



of cases involving that defendant, and nevertheless ruled after Plaintiffs objected on the ground that he is a witness to the underlying proceedings. (Plaintiffs do not assert that judicial familiarity alone constitutes bias. The relevance of Judge Berg's extensive prior involvement lies in its interaction with his prior recusals and potential witness status under Rule 63.)

## **B. FACTUAL BACKGROUND**

4. This action, Case No. 25LA360, arises from claims of prima facie negligent conduct (legal malpractice), fraud against Dulberg, fraud on the court, civil conspiracy to commit fraud against Dulberg and civil conspiracy to commit fraud on the court by officers of the court in connection with the underlying legal malpractice action, Case No. 17LA377.
5. Defendant Thomas J. Popovich was a central party in Case No. 17LA377.
6. Judge Joel D. Berg presided over dispositive proceedings in 17LA377, including motions for summary judgment granted in favor of Defendant Popovich.
7. The Complaint in this action places Judge Berg's conduct, knowledge, and participation in the underlying proceedings directly at issue, including the circumstances under which dispositive rulings were entered.
8. The present action alleges a conspiracy to commit fraud and fraud on the court arising from representations made to, relied upon by, and acted upon by the court in Case No. 17LA377, including during motion practice and dispositive proceedings. These allegations necessarily place at issue whether material facts were withheld or misrepresented to the court and whether judicial rulings were procured through fraudulent means.
9. This action is not procedurally isolated but arises from a procedurally successive but legally interrelated sequence of litigation originating with Case No. 12LA178 (filed May 15, 2012 and dismissed December 12, 2016) and resulting Case No. BK 14-83578 (filed November 26, 2014). Those matters directly gave rise to subsequent legal malpractice actions, including Case No. 17LA377 (filed November 28, 2017 and dismissed February 1, 2023) and Case No. 22L010905 (filed December 8, 2022 and presently ongoing), each predicated upon the same underlying factual and legal determinations emanating from 12LA178. The instant case, Case No. 25LA360,

filed December 4, 2025, remains legally interlinked to those prior proceedings and to the original action from which they derive. This chronology is stated solely to establish continuity and present relevance for purposes of recusal analysis and not to suggest that elapsed time, case volume, or judicial familiarity alone constitutes bias.

### **C. GOVERNING LAW**

**10.** Substitution of judge for cause is required where a judge is prejudiced, personally interested, or where circumstances exist such that a party cannot receive a fair and impartial hearing. (735 ILCS 5/2-1001(a)(3)).

**11.** Disqualification is mandatory where a judge:

- a.** Has personal knowledge of disputed evidentiary facts;
- b.** Is or may become a material witness;
- c.** Has previously recused himself in matters involving the same party; or
- d.** Would be required to adjudicate allegations that directly implicate the integrity of proceedings over which the judge presided.

Illinois Supreme Court Rule 63 (Code of Judicial Conduct), Rule 2.11(A)(1), (A)(5).

**12.** Where disqualification is structural, actual bias need not be shown. The test is whether a reasonable person, fully informed, would question the judge's impartiality.

**13.** A judge must disqualify himself in any proceeding in which his impartiality might reasonably be questioned, and a motion for substitution for cause must be determined by a judge other than the challenged judge. Ill. S. Ct. R. 63(C)(1).

**14.** Illinois courts have repeatedly held that even the appearance of impropriety is sufficient to require disqualification to preserve public confidence in the judiciary. *People v. Bradshaw*, 171 Ill. App. 3d 971, 976–77 (1988); *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 45; *People v. Patterson*, 192 Ill. 2d 93, 111 (2000); *People v. Thompson*, 238 Ill. 2d 598, 608–09 (2010).

### **D. RECORD ADMISSIONS BY THE CHALLENGED JUDGE**

#### **15. Prior Recusal Involving Defendant Popovich**

On January 20, 2026, Judge Berg acknowledged on the record that he previously entered a substitution-of-judge/recusal in a case involving Defendant Thomas J. Popovich, stating:

“My eight- or nine-year-old SOJ on a case involving Mr. Popovich and his ex-wife ... that was the basis of the recusal on a case involving Mr. Popovich.”  
(Tr. Jan. 20, 2026, at Page 4 Lines 18–24; Page 5 Lines 1–2).

