

**Regulatory Impact Analysis
Foreign Language and Sign Language Interpreters**

Agency:	North Carolina Industrial Commission
Contact:	Ashley Snyder – (919) 807-2524
Proposed New Rule Title:	Contact Information
Rules proposed for amendment:	Rule 11 NCAC 23A .0619 (See proposed rule text in Appendix 1)
State Impact:	Yes
Local Impact:	Yes
Private Impact:	Yes
Substantial Economic Impact:	No
Statutory Authority:	G.S. § 97-79(b); 97-80(a)

Introduction/Background:

On November 1, 2014, the Commission implemented Rule 04 NCAC 10A .0619 to allow and regulate the use of foreign language interpreters in Commission hearings. Interpreters ensure full and fair participation of all parties and witnesses as well as equal access to justice. Rule 04 NCAC 10A .0619 was recodified as Rule 11 NCAC 10A .0619 effective June 1, 2018.

On July 1, 2017, the North Carolina Administrative Office of the Courts issued updated Standards for Language Access Services. The Commission proposes to amend Rule 11 NCAC 23A .0619 to incorporate the standards for Spanish language interpretation as required by the Administrative Office of the Courts for the Judicial Branch. Adopting the same standards as the Judicial Branch will promote uniformity, making navigating the requirements easier for attorneys who practice before different courts.

In addition, the North Carolina Administrative Office of the Courts revised their Guidelines for Accommodating Persons who are Deaf or Hard of Hearing in the Courts in March 2017. The Commission proposes to amend Rule 11 NCAC 23A .0619 to adopt the standards set forth in that document for sign language interpreters. Again, adopting the same standards as the Judicial Branch will promote uniformity.

Proposed Rule Changes and Their Estimated Impact:

The proposed rule additions and changes include the following:

1. *Amendment of foreign language interpreters rule – Rule 11 NCAC 23A .0619*
 - a. Description of baseline situation:

In its current form, Rule 11 NCAC 23A .0619 requires persons who do not speak or understand the English language to be assisted by a foreign language interpreter when testifying at a hearing. To qualify as an interpreter, an individual must qualify as an expert witness pursuant to G.S. 8C-1, Rule 702. Requirements for qualification as a Spanish language interpreter or a sign language interpreter were not further specified.

Additionally, the Rule currently requires parties and witnesses who do not speak or understand the English language to be assisted at hearings other than informal hearings other than informal hearings conducted pursuant to G.S. 97-18.1.

b. Description of proposed changes:

The proposed amendments to this rule require Spanish language interpreters to obtain a “Level A” certification according to the standards set forth by the North Carolina Administrative Office of the Courts. Additionally, the amendments allow those who are speech or hearing impaired to request a sign language interpreter. Sign language interpreters must be licensed by the North Carolina Interpreter and Transliterator Licensing Board. The Board’s SC:L legal certification is preferred, but not required. Amendments to the rule also clarify interpreters may be used for oral argument before the Full Commission as well as for testimony at hearings.

c. Economic impact:

(1) Costs to the State through the Commission:

- The costs to the State through the Commission are *de minimus*. The Commission does not coordinate or arrange interpretation services. The Commission only receives notification an interpreter will be used at hearing or oral argument. Additionally, the notification requirement is not being amended in the rule.
- Occasionally, the Commission receives a request for a translator. A Commission employee, usually an Executive Assistant, simply forwards the request to the employer or insurer who would be responsible for retaining the translator’s services.

(2) Costs to the State as an employer:

- The employer or insurer that retained the interpreter must pay the interpreter’s fee. In instances where the State is the employer, the State will be responsible for payment of the cost of the interpreter’s services. The proposed amendments to the Rule require heightened certification requirements for Spanish language interpreters. The average hourly wage of interpreters and translators is \$24.90 per

hour.¹ The average hourly wage of interpreters providing professional, scientific, or technical services is \$26.69 per hour,² equating to an estimated increase of \$1.79 per hour for a translator providing professional, scientific, or technical services.

