

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 12

MILWAUKEE COUNTY

STATE OF WISCONSIN ex rel.
LUCIANNA ARMOUR,

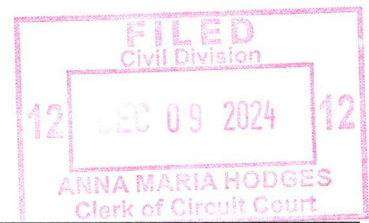
Petitioner,

v.

Case No. 23-CV-6647

MILWAUKEE MUNICIPAL COURT,
PHILLIP CHAVEZ, VALARIE HILL,
MOLLY GENA, SHELDYN HIMLE, and
THE CITY OF MILWAUKEE,

Respondents.

**DECISION AND ORDER ON SUPERVISORY WRIT AND SUMMARY JUDGMENT**

Based on the record in this matter and for the following reasons, the Court hereby:

1. **GRANTS** Petitioner's Motion for Summary Judgment; and
2. **GRANTS** Petitioner's Request for a Supervisory Writ.¹

BACKGROUND

In 2010, the Wisconsin Legislature passed 2009 Wis. Act 402, which was intended to increase uniformity in municipal court procedure throughout the State of Wisconsin. Act 402 significantly revised Wis. Stat. § 800.14, the statute governing appeals from a municipal court. Pursuant to Act 402, parties were now able to appeal two *new* categories of municipal court decisions – decisions on motions to reopen brought under Wis. Stat. § 800.115, and determinations as to whether the defendant is unable to pay the judgment due to poverty. Appeals from these types of decisions would be based on a review of the record. Wis. Stat. § 800.14(5).

¹ Respondents also filed a Motion to Dismiss; however, because the court has found that Petitioner is entitled to summary judgment, it does not address Respondents' motion.

In 2019, the Legislature passed 2019 Wis. Act 70, which was intended to be a “trailer bill,” of sorts, of Act 402, with the goal of addressing procedural issues which may have not been adequately addressed initially. One of these issues was inadequate appellate records for the two new categories of appealable decisions – decisions on motions to reopen and determinations as to whether a defendant was unable to pay due to poverty. 2019 Act 70 amended Wis. Stat. § 800.13(1) to require that these proceedings be electronically recorded for the purposes of appeal. The Act took effect on January 23, 2020.

In early 2020, Respondent Milwaukee Municipal Court (“MMC”) was purportedly notified of these new recording obligations by the Office of Judicial Education. Doc. 7:7. It is further alleged that “[i]n March of that same year, advocates began requesting a variety of electronic recordings” pursuant to the new requirements in s. 800.13(1). *Id.*

In spite of the fact that MMC had been made aware of the recording requirements established by s. 800.13(1), Petitioner Lucianna Armour (“Ms. Armour”) alleges that MMC continually failed to regularly comply with them. *Id.* Ms. Armour, at the time she filed the present action, had multiple unpaid judgments in MMC, which, as an indigent single mother whose primary source of income is SSDI, she was apparently unable to pay. *Id.*, at 4. This put her at risk of sanctions, including “loss of liberty and suspension of her driver’s license” which could only be avoided by “paying or asking Milwaukee Municipal Court to make new determinations involving her inability to pay.” *Id.*

Now, asserting that she wishes to reopen at least one of her cases in MMC, Petitioner states that, given the municipal court’s repeated failures to electronically record the required hearings, she “fears that Milwaukee Municipal Court will not record any hearing in which she moves to reopen a judgment – which will in turn leave her unable to meaningfully appeal the court’s decision under Wis. Stat. § 800.14.” *Id.*, at 17. She states that she is similarly fearful that, if she cannot afford to pay off her outstanding judgments in time, MMC will fail to make a record of any determination as to whether she is unable to pay, subjecting her to possible sanctions and leaving her without any way to meaningfully appeal. *Id.* Ms. Armour points to both her own experiences with MMC along with the experiences of numerous others to support her request that this court issue a Supervisory Writ mandating that Respondents comply with the terms of s. 800.13(1).

