
In re translation of court forms

PETITION

The Director of State Courts hereby petitions this court to create a rule governing translation of court forms, pursuant to the court's rulemaking authority under §751.12. This petition is submitted on behalf of the Committee to Improve Interpreting and Translation in the Wisconsin Courts and the Records Management Committee, which are working jointly to identify those court forms most appropriate for translation into other languages and to set standards for their format and use.

As part of the effort to improve services to court users with limited English proficiency,¹ the court interpreter program has recommended that the director's office contract for professional translation of the most important court forms and instructions. The records management committee has been asked to apply its forms expertise to the design of bilingual forms. This court is requested to approve the use of translated forms and to set guidance for use of the forms.

A number of other state courts provide translations of forms, as do Wisconsin executive agencies. Translation of important documents is consistent with Title

¹ See Committee to Improve Interpreting and Translation in the Wisconsin Courts, *Improving Interpretation in Wisconsin's Courts* at 36 (October 2000).

VI of the Civil Rights Act of 1964 and its requirements for agencies receiving federal funding; there provide that “vital documents” used by a funded agency be translated into the languages most commonly used in the jurisdiction.² The director’s office plans to use its federal interpreter grant funding for 2005 to contract for the translations.

There is a high demand for translated forms from counties with large Spanish- and Hmong-speaking populations.³ Many clerks of court have paid for local translations of the plea questionnaire, the affidavit of indigency, and various waiver forms, but quality of the translations has been mediocre at best.⁴ Standard forms deserve standard, professional translations that are as carefully reviewed and legally sufficient as the English versions, and creating official versions of the most-requested forms is the best way to assure their quality.⁵

² Title VI and the related guidance of the U.S. Department of Justice are described in the Wisconsin Director of State Courts *Language Assistance Plan* at 5 (January 26, 2004), found at <http://www.wicourts.gov/services/judge/docs/lapstate.pdf>.

³ The legislature has already provided in §799.04 that in counties with a population over 500,000, the small claims summons form shall have all provisions printed in both English and Spanish.

⁴ Some locally translated forms include nonexistent words, unrecognizable spelling, and word-for-word translations that render the meaning in Spanish nonsensical.

⁵ This rule does not govern translation of brochures, signs, web pages, and other information undertaken by the director of state courts or other court agencies.

The proposed rule does not contemplate that the official record will be kept in a language other than English, and forms must still be completed in English to be accepted for filing in the circuit courts. Wis. Stats. §757.18 provides that “All writs, process, proceedings and records in any court within this state shall be in the English language....” The proposed rule accordingly provides that translated forms will contain both English and foreign language text, and that any form calling for a response will require the response to be in English. Interpreters may assist parties in filling out the forms by reading the form and waiting for the party to provide the answer, then filling in the English equivalent or checking the appropriate box.⁶

⁶ The Code of Ethics for Court Interpreters, SCR ch. 63, limits the assistance an interpreter may provide in reading and filling out forms:

63.07 Scope of practice. Interpreters shall limit themselves to interpreting or translating and shall not give legal or other advice, express personal opinions to persons using their services, or engage in any other activities that may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Comment: ... Interpreters may convey legal advice from an attorney to a person only while that attorney is giving it. Interpreters should not explain the purpose or contents of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. Interpreters may translate language on a form for a person who is filling out the form, but should not explain the form or its purpose for such a person. While engaged in the function of interpreting, interpreters should not personally perform official acts that are the official responsibility of other court officials. (emphasis added)

The proposed rule says that translations are not intended to substitute for the services of an interpreter, the advice of counsel, or a colloquy with the court. The interpreter committee seeks to avoid situations where defendants are handed a form waiving their rights and asked to sign it without further explanation, or where interpreters are instructed to explain the form in violation of the interpreter code of ethics. Merely reading a translated form to a defendant from another country falls woefully short of discharging the responsibilities of court or counsel, since it assumes that the defendant understands not just the words but the concepts underlying them. In fact, defendants not born in this country often fail to understand concepts such as “jury” and “counsel”, let alone the underlying premise that an individual possesses “rights” with respect to the government. Because the use (and misuse) of translated forms is substantively different, any rule recognizing translations as official court forms should guide their proper usage.

