exchange between the person and
119 ~~a probation officer court staff~~ if the ~~probation officer court staff~~ can fluently speak the
120 language understood by the person. An approved, registered or conditionally approved
121 interpreter may be appointed ~~for a juvenile probation conference~~ if the ~~probation officer~~
122 ~~court staff~~ does not speak the language understood by the juvenile person.

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

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

132 (5) Payment.

133 (5)(A) ~~In cases described in paragraph (4), the~~ The interpreter fees and expenses
134 shall be paid by the administrative office of the courts in courts of record and by the
135 government that funds the court in courts not of record. The court may assess the
136 interpreter fees and expenses as costs to a party as provided by law. (Utah
137 Constitution, Article I, Section 12, Utah Code Sections 77-1-6(2)(b), 77-18-7, 77-32a-1,
138 77-32a-2, 77-32a-3, 78B-1-146(3) and URCP 54(d)(2).)

139 ~~(5)(B) The courts will pay for:~~

140 ~~(5)(B)(i) one interpreter for non-English speaking defendants and non-English~~
141 ~~speaking witnesses;~~

142 ~~(5)(B)(ii) a separate interpreter for each non-English speaking defendant and/or~~
143 ~~witness if the judge determines that one non-English speaking person has an interest~~
144 ~~adverse to the others, or the judge determines that due process, confidentiality, or other~~
145 ~~circumstances require that there be separate interpreters; or~~

146 ~~(5)(B)(iii) two interpreters for person(s) requiring an interpreter if the judge~~
147 ~~determines that the legal proceeding is so long that two interpreters are required to~~
148 ~~alternate duties.~~

149 (5)(B) A person who has been ordered to pay for an interpreter after filing an affidavit
150 of impecuniosity may apply to the presiding judge to review the order. If there is no
151 presiding judge, the person may apply to any judge of the court or any judge of a court
152 of equal jurisdiction. The application must be filed within 20 days after the denial.

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

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

161 (8) Discipline.

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

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

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

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

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

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

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

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

172 (8)(B) Discipline may include:

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

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

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

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

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

181 (8)(B)(vi) reprimand.

182 (8)(C) Any person may file a complaint in writing on a form provided by the program
183 manager. The complaint may be in the native language of the complainant, which the

184 AOC shall translate in accordance with this rule. The complaint shall describe in detail
185 the incident and the alleged conduct or omission. The program manager may dismiss
186 the complaint if it is plainly frivolous, insufficiently clear, or alleges conduct that does not
187 violate this rule. If the complaint is not dismissed, the program manager shall mail the
188 complaint to the interpreter at the address on file with the administrative office.

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

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

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

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

213 (8)(H) The interpreter may review and, upon payment of the required fee, obtain a
214 copy of any records to be used by the committee. The interpreter may attend all of the

215 hearing except the committee’s deliberations. The interpreter may be represented by
216 counsel and shall be permitted to make a statement, call and interview the complainant
217 and witnesses, and comment on the claims and evidence. The interpreter may obtain a
218 copy of the record of the hearing upon payment of the required fee.

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

222 (9) Fees.

223 (9)(A) In April of each year the Judicial Council shall set the fees and expenses to be
224 paid [to interpreters](#) during the following fiscal year by the courts of record ~~for the cases~~
225 ~~identified in Paragraph (4)~~. Payment of fees and expenses shall be made in accordance
226 with the Courts Accounting Manual.

227 (9)(B) The local government that funds a court not of record shall set the fees and
228 expenses to be paid [to interpreters](#) by that court ~~for the cases identified in Paragraph~~
229 ~~(4)~~.

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

233 (11) Court employees as interpreters. A court employee may not interpret legal
234 proceedings except as follows.

235 (11)(A) A court may hire an employee to be an interpreter. The employee will be
236 paid the wages and benefits of the employee’s grade and not the fee established by this
237 rule. If the language is a language for which certification in Utah is available, the
238 employee must be a certified interpreter. If the language is a language for which
239 certification in Utah is not available, the employee must be an approved interpreter. The
240 employee must meet the continuing education requirements of an employee, but at
241 least half of the minimum requirement must be in improving interpreting skills. The
242 employee is subject to the discipline process for court personnel, but the grounds for
243 discipline include those listed in this rule.