I. Petitioner's Motion for Summary Judgment

Petitioner has asked that this court grant summary judgment in her favor. *See*, Doc. 47. Wis. Stat. § 802.08(2) states that summary judgment may be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Further, sub. (3) of the statute states that “[w]hen a motion for summary judgment is made ... an adverse party may not rest upon the mere allegations or denials of the pleadings but the adverse party’s response, by affidavits or as otherwise provided ... must set forth specific facts showing there is a genuine issue for trial.” Wis. Stat. § 802.06(3). “The purpose of summary judgment is to obviate the need for a trial where there is no genuine issue as to any material facts.” *Heck & Paetow Claim Service, Inc. v. Heck*, 93 Wis. 2d 349, 355, 286 N.W.2d 831 (1980). Any reasonable doubt as to the existence of a genuine issue of material fact must be resolved against the moving party. *Id.*, at 356, citing *Kraemer Bros., Inc. v. United States Fire Ins. Co.*, 89 Wis. 2d 555, 566, 278 N.W.2d 857 (1979). The summary judgment materials are viewed most favorably toward the nonmoving party. *Torgerson v. Journal/Sentinel, Inc.*, 210 Wis. 2d 524, 537, 563 N.W.2d 472 (1997). The court does not try the issues, but decides whether there is an issue of fact for trial. *Goelz v. City of Milwaukee*, 10 Wis. 2d 491, 498, 103 N.W.2d 551 (1960) (citation omitted).

Petitioner asserts that there are no genuine issues of material fact, and that she has sufficiently established all elements required for the issuance of a supervisory writ. Doc. 47:1. She further insists that “a supervisory writ is necessary to protect herself and other Milwaukee Municipal Court defendants who are being denied their right to an electronic recording of post-judgment hearings involving decisions on motions to reopen and ability to pay determinations.” *Id.*

In opposition, Respondents assert that there is a dispute about the material facts presented by the Petitioner, as they insist there is no pattern of failure to record the appropriate hearings under s. 800.13(1). Doc. 58:2. Thus, they argue that there is no likelihood of the Petitioner or others being denied the appropriate protections of the legal system. *Id.*

In order for a supervisory writ to be issued, a petitioner must demonstrate that (1) an appeal would be an inadequate remedy, (2) grave hardship or irreparable harm will result, (3) the duty of the court is plain, and it acted or intends to act in violation of that duty, and (4) the request for relief is made promptly and speedily. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶17, 271 Wis. 2d 633, 681 N.W.2d 110 (citation omitted).

While Petitioner argues the first three elements in her briefs (neither party disputes that the request for relief was made promptly and speedily), Respondents only appear to address the third element - whether there is a “plain duty” and whether the court has acted or intends to act in violation of its duty - and thus this court assumes that Respondents concede that the other elements have been met. *See, State v. Verhagen*, 2013 WI App ¶38, 346 Wis. 2d 196, 827 N.W.2d 891 (“Unrefuted arguments are deemed conceded”) (citation omitted).

A. Whether There is a “Plain Duty”

1. Motions to Reopen

In determining whether there is a “plain duty” for the municipal court to record hearings on motions to reopen, this court must look first to the statute. “[S]tatutory interpretation begins with the language of the statute.” *State ex rel. Kalal v. Circuit Court of Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (citation omitted). “If the meaning of the statute is plain, we ordinarily stop the inquiry.” *Id.* “Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *Id.* “Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.” *Id.*, ¶46. “If this process of analysis yields a plain, clear statutory meaning, then ... the statute is applied according to this ascertainment of its meaning.” *Id.*

Petitioner asserts that the plain language of Wis. Stat. § 800.13(1) mandates that the municipal court electronically record every hearing on a motion to reopen, and that the key terms of the statute are unambiguous. Doc. 48:9. The statute states in relevant part:

(1) Every proceeding in which testimony is taken under oath or affirmation, hearing on a motion [to reopen] under s. 800.115, and

hearing regarding whether the defendant is unable to pay the judgment because of poverty, as that term is used in s. 814.29(1)(d), in a municipal court shall be recorded by electronic means for purposes of appeal.

