

OCT 24 2024

Rule Petition No. 24-02

CLERK OF SUPREME COURT
OF WISCONSIN

In the Supreme Court of Wisconsin

IN THE MATTER OF CREATING WIS. STAT. § 885.375

RELATING TO INTERPRETERS IN MUNICIPAL COURT PROCEEDINGS.

RESPONSE TO COMMENTS ON RULE PETITION

INTRODUCTION

The Wisconsin Justice Initiative, Inc. (“Petitioner”) thanks the Supreme Court of Wisconsin for the opportunity to respond to the comments made to Rule Petition No. 24-02. Petitioner gratefully acknowledges that the majority of these comments came from organizations offering full-fledged support for the Petition, including the ACLU Foundation of Wisconsin, Legal Action of Wisconsin, the Wisconsin Hispanic Lawyers Association, the Wisconsin Muslim Civic Alliance, the Consulate of Mexico in Milwaukee, and Judicare Legal Aid. The remaining three comments—from the Director of State Courts, the Wisconsin Municipal Judges Association, and the League of Wisconsin Municipalities—support the Petition in principle while recommending certain changes. Petitioner responds to each of these three comments herein. In short, it continues to stand on the arguments presented in its Memorandum in support of the Petition but also identifies some portions of the Petition that may benefit from an amendment. Thank you to all of the commenting organizations and individuals for their interest

in the pressing issue of ensuring that Wisconsin municipal courts provide interpreters to individuals with limited English proficiency.

1. Comment from the Director of State Courts

The Director of State Courts, The Honorable Audrey K. Skwierawski, argues that a more thorough survey of municipal courts should be carried out to accurately assess demand for interpreters for individuals with limited English proficiency (“LEP individuals”). Judge Skwierawski further suggests the costs associated with Petitioner’s proposed statutory changes are not known and could present unexpected challenges for municipalities. Finally, she argues that the proposed statutory scheme in which the Director of State Courts would vet or approve individual vendors of interpretation services is not appropriate. Petitioner addresses these concerns one by one.

Petitioner’s Survey, attached to the Petition as Exhibit A, is sufficient to achieve the limited purpose of demonstrating that LEP individuals in Wisconsin municipal courts need better access to qualified interpreters. Petitioner did not cite the Survey’s results for the purpose of presenting statistically significant data or showing any other comprehensive scientific assessment of the Wisconsin municipal court system. Indeed, when Petitioner set out to conduct this Survey it understood the Survey results would necessarily be informal, since the Survey asked judges to try to recollect instances when friends or family members (or other unqualified individuals or services) worked as ad hoc interpreters for LEP individuals—instances not likely to have been noted in any records.¹ The goal of the Survey was simply to determine whether these instances of ad hoc friends-and-family interpretative work were regularly occurring. The Survey

¹ The fact that instances of ad hoc interpretation work done by friends and family (or other unqualified individuals or services) are likely not noted in any records further demonstrates the problem the Petition seeks to redress: LEP individuals are being marginalized in Wisconsin municipal courts. The lack of recordkeeping, if anything, further shows the importance of granting the Petition and, at minimum, should not be used as a cudgel against reform.

accomplished this goal: All Wisconsin municipal judges on the municipal judges' listserv were invited to participate. 49 municipal court judges, from a total of 232 judges serving 229 municipal courts, responded to the Survey. Of the respondents, nearly half said that the "primary (most common) way of communicating in court at intake/initial appearances with defendants who speak limited or no English" was "hav[ing] the defendant bring a family member or friend to translate." About 15 percent of the respondents reported that they "[had] the defendant bring a family member or friend to translate" for evidentiary hearings. Petitioner believes this data, along with the experiences shared by several interested parties,² shows that there is an extremely large need for municipal courts to provide qualified interpreters as laid out in the Petition. Petitioner would still welcome any further data that other organizations can provide on the subject—especially organizations (and the Director of State Courts Office itself³) that are better positioned to mandate or encourage municipal court survey participation. But Petitioner also believes that further data collection is not necessary, as the Survey already establishes the need for better interpreter services for LEP individuals. Further, time spent studying the use of unqualified interpreters is time during which the needs of LEP individuals in current and upcoming cases will not be met. While it *may* be useful to "understand[] both current interpreter utilization as well as what additional resources may be needed to expand [the] use of qualified interpreters at the municipal court level," as Judge Skwierawski writes, the usefulness of this information should be considered in the context of the time and resources it would take to collect. The Supreme Court should avoid an analysis-paralysis trap and act promptly to protect the rights of LEP individuals.

