

Agenda

Court Interpreter Committee

March 28, 2008
12:00 to 1:30 p.m.

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

Introduction of new chair		Judge Vernice Trease
Approval of minutes	Tab 1	Judge Vernice Trease
Model tasks for approved interpreters		Daryl Hague
District-wide coordinators		Rosa Oakes
Distance interpretation		Rosa Oakes
Rule 3-306 amendments	Tab 2	Tim Shea
Court reporter member of committee	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

May 30, 2008

July 25, 2008

September 26, 2008

November 21, 2008

Tab 1

**COURT INTERPRETER COMMITTEE
MEETING MINUTES**

January 25, 2008
Matheson Courthouse
Salt Lake City, Utah

Members Present: Hon. Lynn Davis, Chair; Evangelina Burrows; Luther Gaylord; Peggy Gentles; Daryl Hague; Craig Johnson; Deborah Kreeck Mendez; Hon. Karlin Myers; Hon. Frederic M. Oddone; Dinorah Padro; Branden Putnam; Carolyn Smitherman.

Members Excused: Brikena Ribaj; Jennifer Storrer.

Guests: Chief Justice Christine Durham; Grant Anderson; Noelia Erickson; Rachel Webb.

Staff Present: Rosa Oakes; Marianne O'Brien; Carolyn Carpenter

Welcome

Judge Davis welcomed all present.

Recognition of Judge Lynn Davis

Chief Justice Christine Durham paid tribute to Judge Davis for his 13 years of service as chair of the Court Interpreter Committee. She presented Judge Davis with a citation from the Judicial Council in recognition of his work, written both in English and in Spanish. Chief Justice Durham read the Spanish version to the group. Judge Davis responded there has been good support from the AOC over the years, which has allowed the committee to become more professional. Judge Davis was additionally praised by various committee members for the extraordinary work he has given to the committee.

Approval of Minutes

A motion by Judge Oddone to approve the minutes of November 16, 2007 as amended was seconded, and carried unanimously.

Interpreter Brochures

Rosa Oakes distributed copies of the new English and Spanish court interpreter brochures to the group. Ms. Oakes reported that the clerks of court were given the brochures to make available in their court sites. Brochures have also been sent to the court interpreters. A Vietnamese brochure is being proofread and will soon be available. The brochures can be distributed as people see fit. Justice courts are copying the brochures on their own for distribution.

New Judge Orientation

Ms. Oakes and Mr. Shea gave a Power Point presentation about the role of interpreters in the courts at New Judge Orientation. They answered questions and reviewed the bench card with the new judges.

Long Distance Interpreting

Ms. Oakes reported the software to allow long-distance interpreting equipment was demonstrated to her, Kim Allard and others in the AOC. The Technology Committee approved the specs this past week, and the Purchasing Department has put out an RFP. The system will be demonstrated to the committee.

Court Interpreter Scheduling

The new method for scheduling court interpreters is moving forward. Ms. Oakes has met with Todd Eaton in IT, who is working on creating the calendars for the districts. Each interpreter coordinator, and the back-up interpreter coordinator, will have access to the calendars. The TCEs in each district have provided names of interpreter coordinators and back-ups. A full day of training for them will be provided on February 8th. CORIS and CARE will both be programmed to send an email request for an interpreter from the judge's clerk to the interpreter coordinator, who will schedule the interpreter using Groupwise.

A concern was expressed that oftentimes in juvenile court, a notice of cancellation does not reach the interpreter coordinator. Ms. Oakes said this will be addressed when CARE is programmed.

It was asked what drove the decision to change the method of scheduling interpreters. Ms. Oakes and Judge Davis responded that the new scheduling method has been working well in Third District Court and will help the scheduling system to be more efficient and save costs. During their training, the interpreter coordinators will be able to raise issues and work them out at that time.

Ethics Question

Luther Gaylord indicated he was contacted a few weeks ago by a colleague who had an uncomfortable situation come up in court. The interpreter's concern was written up and distributed to the committee as part of their materials. Mr. Gaylord reviewed it with the group. The issue involved the interpreter feeling that s/he was being taken out of the proper role as an interpreter and made into a witness.

The group discussed the issue and decided that though the judge in this particular instance put the interpreter in a difficult situation, the interpreter was bound to answer the judge's questions.

