

**United States District Court
Northern District of Illinois**

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|--------------------------------------|---|----------------------|
| David Martin, |) | |
| Plaintiff |) | |
| |) | |
| |) | |
| V. |) | Case # 1:22-cv-06296 |
| |) | |
| Attorney General Kwame Raoul |) | |
| Judge Gregory Emmett Ahern Jr. |) | |
| Unnamed Cook County Clerks |) | |
| Cook County |) | |
| Chief Deputy Clerk Gretchen Peterson |) | |

**REPLY TO DEFENDANT'S
OPPOSITION FOR A TEMPORARY RESTRAINING ORDER**

I David Martin, state the following in response to the defendant's opposition to my motion for a temporary restraining order.

BRIEF STATEMENT OF FACTS

On 11/14/22 The Circuit Court of Cook County entered the following in its record:
"Activity Date: 11/14/2022 Event Desc: Exhibits Filed Comments: Notice of removal"

On 4/26/23 The state court entered the following in its record: "Activity Date: 04/26/2023
Event Desc: Exhibits Filed Comments: Notice of removal"

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**AHERN VIOLATED
FEDERAL LAW.**

In the defendant's opposition for a temporary restraining order, Ahern does not deny that he was provided with notice of removal. Instead, he argues that the removal was untimely and ineffective. After his determination, he issued several orders while the case was removed to federal court. However, Ahern does not have the right to make such determinations because the statute clearly deprives him of the authority to do so. In addition, even if my removal was untimely or ineffective all orders issued during the removal are still void.

As pointed out in my original motion, after removal "It is the duty of the state court to recognize the removal and proceed no further in the matter". This is made clear in the statute, **28 U.S. Code § 1446 (d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.** The state courts duty to not proceed has also been made clear in several cases. **"1446 expressly provides that upon removal 'the State court shall proceed no further unless and until the case is remanded.'** 28 U.S.C. Sec. 1446(e). Hence, after removal, the jurisdiction of the state court absolutely ceases and the state court has a duty not to proceed any further in the case. *Steamship Co. v. Tugman*. 106 U.S. 118, 122, 1 S.Ct. 58, 60, 27 L.Ed. 87

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(1882). The Circuit Court of Cook County acknowledged my notice of removal on two separate occasions. Once on November 14th 22 and again on April 26th 2023.

Defendant Ahern knew or should have known that the case was removed because he was served with a notice of removal. In addition, my federal complaint against Ahern states that the case had become removable. In the defendant's opposition for a temporary restraining order, Ahern does not deny that he was provided notice of removal. Instead, he argues that the removal was untimely and ineffective. However, these arguments are irrelevant because **“any proceedings in the state court after the filing of the petition and prior to a federal remand order are absolutely void, despite subsequent determination that the removal petition was ineffective.”**

South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir.1971); see United States ex rel. Echevarria v. Silberglitt, 441 F.2d 225, 227 (2d Cir.1971)”.

**A TEMPORARY RESTRAINING ORDER
SHOULD NOT BE NEEDED.**

My previous argument apply here. In addition, I argue that a temporary restraining order should not be necessary. It is only being requested because judge Ahern has refused to abide by the law.

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THE FEDERAL CASES MENTIONED BY

THE DEFENDANTS ARE IRRELEVANT

According to Judge Ahern, the child support case and the case for college expenses are two separate cases. In fact, while I was in the circuit court, I argued that I had already defended myself against Ms. Thompson's claims and that the case was already heard. As a result, the case was in the Illinois court of Appeals. **"Judge Ahern said that I was wrong. Judge Ahern responded saying these are two separate cases" (See page 2 of attached Affidavit).** By the same logic, if the state child support case is separate from the case for college expenses. Then that means the removal of those cases to federal court are separate as well. Thus the removal of my child support case is completely separate from the removal of my case for college expenses. The judgements in those cases are irrelevant and should have nothing to do with the decision in this case.

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REMOVING THE STATE CASE

WAS PROPER AND NECESSARY

It is well known that one cannot appeal a state case in federal court. To appeal a case, one must go through the state court appeal processes. This typically means appealing to the state's court of appeals. If one is not satisfied with a judgment from that court, they could file an application for appeal with that state's supreme court. They would then apply to appeal to the United State's supreme court if the state supreme court decided not to hear the case. Conversely, they could apply to appeal in the U.S supreme court, if the state supreme court heard the case but delivered an unsatisfactory ruling. The overall process could take a decade for the case to be resolved. In addition, both the state and U.S. supreme courts are highly selective. They could very well decide not to hear the case. However, the issue here is that my case would never have a fair chance of making it to the Illinois court of appeals. I allege that my case would die in Illinois circuit court because the defendants are trying to sabotage my case in the court of appeals. The circuit court clerks are sabotaging my case by altering and omitting documents. Judge Ahern is sabotaging my case by refusing to allow me to submit a bystander's report. As I have pointed out in my previous arguments. The Illinois court of appeals requires a record of the proceedings, and all state court documents. It places the responsibility of gathering those documents on the appellant. According to state law ("**...The appellant... has the responsibility to present a**

