# APP. 1 - COVER

No. 20-2006

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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| MARK P. DONALDSON, | ) | |
| | ) | |
| Plaintiff-Appellant, | ) | |
| | ) | |
| v. | ) | ORDER |
| | ) | |
| NICK LYON, et al., | ) | |
| | ) | |
| Defendants-Appellees. | ) | |

Before: MOORE, GILMAN, and KETHLEDGE, Circuit Judges.

Plaintiff Mark P. Donaldson, who held a durable power of attorney on behalf of Vera Bay, appeals the district court's order staying and administratively closing his civil action pending completion of his state-court proceedings. Peggy Hampel, a non-party, moves to intervene in this appeal either as of right or permissively on the grounds that she is the only descendant of Vera Bay, whom Donaldson had improperly attempted to add as a party to his amended complaint. In the alternative, Hampel requests that her motion be remanded for consideration by the district court. Defendants—comprised of various Michigan state agencies and Medicaid-HMOs and their employees involved in Donaldson's underlying Medicaid dispute—separately oppose intervention, arguing that Hampel's claims are unrelated to this appeal and should not be considered. Donaldson supports Hampel's intervention, and Hampel replies.

We have the authority to grant intervention either as of right or permissively under Federal Rule of Civil Procedure 24. *Ne. Ohio Coal. for Homeless & Serv. Emps. Int'l Union, Local 1199*

*v. Blackwell*, 467 F.3d 999, 1006 (6th Cir. 2006). To intervene as of right, an applicant must satisfy four elements: "(1) timeliness of the application to intervene, (2) the applicant's substantial legal interest in the case, (3) impairment of the applicant's ability to protect that interest in the absence of intervention, and (4) inadequate representation of that interest by parties already before the court." *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997); *see also* Fed R. Civ. P. 24(a)(2).

Hampel has failed to articulate any legal interest in this appeal to satisfy the second factor. "The rule against non-lawyer representation 'protects the rights of those before the court' by preventing an ill-equipped layperson from squandering the rights of the party he purports to represent." *Zanecki v. Health All. Plan of Detroit*, 576 F. App'x 594, 595 (6th Cir. 2014) (per curiam) (quoting *Myers v. Loudoun Cnty. Pub. Sch.*, 418 F.3d 395, 400 (4th Cir. 2005)); *see also* 28 U.S.C. § 1654. Bay never signed the complaint, and she was never a party to the underlying action. Donaldson has no connection to Bay's estate. Donaldson, as a non-lawyer, has no authority to represent Bay or bring an action on her behalf. And Hampel cannot be substituted for Bay given that Bay had never been a party to the underlying action. The district court accordingly did not consider any claim put forward in relation to Bay when it ruled on the abstention question that is the subject of this appeal. Although Hampel argues that she has a legal interest in this appeal solely because she is Bay's successor, she does not address a single commonality between Donaldson's claims and any purported claims of her mother. Even in her reply, Hampel merely references the allegations in Donaldson's amended complaint with regard to Bay. These allegations were never considered by the district court because Bay was never a party. Because she has no legal interest in this appeal, denial of intervention cannot impair her ability to protect her interest under the third factor. And finally, as to the fourth factor, Donaldson, proceeding pro

se, may represent only his own interests and, thus, the inadequacy of his representation has no bearing on Hampel's interest.

Hampel's other requested relief is likewise inappropriate. "To intervene permissively, a proposed intervenor must establish that the motion for intervention is timely and alleges at least one common question of law or fact." *United States v. Michigan*, 424 F.3d 438, 445 (6th Cir. 2005). She has failed to do so. Similarly, a remand is inappropriate because the case below is stayed, and that stay is the sole subject of Donaldson's appeal.

Accordingly, the motion to intervene is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

# APP. 2 - COVER

No. 20-2006

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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| MARK P. DONALDSON, | ) | |
| | ) | |
| Plaintiff-Appellant, | ) | |
| | ) | |
| v. | ) | ORDER |
| | ) | |
| NICK LYON, et al., | ) | |
| | ) | |
| Defendants-Appellees. | ) | |

Before: MOORE, GILMAN, and KETHLEDGE, Circuit Judges.

Plaintiff Mark P. Donaldson, who held a durable power of attorney on behalf of Vera Bay, appeals the district court's order staying and administratively closing his civil action pending completion of his state-court proceedings. Peggy Hampel, a non-party and Bay's daughter, moved to intervene in this appeal either as of right or permissively. We denied intervention as of right because Hampel failed to demonstrate that she had a substantial legal interest in the case, in part because she did not identify any commonalities between Donaldson's claims and any purported claims of her mother. We denied permissive intervention because Hampel's request was untimely, and she failed to allege a common question of law or fact. Hampel now petitions for rehearing en banc, which we construe as a motion for reconsideration. *See* 6 Cir. R. 27(g).

