

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
FIRST DEPARTMENT, MUNICIPAL DIVISION**

BRANDON MCGIVERN,)
)
Plaintiff,)
)
v.)
KYLE HADLEY,)
)
Defendant.)
)
)

Case No. **20251707919**

Judge Kelly Marie McCarthy
Courtroom 1402

**PLAINTIFF'S MOTION FOR SUBSTITUTION OF JUDGE AS A MATTER OF
RIGHT**

NOW COMES Plaintiff BRANDON MCGIVERN, appearing pro se, and pursuant to 735 ILCS 5/2-1001(a)(2), respectfully moves for substitution of Judge Kelly Marie McCarthy as a matter of right, stating:

I. PROCEDURAL POSTURE

1. This eviction action was filed on May 20, 2025, alleging Defendant's unlawful holdover of Plaintiff's property at 6122 N Winthrop Ave, Unit C, Chicago, Illinois.
2. Plaintiff obtained default judgment on July 21, 2025, before Judge Porter.
3. Defendant filed Motion to Vacate default judgment, which this Court granted on September 16, 2025, despite substantial evidence supporting the default.
4. This case was originally assigned to Judge Brian R. Porter, who presided over initial proceedings and granted Plaintiff default judgment on July 21, 2025.
5. In August 2025, the case was administratively reassigned to Judge Kelly Marie McCarthy without either party's request or consent.

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6. This administrative reassignment did not constitute Plaintiff's one substitution of judge as matter of right under 735 ILCS 5/2-1001(a)(2).

7. Plaintiff is now exercising that statutory right for the first time, before any trial on the merits before Judge McCarthy.

8. This Court stayed eviction proceedings pending resolution of related Chancery Case 2025CH05527 (Judge Eve M. Reilly).

9. No trial on the merits has occurred in this case.

10. This Motion is timely filed before substantial proceedings on the merits pursuant to 735 ILCS 5/2-1001(a)(2).

II. SUBSTITUTION AS MATTER OF RIGHT

11. Pursuant to 735 ILCS 5/2-1001(a)(2), Plaintiff is entitled to one substitution of judge as a matter of right.

12. Plaintiff has not previously exercised this right in this case.

13. This Motion is made before trial on the merits and is therefore timely under Illinois law.

14. No showing of cause is required for substitution as a matter of right. See *Eychaner v. Gross*, 202 Ill. 2d 228, 779 N.E.2d 1115 (2002).

III. DECEMBER 3, 2025 HEARING - COURT ADMITS NOT READING

FILINGS AND SILENCES PLAINTIFF

15. At the December 3, 2025 hearing at 2:00 PM on Plaintiff's Emergency Motion for Contempt and Permanent Access Order, this Court's bias and refusal to adjudicate reached its

apex.

16. This Court explicitly admitted on the record that it had not read Plaintiff's Emergency Motion or Supplemental Memorandum, stating: "I won't be ruling today because I can't keep up with the feverish pace of the filings on this."

17. This admission is extraordinary. Plaintiff filed the Emergency Motion **10 days prior** to the hearing, providing ample time for review. The Supplemental Memorandum was filed the evening before the hearing, which is standard practice for supplemental filings.

18. A judicial officer who admits she has not read the motions before a hearing cannot fairly adjudicate those motions.

19. This Court then invited oral argument but permitted only Defense Counsel to speak at length while repeatedly interrupting and cutting off Plaintiff.

20. Defense Counsel falsely stated Defendant had paid Use & Occupancy 'every month.' Plaintiff's December 2, 2025 Supplemental Memorandum documented this pattern with a table showing four consecutive months of late payment. This Court admitted it had not read this Supplemental Memorandum, yet permitted Defense Counsel's false characterization to stand while silencing Plaintiff's disagreement. This was demonstrably false, Defendant paid late in September, October, and November, and had not paid December as of the hearing date. When Plaintiff non-verbally disagreed by shaking his head at this false statement, this Court characterized Plaintiff's reaction as 'histrionics' and ordered him to stop.