244 (11)(B) A state court employee employed as an interpreter has the rights and
245 responsibilities provided in the Utah state court human resource policies, including the

246 Code of Personal Conduct, and the Court Interpreters' Code of Professional
247 Responsibility also applies. A justice court employee employed as an interpreter has the
248 rights and responsibilities provided in the county or municipal human resource policies,
249 including any code of conduct, and the Court Interpreters' Code of Professional
250 Responsibility also applies.

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

254

(5) Responses to inquiry of other states

“Given the attention to Title VI in the last year, I would like to know if your state currently provides interpreters for civil matters.”

State	Response
Alaska	The Alaska Court System assigns interpreters for criminal and civil proceedings, including court mandated programs.
Colorado	Colorado does not provide interpreters for civil matters unless there is a determination of indigency. We hope to change that when we have sufficient funding.
Connecticut	Connecticut provides interpreters in civil courts mainly for family matters (Support, Divorces in cases that involve children), Foreclosure and Housing matters.
Idaho	Idaho provides interpreters in civil matters at the court's expense. See the following link to I.C. section 9-205: http://www.legislature.idaho.gov/idstat/Title9/T9CH2SECT9-205.htm .
Indiana	Yes
Iowa	Civil and domestic cases (including contempt cases) – the party needing an interpreter is indigent. The court will appoint and pay for an interpreter – by ordering payment from the court’s Jury & Witness Fund -- then charge the fees as court costs (IA Code 622A.3). Civil and domestic cases (including contempt cases) – the party needing the interpreter is not indigent. The party needing the interpreter is responsible, but to avoid delays and ensure due process, the court may pay the interpreter -- by ordering payment from the court’s Jury & Witness Fund -- then charge the fees as court costs.
Kentucky	In Kentucky, since 1994 when the Kentucky Revised Statutes were amended, interpreters are provided for all court proceedings and directly related services, criminal or civil.
Maine	Maine provides interpreters for court proceedings and clerk counter transactions for all case types at the courts expense.
Maryland	The Judiciary in Maryland pays for interpreters in civil and criminal matters at both the District Court and Circuit Court levels.
Massachusetts	Massachusetts provides interpreters "to appear at any and all criminal or civil judicial proceedings ."

State	Response
Minnesota	When a litigant or witness, because of a hearing, speech, or other communication disorder, or because of difficulty in speaking or comprehending the English language, is unable to fully understand the proceedings in which the person is required to participate, or when a party to a legal proceeding is unable by reason of the deficiency to obtain due process of law. Minn. Stat. §§ 546.42-.43.
Nebraska	Nebraska does provide interpreter services for criminal and civil cases. Nebraska statutes require interpreters for “any legal proceeding or any hearing preliminary thereto”.
Nevada	Pursuant to a court rule, when an interpreter is appointed in a civil proceeding, the court can either be “be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.”In practice, Nevada courts will cover the costs of interpretation only when a determination of indigence has been made.
New Jersey	<p>We do provide interpreters in all matters, including civil. Our interpreting standards are available at http://www.judiciary.state.nj.us/directive/personnel/dir_03_04.pdf</p> <p>Standard 1.2. Who should be assigned an interpreter.</p> <p>The judiciary should generally assign interpreters to interpret all phases of court-connected proceedings for any person with limited proficiency in English who is a named party in the proceeding or who, in Family Part, is a parent or guardian of a juvenile who is a named party, as well as for witnesses during their testimony. Such phases include, most critically, those proceedings for which a transcript may be made, but also, when necessary, court-ordered arbitration and mediation and delivery of services involving court personnel, particularly in criminal and quasi-criminal cases. Interpreters should be provided whenever a failure of communication may have significant negative repercussions.</p>
New Mexico	<p>For a non-English speaking person who is a principal party in interest or a witness in a domestic violence case, domestic relations ease referred by the Child Support Enforcement Division, and/or Children's Court cases.</p> <p>For a non-English speaking person who is a principal party in interest in a civil case or that party's witness when the court has found the party to be indigent.</p> <p>For any non-English speaking juror; a certified court interpreter shall be provided to petit and grand jurors, including jury orientation, voir</p>

