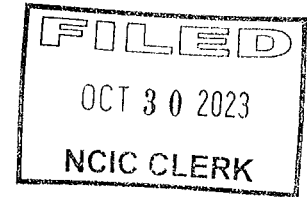


NORTH CAROLINA PRISONER LEGAL SERVICES, INC.

Post Office Box 25397
Raleigh, North Carolina 27611
(919) 856-2200
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October 26, 2023

North Carolina Industrial Commission
1240 Mail Service Center
Raleigh, NC 27699-1240



Petition for Rule-making

PETITION TO THE NORTH CAROLINA INDUSTRIAL COMMISSION TO ADOPT A NEW RULE

Pursuant to N.C. Gen. Stat. § 150B-20 and 11 NCAC 23E .0101, North Carolina Prisoner Legal Services, Inc. ("NCPLS") petitions the North Carolina Industrial Commission ("Commission") to promulgate a rule prescribing the procedures to follow when a tort claimant or witness in a tort claim hearing requires English-language interpretation. A draft of this proposed regulation is attached as Exhibit 1.

In support of this petition, NCPLS provides the following information:

I. About Petitioner North Carolina Prisoner Legal Services

NCPLS provides legal advice to prisoners in every state-run correctional facility, and regularly represents claimants before the Commission. NCPLS is headquartered in Raleigh and can be reached by mail at: North Carolina Prisoner Legal Services, PO Box 25397, Raleigh, NC 27611

II. Explanation of why the new interpreter rule is requested

NCPLS proposes that the Commission promulgate a new rule specifying the procedures to follow when a tort claimant or witness in a tort claim hearing needs English language interpretation. NCPLS is proposing this regulation largely because there is no current rule prescribing how a party should proceed when they need to use interpretation services to litigate their case. The proposed regulation would: 1) dictate the procedures to follow when a claimant or witness needs interpretation services; 2) give guidance on who would qualify as an interpreter; and 3) provide clarity on whose responsibility it is to engage and pay the interpreter.

A. Providing clarity on procedures for obtaining an interpreter

A new regulation on interpretation services in tort claims would let parties and their attorneys know how to request an interpreter, how to apprise the Commission that an interpreter will be present at the hearing, and ensure procedures are standard from case to case.

NCPLS has recommended that a party seeking an interpreter notify the Commission and opposing party 21 days before the hearing in writing. This mirrors the workers' compensation rules at 11 NCAC 23A .0618 and gives adequate notice to the Commission and the opposing party. This gives the responsible party time to engage an interpreter and prevents the parties and the Commission from being surprised by the request or the presence of an interpreter at the hearing.

NCPLS further recommends that a Commissioner or Deputy Commissioner may investigate as to whether a witness or party requires an interpreter and appoint one at will. The American Bar Association also recommends this practice as individuals may overestimate their language proficiency, may be blindsided with the linguistic complexities of legal proceedings, or may be difficult for the Commission to understand. *Standards for Language Access in Courts*, American Bar Association, § 3.3 at 43 (Feb. 2012) https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.pdf.

Both procedural clarity and the Commission's authority to appoint an interpreter are in the interests of promoting fairness and justice. NCPLS received a copy of a Commission order from a prisoner stating that the Commission "does not have the authority to appoint AOC-certified interpreters for hearings in tort claims." Ex. 4. The order directed that the claimant's case would be dismissed for failure to prosecute if he was unable to procure an interpreter on his own. Ex. 4. The order directed the claimant to request assistance from North Carolina Prisoner Legal Services, Ex. 4, although it does not have AOC-certified interpreters on staff. A new regulation would clarify the procedures in cases such as this, and prevent claimants from having their cases dismissed because they have Limited English Proficiency, not because their claims lack merit.

B. Ensuring interpretation services are consistent, high-quality, and accurate

A new regulation would specify with sufficient clarity the professional requirements for interpreters before the Commission. It would also specify the need for the interpreter to be independent and uninterested in the case they are interpreting. NCPLS recommends that the Commission hew to its current rules for workers compensation cases and only allow interpreters approved by the Administrative Office of the Courts. This will ensure that interpreters are qualified and familiar with judicial proceedings in general.