21. This Court permitted Defense Counsel's false statements to stand uncorrected while simultaneously characterizing Plaintiff's non-verbal disagreement as improper behavior. This demonstrates clear bias: Defense Counsel may lie, but Plaintiff may not even silently disagree.

22. This characterization of Plaintiff's non-verbal disagreement with false statements as "histrionics" demonstrates hostility toward Plaintiff while simultaneously allowing Defense Counsel to make unchallenged misrepresentations.

23. When Plaintiff attempted to provide facts showing Defense Counsel's statement was false (four consecutive months of late payment documented in Supplemental Memorandum Court admitted not reading), this Court cut Plaintiff off stating "I'm talking."

24. Regarding Defendant's illegal lockout, when Plaintiff explained Defendant changed locks and refuses to provide keys or access codes to property Plaintiff owns, this Court stated: "I'm not getting in the middle of it" and "I'm not getting in the middle of it. Okay, because obviously if there is an issue... he's going to do what he just did contact you to come in and do the repair."

25. This Court's refusal to address Defendant's illegal exclusion of Plaintiff from Plaintiff's own property directly contradicts Illinois law **and** Chicago Residential Landlord and Tenant Ordinance requirements.

26. When Plaintiff attempted to explain the pattern of violations, this Court cut him off and granted Defense Counsel's request to continue the hearing to December 8, 2025.

27. This Court's statement epitomizes the futility of seeking relief before this judicial officer.

28. Plaintiff explained he needed emergency property access to repair ongoing water damage. This Court responded: **"If there is another emergency issue that you need to get in and you can't get in, then file a motion."**

29. **Plaintiff WAS at a hearing on exactly that motion**, the Emergency Motion for Contempt and Permanent Access Order filed November 24, 2025.

30. This Court's instruction to “file a motion” when Plaintiff was literally presenting that motion proves either:

- (a) This Court had not read the motion (as it admitted); or
- (b) This Court would not grant relief regardless of law or evidence.

Either way, Plaintiff cannot obtain fair adjudication before this judicial officer.

31. At the December 3, 2025 hearing, this Court:

- Admitted not reading Plaintiff's filings
- Refused to rule on any issue
- Made no findings on any of five documented violations
- Imposed no consequences for any violations
- Characterized Plaintiff's reaction to false statements as "histrionics"
- Permitted Defense Counsel to speak extensively while silencing Plaintiff
- Refused to address illegal lockout stating "not getting in the middle of it"
- Told Plaintiff to "file a motion" when Plaintiff was at hearing on that exact motion
- Continued hearing to December 8 rather than adjudicating
- Stated she would not rule because she “can't keep up with filings,” then told Plaintiff to “file a motion” when Plaintiff was at hearing on that exact motion, proving either she had not read the motion or would not grant relief regardless of law.

32. The December 3 hearing demonstrates beyond dispute that Plaintiff cannot receive fair adjudication before this judicial officer.

IV. PATTERN OF JUDICIAL CONDUCT (Informational Only - Not Required for Relief)

33. While no cause is required for substitution as a matter of right, Plaintiff respectfully provides the following pattern for the record to demonstrate the need for a judicial officer who will enforce court orders:

A. SEPTEMBER 16, 2025: IGNORING SISTER COURT'S FINDINGS OF FABRICATED EVIDENCE

34. On September 29, 2025, Judge Eve M. Reilly of the Chancery Division entered an Order in related Case 2025CH05527 finding:

- a. Defendant fabricated Exhibit B (equity tracking document);
- b. Defendant fabricated Responses to Requests for Admission;
- c. All 30 Requests for Admission deemed ADMITTED under Illinois Supreme Court

Rule 216, including:

- Admission #21: Defendant is a licensed real estate agent
- Admission #22: Defendant knows oral real estate agreements are void under Illinois law
- Admission #23: Defendant never had a written agreement with Plaintiff
- Admission #15: Defendant texted "Sell the house. I'll move out" on October 9, 2024
- Admission #26: Defendant fabricated the equity tracking document

