

Agenda
Language Access Committee Meeting
September 20, 2019
12:00 – 2:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Council Room, 3rd Floor, N31

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|-------|---|-----------------------|-------------------------|-----------------|
| 12:00 | Welcome, Discussion and Approval of Minutes | Discussion/ Action | Tab 1 | Michelle Draper |
| 12:05 | 2020 Committee Meeting Dates | Discussion/ Action | Tab2 | Kara Mann |
| 12:10 | LAP- Editing Subcommittee | Discussion | | Kara Mann |
| 12:20 | Shortage of Certified Spanish Interpreters <ul style="list-style-type: none">Email from Judge SkanchyEmail Response to Judge SkanchyCurrent Requirements for Certified Interpreters | Discussion/ Action | Tab 3 Tab 4 Tab 5 | Kara Mann |
| 1:00 | Recorded Evidence Guidelines <ul style="list-style-type: none">Proposed GuidelinesNew Mexico's GuidelinesOregon's Guidelines | Discussion/ Action | Tab 6 Tab 7 Tab 8 | Kara Mann |
| 2:00 | Adjourn | | | Michelle Draper |

2019 Meeting Schedule:
November 15, 2019

Tab 1

Language Access Committee
Matheson Courthouse
Council Room
450 South State St.
Salt Lake City, Utah 84111

July 26, 2019

Draft

Members Present

Michelle Draper - Chair
Yadira Call - by phone
Judge Su Chon
Monica Greene Diaz
Mary Kaye Dixon
Judge Michael Leavitt

Members Excused

Amine El Fajri
Megan Haney
Russ Pearson
Lynn Wiseman
Judge Kelly Schaeffer-Bullock

Staff

Kara Mann
Jeni Wood - recording secretary

Guests

(1) Welcome.

Michelle Draper welcomed everyone to the meeting.

Kara Mann addressed the May 17, 2019, minutes. Two changes were recommended. 1.) Under notice of formal complaint section: "The committee went into an executive session to address a formal complaint." 2.) In the Interpreter Coordinator's Handbook section: clarify "ASL" interpreter for jurors. Judge Michael Leavitt moved to approve the May 17, 2019, minutes, as amended. Monica Diaz seconded the motion. The motion carried unanimously.

Ms. Mann next addressed committee membership. After the last committee meeting, Chris Kunej resigned from the committee and Randall McUne's second term ended. Ms. Mann will seek replacements and send the notice to the committee members. Ms. Mann will speak with Mr. McUne about any possible recommendations.

(3) Language Access Plan

Ms. Mann reminded the committee the purpose of a Language Access Plan is to provide information; including rules, needs, judicial structure, and services. Ms. Mann obtained Plans from New Mexico and Oregon to provide as examples for the committee to consider when discussing the methodology for updating Utah's Plan.

The committee edited the proposed outline. Recommended edits made to the proposed outline:

- Ensure the Plan is simple because it could be viewed by stake holders and the public.
- Make the Plan more accessible to the public.
- Hyperlink statutes and rules.

- Section I – Change the name to Introduction and Overview, include the requirements and need in separate appendixes.
- Section I-Move directive and legal basis to an appendix.
- Section I- Add subparagraph on need, include data on people living below the poverty line.
- Section I- Include demographic data in an appendix.
- Section II- Change name to Structure and Funding, with subparagraphs on judicial structure and management structure.
- Section II- Include program funding.
- Section II- Include a paragraph stating language services are available at all court levels with a description of types of hearings (in an appendix).
- Section II-Include the Language Access Committee and data collection as subparagraphs to the Management structure.
- Break services into separate sections.
- Section III- Include video capabilities.
- Section IV- Include law library with services outside the courtroom.
- Section V-Add mediation and probation to court-related services.
- Section VI- Change to Remote Interpreting
- Section VI- Include a clear definition of remote interpreting.
- Section VIII- Include working with other organizations
- Section IX: Include complaint process to quality control.
- Section IX: Add best practices.

Ms. Mann will make adjustments as recommended and readdress the Plan with the committee at a later meeting. Ms. Mann noted the Plan is not available in other languages at this time.

Judge Leavitt moved to approve the outline, as amended.

The committee chose to have Ms. Mann create the Plan then create subcommittees to review sections prior to the next meeting. Ms. Draper and Judge Leavitt volunteered to be on the editing committee. Ms. Mann will send an email to the committee to get additional volunteer members.

Judge Leavitt moved to create an editing subcommittee. Monica Diaz seconded the motion, and the motion passed unanimously.

