

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,)	
)	
Plaintiff,)	
)	
v.)	Case No. 5:15-CV-00324-C
)	
SOUTHEASTERN OKLAHOMA)	
STATE UNIVERSITY,)	
)	
and)	
)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
)	
Defendants.)	

**EZRA YOUNG AND BRITTANY STEWART'S
REPLY TO DR. TUDOR AND DEFENDANTS' OPPOSITION TO
JOINT MOTION TO FOR LEAVE TO INTERVENE**

We agree with the parties that our bid for intervention as of right or, in the alternative, permissive intervention is governed by Fed. R. Civ. P. 24 and binding precedents construing the same.

The parties raise two discrete challenges to our intervention. First, they charge that our bids to intervene as of right and permissive intervention fail because they are untimely. Second, they argue that our permissive intervention bid fails because if granted it will prejudice the original parties. As explained more fully below both challenges are infirm. Additionally, the

parties appear to raise other points in opposition which, for sake of completeness, we endeavor to respond.

I. THE INTERVENTION MOTION IS TIMELY

Rule 24 imposes a timeliness requirement on both intervention as of right and permissive intervention. And yet, there was no undue delay between the undersigned's claims in intervention ripening and filing of our motion to intervene.

At the threshold, it is binding Tenth Circuit precedent that Rule 24's timeliness factor is determined "in light of all circumstances, including the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances." *Sanguine, Ltd. v. US Dep't of Int.*, 736 F.2d 1416 (10th Cir. 1984) (cleaned up).

We moved to intervene in this case on July 13, 2022. Our intervention bis was thus docketed within 29 days of learning for the first time vis-à-vis the parties' June 14, 2022 notice that they had settled this matter (ECF No. 412), which Dr. Tudor disclosed in a separate litigation against us we discovered after the fact, for a total of \$1,725,000 (Interpleader Case, 5:22-cv-00480-C, ECF No. 1 ¶ 7). As we explained in our original motion this settlement amount is on its face insufficient to cover the undersigned's itemized bills of fees and

costs let alone all those filed by other former counsel and the still not disclosed sums Dr. Tudor's current counsel purport entitlement to in this matter.

In opposition, the parties insist that former counsels' intervention bid is untimely because it was docketed *after* the parties brokered a settlement in this matter. On their view, former counsel should have moved to intervene sometime in July 2021, a full year prior (Resp. at 6).

The parties' opposition is undercut by binding precedent they themselves bring to the Court's attention. The timeliness calculus articulated in *Sanguine* supports a finding of timeliness in these circumstances. In that case, which reviewed an intervention bid in a roughly similar posture, the Tenth Circuit held that a motion filed more than 30 days after the case was settled and final judgment entered satisfies Rule 24's timeliness prong. Resp. at 5 (citing *Sanguine*, 736 F.2d at 1418). Thus, under *Sanguine*, the fact that intervention is sought *after* settlement let alone within 29 days of it does not make it untimely under the circumstances.

Alternatively, the parties' timeliness position is fatally flawed because it is premised on the constitutionally infirm demand that former counsel move to intervene and bring claims long before they were ripe for adjudication. Former counsels' claims did not ripen until mid-June 2022—when the parties brokered a settlement that did not resolve our outstanding legal bills. That former

counsel's three claims in intervention were not ripe for adjudication until Dr. Tudor settled around us in June 2022 is law of the case at this juncture.¹

Glaringly, the parties conveniently ignore the ripeness problem in insisting that former counsel must have moved to intervene long before our claims were constitutionally ripe. Article III does not permit this Court to entertain unripe claims.² It follows from that that Rule 24's timeliness requirement cannot possibly be construed as obliging would be intervenors to move to join claims before this Court could constitutionally hear them.

