



Wisconsin Municipal Judges Association

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September 13, 2024

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

RECEIVED

SEP 30 2024

CLERK OF SUPREME COURT
OF WISCONSIN

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

Dear Honorable Justices:

Thank you for the opportunity to provide comment and an alternative proposal on Rule Petition 24-02 regarding interpreters in municipal court proceedings. We write on behalf of the Wisconsin Municipal Judges Association. The Association is comprised of the vast majority of the approximately 240 municipal court judges across the State of Wisconsin, handling about 500,000 traffic and ordinance violations each year.

Introduction

The Association agrees with the two major premises of the petition. We agree that it is vital that all courts make substantial efforts to ensure that individuals with limited English proficiency have meaningful access to the courts. We further agree that it is appropriate for our statutes and rules to differentiate municipal courts, which are part of the unified court system recognized by both the Wisconsin Constitution¹ and the Wisconsin Statutes², from administrative agencies.

While we agree with the petition in principle, and are committed to the causes advanced by it (as demonstrated below), we must oppose it as it is currently written. We disagree with the petition's implication that the standard practices of municipal courts are weak or that municipal courts are not actively pursuing access to justice for individuals of limited English proficiency. Indeed, we believe that most Wisconsin municipal courts are actively pursuing and providing justice for all participants, through a set of strong standards that emphasize fairness. Still, clarification and strengthening of our courts' duties in these situations is appropriate, desired, and welcomed by the Association. To that end, we offer an alternative proposal.

We believe that the version proposed by Wisconsin Justice Initiative, Inc. would be less workable, less flexible, less forward-looking, and more costly than our alternative proposal. Our alternative proposal better recognizes the types of cases heard by municipal courts, as opposed to circuit courts, and would be less likely to result in municipal courts consuming already scarce interpreter resources that might be more needed in circuit courts.

¹ See Wis. Const. Art. VII, §14.

² See Wis. Stat. Chs. 755 and 800.

A Legislative Solution Would Be More Complete

As an initial matter, before describing our proposal, the Association asserts that a legislative solution would provide a better format for addressing the concerns raised by the petition. While there is no doubt that the Court has the superintending and administrative authority to grant the petition (or our alternative proposal), there is also no doubt that the WJI, Inc. petition creates an unfunded mandate that would increase costs for municipal courts and their sponsoring municipalities without providing any form of financial relief for those costs. To be clear, the WJI, Inc. petition asks the Court to adopt the circuit court interpreter requirements. Unlike those requirements, which were passed by the Legislature and are accompanied by both a statutory appropriation and a scheme for substantial reimbursement by the State to the applicable county³, the WJI, Inc. petition does not include any funding mechanism. In other words, the WJI, Inc. petition proposes to create a rule without any funding to relieve the financial impact on municipalities, thereby imposing an unfunded mandate on all Wisconsin municipalities with municipal courts.

The Association is particularly concerned about creating such an unfunded mandate in light of efforts occurring in some municipalities to eliminate their courts as a cost-cutting measure. There is a real risk that, for some municipalities, the additional burden of such an unfunded mandate could be enough to tip them in favor of court elimination. In addition to losing all of the intangible benefits of having minor municipal matters resolved within the community, this would effectively shift all of those cases to the circuit courts, at increased cost to litigants and the system as a whole.

It is also doubtful that the Court is in a position to provide financial relief, for two reasons. First, the Court doesn't generally use its superintending and administrative authority to levy fees or require appropriations of the sort that would be needed. Second, to the extent that the Court has control over the appropriation described above, that appropriation is already insufficient to meet the financial need for circuit courts. From 2016-2020, the appropriation only led to about 65% reimbursement of the almost \$11,000,000 in interpreter costs borne by the counties.⁴ We would also note that, due to high volumes and generally shorter hearing lengths for municipal court proceedings, the per usage costs to provide interpreter services in municipal court are likely to be even higher than those in circuit court.

The Association will endeavor to include solutions similar to our alternative proposal as part of our legislative agenda for the upcoming session. We are committed to pursuing action on the issue in that forum, where the necessary accompanying financial relief is also available.