Reconsideration is not warranted if the panel did not misapprehend or overlook any point of law or fact. *Id.*; *see* Fed. R. App. P. 40(a)(2). Hampel asserts that (1) we failed to liberally construe her pleadings as required for pro se litigants; (2) the commonality requirement conflicts with our precedent in *Meyer Goldberg, Inc. v. Fisher Foods, Inc.*, 823 F.2d 159, 164 (6th Cir.

1987); and (3) Donaldson's complaint sufficiently alleged numerous commonalities. Hampel's reliance on *Meyer* is misplaced. In *Meyer*, we concluded that a strong showing of common fact or law was not necessary for a non-party company to intervene in prior concluded litigation for the purpose of seeking discovery material that would assist it in its current litigation alleging related claims. *Id.* at 161–64. But here, for the reasons that we previously stated, intervention is not warranted.

Accordingly, the motion for reconsideration is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

# APP. 3 - COVER

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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| MARK P. DONALDSON,<br>Plaintiff - Appellant,<br>v.<br><br>NICK LYON, et al.,<br>Defendants - Appellees. | COA No.: 20-2006<br><br>**MOTION TO INTERVENE AS PLAINTIFF/APPELLANT** |

## INTRODUCTION

The Plaintiff timely filed as a matter of right a first amended complaint before the first appeal to the Sixth circuit even occurred in which another party was added Vera Bay, my mother, along with Ms. Bay's specific counts, claims, and facts which were not at all extinguished upon my mother, Ms. Bay's death and occurred while the first appeal was still before the Sixth circuit. After the remand from the Sixth circuit, the first amended complaint was served on the Appellees by the U.S. Marshals. The issue of a lack of a signature by my mother, Ms. Bay on the first amended complaint became an issue which could no longer be easily corrected because of Ms. Bay's death in which substitution was believed to be the means to handle both issues of Ms. Bay's signature and my mom's death. After the first Sixth circuit remand, receiving my mother's timely death notice, and being told of Mr. Donaldson's substitution motion, communications occurred with attorneys who believed that substitution was the proper means to address the issues involving my deceased mother Ms. Bay so I also timely filed a motion for substitution. The district court denied both Mr. Donaldson and my motions for both substitution and request for a court appointed attorney. Mr. Donaldson filed a timely notice of appeal, case 20-2006, and I also filed a timely notice of appeal. In my appeal, the panel determined that being an intervenor was

the appropriate avenue which was unknown to me since substitution was believed to be the correct means to address my mother, Vera Bay's lack of a signature and her being deceased. This motion is now being timely filed with the Sixth circuit since several common questions of law and facts, see first amended complaint, involving my deceased mother Vera Bay are expected to be argued and addressed in which this motion should be ruled upon first and my motion should be granted which would also resolve some of the issues on appeal and in particular involving my mother Ms. Bay. I'm also requesting to be added to this appeal's briefing schedule & reply brief.

**FACTS**

1. Timely notice of death was filed in the lower district court involving my deceased mother Vera Bay on Mar. 17, 2020, she is named in first amended complaint Plaintiff, Vera Bay.

2. I timely filed a motion for substitution in the district court.

3. I'm the appropriate intervenor and/or substitution since I'm the only living and adult child concerning my deceased mother Vera Bay, first amended complaint Plaintiff party.

4. Consolidation was sought involving Sixth circuit appeal cases 20-2006 and 20-2055 in which the Appellees did not contest consolidation nor did Mr. Donaldson.

5. Discovery was already sought in this case by Mr. Donaldson while this appeal was before the district court and discovery has not yet started in this case before the district court.

6. On Mar. 17, 2020, service of death notice was made on myself the & Defendants.

7. Vera Bay passed away during the first, initial appeal, in while said appeal was still pending before the Sixth Circuit.

8. The applicable time line involving Vera Bay begins after three (3) conditions had occurred being: (1) the case had to be remanded back from the 6th Circuit since the 6th Circuit

had jurisdiction at the time of Ms. Bay's death, (2) U. S. Marshals must serve the summons and complaint, (which was the first amended complaint that was timely filed as a matter of right including adding Vera Bay and was served on all Defendants), and (3) the Defendants must appear so that service of the death notice pursuant to FRCP 25(a)(3) can be initiated and be served on all applicable persons including myself and the Defendants.

9. I, Peggy Hampel, am the sole decedent, Vera Bay's successor in which there was no will or administration of my mother Vera Bay's estate and none was necessary so no personal representative was needed at the time since I'm the only living adult child, daughter, of Vera Bay and the decedent's successor pursuant to MCL 700.2101.

10. My deceased mother, Vera Bay's estate passes by intestate succession since both of my parents and their two sons, my brothers, are deceased leaving myself as the only decedent successor and a proper party for substitution, see MCL 700.2103 (a), and if needed an intervenor in which I'm also now a personal representative so my name can be in the court case caption.