- The requirements for other spoken languages remain unchanged, meaning there is no fiscal impact to the State for obtaining the assistance of an interpreter of any foreign language other than Spanish.
- The Deputy Commissioner section hears 1,728 cases per year.³ Out of 9,027,673 speakers in North Carolina, 331,650 individuals (3.67%) speak Spanish and speak English less than “very well.”⁴ Applied to the number of Deputy Commissioner hearings, an estimated 63.4 cases per year involve an individual who speaks Spanish and speaks English less than “very well,” meaning they likely need the assistance of a translator. Assuming Spanish translating services are needed for one hour of those Deputy Commission Section hearings, the additional cost caused by the proposed amendments to the rule is \$113.19 per year, total. Assuming the type of filer (public or private) follows the same breakdown as the type of employment in NC, about 11% of employers should be attributed to the public sector,⁵ meaning \$12.48 per year in increased costs to the State as an employer.
- The Full Commission section hears 424 cases on appeal annually.⁶ Out of 9,027,673 speakers in North Carolina, 331,650 individuals (3.67%) speak Spanish and speak English less than “very well.”⁷ Applied to the number of Full Commission hearings, an estimated 15.56 cases per year involve an individual who speaks Spanish and speaks English less than “very well,” meaning they likely need the assistance of a translator. (For reference, it is believed no Spanish language translators were requested at a Full Commission oral argument within the past year.) Assuming Spanish translating services are needed for the total time of a Full Commission oral argument, 40 minutes, the additional cost caused by the proposed

¹ “Occupational Employment and Wages, May 2017,” Occupational Employment Statistics, Bureau of Labor Statistics, <https://www.bls.gov/oes/current/oes273091.htm#st>

² Supra note 1.

³ Industrial Commission Annual Report, Fiscal Year 2017, <http://www.ic.nc.gov/2017AnnualReport.pdf>.

⁴ Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over: 2009-2013, <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html>.

⁵ Governing website. Governing Data. States with Most Government Employees: Per Capita Rates by Job Type. <http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>

⁶ Annual Report.

⁷ Table: Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for States: 2009-2013, <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html>.

amendments to the rule is \$18.57 per year, total. Assuming the type of filer (public or private) follows the same breakdown as the type of employment in NC, about 11% of employers should be attributed to the public sector,⁸ meaning \$2.04 per year in increased costs to the State as an employer.

- Currently, the Rule does not contemplate the assistance of a sign language interpreter. As a result, the full cost of a sign language interpreter should be included in the fiscal impact of the proposed amendments to this Rule.
- The Full Commission section hears 424 cases on appeal annually.⁹ 5.9%¹⁰ of the population are individuals who are deaf or hard of hearing. Assuming all persons who are deaf or hard of hearing use sign language, approximately 25 Full Commission oral arguments per year would require a sign language interpreter. (For reference, it is believed no sign language interpreters were requested at a Full Commission oral argument within the past year.) The proposed rule amendments establish a preference for SC:L legal certifications for sign language interpreters. The average wage for professional, scientific, and technical interpreters is \$26.69 per hour.¹¹ Assuming sign language interpretation is needed for the total time of a Full Commission oral argument, 40 minutes, the additional cost caused by the proposed amendments to the rule is \$444.83 per year, total. Assuming the type of filer (public or private) follows the same breakdown as the type of employment in NC, about 11% of employers should be attributed to the public sector,¹² meaning \$48.93 per year in increased costs to the State.
- The Deputy Commissioner section hears 1,728 cases per year.¹³ 5.9% of the population are individuals who are deaf or hard of hearing. Applied to the number of Deputy Commissioner hearings, an estimated 102 cases per year would require a sign language interpreter. Assuming sign language translating services are needed for one hour of those Deputy Commission Section hearings, the additional cost caused by the proposed amendments to the rule is \$2,722.38 per year, total. Assuming the type of filer (public or

⁸ Governing website. Governing Data. States with Most Government Employees: Per Capita Rates by Job Type. <http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>

⁹ Annual Report.

¹⁰ 2016 Behavioral Risk Factor Surveillance System Survey Results: NC Disability, <https://schs.dph.ncdhhs.gov/data/brfss/2016/nc/all/DEAF.html>.