#### **16. Admission of Extensive Judicial Involvement With Defendant Popovich**

During the same proceeding, Judge Berg further admitted:

“I have before and since heard hundreds of cases involving him.”  
(Tr. Jan. 20, 2026, at Page 5 Lines 2–3).

#### **17. Existence of File-Stamped Recusal Orders**

Judge Berg has executed at least two file-stamped recusal orders in matters involving Defendant Popovich, including Case No. 15LA78 (Sept. 15, 2015) and Case No. 16CV265 (Apr. 4, 2017). True and correct copies are attached as **Exhibit BI-9** and **Exhibit BI-10**.

#### **18. Acknowledgment That Substitution Is the Proper Procedural Vehicle**

Judge Berg advised Plaintiffs on the record that substitution of judge was the appropriate mechanism for resolving the disqualification issue, stating:

“If you wish to file a motion for substitution ... you have every right to do so.”  
(Tr. Jan. 20, 2026, at Page 5 Lines 4–6).

#### **19. Objection Based on Judge’s Status as a Witness**

At the January 20, 2026 hearing, Plaintiffs expressly objected to Judge Berg ruling on any matter on the ground that he is a witness to the underlying proceedings, stating:

“The objection is you sitting here ruling on it.”  
(Tr. Jan. 20, 2026, at Page 7 Lines 12–13).

#### **20. Ruling After Witness Objection**

Notwithstanding the objection described in ¶ 19, Judge Berg proceeded to rule on the pending motion.

“the motion to extend time is heard. It is allowed as prayed.”  
(Tr. Jan. 20, 2026, at Page 7 Lines 17-18).

### **E. ARGUMENT**

#### **21. Judge Berg Is a Likely Material Witness**

As set forth in ¶¶ 15–20 above, Judge Berg has admitted prior recusals involving Defendant Popovich, extraordinary prior judicial involvement with that defendant, and has ruled after

Plaintiffs objected on the ground that he is a witness to the underlying proceedings. These undisputed admissions establish that Judge Berg is, at minimum, a likely material witness concerning disputed factual and procedural matters central to this case. Rule 63 does not require certainty of testimony, only a reasonable likelihood that the judge's knowledge may be relevant to disputed facts.

## **22. Legal Consequences of Judge Berg's Witness Status**

Based on the admissions summarized in ¶¶ 15–20 above:

- a. This action directly implicates proceedings over which Judge Berg presided;
- b. His testimony may be required to establish the existence, timing, and scope of his prior recusals and conflicts; and
- c. A judge may not simultaneously serve as adjudicator and witness without violating Illinois Supreme Court Rule 63 (Code of Judicial Conduct), Rule 2.11(A)(1), (A)(5), and fundamental due process.

## **23. Structural Defect After Notice**

As demonstrated in ¶¶ 19–20 above, Judge Berg was placed on contemporaneous notice that his own conduct, knowledge, and prior rulings were alleged to be part of the disputed factual record, yet continued to exercise judicial authority. Once such notice is given, continued participation constitutes a structural defect not subject to harmless-error analysis. The nature of the ruling is immaterial once notice of disqualification is given.

## **24. Institutional Conflict Independent of Witness Status.**

Independently of the judge-as-witness defect, this action requires adjudication of whether proceedings conducted before Judge Berg were compromised by fraud on the court. Continued assignment would require Judge Berg to sit in judgment of the integrity, fairness, and legal effect of proceedings over which he presided, a circumstance that creates an inherent institutional conflict and an appearance of impropriety under Rule 63 even absent any testimony.

## **25. Appearance of Impropriety.**

As set forth in ¶¶ 15–17 above, Judge Berg's acknowledged recusals and extraordinary volume of prior judicial involvement materially contextualize the appearance of impropriety only

in conjunction with his admitted recusals and potential witness status. While volume alone does not establish bias, it amplifies the objective concerns arising from those admitted recusals and the reasonable likelihood that Judge Berg may be required to testify concerning disputed matters central to this case.

#### **26. Judge of His Own Case.**

A reasonable person, fully informed of the relevant facts, would question the impartiality of a court asked to adjudicate claims that necessarily implicate the correctness, fairness, and procedural integrity of its own prior rulings. Such circumstances create an unavoidable appearance that the court is acting as judge of its own case, which Illinois courts have repeatedly held to be incompatible with neutral adjudication.