11. Communications occurred with attorneys while this case was still before the district court in which substitution at the time was believed to be the correct means for me to proceed in the district court involving my deceased mother Vera Bay in which then the issue of just a signature could then be easily corrected by me filing a timely amended complaint.

12. The COA ruled in case 20-2055 that intervention applied instead of substitution so I'm now timely seeking within a very short time and with no undue delay being an intervenor, involving Ms. Bay and her counts, claims, and facts provided within the first amended complaint.

13. Timely filed first amended complaint added Vera Bay, my mother, along with her own specific counts, claims, and facts, all of which were not extinguished upon Ms. Bay's death.

14. No known unusual circumstances militating against me being an intervenor.

**ARGUMENT**

Pursuant to Federal Rule of Civil Procedure 24 and this Court's inherent authority, I, Peggy Hampel respectfully now move to be an intervenor on the side of the Plaintiff-Appellant in which their are significant claims, (see first amended claims), involving my deceased mother Vera Bay that are at stake in this litigation. Also, I request an order allowing me additional time to prepare brief(s) in this appeal, a reply, and be part of any appellate briefing schedule in this appeal.

**I.** ***Ms. Hampel Satisfies Standard for Intervention As Of Right Under Rule 24(a).***

This Court has the authority to grant such intervention in this appeal or for consideration and remand to the district court, see Ne. Ohio Coal. for Homeless & Serv. Emps. Int'l Union, Local 1199 v. Blackwell, 467 F.3d 999, 1006 (6th Cir. 2006). To intervene as of right under Rule 24(a)(2), I must satisfy "four elements: (1) timeliness of application; (2) a substantial legal interest in the case; (3) impairment of the applicant's ability to protect that interest in the absence of intervention; and (4) inadequate representation of that interest by parties already before the court." Blackwell, 467 F.3d at 1007. Also, "Failure to meet [any] one of the [four] criteria will require that the motion to intervene be denied.", see Stupak-Thrall v. Glickman, 226 F.3d 467, 471 (6th Cir. 2000) and more importantly, Rule 24 as a whole is "broadly construed in favor of potential intervenors." Id., in which I now satisfy the above four (4) required intervenor elements:

**A. Ms. Hampel Has Legally Protect Able Interests Which May Be Impaired By Disposition of This Case.**

Consistent with its generally liberal approach to Rule 24, the Sixth Circuit applies a "rather expansive notion of the interest sufficient to invoke intervention of right." Mich. State AFL-CIO

v. Miller, 103 F.3d 1240, 1245 (6th Cir. 1997). In any of the applicable standards, I do have a legally cognizable interests, including as noted above in my Facts as a decedent successor, personal representative, and/or as the only living adult child of my deceased mother Vera Bay which would be impaired by a disposition of this case. Also, the Plaintiff, Mr. Donaldson is only a forma pauperis pro se party and cannot protect Vera Bay's legal rights and interests adequately in which this issue also falls into similar comparison when there is a government party on what issues and/or arguments can or should be made. More importantly, I can protect and argue for any and all of my deceased mother Vera Bay's legal interests and rights in this case including any and all of her counts, claims, and facts in amended complaint, my mother's rights and/or representation.

**B. Mr. Donaldson May Not Adequately Represent Ms. Hampel's Interests In The Appeal and Subsequent Proceedings.**

The federal rule 24(a)'s inadequacy requirement "is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 n.10 (1972); accord, e.g., Linton v. Comm'r of Health & Env't, 973 F.2d 1311, 1319 (6th Cir. 1992). To satisfy this requirement, as an intervenor I'm "not required to show that the representation will in fact be inadequate." Mich. State AFL-CIO, 103 F.3d at 1247. Rather, it may be enough to show, for example, that the existing party Mr. Donaldson "who purports to seek the same outcome will not make all of the prospective intervenor's arguments." Id as a pro se forma pauperis party. By the same token, a decision not to appeal by an original party to the action—or to limit the scope of an appeal—can also constitute inadequate representation of another party's interest. Id. at 1248 (citing Am. United for Separation of Church & State v. City of Grand Rapids, 922 F.2d

303, 306 (6th Cir. 1990)). On this matter, I have met this low threshold as the only and sole decedent successor, personal representative, and/or the only living adult child of my deceased mother Vera Bay over Mr. Donaldson who is pro se and forma pauperis. Also, I can re-file if needed a motion for a court appointed attorney to represent me involving my deceased mother Vera Bay's legal interests before the court.