Petitioner argues that the word “every” is intended to apply to *each* of the three types of hearings enumerated in the statute, thus mandating that the municipal court electronically record *every* hearing on a motion to reopen under s. 800.115. Doc. 48:9. She further asserts that the word “hearing” refers to those types of proceedings which both occur in open court and in which the judge decides issues of law and/or fact. *Id.*, at 10. Petitioner also notes the use of the word “shall,” which she argues illustrates the mandatory nature of the statute and deprives the municipal court of any discretion. *Id.*

Petitioner further points to the statutory histories of both s. 800.13 and s. 800.14² to support her contention. *Id.*, at 11; *see, Kalal*, 2004 WI at ¶46 (statutes are interpreted in the context of closely related statutes); *Richards v. Badger Mut. Ins. Co.*, 2008 WI 52, ¶22, 309 Wis. 2d 541 (statutory history is part of a plain-meaning analysis because it is part of the context in which the statutory terms are interpreted). Petitioner insists that the changes made by 2009 WI Act 402 and 2019 WI Act 70 reflect the importance of having accurate records of hearings on motions to reopen, where the only avenue for appeal is through a review of the record. Doc. 48:12. In the absence of a written decision with findings of fact and conclusions of law (which she argues is a rarity in municipal courts), Petitioner asserts that the electronic recordings from s. 800.13(1) are the only sufficient explanation for how a municipal court judge decided an issue. *Id.* Without a recording of the hearing, she insists that the circuit court would have no information in order to review the municipal court’s decision, thereby eliminating the defendant’s only possible recourse. *Id.*, at 13.

Respondents, however, argue that Wis. Stat. § 800.115(5) allows for a motion for modification of a judgment to be decided *without* a hearing, based on written submissions from the defendant or for failure to state a claim upon which relief can be granted³. Doc. 58:6. Thus,

² Governing appeals from municipal court decisions.

³ Wis. Stat. § 800.115(5): “Upon making a motion [to reopen] under this section, the court shall provide notice to all parties and schedule a hearing on the motion. Upon receiving a motion under this section, the court may enter

they appear to argue that motions to reopen, which are granted based on written submissions or are denied based on failure to state a claim, require no hearing and thus would need no recording. They also assert that Petitioner's interpretation of the statute ignores the words, "for purposes of appeal," arguing that if the purpose of the recording requirement is to provide a record for an appeal, granting a defendant's request or motion would negate the need for an electronic recording, because the defendant would have "no appealable issue." *Id.*, at 7.

After reviewing the parties' arguments, the court agrees with Petitioner, and finds that s. 800.13(1) imposes a plain duty on the municipal court to record every hearing in which a motion to reopen is heard. The statute's use of the word "every" clearly operates to encompass *all* hearings and proceedings enumerated in the statute, depriving the municipal court of any discretion in determining *which* hearings on motions to reopen are required to be electronically recorded. This conclusion is further supported by the statute's use of the word, "shall," which is generally presumed to be mandatory. *See, Rutherford v. Labor & Industry Review Com'n*, 2008 WI App 66, ¶19, 309 Wis. 2d 498, 752 N.W.2d 897 (noting that the courts have characterized "'shall' as mandatory unless a different construction is required by the statute to carry out the clear intent of the legislature."). Thus, regardless of the label attached to it, the municipal court is plainly required to electronically record each and every hearing in which it makes a decision as to whether to reopen a case.

In addition, the court simply cannot agree with Respondents' argument that the statute's use of the phrase, "for purposes of appeal," means that there is no need to record a hearing where a motion to reopen is granted because the defendant would have "no appealable issue." This goes against logic - as Petitioner rightfully points out, the municipal court judge cannot and should not know before the hearing is held whether it will grant or deny a motion to reopen. Thus, the municipal court judge's granting of a motion to reopen cannot eliminate the Respondents' plain duty to record the hearing at its outset.