35. These Chancery findings are binding under principles of comity and issue preclusion.

36. Despite these findings proving Defendant has no valid claim and has fabricated evidence under oath, Judge McCarthy:

- Granted Defendant's Motion to Vacate the default judgment
- Stayed eviction proceedings indefinitely

- Made no reference to the Chancery findings
- Imposed no consequences for the fabricated evidence
- Allowed party who fabricated evidence to continue litigating

37. Granting relief to a party found by a sister court to have fabricated evidence creates appearance of bias and undermines judicial integrity.

**B. SEPTEMBER 16, 2025: USE & OCCUPANCY SET BELOW MARKET RATE
AND MORTGAGE OBLIGATION**

38. At the September 16, 2025 hearing, this Court set Use & Occupancy at \$2,080 per month.

39. Plaintiff provided comprehensive market comparables demonstrating fair market rent for the property is \$3,259 per month.

40. The property is fully furnished with Plaintiff's personal property, including:

- All furniture in living rooms, dining room, and bedrooms
- Kitchen appliances, flatware and cookware
- Bedroom furniture
- Electronics and entertainment systems
- Artwork and decorative items

41. Furnished rental properties command premium rates above unfurnished comparables.

42. Plaintiff's mortgage obligations total \$2,303.69 per month:

- Chase First Mortgage: \$1,625.22/month
- Shellpoint Second Mortgage: \$678.47/month

43. The Use & Occupancy amount of \$2,080 is **\$223.69 below** Plaintiff's mortgage obligation, guaranteeing Plaintiff defaults on mortgages while Defendant occupies the property.

44. This Court's Use & Occupancy order forces Plaintiff to subsidize Defendant's occupancy of property Defendant has no legal right to possess.

45. Illinois law requires Use & Occupancy to reflect fair market value. Setting it below both Plaintiff's carrying costs *and* fair market value while Defendant claims "equity" in the property, is inequitable and creates appearance of bias.

C. SEPTEMBER 16, 2025: VACATING DEFAULT DESPITE CLEAR NOTICE

46. Plaintiff obtained default judgment on July 21, 2025, after Defendant and his attorney failed to appear for trial.

47. Evidence presented to this Court demonstrated:

- a. Attorney Mason Cole received proper notice of trial date and time
- b. Attorney Cole acknowledged the trial date in email communications
- c. Attorney Cole was copied on all case communications and trial exhibits
- d. Plaintiff flew to Chicago from Mexico specifically for the trial
- e. Plaintiff incurred substantial expense and personal hardship to attend trial

48. Despite this evidence of actual notice, this Court granted Defendant's Motion to Vacate.

49. This ruling rewarded Defendant's failure to appear and penalized Plaintiff for following proper procedure.

D. PATTERN OF USE & OCCUPANCY VIOLATIONS WITHOUT CONSEQUENCE

Date	Court Order	Defendant's Violation	Consequence
September 2025	Pay \$3,120 by 9/29/25	Did not pay until motion filed	None - paid after threat
October 2025	Pay \$2,080 on 10/1/25	Did not pay until motion filed	None - paid after threat
November 2025	Pay \$2,080 on 11/1/25	Paid late after attorney contact	None - paid after threat
December 2025	Pay \$2,080 on 12/1/25	Paid late after attorney contact	None - paid after threat

50. On October 1, 2025, this Court found Defendant in contempt for failure to pay September Use & Occupancy as ordered.

51. At the October 8, 2025 contempt hearing, Defendant had paid only after the contempt motion was filed.

52. This Court denied the contempt finding because Defendant eventually paid, establishing the precedent that court orders can be violated with impunity as long as eventual compliance occurs.

53. At the October 8, 2025 hearing, this Court would not allow Plaintiff to speak or present argument regarding the contempt violation.

54. This established pattern: Defendant violates court order → Plaintiff files contempt motion → Defendant pays only after motion filed → No consequence imposed → Pattern repeats.