**C. My Motion To Intervene is Timely under the Circumstances, No Prejudice to Appellees & Mr. Donaldson, No Undue Delay & No Unusual Circumstance.**

"The determination of whether a motion to intervene is timely should be evaluated in the context of all relevant circumstances.", see United States v. Tennessee, 260 F.3d 587, 592 (6th Cir. 2001) and the following factors should be considered in determining timeliness:

> (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 intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention.

in which the timeliness requirement is liberally construed. See, e.g., Cook v. Bates, 92 F.R.D. 119, 122 (S.D.N.Y. 1981) ("In the absence of prejudice to the opposing party, even significant tardiness will not foreclose intervention.").

First, this case is still in it's initial stages in which even discovery has not yet started. Second, my purpose is very clear since I'm the appropriate and sole person including being a decedent successor and/or personal representative to be a party involving all of my deceased mother's legal interests and claims as provided throughout the timely first amended complaint which was timely filed as a matter of right, so my intervention now is both timely and appropriate. Third, as noted previously, a death notice was timely filed so my substitution was then timely

sought in the district court which at the time was believed to be the correct avenue to proceed, see Facts, and now since this court has ruled that intervention applies in this case instead of substitution involving me then I'm now timely seeking within a very minimal time period, a week, and there is no undue delay for me to be an intervenor since "any delay in and of itself does not mean that my intervention should be denied." see 7C CHARLES ALAN WRIGHT & ARTHUR MILLER, FEDERAL PRACTICE & PROCEDURE § 1913 (3d ed. April 2018 update) in which the key consideration is whether the intervention will cause "undue delay." Id.; cf. Penick v. Columbus Educ. Ass'n, 574 F.2d 889, 890–91 (6th Cir. 1978) which my intervention will not cause any undue delay involving the Appellees and/or Mr. Donaldson including that this litigation is in its very early stage in which even discovery has not occurred. Fourth, there is no basis of any prejudice to the Appellees nor Mr. Donaldson since this case is still in its very early stages and there are no known unusual circumstances militating against me and my requested intervention.

## II. *Ms. Hampel Alternatively Should Be Granted Permissive Intervention Under Rule 24(b).*

In the alternative, I should be granted permissive intervention under Federal Rule of Civil Procedure 24(b) "To intervene permissively, a proposed intervenor must establish that the motion for intervention is timely and alleges at least one common question of law or fact." United States v. Michigan, 424 F.3d 438, 445 (6th Cir. 2005). Now, "Once these two requirements are established, the district [or appellate] court must then balance undue delay and prejudice to the original parties, if any, and any other relevant factors to determine whether, in the court's discretion, intervention should be allowed." Id in which this motion and my deceased mother Vera Bay involves the same district court ruling as the other plaintiff Mr. Donaldson. More

importantly, Mr. Donaldson and Ms. Bay both have common questions of laws and/or facts, (see first amended complaint), including common counts, facts, claims, and questions of law and/or facts, (see first amended complaint), common district court rulings, and me being an intervenor now protects my deceased mother Ms. Bay's claims and her legal interests in which the circumstances now merit my permissive intervention. Also, the Sixth Circuit has stated that a proposed intervenor is not required to show that its asserted intervention has "a strong nexus of common fact or law." Meyer Goldberg, Inc. v. Fisher Foods, Inc., 823 F.2d 159, 164 (6th Cir. 1987) which has been met, see first amended complaint. Also, as already discussed above, I'm timely seeking intervention under the circumstances as a Plaintiff/Appellant involving my deceased mother Ms. Bay in which the Vera Bay's notice of death filed in the district court was timely. I sincerely believed while the case was at the district court that my substitution was appropriate involving my deceased mother Vera Bay and now this motion is being timely filed within a week of a recent COA determination that intervention and not substitution is to be done so there is no undue delay in me seeking now to be an intervenor since also this case is in the early stages and discovery has not even started in this case, and there is no significant prejudice to any of the Appellees and/or Mr. Donaldson.

**III.** ***Ms. Hampel Motion To Intervene In The Sixth Circuit &/or Remand to District Court.***

In this case a timely notice of appeal was filed from the district court. At this time, I cannot file a motion to intervene with the district court but can with the Sixth circuit because the the filing of the notice would deprive the district court of power to act on my motion to intervene but my motion "may be remanded for that purpose." 9 Moore's Federal Practice ¶ 203.06 at 3-24 n. 10 (2d ed. 1990). My motion to intervene can be ruled upon by the Sixth circuit which is now

being timely filed and/or my motion can be remanded back to the district court to rule upon this motion. I sincerely believe my motion would have a direct bearing or resolution on some of the arguments and district court rulings that would come before the Sixth circuit on this appeal. Also, this court can remand my motion to intervene for a ruling and still maintain jurisdiction on appeal.

## IV. *Ms. Hampel Requests To Be Allowed to File A Reply and be Added To All Applicable Briefing Schedules.*

For substantially the same reasons on why my intervention should be granted, I request this Court allow me to file a reply to any responses to this motion and also be added to any applicable briefing schedules involving this appeal.