Following discussion, it was determined that this issue should be raised at new judge orientation and put on the agenda of judicial bench meetings.

Rule 3-306 Amendments

Judge Davis indicated the amendments to Rule 3-306 are being made because the rule has not been studied for some time. Based on past discussions in this committee, Tim Shea feels there should be some amendments made to the rule in Sections 6 and 7 (discipline of interpreters), Section 8 (interpreter fees and expenses) and Sections 10, and 11 (how court employees can be used as interpreters).

It was suggested that because Tim Shea was unable to attend today's meeting, committee members should email their concerns to Mr. Shea so he can review them before the next committee meeting. The group agreed to this and to defer further discussion on the amendments until the meeting on March 28th so that Mr. Shea can be in attendance.

Other Business

Judge Davis reminded the committee that at the last meeting this group discussed recoupment of court interpreter fees and a position paper written by Judge Davis on the issue was distributed to the group. The committee determined that before it was emailed to judges statewide, it should be reviewed by the Justice Court Board of Judges. Judge Davis and Tim Shea met with that Board and the Board decided the

position paper should be given to Brent Johnson for review and any directive on the issue be sent to the judges through Mr. Johnson.

Judge Davis asked Professor Hague if he has received any suggestions from the committee about tasks that should be modeled for approved interpreters in the less common languages. Prof. Hague responded he has received a few suggestions: arraignment, example of witness testimony, Rule 11, and a statement in advance of plea. The committee suggested some other tasks, which were noted by Prof. Hague. This topic will be put on the agenda for the next committee meeting on March 28th.

Case Law Update

Judge Davis distributed copies of case law involving interpreters and reviewed some of the cases with the group.

Fond Farewell

Judge Davis was presented with a card and a cake to thank him for his service to this committee. The committee bade him a fond farewell.

The meeting was adjourned.

Tab 2

1 Rule 3-306. Court Interpreters.

2

3 ~~(9)(6)~~ Removal in individual cases. ~~Any of the following actions shall be good cause~~
4 ~~for a judge to remove an interpreter in an individual case:~~

5 ~~(9)(A) being unable to interpret adequately, including where the interpreter self-~~
6 ~~reports such inability;~~

7 ~~(9)(B) knowingly and willfully making false interpretation while serving in an official~~
8 ~~capacity;~~

9 ~~(9)(C) knowingly and willfully disclosing confidential or privileged information~~
10 ~~obtained while serving in an official capacity;~~

11 ~~(9)(D) failing to follow other standards prescribed by law and the Code of~~
12 ~~Professional Responsibility; and~~

13 ~~(9)(E) failing to appear as scheduled without good cause.~~ The appointing authority
14 may remove an interpreter from a legal proceeding for any grounds for which an
15 interpreter can be disciplined.

16 ~~(10) Removal from certified or approved list. Any of the following actions shall be~~
17 ~~good cause for a court interpreter to be removed from the certified list maintained under~~
18 ~~subsection (4)(A)(iii) or from the approved list maintained under subsection (6)(B)(iii):~~
19 (7) Discipline.

20 (7)(A) An interpreter may be disciplined for:

21 ~~(10)(A)-(7)(A)(i)~~ knowingly ~~and willfully~~ making false interpretation while serving in an
22 official capacity;

23 ~~(10)(B)-(7)(A)(ii)~~ knowingly ~~and willfully~~ disclosing confidential or privileged
24 information obtained while serving in an official capacity;

25 ~~(10)(C)-(7)(A)(iii)~~ knowingly failing to follow ~~other~~ standards prescribed by law, ~~and~~
26 the Code of Professional Responsibility and this rule;

27 (7)(A)(iv) failing to pass a background check;

28 (7)(A)(v) failing to meet continuing education requirements; and

29 ~~(10)(D)-(7)(A)(vi)~~ failing to appear as scheduled without good cause.

