

State of South Carolina

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Workers' Compensation Commission

Advisory Guidelines for the Use of Translators/Interpreters

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WHEREAS, pursuant to South Carolina Code of Laws Section 42-3-20(C) the Commission has a duty to hear and determine all contested cases and, pursuant to South Carolina Code of Laws Section 42-3-180, to determine all questions arising under Title 42 of the South Carolina Code of Laws; and

WHEREAS, Article I Section 3 of the South Carolina Constitution states, in part, that “nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws;” and

WHEREAS, many persons who come before the Commission are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment and it is essential that this communication barrier must be removed, as much as possible, so that these persons are placed in the same position as a similarly situated person for whom there is no such barrier; and

WHEREAS, it is the desire of the Commission to ensure that translators and interpreters should, to the extent possible, render a complete and accurate translation or interpretation, without altering, omitting or adding anything to what is said or written, and without explanation or summarization, while preserving the nuances and level of formality, or informality, of the speech.

THEREFORE, the Commission establishes the following advisory guidelines for parties and the Commission to utilize when translators or interpreters are necessary, to the extent that the circumstances allow.

- 1) All parties shall make a good faith effort to ensure that any interpretations or translations are rendered completely and accurately, without alterations,

omissions, or additions to what is written or stated, and without explanation or summarization while preserving the nuances and level of formality, or informality, of the speech.

- 2) When a party finds it necessary to obtain the services of a translator or interpreter to assist with the handling of a workers' compensation claim, the party should, to the extent that the circumstances allow, make a good faith effort to obtain a translator or interpreter who possesses the necessary certifications, training and pertinent experience to render a complete and accurate translation or interpretation, without altering, omitting or adding anything to what is said or written, and without explanation or summarization, while preserving the nuances and level of formality, or informality, of the speech.
- 3) The Commission presumes an interpreter or translator who is certified pursuant to the South Carolina Court Interpreter Certification Program possesses the requisite certifications, training and pertinent experience; however, the Commission may, in its discretion, permit the use of uncertified interpreters or translators who possess sufficient training and/ or experience, as the circumstances may require. Any interpreter or translator is expected, to the extent the circumstances allow, to comply with Rule 511, S.C.A.C.R., Rules of Professional Conduct for Court Interpreters (2006).
- 4) When a party finds it necessary to obtain the services of a translator or interpreter to assist with the handling of a workers' compensation claim, the party should, to the extent that the circumstances allow, make a good faith effort to ensure that the translator or interpreter is impartial, unbiased and refrains from conduct that may give the appearance of bias.
- 5) Translators or interpreters shall disclose any real or perceived conflict of interest. Specifically, an interpreter or translator shall disclose if he or she is a friend, associate, or relative of a party or counsel for a party involved in the proceedings; has served in an investigative capacity for any party involved in the case; if he or she, or his or her spouse or child, have a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case; has been involved in the choice of counsel or law firm for that case; is an attorney or an employee of an attorney in the case; has previously been retained for private employment by one of the parties to the case; or if there is any other reason his or her independence of judgment would be compromised in the course of providing services in the case.

- 6) After the interpreter's or translator's qualifications and any conflicts of interests have been disclosed, the parties may stipulate their consent to using the interpreter's or translator's services. If a party objects to the use of a translator or interpreter due to a perceived lack of qualifications or conflict of interest, the Commissioner will decide on a case-by-case basis whether the proffered interpreter or translator is sufficient.
- 7) The parties are encouraged to notify the Translator or Interpreter as soon practicable regarding the cancellation of services and are encouraged to independently resolve any fees for the cancellation of services that may be due according to their agreement. The South Carolina Judicial Department Form 261A is instructive as to reimbursement practices for cancelled services.

In order to accomplish the goals stated above, at a Hearing or other proceeding before the Commission where the services of an interpreter or translator is necessary, the interpreter or translator shall complete the affidavit shown as Attachment A, which will be included as part of the record.

Furthermore, prior to the commencement of the translation or interpretation, the interpreter or translator will be asked, on the record and under oath, the following questions:

TO THE INTERPRETER

1. Are you a friend, associate, or relative of a party or counsel for a party involved in the proceedings?
2. Have you served in an investigative capacity for any party involved in the case?
3. Do you or your spouse or child have a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case?
4. Have you been involved in the choice of counsel or law firm for that case?
5. Are you an attorney or an employee of an attorney in the case?
6. Have you previously been retained for private employment by one of the parties to interpret in the case?
7. Is there any other reason your independence of judgment would be compromised in the course of providing services in the case?

TO THE PARTIES

Do you consent that the interpreter should not be disqualified and should be

allowed to render services in this case?

The parties and their attorneys shall make every effort not engage in private, off the record conferences with the interpreter or translator. Any private, off the record communication between the parties or their attorneys and the interpreter or translator should not address the substance of the witness's testimony or the issues in dispute. Upon request from the opposing party, the Commissioner may, in his or her discretion, permit cross-examination of a translator or interpreter regarding private, off the record conferences between the interpreter or translator and the parties or their attorneys regarding the substance of the witness's testimony or the issues in dispute.