A Better Proposal

In the event that the Court determines that granting a rule petition is the preferred course, the Association has included its alternative proposal. Exhibits A and B are the same proposal in two different forms. Exhibit A shows how our proposal differs from WJI, Inc.'s petition, while Exhibit B shows how our proposal differs from the present statutes and rule.

The WJI, Inc. petition, with one slight difference, simply copies the interpreter requirements for circuit court proceedings and imposes them on municipal courts. On the other hand, our alternative proposal is more finely tuned to the types of civil proceedings held in municipal courts, which generally have fewer physical and financial resources, often meet outside of ordinary business hours, are somewhat less

³ See Wis. Stat. §885.38(8)(a).

⁴ See Language Access Plan, Director of State Courts (Dec. 2021), <https://www.wicourts.gov/services/interpreter/docs/laplan.pdf>

formal, and generally hear cases with lower stakes than those heard in circuit court. It is more practical and, therefore, more likely to yield the desired result.

The Rule Must be Flexible and Workable

Turning more to the specific differences, while the WJI, Inc. petition takes a mostly “one size fits all” approach, the Association’s proposal flexibly responds to different situations and needs. The WJI, Inc. petition appears most concerned with family members or friends serving as interpreters in court. Our proposal appropriately responds to that concern. The proposal would generally require the use of a qualified interpreter for evidentiary hearings.

The alternative proposal would also recognize two additional options. These options are important, as municipal courts often do not know that an interpreter is needed until the individual arrives in court, often at times when a certified interpreter is not likely to be available, particularly without advance notice. The use of alternatives (such as Language Line or non-certified interpreters) for non-jury proceedings is fairly common even in circuit courts, which meet during ordinary business hours, and where more is at stake in most cases. In fact, despite the reimbursement incentive for using certified interpreters, circuit courts report that non-certified interpreters are used in about 15% of cases⁵, presumably due to issues with locating available interpreters, a problem only likely to become worse if municipal courts are competing with circuit courts for these resources when lesser alternatives could be used. With municipal courts often located somewhere other than the county seat and with municipal courts hearing largely traffic offenses, which can involve individuals who are not from the area and whose language needs may not match the prevailing non-English languages of the area, the need for flexibility is even higher.

An “interpretation service”, defined broadly enough to potentially encompass future technological developments, could be used for non-evidentiary hearings and for limited procedural functions, such as providing the date and time of a future court proceeding, informing the person that an interpreter will be appointed, or to accept a party’s waiver of the use of a qualified interpreter. It could also be an option if a “qualified interpreter” cannot be secured despite reasonable efforts.

A “nonqualified interpreter”, basically defined as a person who can assist the party and the Court but does not meet the definition of a qualified interpreter, could be used only for the very limited procedural functions described above.

The proposal would also provide for a comment to be published with the rule as a guide to interpretation.

With these changes, the alternative proposal is better adapted to the realities of municipal court, yet still meets the due process and fairness objectives shared by both the incorporated petitioner and the Wisconsin Association of Municipal Judges.

A Mandate Shouldn’t Be a Suggestion

While perhaps a technical point, the Association contends that its proposal is actually stronger than the WJI, Inc. petition because it contains an actual mandate. The Association proposal would create a rule

⁵ See Total Hours Reported by County Report (2022), Committee to Improve Interpreting and Translation in the Wisconsin Courts

indicating that “the court shall appoint a qualified interpreter” in most instances, while the WJI, Inc. petition only implies a duty, at best.

Fewer Duties for the Director of State Courts and Court Interpreter Program

Unlike the WJI, Inc. petition, the Association’s alternative proposal seemingly imposes less onerous duties on the Director of State Courts. The proposal would only require the Director (presumably through the existing Court Interpreter Program/Committee) to identify appropriate interpretation services, which undoubtedly does as part of its mission to support the circuit court system. We are not opposed to the Court making the Director’s role discretionary, but understands that there is value to the Director and the Court Interpreter Program/Committee’s⁶ expertise on these issues.

The petition filed by WJI, Inc. seems to impose a recruitment, training, and procedural mechanism for municipal court interpreters and discusses applying certification fees to a particular appropriation. Whether intended to be the already existing certification mechanism or an additional process and cost for municipal court certification is less than clear, but we assert that an additional qualification process is unnecessary given the current certification process and given the definition of “qualified interpreter” contained in both the petition and our alternative proposal.