¹¹ <https://www.bls.gov/oes/current/oes273091.htm#st>

¹² Governing website. Governing Data. States with Most Government Employees: Per Capita Rates by Job Type. <http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>

¹³ Industrial Commission Annual Report, Fiscal Year 2017, <http://www.ic.nc.gov/2017AnnualReport.pdf>.

private) follows the same breakdown as the type of employment in NC, about 11% of employers should be attributed to the public sector,¹⁴ meaning \$299.46 per year in increased costs to the State as an employer.

(3) Costs to private sector:

- The employer or insurer that retained the interpreter must pay the interpreter's fee. The proposed amendments to the Rule require heightened certification requirements for Spanish language interpreters. The average hourly wage of interpreters and translators is \$24.90 per hour.¹⁵ The average hourly wage of interpreters providing professional, scientific, or technical services is \$26.69 per hour,¹⁶ equating to an estimated increase of \$1.79 per hour for a translator providing professional, scientific, or technical services.
- The requirements for other spoken languages remain unchanged, meaning there is no fiscal impact to the State for obtaining the assistance of an interpreter of any foreign language other than Spanish.
- The Deputy Commissioner section hears 1,728 cases per year.¹⁷ Out of 9,027,673 speakers in North Carolina, 331,650 individuals (3.67%) speak Spanish and speak English less than "very well."¹⁸ Applied to the number of Deputy Commissioner hearings, an estimated 63.4 cases per year involve an individual who speaks Spanish and speaks English less than "very well," meaning they likely need the assistance of a translator. Assuming Spanish translating services are needed for one hour of those Deputy Commission Section hearings, the additional cost caused by the proposed amendments to the rule is \$113.19 per year, total. Assuming the type of filer (public or private) follows the same breakdown as the type of employment in NC, about 89% of employers should be attributed to the private sector,¹⁹ meaning \$100.74 per year in increased costs to the State as an employer.

¹⁴ Governing website. Governing Data. States with Most Government Employees: Per Capita Rates by Job Type. <http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>

¹⁵ "Occupational Employment and Wages, May 2017," Occupational Employment Statistics, Bureau of Labor Statistics, <https://www.bls.gov/oes/current/oes273091.htm#st>

¹⁶ Supra note 1.

¹⁷ Industrial Commission Annual Report, Fiscal Year 2017, <http://www.ic.nc.gov/2017AnnualReport.pdf>.

¹⁸ Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over: 2009-2013, <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html>.

¹⁹ Governing website. Governing Data. States with Most Government Employees: Per Capita Rates by Job Type. <http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>

- The Full Commission section hears 424 cases on appeal annually.²⁰ Out of 9,027,673 speakers in North Carolina, 331,650 individuals (3.67%) speak Spanish and speak English less than “very well.”²¹ Applied to the number of Full Commission hearings, an estimated 15.56 cases per year involve an individual who speaks Spanish and speaks English less than “very well,” meaning they likely need the assistance of a translator. (For reference, it is believed no Spanish language translators were requested at a Full Commission oral argument within the past year.) Assuming Spanish translating services are needed for the total time of a Full Commission oral argument, 40 minutes, the additional cost caused by the proposed amendments to the rule is \$18.57 per year, total. Assuming the type of filer (public or private) follows the same breakdown as the type of employment in NC, about 89% of employers should be attributed to the public sector,²² meaning \$16.53 per year in increased costs to the State as an employer.
- Currently, the Rule does not contemplate the assistance of a sign language interpreter. As a result, the full cost of a sign language interpreter should be included in the fiscal impact of the proposed amendments to this Rule.
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- The Full Commission section hears 424 cases on appeal annually.²³ 5.9%²⁴ of the population are individuals who are deaf or hard of hearing. Assuming all persons who are deaf or hard of hearing use sign language, approximately 25 Full Commission oral arguments per year would require a sign language interpreter. (For reference, it is believed no sign language interpreters were requested at a Full Commission oral argument within the past year.) The proposed rule amendments establish a preference for SC:L legal certifications for sign language interpreters. The average wage for professional, scientific, and technical interpreters is \$26.69 per hour.²⁵ Assuming sign language interpretation is needed for the total time of a Full Commission oral argument, 40 minutes, the additional cost caused by the proposed amendments to the rule is \$444.83 per year, total. Assuming the type of filer (public or private) follows the same

²⁰ Annual Report.