C. Clarifying the party responsible for engaging and paying the interpreter

NCPLS has again hewn to the Commission's workers' compensation rule on the financial responsibility for the interpreter. As the defendant employers in those cases must engage and pay the interpreter, it seemed natural for the defendant state agency to engage and pay the interpreter for tort claims.

We recommend that defendant state agencies be financially responsible because prisoners are generally incarcerated, indigent, and proceeding *pro se* before the Commission. Prisoners lack the means to pay Commission filing fees, and similarly cannot afford to pay an interpreter for their services. Interpreters are paid between \$350/day and \$566/day in federal court depending on their qualifications. Ex. 3, *Federal Court Interpreters*, United States Courts, <https://www.uscourts.gov/services-forms/federal-court-interpreters> (accessed October 3, 2023). In North Carolina courts, interpreters are provided free of charge to anyone requesting the service. Language Access, North Carolina Courts, <https://www.nccourts.gov/help-topics/disability-and-language-access> (accessed October 3, 2023). Prisoners are also hindered in telephoning interpreters to find one who is available on their hearing date, as prisoners are limited to making collect calls or calls to the people on their visitor list. Although prisoners and former prisoners are not the only tort claimants before the Commission, their typical indigence and limited communication capabilities should be taken into account in drafting regulations for interpretation.

NCPLS would be equally open to the Commission engaging and compensating interpreters, as North Carolina state courts do. Ex. 5. The interpreter's lack of a financial relationship with either party would ensure that the interpreter would be unbiased and disinterested in the outcome of the case. NCPLS respects, however, that the Commission had sound reasoning for assigning this responsibility to defendants in their workers' compensation cases, and that such reasoning would likely apply in tort claim cases.

In sum, NCPLS proposes that the Commission promulgate this new regulation to provide clarity on the procedures for requesting an interpreter, set requirements for who can serve as an interpreter, and decide by whom that interpreter is retained and compensated. Official documentation of the rules regarding interpretation in Commission hearings would promote public trust and bolster confidence in the Industrial Commission's commitment to justice.

III. Effect of proposed regulation on procedures of the Industrial Commission

The proposed rule would establish official processes for a tort claimant to receive English language interpretation services when the claimant or their witness has Limited English Proficiency or is deaf or hard of hearing. The claimant could affirmatively request interpretation for themselves or a witness. The presiding Commissioner or Deputy Commissioner in any hearing could also make a *sua sponte* request for interpretation services following a *voir dire* investigation of a witness or party. The proposed regulation would also prevent claimants from having their claims dismissed because they were indigent and had Limited English Proficiency or were deaf or hard of hearing.

If the proposed rule were promulgated, the Commission would have to adapt to the formalized procedures in cases where interpretation services are requested or needed. When notified in writing of a request for interpretation services, the Commission would have to confirm that the defendant government agency engaged an interpreter before a hearing could take place. The Commission may also need to develop a form for requesting

an interpreter and make it available to litigants on the Commission's website or upon written request.

V. Other relevant information

NCPLS recently represented a client with Limited English Proficiency in a full evidentiary hearing before the Commission.

In advance of this evidentiary hearing, NCPLS filed a document with the Commission requesting an interpreter. The document followed, for lack of other official guidance, the regulation from the Commission's workers compensation section (11 NCAC 23A .0618, attached as Ex. 2). This filing did not receive a direct response from the Deputy Commissioner or Commission staff laying out the procedures by which an interpreter should be procured, what their qualifications were, or whose responsibility it was to hire and pay the interpreter. Only upon speaking directly with Commission staff and discussing the issue at the pre-hearing conference were these questions answered. We include this narrative not to criticize the Commission or its dedicated and capable staff, but to elaborate on the need for official documentation and procedures when interpretation services are needed.

In addition, NCPLS has repeatedly received mail from prisoners about interpretation services in their tort claims before the Commission. NCPLS staff regularly gives advice and information on filing tort claims with this Commission, but struggles to find the best way to accurately respond to letters about interpretation services due to the lack of official documentation. Prisoners ask how to request interpretation services from the Commission, and the best we can do is direct them to Commission staff.