(3) Updating the Code of Professional Responsibility for Court Interpreters Exam

Ms. Mann noted the exam has been used since 2000, and doesn't appear to have been updated since as many questions were outdated and simple. The committee reviewed the exams and made suggested edits.

Judge Leavitt moved to approve the suggested edits. Ms. Diaz seconded the motion, and the motion passed unanimously.

(4) Recorded Evidence Guidelines

This item was not addressed due to time.

(5) Other Business.

No further business was discussed.

(6) Adjourn

There being no further business, the meeting adjourned at 2:04 p.m.

Tab 2

Proposed 2020 Language Access Committee Meeting Dates

- January 17, 2020
- March 20, 2020
- May 15, 2020
- July 17, 2020
- September 18, 2020
- November 20, 2020

Tab 3



Kara Mann <karajm@utcourts.gov>

Fwd: Spanish interpreter situation

2 messages

Ray Wahl <rayw@utcourts.gov>
To: Kara Mann <karajm@utcourts.gov>

Fri, May 17, 2019 at 9:48 AM

Can you brainstorm solutions with Evangelina on this? I don't think the answer is to lower the standards.

----- Forwarded message -----

From: **Judge Randall Skanchy** <rskanchy@utcourts.gov>
Date: Fri, May 17, 2019 at 8:41 AM
Subject: Fwd: Spanish interpreter situation
To: Judge Mary T. Noonan <mnoonan@utcourts.gov>, Ray Wahl <rayw@utcourts.gov>, Peyton Smith <peyttons@utcourts.gov>, Evangelina Burrows <evangelinab@utcourts.gov>
Cc: Judge Mark Kouris <mkouris@utcourts.gov>, Julie Rigby <julier@utcourts.gov>

Mary: this is a problem that has apparently been ongoing for 4 years with no resolution in sight. Could we please have a higher level of addressing this and find some interim measures to get an adequate supply of Spanish speaking interpreters qualified in our court system on an **expedited basis**? We run into this issue every day of the week on our criminal calendars in the Matheson courthouse. If we haven't been able to fix this problem in 4 years, then our qualification criteria is hamstringing Evangelina in fixing it. Don't know who is the right person to speak with, but how do we start a bigger ball rolling on this issue?
R Skanchy.

----- Forwarded message -----

From: **Julie Rigby** <julier@utcourts.gov>
Date: Tue, May 7, 2019 at 3:14 PM
Subject: Fwd: Spanish interpreter situation
To: Everyone-Slc <Everyone-Slc@utcourts.gov>, Everyone-WJDistrict <Everyone-WJDistrict@utcourts.gov>

IMPORTANT: Please read the message below from Evangelina regarding Spanish Interpreter shortage.

Thank You!

Julie

----- Forwarded message -----

From: **Evangelina Burrows** <evangelinab@utcourts.gov>
Date: Tue, May 7, 2019 at 3:09 PM
Subject: Spanish interpreter situation
To: Julie Rigby <julier@utcourts.gov>
Cc: Evangelina Burrows <evangelinab@utcourts.gov>

Greetings,

For about three years now, we've been short five Spanish interpreters (four Certified and one Approved). Last week another Certified Spanish interpreter notified me she's starting a full time job and won't be available for interpreting assignments.

I've been asking interpreters to juggle courtrooms in order to provide assistance to Spanish speakers. This causes delays that are unavoidable due to the limited number of available Spanish interpreters. I ask for your patience and understanding.

Hopefully Spanish interpreter candidates will be successful in passing the tests required to become credentialed and will then be available to cover interpreting assignments.

For those weeks in which several multiple day jury trials are scheduled, I'll do my best to find Certified interpreters, but please understand that other courts are also contacting the same pool of interpreters.

Please feel free to contact me if you have any questions or concerns.

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Evangelina Burrows
Court Interpreter Coordinator
Third District Court
450 State Street
Salt Lake City UT 84114
(801) 238-7338
evangelinab@utcourts.gov

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Julie Rigby
Team Manager
3rd District Court
450 So State St
Salt Lake City Ut 84114
801-238-7186
julier@utcourts.gov

Kara Mann <karajm@utcourts.gov>
To: Ray Wahl <rayw@utcourts.gov>

Fri, May 17, 2019 at 9:54 AM

Absolutely. I agree that lowering our standards isn't the answer and I'll speak with Evangelina to come up with possible solutions.

