

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 02-21256-CIV-JORDAN

JOHN B. THOMPSON,)

vs.)

The FLORIDA BAR, et.al.,)

Defendants.)

_____/

Motion for Permissive Intervention Under Rule 24

Comes now the undersigned, Norman Elliott Kent, as an Intervenor, and as an Attorney at Law in good standing in the State of Florida, and admitted to practice in the Southern District and represents to this Court as follows:

1. First and foremost, while the undersigned has reviewed thoroughly the legal pleadings filed by the Plaintiff in the above-styled cause, a vast amount of which attack me personally, as the case sits presently, there is no good cause for Intervention as a Matter of Right under Rule 24 of the Federal Rules of Procedure. As the Court noted in one of its Orders, the undersigned has no dog in this fight, notwithstanding the growling of the Plaintiff to the contrary.

2. Second, Rule 24 does however provide permissive intervention through the grace of the court, and this may be

allowed for purposes within the Court's broad discretion. Fed. R. Civ. P. 24(b).

3. "Permissive intervention under Fed. R. Civ. P. 24(b) is appropriate where a party's claim or defense and the main action have a question of law or fact in common and the intervention will not unduly prejudice or delay the adjudication of the rights of the original parties." Mt. Hawley Ins. Co. v. Sandy Lake Prop., Inc., 425 F.3d 1308, 1312 (11th Cir. 2005) (quoting Georgia v. United States Army Corps of Eng'rs, 302 F.3d 1242, 1250 (11th Cir. 2002)).

4. The determination of whether permissive intervention is proper in a case is a multiple step process. First, the Court must determine if the application is timely. Next, the Court must determine whether the applicant's claims or defenses and the main action share common questions of law or fact. If this requirement is satisfied, the Court then exercises its discretion in determining whether intervention should be allowed. Reliance Insurance Co. v. Core Carriers, Inc., No. 3:06-cv-585-J-20MCR (M.D.Fla. 04/11/2007)

5. In the instant cause, the request for intervention is non-time consuming and will not delay an adjudication of the rights of the parties on the merit. The intrusion is minimal, and the Intervenor's claim is laid out solely within the contents of this pleading.

6. The Plaintiff has filed a document, number 174, belatedly and inappropriately seeking to name the undersigned as a party Defendant. The claim is legally

insufficient in a number of ways, including but not limited to a) having failed to attach with the motion the entirety of the claim itself, thus leaving this court to render a judgment on an as yet unfilled, speculative pleading which does not exist. Further, as this Court ruled in its Order of October 5, 2007, no additional amendments would be allowed absent a showing of good cause. Regardless, a close judicial review of the Plaintiff's motion (D.E. 174) reveals a tendering of matters entirely irrelevant to this cause of action.

7. As the Court has already noted in the Plaintiff's similarly related application to join His Honor as a party defendant, the claim must be denied because none of the prospective allegations arise out of the same transaction or occurrence as the claims presently pending in this case, even if good cause had been alleged. See Fed.R.Civ.P.20 (a). There is no good cause shown to make the undersigned a Defendant in this cause, and it would surely delay a disposition on the existing merits of the action.

8. Lastly, none of the Plaintiff's claims are timely. After numerous amendments and the Court's Omnibus Order of September 7, 2007, document 88, this case could be at its closing stages, with a final ruling as early as today after the oral arguments. Nor did the Plaintiff proffer to this Court that he made a good faith attempt to resolve these issues with opposing counsel prior to submitting his 'Motion to Amend Complaint,' as local rules require.

9. A district court is vested with broad discretion to decide a motion for permissive intervention. United States v. Dallas County Comm'n., 850 F.2d 1433, 1443 (11th Cir. 1988); Sellers v. United States, 709 F.2d 1469, 1471 (11th Cir. 1983). The Intervenor's requests herein are thus limited to the arguments asking this Court to deny an additional amended complaint to the Plaintiff, and two minor matters asserted below.

10. The Plaintiff has attempted to make the undersigned an issue in this cause, by filing a document, number 115, attachment #1, which is apparently a letter to various law enforcement authorities, concerning the Plaintiff. The undersigned recognizes this forum is not the proper place to litigate the allegations of the Plaintiff therein, nor does he seek to do so. However, the attachment so submitted to the Court was of a sufficiently offensive nature so as to provide the Court with legitimate concerns to place it under seal.