The interpreter committee and the records management committee have each contributed members to an ad hoc committee on translation. This committee has identified forms and instructions to be translated,⁷ agreed on an appropriate

⁷ Court documents chosen for translation include the adult and juvenile plea questionnaires, waiver of right to counsel, notice of right to seek post-conviction relief, and the domestic abuse injunction form and instructions.

format,⁸ and determined that the language most critically needed is Spanish.⁹ The court interpreter program manager will have the responsibility to negotiate and monitor contracts with translators, assemble a review panel to make sure translations are accurate and easily comprehended by diverse speakers of the language, distribute the forms, and keep the materials updated. Once a form is translated into a particular language for the first time, keeping up with changes should involve a manageable level of time and expense.

Accordingly, the director requests the following changes to the statutes and rules. Wis. Stats. §758.18(3) should be created to read as follows:

§ 758.18 Judicial conference: standard court forms.¹⁰

⁸ A draft translation of the plea questionnaire, CR-227, is attached to demonstrate the format.

⁹ Hmong translations may be provided at a later date after completion of a Hmong-English legal glossary currently in development.

¹⁰ The Records Management Committee is concurrently submitting a petition on forms for use by self-represented litigants, which would add a second section to §758.18:

(1) The judicial conference shall adopt standard court forms for use by parties and court officials in all civil and criminal actions and proceedings in the circuit court.

(2) *In addition, at the request of the director of state courts, the judicial conference may adopt forms created for voluntary use by self-represented litigants in the circuit court. The judicial conference shall identify which forms are intended for voluntary use.*

This translation petition contemplates that both standard forms and voluntary pro se forms, if any, will be covered by the translation rule.

(3) The judicial conference may adopt translations of forms adopted under sub. (1) and (2) . The judicial conference shall identify the forms to be translated and the languages to be used.

SCR 70.155 should be created to read as follows:

SCR 70.155 Translations of Court Forms.

(1) The records management committee, working with the director of state courts office, shall identify court forms and instructions suitable for translation into a language other than English. Translated forms adopted by the judicial members of the records management committee on behalf of the judicial conference shall be treated as court forms adopted under §758.18 and SCR 70.153.

(2) Translated forms shall use a format that incorporates both English and the second language. Every question or statement requiring a response, such as a check box or signature, will provide only one location in the English portion of the form to make that response. The answers to free-text questions must be written in English.

(3) Each translated form shall carry a notice, in both languages, that the translated form does not replace the need for an interpreter, any colloquies mandated by law, or the responsibility of court and counsel to ensure that persons with limited English proficiency fully comprehend their rights and obligations.

(4) Use of a translated form does not supersede the need for an interpreter for communicating with counsel, or for in-court proceedings pursuant to Wis. Stats. §885.38. Interpreters may assist individuals in filling out forms to the extent provided by SCR 63.07.

Respectfully submitted this ___ day of _____, 2005.

A. John Voelker
Director of State Courts

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY
ESTADO DE WISCONSIN, TRIBUNAL DE CIRCUITO, CONDADO DE _____

English/Spanish

For Official Use

Para uso oficial

State of Wisconsin, Plaintiff,
Estado de Wisconsin, Demandante,
 -VS-
 _____, Defendant
 Name Nombre Acusado

**Plea Questionnaire/
 Waiver of Rights**
*Cuestionario de declaración/
 Renuncia de derechos*
 Case No. _____
 Número de Caso

This form does not replace the need for an interpreter, any colloquies mandated by law, or the responsibility of court and counsel to ensure that persons with limited English proficiency fully comprehend their rights and obligations.

Este documento no sustituye el uso de un intérprete, ni los coloquios judiciales mandados por la ley. Tampoco sustituye la responsabilidad del tribunal y los abogados de asegurarse de que las personas cuya comprensión del idioma inglés sea limitada entiendan por completo sus derechos y obligaciones.

I am the defendant and intend to plea as follows:
Soy el acusado y tengo la intención de declararme de la siguiente manera:

Charge/Statute <i>Cargo/Estatuto</i>	Plea <i>Declaración</i>	Charge/Statute <i>Cargo/Estatuto</i>	Plea <i>Declaración</i>
	<input type="checkbox"/> Guilty <i>Culpable</i> <input type="checkbox"/> No Contest <i>Nolo contendere</i>		<input type="checkbox"/> Guilty <i>Culpable</i> <input type="checkbox"/> No Contest <i>Nolo contendere</i>
	<input type="checkbox"/> Guilty <i>Culpable</i> <input type="checkbox"/> No Contest <i>Nolo contendere</i>		<input type="checkbox"/> Guilty <i>Culpable</i> <input type="checkbox"/> No Contest <i>Nolo contendere</i>

See attached sheet for additional charges. *Consulte la hoja adjunta para ver cargos adicionales.*

I am _____ years old. I have completed _____ years of schooling.
Tengo _____ años de edad. He completado _____ años de escolaridad.