II. THE ORIGINAL PARTIES ARE NOT PREJUDICED BY THIS INTERVENTION

We agree with the parties that Rule 24 provides that permissive intervention can be denied if granting the intervention unduly prejudices the

¹ This Court's December 2021 order expressly recognizes that state law claims seeking payment under the attorneys' lien theory, contract, or quantum meruit ripen only at the point at which the parties settle without Dr. Tudor simultaneously satisfying her outstanding legal bills. ECF No. 391 at 4–5 (explaining that claims proceeding on any of three theories can be brought in the event that Dr. Tudor fails to broker a resolution of fees and costs as between her present and former counsel). *See United States v. Webb*, 98 F.3d 585, 587 (10th Cir. 1996) (“Under the law of the case doctrine, findings made at one point during the litigation become law of the case for subsequent stages of the same litigation.”).

² *See Kans. Judicial Rev. v. Stout*, 519 F.3d 1107, 1116 (10th Cir. 2008) (claim not judiciable under Article III unless it presents a live controversy, ripe for determination—inquiry is not whether the party was in fact harmed but rather “whether the harm asserted has matured sufficiently to warrant judicial intervention”).

adjudication of the original parties' rights. Nonetheless, the parties' contention that they are prejudiced by former counsels' intervention lacks merit.

The parties argue that former counsel's intervention is so prejudicial as to cut against permissive intervention because if granted, their privately brokered settlement which they spent "months" negotiating is "at risk" (Resp. at 7). They offer no further details shedding light as to why their settlement is so weak as to fall apart if Dr. Tudor is made to pay the sizeable legal bills she accumulated in this litigation.

Moreover, on its face, the parties' claim of prejudice falls flat. The parties theory of prejudice has no bearing on the prejudice factor articulated in Rule 24. The only risk of prejudice Rule 24 concerns itself with is that which prejudices "adjudication of the original parties' rights," not privately brokered settlements.

If intervention is granted in this instance, the parties and former counsel will all be afforded the opportunity to be heard on the merits of the putative claims in intervention, a process that in and of itself ensures that the original parties *and* former counsels' rights are fairly adjudicated. And, as a backstop, grant of intervention will hopefully incentivize the original parties to actually endeavor to settle this matter in its totality—saving this Court, the original parties, and former and present counsel from wasteful piecemeal litigation of legal bills Dr. Tudor and Defendants are, at the end of the day, ultimately

obliged to satisfy.

III. OTHER CHALLENGES TO PERMISSIVE INTERVENTION LACK MERIT

The parties are wrong in insisting that former counsel fail to identify a common question of law or fact connecting our putative claims in intervention to the instant case. On its face, both our motion and our putative complaint in intervention repeatedly point to common issues of law and fact. Beyond that, our claims are quite obviously intimately entangled with this litigation insofar as they seek to recoup compensation due to us for our legal services and costs incurred in this very matter.

The parties also claim that there is no Tenth Circuit precedent examining whether an attorneys' lien in and of itself creates a cognizable interest for the purposes of Rule 24(a)(2). Setting aside the fact that the parties fail to point to any evidence that this is in fact an issue of first impression in the Tenth Circuit, there is no reason that if true it cuts against grant of permissive intervention in the instant case. Rule 24 requires a colorable interest. Rule 24 does not demand that intervenors additionally establish that the precise kind of interest they claim is interest previously deemed sufficient under circuit law.

The parties also assert that former counsel failed to satisfy unspecified other requirements of Rule 24. See, e.g., Resp. at 10 (“Movants must satisfy all remaining Rule 24(a) requirements, yet they have failed to show they satisfied any of the remaining requirements.”) It is unclear to us what “remaining requirements” the parties believe we do not satisfy. Among other things, our motion was served on the parties in accordance with Rule 5 and it was accompanied by a putative complaint in intervention, just as Rule 24 requires.

Dated: August 24, 2022

Respectfully Submitted,

/s/ Ezra Young

Ezra Young (NY Bar No. 5283114)

LAW OFFICE OF EZRA YOUNG

210 North Sunset Drive

Ithaca, NY 14850

P: (949) 291-3185

ezra@ezrayoung.com

/s/ Brittany M. Stewart

Brittany M. Stewart (OK Bar No. 20796)

NATIONAL LITIGATION LAW GROUP, PLLC

2401 NW 23rd St., Ste. 42

Oklahoma City, OK 73107

P: (405) 896-7805

bmnstewart@nationlit.com

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2022, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Ezra Young

Ezra Young (NY Bar No. 5283114)