11. The undersigned also requests a limited intervention so that he may ask this Court to enter an order directing its clerks to release the sealed attachments in question to the undersigned, who clearly was the target of the Plaintiff's untoward correspondence.

12. Prior to making this request, the undersigned exhausted his remedies by asking counsel for the Defendants' to voluntarily produce the same, but in all fairness to them, they respectfully declined, as counsel for the Florida

Bar did not think it was prudent to release to any parties a document under Court seal.

13. As the Plaintiff elected not to provide the undersigned with copies of this potentially defamatory document which he unilaterally sent to law enforcement authorities, the proposed Intervenor's only relief is a request directly to this Court.

14. Having reviewed the file in the above styled cause, and seen the numerous and varied intemperate comments to the Court by one of the parties, the undersigned submits that the prudent course of action is not to write a letter to the Court in the form of correspondence by mail, but to notify all parties and submit this request under Rule 24. Additionally, Local Rule 7.7 looks with disfavor upon directly corresponding with the Court, for "relief in any form."

15. As this Court has suggested these under seal documents and attachments have or will be sent to third parties who are members, under the Local Rules, of the *Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance* this request is appropriate and proper as the undersigned and one of his non-law related entrepreneurial ventures, *Nationalgaynews.com*, are the named parties and targets of its contents.

16. Again, the undersigned does not seek to debate or address any of the contents therein, as they are inappropriate within the context of this case. I simply

request an order granting me the documents in question.

17. The litigation privilege provides a near, but not absolute immunity, for libelous claims made within judicial proceedings, also not a matter to be contested herein. But the undersigned asserts that because of the purported offensive nature of the communication at issue, this is a good faith request for the sealed documents, as it may be an exhibit in future causes of action.

18. Finally, its release and this limited intervention will not impede the cause of action before this court, or cause prejudice to any of the parties. Permissive intervention, which is given broad latitude, only "requires an interest sufficient to support a legal claim or defense." Laube v. Campbell, 215 F.R.D. 655, 659 (N.D. Ala. 2003) (citing Diamond v. Charles, 476 U.S. 54, 77 (1986)).

19. In summary, Intervention under Rule 24 is appropriate for the limited purposes stated. The undersigned does not want to be sued and named as a party defendant in a cause of action he has nothing at all to do with no matter how strained the logic of the Plaintiff in asserting such a claim. Second, the undersigned maintains a legitimate professional and personal interest in securing potentially defamatory documents authored by the Plaintiff.

20. The undersigned respectfully addresses one sole issue as to the contents of the matters this Court has placed under seal. The Plaintiff was not without prior knowledge that these types of documents were inappropriate

for submission to this Court. The proposed Intervenor requests this court take judicial notice of its Attachment #1, an order entered by the Supreme Court of the State of Florida on April 12, 2007, advising the Plaintiff that the inclusion of graphic and pornographic pictures of sexual acts was inappropriate in a legal pleading. Thus, the Plaintiff had been forewarned six months ago by the highest court in the State of Florida that his conduct was unprofessional.

21. Should this Court elect, under its authority, to refer this matter to *Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance*, the undersigned would respectfully request this Court allow me the privilege to submit to said committee those pleadings and documents submitted in this cause by the Plaintiff which the undersigned proffers may arguably be violations of Rule 11's limitations on good faith pleadings. The proposed Intervenor would respectfully submit that multiple filings include false allegations which were submitted for an improper purpose, without a factual foundation, and are wholly irrelevant to the causes at issue.

22. Under the local rules of the committee, it would appear such a referral may only be made by the Court. The undersigned may not have a stake in the Plaintiff's proceedings with the Florida Bar and its ultimate outcome, but he does have a stake in protecting his dignity and honor against the thus-far uncontested allegations made repeatedly

in numerous pleadings by the Plaintiff.

23. It is respectfully submitted that the appropriate forum at this time in which to raise such grievances would be with this District's *Ad Hoc Committee on Peer Review*, governed by judicious procedures articulated in our Local Rules. The proposed Intervenor requests from this Honorable Court the latitude in which to proffer such claims.

Respectfully submitted,

Norman Elliott Kent
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Clerk of the Court, to all parties in this cause utilizing the CM/ECF Pacer System of the United States District Court, including Barry Richard, Katrina Sharpe, John B. Thompson, and Charles Fahlbusch.

**By Norman Elliott Kent
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