#### **27. Continuity of Underlying Matters**

As reflected in the continuous litigation history set forth in ¶ 9 above, the relevance of Judge Berg's prior recusal does not turn on the passage of years alone, but on the uninterrupted legal propagation of the same underlying matters into the present case.

#### **28. Due Process Requires Immediate Substitution**

Given the undisputed admissions set forth in Section D and the continuity described in ¶ 9, Plaintiffs cannot receive a fair and impartial hearing so long as Judge Berg continues to preside. Substitution is the only appropriate remedy.

### **F. FACTS ESTABLISHING CAUSE FOR SUBSTITUTION**

**29.** This case involves claims for prima facie negligent conduct (legal malpractice), fraud against Dulberg, fraud on the court, civil conspiracy to commit fraud against Dulberg and civil conspiracy to commit fraud on the court by officers of the court arising from proceedings in Case No. 17LA377.

**30.** Judge Berg presided over dispositive proceedings in Case No. 17LA377, the integrity of which is directly challenged in this action.

**31.** As established by the record admissions summarized in ¶¶ 15–20 above, Judge Berg possesses personal knowledge of disputed evidentiary facts and may be required to testify

concerning matters central to Plaintiffs' claims.

**32.** The combination of Judge Berg's prior recusals, extraordinary judicial involvement with Defendant Popovich, continued rulings after a witness objection, institutional conflict, and the ongoing legal continuity of the underlying matters constitutes objective grounds requiring substitution for cause under 735 ILCS 5/2-1001(a)(3) and Illinois Supreme Court Rule 63.

**G. JURISDICTIONAL PRESERVATION AND NOTICE OF POTENTIAL EXTRAORDINARY REVIEW**

**33.** Nothing herein shall be construed as requesting advisory relief from this Court regarding the availability or merits of extraordinary writs, which Plaintiffs expressly reserve to the reviewing courts.

**34.** Plaintiffs expressly preserve all jurisdictional, procedural, and substantive rights to seek immediate interlocutory, mandamus, or supervisory relief from the Illinois Appellate Court or Supreme Court in the event this Motion is denied, not promptly referred to a non-conflicted judge for determination, or otherwise adjudicated by the challenged judge.

**35.** Plaintiffs expressly preserve their position that orders entered after notice of disqualification constitute structural error and are void or voidable as a matter of law, and request vacatur to ensure due process and appellate clarity.

**36.** Plaintiffs previously filed a formal Notice of Judicial Disqualification and Objection on January 8, 2026, expressly preserving all mandamus, interlocutory, appellate, and supervisory rights concerning Judge Berg's disqualification. The subsequent hearing on January 20, 2026 confirmed that Judge Berg had actual knowledge of his prior recusals, his extensive judicial involvement with Defendant Popovich, and his potential status as a material witness. Any judicial action taken by Judge Berg after January 8, 2026 constitutes structural error, is void or voidable as a matter of law, and supports vacatur or reassignment to a non-conflicted judge to ensure due process and appellate clarity.

**37.** Plaintiffs assert that the admissions set forth in ¶¶ 15–20 establish a structural disqualification under Illinois Supreme Court Rule 63 (Code of Judicial Conduct), Rule 2.11(A)(1), (A)(5), and that any orders entered after notice of such disqualification are void or voidable

and incapable of adequate remedy by appeal.

38. Plaintiffs acknowledge that judicial immunity may limit the availability of claims against a judge acting in a judicial capacity; however, judicial immunity does not abrogate the requirements of Illinois Supreme Court Rule 63. The appearance-of-impartiality standard applies regardless of immunity, and disqualification is required where a judge's prior conduct or rulings are placed at issue in a manner that would cause a reasonable observer to question impartiality.

#### **H. RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter an order disqualifying and substituting Judge Joel D. Berg for cause;
2. Transfer this matter to the Chief Judge for reassignment pursuant to applicable local rules;
3. Stay all substantive proceedings pending reassignment;
4. Vacate any substantive orders entered in this matter by the disqualified judge and, upon reassignment, direct that such orders be reviewed de novo by the newly assigned non-conflicted judge, who may re-enter such orders with identical language, modify them, or set them aside, solely to preserve due process and appellate clarity, as justice requires; and
5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted *pro se* for Plaintiffs

By: /s/ Paul R. Dulberg

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#### VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Paul R. Dulberg

Paul R. Dulberg