At least one prisoner has forwarded an order to NCPLS from the Commission referring the prisoner to NCPLS to provide interpretation services in a tort claim. Ex. 4. NCPLS did not receive this order directly. NCPLS has diverse, multi-talented staff, but none of them are court-certified interpreters. Those who could potentially qualify may have a conflict of interest in serving as a neutral interpreter for tort claimants due to past advice or information provided to that client. We include this not to dispute responsibilities, but to emphasize the need for independent interpretation services at the Commission and documented procedures for obtaining said services.

VI. Citation to any rule for which amendment is requested

The Industrial Commission currently has no regulation explicitly detailing Commission procedures or parties' responsibilities in tort claims where witnesses or claimants have Limited English Proficiency and cannot understand proceedings in or give testimony in the English language. Because the proposed rule would be a new rule, there is no citation to a rule to amend.

There are, however, rules regarding language interpretation services in the Commission's workers' compensation cases. The workers' compensation rules, at 11 NCAC 23A .0618, (Ex. 2), have been used as a guide for the Proposed Regulation. While the Industrial Commission is not under the purview of the Administrative Office of the Courts, NCPLS

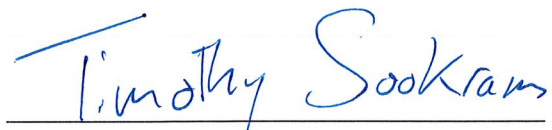
relied upon AOC policies and guidance from the American Bar Association in drafting the Proposed Regulation.

VII. Conclusion

NCPLS urges the Commission to grant this petition and initiate a rule-making proceeding to set procedures for securing the services of an interpreter in a tort claim, describe the qualifications of that interpreter, and dictate the financial responsibility for the interpreter's services.

If the Commission declines to change its policy with regard to interpretation services, NCPLS urges that the Commission still promulgate a regulation documenting their official process. Official documentation explaining how a tort claimant goes about procuring an interpreter for Industrial Commission hearings is vital to the Commission's continued furtherance of justice and judicial efficiency.

Respectfully submitted, this 26 of October 2023.



TIMOTHY SOOKRAM,

Staff Attorney
N.C. Prisoner Legal Services Inc.
P.O. Box 25397
Raleigh, NC 27611



Ex. 1: Draft of Proposed Rule

11 NCAC 23B .020_ FOREIGN LANGUAGE AND SIGN LANGUAGE INTERPRETERS IN TORT CLAIMS

(a) When a party or witness does not speak or understand the English language or is speech or hearing impaired, they shall be assisted by a qualified interpreter upon request if the person:

- (1) is a represented or unrepresented tort claimant attending a hearing;
- (2) is a witness called to testify in a hearing;
- (3) or is a tort claimant appearing unrepresented before the Commission for an oral argument or pre-trial conference.

For purposes of this Rule, "language" means foreign language or sign language.

(b) To qualify as a foreign language interpreter, a person shall possess sufficient experience and education, or a combination of experience and education, speaking and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S. 8C-1, Rule 702. For Spanish language interpretation, the interpreter must be "Level A" certified by the North Carolina Administrative Office of the Courts. A person qualified as an interpreter under this Rule shall not be interested in the claim and shall make a declaration under oath or affirmation to interpret accurately and truthfully, meaning without any additions or deletions, all questions propounded to the witness and all responses thereto. In cases where the interpreter is needed for a claimant, the interpreter shall make a declaration under oath or affirmation to interpret accurately and truthfully the entirety of the proceedings for the claimant, without additions or deletions.

(c) To qualify as a sign language interpreter, a person shall possess a license from the North Carolina Interpreter and Transliterator Licensing Board, under Chapter 90D of the North Carolina General Statutes.

(d) Any party who is unable to speak or understand English, or who is speech or hearing impaired, or who intends to call as a witness a person who is unable to speak or understand English or who is speech or hearing impaired, shall so notify the Commission and the opposing party, in writing, not less than 21 days prior to the date of the hearing. The notice shall state the language(s) that shall be interpreted for the Commission.

