
**In re submission of evidence
originating in a language other than English**

PETITION

The Director of State Courts hereby petitions this court to create a new rule governing the submission of evidence originating in a language other than English, 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. This rule is proposed as part of the Wisconsin Statutes Chapter 901 which addresses the rules of evidence in civil and criminal proceedings. This petition also requests a related change pertaining to translation of official court forms.

Wis. Stat. §757.18 states, “All writs, process, proceedings and records in any court within this state shall be in the English language.” Given the sharp increase in the foreign born population to this state over the past decade and the heavy reliance on court interpreters for litigants who do not speak English, courts have begun to see an increase in documents, records, and transcripts originating in a language other than English that are offered into evidence and need to be translated.

For example, custodial interrogations that are conducted with non-English speaking individuals through the assistance of interpreters may need to be transcribed and translated. Other examples of materials requiring translation include wills, letters submitted for sentencing consideration, and government documents from other countries such as birth records, marriage certificates and divorce decrees.

Currently, Wisconsin statutes address only translation of depositions taken outside of the state. Wis. Stat. §887.26(8) states:

When the witness is unable to speak the English language, the judge of the court from which the commission issues may appoint some competent and disinterested person to translate, at the expense of the noticing person, the subpoena, rules, and deposition questions and answers, or any part thereof as may be necessary, from English into the language used by the witness or vice versa; and the translation shall be transcribed and maintained as part of the deposition transcript. The translator shall append to all translations the translator's affidavit that the translator knows English and the language of the witness, and that in making such translation the translator carefully and truly translated the proceedings from English into the witness's language or from the witness's language into English, and that the translation is correct. A translation under this paragraph shall have the same effect as if all the proceedings were in English, but the circuit court, upon the deposition being offered in evidence, may admit the testimony of witnesses learned in the language of the deposed witness for the purpose of correcting errors therein; and, if it shall appear that the first translation was in any respect so incorrect as to mislead the witness, the court may, in its discretion, continue the cause for the further taking of testimony.

Wis. Stat. §887.26(8), however, does not address other forms of evidence which may need to be translated. It also does not address depositions taken within the state.

Therefore, this rule proposes to renumber §887.26(8) as §887.27 and rename the new section "Depositions, translations of" so it encompasses depositions taken from non-English speaking witnesses within the state as well. This rule seeks to establish similar guidance for other forms of translated evidence and to place both the responsibility and expense of the translation on the party who wishes to admit evidence. Like 887.26(8), the proposed rule includes a requirement for the translator to submit an affidavit attesting to the accuracy of the translation.

Finally, Supreme Court Rule 70.155 sets requirements for official translation of court forms. For the purpose of consistency, this rule should also require attachment of the translator's affidavit attesting to the accuracy of all translations of court forms.

Accordingly, the director requests the following changes to the statutes and rules:

1. Wis. Stat. §887.26(8) should be renumbered and renamed as a new section under Wis.

Stat. §887.27 to read:

887.27 Depositions, translations of.

2. A new section of the Wisconsin statutes should be created to read:

901.08 Submission of evidence-languages other than English

A party seeking to offer evidence originating in a language other than English shall be responsible for translating the evidence into written format and shall be responsible for all costs of translation, and any other expense associated with the receipt into evidence, unless otherwise ordered by the court. The translator shall append to all translations the translator's affidavit that the translator knows English and the other language and that in making such a translation the translator carefully and truly translated the information from English into the other language or from the other language into English, and that the translation is correct. In cases where a party objects to the translator selected or the accuracy of the translation, the objecting party shall bear the costs of producing an alternate translation.

3. A new section of Supreme Court Rule 70.155, Translation of court forms should be created to read:

(5) Any translation shall be accompanied by an affidavit that the translator knows English and the other language and that in making such a translation the translator carefully and truly translated the information from English into the other language and that the translation is correct.

Respectfully submitted this ____ day of _____, 2009.

A. John Voelker
Director of State Courts