[Quoted text hidden]

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Kara Mann
Language Access Program Coordinator
Administrative Office of the Courts
450 S. State Street
Salt Lake City, UT 84114
Phone: 801.578.3828

Tab 4



Kara Mann <karajm@utcourts.gov>

Certified Spanish Interpreter Shortage Update and Request

Kara Mann <karajm@utcourts.gov>

Mon, Aug 5, 2019 at 5:45 PM

To: Judge Randall Skanchy <rskanchy@utcourts.gov>

Cc: "Judge Mary T. Noonan" <mnoonan@utcourts.gov>, Cathy Dupont <cathyd@utcourts.gov>, Peyton Smith <peyttons@utcourts.gov>, Tracy Walker <tracyw@utcourts.gov>

Hi Judge Skanchy,

I spoke with Judge Noonan today about the shortage of certified Spanish interpreters, which you emailed about back in May. Your original email was forwarded to me by Ray Wahl, and I met with Evangelina Burrows a few days later to discuss the shortage. At the meeting, we discussed the following solutions, some of which were suggestions that Evangelina had already implemented.

- Prioritizing court proceedings for certified interpreters.
 - Communication with court patrons outside of court proceedings will be handled by second language stipend employees.
 - Interviews by Juvenile Court POs will be handled by approved interpreters.
 - Interpreter requests by the Law Library will be handled by approved interpreters.
- Utilizing Approved Spanish interpreters for non-complex court proceedings to free up the availability of certified interpreters for more complex or longer court proceedings when necessary.
- Reminding court employees and attorneys on the importance of advance notice for interpreters. Last minute interpreter requests happen weekly for Evangelina. Interpreters are not available instantaneously as we, the court system, are not their only clients. Scheduling last minute requests are difficult as most interpreters have their schedules set for accepted assignments.
- Reminding certified Spanish interpreters not to overbook assignments.
- Contacting Spanish interpreter candidates who are close to fulfilling the necessary requirements to reach the approved credentialing in order to encourage that they do so. Having more approved Spanish interpreters will help ease the burden placed on the certified interpreters that we have.
- Building the interpreter roster by:
 - Expanding outreach for interpreters on the court's Facebook page.
 - Contacting applicants who applied for the open staff interpreter position but lacked the necessary requirements to suggest they complete the requirements to become a certified court interpreter.

You are correct; we haven't had a Spanish interpreter successfully pass the Oral Proficiency Exam since 2015, which is the primary reason we are experiencing a shortage. The exams have a national pass rate of just 15% according to the National Center for State Courts, who oversees the development and maintenance of the exams.

I have worked on addressing the issue our interpreters are having in not passing the exam. For example, I closely monitored and tracked the progression of Spanish interpreters, and updated the interpreters on their next requirements throughout the year, to ensure a healthy number of exam candidates. In doing so, this year we had 10 Spanish exam candidates (and 14 candidates overall), the most in a single year going back to 2011, which is the earliest year for which I have exam records. Additionally, before the exam this year, I held a practice exam workshop for registered candidates. The practice exam mirrored each section of the actual exam so that candidates had an understanding of what to expect. I will know the exam scores for this year's exams by the end of the month, so I'll soon be able to determine if these additional efforts have had any impact on our passing rate.

I would like for the Language Access Committee to discuss the shortage, and your suggestion to lower the standards required to become a certified court interpreter. The exam itself cannot be changed, and Utah court interpreters cannot reach the credentialing level of certified without specifically passing NCSC's Oral Proficiency Exam. That is because passing the exam is the nationally recognized standard for certified court interpreters by the Department of Justice and all state judiciaries. However, perhaps the committee should reexamine the other interpreter requirements that are specific to Utah, while also brainstorming other solutions for the certified Spanish interpreter shortage. Can I have your permission to share your email from May 17, 2019, with the committee?

Please let me know if you have any question.

Thank you.

--

Kara Mann
Language Access Program Coordinator
Administrative Office of the Courts
450 S. State Street
Salt Lake City, UT 84114
Phone: 801.578.3828



Kara Mann <karajm@utcourts.gov>

Certified Spanish Interpreter Shortage Update and Request

Judge Randall Skanchy <rskanchy@utcourts.gov>

Tue, Aug 6, 2019 at 8:30 AM

To: Kara Mann <karajm@utcourts.gov>

Cc: "Judge Mary T. Noonan" <mnoonan@utcourts.gov>, Cathy Dupont <cathyd@utcourts.gov>, Peyton Smith <peytons@utcourts.gov>, Tracy Walker <tracyw@utcourts.gov>

yes please share it. If we have a national standard that isn't giving us interpreters, than we need to disregard the standard . WE JUST NEED INTERPRETERS and if we have a standard that no one can meet the issue isn't getting people up to the standard it is lowering it.