State	Response
	<p>dire, deliberations, and all portions of the trial.</p> <p>State statute can be read to imply that the state should be providing interpreters in all civil matters. This is currently being considered by the Joint Rules Committee of the Supreme Court.</p>
New York	<p>New York State courts provide interpreters for civil as well as criminal matters. see Court Rule Part 217: http://nycourts.gov/rules/trialcourts/217.shtml</p>
Oregon	<p>Provides interpreters free of charge to all LEP litigants and witnesses in all civil proceedings.</p> <p>By statute, state courts in Oregon must appoint qualified interpreters for parties and witnesses in all civil, criminal, or administrative adjudicatory proceedings if interpreter services are necessary.</p> <p>Although a statute permits courts to charge parties for interpreters when the party cannot demonstrate a financial inability to pay, as a matter of practice, Oregon's courts do not charge for interpreters.</p>
Pennsylvania	<p>Pennsylvania provides interpreters in all criminal proceedings, all family court matters, landlord/tenant, court sponsored arbitration, and most municipal court matters at court cost. We normally do not provide interpreters in private civil matters like malpractice, breach of contracts, etc. We also provide interpreters in administrative hearings and appeals.</p>
Vermont	<p>Vermont assigns interpreters in all court matters, including court ordered programs, at court cost.</p>
Washington	<p>According to Washington statute, our courts provide interpreters in all matters. In civil cases, however, parties who are found not to be indigent will be assessed the cost.</p>
Wisconsin	<p>Since Oct 2007, Wisconsin statutes require that interpreters be provided for civil matters at public expense regardless of indigence.</p>

(6) DOJ enforcement letter



U. S. Department of Justice

Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

August 16, 2010

Dear Chief Justice/State Court Administrator:

In the past decade, increasing numbers of state court systems have sought to improve their capacity to handle cases and other matters involving parties or witnesses who are limited English proficient (LEP). In some instances the progress has been laudable and reflects increased recognition that language access costs must be treated as essential to sound court management. However, the Department of Justice (DOJ) continues to encounter state court language access policies or practices that are inconsistent with federal civil rights requirements. Through this letter, DOJ intends to provide greater clarity regarding the requirement that courts receiving federal financial assistance provide meaningful access for LEP individuals.

Dispensing justice fairly, efficiently, and accurately is a cornerstone of the judiciary. Policies and practices that deny LEP persons meaningful access to the courts undermine that cornerstone. They may also place state courts in violation of long-standing civil rights requirements. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.* (Title VI), and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d(c) (Safe Streets Act), both prohibit national origin discrimination by recipients of federal financial assistance. Title VI and Safe Streets Act regulations further prohibit recipients from administering programs in a manner that has the effect of subjecting individuals to discrimination based on their national origin. *See* 28 C.F.R. §§ 42.104(b)(2), 42.203(e).

The Supreme Court has held that failing to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI regulations. *See Lau v. Nichols*, 414 U.S. 563 (1974). Executive Order 13166, which was issued in 2000, further emphasized the point by directing federal agencies to publish LEP guidance for their financial assistance recipients, consistent with initial general guidance from DOJ. *See* 65 Fed. Reg. 50,121 (Aug. 16, 2000). In 2002, DOJ issued final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 67 Fed. Reg. 41,455 (June 18, 2002) (DOJ Guidance). The DOJ Guidance and subsequent technical assistance letters from the Civil Rights Division explained that court systems receiving federal financial assistance, either directly or indirectly, must provide meaningful access to LEP persons in order to comply with Title VI, the Safe Streets Act, and their implementing regulations. The federal requirement to provide language assistance to LEP individuals applies notwithstanding conflicting state or local laws or court rules.

