

2001 WL 1175141

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United States District Court, E.D. Pennsylvania.

THE UNITED STATES OF AMERICA, Plaintiff,
v.
LAW SCHOOL ADMISSION COUNCIL, INC.,
Defendant.

No. Civ.A. 99-6209.

|
Aug. 7, 2001.

ORDER-MEMORANDUM

PADOVA, J.

*1 AND NOW, this 7th day of August, 2001, upon consideration of the 3rd Party Request to Intervene (“Request”) of Thomas E. Scherer (“Scherer”) (Doc. No. 24), and the responses of Plaintiff, the United States of America (“the Government”) (Doc. No. 28), and Defendant, Law School Admission Council (“LSAC”) (Doc. No. 26), IT IS HEREBY ORDERED that said Request is DENIED.

Scherer, acting pro se, has not made clear the precise claim he seeks to bring before the Court in this matter. A person moving to intervene must file with the motion “a pleading setting forth the claim or defense for which intervention is sought.” Fed.R.Civ.P. 24(c). Scherer states that he submits his Request “as both the motion to intervene and the pleading as specified in Rule 24c [sic].” (Req. at 1.) Scherer attached to the Request a document that he claims is a copy of the complaint in a civil action in the United States District Court for the District of Kansas; the document bears no stamp indicating that it was filed in that court, although it bears the “case number” 01-2085-JWL. In the complaint, Scherer, the plaintiff, brings claims against two defendants: UMKC School of Law and LSAC. Scherer complains of a denial of admission by UMKC School of Law and denial of his request for reasonable accommodation by LSAC. In responding to Scherer’s Request, the parties to this action have treated the complaint in the Kansas action as the claim Scherer wishes to bring before this Court in this action, and the Court will so treat it. Nevertheless, whether Scherer intends to pursue all or part of the action

he claims to have filed in Kansas remains unclear.

Scherer states four grounds for intervention in this action:

- (1) Both cases involve the same defendant the LSAC.
- (2) The cause of action in both cases is regarding LSAC documentation prior to granting reasonable accommodation on the law school exam.
- (3) The United of America [sic] Department of Justice as the plaintiff has the right to intervene.
- (4) The parties seeking relief are all disabled individuals who have requested reasonable accommodation.

(Req. at 1-2.)

Scherer has not specified whether he seeks intervention of right or permissive intervention, both of which are provided under Federal Rule of Civil Procedure 24.

Upon timely application anyone shall be permitted to intervene in an action:

- (1) when a statute of the United States confers an unconditional right to intervene; or
- (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by the existing parties.

Fed.R.Civ.P. 24(a).

Scherer has not demonstrated an unconditional statutory right to intervene. Nor has he satisfied the four requirements for intervention pursuant to Rule 24(a)(2): (1) timeliness; (2) sufficient interest in the litigation; (3) threat of impairment of the applicant’s interest by disposition of the action; and (4) inadequacy of representation of the applicant’s interest by parties to the litigation. *Kleissler v. U.S. Forest Service*, 157 F.3d 964, 969 (3d Cir.1998); *Harris v. Pernsley*, 820 F.2d 592, 596 (3d Cir.1987).

*2 Scherer’s application is untimely, as the claim filed in

Kansas raises issues unrelated to the case at bar and would broaden the scope of litigation to the prejudice of the parties. Scherer's case in Kansas names as defendants UMKC School of Law as well as LSAC and raises issues surrounding the school's admission decision, which are unrelated to the matter before this Court. The Government argues that Scherer requested testing accommodation on the basis of a mental impairment, whereas the instant case seeks relief for persons with physical impairments. Defendant, characterizing Scherer's claim differently-as a claim that LSAC had no right to ask him for documentation-also argues that it raises unrelated issues. Scherer brings claims under the Americans with Disabilities Act ("ADA"), the Civil Rights Act and the Rehabilitation Act as well as a privacy claim, whereas the instant case involves only the ADA. Scherer has offered no justification for his delay in seeking to intervene, and has not explained why he first initiated action in another forum. Intervention by Scherer would disrupt both the discovery track and the settlement track that are well under way in this matter, unduly prolonging this litigation.

Scherer has failed to demonstrate a sufficient interest in the litigation at bar, or the threat of impairment of such an interest by disposition here. The Government argues that Scherer is outside the group of persons for whom the Government seeks relief-namely, persons with physical impairment, and therefore, Scherer has not shown that the instant litigation implicates his position. Defendant argues that Scherer has failed to identify the interest that the instant litigation jeopardizes, and that Scherer mischaracterizes the nature of this action as involving "all disabled individuals who have requested reasonable accommodation." Defendant argues that, as Scherer falls without the ambit of the Complaint in this matter, disposition of the instant case will have no stare decisis effect upon him. The Court agrees that Scherer fails to establish an interest in the subject of this action that would be imperiled by disposition without his participation.

Finally, Scherer has failed to overcome the presumption

that a government entity charged by law with representing a national policy is presumed adequate for the task. *Kleissler*, 157 F.3d at 972. Therefore, Scherer has not established that he is entitled to intervention of right.

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common.

Fed.R.Civ.P. 24(b). Furthermore, "[i]n exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Id.*

The ambiguity of the Request as to the specific claim that Scherer seeks to bring before the Court renders difficult a determination of whether Scherer's claim poses a question of fact or law in common with the instant matter. However, even if a common question existed, Scherer's intervention would so unduly delay resolution of this matter as to make intervention unfair.

*3 Accordingly, the Court denies the Request on the grounds that Scherer has failed to demonstrate that he is entitled either to intervention of right or permissive intervention, and intervention would unduly delay resolution of this action and burden the parties.

All Citations

Not Reported in F.Supp.2d, 2001 WL 1175141