This finding is also supported by the context of the statute. Notably, s. 800.14(1) allows either party to appeal a decision on a motion to reopen to the circuit court. Such an appeal is based

an order denying the motion for failure to state grounds upon which relief may be granted, schedule a hearing on the motion, or enter an order based on written submissions from the parties."

on a review of the proceedings in the municipal court, and the municipal court is required to transmit to the circuit court a copy of the entire record, including any electronic recording created under s. 800.13(1). *See*, Wis. Stat. § 800.14(5). The implicit purpose of s. 800.13(1) is thus to ensure that there is an adequate record of those appealable decisions found in s. 800.14.

The statutory history of s. 800.13(1) further supports this contention – the changes made to the statute were intended to increase uniformity throughout the municipal courts in the State, and closely paralleled the changes made to s. 800.14. It follows that the legislature’s intention was to ensure that (given that decisions on motions to reopen would be appealable to the circuit court upon a review of the proceedings) hearings on motions to reopen would consistently be electronically recorded for the purposes of appeal. This court therefore finds that the municipal court has a plain legal duty to record every hearing in which a motion to reopen is heard.

2. Hearings Regarding Inability to Pay

When it comes to hearings regarding the defendant’s inability to pay the judgment due to poverty, Petitioner again argues that the plain language of the statute imposes a clear duty on the Respondents. She argues that the word “regarding” is unambiguous and necessarily encompasses any hearing in which a determination as to the defendant’s ability to pay the judgment is made. *Id.*, at 10. She insists that nothing in the text of the statute limits the mandate to only those hearings which are *solely* concerning the defendant’s inability to pay the judgment due to poverty, and is instead meant to include *any* hearing where such a determination is made regardless of whether it is categorized by Respondents as a “poverty” or “indigency” hearing. *Id.* She states that the words “primary” and “incidental” appear nowhere in the text of s. 800.13(1), and that Respondents have not identified a definition of “regarding” which would require adding them to the statute. *Id.*, at 15.

Respondents, however, essentially argue that Petitioner has mistakenly interpreted the statute, and that the electronic recording requirement is limited to those hearings which *solely* address the defendant’s inability to pay the judgment due to poverty (i.e., a “poverty” or “indigency” hearing). Respondents insist that not every determination as to a defendant’s ability to pay a judgment requires a hearing, as the statutes allow a municipal court judge to make a finding of poverty without a hearing (such as when the defendant is represented by LAW/Legal

Aid, appears from the House of Corrections or a homeless shelter, or submits written documentation). Doc. 58:4. “When the defendant is automatically found to be indigent based on representation based on representation by LAW attorneys and in homeless shelters or seen in HOC, there is no reason for a recorded hearing to determine poverty, as it is clear from the written record that they are unable to pay.” *Id.*, citing Wis. stat. § 814.29(1)(d).

Again, the court agrees with Petitioner, and finds that s. 800.13(1) imposes a plain legal duty on Respondents to record *every* hearing in which a determination as to the defendant’s inability to pay the judgment due to poverty is made, regardless of whether such determination is the primary focus of the hearing. If the municipal court makes a determination in open court as to the defendant’s inability to pay, which would be properly based on the criteria set forth in s. 814.29(1)(d), *that determination is appealable under s. 800.14*. Given that such an appeal would be based on a review of the record, and generally the only record would be an electronic recording of that hearing, the municipal court necessarily must make an electronic record of the hearing in order to properly preserve the parties’ abilities to appeal the decision.

B. Whether the Court Has Acted or Intends to Act in Violation of its Duty

1. Motions to Reopen

Given that this court has found that s. 800.13(1) imposes a plain legal duty on Respondents to electronically record every hearing on a motion to reopen under s. 800.115, it must next determine whether the municipal court has acted or intends to act in violation of that plain duty.

