



Wisconsin

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Clerk of Supreme Court
Attention: Deputy Clerk - Rules
P.O. Box 1688
Madison, WI 53703-1688

CLERK OF SUPREME COURT
OF WISCONSIN

Dear Honorable Justices:

Re: Rule Petition 24-02: Interpreters in
Municipal Court Proceedings

The ACLU of Wisconsin offers its strong support for the petition and proposed rule to require language interpreters to be provided in all proceedings in municipal courts. Ensuring access to language interpretation in municipal courts is essential for the fair administration of justice for several key reasons.

1. Interpreters Are Essential to Ensuring that Persons with Limited English Proficiency Have Access to Justice in Municipal Courts.

The cornerstone of our legal system is the principle that all individuals, regardless of their background, are entitled to equal access to justice. However, individuals with limited English proficiency (LEP) face significant barriers in understanding and participating in court proceedings. Without adequate language interpretation, they may be unable to comprehend their rights, the charges against them, or the procedural requirements of the court. This places them at a substantial disadvantage and undermines their ability to receive a fair hearing.

This basic fact is reflected in the existing mandate for provision of interpreters in the circuit courts of this state, Wis. Stat. § 885.38, as well as for juvenile matters pending before municipal courts Wis. Stat. § 885.37. This requirement should be extended to all substantive municipal court proceedings for the reasons set out below.

By mandating the provision of interpreters, the Court can help ensure that all individuals, regardless of language proficiency, can effectively participate in their own defense and understand the outcomes of their cases. This is critical for upholding the constitutional guarantee of due process for all. As the US Department of Justice has written:

Simply put, interpretation and translation are essential to providing meaningful access to the courts and to maintaining the integrity of our justice system. Court cases are often highly structured, stressful experiences requiring specialized terminology. Without careful attention to providing effective language services, many people will face a judicial process that places unfair and unconstitutional burdens on their

ability to fully participate in proceedings. At the same time, relying on un-interpreted or poorly interpreted testimony from witnesses who are not proficient in English, or from improperly translated documents, will hinder the court's ability to determine the facts and dispense justice.

Language Access in State Courts, U.S. Dep't of Just. Civ. Rts. Div. (Sept. 2016).

Interpreters ensure that defendants can communicate effectively with the court, enabling them to explain mitigating circumstances or defend themselves appropriately. This reduces the risk of misunderstandings that could lead to unnecessarily harsh or unwarranted legal outcomes. *See State v. Yang*, 2006 WI App 48, ¶ 13, 290 Wis.2d 235, 712 N.W.2d 235 (“Both the legislature and the Wisconsin Supreme Court have recognized that fair trials require comprehension of the spoken word—by parties, by witnesses, and by fact-finders.”).

The proposed rule also aligns with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C §§ 2000d - 2000d-7), which prohibits discrimination on the basis of national origin, and its interpretation under Executive Order 13166, 65 Fed. Reg. 50121 (Aug. 16, 2000), which mandates meaningful access to services for individuals with LEP. Courts have a legal obligation to ensure that defendants who cannot speak or understand English are provided with the means to fully participate in their proceedings.

2. Municipal court proceedings have real impact on lives.

The right to interpreters should be extended to all defendants in municipal courts, and not just juveniles, because of the significant impact which a municipal court judgment can have on a person's financial position, employment possibilities, and even ability to continue to live in the United States. The absence in Wisconsin of a right to interpreters in all municipal court proceedings reflects a failure to recognize the importance of what goes on in these courts across the state. Far from being simply forums for contesting traffic tickets, municipal court proceedings deal with many issues of significance and have a wide-reaching scope.

In Wisconsin, municipal courts have exclusive jurisdiction over municipal ordinance violations where the penalty is a civil forfeiture, Wis. Stat. § 755.045(1) and based on open records requests have, handled approximately 440,000 cases statewide in 2023. Municipal courts handle a wide array of ordinance violations such as traffic violations, disorderly conduct, retail theft, marijuana possession, truancy, and first offense drunk driving.

The outcome of these proceedings can have significant impacts on the lives of defendants. The consequence of municipal court citation convictions, especially for those who cannot pay, not only is more court involvement and police interaction, but can also lead to loss of employment, and loss of housing. A municipal court may intercept tax refunds (Wis. Stat. § 800.095(6)); garnish wages and levy bank accounts via the state debt collection agency (Wis. Stat. § 800.095(1)(c)); use a private debt collection agency (Wis. Stat. § 800.095(5)); issue a civil judgment (Wis. Stat. § 800.095(7)); transfer unclaimed property (Wis. Stat. § 800.095(8)); issue a driver's license suspension (Wis. Stat. § 800.095(1)(a)); or issue a writ of commitment for

incarceration (Wis. Stat. § 800.095(1)(b)) when someone defaults on a forfeiture. Therefore, these penalties can have detrimental short term and long-term consequences for those who have forfeitures issued against them.