30 (11) Discipline

31 ~~(11)(A) An interpreter may be disciplined for violating the Code of Professional~~
32 ~~Responsibility. (7)(B) Discipline may include: decertification, suspension, probation or~~
33 ~~other restrictions on the interpreter's certification or qualification. Discipline by the~~
34 ~~committee does not preclude independent action by the Administrative Office of the~~
35 ~~Courts.~~

36 ~~(7)(B)(i) removal from the legal proceeding;~~

37 ~~(7)(B)(ii) loss of certified or approved credentials;~~

38 ~~(7)(B)(iii) suspension from the roster of certified or approved interpreters with~~
39 ~~conditions;~~

40 ~~(7)(B)(iv) prohibition from serving as a conditionally approved interpreter;~~

41 ~~(7)(B)(v) suspension from serving as a conditionally approved interpreter with~~
42 ~~conditions; and~~

43 ~~(7)(B)(vi) reprimand.~~

44 ~~(11)(B) (7)(C) Any person, including other than a members of the committee, may~~
45 ~~initiate file a complaint in writing with the program manager. Upon receipt of a~~
46 ~~complaint, the committee shall provide written notice of the allegations. If the complaint~~
47 ~~is not plainly frivolous, the program manager shall mail the complaint to the interpreter.~~
48 ~~Within 20 days after the notice-complaint is mailed, the interpreter shall submit a written~~
49 ~~response to the complaint program manager. The response shall be sent to the~~
50 ~~administrative office staff assigned to the committee.~~

51 ~~(11)(C) Upon receipt of the interpreter's response, staff shall attempt to informally~~
52 ~~resolve the complaint. Informal resolution may include stipulated discipline or dismissal~~
53 ~~of the complaint if staff determines that the complaint is without merit. The program~~
54 ~~manager will meet with the complainant and the interpreter to mediate an appropriate~~
55 ~~resolution. If the complaint is resolved, the interpreter and complainant will sign the~~
56 ~~stipulated resolution.~~

57 ~~(11)(D)(i) A hearing shall be held on the complaint if informal resolution is~~
58 ~~unsuccessful, or if the committee otherwise determines that a hearing is necessary.~~

59 ~~(11)(D)(ii) The hearing shall be held no later than 45 days after notice of the~~
60 ~~complaint was sent to the interpreter. (7)(D) If the complaint is not resolved, the~~
61 ~~program manager will sign a statement to that effect, and the committee shall hold a~~

62 hearing within 45 days after the statement. The ~~committee-program manager~~ shall
63 serve-mail notice of the date, time and place of the hearing to the interpreter ~~with notice~~
64 ~~of the date and time of the hearing, via by certified mail, return receipt requested.~~

65 ~~(11)(D)(iii)~~ The hearing shall be closed to the public. The interpreter may be
66 represented by counsel and shall be permitted to testify, present evidence and
67 comment on the allegations. The committee may ask questions of the interpreter,
68 complainant and witnesses. The committee may rely upon evidence commonly relied
69 upon by reasonably prudent persons in the conduct of their important affairs. ~~Testimony~~
70 ~~shall be under oath and a~~ A record of the proceedings shall be maintained. The
71 interpreter may obtain a copy of the record upon payment of any required fee.

72 ~~(11)(E)-(7)(E)~~ The committee shall issue a written decision within 10 days from the
73 conclusion of the hearing. The decision shall be supported by written findings and shall
74 be ~~served on~~ mailed to the interpreter ~~via first-class mail.~~

75 (7)(F) If the committee finds that a certified interpreter has violated a provision of the
76 Code of Professional Responsibility, and if the sanction includes suspension or removal
77 from the roster of certified interpreters, the findings and sanction will be reported to the
78 National Center for State Courts Consortium for State Court Interpreter Certification,
79 where they will be available to member states.

80 ~~(11)(F) The interpreter may appeal the committee's decision to the Judicial Council.~~
81 ~~The interpreter shall file the notice of appeal with the Judicial Council no later than 20~~
82 ~~days after the committee's decision is mailed to the interpreter. The notice of appeal~~
83 ~~shall include the interpreter's written objections to the decision. The Judicial Council~~
84 ~~shall review the record of the committee proceedings to determine whether the~~
85 ~~committee correctly applied procedures and sanctions, and to determine whether the~~
86 ~~committee abused its discretion. The interpreter and committee members are not~~
87 ~~entitled to attend the Council meeting at which the proceeding is reviewed.~~

88 (12) Payment(8) Fees and expenses.

89 (12)(A) Courts of Record.