Despite efforts to bring courts into compliance, some state court system policies and practices significantly and unreasonably impede, hinder, or restrict participation in court proceedings and access to court operations based upon a person's English language ability. Examples of particular concern include the following:

1. Limiting the types of proceedings for which qualified interpreter services are provided by the court. Some courts only provide competent interpreter assistance in limited categories of cases, such as in criminal, termination of parental rights, or domestic violence proceedings. DOJ, however, views access to *all* court proceedings as critical. The DOJ Guidance refers to the importance of meaningful access to courts and courtrooms, without distinguishing among civil, criminal, or administrative matters. *See* DOJ Guidance, 67 Fed. Reg. at 41,462. It states that "every effort should be taken to ensure competent interpretation for LEP individuals during *all* hearings, trials, and motions," *id.* at 41,471 (emphasis added), including administrative court proceedings. *Id.* at 41,459, n.5.

Courts should also provide language assistance to non-party LEP individuals whose presence or participation in a court matter is necessary or appropriate, including parents and guardians of minor victims of crime or of juveniles and family members involved in delinquency proceedings. Proceedings handled by officials such as magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers should also include professional interpreter coverage. DOJ expects that meaningful access will be provided to LEP persons in all court and court-annexed proceedings, whether civil, criminal, or administrative including those presided over by non-judges.

2. Charging interpreter costs to one or more parties. Many courts that ostensibly provide qualified interpreters for covered court proceedings require or authorize one or more of the persons involved in the case to be charged with the cost of the interpreter. Although the rules or practices vary, and may exempt indigent parties, their common impact is either to subject some individuals to a surcharge based upon a party's or witness' English language proficiency, or to discourage parties from requesting or using a competent interpreter. Title VI and its regulations prohibit practices that have the effect of charging parties, impairing their participation in proceedings, or limiting presentation of witnesses based upon national origin. As such, the DOJ Guidance makes clear that court proceedings are among the most important activities conducted by recipients of federal funds, and emphasizes the need to provide interpretation free of cost. Courts that charge interpreter costs to the parties may be arranging for an interpreter's presence, but they are not "providing" the interpreter. DOJ expects that, when meaningful access requires interpretation, courts will provide interpreters at no cost to the persons involved.

3. Restricting language services to courtrooms. Some states provide language assistance only for courtroom proceedings, but the meaningful access requirement extends to court functions that are conducted outside the courtroom as well. Examples of such court-managed offices, operations, and programs can include information counters; intake or filing offices; cashiers; records rooms; sheriff's offices; probation and parole offices; alternative dispute resolution programs; *pro se* clinics; criminal diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs. Access to these points of public contact is essential to the fair administration of justice, especially for unrepresented LEP persons. DOJ expects courts to provide meaningful access for LEP persons to such court operated or managed points of public contact in the judicial process, whether the contact at issue occurs inside or outside the courtroom.

4. Failing to ensure effective communication with court-appointed or supervised personnel. Some recipient court systems have failed to ensure that LEP persons are able to communicate effectively with a variety of individuals involved in a case under a court appointment or order. Criminal defense counsel, child advocates or guardians *ad litem*, court psychologists, probation officers, doctors, trustees, and other such individuals who are employed, paid, or supervised by the courts, and who are required to communicate with LEP parties or other individuals as part of their case-related functions, must possess demonstrated bilingual skills or have support from professional interpreters. In order for a court to provide meaningful access to LEP persons, it must ensure language access in all such operations and encounters with professionals.

DOJ continues to interpret Title VI and the Title VI regulations to prohibit, in most circumstances, the practices described above. Nevertheless, DOJ has observed that some court systems continue to operate in apparent violation of federal law. Most court systems have long accepted their legal duty under the Americans with Disabilities Act (ADA) to provide auxiliary aids and services to persons with disabilities, and would not consciously engage in the practices highlighted in this letter in providing an accommodation to a person with a disability. While ADA and Title VI requirements are not the same, existing ADA plans and policy for sign language interpreting may provide an effective template for managing interpreting and translating needs for some state courts.