On Mon, Aug 5, 2019 at 5:46 PM Kara Mann <karajm@utcourts.gov> wrote:

[Quoted text hidden]

Tab 5

Certification Requirements for Spoken Language Interpreters:

- **An application to become a court interpreter**
- **Pass a background check**
- **Score 80% on the National Center for State Courts' English Written Exam**
- **Attend Utah's 2-day Orientation**
- **Score 70% on the Code of Professional Responsibility for Court Interpreters test**
- **Complete 10 in-court observation hours of a certified court interpreter**
- **Score a superior rating on Language Testing International's Oral Proficiency Interview**
- **Attend a 3-day skills-building workshop**
- **Attend a 2-day advanced skills-building workshop**
- **Score 70% on each section of the National Center for State Courts' Oral Proficiency Exam**

Tab 6

Utah State Court Language Access Program Guidelines for Interpreting Recorded Evidence

Recorded Evidence

Occasionally, audio or video taped evidence will be introduced during a court proceeding that involves a Limited English Proficiency (LEP) party. Examples may include a video-taped police interrogation, voicemails, dash-cam video, or audio recordings of a 911 call. The court may be asked to direct the onsite interpreter to interpret the recording on the spot.

Issues

Onsite interpreters should not be asked to provide instantaneous interpretation of audio or video evidence due to numerous reasons. The following issues can impede the interpreter's ability to give an accurate interpretation.

- Length of recording
- Overlapping voices
- Poor quality of the recording
- Background noises
- Regional variations of words or phrases
- Unintelligible portions
- Specialized vocabulary

Recommended Practice

The court should not ask the onsite interpreter to provide instantaneous interpretation of audio or video recordings, and should explain to the attorneys and parties that instantaneous interpretation of a recording often goes against recognized best practices¹ and the Code of Professional Responsibility for Court Interpreters.

Non-English recordings

The party wishing to use the recording is responsible to have the recording properly transcribed and translated into English, and to pay for the associated costs. Having a recording translated is a two-step process. First, a transcription of the recording must be prepared in the source language. The transcriber must listen to the audio or video recording and prepare a written record of what was said in the source language. Then the translator, who may or may not be the same individual as the transcriber, uses the transcription to complete the translation into English. The standard unit of measure for transcription and translation of a recording is one hour of work for each one minute of sound in

accordance with the National Association of Judiciary Interpreters and Translators (NAJIT).

English Recordings

The court can allow the onsite interpreter to privately review the recording to determine if they are able to provide an accurate interpretation. Interpreters must review the recording to ensure they can competently interpret the recording and to make any necessary notes if they do determine they are able to interpret the recording.

If the interpreter determines they are not able to provide an accurate interpretation for any of the reasons listed above, the court should consider the interpreter's opinion. Utah State Courts does not have the responsibility of translating evidence into the court patron's native language.

¹ NAJIT Position Paper, [Onsight Simultaneous Interpretation of a Sound File is Not Recommended](http://www.najit.org), 2006, at www.najit.org.

Tab 7

Administrative Office of the Courts

Supreme Court of New Mexico

Paula Couselo
Language Access Services



237 Don Gaspar, Room 25
Santa Fe, NM 87501
(505) 827-4800
(505) 827-4824 (fax)
www.nmcourts.gov

MEMORANDUM

TO: District Court Judges
Metropolitan Court Judges
Magistrate Court Judges
Court Executive Officers
Administrative Office of the Courts Program Staff

FROM: Paula Couselo, Language Access Services

DATE: July 22, 2016

SUBJECT: Guidelines for audio recorded, video recorded, or written materials in languages other than English – Rule 1-103(E)(8) NMRA

As the use of dash-cam video, lapel video, belt tapes, social media, wiretaps, and cell phone audio and video recordings increase in the courts, the demands on spoken and signed language interpreters to provide on-the-spot interpretations of these materials that are presented in languages other than English have greatly increased.

The guidelines herein seek to balance respect for best practices for interpreters with the challenges a court faces when confronted with recorded or written materials that require translation.

On-demand sight translation of complex recorded or written materials is often in conflict with recognized best practices and with the Codes of Professional Conduct of the interpreting profession, as well as the Supreme Court Rules of Criminal and Civil Procedure. Best practices are designed to create the greatest degree of accuracy of interpretations and translations.

Materials in a Language Other than English

To ensure accuracy, sound and video files that a party will use in court should first be transcribed in its source language and then translated to English by the party. Materials presented in signed language require the same steps in the opposite order – they must first be interpreted into spoken English, then the interpretation transcribed into written form.¹ This process must take place prior to the presentation of the materials. The case participants wishing to use the materials are responsible for assuring the materials are properly prepared in English and for paying the cost of such preparation.²

In accordance with the rules of evidence, the offering party must establish its translation witness's expertise in both English and the language other than English and the ability to translate from one to the other. If the party fails to provide testimony attesting to the accuracy of the translation, the court may not admit the translation.