(e) Upon receiving or giving the notice required in Paragraph (d) of this Rule, the defendant department or agency of the State shall retain an interpreter who possesses the qualifications listed in Paragraph (b) or (c) of this Rule to appear at the hearing and interpret the testimony or oral argument of all persons for whom the notice in Paragraph (d) of this Rule has been given or received.

(f) The interpreter's fee shall constitute a cost as set forth in G.S. 97-80. A qualified interpreter who interprets testimony or oral argument for the Commission is entitled to

payment of the fee agreed upon by the interpreter and the department or agency of the State that retained the interpreter. Except in cases where a claim for compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and department or agency of the State shall be paid by the department or agency of the State. When the Commission ultimately determines that the request for an interpreter was unfounded, attendant costs shall be assessed against the movant.

(g) Foreign language interpreters shall abide by the Code of Ethics and Professional Conduct for Court Interpreters, contained in Section 11 of Standards for Language Access Services, North Carolina Judicial Branch and promulgated by the North Carolina Administrative Office of the Courts, and shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications. The Code of Ethics and Professional Conduct for Court Interpreters is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's website, https://www.nccourts.gov/assets/inlinefiles/02_2_NC_Standards_for_Language_Access_0.pdf?NhuszCAEVfS8KkdLetH97b9I4NRBcd.f, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, 27603, between the hours of 8:00 a.m. and 5:00 p.m.

(h) Sign language interpreters shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications. Sign language interpreters shall abide by the ethical standards communicated in the training required by G.S. 90D-8.

(i) Failure of a claimant to request an interpreter shall not negate the need to provide an interpreter for the witness or claimant.

(j) The Commissioner or Deputy Commissioner is fully authorized to provide an authorized interpreter during a hearing if said commissioner has reason to believe a witness or claimant needs an interpreter to facilitate their testimony. The Commissioner or Deputy Commissioner is authorized to continue the hearing for a reasonable time until an interpreter can be retained.

(k) If the Commissioner or Deputy Commissioner is unsure whether an interpreter is needed, the commissioner should conduct a brief examination or voir dire of the claimant or witness on the record. In determining the need for an interpreter, the court should ask open-ended questions that cannot be answered with a simple yes or no. For example, the commissioner may ask the claimant or witness to explain the purpose of their court hearing, describe their place of origin, or talk about the kind of work they do. If there is any doubt, the commissioner should err on the side of caution and request an interpreter. The commissioner may request an interpreter to aid the Commission even if the claimant or witness refuses one.



11 NCAC 23A .0619 FOREIGN LANGUAGE AND SIGN LANGUAGE INTERPRETERS

(a) When a person who does not speak or understand the English language or who is speech or hearing impaired is either called to testify in a hearing, other than in an informal hearing conducted pursuant to G.S. 97-18.1, or appears unrepresented before the Full Commission for an oral argument, the person, whether a party or a witness, shall be assisted by a qualified interpreter upon request. For purposes of this Rule, "language" means foreign language or sign language.

(b) To qualify as a foreign language interpreter, a person shall possess sufficient experience and education, or a combination of experience and education, speaking and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S. 8C-1, Rule 702. For Spanish language interpretation, the interpreter must be "Level A" certified by the North Carolina Administrative Office of the Courts. A person qualified as an interpreter under this Rule shall not be interested in the claim and shall make a declaration under oath or affirmation to interpret accurately and truthfully, meaning without any additions or deletions, all questions propounded to the witness and all responses thereto.

(c) To qualify as a sign language interpreter, a person shall possess a license from the North Carolina Interpreter and Transliterator Licensing Board, under Chapter 90D of the North Carolina General Statutes.

(d) Any party who is unable to speak or understand English, or who is speech or hearing impaired, or who intends to call as a witness a person who is unable to speak or understand English or who is speech or hearing impaired, shall so notify the Commission and the opposing party, in writing, not less than 21 days prior to the date of the hearing. The notice shall state the language(s) that shall be interpreted for the Commission.