Three Modest Provisions

The Association’s alternative proposal contains three other provisions, all related to financial concerns that are within the Court’s control in adopting a rule petition and that are consistent with the Court’s superintending and administrative authority.

As noted throughout this response and proposal, nearly all of the costs to provide interpretation services will be borne by the municipal court or their sponsoring municipalities, as under current law. Our proposal would allow the very limited option of imposing only actual costs (or a lesser amount) upon a misrepresentation regarding the need for services, a failure to appear for a scheduled court proceeding for which a qualified interpreter was appointed, or if the person engaged in intentional conduct constituting waste of the interpreter’s services. Fortunately, most of these behaviors are rare, but they do occur. Allowing recoupment of these costs under these extremely limited circumstances is fair and appropriate and provides a bit of financial relief when the occasion arises. Further, the proposal contains protection against inappropriate shifting of interpreter costs by requiring very specific findings and providing that the costs can’t be imposed merely because the person was cited for or found guilty for an offense.

The proposal would further the WJI, Inc. petition’s goal of removing municipal courts from being lumped in with administrative agencies, arbitrators, or non-judicial governmental bodies by removing the interpreter fee provisions in Wis. Stat. §§814.65(2) and 814.67(1)(a). The removal of these provisions restores municipal courts to their rightful place as part of the unified court system. While at the hierarchical bottom of the unified court system, municipal courts handle about half a million cases per year that must otherwise be heard in circuit court, with interpreter and all of the other system costs to boot.

⁶ One of the undersigned, WMJA Legislative Committee Co-Chair Jason Hanson, served as a member of the Court Interpreter Committee. He succeeded Madison Municipal Judge Daniel Koval, who is also a member of the WMJA Legislative Committee, in that role.

Further, making this change would remove the anachronistic and subminimum wage \$10 per half-day interpreter fee inexplicably cited in WJI, Inc.'s petition memorandum⁷ and that they seemingly acknowledge bears absolutely no relation to the actual costs⁸, which are many times higher than that. A recent article indicated that Milwaukee County pays full-time interpreters \$26-30 per hour, plus benefits, is seeking to increase the contract interpreter rate from \$50-65 per hour, and is mightily struggling to locate interpreters.⁹ As the Court is aware, due to travel reimbursement, hourly minimums, and the fact that interpreters are free to charge market rates for their services, the true cost for interpretation services can range from these stated hourly amounts to hundreds of dollars per hour.¹⁰

It is also important to note that, just as it has proven necessary to use Language Line or other remote interpreter options for many circuit court hearings, the use of these resources is essential for municipal courts, due to the variety of languages that municipal judges encounter. There are over 7,000 world languages. In 2022, the top ten languages (by number of hours) for interpreter use in circuit courts on a statewide basis were Spanish, American Sign Language, Hmong, Arabic, Burmese, Karen, Somali, Swahili, Russian, and Mandarin.¹¹ There could be even more variation by region or municipality. Yet, Wisconsin does not even have certified interpreters for three of these languages (Burmese, Karen, and Swahili) and the only two certified Hmong interpreters are located out of state.¹² In fact, many of the interpreters in the database are located in other states. Using them as live in-person interpreters would require complicated arrangements, travel costs, and accommodations, in addition to their hourly rates. It does not make sense to put in place a rule that is not logistically feasible.

Our final request is that the Court delay the implementation of any new rule by up to two years in order to allow the Association and other interested parties to work with the Legislature to explore options to fund interpreter services. Obviously, a delay is not needed if the Court elects to allow time to pursue an overall legislative solution, as opposed to granting a rule petition. An additional reason to provide for this delay if the Court does adopt a new rule is to provide for a municipal budgeting cycle to occur before the rule goes into effect.

Conclusion

As you can see from this response and alternative proposal, the Wisconsin Municipal Judges Association takes the concerns raised by the petition seriously. Wisconsin's municipal judges work hard to provide a fair, just, and efficient forum for resolving traffic and ordinance cases and are proud of the work we do to ensure that everyone cited for an offense is given their "day (or evening) in court", regardless of that person's English proficiency or other factors. We are committed to working with the Legislature, the Court, and anyone else who can provide assistance in doing so. We welcome the opportunity to address any questions or concerns of the Court pertaining to the petition or our alternative proposal at a public hearing or in any other form desired by the Court.