55. Since September 16, 2025 Order establishing Use & Occupancy obligations, Defendant has violated payment obligations repeatedly:

56. This pattern demonstrates Defendant has learned he can violate any court order without consequence, as long as he eventually complies after Plaintiff files enforcement motions.

57. This Court's refusal to impose sanctions for violations encourages continued non-compliance and forces Plaintiff to file repeated contempt motions for the same ongoing violations.

E. PROPERTY ACCESS VIOLATIONS AND ILLEGAL LOCKOUT

58. On June 5, 2025, this Court entered an Agreed Order requiring Defendant to provide access and cooperation for water damage repairs and property preservation.

59. On November 18, 2025, Defendant reported recurring water leak (same issue from June 2025).

60. Plaintiff scheduled plumber for November 20, 2025, 12:00-2:00 PM, and requested:

- a. Confirmation of access
- b. Door codes to property Plaintiff owns
- c. Immediate cessation of upstairs shower use

61. On November 19, 2025 at 5:25 PM, Defendant confirmed in writing: "I will be available to provide access," only after a call to Defendant's attorney.

62. On November 20, 2025:

- a. 1:57 PM: Plumber called Plaintiff stating he was 45-60 minutes away
- b. 1:59 PM: Plaintiff immediately notified Defendant of delay
- c. 2:55 PM: Plumber arrived at property
- d. Defendant was NOT home despite his written confirmation
- e. Defendant left dogs loose in the property preventing plumber entry
- f. Plumber unable to access property or complete emergency repair

63. Defendant's own email at 2:47 PM falsely claimed he "accommodated" the appointment when he was not present.

64. This willful violation of this Court's June 5, 2025 Order occurred with Defendant's advance knowledge, written confirmation, and immediate notice of delay.

65. On December 3, 2025, this Court heard Plaintiff's Emergency Motion for Contempt and Permanent Access Order and refused to rule.

66. The water leak reported November 18, 2025 has caused ongoing damage for 13+ days while Defendant obstructs repairs.

67. Defendant has unlawfully excluded Plaintiff from property Plaintiff owns by:

- a. Changing the door locks without providing new keys
- b. Removing Plaintiff's administrator access to Google Home security system
- c. Refusing to provide door codes
- d. Refusing to provide physical keys
- e. Denying access even with advance notice and court orders

68. Illinois law prohibits one co-owner from excluding another co-owner from property. Chicago Residential Landlord and Tenant Ordinance § 5-12-050 requires tenants to provide landlords access for repairs.

69. Regardless of Defendant's claimed ownership interest, he cannot legally lock Plaintiff out of the property.

70. This Court's refusal to order Defendant to provide permanent access (keys and codes) perpetuates Defendant's illegal lockout and prevents Plaintiff from fulfilling legal duty to maintain the property under Chicago Municipal Code § 5-12-070.

F. DEFENDANT'S PATTERN: VIOLATIONS WITHOUT CONSEQUENCES

71. Over four months, Defendant has violated court orders in the following manner:

- a. Violates Use & Occupancy payment order
- b. Plaintiff threatens or files contempt motion
- c. Defendant pays late (only after motion filed)
- d. This Court imposes no consequence
- e. Pattern repeats next month

72. Over four months, Defendant has obstructed property access in the following manner:

- a. Reports emergency requiring immediate repair
- b. Confirms he will provide access
- c. Prevents access through various means (not present, dogs loose, doors locked)
- d. Plaintiff files contempt or emergency motion
- e. Defendant offers cooperation only after motion filed
- f. This Court imposes no consequence
- g. Pattern repeats with next repair need

G. CUMULATIVE PATTERN DEMONSTRATING NEED FOR SUBSTITUTION

73. Over the four-month period from September 16, 2025 to December 3, 2025, this Court has:

- a. Ignored sister court's findings that Defendant fabricated evidence under oath
- b. Granted Motion to Vacate to party found to have fabricated evidence
- c. Set Use & Occupancy below fair market rent despite comparables provided