(e) Upon receiving or giving the notice required in Paragraph (d) of this Rule, the employer or insurer shall retain an interpreter who possesses the qualifications listed in Paragraph (b) or (c) of this Rule to appear at the hearing and interpret the testimony or oral argument of all persons for whom the notice in Paragraph (d) of this Rule has been given or received.

(f) The interpreter's fee shall constitute a cost as set forth in G.S. 97-80. A qualified interpreter who interprets testimony or oral argument for the Commission is entitled to payment of the fee agreed upon by the interpreter and employer or insurer that retained the interpreter. Except in cases where a claim for compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and employer or insurer shall be paid by the employer or insurer. When the Commission ultimately determines that the request for an interpreter was unfounded, attendant costs shall be assessed against the movant.

(g) Foreign language interpreters shall abide by the Code of Ethics and Professional Conduct for Court Interpreters, contained in Section 11 of Standards for Language Access Services, North Carolina Judicial Branch and promulgated by the North Carolina Administrative Office of the Courts, and shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications. The Code of Ethics and Professional Conduct for Court Interpreters is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's website, https://www.nccourts.gov/assets/inline-files/02_2_NC_Standards_for_Language_Access_0.pdf?NhuszCAEVfS8KkdLetH97b9I4NRBcd.f, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, 27603, between the hours of 8:00 a.m. and 5:00 p.m.

(h) Sign language interpreters shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications. Sign language interpreters shall abide by the ethical standards communicated in the training required by G.S. 90D-8.

*History Note: Authority G.S. 97-79(b); 97-80(a);
Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0619 Eff. June 1, 2018;
Amended Eff. April 1, 2020; January 1, 2019.*

Federal Court Interpreters



The use of competent federal court interpreters in proceedings involving speakers of languages other than English is critical to ensure that justice is carried out fairly for defendants and other stakeholders.

The Court Interpreters Act, 28 U.S.C. §1827 (<https://www.law.cornell.edu/uscode/text/28/1827>) provides that the Director of the Administrative Office of the United States Courts shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters, when the Director considers certification of interpreters to be merited, for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States.

National Court Interpreter Database (NCID) Gateway (</services-forms/federal-court-interpreters/national-court-interpreter-database-ncid-gateway>).

The NCID is used by the federal courts for contact information when in need of contract court interpreting services.

Types of Interpreters

The Administrative Office classifies three categories of interpreters (</services-forms/federal-court-interpreters/interpreter-categories>):

- Federally certified interpreters (</services-forms/federal-court-interpreters/interpreter-categories#a1>).
- Professionally qualified interpreter (</services-forms/federal-court-interpreters/interpreter-categories#a2>).
- Language skilled interpreters (</services-forms/federal-court-interpreters/interpreter-categories#a3>).

Interpreter Qualifications

The professional knowledge, skills, and abilities (</services-forms/federal-court-interpreters/interpreter-skills>) required of a federal court interpreter are highly complex.

Communication in courtroom proceedings may be more complex than that in other settings or in everyday life. For example, the parties involved may use specialized and legal terminology, formal and informal registers, dialect and jargon, varieties in language and nuances of meaning.

Current Fees for Court Interpreters

Federally Certified Interpreters

Full-Day: \$566

Half-Day: \$320

Overtime: \$80 per hour or part thereof

Professionally Qualified Interpreters

Full-Day: \$495

Half-Day: \$280

Overtime: \$70 per hour or part thereof

Language Skilled Interpreters (non-certified)

Full-Day: \$350

Half-Day: \$190

Overtime: \$44 per hour or part thereof

Contract Court Interpreter Services

- [Purchase Order Terms and Conditions \(/file/26165/download\)](#) (pdf)
- [BPA Terms and Conditions - Rate Sheet \(/file/rateinfosheetpdf\)](#) (pdf)
- [Standards for Performance and Professional Responsibility \(/file/standardsforperformancepdf\)](#) (pdf)

Court Interpreting Guidance

- [Guide to Judiciary Policy, Vol 5: Court Interpreting \(/rules-policies/judiciary-policies/court-interpreting-guidance\)](#)
- [Federal Court Interpreter Orientation Manual and Glossary \(/file/federal-court-interpreter-orientation-manualpdf-0\)](#) (pdf)



NORTH CAROLINA INDUSTRIAL COMMISSION

**I.C. NO. TA-30043, [REDACTED] Plaintiff v. NORTH CAROLINA
DEPARTMENT OF PUBLIC SAFETY, Defendant.**

ORDER by KATASHIA L. COOPER, Special Deputy Commissioner.