Language services expenses should be treated as a basic and essential operating expense, not as an ancillary cost. Court systems have many operating expenses – judges and staff, buildings, utilities, security, filing, data and records systems, insurance, research, and printing costs, to name a few. Court systems in every part of the country serve populations of LEP individuals and most jurisdictions, if not all, have encountered substantial increases in the number of LEP parties and witnesses and the diversity of languages they speak. Budgeting adequate funds to ensure language access is fundamental to the business of the courts.

We recognize that most state and local courts are struggling with unusual budgetary constraints that have slowed the pace of progress in this area. The DOJ Guidance acknowledges that recipients can consider the costs of the services and the resources available to the court as part of the determination of what language assistance is reasonably required in order to provide meaningful LEP access. *See id.* at 41,460. Fiscal pressures, however, do not provide an exemption from civil rights requirements. In considering a system's compliance with language access standards in light of limited resources, DOJ will consider all of the facts and circumstances of a particular court system. Factors to review may include, but are not limited to, the following:

- The extent to which current language access deficiencies reflect the impact of the fiscal crisis as demonstrated by previous success in providing meaningful access;
- The extent to which other essential court operations are being restricted or defunded;
- The extent to which the court system has secured additional revenues from fees, fines, grants, or other sources, and has increased efficiency through collaboration, technology, or other means;
- Whether the court system has adopted an implementation plan to move promptly towards full compliance; and
- The nature and significance of the adverse impact on LEP persons affected by the existing language access deficiencies.

DOJ acknowledges that it takes time to create systems that ensure competent interpretation in all court proceedings and to build a qualified interpreter corps. Yet nearly a decade has passed since the issuance of Executive Order 13166 and publication of initial general guidance clarifying language access requirements for recipients. Reasonable efforts by now should have resulted in significant and continuing improvements for all recipients. With this passage of time, the need to show progress in providing all LEP persons with meaningful access has increased. DOJ expects that courts that have done well will continue to make progress toward full compliance in policy and practice. At the same time, we expect that court recipients that are furthest behind will take significant steps in order to move promptly toward compliance.

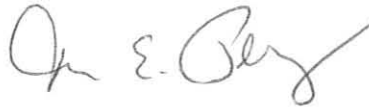
The DOJ guidance encourages recipients to develop and maintain a periodically-updated written plan on language assistance for LEP persons as an appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Such written plans can provide additional benefits to recipients' managers in the areas of training, administrating, planning, and budgeting. The DOJ Guidance goes on to note that these benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. In court systems, we have found that meaningful access inside the courtroom is most effectively implemented in states that have adopted a court rule, statute, or administrative order providing for universal, free, and qualified court interpreting. In addition, state court systems that have strong leadership and a designated coordinator of language services in the office of the court administrator, and that have identified personnel in charge of ensuring language access in each courthouse, will more likely be able to provide effective and consistent language access for LEP

individuals. Enclosed, for illustrative purposes only, are copies of Administrative Order JB-06-3 of the Supreme Judicial Court of Maine, together with the September 2008 Memorandum of Understanding between that court and DOJ. Also enclosed for your information is a copy of "Chapter 5: Tips and Tools Specific to Courts" from DOJ, *Executive Order 13166 Limited English Proficiency Document: Tips and Tools from the Field* (2004).

The Office of Justice Programs provides Justice Assistance Grant funds to the states to be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and criminal justice information systems that will improve or enhance criminal justice programs including prosecution and court programs. Funding language services in the courts is a permissible use of these funds.

DOJ has an abiding interest in securing state and local court system compliance with the language access requirements of Title VI and the Safe Streets Act and will continue to review courts for compliance and to investigate complaints. The Civil Rights Division also welcomes requests for technical assistance from state courts and can provide training for court personnel. Should you have any questions, please contact Mark J. Kappelhoff, Acting Chief, Federal Coordination and Compliance Section (formally known as Coordination and Review Section) at (202) 307-2222.

Sincerely,

A handwritten signature in black ink, appearing to read "Th. E. Perez", with a long, sweeping flourish extending to the right.

Thomas E. Perez
Assistant Attorney General

Enclosures