

Rule 3-306.04. Interpreter appointment, payment, and fines.**Intent:**

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

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

Applicability:

This rule ~~shall apply~~applies to legal proceedings in courts of record and not of record.

This rule ~~shall apply~~applies to interpretation for individuals with a primary language other than English and limited English proficiency (LEP). This rule ~~does not apply to non-English speaking people and not to~~ interpretation for persons~~individuals~~ with a hearing impairment, which is governed by Utah and federal statutes.

Statement of the Rule:**(1) Appointment.**

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

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

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

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

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

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

44 interpreter are not justified.

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46 (1)(D) **Out of state credentials.** The appointing authority may appoint an interpreter
47 with certified or approved or equivalent credentials from another state if the
48 appointing authority finds that the approved, registered, or conditionally approved
49 interpreters who are reasonably available do not have the language skills,
50 knowledge of interpreting techniques, or familiarity with interpreting sufficient to
51 interpret the legal proceeding. The appointing authority may consider the totality of
52 the circumstances, including the complexity or gravity of the legal proceeding, the
53 potential consequences to the person of ~~LEP~~~~limited English proficiency~~, and any other
54 relevant factor.

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56 (1)(E) **Direct verbal exchange.** No interpreter is needed for a direct verbal exchange
57 between the person and court staff if the court staff can fluently speak the language
58 understood by the person and the state court employee is acting within guidelines
59 established in the Human Resources Policies and Procedures. An approved,
60 registered, or conditionally approved interpreter may be appointed if court staff
61 does not speak the language understood by the person.

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63 (1)(F) **Number of interpreters.** The appointing authority will appoint one interpreter
64 for all participants with ~~LEP~~~~limited English proficiency~~, unless the judge determines that
65 the participants have adverse interests, or that due process, confidentiality, the
66 length of the legal proceeding, or other circumstances require that there be
67 additional interpreters.

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

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75 (3) **Waiver.** A person may waive an interpreter if the appointing authority approves the
76 waiver after determining that the waiver has been made knowingly and voluntarily. A
77 person may retract a waiver and request an interpreter at any time. An interpreter is for
78 the benefit of the court as well as for the ~~non-English-speaking~~ person with a primary language
79 other than English and LEP, so the appointing authority may reject a waiver.

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81 (4) **Translation of court forms.** Forms must be translated by a team of at least two people
82 who are interpreters certified or approved under this rule or translators accredited by the
83 American Translators Association.

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85 (5) Recorded evidence.

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(5)(A) **Sight translations.** Parties may not ask interpreters to produce on-the-spot sight translations of written documents. The court may explain to the parties why this task is inappropriate.

(5)(B) **Recorded evidence in languages other than English.** When offering a recording of a spoken language other than English, a party must offer a written transcript of the recording to aid the jury or the court in understanding the recording. Admissibility of the recording and transcript is governed by the Utah Rules of Evidence.

(5)(C) **Recorded evidence in English.** Audio and video files recorded in English that will be played in open court should be reviewed by the interpreter(s) who will be providing language services for that hearing prior to the proceeding.

(5)(D) **Emergency circumstances.** If the situation involves an emergency circumstance, the court may require a party with LEP to testify as to what is being said on the recording and have that testimony interpreted by the court interpreter for the record. If the recorded evidence is brief or not complex, the court may permit on-the-spot interpretation with the consent of the court interpreter.

(5)(E) **Duty to inform.** Court interpreters assigned to a given proceeding must inform the judge if they are unable to provide an on-the-spot interpretation of audio or video recordings, or sight translations of written documents in English.

(56) Payment.

(56)(A) **Courts of record.** The fees and expenses for language access in courts of record ~~shall will~~ be paid by the Administrative Office. Payment of fees and expenses ~~shall will~~ be made in accordance with the Accounting Manual.

(56)(B) **Courts not of record.** The local government that funds a court not of record ~~shall will~~ set and pay the fees and expenses for interpreters in that court.

(56)(C) **Parties.** The court may assess the fees and expenses as costs to a party as otherwise provided by law- (e.g., Utah Constitution, Article I, Section 12, Utah Code Sections 77-1-6(2)(b), 77-18-116, 77-32b-104, 78B-1-146(3), URCP-Rule 54 of the Utah Rules of Civil Procedure(d)(2), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., ~~and including~~ regulations and guidance adopted under that title-).

(56)(D) **Review.** A person who has been ordered to pay fees and expenses for language access may apply to the presiding judge to review the order. If there is no presiding judge, the person may apply to any judge of ~~the court or any judge of a~~ court of equal jurisdiction. The application must be filed within 20 days after the date the order was issued.

|131 *Effective:* ~~2/27/2024~~May 1, 2025