² See Comment from Legal Action of Wisconsin at 2; Comment from the Consulate of Mexico in Milwaukee.

³ The Director of State Courts, not Petitioner, is in the best position to collect any such data. If the Court desires such data, it could direct her to conduct such a study quickly.

Judge Skwierawski's concerns about unexpected costs for municipalities are similarly misplaced. While the Petition does provide the listed hourly rates for LanguageLine⁴ (an example of a service that would satisfy the proposed statute's requirements for non-evidentiary hearings), Petitioner agrees that each municipal court should anticipate different hourly and annual interpreter costs depending on the respective populations served, and further agrees that the Petition does not provide detailed information regarding these anticipated costs.⁵ But to require this information in advance of granting the Petition would create an unnecessary bottleneck. The people best positioned to understand the anticipated costs are the municipal court judges and other municipal court employees. If Judge Skwierawski's concern is that the courts will face unexpected costs, the Supreme Court can resolve this concern by creating a phase-in period for the new statutory scheme. For example, the Court could grant the Petition but delay implementation until January 1, 2026, allowing courts to assess any upcoming increases to interpreter service costs and adjust their budgets accordingly. To the extent Judge Skwierawski's concern is that the cost of providing interpreters to LEP individuals is simply a weight that municipal courts cannot bear, this argument should be dismissed outright for the due process concerns established in Section I of the Petition.⁶ There are numerous ways municipalities can cover costs such as this. Under Wis. Stat. § 814.65(1), municipal courts can assess a fee ranging from \$15 to \$38 for citations. Courts that are not charging the full \$38 can raise their fees. Courts can also seek legislative change to increase the \$38 maximum fee assessment.

⁴ The Petition also includes the LanguageLine hourly rate paid by the State of Minnesota in 2023—\$1.45 per minute, down from the listed rate of \$3.95 per minute for audio interpreting and \$4.95 per minute for video interpreting—and provides that the State of Wisconsin would likely also receive discounted rates.

⁵ The \$10 per one-half day interpreter fee set out by Wis. Stat. § 814.67 is clearly outdated. Petitioner referenced it because it is the statutory basis for setting interpreter fees in Wisconsin.

⁶ See also Wisconsin Interpreting & Translation Related Statutes, Rules and Case Laws (Updated 06-06-2023), WISCONSIN COURT SYSTEM, available at <https://www.wicourts.gov/services/judge/docs/interpreterlaws.pdf>.

Petitioner did not intend to reinvent the wheel when it proposed that the Director of State Courts approve the interpreter services that can be used for non-evidentiary hearings. Rather, Petitioner seeks to ensure that some sort of vetting process occurs, especially considering that there must already be a vetting process for services used in state courts. Judge Skwierawski provides that the Wisconsin Department of Administration is responsible for executing “multi-year contracts for in-person, telephonic, and video-based interpreter services available to state agencies” and that “counties and municipalities[] are free to utilize the DOA-contracted vendors through cooperative agreements.” If the Director of State Courts has accepted or “approved” the DOA’s list of vendors, then that approval could satisfy the requirement in the proposed new rule. Alternatively, Petitioner proposes that its Petition be amended accordingly, to reflect that the DOA rather than the Director of State Courts will approve the telephone, video, or other computerized services permissible for non-evidentiary hearings, if that is what is currently acceptable in circuit courts.

The term “computerized service” refers to any service in which an interpreter appears remotely other than via video or telephone. It also includes AI interpreter services that the DOA may approve. Petitioner stands ready to amend the proposed statute to clarify this issue.