Legislative Committee Co-Chair Jason Hanson may be reached via telephone at 608-225-9781 or via email at hansonj@deforestwi.gov.

⁷ See p. 7, Memorandum in Support of Petition 24-02, WJI, Inc. (filed 5-20-2024).

⁸ Id. Fn. 8, p. 8.

⁹ See From 1 to none. Spanish-speaking court interpreters in short supply in Milwaukee County, Milwaukee Journal Sentinel, September 9, 2024.

¹⁰ See Average Cost per Hour Report (2022), Committee to Improve Interpreting and Translation in the Wisconsin Courts

¹¹ Total Hours Interpreted Report (2022), Committee to Improve Interpreting and Translation in the Wisconsin Courts

¹² Wisconsin Court System Interpreter Database, <https://www.wicourts.gov/services/interpreter/search.htm> (searched Sept. 27, 2024)

Respectfully submitted,

Felice Borisy-Rudin

Felice Borisy-Rudin
President

Jason Hanson

Jason Hanson
Co-Chair, Legislative Committee

Richard Ginkowski

Richard Ginkowski
Co-Chair, Legislative Committee

EXHIBIT A

WMJA Proposed Amendments to WJI Petition (as compared to that Petition)

WMJA's proposed changes to the WJI Petition are in red, with additions signified by underlined language and deletions signified by ~~stricken~~ language.

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

SEP 30 2024

885.375 Interpreters in Municipal Courts

CLERK OF SUPREME COURT
OF WISCONSIN

(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) "Interpretation service" includes, without limitation, an agency or computer program or service that the court may utilize to assist persons with limited English proficiency to a substantially similar level of competence as a qualified interpreter. The Director of State Courts shall assist courts in identifying and maintaining a roster of such resources.

~~(b)~~ (c) "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.

(d) "Nonqualified interpreter" means a person who demonstrates some degree of ability to communicate with a person of limited English proficiency but whose skills are insufficient to fulfill the duties and responsibilities of a qualified interpreter.

~~(e)~~ (e) "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) (2) (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) Upon making a finding under par. (a), the court shall appoint a qualified interpreter except:

1. The court may use an interpretation service for proceedings other than evidentiary hearings, or if it cannot secure the services of a qualified interpreter for an evidentiary hearing despite reasonable efforts.

2. The court may use a nonqualified interpreter or interpretation service to provide the date and time of a future court proceeding, to inform the person that an interpreter will be appointed, to determine waiver under sub. (3), or for similar procedural purposes.

3. If the use of a qualified interpreter is waived under sub. (3).

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

~~(e) (d)~~ 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) (e)~~ 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) (3) (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)~~ (4) 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)~~ (5) 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)~~ (6) 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)~~ (7) (a) Except as provided in par. (b), The 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.

(b) Pursuant to s. 800.09(1b)(d), the court may assess an amount not to exceed the actual expense of providing a qualified interpreter against a party or person described in sub. (2)(a) upon a specific finding that the party or person misrepresented facts essential to the finding in sub. (2)(a), failed to appear for a scheduled court proceeding for which a qualified interpreter was appointed, or otherwise engaged in intentional conduct constituting waste of the qualified interpreter's services. This finding cannot be made solely based on the fact that the person was cited for or found guilty of an offense.

Comment: The ability to meaningfully participate in legal proceedings is a crucial element of due process. Municipal courts are an essential part of the unified court system. For many individuals, their only experience with the unified court system will be in a municipal court. This rule seeks to unify the obligations on municipal courts and circuit courts to the extent feasible, while also recognizing that municipal courts may have fewer resources, may meet outside of ordinary business hours, may be less formal, and generally hear cases that have lower stakes than many proceedings held in circuit court. The rule is to be interpreted in accordance with these principles.

Section 2. No changes from WJI petition.

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 by ss. 885.375(1)(b)(c) 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.

Section 4. Section 814.65(2) is amended to read:

(2) Witness ~~and interpreter's~~ fees. The fees of witnesses ~~and interpreters~~ shall be paid as specified in s. 814.67.