## RELIEF

Grant my motion to intervene in this appeal, allow me to file a reply to any response involving this motion, allow me to be added for briefing arguments in this appeal, remand my intervention request with instructions to the district court, if a lower court determination is to be done and still maintain jurisdiction, and/or any other relief on behalf of myself in this appeal.

Respectfully Submitted,

/s/Peggy Hampel Date: Feb. 22, 2021

## PROOF OF SERVICE

I, Peggy Hampel, filed this motion for intervention via the Sixth Circuit pro se link on Feb. 22, 2021, and on the same day to the Appellees and Mr. Donaldson via their e-mail addresses.

Sincerely,

/s/Peggy Hampel Date: Feb. 22, 2021

# APP. 4 - COVER

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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| MARK P. DONALDSON,<br>Plaintiff - Appellant,<br>v.<br><br>NICK LYON, et al.,<br><br>Defendants - Appellees. | COA No.: 20-2006<br><br><br>**Petition Rehearing En Banc, Motion For Reconsideration, & Motion Allowing Parties To Respond To Petition and/or Reconsideration** |

## PETITION REHEARING EN BANC

Pursuant to FRAP 35(b)(1)(A) this Petition Rehearing En Banc begins with:

> (A) the panel decision conflicts with a decision of the United States Supreme Court ***or of the court to which the petition is addressed*** (with citation to the conflicting case being Meyer Goldberg, Inc. v. Fisher Foods, Inc., 823 F.2d 159, 164 (6th Cir. 1987)) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions.

A circuit panel's order involves a legal issue & a new standard being created by the panel of this circuit which will change the interpretation and requirements for intervening, is recurring, is significant, and would impact anyone who seeks to intervene in a case in the entire Sixth circuit. More importantly, the panel's "commonality" standard is new and conflicts with the rest of the circuits opinions when it comes to applying the clear and unambiguous language of FRCP 24 (b)(1)(B) and this panel's "commonality" standard conflicts with this circuit own opinion in Meyer Goldberg, Inc. v. Fisher Foods, Inc., 823 F.2d 159, 164 (6th Cir. 1987). The case of Meyer has established legal precedence for years in this circuit in it's published decision that I am not required to show that my asserted intervention has "a strong nexus of common fact or law." which also applies to myself as a pro se intervenor. I'm seeking to intervene on behalf of my now deceased mother Vera Bay, as her only living adult child in the complaint, see attached exhibit #1.

This new "commonality" standard is more the just a correction issue that occurred but an erroneous interpretation of FRCP 24(b)(1)(B) which now proposes a review standard based on the "sharing of Vera's claims to Mr. Donaldson's claims", as stated in the panel's order on page 2, see exhibit 2 instead of the language in FRCP 24(b)(1)(B). More importantly, this new "commonality" standard is contrary to Meyer Goldberg, Inc. v. Fisher Foods, Inc., 823 F.2d 159, 164 (6th Cir. 1987) in which I'm as a pro se proposed intervenor who is not required to show that my intervention has "a strong nexus of common fact or law." and instead removes common fact or law and now requires sharing of Vera's claims to Mr. Donaldson's claims. The panel's new "commonality" standard requires that you must go outside of documenting the actual shared common facts or laws as stated in the first amended pleading that are accepted as true, exhibit 1, for instance where both Vera Bay and Mr. Donaldson share the same actual allegations involving specific facts and/or questions of law, see exhibit 1 pleading nos. 36, 124, 169, 188-190, 193-195, 200 & 201, and instead argue my mother Ms. Bay's deceased claims and Mr. Donaldson's claims.

I understood that at this stage of the case, the allegations within the first amended complaint, attached herein as exhibit #1, are accepted as true so the allegations stated content are not in question. The panel's new requirement of arguing of my mother Vera Bay's claims & Mr. Donaldson's claims, the panel's new "commonality" standard, goes far beyond and any nexus determination and is contrary to the language in both FRCP 24(b)(1)(B) and Meyer Goldberg, Inc. v. Fisher Foods, Inc., 823 F.2d 159, 164 (6th Cir. 1987). Now that the specific allegations in the first amended are considered true, the shared common facts and/or questions of law must be reviewed. Both Vera Bay & Mr. Donaldson, as Vera & Mark, are named in the same complaint's allegations, (see nos. 36, 124, 169, 188-190, 193-195, 200 & 201), which the allegations they

both shared the same alleged common fact or questions of law within the same actual pleading's allegation which must be accepted as true. No matter what a party's status, is or was, does not change the actual language within the first amended complaint's allegations as being true which provide the common fact and questions of law. Also, there was no liberally reading of my motion, reply, and no inference was given and should have been given involving these specific allegations.