2. Comment from the Wisconsin Municipal Judges Association

The Wisconsin Municipal Judges Association agrees that there should be an improvement in interpreter services for LEP individuals in municipal courts, but suggests that these changes would best be brought in the Wisconsin State Legislature. It also puts forward a proposed statute that it argues improves on the statutory scheme set out in the Petition. In response to the argument that the core due process rights of LEP individuals should be left for the legislative branch to address, Petitioner stands on the arguments presented in Section III of its

Memorandum. Petitioner is also unaware of any current credible effort, spearheaded by WMJA or by any other organization or legislator, to pass a responsive bill in Madison. While Petitioner will not scrutinize the new statutory scheme put forward by WMJA, it will address below the concerns about the Petition that the alternate proposal purports to fix.

WMJA's proposal substantively overlaps with Petitioner's proposal—to a greater extent than WMJA appears to understand. WMJA's proposal that courts be allowed to use an "interpretation service for proceedings other than evidentiary hearings" is substantively identical to Petitioner's proposed language providing that "[i]n 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." For the avoidance of any doubt, Petitioner summarizes here the basic framework of its proposal: For evidentiary hearings, municipal courts must provide qualified interpreters (defined similarly to the circuit court rule), who may appear in person or remotely via video or telephone under Wis. Stat. § 800.085. For non-evidentiary hearings, courts must still provide a qualified interpreter, but the definition of a qualified interpreter is expanded for those proceedings to include use of LanguageLine or a similar service or even a computerized AI service if approved by the Director of State Courts.⁷ Petitioner believes this scheme is clear in its Petition and Memorandum but will amend its Petition as necessary to resolve any ambiguity. WMJA's apparent concerns about working with interpreters after normal working hours and/or in far-flung areas are not applicable in light of the foregoing explanation.

⁷ Some municipal judges appear to be using Google Translate for court interpretation. Petitioner disapproves of the use of such an AI service at this time, until such use has been *approved* by the Director of State Courts, DOA, or other experts in the interpretation field. However, the proposed rule has been written to allow for such services in the future if appropriate. The use of Google Translate is discussed further below.

To the extent WMJA's proposal differs from Petitioner's, Petitioner's proposal is superior. WMJA's provision regarding "nonqualified interpreters" has no enforceable standard and undermines the basis for the proposal. WMJA supposes that when an LEP individual needs an interpreter only for the "date and time of a future proceeding, to inform the [LEP individual] that an interpreter will be appointed, to determine waiver under sub. (3), or for similar procedural purposes," then a family member, friend, or bystander can step in. The "procedural purposes" hearing category the WMJA purports to create is not well defined—certainly, at least, the LEP individual's decision whether to waive her right to an interpreter is not merely a procedural step, and the court should make sure an LEP individual understands any rights the individual purports to waive.⁸ But even when, for the sake of argument, matters appear to be limited only to relaying the date and time of a future proceeding, non-procedural issues will likely still come up. The LEP individual or the other parties to the case may have follow-up questions about the scheduled proceeding. Likewise, judges or other parties to the case may offhandedly refer to other non-procedural information. In these situations, the LEP individual's child—or whoever is attempting to interpret for the LEP individual—herself may not understand what is important to interpret or how to interpret it. In sum, in what might be considered a "procedural purposes" hearing, not only might the LEP individual encounter information she does not understand, she may also not know whether she is encountering information she does not understand or whether she has the ability to ask for further clarification. All the while, the presence of the LEP interpreter's child or other unqualified interpreter may inadvertently prevent the court from

⁸ WMJA's own proposed statutory language recognizes the significance of waivers. It provides that "[t]he court may accept the waiver of the right to a qualified interpreter by a person with limited English proficiency . . . 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." Courts should not rely on the interpretive work of family members, friends, or bystanders to advise the LEP individual on "the nature and effect of the waiver" or to determine the LEP individual is making the waiver "knowingly, intelligently, and voluntarily."

recognizing that the LEP individual has stopped being able to meaningfully participate in the hearing. *See* Comment from ACLU of Wisconsin, citing 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> (“[T]he use of children, family members, bystanders or automated electronic translations (e.g., Google translate) to assist [Dane County Sheriff's Office] officers in communicating with individuals with LEP [should occur] only when exigent circumstances are present[.]”). Petitioner's proposal avoids these situations.