I do do not have a high school diploma, GED, or HSED.
Yo tengo no tengo diploma de escuela secundaria (preparatoria en México) o su equivalente (GED o HSED).

I do do not understand the English language.
Yo entiendo no entiendo el idioma inglés.

I do do not understand the charge(s) to which I am pleading.
Yo entiendo no entiendo el cargo del cual me declaro (culpable o nolo contendere).

I am not am currently receiving treatment for a mental illness or disorder.
Yo no estoy estoy recibiendo actualmente tratamiento por trastorno o enfermedad mental.

I have not have had any alcohol, medications, or drugs within the last 24 hours.
Yo no he he consumido alcohol, medicamentos ni drogas en las últimas 24 horas.

Constitutional Rights **Derechos constitucionales**

I understand that by entering this plea, I give up the following constitutional rights:

Entiendo que al hacer esta declaración, renuncio a los siguientes derechos constitucionales:

I give up my right to a trial.
Renuncio a mi derecho a un juicio.

I give up my right to remain silent and I understand that my silence could not be used against me at trial.
Renuncio a mi derecho a mantenerme en silencio y entiendo que mi silencio no podría usarse en mi contra durante el juicio.

I give up my right to testify and present evidence at trial.
Renuncio a mi derecho a testificar y presentar evidencia en el juicio.

I give up my right to use subpoenas to require witnesses to come to court and testify for me at trial.
Renuncio a mi derecho de utilizar citaciones judiciales para exigir que los testigos acudan al tribunal y testifiquen por mí en el juicio.

I give up my right to a jury trial, where all 12 jurors would have to agree that I am either guilty or not guilty.
Renuncio a mi derecho a tener un juicio en el cual los 12 miembros del jurado tendrían que acordar que soy culpable o no culpable.

I give up my right to confront in court the people who testify against me and cross-examine them.
Renuncio a mi derecho a confrontar en el tribunal a las personas que testifiquen en mi contra y a examinarlos.

I give up my right to make the State prove me guilty beyond a reasonable doubt.
Renuncio a mi derecho de hacer que el estado compruebe mi culpabilidad más allá de una duda razonable.

I understand the rights that have been checked and give them up of my own free will.

Entiendo los derechos que se han marcado y renuncio a ellos por voluntad propia.

Understandings **Entendimientos**

- I understand that the crime(s) to which I am pleading has/have elements that the State would have to prove beyond a reasonable doubt if I had a trial. These elements have been explained to me by my attorney or are as follows: See Attached sheet.

Entiendo que el(los) delito(s) del cual me declaro tiene(n) elementos que el Estado tendría que comprobar más allá de una duda razonable si me sometiera a juicio. Mi abogado me ha explicado estos elementos o éstos son los siguientes:

Vea la hoja adjunta.

- I understand that the judge is not bound by any plea agreement or recommendations and may impose the maximum penalty. The maximum penalty I face upon conviction is:
Entiendo que el juez no está obligado a seguir ningún convenio declaratorio ni recomendaciones y puede

imponer la pena máxima. La pena máxima que enfrento al ser condenado es:

- I understand that the judge must impose the mandatory minimum penalty, if any. The mandatory minimum penalty I face upon conviction is:

Entiendo que el juez debe imponer la condena mínima obligatoria, si la hay. La condena mínima obligatoria que enfrento al ser condenado es: _____

- I understand that the presumptive minimum penalty, if any, I face upon conviction is:

Entiendo que la pena mínima presunta, si la hay, que enfrento al ser condenado es: _____

The judge can impose a lesser sentence if the judge states appropriate reasons.

El juez puede imponer una condena menor si indica las razones adecuadas.

