

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND
JUDICIAL CIRCUIT, McHENRY COUNTY, ILLINOIS**

AIB

PAUL R. DULBERG	)	
Plaintiff,	)	
v.	)	Case No. 2025LA000360
THOMAS W. GOOCH, et al.,	)	
Defendants.	)	

**PLAINTIFF’S RESPONSE IN OPPOSITION TO POPOVICH DEFENDANTS’ MOTION
REQUESTING A RULE 304(a) FINDING AND ALTERNATIVE REQUEST TO DEFER
RULING**

NOW COMES Plaintiff Paul R. Dulberg, pro se, and respectfully responds in opposition to the Popovich Defendants’ Motion Requesting a Finding Pursuant to Illinois Supreme Court Rule 304(a). Plaintiff asks the Court to deny certification without prejudice. At minimum, the Court should defer ruling until Plaintiff’s timely August 20, 2026 Motion to Reconsider the same August 7 judgment has been briefed and decided. Certification now would place an unsettled order on an appellate track while the one remaining claim, by this Court’s own holding, requires proof that Plaintiff would have prevailed against Popovich and Mast.

I. REQUESTED RELIEF

01. Plaintiff requests an order (a) denying the Rule 304(a) motion without prejudice; or, alternatively, (b) deferring decision and using the August 26 appearance to set a prompt briefing and hearing schedule for the Rule 304(a) motion and Plaintiff’s pending Motion to Reconsider. If the Court is inclined to certify, Plaintiff asks the Court first to decide reconsideration by a separate written order so that any judgment sent to the reviewing court is fixed rather than subject to change in this Court.

II. PROCEDURAL POSTURE

02. On August 7, 2026, the Court dismissed with prejudice Plaintiff’s claims against Thomas J. Popovich and Hans Mast. The Court dismissed the claims against Alphonse Talarico and the Law Office of Alphonse A. Talarico without prejudice and granted Plaintiff 28 days to amend. (Aug. 7, 2026 Memorandum Decision and Order (“Opinion”) at 16-17.)

03. The Opinion expressly held that the remaining Talarico claim cannot be decided without

litigating the merits of the claims against Popovich and Mast. The Court described the claim as “a case within a case, within a case” and required Plaintiff to plead and prove all of the following:

(1) that the Talarico Defendants committed malpractice in the appeal of 2017LA-377; (2) but for that malpractice, Plaintiff would have prevailed in the appeal; and (3) upon remand and reinstatement of 2017LA-377, Plaintiff would have prevailed in his malpractice claim against the Popovich Defendants, including proving that he would have obtained a better result in 2012LA-178.

(Opinion at 16.)

04. On August 20, 2026, Plaintiff filed a Motion to Reconsider the dismissal of Popovich and Mast. That motion is directed to the identical judgment the Popovich Defendants now ask the Court to certify and may alter or eliminate issues proposed for immediate appeal.

05. The Popovich Defendants nevertheless contend that their dismissal rests on grounds “largely independent” of the remaining claims and that any later appeal concerning the Talarico Defendants would involve “unrelated” issues. (Popovich Motion, ¶¶ 17, 20-21.) Those assertions cannot be reconciled with the Opinion’s express case-within-a-case holding.

06. The Opinion’s statement that the Court would “consider” later Rule 304(a) requests merely preserved the parties’ ability to request certification; it did not decide that certification would be warranted. Nor does the Popovich Defendants’ decision not to seek Rule 137 sanctions make their dismissal separate from the remaining Talarico claim. Flynn’s fee petition is a collateral remaining matter, but the Talarico claim itself expressly requires proof that Plaintiff would have prevailed against Popovich and Mast.

III. RULE 304(a) REQUIRES A CASE-SPECIFIC FINDING THAT IMMEDIATE APPEAL IS JUST

07. Rule 304(a) is an exception to the ordinary rule against appeals before all claims and parties are resolved. A final order disposing of fewer than all claims or parties is immediately appealable only if the trial court expressly finds no just reason to delay enforcement or appeal. Ill. S. Ct. R. 304(a). Certification is discretionary, not automatic merely because the order finally disposed of one party. *AT&T v. Lyons & Pinner Electric Co.*, 2014 IL App (2d) 130577, ¶¶ 19-23.