Petitioner insists that the undisputed facts show that Respondents do not record hearings where oral motions to reopen are decided, despite the fact that these decisions are appealable under s. 800.14. Doc. 48:15. She posits that this alone is enough to establish that the municipal court is violating its plain legal duty, and that it has no justification for doing so. *Id.*, at 15-16. Petitioner points to a survey of hearings on motions to reopen from January 1 – March 31, 2022, in which she states the municipal court records show four unrecorded hearings on motions to reopen that were decided at “Walk-In” hearings. *Id.*, at 19 (citing SCL Aff P 21 Ex 18 pp 156-163). She also points out that, in that same time period, MMC failed to record 42% of scheduled “Hearings on Motion” regarding motions to reopen. *Id.*, at 20 (citing SCL Aff ¶19 Ex 16 pp 129-139; ¶20 Ex

17 pp 140-155). She argues that MMC's position that oral motions to reopen are not "motions," and that such hearings need not be recorded, demonstrates that Respondents intend to continue acting in violation of their plain duty. *Id.*

In opposition, Respondents point out that one of the motion to reopen cases in Petitioner's survey - which was lacking a recording and was denied - had documentation submitted by the defendant, and therefore complied with the requirements of s. 800.115(5). Doc. 58:7. The docket information for the case listed the basis for denial as being that the case was too old - which they state complies with the municipal court's ability to deny a motion to reopen without a hearing based on failure to state a claim. *Id.* They argue that another case was denied because it was previously amended, which also complies with s. 800.115(5). *Id.* The other three motions to reopen were granted, which they argue gave the defendants "no appealable issue." *Id.*

As to the four "Walk-In" events in which there were motions to reopen, Respondents state that one was decided without a hearing on the basis of a written submission; two were granted, which gave the defendant "no appealable issue"; and one was denied because the defendant missed the trial date. *Id.*

Again, the court agrees with Petitioner, and finds Respondents' many excuses for not recording its hearings to be lacking. In particular, the court takes issue with the Respondents' repeated attempts to excuse their failure to record hearings on the basis that a motion to reopen was granted, which they claim gives the defendants "no appealable issue." This is illogical - the determination as to whether a motion to reopen should be granted or denied is not something that can or should be decided before the hearing is held and the court has heard all of the facts and argument. This line of logic, alone, is enough to demonstrate to this court that the Respondents have acted and very likely will continue to act in violation of their plain legal duty. In addition, Respondents' contention, that one hearing on a motion to reopen did not need to be recorded, simply because the motion was denied on account of the defendant missing the trial date, is likewise an attempt on Respondents' part to carve out a level of discretion that simply does not exist in the statute - Respondents certainly do not get to decide *which outcomes* render a hearing on a motion to reopen worthy of being recorded. This court is thus satisfied that Respondents have

clearly violated and intend to continue acting in violation of their plain legal duty to record hearings on motions to reopen.

2. Hearings Regarding Inability to Pay

As it relates to hearings regarding the defendant's inability to pay because of poverty, Petitioner insists that the municipal court fails to record most of them, noting that the court frequently has hearings seeking to address outstanding debt and/or sanctions caused by a defendant's nonpayment, which necessarily raise the issue of a defendant's inability to pay the judgment. Doc. 48:16. Petitioner argues that Respondents cannot exclude these hearings simply by labeling them as "Outstanding Writ Hearings" or "Walk-In" hearings. *Id.* She points out that in the three-month survey period in 2022, the municipal court held fifty-three "Outstanding Writ Hearings" and fifteen "Walk-In" hearings where the defendant appeared before a judge to resolve or avoid sanctions related to nonpayment or an outstanding debt. *Id.*, at 17 (citing SCL Aff ¶18 Ex 15 pp 108-128; ¶23 Ex 20 pp 179-250). She states that these hearings necessarily involved evaluations of whether the defendants were unable to pay because of poverty; however, none of them were recorded. *Id.* To support her assertion, Petitioner points to Wis. Stat. § 800.095, which states in relevant part:

(1) If the defendant *fails to pay a monetary judgment* ordered by the court, the court may order any one of the following...:

(b)

1. That the defendant be imprisoned until the forfeiture, assessments, surcharge, and costs are paid...

2. No defendant may be imprisoned under subd. 1. *unless* the court makes one of the following findings:

a. Either at sentencing or thereafter, *that the defendant has the ability to pay the judgment* within a reasonable time. *If a defendant meets the criteria in s. 814.29(1)(d), the defendant shall be presumed unable to pay* under this subsection and the court shall either suspend

or extend payment of the judgment or order community service.

b. The defendant has failed ... to perform the community service ...

c. The defendant has failed to attend an indigency hearing ...

d. The defendant has failed ... to complete an assessment or treatment ...