Filed: December 14, 2022

This matter was set for a pre-trial conference hearing on December 13, 2022. At hearing, Plaintiff moved for a continuance to allow time to obtain the services of an English/Spanish interpreter.

APPEARANCES

Plaintiff: *Pro se.* OPUS # [REDACTED].
Defendant: North Carolina Department of Justice, Raleigh, North Carolina;
Jayla Cole, Assistant Attorney General, appearing.

For good cause shown, it is hereby ORDERED as follows:

1. The December 13, 2022 pre-trial conference hearing is CONTINUED.
2. This matter is TEMPORARILY REMOVED from the active hearing docket.
3. Plaintiff SHALL HAVE 120 days, up to and including **April 13, 2023**, to file with the Industrial Commission written notice that he has obtained the services of an interpreter certified by the North Carolina Administrative Office of the Courts ("AOC"). As the Industrial Commission does not have the authority to appoint AOC-certified interpreters for hearings in tort claims, Plaintiff may request assistance from North Carolina Prisoner Legal Services, whose contact information is listed below:

North Carolina Prisoner Legal Services, Inc.
PO Box 25397
Raleigh, NC 27611
(919) 856-2200

4. If no such notice is received by the Industrial Commission on or before **April 13, 2023**, this matter SHALL be dismissed for failure to prosecute, pursuant to Rule 41(b) of the North Carolina Rules of Civil Procedure.


KATASHIA L. COOPER
SPECIAL DEPUTY COMMISSIONER



SECTION 5 ELIGIBLE CASES AND COVERED EVENTS

Section 5.1 Responsibility of NCAOC to Provide Language Access Services

NCAOC shall provide an interpreter for an LEP party in interest to facilitate participation in covered events.

Section 5.1.a Court Proceedings

The court shall provide an authorized court interpreter for an LEP party in interest to facilitate participation in court proceedings.

Section 5.1.b Court Operations

To facilitate access to court operations, court personnel shall communicate with LEP individuals utilizing bilingual staff or remote interpreting services.

Section 5.1.c Out-of-Court Communications

NCAOC shall provide an authorized court interpreter for out-of-court communications involving the district attorney, public defender / appointed counsel, or guardian ad litem in accordance with Sections 5.4, 5.5, 5.6 of this Section.

Section 5.2 Interpreters Provided at State Expense for All Court Proceedings

NCAOC will bear the costs of providing an interpreter for all court proceedings as defined by Section 2.10. This includes all court proceedings before the magistrate, all court proceedings before the clerk of superior court, all district court proceedings and all superior court proceedings.

Section 5.3 Individuals Entitled to Interpreter

NCAOC shall provide an interpreter to the following LEP parties in interest during a court proceeding or to any LEP individual to facilitate access to a court operation:

- (a) A party;
- (b) A victim;
- (c) A testifying witness;
- (d) The parent, legal guardian, or custodian of a minor who is a party, victim or a testifying witness in a court proceeding; or
- (e) The legal guardian or custodian of an adult who is a party, victim or a testifying witness in a court proceeding.



Section 5.4 Out-of-Court Communications Involving the District Attorney

NCAOC will provide an interpreter for out-of-court communications between the district attorney and LEP victims, witnesses and defendants, or to facilitate communication during interviews, investigations, and other aspects of general case preparation that are the responsibility of the district attorney's office.

Section 5.5 Out-of-Court Communications Involving the Public Defender or Appointed Counsel

NCAOC shall provide an interpreter for indigent defendants or respondents under Article 36 of Chapter 7A in accordance with this section.