- d. Set Use & Occupancy below Plaintiff's mortgage obligation, forcing Plaintiff to subsidize Defendant's illegal occupancy
- e. Failed to account for property being fully furnished with Plaintiff's belongings
- f. Vacated default judgment despite evidence defense counsel had actual notice of trial
- g. Found contempt for payment violation but imposed no consequence
- h. Refused to allow Plaintiff to speak at October 8 contempt hearing
- i. Allowed four consecutive months of late/non-payment without sanction
- j. Refused to enforce property access order despite documented November 20 violation
- k. Refused to order Defendant provide keys or codes to property Plaintiff owns
- l. Maintained indefinite stay of eviction despite overwhelming evidence

74. This pattern creates appearance that Defendant can violate any court order without consequence as long as he eventually complies after Plaintiff files enforcement motions

75. This pattern creates appearance of bias in favor of Defendant and against Plaintiff.

76. This pattern undermines judicial authority and the integrity of court orders.

77. Plaintiff cannot obtain fair adjudication or enforcement of court orders before this judicial officer.

H. PREJUDICE TO DEFENDANT

78. Defendant will not be prejudiced by substitution as:

- a. No trial on merits has occurred
- b. All substantive issues remain pending
- c. All evidence and motions will transfer to new judicial officer

- d. Defendant has already received extraordinary leniency from this Court
- e. Defendant's only "prejudice" would be loss of favorable judicial officer

V. LEGAL AUTHORITY

79. Illinois Supreme Court Rule 5/2-1001(a)(2) provides: "A party shall be entitled as a matter of right to one substitution of judge without cause."

80. This right is absolute and requires no showing of cause, bias, or prejudice. *Eychaner v. Gross*, 202 Ill. 2d 228, 779 N.E.2d 1115 (2002).

81. The substitution motion must be filed before any substantial proceeding on the merits. *In re Marriage of Wazny*, 2015 IL App (2d) 140530.

82. No trial on merits has occurred. The December 3, 2025 contempt hearing does not constitute a substantial proceeding on the merits. Therefore, this Motion is timely.

CONCLUSION

83. The December 3, 2025 hearing removed any doubt that Plaintiff cannot receive fair adjudication before this judicial officer. A judge who admits she has not read the filings, characterizes plaintiff's reactions as 'histrionics,' refuses to address illegal lockouts, permits defense counsel to make false statements, and tells plaintiff to 'file a motion' when plaintiff is at a hearing on that motion cannot provide impartial adjudication.

84. This is not a case of mere disagreement with rulings. This is a case of systematic refusal to read filings, enforce orders, or adjudicate disputes. Substitution is not just warranted, it is essential to the integrity of these proceedings.

WHEREFORE, Plaintiff BRANDON MCGIVERN respectfully requests this Honorable Court:

A. GRANT Plaintiff's Motion for Substitution of Judge as a matter of right pursuant to 735 ILCS 5/2-1001(a)(2);

B. REASSIGN this case to a different judicial officer in the Municipal Division;

C. TRANSFER all pending motions and matters to the newly assigned judicial officer; and

D. GRANT such other and further relief as this Court deems just and proper.

Dated December 3, 2025

Respectfully submitted,
/s/ Brandon McGivern
Plaintiff

Brandon McGivern
5701 N Sheridan Rd, [REDACTED]
Chicago, IL 60660
[REDACTED]
Plaintiff, Pro Se

CERTIFICATE OF SERVICE

I, Brandon McGivern, a non-attorney, on oath state that on December 3, 2025, I served a true and correct copy of the foregoing **Plaintiff's Motion for Substitution of Judge as a Matter of Right** upon Defendant's counsel via email to:

Mason S. Cole
mcole@colesadkin.com

Attorney for Defendant Kyle Hadley

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth in this instrument are true and correct.

/s/ Brandon McGivern
Brandon McGivern, *Pro Se*

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