

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF OHIO  
 EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY )	)
COMMISSION )	) CIVIL ACTION 1:03CV2023
Plaintiff )	)
v. )	) JUDGE KATHLEEN McDONALD
S & Z TOOL & DYE CO., INC. )	) O'MALLEY
COMPANY, )	)
Defendants. )	) <u>MOTION BY MOLLY BARON TO</u>
_____ )	) <u>INTERVENE, INSTANTER</u>
)	)
)	)

Now comes Molly Baron, by and through authorized counsel, and moves this Court to permit her to intervene, instanter, in the within action as a party Plaintiff. Molly Baron brings this motion pursuant to Federal Rule of Civil Procedure 24(a)(1) and (2). The grounds for this Motion are as follows:

1. 42 U.S.C. 2000(e)-5(f)(1), Title VII, confers an unconditional right upon a party aggrieved to intervene in a civil action brought by the Equal Employment Opportunity Commission; and
2. Molly Baron is an aggrieved party in that she is the charging party in the action being brought by the Equal Employment Opportunity Commission; and
3. The Intervenor-Plaintiff is filing this Motion to Intervene under Federal Rule of Civil Procedure 24(a) as a matter of right. The disposition of this action will, as a practical matter, impair or impede Intervenor-Plaintiff's ability to protect her interests, unless this Court grants the intervention; and
4. Intervenor-Plaintiff has already been involved with the Plaintiff EEOC in preparing the instant litigation. The EEOC has no objection to the granting this Motion to Intervene; and

5. Intervenor-Plaintiff is proposing to file in her complaint a state law claim the EEOC has no jurisdiction to raise in this matter, which claim allows her remedies beyond those available under federal law; and

6. Intervenor-Plaintiff's claims involve questions of law and fact common to those in the pending action; and

7. Intervenor-Plaintiff's ability to protect her interests will be substantially impaired if she is not joined as a Plaintiff to this action; and

8. Intervenor-Plaintiff's interests are not adequately represented by the present parties; and

9. This Motion is being brought in a timely manner, the Complaint having been filed on September 30, 2003, the Answer having been filed November 10, 2003, and no CMC conference yet having been conducted.

A copy of the proposed complaint of Molly Baron against the Defendant S & Z Tool & Dye Co., Inc. is attached. The grounds are set forth with particularity below.

Respectfully submitted,

s/ Dennis J. Niermann  
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EQUAL EMPLOYMENT OPPORTUNITY )	)
COMMISSION )	) CIVIL ACTION 1:03CV2023
Plaintiff )	)
v. )	) JUDGE KATHLEEN McDONALD
S & Z TOOL & DYE CO., INC. )	) O'MALLEY
COMPANY, )	)
Defendants. )	) <u>BRIEF IN SUPPORT OF</u>
_____ )	) <u>MOTION BY MOLLY BARON TO</u>
)	) <u>INTERVENE, INSTANTER</u>
)	)
)	)

Intervention balances two competing interests -- judicial economy resulting from the disposition of related issues in a single lawsuit and focused litigation resulting from the need to govern the complexity of a single lawsuit. As a general rule, a person cannot be deprived of his or her legal rights in a legal proceeding to which such person is neither a party nor summoned to appear. See, e.g., *Martin v. Wilks*, 490 U.S. 755, 109 S. Ct. 2180, 2185, 104 L. Ed. 2d 835 (1989) (citing *Chase National Bank v. Norwalk*, 291 U.S. 431, 441, 78 L. Ed. 894, 54 S. Ct. 475 (1934)). The need to settle claims among a disparate group of affected persons militates in favor of intervention.

Federal Rule of Civil Procedure 24(a)(1) permits intervention as a matter of right upon timely application when a statute of the United States confirms an unconditional right to intervene. 42 U.S.C. 2000(e)-5(f)(1) provides, in pertinent part, that an aggrieved party may intervene in an action brought by the Equal Employment Opportunity Commission as a matter of right. A charging party is an aggrieved person. *EEOC v. Century I*, 142 F.R.D. 494 (1992). As such, Molly Baron is entitled to intervene as a matter of right provided that this Motion is timely filed. *EEOC v. Century I*, 142 F.R.D. 494 (1992).

Federal Rule of Civil Procedure 24(a) (2) provides for intervention of right in an action. The rule specifically provides that:

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 existing parties.

The U.S. Court of Appeals for the Sixth Circuit has delineated Rule 24 (a)(2) into four separate criteria that must be met before intervention of right is allowed. These criteria are:

(1) the application for intervention must be timely, (2) the applicant must have a substantial, legal interest in the subject matter of the pending litigation; (3) the applicant's ability to protect that interest must be impaired; and (4) the present parties do not adequately represent the applicant's interest.

*Triax Co. v. TRW, Inc.*, 724 F.2d 1224, 1227 (6th Cir. 1984); See also, *Michigan Ass'n for Retarded Citizens v. Smith*, 657 F. 2d 102, 105 (6th Cir. 1981).

The *Triax* court further explained that the determination of whether an application is timely under the rule is within the sound discretion of the court. The trial court should consider the following factors:

(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor's failure, after he or she knew or reasonably should have known of his or her interest in the case, to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention.

*Triax*, 724 F.2d at 1228.

The determination of whether a motion to intervene is timely should be evaluated in the context of all relevant circumstances. See *Bradley v. Milliken*, 828 F.2d 1186, 1191 (6th Cir. 1987).

The suit between the EEOC and the defendants was only filed on September 30, 2003 and Defendant served its answer upon the EEOC as recently as November 10, 2003. In the *Century I* case, the district court held that a motion to intervene under Rule 24(a)(1) was timely when brought even in the pretrial stage.

In the unlikely event that this Court would find, in this action, that the defendant did not violate the federal anti-discrimination laws, the proposed intervenor will be bound by that decision in any subsequent action. A number of courts have held that the possibility of adverse stare decisis effects provides intervenors with sufficient interest to join an action. See *United States v. State of Oregon*, 839 F.2d 635, 638 (9th Cir. 1988); *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C.Cir. 1967); *Atlantis Dev. Corp. v. United States*, 379 F.2d 818, 829 (5th Cir. 1967). Accordingly, the disposition of the present action without the proposed intervenor will impede her ability to protect her interest in this lawsuit.

Finally, the original parties will not be prejudiced by Molly Baron's intervention because she is not asking for enlargements of time for discovery or for delay in any possible trial. Thus, this Court is respectfully requested to find that the Motion of Molly Baron is timely and grant intervention as a matter right under both F.R.C.P. 24 (a) (1) and (2).

Respectfully submitted,

s/ Dennis J. Niermann  
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**CERTIFICATE OF SERVICE**

A true copy of the foregoing Motion to Intervene and Supporting Brief has been filed this 4<sup>th</sup> day of December, 2003 through the Court's electronic filing system. All parties may access the foregoing, and will be served via the Court's electronic filing system.

s/ Dennis J. Niermann  
Dennis J. Niermann