90 ~~(12)(A) (i) In courts of record, the administrative office shall pay interpreter fees and~~
91 ~~expenses(8)(A) In courts of record, the administrative office of the courts shall pay~~
92 interpreter fees and expenses for legal proceedings in the following cases. In courts not

93 of record, the government that funds the court shall pay interpreter fees and expenses
94 for legal proceedings in the following cases.

95 ~~(12)(A)(i)(a) in (8)(A)(i)~~ criminal cases,

96 ~~(12)(A)(i)(b) in (8)(A)(ii)~~ a preliminary inquiry or case filed on behalf of the state
97 under Title 78, Chapter 3a, Juvenile Courts,

98 ~~(12)(A)(i)(c) in (8)(A)(iii)~~ cases filed against the state pursuant to U.R.C.P. 65B(b) or
99 65C,

100 ~~(12)(A)(i)(d) in (8)(A)(iv)~~ cases filed under Title 30, Chapter 6, Cohabitant Abuse Act,

101 ~~(12)(A)(i)(e) in (8)(A)(v)~~ cases filed under Title 77, Chapter 3a, Stalking Injunctions,

102 ~~(12)(A)(i)(f) in (8)(A)(vi)~~ cases filed under Title 78, Chapter 3h, Child Protective
103 orders, and

104 ~~(12)(A)(i)(g) in (8)(A)(vii)~~ other cases in which the court determines that the state
105 court is obligated to pay for an interpreter's services, and

106 ~~(12)(A)(i)(h) for translation of forms pursuant to paragraph (13).~~

107 ~~(12)(A)(ii) In all other civil cases and small claims cases, the party engaging the~~
108 ~~services of the interpreter shall pay the interpreter fees and expenses.~~

109 ~~(12)(A)(iii) Fees. (8)(B)~~ In April the Judicial Council shall set the fees to be paid ~~to~~
110 ~~court interpreters for during~~ the following fiscal year by the administrative office of the
111 courts or the government that funds the court not of record in legal proceedings and for
112 translation of forms. Payment ~~to interpreters of fees and expenses~~ shall be made in
113 accordance with the Courts Accounting Manual. ~~This section does not apply to court~~
114 ~~employees acting as interpreters.~~

115 (8)(C) The court may order that the fee and expenses paid to a court interpreter,
116 other than to a court employee hired under subsection (10)(A), be assessed against a
117 party failing to appear at a hearing of which he or she had notice.

118 ~~(12)(A)(iv) Expenses. Mileage for interpreters will be paid at the same rate as state~~
119 ~~employees for each mile necessarily traveled in excess of 25 miles one-way. Per diem~~
120 ~~expenses will be paid at the same rate as state employees.~~

121 ~~(12)(A)(v) Procedure for payment. The administrative office shall pay fees and~~
122 ~~expenses of the interpreter upon receipt of a certification of appearance signed by the~~
123 ~~clerk of the court or other authorized person. The certification shall include the name,~~

124 ~~address and social security number of the interpreter, the case number, the dates of~~
125 ~~appearance, the language interpreted, and an itemized statement of the amounts to be~~
126 ~~paid.~~

127 ~~(12)(B) Courts not of record.~~

128 ~~(12)(B)(i) In courts not of record, the local government that funds the court not of~~
129 ~~record shall pay interpreter fees and expenses in criminal cases in which the defendant~~
130 ~~is determined to be indigent.~~

131 ~~(12)(B)(ii) In small claims cases, the party engaging the services of the interpreter~~
132 ~~shall pay the interpreter fees and expenses.~~

133 ~~(12)(B)(iii) Fees. The local government that funds the court not of record shall~~
134 ~~establish the amount of the interpreter fees.~~

135 ~~(12)(B)(iv) Expenses. The local government that funds the court not of record shall~~
136 ~~establish interpreter expenses, if any, that will be paid.~~

137 ~~(12)(B)(v) Procedure for payment. The local government that funds the court shall~~
138 ~~pay the interpreter upon receipt of a certification of appearance signed by the clerk of~~
139 ~~the court. The certification shall include the name, address and social security number~~
140 ~~of the interpreter, the case number, the dates of appearance, the language interpreted,~~
141 ~~and an itemized statement of the amounts to be paid.~~

142 ~~(13)(9) Translation of court forms.~~

143

144 (10) Court employees as interpreters. A court employee may not interpret legal
145 proceedings except as follows.

