

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 09-03

In the matter of creation of Wis. Stat. § 887.27 and Wis. Stat. § 901.09 and amendment of Supreme Court Rule 70.155, relating to the submission of evidence originating in a language other than English.

FILED**JUL 27, 2010**

A. John Voelker
Acting Clerk of
Supreme Court
Madison, WI

On May 26, 2009, the Director of State Courts, A. John Voelker, on behalf of the Committee to Improve Interpreting and Translation in the Wisconsin Courts, petitioned this court to create Wis. Stat. § 887.27, Wis. Stat. § 901.09, and Supreme Court Rule (SCR) 70.155(5), relating to the submission of evidence originating in a language other than English.

On October 16, 2009, the Wisconsin District Attorneys Association (WDAA) filed a letter raising some questions about the scope of the petition. On November 2, 2009, the court conducted a hearing in this matter. The Honorable Ralph M. Ramirez presented the petition to the court. The petitioner agreed to certain changes suggested by the WDAA. Wisconsin Hispanic Lawyers' Association ("WHLA") appeared at the public hearing and requested additional time to respond to the petition.

At the ensuing open administrative conference, the court granted the WHLA additional time to file a written response to the petition.

On November 20, 2009, the Honorable Juan Colás and the Honorable Elsa Lamelas filed a joint written statement expressing concern about the scope of the petition. On December 1, 2009, the WHLA filed a letter setting forth its concerns. The petitioner formally requested and received an extension of time to consider the written responses. On March 15, 2010, the petitioner filed an amended petition adopting many of the suggestions proposed by the interested parties and setting forth the alternative language proposed by Judges Colás and Lamelas and the WHLA, respectively. A primary difference of opinion was whether the proposed rule should be limited to written evidence. The WHLA and Judge Colás and Judge Lamelas asserted the proposed rule should be limited to written evidence. The petitioner maintained the rule should encompass non-written evidence.

The court considered the matter at its open administrative conference on May 11, 2010. The court voted unanimously to adopt the proposed amendments to SCR 70.155(5) and Wis. Stat. § 887.26(8). With respect to Wis. Stat. § 901.09 of the statutes, a majority of the court voted to adopt the language as proposed by the Honorable Juan Colás and the Honorable Elsa Lamelas. Chief Justice Shirley S. Abrahamson, Justice Ann Walsh Bradley, and Justice N. Patrick Crooks dissented from this decision. Therefore,

IT IS ORDERED that, effective January 1, 2011:

SECTION 1. 887.26 (8) of the statutes is renumbered 887.27 and 887.27 (title), as renumbered, is amended to read:

887.27 (title) ~~Translations~~ Depositions, translations of.

SECTION 2. 901.09 of the statutes is created to read:

901.09 Submission of writings; languages other than English. (1) The court may require that a writing in a language other than English offered in evidence be accompanied by a written translation of the writing into English with an attached affidavit by the translator stating his or her qualifications to perform the translation and certifying that the translation is true and correct.

(2) A party may object to all or parts of a translation offered under sub. (1) or to the qualifications of the translator. The court may order a party objecting to all or part of a translation to submit an alternate translation of those parts of the original translation to which the party objects, accompanied by a translator's affidavit as described in sub. (1). If an objection is made to the qualifications of the translator and the court finds that the translator is not qualified the court may reject the offered translation on that ground alone without requiring an alternative translation by the objecting party.

(3) The court may require a party offering into evidence a translation under sub. (1) or an alternative translation ordered by the court under sub. (2) to bear the cost of the translation.

SECTION 3. The following Comment to 901.09 of the statutes is created to read:

Comment

This rule is not intended to apply strictly to evidence in documentary form. Parties often offer evidence not contained in documents that consists of or contains statements made in a foreign language, for example, recordings of telephone calls to 911 operators, recordings of police interrogations, and surveillance recordings. The better practice when offering such evidence is for a party to offer a written transcript of the recording, to aid the jury or the court in understanding the recording. Sometimes the transcript is received as evidence, but not always, and in any event the recording is considered primary and the transcript merely an aid. If a party offers in evidence a recording accompanied by a transcript, this rule governs the transcript.

This rule does not require the court to provide the party with an interpreter for purposes of preparing the translation required by this rule.

SECTION 4. 70.155 (5) of the Supreme Court Rules is created to read:

70.155 (5) Any translation of a form shall be accompanied by an affidavit stating that the translator knows English and the second language and that in making the translation the translator carefully translated the form from English into the other language and that the translation is true and correct.

IT IS FURTHER ORDERED that the Comment to 901.09 of the statutes is not adopted, but will be published and may be consulted for guidance in interpreting and applying 901.09 of the statutes.

IT IS FURTHER ORDERED that notice of the creation of Wis. Stat. § 887.27, Wis. Stat. § 901.09, and SCR 70.155(5) be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 27th day of July, 2010.

BY THE COURT:

A. John Voelker
Acting Clerk of Supreme Court