Understandings Entendimientos

- I understand that if I am placed on probation and my probation is revoked:
Entiendo que si se me pone en libertad condicional y se revoca mi libertad condicional:
 - if sentence is withheld, the judge could sentence me to the maximum penalty, or
si se posterga la pena, el juez podría condenarme a la pena máxima, o
 - if sentence is imposed and stayed, I will be required to serve that sentence.
si se impone y aplaza la condena, se me exigirá cumplirla.
- I understand that if I am not a citizen of the United States, my plea could result in deportation, the exclusion of admission to this country, or the denial of naturalization under federal law.
Entiendo que si no soy ciudadano de los Estados Unidos, mi declaración podría resultar en deportación, la exclusión de entrada a este país o la denegación de la nacionalización según la ley federal.
- I understand that if I am convicted of any felony, I may not vote in any election until my civil rights are restored.
Entiendo que si se me condena de algún delito mayor, no puedo votar en ninguna elección hasta que se me restablezcan mis derechos cívicos.
- I understand that if I am convicted of any felony, it is unlawful for me to possess a firearm.
Entiendo que si se me condena de algún delito mayor, es ilegal que yo posea un arma de fuego.
- I understand that if I am convicted of any violent felony, it is unlawful for me to possess body armor.
Entiendo que si se me condena de algún delito mayor con violencia, es ilegal que yo posea protección corporal antibalas.
- I understand that if I am convicted of a serious child sex offense, I cannot engage in an occupation or participate in a volunteer position that requires me to work or interact primarily and directly with children under the age of 16.
Entiendo que si se me condena de un delito sexual grave contra menores de edad, no puedo participar en una ocupación ni en cargos voluntarios que me exijan trabajar o interactuar principal y directamente con niños menores de 16 años.
- I understand that if any charges are read-in as part of a plea agreement they have the following effects:
Entiendo que si se leen cargos como parte de un convenio declaratorio, tienen los siguientes efectos:
 - Sentencing – although the judge may consider read-in charges when imposing sentence, the maximum penalty will not be increased.
Pena – aunque el juez puede considerar los cargos leídos al imponer la condena, esto no aumentará la pena máxima.
 - Restitution – I may be required to pay restitution on any read-in charges.
Restitución – Puede que se me exija pagar restitución de algún cargo leído.
 - Future prosecution – the State may not prosecute me for any read-in charges.
Procesamientos – el Estado no puede procesarme por cargos leídos.

- I understand that if the judge accepts my plea, the judge will find me guilty of the crime(s) to which I am pleading based upon the facts in the criminal complaint and/or the preliminary examination and/or as stated in court.
Entiendo que si el juez acepta mi declaración, puede encontrarme culpable del(de los) delito(s) por los cuales me declaro basándose en los hechos de la acusación penal y el examen preliminar y según lo declarado en el tribunal.

Voluntary Plea **Alegación voluntaria**

I have decided to enter this plea of my own free will. I have not been threatened or forced to enter this plea. No promises have been made to me other than those contained in the plea agreement. The plea agreement will be stated in court or is as follows: See Attached.

He decidido hacer esta declaración por voluntad propia. No se me ha amenazado ni forzado a presentar esta declaración. No se me han hecho promesas aparte de las que contiene el convenio declaratorio. El convenio declaratorio se presentará en el tribunal o es de la siguiente manera: Vea el anexo.

Defendant's Statement **Declaración del acusado**

I have reviewed and understand this entire document and any attachments. I have reviewed it with my attorney (if represented). I have answered all questions truthfully and either I or my attorney have checked the boxes. I am asking the court to accept my plea and find me guilty.

He evaluado y entiendo la totalidad de este documento y todo anexo. Lo he evaluado con mi abogado (si cuento con representación). He respondido a todas las preguntas con la verdad y yo o mi abogado hemos marcado las casillas. Pido al tribunal que acepte mi declaración y me declare culpable.

Signature of Defendant *Firma del acusado*

Date *Fecha*

Attorney's Statement **Declaración del abogado**

I am the attorney for the defendant. I have discussed this document and any attachments with the defendant. I believe the defendant understands it and the plea agreement. The defendant is making this plea freely, voluntarily, and intelligently. I saw the defendant sign and date this document.

Soy abogado del acusado. He hablado de este documento y todo anexo con el acusado. Considero que el acusado lo entiende, así como el convenio declaratorio. El acusado hace esta declaración libre, voluntaria e inteligentemente. Observé al acusado firmar y fechar este documento.

Signature of Attorney *Firma del abogado*

Date *Fecha*