Section 5.5.a Public Defender or Assigned / Appointed Counsel

Pursuant to a memorandum of understanding between NCAOC and IDS, NCAOC will provide an interpreter for out-of-court communications between a public defender or assigned / appointed counsel for an LEP party, or a Guardian ad Litem (GAL) for an adult LEP party, and LEP parties in interest, or to facilitate communication during interviews, investigations, and other aspects of general case preparation for indigent defendants and respondents, in accordance with the terms of the memorandum, at IDS expense.

Section 5.5.b Privately-Retained Counsel Representing Indigent Defendants

Notwithstanding Section 5.7, pursuant to a memorandum of understanding between NCAOC and IDS, NCAOC will provide an interpreter for out-of-court communications between privately-retained counsel and an LEP defendant or respondent, at IDS expense, provided that a court has entered an order specifically finding that the LEP defendant or respondent who has retained private counsel meets the definition of an indigent person entitled to representation by IDS under the standards and procedures set out in Subchapter IX of Chapter 7A. Once the court has issued the order, NCAOC shall provide an interpreter to facilitate communication during interviews, investigations, and other aspects of general case preparation for the indigent defendant or respondent, in accordance with the terms of the memorandum, at IDS expense.

Section 5.6 Out-of-Court Communications Involving Guardian ad Litem Program

To assist with out-of-court investigations and witness preparation, NCAOC will provide interpreting services to facilitate out-of-court communications among the Guardian ad Litem attorney advocate, staff, and / or volunteer appointed pursuant to G.S. § 7B-601, and the LEP juvenile and / or any LEP witness or party in interest.

Section 5.7 Out-of-Court Communications Involving Privately-Retained Counsel

NCAOC does not provide interpreting services to facilitate communications between privately-retained counsel and clients, witnesses or other parties outside of a court proceeding. Language access services required for all out-of-court communications involving privately retained counsel, including all interviews, investigations, and other aspects of general case preparation, are outside the scope of services provided by NCAOC.

Section 5.8 Limitations on Providing an Authorized Interpreter for Other Agencies
 NCAOC does not provide interpreters for programs and operations that are within the purview of other agencies or entities, such as interpreting services required on behalf of juvenile court counselors, probation and parole officers, criminal mediation centers, and law enforcement personnel outside of the court proceeding.

COMMENT: Prior to ordering an LEP individual to attend programs or operations within the purview of other agencies or entities, the judicial official should consider whether the agency or entity provides language access services that eliminate barriers to successful completion of the program.

Section 5.9 Treatment or Rehabilitative Services
 NCAOC will not provide court interpreters for treatment, classes, counseling, or other similar services whether or not ordered by the court.

COMMENT: Prior to ordering an LEP individual to attend treatment of rehabilitative services, the judicial official should consider whether the service provider provides language access services that eliminate barriers to successful completion of the program.

Section 5.10 Alternative Dispute Resolution
 NCAOC will provide court interpreters for court-annexed alternative dispute resolution procedures that are court proceedings or court operations, which specifically include mediation through the Child Custody and Visitation Mediation Program pursuant to G.S. 7A-494, and the Permanency Mediation Program pursuant to G.S. 7B-202. NCAOC will not provide interpreters for private mediation, private arbitration, or other types of dispute resolution outside of a court proceeding or court operations, which specifically include mediation pursuant to the Family Financial Settlement Program, district criminal court mediation, mediated settlement conferences, court-ordered arbitration, clerk-ordered mediation, or mediation of public records disputes.

COMMENT: In determining whether NCAOC pays for specific types of alternative dispute resolution, the following questions are determinative:

- (1) Is the service mandated by the court?*
- (2) Does NCAOC pay for the service?*
- (3) Are the mediators or arbitrators employed by NCAOC?*

If the answer is yes to all three questions, NCAOC will provide an interpreter at State expense.



Section 5.11 Language Access Services to Be Provided at No Cost to the Party in Interest
Language access services shall be provided to LEP individuals involved in court proceedings or accessing court operations at no cost, regardless of the party's ability to pay, consistent with these *Standards*.