146 (10)(A) A court may hire an employee as an interpreter. The employee will be paid
147 the wage and benefits of the employee's grade and not the fee established by this rule.
148 If the language is a language for which certification in Utah is available, the employee
149 must be a certified interpreter. If the language is a language for which certification in
150 Utah is not available, the employee must be an approved interpreter. The employee will
151 not be included on the roster of certified or approved interpreters. The employee must
152 meet the continuing education requirements of an employee, but at least half of the
153 minimum requirement must be in improving interpreting skills. The employee is subject

154 to the discipline process for court personnel, but the grounds for discipline include those
155 listed in this rule.

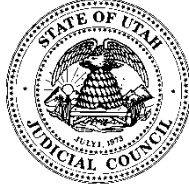
156 (10)(B) A court may appoint an employee as an interpreter engaged in secondary
157 employment. While interpreting, the employee will be paid the fee and expenses
158 established by this rule, but he or she must comply with the requirements for secondary
159 employment. If the language is a language for which certification in Utah is available,
160 the employee must be a certified interpreter. If the language is a language for which
161 certification in Utah is not available, the employee must be an approved interpreter. The
162 employee may be included on the roster of certified or approved interpreters. The
163 employee must meet the continuing education requirements of an employee, but at
164 least half of the minimum requirement must be in improving interpreting skills. The
165 grounds and process for discipline depend on whether the person is being disciplined
166 as an employee or as an interpreter.

167 (10)(C) A state court employee employed as an interpreter or serving as an
168 interpreter as secondary employment has the rights and responsibilities provided in the
169 Utah state court human resource policies, including the Code of Personal Conduct, and
170 the Court Interpreters' Code of Professional Responsibility also applies. A justice court
171 employee employed as an interpreter or serving as an interpreter as secondary
172 employment has the rights and responsibilities provided in the county or municipal
173 human resource policies, including a code of conduct, and the Court Interpreters' Code
174 of Professional Responsibility also applies.

175 (11) Acts contrary to the Code. No person shall request or direct a court interpreter
176 to act contrary to a code of conduct or the Court Interpreters' Code of Professional
177 Responsibility.

178

Tab 3



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Court Interpreter Committee
From: Tim Shea *TS*
Date: March 19, 2008
Re: Court reporter as member

The Judicial Council amended Rule 1-205 to add an American Sign Language representative. We are in the process of recruiting applicants for that vacancy. During the comment period for the proposed amendment, a court reporter submitted the following comment, suggesting that a court reporter be added to the committee. The Judicial Council has asked for your recommendations.

It is respectfully here suggested that the Managing Court Reporter from Third District or an Official Court Reporter representative be added to this committee as well.

There is a national interpreting "practice" called Communication Access Realtime Translation (CART). Used to assist hearing-impaired individuals in school settings and elsewhere, for court purposes this is the phenomenon whereby hearing-impaired court patrons -- those who do not use American Sign Language -- have provided for them a court reporter (called in national usage a "stenographic interpreter") who "writes" the proceedings in stenographic realtime, the immediate computer-screen English translation of which allows the patron to be "reasonably accommodated."

The court interpreter's office in Third District, for example, routinely refers CART interpreting engagements to the Managing Reporter's Office, on the assumption that "that's what we do."

Yet there are significant problems emerging, unaddressed: in policy; in records retention or dissemination; in certification; in oaths; in definition of "reasonable accommodation;" in security; in scope of official-reporter employment (CART is very different from judicial reporting; there is a specific CART certification and no state-court official reporter in Utah currently holds it); in conflict of interest; in ADA compliance and liability (there's a recent Ninth Circuit case on the very subject of reasonable accommodation using realtime; and that same issue has frighteningly been broached by a Legal Defender in a CART engagement in the Matheson Courthouse).

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

The court interpreter in Matheson arranges for ASL interpreters for court hearings, yet also refers all CART engagements to the Managing Reporter's Office, and that office needs representation on this committee as well.

Your attention is appreciated.

Posted by Ed Midgley December 5, 2007 02:25 PM