(2) At any time prior to imprisonment under sub. (1)(b), *the defendant may request a review of any findings made under sub. (1)(b)2.*

(emphasis added). Thus, Petitioner asserts that an “Outstanding Writ Hearing” on a warrant ordered as a remedial sanction for nonpayment is necessarily a “hearing regarding whether the defendant is unable to pay the judgment because of poverty.” Doc. 48:18. Because the municipal court has an obligation to evaluate the defendant’s ability to pay any time the defendant appears on a case with a threat of imprisonment as a remedial sanction for nonpayment, the municipal court is required to electronically record such hearings in order to be in compliance with s. 800.13(1). *Id.*

Petitioner also points out that seven of the unrecorded “Walk-In” hearings from the survey period were necessarily “hearings regarding the inability to pay because of poverty” because the defendants appeared before the judge to try to avoid or resolve a driver’s license suspension ordered as a remedial sanction for nonpayment. *Id.* In looking again at s. 800.095, the statute states in relevant part:

(1) If the defendant fails to pay a monetary judgment ordered by the court, the court may order any one of the following...:

(a) Suspension of the defendant’s operating privilege until the defendant pays the judgment, but not to exceed one year. If the court orders suspension under this paragraph, all of the following apply: ...

5. During the period of operating privilege suspension under this paragraph, the defendant may request the court to reconsider the order of suspension based on an inability to pay the judgment because of poverty, as that term is used in s. 814.29(1)(d). The court shall consider the defendant's request. If the court determines that the inability to pay the judgment is because of poverty, the court shall withdraw the suspension and grant the defendant further time to pay or withdraw the suspension and order one or more other sanctions set forth in this subsection, including community service.

Petitioner concludes that a "Walk-In" hearing on a driver's license suspension ordered as a remedial sanction for nonpayment is *necessarily* a hearing regarding the defendant's inability to pay due to poverty, because the municipal court has the obligation to evaluate the defendant's ability to pay any time the defendant appears on a case with the threat of a driver's license suspension for nonpayment. *Id.*, at 19. She insists that Respondents' continued position that these and the "Outstanding Writ Hearings" are not hearings that fall within the recording requirements of s. 800.13(1) demonstrates that it will continue to act in violation of the statute. *Id.*

Respondents take issue with Petitioner's characterization of these hearings. *See generally*, Doc. 58. They state that, of the fifty-three "Outstanding Writ Hearings" mentioned by Petitioner, twenty-two were misrepresented as being for "failure to pay judgment," when in fact they were for "failure to appear for judgment," which Respondents assert does *not* require a recording. *Id.*, at 3. A failure to appear for judgment, they point out, does not require a discussion of the ability to pay or a determination of poverty (although they acknowledge that in six of the hearings the defendants stated they had the ability to pay, and one waived an indigency hearing). *Id.* In addition, Respondents note that five of the defendants were represented by LAW/Legal Aid lawyers, participated from the House of Corrections, or participated from a homeless shelter, which would have automatically qualified them as unable to pay. *Id.* Respondents argue that a recording in such a case would be unnecessary. *Id.* In addition, they point out that three of the "arrest warrants" for nonpayment were for building code violations, which they assert are not compatible with poverty. *Id.* They also note that three were paid in full; three were adjourned; and three were given

installment payments (which may be given at the discretion of the judge and do not require a determination of poverty). *Id.*

