
In the Supreme Court of Wisconsin

IN THE MATTER OF CREATING WIS. STAT. § 885.375
RELATING TO INTERPRETERS IN MUNICIPAL COURT PROCEEDINGS.

PETITION

For the reasons set forth in the accompanying memorandum, petitioner, Wisconsin Justice Initiative, Inc. (“WJI”), respectfully petitions the Wisconsin Supreme Court to create Wis. Stat. § 885.375 and amend Wis. Stat. § 885.37 and SCR 63.002 to establish a procedure for providing qualified interpreters in municipal court proceedings. The Court has authority to create Wis. Stat. § 885.375 and amend Wis. Stat. § 885.37 and SCR 63.002 pursuant to its authority under Wis. Stat. § 751.12 and article VII, section 3 of the Wisconsin Constitution.

PETITION

WJI respectfully requests that the Supreme Court adopt the following:

Section 1. 885.375 of the statutes is created to read:

(1) In this section:

(a) “Evidentiary hearing” means any proceeding before a municipal court which will likely require the oral testimony of one or more witnesses.

(b) “Limited English proficiency” means any of the following:

1. The inability, because of the use of a language other than English, to adequately understand or communicate effectively in English in a municipal court proceeding.

2. The inability, due to a speech impairment, hearing loss, deafness, deaf-blindness, or other disability to adequately hear, understand, or communicate effectively in English in a municipal court proceeding.

(c) "Qualified interpreter" means a person who is able to do all of the following:

1. Readily communicate with a person who has limited English proficiency.
2. Orally transfer the meaning of statements to and from English and the language spoken by a person who has limited English proficiency in the context of a municipal court proceeding.
3. Readily and accurately interpret for a person who has limited English proficiency, without omissions or additions, in a manner that conserves the meaning, tone, and style of the original statement, including dialect, slang, and specialized vocabulary.

(d) In all proceedings or matters other than in an evidentiary hearing, "Qualified interpreter" includes a telephonic, video, or computerized service approved by the director of state courts.

(2) The supreme court shall establish the procedures and policies for the recruitment, training, and certification of persons to act as qualified interpreters in a municipal court proceeding and for the fees imposed for the training and certification, and for the coordination, discipline, retention, and training of those interpreters. Any fees collected under this subsection shall be credited to the appropriation under s. 20.680 (2) (gc).

(3) (a) If the court determines that the person has limited English proficiency and that an interpreter is necessary, the court shall advise the person that he or she has the right to a qualified interpreter at the public's expense if the person is one of the following:

1. A party in interest.
2. A witness, while testifying in an evidentiary hearing.
3. An alleged victim.
4. A parent or legal guardian of a minor party in interest or the legal guardian of a party in interest.
5. Another person affected by the proceedings, if the court determines that the appointment is necessary and appropriate.

(b) The court may appoint more than one qualified interpreter in a municipal court proceeding when necessary.

(c) If a person with limited English proficiency requests the assistance of the clerk of court regarding a legal proceeding, the clerk may provide the assistance of a qualified interpreter to respond to the person's inquiry.

(d) A qualified interpreter appointed under this subsection may, with the approval of the court, provide interpreter services outside the courtroom that are related to the municipal court proceedings.

(4) (a) The court may accept the waiver of the right to a qualified interpreter by a person with limited English proficiency at any point in the municipal court proceeding if the court advises the person of the nature and effect of the waiver and determines that the waiver has been made knowingly, intelligently, and voluntarily.

(b) At any point in the municipal court proceeding, for good cause, the person with limited English proficiency may retract his or her waiver and request that a qualified interpreter be appointed.

(5) Every qualified interpreter, before commencing his or her duties in an evidentiary hearing, shall take a sworn oath that he or she will make a true and impartial interpretation. The supreme court may approve a uniform oath for qualified interpreters.

(6) Any party to a municipal court proceeding may object to the use of a qualified interpreter for good cause. The court may remove a qualified interpreter for good cause.

(7) The delay resulting from the need to locate and appoint a qualified interpreter may constitute good cause for the court to toll time limitations in the court proceeding.