08. The governing factors include: (1) the relationship between adjudicated and unadjudicated

claims; (2) whether future developments in the circuit court might moot appellate review; (3) whether the reviewing court might be required to consider the same issue a second time; (4) the presence of a setoff; and (5) miscellaneous concerns such as delay, expense, judicial economy, and shortening the time of trial. *Id.* ¶ 22 (citing *Geier v. Hamer Enterprises, Inc.*, 226 Ill. App. 3d 372, 383 (1992)).

09. The Second District further explains that significant factual overlap means the claims are not truly separate for Rule 304(a) purposes and appellate review should be deferred. *AT&T*, 2014 IL App (2d) 130577, ¶ 23. The rule also permits a certification to be entered later. Ill. S. Ct. R. 304(a). Thus, deferral preserves every legitimate appellate right while avoiding a premature and potentially duplicative appeal.

IV. ARGUMENT

A. The Court's own findings establish that the dismissed and remaining claims are intertwined.

10. The first and most important factor strongly defeats certification. The Opinion does not describe the Popovich/Mast issues as standalone. It says the opposite: to prevail against Talarico, Plaintiff must prove that the appeal of 2017LA-377 should have succeeded and that, after remand, Plaintiff would have prevailed against Popovich and Mast. (Opinion at 16.)

11. That required proof necessarily overlaps the issues the Popovich Defendants seek to place before the appellate court now: the viability of the claims arising from their representation, the limitations and accrual analysis applied in 2017LA-377 and this case, the effect of *res judicata* and collateral estoppel, the merits of the underlying 2012LA-178 matter, and causation and damages. Labeling the dismissal grounds “legal” does not make the claims independent when the remaining claim requires the same legal and factual propositions to be proved.

12. An immediate appeal could therefore require the Second District to decide the viability of the Popovich/Mast claims while this Court simultaneously requires Plaintiff to plead and litigate that same viability as an element of the Talarico claim. That is the fragmentation Rule 304(a) is designed to prevent.

B. The pending Motion to Reconsider may alter or moot the proposed appeal.

13. The second factor independently supports deferral. Plaintiff's August 20 Motion to Reconsider asks this Court to revisit the exact judgment for which certification is requested. If reconsideration is granted in whole or in part, the scope of any appeal changes or disappears. If reconsideration is denied, a later appeal proceeds on a complete and fixed record that includes this Court's disposition of the asserted errors.

14. Appellate procedure ordinarily sequences a timely postjudgment motion before appellate review becomes effective. See Ill. S. Ct. R. 303(a)(2); Ill. S. Ct. R. 274. That sequencing serves an obvious purpose: the trial court receives the first opportunity to correct or clarify its judgment, and the reviewing court receives one settled order. The same orderly sequence is appropriate here as a matter of Rule 304(a) discretion.

15. The Popovich Defendants' motion does not address the reconsideration motion because their motion was filed two days earlier. The Court therefore should not make the required no-just-reason finding on a record that omits the most important present development: a timely request that the Court change the very judgment proposed for certification.

C. Certification creates a substantial risk of duplicative review and inefficient parallel proceedings.

16. The third and fifth factors also favor denial. Immediate certification would permit an appeal concerning Popovich and Mast while the amended Talarico case proceeds here. The same 2012LA-178 and 2017LA-377 records, the same alleged attorney conduct, and the same questions of appellate success, underlying success, causation, and damages would be developed in two courts at the same time.

17. A later ruling on the Talarico claim could produce a second appeal requiring the Second District to revisit those same issues. Conversely, resolution of reconsideration or development of the amended claim may narrow, clarify, or moot issues. One coherent appeal from a settled record conserves substantially more resources than two overlapping appellate tracks.

18. The setoff factor is neutral because the August 7 dismissal awarded the Popovich Defendants no money and there is no setoff issue. The remaining considerations—delay, expense, and judicial economy—favor only the short and orderly deferral requested here.

