

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAURENCE DILWORTH, WILLIE)
COCHRAN, CAROLYN REED, and)
ELBERT DAVIS,)
)
Plaintiffs,)
)
and) No. 2:04-cv-73152
)
THE UNITED STATES OF AMERICA,) THE HON. ROBERT H. CLELAND
) MAGISTR. JUDGE R. STEVEN WHALEN
)
Plaintiff-Intervenor,)
)
v.)
)
CITY OF DETROIT,)
)
Defendant.)
)

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
THE UNITED STATES' MOTION TO INTERVENE

At the request of the Court, the United States submits this Supplemental Memorandum in Support of the United States' Motion to Intervene. When the Court granted the United States' Motion to Intervene on March 30, 2005, it requested this Supplemental Memorandum to address the procedural requirements that apply to the United States' Motion to Intervene, and specifically, whether the Complaint in Intervention that accompanied the United States' Motion to Intervene is required.

A Motion to Intervene Shall be Accompanied by a Pleading

Federal Rule of Civil Procedure 24(c) sets out the procedural requirements for intervention under Rule 24. In relevant part, Rule 24(c) states:

A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

Rule 24(c) thus states that a motion to intervene “shall be accompanied by a pleading.”¹ As the United States’ role in this case is as plaintiff-intervenor, the appropriate pleading to accompany its motion to intervene is a complaint.

A Motion to Intervene filed without an accompanying pleading is considered a procedurally defective motion and may be denied for that reason. Retired Chicago Police Ass’n v. City of Chicago, 7 F.3d 584, 595 (7th Cir. 1993); In re Pioneer Investment Servs. Co. v. Valley Fidelity Bank & Trust Co., 106 B.R. 507, 510 (E.D. Tenn. 1989); see also United States v. City of Milwaukee, 144 F.3d 524, 527 (7th Cir. 1998) (district court denied applicant’s motion to intervene because of its failure to attach a pleading within the meaning of Rule 7(a), but did so without prejudice and invited the applicant to file a compliant motion). Courts have also held that the intervenor-applicant may not simply adopt the allegations of the plaintiff’s complaint in lieu of filing its own complaint with its motion. Retired Chicago Police Ass’n, 7 F.3d at 595; Shevlin v. Schewe, 809 F.2d 447, 450 (7th Cir. 1987).

The purpose of Rule 24(c)’s requirement that the motion be accompanied by a pleading is to provide notice to the parties and the Court of the position that will be asserted by the applicant

¹ Federal Rule of Civil Procedure 7(a) instructs that a “pleading” is one of the following: a complaint or an answer, a reply to a counterclaim, an answer to a cross-claim, a third-party complaint, or a third-party answer.

if intervention is allowed. Piedmont Paper Prods., Inc., et al., v. American Fin. Corp., 89 F.R.D. 41, 42-43 (S.D. Ohio 1980); see also United States v. State of Michigan, 115 F.R.D. 621, 623 (W.D. Mich. 1987). An applicant's memorandum, without a pleading, may be insufficient to identify "what specific relief [the applicant] expected and how it was to be achieved." Shevlin, 809 at 449 ("Lawsuits cannot be tried merely on memoranda."). This rationale supports the United States' filing of its Complaint in Intervention since the United States' interest and position in this case are not identical to those of the Plaintiffs. While the United States and the Plaintiffs assert similar allegations, the United States is a separate party from the Plaintiffs in this litigation, and has a separate, protectable interest justifying its intervention in this matter.² In entering this action, the Department of Justice does not become the representative of the individuals who are Plaintiffs in this action; rather the Department represents the United States and the public interest. Consequently, it would be improper for the United States to adopt the Plaintiffs' Complaint as its own, even though many of its allegations overlap with the Plaintiffs'.³

Compensatory Damages for Complainants

As represented in the status call with the Court on March 30, 2005, the United States is fully committed to attempting to resolve this case through the court-ordered mediation process

² An intervenor's complaint may differ from the original plaintiff's complaint. In fact, a court may reject, as deficient, a motion to intervene where no separate complaint is presented. See, e.g., Retired Chicago Police Ass'n., 7 F.3d at 595 (The applicant for intervention attempted to expand the scope of the plaintiff class beyond that defined in the original plaintiff's complaint, but did not attach a complaint to its motion. The Court would have granted the motion had the intervenor-applicant filed a complaint setting out its distinct position.)

³ The United States does not object to allowing the City to defer filing an Answer to the Complaint as long as the parties are conducting good-faith mediation and settlement talks.

already in place. The United States' foremost interest in this case is to ensure that individuals with disabilities are able to consistently use the City's fixed route bus system. This interest is best served by the parties' reaching an effective resolution through settlement as soon as possible. The Court's concerns that the United States' inclusion of a request for compensatory damages might interfere with efficient resolution of this case through mediation are well-heard, and the United States reaffirms, herein, that the United States will not seek monetary damages in the course of the parties' on-going settlement negotiations and any agreement that results therefrom.

The United States' primary concern is injunctive relief. That said, practical, technical, and policy reasons, fully separate from the mediation process, underlie our request that the Court reconsider its concerns regarding the appropriateness of the United States retaining its claim for damages in its Complaint in Intervention. As provided for under title II of the ADA and section 504 of the Rehabilitation Act, the United States' Complaint in Intervention includes a request for compensatory damages, according to proof, for individuals aggrieved as a result of the City's inaccessible bus system. Where the facts appear to support such an award, it is the policy of the United States to seek compensatory damages in addition to injunctive relief. Inclusion of a request for compensatory damages in the pleading, even where settlement without damages is fully anticipated, promotes consistency in the United States' enforcement of the ADA and section 504 across jurisdictions, and ensures that the full panoply of relief is available should the parties' good faith attempts at settlement prove unsuccessful. Inclusion of a claim for damages in the pleading also ensures the factual and legal basis necessary to preserve the United States' request for a jury trial under Federal Rule of Civil Procedure 38 and the Seventh Amendment. Thus, the United States requests, for the reasons discussed herein, the Court's permission to file its proposed Complaint in Intervention without amendment.

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2005, I electronically filed the following with the Clerk of the Court using the Electronic Case Management System: Supplemental Memorandum in Support of the United States' Motion to Intervene.

I further certify that copies of this filing were mailed by Federal Express Overnight Delivery to the following non-ECF participants:

Richard H. Bernstein
Marya Sieminski
Law Offices of Samuel I. Bernstein
31100 Northwestern Highway
Farmington Hills, Michigan 48334

Valerie A. Colbert-Osamuede
Andrew R. Javis
City of Detroit Law Department
660 Woodward Avenue
1650 First National Building
Detroit, Michigan 48226

 /s/ Amanda Maisels
Amanda Maisels