**MOTION FOR RECONSIDERATION**
**ARGUMENTS**

**I. Pro se standard involving my filings and the Plaintiff's attached pleading.**

As I am pro se, my filings including my motions and reply are to be liberally construed and Mr. Donaldson is pro se forma pauper so Mr. Donaldson's first amended complaint, see attached, is to be liberally construed based upon Spotts v. United States, 429 F.3d 248, 250 (6th Cir. 2005).

**II. Publication of ruling.**

There is no statement at the beginning of the panel's order indicating the non publishing of this order so due to this panel's determination and possible publication in which this panel seeks to create a new FRCP 24 standard of review, I believe that this warrants that all the parties should be allowed to file a response to my motion and my en banc petition.

**III. Incorporated attached exhibit #1 first amended complaint with this motion.**

The attached pleading, first amended complaint as exhibit #1, (see attached file titled "exhibit 1 first amend complaint.pdf"), with this motion. I'm specifically using particular parts of exhibit 1, first amended complaint, in which the courts "must consider" documents, including my exhibit #1 first amended pleading, see Tellabs, Inc. v. Makor Issues & Rights Ltd., 551 U.S. 308, 322 (2007) so that my exhibit #1 first amended complaint is properly construed as part of my

motion which I have repeatedly used in both of my motions being as previously sought and stated:

> My legal interests, common facts and laws involving my intervention and Mr. Donaldson does exist and is based upon the timely filed first amended complaint, (superceded the original complaint), and first the allegations numbers 14-30, 32-34, 36, 38, 46-51, 53, 73-92, 97-98, 104, 110, 115, 124, 126, and 169, second the causes of action including numbers 179-201, and relief including letters A-F.

The allegations in the attached first amended complaint at this stage of the litigation must be accepted as true and as pro se party liberally construed for me and more important the language of these noted pleadings cannot be changed. My previous noted allegations to this court were: 14-30, 32-34, 36, 38, 46-51, 53, 73-92, 97-98, 104, 110, 115, 124, 126, 169, 179-201, and relief including letters A-F in which have these specific from the first amended pleading numbers 36, 124, 169, 188-190, 193-195, 200 & 201 are specifically shared with both of their names Vera and Mark in these following allegations and in doing so the facts and/or questions of law apply to both Vera and Mark and are incorporated now with this motion being:

see Case 1:18-cv-13994-BAF-PTM ECF No. 8, PageID.127, allegation #36:

> 36. NEMT is defined in 42 C.F.R. 431.53 and 42 CFR 440.170 and includes expenses for transportation and other related travel expenses determined necessary to secure medical examinations, documentation, or treatment for: Vera a AAA MI Choice recipient and Mark a MHP Medicaid insurance recipient.

see Case 1:18-cv-13994-BAF-PTM ECF No. 8, PageID.142, allegation #124:

> 124. Involving irreparable injury, monetary damages at a later time do not adequately compensate Mark and/or Vera for MHP and/or AAA repeated violations of federal statutes and/or regulations including but not just limited to:
>
> (I) timeliness in completing MHP and AAA appeals;
> (ii) withholding of the "case file" including medical records, other documents and records, and any new or additional evidence considered, relied upon, or generated by MHP and AAA;
> (iii) failure to acknowledge appeals; and
> (iv) Mark and/or Vera not being allowed to update appeals during MHP and

AAA appeals process without withheld records.

see Case 1:18-cv-13994-BAF-PTM ECF No. 8, PageID.149, allegation #169:

169. Mark and/or Vera in this verified complaint for declaratory and injunctive relief also move for relief including for the claims within this verified complaint as an action seeking redress of the deprivation of federal constitutional and/or statutory rights under the color of state law through 42 U.S.C. § 1983 involving the Defendants.

see Case 1:18-cv-13994-BAF-PTM ECF No. 8, PageID.152-153, allegations #188-190:

188. Defendants' policy and practice of failing or refusing to provide a timely appeal process, timely fair hearing, exceeding the time permitted by law for an appeal, and exceeding the time permitted by law for in three different MAHS dockets violates Mark and/or Vera rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

189. Defendants' policy and practice of failing or refusing to provide a "case file" in violation of Title XIX of Social Security Act, 42 U.S.C. § 1396-u2 (b)(4), 42 C.F.R. § 438.400, Medicaid Act, 42 U.S.C. § 1396a(a)(10) violates Mark and/or Vera rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

190. Defendants' policy and practice of failing or refusing to acknowledge appeals, not allowing the updating of appeals, not allowing access to the Defendants' determinations during appeals, not providing timely appeal responses notices, repeatedly confusing what an appeal and/or grievance is and the associated timeframes, using and/or retaliating against employee(s) who were involved in the initial action in also the appeals process, and/or not responding to provided updates information in appeal responses in violation of Title XIX of Social Security Act, 42 U.S.C. § 1396-u2 (b)(4), 42 C.F.R. § 438.400, Medicaid Act, 42 U.S.C. § 1396a(a)(10) violates Mark and/or Vera rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

see Case 1:18-cv-13994-BAF-PTM ECF No. 8, PageID.153, allegations #193-195:

193. MDHHS, Lyon, Gordon, and/or MCPD failed to act, oversee, and/or address the Defendants violations of Mark and/or Vera's rights under Title XIX of Social Security Act, 42 U.S.C. § 1396-u2 (b)(4), 42 C.F.R. § 438.400, Medicaid Act, 42 U.S.C. § 1396a(a)(10), and/or Medicaid hearing rights.