Section 5. Section 814.67(1)(a) is amended to read:

(a) For attending before ~~a municipal judge~~, an arbitrator, or any officer, board or committee:

Nonstatutory Provision: While it is essential to provide interpreter services in municipal courts, those services are costly and this rule does not provide a funding mechanism for the important mandate imposed by the rule. The Director of State Courts is encouraged to work with the Legislature, Wisconsin Municipal Judges Association, Wisconsin League of Municipalities, Wisconsin Towns Association, and other interested parties to explore options to fund interpreter services in municipal courts. To allow an opportunity for this and for the municipal budgeting cycle to occur, this rule shall be effective [eff. two years after adoption of petition].

EXHIBIT B

WMJA Proposal (as compared to existing statute/rule)

WMJA's proposed changes to existing law are as below, with additions to existing sections signified by underlined language and deletions signified by ~~stricken~~ language.

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CLERK OF SUPREME COURT
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Section 1. 885.375 of the statutes is created to read:

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(1) In this section:

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(b) "Interpretation service" includes, without limitation, an agency or computer program or service that the court may utilize to assist persons with limited English proficiency to a substantially similar level of competence as a qualified interpreter. The Director of State Courts shall assist courts in identifying and maintaining a roster of such resources.

(c) "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.

(d) "Nonqualified interpreter" means a person who demonstrates some degree of ability to communicate with a person of limited English proficiency but whose skills are insufficient to fulfill the duties and responsibilities of a qualified interpreter.

(e) "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.

(2) (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) Upon making a finding under par. (a), the court shall appoint a qualified interpreter except:

1. The court may use an interpretation service for proceedings other than evidentiary hearings, or if it cannot secure the services of a qualified interpreter for an evidentiary hearing despite reasonable efforts.

2. The court may use a nonqualified interpreter or interpretation service to provide the date and time of a future court proceeding, to inform the person that an interpreter will be appointed, to determine waiver under sub. (3), or for similar procedural purposes.

3. If the use of a qualified interpreter is waived under sub. (3).

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

(d) 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.

(e) 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.

(3) (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.

(4) 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.

(5) 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.

(6) 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.

(7) (a) Except as provided in par. (b), 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.

(b) Pursuant to s. 800.09(1b)(d), the court may assess an amount not to exceed the actual expense of providing a qualified interpreter against a party or person described in sub. (2)(a) upon a specific finding that the party or person misrepresented facts essential to the finding in sub. (2)(a), failed to appear for a scheduled court proceeding for which a qualified interpreter was appointed, or otherwise engaged in intentional conduct constituting waste of the qualified interpreter's services. This finding cannot be made solely based on the fact that the person was cited for or found guilty of an offense.

Comment: The ability to meaningfully participate in legal proceedings is a crucial element of due process. Municipal courts are an essential part of the unified court system. For many individuals, their only experience with the unified court system will be in a municipal court. This rule seeks to unify the obligations on municipal courts and circuit courts to the extent feasible, while also recognizing that municipal courts may have fewer resources, may meet outside of ordinary business hours, may be less formal, and generally hear cases that have lower stakes than many proceedings held in circuit court. The rule is to be interpreted in accordance with these principles.

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

885.37 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 by ss. ~~885.37(1)(b)~~ 885.375(1)(c) 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.

Section 4. Section 814.65(2) is amended to read:

(2) Witness ~~and interpreter's~~ fees. The fees of witnesses ~~and interpreters~~ shall be paid as specified in s. 814.67.

Section 5. Section 814.67(1)(a) is amended to read:

(a) For attending before ~~a municipal judge~~, an arbitrator, or any officer, board or committee:

Nonstatutory Provision: While it is essential to provide interpreter services in municipal courts, those services are costly and this rule does not provide a funding mechanism for the important mandate imposed by the rule. The Director of State Courts is encouraged to work with the Legislature, Wisconsin Municipal Judges Association, Wisconsin League of Municipalities, Wisconsin Towns Association, and other interested parties to explore options to fund interpreter services in municipal courts. To allow an opportunity for this and for the municipal budgeting cycle to occur, this rule shall be effective ____ [eff. two years after adoption of petition].