WMJA appears to suggest that its proposal is stronger than Petitioner's proposal because WMJA contains “an actual mandate” whereas Petitioner “only implies a duty, at best.” As WMJA does not elaborate on this point, Petitioner assumes WMJA is contrasting WMJA's language “the court shall appoint a qualified interpreter” with Petitioner's language “the court shall advise the [LEP individual] that he or she has the right to a qualified interpreter.” But in practice these phrases would be substantively the same, considering WMJA's language includes a waiver clause. In any event, Petitioner's proposed statutory language plainly includes a mandate to municipal courts regarding the provision of interpreter services.

WMJA's proposal also includes a provision by which a municipal court can fine any individual who misrepresents their need for an interpreter, fails to appear at a hearing involving an appointed interpreter, or intentionally wastes the court's interpreter services. WMJA does not establish that individuals regularly misrepresent their need for an interpreter or waste interpreters' services. To the extent this behavior may occur, the costs municipal courts would be able to recoup from them are minimal and likely outweighed by the burdens of adjudicating the wrongdoing and administering the fine. Fining LEP individuals for failing to appear at a

hearing, especially without at a minimum requiring a good cause determination, presents a fairness issue: Municipal courts generally do not fine non-LEP individuals for failing to appear in court, even though these failures to appear also involve costs. LEP individuals should not be singled out for what effectively constitute punitive fines on the basis that they require certain help from interpreters.

Petitioner has addressed WMJA's remaining concerns in Petitioner's response to the Director of State Courts.

3. Comment from the League of Wisconsin Municipalities

The League of Wisconsin Municipalities provided comments similar in substance to those of the Director of State Courts and WMJA; accordingly, most of the LWM's concerns are already addressed above. LWM points to "technology-based tools like Google Translate" as potential cost-saving options for non-evidentiary hearings. If the DOA (or another authoritative body with relevant expertise) comes to determine that the use of Google Translate or similar tools would satisfy the definition of a "Qualified interpreter" for non-evidentiary hearings as laid out in the Petition, Petitioner would not object to the use of such *approved* programs for non-evidentiary hearings. Based on its discussions with others with expertise regarding interpreters and its informal research, Petitioner does not believe that Google Translate would currently meet this standard. *See* Comment from ACLU of Wisconsin, citing *United States v. Ramirez-Mendoza*, No. 4:20-CR-00107, 2021 WL 4502266 (M.D. Pa. Oct. 1, 2021) ("A review of the record shows that Google Translate is a useful tool with an alarming capacity for miscommunication and error."); *see also id.*, citing *United States v. Cruz-Zamora*, 318 F. Supp. 3d 1264, 1272 (D. Kan. 2018) ("[I]t 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 translation.”); *Maslic v. ISM Vuzem d.o.o.*, No. 21-cv-02556, 2024 WL 3408217, at *7 (N.D. Cal. July 11, 2024) (“Translations done using Google Translate are not admissible in federal court; translation generally must be performed by a certified interpreter.”).

Conclusion

Petitioner again thanks the organizations who commented on its Petition and thanks the Court for the opportunity to respond to the comments. Petitioner hopes the Petition might be strengthened by this process and looks forward to any opportunity to further support the Petition.

Dated this 21st day of October, 2024.

Respectfully submitted:

Wisconsin Justice Initiative, Inc.

Electronically signed by Parker White

Parker White (WI Bar No. 1134039)
FOLEY & LARDNER LLP
777 E. Wisconsin Avenue
Milwaukee, WI 53202-5306
(414) 297-5388 (Telephone)
(414) 297-4900 (Facsimile)
pwhite@foley.com

Electronically signed by Evan V. Bondoc

Evan V. Bondoc (WI Bar No. 1123612)
FOLEY & LARDNER LLP
150 E. Gilman Street
P.O. Box 1497
Madison, WI 53701-1497
(608) 258-4217 (Telephone)
(608) 258-4258 (Facsimile)
ebondoc@foley.com

Attorneys for Petitioner