Of the fifteen “Walk-In” appearances, Respondents note that seven of the defendants were seen from the House of Corrections, which would have automatically deemed them as unable to pay and therefore not required a hearing. *Id.*, at 4. One defendant, they state, was represented by a private attorney and paid the judgment in full; one accepted the city’s offer and was given an installment plan; one was also given a installment plan; one had the judgment stayed; one was told what payment was needed to lift the driver’s license suspension; and two were given extensions on paying judgments. *Id.* Respondents assert that none of these defendants “apparently” mentioned an inability to pay due to poverty (although they concede that one defendant stated he had health and financial problems but presented no documentation). *Id.*

This court again agrees with Petitioner, and feels that Respondents’ argument puts the cart before the horse. Any argument that Respondents make which is based on the *result* of the hearing is necessarily illogical and ignores the fact that there is a plain duty to record those hearings wherein a determination as to a defendant’s inability to pay because of poverty is made. Respondents’ statement that a defendant being charged with building code violations is “not compatible with poverty” (Doc. 58:3) is particularly unsupported. Respondents’ argument appears to simply be an attempt to downplay the extent of their alleged violations, but cannot eliminate it entirely.

It certainly may be that a municipal judge *may* allow a defendant to participate in an installment plan at the judge’s discretion, regardless of the defendant’s ability to pay; however,. municipal court defendants whose judgments are put onto installment plans, stayed, or extended very likely engaged in some sort of discussion with the judge as to their ability to pay. One cannot know for sure, however, because Respondents decided not to make the proper electronic recordings. Respondents even concede that one of the defendants in a “walk-in” hearing stated that he had health and financial problems, and that this hearing was not recorded, their excuse simply being that the defendant provided no documentation. Doc. 58:4. This is another exception that Respondents have attempted to carve out of the statute that simply doesn’t exist – such a hearing

should still have been recorded, even if the judge ultimately came to the conclusion that the defendant had the ability to pay the judgment.

Respondents attempt to carve out exceptions to their statutory obligations where no such exceptions exist. This court is thus satisfied that Respondents have violated and very likely may continue to violate their plain duty to record hearings wherein a determination as to a defendant's inability to pay due to poverty is made.

CONCLUSION

This court finds that there is a plain legal duty for Respondents to electronically record every hearing in which a motion to reopen is decided, as well as every hearing in which a determination as to a defendant's inability to pay due to poverty is made. This court also finds that Petitioner has sufficiently shown that Respondents have violated and very likely will continue to act in violation of their plain duties. For those reasons, this court GRANTS Petitioner's Motion for Summary Judgment, and thereby GRANTS Petitioner's request for a Supervisory Writ.

IT IS HEREBY ORDERED THAT:

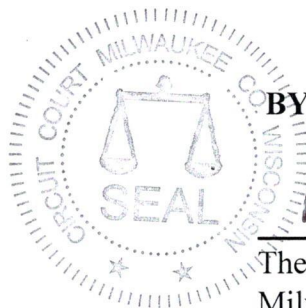
1. The Respondents, upon issuance of this order, shall have ninety (90) days in which to fully implement policies and procedures whereby an electronic recording shall be made of EVERY hearing in which (1) a decision is made as to a motion to reopen a case (regardless of whether said motion is made orally or in writing, regardless of the label or category assigned to said hearing, and regardless of the ultimate result of the hearing) and (2) a determination is made as to the defendant's ability to pay a judgment due to poverty (regardless of the ultimate result of the hearing).
2. Said policies and procedures must result in the municipal court satisfying its plain legal duties as stated herein. Proof of implementation by the respondents of policies and procedures in compliance with this Court's order shall be provided to the Petitioners and the Court within one hundred (100) days.

3. This court reserves the right to hold hearings, every three to six months hereafter, for the purposes of supervising Respondents' compliance with this order; said hearings shall continue indefinitely until this court is satisfied that they are no longer necessary.
4. Any failure to comply with this order and Supervisory Writ may result in the imposition of sanctions.

SO ORDERED.

THIS IS A FINAL ORDER FOR THE PURPOSES OF APPEAL

Dated this 9th day of December, 2024, in Milwaukee, Wisconsin.



BY THE COURT:

The Honorable David L. Borowski
Milwaukee County Circuit Court, Branch 12