The lack of interpreters in municipal court proceedings may lead to unjust outcomes, including incorrect pleas, wrongful convictions, or fines and penalties imposed without a clear understanding of the charges. Even minor offenses can have lasting consequences for individuals, such as increased fines, loss of driving privileges, or an arrest record. These penalties disproportionately affect those who are already marginalized, and the lack of interpretation services exacerbates these inequities.

In addition to these impacts, non-citizens can see additional negative consequences. An adverse municipal court judgment may result in loss of legal immigration status and possible removal from the country. In *Matter of Cuellar-Gomez*, 25 I&N Dec. 850, 852–53 (BIA 2012), the Board of Immigration Appeals held that a municipal judgment for marijuana possession could support removal proceedings. See also *Rubio v. Sessions*, 891 F.3d 344 (8th Cir. 2018) (violations of municipal ordinances adjudged in Missouri municipal courts barred respondent from qualifying for Temporary Protected Status); *Dominguez-Herrera v. Sessions*, 850 F.3d 411 (8th Cir. 2017) (convictions for theft in Kansas municipal court prevented immigrant from receiving relief from deportation order).

Thus, for a noncitizen resident of Wisconsin, the stakes in municipal court proceedings may be much higher, and the need to fully understand the matter even more essential. To deny such a person access to qualified interpretation services violates principles of fundamental fairness.

3. Ad hoc methods to assist LEP individuals do not guarantee justice.

A defendant in municipal court cannot fully participate in the proceedings against them without the ability to understand what is being said and alleged before the court. The municipal court system is still an adversary system, and a lack of language access severely handicaps a defendant. Ensuring that defendants in municipal court understand the citation, the consequences, and the options available to them, especially when counsel is not provided is paramount to the administration of justice.

The ACLU of Wisconsin is troubled by the WJI survey of municipal court judges (Rule Petition Exhibit A) regarding their practices when LEP individuals are before them, particularly the percentage of judges who would use friends or family members of the defendant, or other non-qualified interpreters, or who would use an automated tool like Google Translate.

Having a defendant rely on their children, family members or other trusted individuals rather than qualified interpreters is not an adequate step to assure justice. The language of the courts and the nature of proceedings will often be unfamiliar to such persons and mistakes are likely. To this point, the Court should review the recent Memorandum of Understanding between the

office of the Dane County Sheriff and the US Justice Department to resolve an inquiry by the Department under Title VI.¹

That Memorandum points out the importance of not relying on informal methods such as a helpful family member or Google Translate. The Dane County Sheriff agreed to:

Set standards for the use of children, family members, bystanders or automated electronic translations (e.g., Google translate) to assist DCSO officers in communicating with individuals with LEP only when exigent circumstances are present, including concerns attendant to their use in specialized circumstances (e.g. domestic violence incidents), and set procedures to confirm the accuracy of any information obtained through an informal or unqualified interpreter once the exigency has passed or authorized language assistance becomes available;²

Similarly, in ruling that reliance on Google Translate was inadequate to establish consent for a vehicle search after a traffic stop, U.S. District Judge Matthew Brann wrote:

A review of the record shows that Google Translate is a useful tool with an alarming capacity for miscommunication and error. That the app can facilitate basic communication does not make it an adequate method for soliciting consent. It need only fail once to obviate a suspect's consent. As a result, the Court cannot hold that Google Translate is sufficiently reliable to presume its accuracy without further verification.

United States v. Ramirez-Mendoza, No. 4:20-CR-00107, 2021 WL 4502266 (M.D. Pa. Oct. 1, 2021); *See also United States v. Cruz-Zamora*, 318 F. Supp. 3d 1264, 1272 (D. Kan. 2018) (“it is not reasonable for an officer to use and rely on Google Translate to obtain consent to a warrantless search, especially when an officer has other options for more reliable translations”).

Interpreters who have met existing qualification standards should be required in any substantive proceeding in municipal court. Only in this way can municipal courts assure that LEP individuals before them can understand and participate fully in the proceedings.

Conclusion

For the reasons set out above, the ACLU of Wisconsin respectfully urges the Court to adopt the proposed rule requiring language interpreters in all municipal court proceedings. Providing interpreters is not only a matter of fairness, but it is also essential to upholding the integrity of our legal system and ensuring that justice is truly accessible to all individuals, regardless of the language they speak.

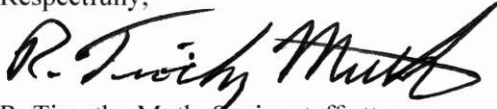
¹ Memorandum of Understanding Between the U.S. and Dane Cnty Sheriff's Off., U.S. Dep't of Just. Civ. Rts. Div. No. 171-86-28 (Sept. 3, 2024), <https://www.lep.gov/sites/lep/files/media/document/2024-09/Dane-County-MOU-Final.pdf>.

² *Id.* at 2-3.

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Thank you for considering this important issue. The ACLU of Wisconsin appreciates the Court's commitment to ensuring fairness and equity in the administration of justice.

Respectfully,

A handwritten signature in black ink, appearing to read "R. Timothy Muth". The signature is written in a cursive, flowing style.

R. Timothy Muth, Senior staff attorney
Emma Shakeshaft, Senior staff attorney-Researcher