194. Mark and/or Vera move for relief on this claim as an action seeking redress of the

deprivation of their constitutional rights under the color of state law, through 42 U.S.C. § 1983.

195. Mark and/or Vera also requests nominal damages and/or punitive damages involving the Defendants and/or their associated department personnel in which punitive damages can be accessed for violations of Mark and/or Vera's federal, due process rights.

see Case 1:18-cv-13994-BAF-PTM ECF No. 8, PageID.154, allegations # 200-201:

200. Mark and/or Vera move for relief on this claim as an action seeking redress of the deprivation of their constitutional rights under the color of state law, through 42 U.S.C. § 1983.

201. Mark and/or Vera also requests nominal damages and/or punitive damages involving the Defendants and/or their associated department personnel in which punitive damages can be accessed for violations of Mark and/or Vera's federal, due process rights.

In addition to the above allegations, I'm now adding the additional allegation that share the both

the same names of Vera and Mark and required common facts and/or questions of law:

see Case 1:18-cv-13994-BAF-PTM ECF No. 8, PageID.127, allegation #37:

37. Federal regulation 42 C.F.R. 431.53 requires Medicaid to ensure necessary transportation for beneficiaries to and from services that Medicaid covers in which the NEMT benefits must be overseen by MDHHS and MCPD and administered by MDHHS, MHP, and AAA to beneficiaries including Mark and Vera in an equitable and consistent manner.

## IV. Panel misconstrued my motion and reply filings along with introducing the new commonality standard.

In this court's ruling on page 2 specifically stated the following:

> Although Hampel argues that she has a legal interest in this appeal solely because she is Bay's successor, she does not address a single commonality between Donaldson's claims and any purported claims of her mother. Even in her reply, Hampel merely references the allegations in Donaldson's amended complaint with regard to Bay.

and

> Hampel's other requested relief is likewise inappropriate. "To

> intervene permissively, a proposed intervenor must establish that the motion for intervention is timely and alleges at least one common question of law or fact." United States v. Michigan, 424 F.3d 438, 445 (6th Cir. 2005). She has failed to do so.

in which the panel misconstrued and removed my specific language: "My legal interests, common facts and laws involving my intervention and Mr. Donaldson does exist and is based upon the timely filed first amended complaint" that was specifically stated in my reply which said:

> My legal interests, common facts and laws involving my intervention and Mr. Donaldson does exist and is based upon the timely filed first amended complaint, (superceded the original complaint), and first the allegations numbers 14-30, 32-34, 36, 38, 46-51, 53, 73-92, 97-98, 104, 110, 115, 124, 126, and 169, second the causes of action including numbers 179-201, and relief including letters A-F.

**A.** In the document filed with this court titled "MOTION TO INTERVENE AS PLAINTIFF/APPELLANT", (case: 20-2006 document: 22 filed: 02/22/2021 on pages 7-8 under II. Ms. Hampel Alternatively Should Be Granted Permissive Intervention Under Rule 24(b) states:

> More importantly, Mr. Donaldson and Ms. Bay both have common questions of laws and/or facts, (see first amended complaint), including common counts, facts, claims, and questions of law and/or facts, (see first amended complaint)

**B.** In the document filed with this court titled "REPLY TO STATE APPELLEES RESPONSES TO MY MOTION TO INTERVENE AS PLAINTIFF/APPELLANT", (case: 20-2006 document: 32 filed: 03/10/2021 on page 3 under Counter Statement of Facts states:

> My legal interests, common facts and laws involving my intervention and Mr. Donaldson does exist and is based upon the timely filed first amended complaint, (superceded the original complaint), and first the allegations numbers 14-30, 32-34, 36, 38, 46-51, 53, 73-92, 97-98, 104, 110, 115, 124, 126, and 169, second the causes of action including numbers 179-201, and relief including letters A-F.

and these allegations, in the attached exhibit 1 first amended complaint must be taken as true.

**C.** In the document filed with this court titled "REPLY TO NEMCSA AND MR. DONALDSON RESPONSES TO MY MOTION TO INTERVENE AS PLAINTIFF/ APPELLANT", (case: 20-2006 document: 30 filed: 03/8/2021 on Pages 4-5 under Response to NEMCSA 3rd response argument and noted second part states:

> Second, NEMCSA did not argue against the existence of common questions of law and/or facts, see FRCP 24(b) "To intervene permissively, a proposed intervenor must establish that the motion for intervention is timely and alleges at least one common question of law or fact." United States v. Michigan, 424 F.3d 438, 445

in which NEMCSA in failing to do so, conceded, to this court in their filing which this court can now conclude that there is at least one common question of law or fact.