²¹ Table: Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for States: 2009-2013, <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html>.

²² Governing website. Governing Data. States with Most Government Employees: Per Capita Rates by Job Type. <http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>

²³ Annual Report.

²⁴ 2016 Behavioral Risk Factor Surveillance System Survey Results: NC Disability, <https://schs.dph.ncdhhs.gov/data/brfss/2016/nc/all/DEAF.html>.

²⁵ <https://www.bls.gov/oes/current/oes273091.htm#st>

breakdown as the type of employment in NC, about 89% of employers should be attributed to the private sector,²⁶ meaning \$395.90 per year in increased costs to the private sector.

- The Deputy Commissioner section hears 1,728 cases per year.²⁷ 5.9% of the population are individuals who are deaf or hard of hearing. Applied to the number of Deputy Commissioner hearings, an estimated 102 cases per year would require a sign language interpreter. Assuming sign language translating services are needed for one hour of those Deputy Commission Section hearings, the additional cost caused by the proposed amendments to the rule is \$2,722.38 per year, total. Assuming the type of filer (public or private) follows the same breakdown as the type of employment in NC, about 89% of employers should be attributed to the private sector,²⁸ meaning \$2,422.92 per year in increased costs to the private sector.

(4) Benefits to the State through the Commission:

- The Commission will benefit by being able to communicate with those that need sign language interpreters and by being able to communicate at a higher and more professional level with individuals requesting Spanish interpreters.

(5) Benefits to the public and private sector:

- Because the Commission proposing amendments based upon standards adopted by the Administrative Office of the Courts, the Commission proposes the same standards for Spanish language and sign language interpreters as required by North Carolina's district courts, superior courts, the Court of Appeals of North Carolina, and the North Carolina Supreme Court. Adopting the same standards will ensure uniformity and will make it easier for attorneys to navigate the proposed requirements.
- Members of both the public and private sector who are parties in a case before the Commission or who are witnesses in a case before the Commission will benefit from being able to fully and actively participate in hearings and oral arguments. Individuals who speak Spanish will benefit from more highly trained interpreters. Individuals who communicate using sign language will now be

²⁶ Governing website. Governing Data. States with Most Government Employees: Per Capita Rates by Job Type. <http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>

²⁷ Industrial Commission Annual Report, Fiscal Year 2017, <http://www.ic.nc.gov/2017AnnualReport.pdf>.

²⁸ Governing website. Governing Data. States with Most Government Employees: Per Capita Rates by Job Type. <http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>

guaranteed access to a sign language interpreter during hearings and oral arguments.

Summary of aggregate impact:

Based on the monetized costs and benefits cited above, it is estimated the proposed rule amendments will amount to an aggregate impact of \$131.79 per year for the amendments related to Spanish language interpreters plus \$3,167.21 per year for sign language interpreters. In total, the proposed amendments amount to an impact of \$3299.00. Additionally, the proposed changes will result in unquantifiable benefits to the public, including equal access to justice and uniformity with North Carolina's Judicial Branch. It is anticipated the rule will go into effect January 1, 2019, and that the same level of cost and benefit will recur each year.

APPENDIX I

Rule 11 NCAC 23A .0619 is proposed for amendment as follows:

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 ~~foreign language interpreter~~. interpreter upon request.

(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, truthfully and 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. It is preferred that sign language interpreters obtain an SC:L legal certification.

~~(d)~~ (d) Any party who is unable to speak or understand ~~English~~, 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~~, 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)~~ (e) Upon receiving or giving the notice required in Paragraph ~~(d)~~ (d) of this Rule, the employer or insurer shall retain a disinterested 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)~~ (d) of this Rule has been given or received.

~~(f)~~ (f) The interpreter's fee shall constitute a cost as contemplated by 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. Where the Commission ultimately determines that the request for an interpreter was unfounded, attendant costs shall be assessed against the movant.

~~(g)~~ (g) Foreign language interpreters shall abide by the Code of Conduct and Ethics of Foreign Language Interpreters and Translators, contained in Part 4 of Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System 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 Conduct and Ethics of Foreign Language Interpreters and Translators 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, <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, 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.

*Amended Eff. **** **, ****.*