Once approved by the parties and ruled admissible by the court, the written English rendition and a copy of the original material shall be provided to the court interpreter, if any, assigned to the court proceeding at which it will be introduced, with sufficient time to prepare for the court proceeding.

Materials in English

Audio and video files recorded in English that will be played in open court for a case involving a Limited English Proficiency (LEP) party or juror should be reviewed by the interpreter(s) who will be providing language services for that hearing prior to the proceeding.³

Court interpreters assigned to a given proceeding shall inform the judge if they are unable to provide an on-site interpretation of audio or video recordings, or sight translations of written documents in English. This can be due to:

- Length of material
- Quality of recording or legibility of written document
- Number of speakers or signers
- Variety of accents or regional variations
- Sufficiency of contextual information
- Degree of deviation from standard forms of language
- Level of audio or video intrusions and distractions
- Degree of technicality or specialization of vocabulary and content

The judge will consider the interpreter's opinion and decide whether to continue or proceed with the case. The factors listed above are the type of considerations taken into account when the judge determines whether the brief and/or non-complex nature of the materials permits on-site interpretation or, if not, what is a reasonable amount of time to provide for the interpreter to address the materials.

Interpreters as Expert Witnesses

Court Interpreters assigned to interpret during a given proceeding shall not be used as expert witnesses to evaluate, during that proceeding, the quality of a previously completed interpretation or translation provided for audio, video or written material originally in a language other than English. The party wishing to question or evaluate the quality of an interpretation or translation for the record shall arrange for a qualified individual to serve as an expert witness during the proceeding in accordance with NM rules of evidence.

Any questions regarding this matter or other questions regarding language access services please contact me at (505) 827-4853 or aocpvc@nmcourts.gov.



Paula Couselo-Findikoglu
Senior Statewide Program Manager
Language Access Services
NM Center for Language Access
New Mexico Administrative Office of the Courts

¹ Onsite Simultaneous Interpretation of a Sound File is Not Recommended, National Association of Judiciary Interpreters and Translators (NAJIT), 2006.

² "(...) the court is not responsible for providing court interpretation services for confidential attorney-client communications during a court proceeding, nor is the court responsible for providing court interpretation services for witness interviews or pre-trial transcriptions or translations that the party intends to use for a court proceeding. When the court is responsible for paying the cost of the court interpretation services, the AOC standards control the amounts and procedures for the payment of court interpreters." Rules 1-103, 2-113, 3-113

³ "The court shall allow the court interpreter a reasonable amount of time to prepare an accurate and complete translation or transcription and, if necessary, shall continue the proceeding to allow for adequate time for a translation or transcription." Rule 1-103 (E) (8) NMRA.

Tab 8



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

October 26, 2010
(SENT BY EMAIL)

TO: Oregon Court Interpreters

FROM: Court Interpreter Services (CIS)
Kelly Mills, Program Manager
Max Christian, Interpreter Supervisor

RE: **Interpreting Concerns When the Court Interpreter Is Asked to Interpret non-English Recorded Evidence into English**

CIS Non-English Sound Recording Evidence Interpretation Guideline

"Court Interpreter Services advises that non-English recorded evidence be transcribed and translated by the moving party prior to being submitted as evidence, and that the court interpreter not perform interpretation of recorded evidence into English, except as instructed by the court."

The *Code of Professional Responsibility for Interpreters in the Oregon Courts* requires that you, the court interpreter, render "a complete and accurate interpretation or sight translation, without altering, omitting anything from, or adding anything to what is stated or written, and without explanation." You may be hindered or precluded from doing so by obstacles frequently encountered in sound recordings (recorded 911 calls, recorded jail calls, recorded voice mail, etc.). Three common impediments are:

- Lack of opportunity to request clarification of a word or an ambiguity
- Poor quality recordings
- Overlapping voices and sounds

Due to these obstacles transcribers and translators of sound recordings employ explanatory footnotes. However, such explanations go beyond the scope of the court interpreter's role which is to interpret "without explanation."

Additionally, interpreting recorded non-English evidence for a party may cause you to be called as a witness by a party in order to explain or defend an interpretation in question. A court interpreter's neutral role as described in the *Code of Professional Responsibility* requires that you remain impartial, avoiding the appearance of bias. Being called as a witness by a party may create a situation which is perceived as a bias.

Therefore, Court Interpreter Services recommends that you, the interpreter, carefully evaluate requests to interpret sound recordings being presented as evidence, and that you inform the judge and the parties of potential practical and ethical difficulties.