(8) The necessary expenses of providing qualified interpreters to persons with limited English proficiency under this section shall be paid by the municipality or municipalities that established the court.

SECTION 2. 885.37 of the statutes is amended to read:

Interpreters in ~~municipal courts and~~ administrative agency contested cases.

~~(1) If a municipal court has notice that a person who is a juvenile or parent subject to ch. 938, or who is a witness in a proceeding under ch. 938, has a language difficulty because of the inability to speak or understand English, has a hearing impairment, is unable to speak or has a speech defect, the court shall make a factual determination of whether the language difficulty or the hearing or speaking impairment is sufficient to prevent the individual from communicating with his or her attorney, reasonably understanding the English testimony or reasonably being understood in English. If the court determines that an interpreter is necessary, the court shall advise the person that he or she has a right to a qualified interpreter and that, if the person cannot afford one, an interpreter will be provided for him or her at the public's expense. Any waiver of the right to an interpreter is effective only if made voluntarily in person, in open court and on the record.~~

~~(2) A municipal court may authorize the use of an interpreter in actions or proceedings in addition to those specified in sub. (1).~~

~~(3)~~

(a) In this subsection:

1. "Agency" includes any official, employee or person acting on behalf of an agency.

2. "Contested case" means a proceeding before an agency in which, after a hearing required by law, substantial interests of any party to the proceeding are determined or adversely affected

by a decision or order in the proceeding and in which the assertion by one party of any such substantial interest is denied or controverted by another party to the proceeding.

- (b) In any administrative contested case proceeding before a state, county or municipal agency, if the agency conducting the proceeding has notice that a party to the proceeding has a language difficulty because of the inability to speak or understand English, has a hearing impairment, is unable to speak or has a speech defect, the agency shall make a factual determination of whether the language difficulty or hearing or speaking impairment is sufficient to prevent the party from communicating with others, reasonably understanding the English testimony or reasonably being understood in English. If the agency determines that an interpreter is necessary, the agency shall advise the party that he or she has a right to a qualified interpreter. After considering the party's ability to pay and the other needs of the party, the agency may provide for an interpreter for the party at the public's expense. Any waiver of the right to an interpreter is effective only if made at the administrative contested case proceeding.
- (3m) Any agency may authorize the use of an interpreter in a contested case proceeding for a person who is not a party but who has a substantial interest in the proceeding.

(4)

- ~~(a) The necessary expense of furnishing an interpreter for an indigent person in a municipal court shall be paid by the municipality.~~
- (b) The necessary expense of furnishing an interpreter for an indigent party under sub. (3) shall be paid by the unit of government for which the proceeding is held.
- (c) The ~~court or~~ agency shall determine indigency under this section.

(5)

- (a) If ~~a municipal court under sub. (1) or (2) or~~ an agency under sub. (3) decides to appoint an interpreter, the ~~court or~~ agency shall follow the applicable procedure under par. (b) or (c).
- (b) The department of health services shall maintain a list of qualified interpreters for use with persons who have hearing impairments. The department shall distribute the list, upon request and without cost, to ~~courts and~~ agencies who must appoint interpreters. If an interpreter needs to be appointed for a person who has a hearing impairment, the ~~court or~~ agency shall appoint a qualified interpreter from the list. If no listed interpreter is available or able to interpret, the ~~court or~~ agency shall appoint as interpreter another person who is able to accurately communicate with and convey information to and receive information from the hearing-impaired person.
- (c) If an interpreter needs to be appointed for a person with an impairment or difficulty not covered under par. (b), the ~~court or~~ agency may appoint any person the ~~court or~~ agency decides is qualified.

SECTION 3. SCR 63.002 is amended to read:

Many persons are partially or completely excluded from participation in court proceedings due to limited proficiency in the English language, as described in ss. ~~885.37(1)(b), 885.375(1)(b)~~ and 885.38(1)(b), stats. Communication barriers must be removed as much as is reasonably possible so that these persons may enjoy equal access to justice. Qualified interpreters are highly skilled

professionals who help judges conduct hearings justly and efficiently when communication barriers exist.

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Respectfully submitted:

Wisconsin Justice Initiative, Inc.

/s/ Parker White

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