**D.** The panel introduced on page 2 of their order the commonality standard stating:

> Although Hampel argues that she has a legal interest in this appeal solely because she is Bay's successor, she does not address a single commonality between Donaldson's claims and any purported claims of her mother.

which the commonality standard stating "single commonality between Donaldson's claims and any purported claims of her mother." is contrary to the unambiguous language of FRCP 24(b)(1)(B):

> (b) PERMISSIVE INTERVENTION.
> (1) In General. On timely motion, the court may permit any one to intervene who:
> (B) has a claim or defense that shares with the main action a common question of law or fact.

## V. Panel's erroneous "commonality" standard violates unambiguous, clear language in FRCP 24(b)(1)(B).

When it comes to permissive intervening in this appeal, FRAP do not apply, so FRCP 24(b)(1)(B) governs and states: "has a claim or defense that shares with the main action a common question of law or fact." in which this rule's language is unambiguous so it must be applied as stated. This panel created on page 2 of it's Order an erroneous a new "commonality"

standard stating "she does not address a single commonality between Donaldson's claims and any purported claims of her mother." and in doing so violated FRCP 24(b)(1)(B). My mother, Ms. Bay's claims pursuant to FRCP 24(b)(1)(B) must only share a common question of law or fact with Mr. Donaldson's actions which are both stated together and by name as Vera and/or Mark within each of these allegations numbers 36, 124, 169, 188-190, 193-195, 200 & 201 in the first amended complaint. Furthermore, this panel's new commonality standard now being deployed is contrary to the Sixth Circuit ruling in Meyer Goldberg, Inc. v. Fisher Foods, Inc., 823 F.2d 159, 164 (6th Cir. 1987) since a proposed intervenor is not required to show that its asserted intervention has "a strong nexus of common fact or law." within Mr. Donaldson's first amended complaint so all that I must show is a nexus of common law or fact which I already did and exists in the first amended complaint's allegations numbers 36, 124, 169, 188-190, 193-195, 200 & 201.

To show how clearly erroneous and without merit this panel's new, unknown, and unstated "commonality" standard is, this panel was specifically told of facts and/or questions of law enumerated allegations in which first amended complaint's allegations numbers 36, 124, 169, 188-190, 193-195, 200 & 201 are shared within each of these allegations which the these allegations specifically name within each of these allegations both Vera and Mark. Furthermore, there is no "sharing of Vera's claims to Mr. Donaldson's claims" language within and is contrary to FRCP 24(b)(1)(B). More importantly, the panel is fully aware that I am currently a pro se intervenor and was not given the proper consideration as such in the drafting of my motion and/or reply even though the specific allegations in first amended complaint's numbers 36, 124, 169, 188-190, 193-195, 200 specifically stated both Vera and Mark within each of these allegations. All that I am was required to do is to intervene is who "has a claim or defense that shares with the

main action a common question of law or fact." in which I indicated the actual allegations in the first amended pleading that Vera shares, including named with Mr. Donaldson, a common question of law or fact with Mr. Donaldson. The panel failed refused to accept the FRCP 24(b)(1)(B) unambiguous language in the rule and instead chose that I'm as a pro se party is to be held to a different standard, an erroneous commonality which is contrary to FRCP 24's language.

**MOTION ALLOWING PARTIES TO RESPOND TO |PETITION And/Or RECONSIDERATION**
**ARGUMENT**

This Court has the authority to grant that all of the parties can now timely respond to this timely filed motions herein in which I also seek that I can file timely replies. I'm requesting that the parties all be allowed to file responses which will assist in any en banc review by the Sixth circuit or any panel review of this motion, will assist in the publication consideration of your order, and since no other circuit has created or attempted to create a new commonality standard involving FRCP 24(b)(1)(B) will develop a thorough record for any remand and/or appeal.

**RELIEF FOR PETITION REHEARING EN BANC AND BOTH OF MY MOTIONS**

Grant my petition rehearing en banc, grant me as an intervenor, grant me pro se status including inferences when it comes to my filings, grant the incorporation of the first amended complaint exhibit 1 & pleadings nos. 36, 124, 169, 188-190, 193-195, 200 & 201 that is attached to this motion, grant that the parties can respond to the petition or reconsideration, grant remand, clarify your commonality standard in your order & grant any other relief on my behalf in this case.

Respectfully Submitted,

/s/Peggy Hampel Date: Dec. 15, 2021

**EXHIBIT**

1. First Amended Pleading. attached as a separate pdf file.
2. Panel order. attached as a separate pdf file.