D. The Popovich Defendants identify no concrete hardship that justifies immediate certification.

19. The Popovich Defendants have been dismissed with prejudice. Unless that judgment is changed, they face no trial, discovery, or merits obligation in the ongoing Talarico proceeding. Nor is there a money judgment or other relief requiring immediate enforcement. Waiting until the pending reconsideration motion is decided causes no concrete prejudice.

20. The stated desire that the dismissal be appealed now or become “set-in-stone by way of an expired time to appeal” (Popovich Motion, ¶ 17) is not a Rule 304(a) hardship. Every prevailing party prefers finality. If that preference alone established no just reason for delay, the exception would swallow the rule against piecemeal appeals.

21. The motion’s reference to Plaintiff’s prior litigation and alleged “incessant motion-filing” is likewise not one of the governing factors and does not make related claims separate. The relevant filing is a timely motion directed at the exact judgment proposed for certification. It should be decided on its merits before this Court places the same judgment on an appellate track.

E. The Popovich Defendants’ authorities do not establish that this dismissal is standalone.

22. *Levine v. EBI, LLC*, 2013 IL App (1st) 121049, ¶ 17, is materially distinguishable. *Levine* affirmed certification because immediate review of EBI’s central role would facilitate resolution of the claims against the remaining defendants. It did not involve a pending motion to reconsider the certified judgment or an express holding that the remaining claim required proof that the plaintiff would have prevailed against the dismissed parties. More importantly, the later Second District decision governing this Court holds that significant factual overlap means the claims are not separate and that appellate review must be deferred. *AT&T*, 2014 IL App (2d) 130577, ¶ 23.

23. *In re Marriage of Berto*, 344 Ill. App. 3d 705, 710 (2d Dist. 2003), is materially distinguishable. There, the circuit court found that the certified attorney-fee issue had “absolutely nothing to do with” the remaining Rule 137 matter and was “stand-alone,” and the respondent did not object to certification. *Id.* Here, Plaintiff timely objects, and the circumstances are the opposite: the Opinion expressly requires Plaintiff, as part of the remaining Talarico claim, to plead and prove that he would have prevailed against Popovich and Mast. Thus, unlike the

claims in Berto, the dismissed and remaining claims here are legally and factually intertwined.

24. *Matson v. Department of Human Rights*, 322 Ill. App. 3d 932, 938 (2001), asks whether immediate review would expedite the controversy, be fair, and conserve resources. Those considerations favor a brief deferral until reconsideration is decided and the amended Talarico pleading defines the remaining claim.

F. At minimum, the Court should defer ruling and establish a coordinated schedule.

25. Rule 304(a) expressly allows the finding to be entered later. Denial without prejudice or a short deferral therefore forfeits nothing. It permits the Court to decide reconsideration first, review the amended Talarico pleading, and then determine on an accurate record whether any discrete issue remains suitable for immediate appeal.

26. If the Court does not deny the motion on August 26, Plaintiff asks that the appearance be limited to setting a prompt response/reply and hearing schedule for the Rule 304(a) motion and the pending Motion to Reconsider. If the Court ultimately grants certification over Plaintiff's objection, Plaintiff asks that the Court first dispose of reconsideration by separate written order and then identify precisely the judgment and issues being certified. If certification is nevertheless granted, Plaintiff respectfully requests that the Court state its findings concerning the Geier factors, including the significance of the Opinion's case-within-a-case requirement and the pending Motion to Reconsider, so that the basis for certification is clear in the record.

V. CONCLUSION

WHEREFORE, Plaintiff Paul R. Dulberg respectfully requests that this Court deny the Popovich Defendants' Motion Requesting a Rule 304(a) Finding without prejudice; alternatively, defer ruling and set a coordinated briefing and hearing schedule after which the Court may reassess certification on a settled record; and grant such other and further relief as the Court deems just.

Respectfully submitted,

/s/ Paul R. Dulberg

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VERIFICATION BY CERTIFICATION PURSUANT TO 735 ILCS 5/1-109

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 that he verily believes the same to be true.

/s/ Paul R. Dulberg

Paul R. Dulberg

CERTIFICATE OF SERVICE

I certify that on August 23, 2026, I served a true and complete copy of the foregoing through the Illinois e-filing system on all registered counsel and parties of record and by email at the addresses listed below:

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