

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

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3 **Intent:**

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

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

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11 ~~To provide certified interpreters in legal proceedings in those languages for which a certification
12 program has been established.~~

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14 **Applicability:**

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

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19 **Statement of the Rule:**

20 **(1) Appointment.**

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

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

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

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

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

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

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44 (1)(~~CD~~)(iii) a certified, approved, or registered interpreter is not reasonably
45 available or the gravity of the legal proceeding and the potential consequence to
46 the person are so minor that delays in obtaining a certified or approved
47 interpreter are not justified.
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49 (1)(~~DE~~) **Out of state credentials.** The appointing authority may appoint an interpreter
50 with certified or approved or equivalent credentials from another state if the appointing
51 authority finds that the approved, registered or conditionally approved interpreters who
52 are reasonably available do not have the language skills, knowledge of interpreting
53 techniques, or familiarity with interpreting sufficient to interpret the legal proceeding. The
54 appointing authority may consider the totality of the circumstances, including the
55 complexity or gravity of the legal proceeding, the potential consequences to the person
56 of limited English proficiency, and any other relevant factor.
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58 (1)(~~EF~~) **Direct verbal exchange.** No interpreter is needed for a direct verbal exchange
59 between the person and court staff if the court staff can fluently speak the language
60 understood by the person and the state court employee is acting within guidelines
61 established in the Human Resources Policies and Procedures. An approved, registered
62 or conditionally approved interpreter may be appointed if ~~the~~ court staff does not speak
63 the language understood by the person.
64

65 (1)(~~FG~~) **Number of interpreters.** The appointing authority will appoint one interpreter for
66 all participants with limited English proficiency, unless the judge determines that the
67 participants have adverse interests, or that due process, confidentiality, the length of the
68 legal proceeding or other circumstances require that there be additional interpreters.
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70 ~~(2) **Court employees as interpreters.** A court employee may not interpret legal proceedings
71 except as follows.~~

72 ~~(2)(A) A court may hire an employee interpreter. The employee will be paid the wages
73 and benefits of the employee's grade and not the fee established by this rule. If the
74 language is a language for which certification in Utah is available, the employee must be
75 a certified interpreter. If the language is a language for which certification in Utah is not
76 available, the employee must be an approved interpreter. The employee must meet the
77 continuing education requirements of an employee, but at least half of the minimum
78 requirement must be in improving interpreting skills. The employee is subject to the
79 discipline process for court personnel, but the grounds for discipline include those listed
80 in rule 3-306.05.~~

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82 ~~(2)(B) A state court employee employed as an interpreter has the rights and
83 responsibilities provided in the Utah state court human resource policies, including the
84 Code of Personal Conduct, and the Court Interpreters' Code of Professional
85 Responsibility also applies. A justice court employee employed as an interpreter has the
86 rights and responsibilities provided in the county or municipal human resource policies,~~

~~including any code of conduct, and the Court Interpreters' Code of Professional Responsibility also applies.~~

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

~~(23)~~ **Review of denial of request for interpreter.** A person whose request for an interpreter has been denied may apply for review of the denial. The application shall be decided by the presiding judge. If there is no presiding judge or if the presiding judge is unavailable, the clerk of the court shall refer the application 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 denial.

~~(34)~~ **Waiver.** 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.

~~(45)~~ **Translation of court forms.** Forms must be translated by a team of at least two people who are interpreters certified or approved under this rule or translators accredited by the American Translators Association.

~~(56)~~ **Payment.**

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

~~(5)(B)~~ **Courts not of record.** ~~The and by the local~~ government that funds ~~the a~~ court ~~in courts~~ not of record shall set and pay the fees and expenses for interpreters in that court.

~~(5)(C)~~ **Parties.** The court may assess the fees and expenses as costs to a party as otherwise provided by law. (Utah Constitution, Article I, Section 12, Utah Code Sections 77-1-6(2)(b), 77-18-~~1167~~, ~~77-32a-1~~, 77-32~~ba-1042~~, ~~77-32a-3~~, 78B-1-146(3), URCP 54(d)(2), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and regulations and guidance adopted under that title.)

~~(56)(DB)~~ **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 order.

~~(7)~~ **Fees.**

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

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

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140 *Effective: ~~May 1, 2016~~February 27, 2024*

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