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sufficiently complete record to this court, including transcripts, to support his claims of error on appeal. **Foutch, 99 Ill. 2d at 391–92, 76 Ill.Dec. 823, 459 N.E.2d 958.**)". An appellant's case is effectively dead on arrival if he does not provide a complete and accurate record, and a report of the state court proceedings. **"In the absence of a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. As there is no transcript of the hearing on the motion to vacate here, there is no basis for holding that the trial court abused discretion in denying the motion."**)... **Foutch v. O'BRYANT, 459 NE 2d 958 - Ill: Supreme Court 1984.** I allege that both Judge Ahern and the circuit court clerks are well aware of the state court doctrine, and they are simply trying to sabotage my case. I also allege that their actions constitute extrinsic fraud in the state court of appeals. **"Extrinsic fraud" refers to situations where `the unsuccessful party has been prevented from exhibiting fully his case. . . as by keeping him away from court . . . or where the defendant never had knowledge of the suit."** **Falcon v. Faulkner, 209 Ill.App.3d 1, 153 Ill.Dec. 728, 567 N.E.2d 686, 694-95 (1991).** Because of the defendant's action's, I argue that I am not able to properly present my case to the court of appeal's. I can go through the motions of the appeal's processes, but my efforts will be meaningless without the state court records and a report of the proceedings.

According to the removal statute, a case not originally removable, may become removable based on court orders or motions filed in state court. **28 U.S.C. 1446 (C)(3)**
(3) "Except as provided in subsection (c), if the case stated by the initial pleading

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is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” I argue that there were a flurry of court orders and motions that made my case removable. Several orders were issued for accurate and complete records. However, the circuit court clerks ignored those orders and continued to provide altered and incomplete records. On October 19, 2022, the Illinois Court of Appeals denied my appeal based on lack of jurisdiction. Essentially refusing to hear my appeal until after my claims have been heard in state court. On October 31st 2022 the state court litigants filed a rule to show cause, at that point I realized that the case had become removable under 1446 and U.S.C 1983. As alleged the defendants are trying to sabotage my appeal, and I am unable to make a bystanders report. Now the defendants are initiating a proceeding in which I could be jailed. I filed the removal to prevent the perpetuation of the same violations that had previously occurred. I wanted to make sure that I could get a record of the past and future proceedings. Most importantly I wanted to do something to try and stop the constant constitutional violations. Such as notice and opportunity to be heard in zoom proceedings. There is no remedy adequate at law. Except for an order that would; allow me to present a bystanders report, declare that I have a right to notice and opportunity to be heard (accurate zoom info), and to prevent the defendant's from continuously sabotaging my appeal. I filed my notice of removal in federal court on November 10th 2022, which was well within the time frame to remove a case based on 1446 (c) (3). I

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filed a copy of that complaint in state court on November 14th 2022. Judge Ahern and the state court litigants were provided with notice of removal on that same day.

**THIS COURT MAY PROVIDE RELIEF
FROM AHERN'S ORDERS**

All of my preceding arguments apply here. I argue that I should be relieved of all of Aherns judgments after the notice of removal because those judgments are void. Ahern and the state court litigants received notice of removal, the state court acknowledge the receipt of the notice removal. According to 1446, Federal Courts gain exclusive jurisdiction of a state case once notice of removal is filed in state court and notice is given to all the parties. **"When a case is removed from state to federal court, the entire civil action, including all of the parties and their claims, is transferred to federal court and the state court is prohibited from further proceeding, unless and until the case is remanded". 28 U.S.C. § 1446(e); see also Polyplastics, Inc. v. Transconex, Inc.** The statute does not allow state court judges to determine whether or not a removal is valid. This court can review state court orders. **"a federal court is free to reconsider a state court order and to treat the order as it would any interlocutory order it might itself have entered"** **NOC PROPERTIES, LLC v. GREAT SMOKY MOUNTAINS RAILROAD, LLC, 2021...** **"A prior state court order in essence is federalized when the action is removed to federal court,**

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although the order `remains subject to reconsideration just as it had been prior to removal." FARMLANDS PARTNERS INC. v. FORTUNAE

This court may relieve parties from void orders. **Federal Rule of Civil procedure 60 (b) "GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding..."** This court should relieve me from Aherns orders because they were issued after the state acknowledged the removal and after he and the state court litigants received notice of the removal.

ALL OF THE DEFENDANTS

ARGUMENTS ARE IRRELEVANT

All of my preceding arguments apply here. In addition I argue that all of the defendants arguments are irrelevant. A temporary restraining order should not be necessary. However, the defendants are trying to determine their own jurisdiction. Which is prohibited by statute. A temporary restraining order is only being requested to order Ahern to adhere to the federal statute. The defendants are now essentially making remand arguments. I argue that it is not proper for a state court judge to come to federal court to make remand arguments. For one, I believe it would be an indication of bias. Second, this is the job of the state court litigants. Most importantly Ahern was prohibited from issuing orders after the notice of removal. He does not now gain the right to come to federal court to make arguments to justify why he violated the statute.

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CONCLUSION

All of the defendant's arguments are irrelevant. Judge Ahern clearly violated the federal removal statute. He did so by essentially determining that my removal was invalid. However, the removal statute clearly deprives Ahern of any authority to gauge the strength of my removal. Even if my removal is invalid, Ahern would still lack jurisdiction until the case is remanded. Thus all, his judgments issued after the removal are void. A temporary restraining order is being requested so that Ahern may respect the federal statute. This court has the authority to provide relief from Aherns orders because those orders were entered after removal, and they are already void.

Wherefor I pray:

- 1. That this court issues a temporary restraining order.**
- 2. That I be provided relief from Ahern orders during the period of removal.**
- 3. Any remedy that this court can provide.**

Date of signing: *11/20/23*
David Martin
5352 S. Princeton, Chicago IL 60649
Email: martinvtompson@gmail.com
Signature of Plaintiff

David Martin

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