

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

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State ex rel. Peter Stephenson a/k/a  
Peter Rickmyer, Peter Rickmyer

Court File No. 27-CV-11-11012  
The Honorable Philip D. Bush

Plaintiff,

**ORDER REGARDING REMOVAL TO  
FEDERAL COURT**

v.

Joan Fabian, in her capacity as Minnesota  
Commissioner of Corrections, and her  
successor, Tom Roy, in his official capacity,  
Jeff Peterson, in his individual capacity, Will  
McDonald, in his individual capacity, John  
Hoff, an individual, Megan Goodmundson, an  
individual, Michael “Kip” Browne, an  
individual, and John Does 1-3,

Defendants.

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The above-captioned matter was previously scheduled for dispositive motions by Defendants. The motion hearing was originally scheduled for July 17, 2012 and then rescheduled for October 10, 2012 because Plaintiff’s counsel was not available. On September 1, 2012, Plaintiff filed a Notice of Filing Notice of Removal (“Removal Notice”) with the Court. The Removal Notice stated that on August 10, 2012, Plaintiff filed a petition for removal of the above-referenced matter to the United States District Court for the District of Minnesota. Based on the Removal Notice, the Court cancelled the October 10, 2012 motion hearing.

The Court is issuing this Order in an attempt to clarify Plaintiff’s intentions, the status of this case and to facilitate an expeditious resolution of this action. Ordinarily, a plaintiff cannot remove a state court action to federal court. *See* 28 U.S.C.A. § 1441(a)

“Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed *by the defendant or the defendants*, to the district court of the United States for the district and division embracing the place where such action is pending.”) (emphasis added). Nevertheless, Plaintiff has clearly signaled an intention to remove this action and pursue it in federal court rather than in state court, thereby concluding this state court action.

Given the previous delays in proceeding with the litigation of this action and the dictate for an expeditious determination of every action,<sup>1</sup> Plaintiff must now make a conclusive determination of whether he intends to pursue his action in another forum. To that end, the Court is directing Plaintiff to notify the Court, in writing and within ten days of the date of this Order, whether Plaintiff intends to pursue this action in state court. Silence will be construed as an affirmation that Plaintiff has indeed opted to pursue this action in federal court rather than state court, in which case this state court action will be dismissed with prejudice for failure to prosecute but with the caveat that the dismissal does not operate as an adjudication upon the merits with respect to any federal court action.<sup>2</sup>

Based upon all the files, records, and proceedings herein, the Court makes the following:

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<sup>1</sup> See Minn. R. Civ. Proc. 1.

<sup>2</sup> The Court will retain jurisdiction over Defendant Michael Browne’s pending application for an award of attorney fees.

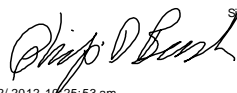
**ORDER**

1. By no later than October 22, 2012, Plaintiff shall notify the Court in writing, and serve the other parties, whether Plaintiff intends to pursue this action in state court or in federal court.

2. If Plaintiff fails to notify the Court that Plaintiff intends to pursue this action in state court rather than federal court or if Plaintiff notifies the Court that Plaintiff intends to pursue this action in federal court, the Court will issue the following Order for Dismissal: “Pursuant to Rule 41.02 of the Minnesota Rules of Civil Procedure, this action is hereby dismissed with prejudice for failure to prosecute. However, for purposes of any federal court action, this dismissal does not operate as an adjudication upon the merits.”

3. If Plaintiff notifies this Court in writing by October 22, 2012 that he intends to continue to pursue this action in state court, all of the motions previously scheduled for October 10, 2012 will be heard on **November 7, 2012 at 1:30 p.m.**

BY THE COURT:

The image shows a handwritten signature in black ink that reads "Philip D. Bush". To the right of the signature, there is a small, faint stamp that says "SGPlus1".

10/12/2012 12:25:53 am

Dated: October 12, 2012

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Philip D. Bush  
Judge of District Court