

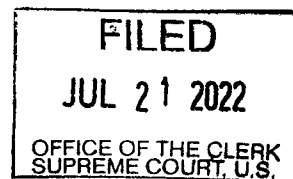
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No. 21-7800

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In The  
Supreme Court of the United States



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MARK P. DONALDSON &  
PEGGY HAMPEL

Petitioners,

v.

NICK LYON, et al.,

Respondents.  
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Petition For Writ Of Certiorari  
Of A Denial On The Merits By United States Court  
Of Appeals For The Sixth Circuit  
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MOTION FOR REHEARING  
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As required: Filing an original & 10 copies pursuant to: Supreme Ct. Rules: 44(1) and 12(2).

## FACTS

1. A timely notice of death was filed in the East. Mich. district court in this case involving my deceased mother Vera Bay on Mar. 17, 2020, a Notice of Death involving the party Vera Bay.
2. On Mar. 17, 2020, service of death notice was made on the defendants & Peggy Hampel.
3. Named party Vera Bay passed away during the first, initial appeal, while said appeal was still pending before the 6th Circuit.
4. The applicable time line at the East. Mich. dis. ct. involving Vera Bay begins only after these three conditions had occurred: first required condition is that this case had to be remanded back from the 6th Circuit who had jurisdiction at the time over Vera Bay as a party and her death, second required condition that the U. S. Marshals must serve the summons and complaint, (which the amended complaint that was timely filed as a matter of right including adding the party Vera Bay was served on all Defendants), and the third required condition is that the Defendants must appear so that service of the death notice pursuant to FRCP 25(a)(3) could then occur and was timely served on all applicable persons including Peggy Hampel and all the Defendants.
5. Peggy Hampel is the only living and adult child, a decedent of Vera Bay, and her 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 Ms. Hampel is the only living adult child, daughter of Vera Bay and the decedent's successor pursuant to MCL 700.2101.
6. 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 me as the only decedent successor and a proper party for substitution, see MCL 700.2103 (a), and/or as an intervenor in which I'm also now a personal representative so my name can be in the case caption in this case.

7. Discovery was already timely sought in this case while this appeal was before the East.

Mich. Dis. Ct. and discovery has not yet even started in this case before the district court.

8. Mr. Donaldson's first amended complaint, adding Vera Bay was filed pursuant FRCP 15.

9. Respondents, (only after the first appeal was decided by the Sixth circuit and the case was remanded back to the district court), were they then served in this case and with only Mr.

Donaldson's first amended complaint, case 1:18-cv-13994-BAF-PTM ECF No. 8 Filed 01/14/19.

10. No submission of or comments were even provided by the Sixth circuit panel or any judges to Ms. Harris, Sixth Cir. COA En Banc Coordinator, of Peggy Hampel's en banc petition.

## **ARGUMENT**

### **I. *New Supreme Court ruling.***

This court very recently decided this year in *Cameron v. EMW Women's Surgical Ctr., P. S. C.*, No. 20-601 intervention by a non party. In *Cameron*, the Respondents argued that the intervenor should have filed a notice of appeal to the Sixth circuit but did not do so in that case including that the Respondents tried to infer prejudice. In this case, Peggy Hampel is an appropriate person as a decedent successor and/or personal representative involving the party and her deceased mother Vera Bay. Ms. Hampel did repeatedly and timely act before the Sixth circuit by first filing a notice of appeal in this case before the Sixth circuit which was denied by the Sixth circuit and second by acting after the Sixth circuit denial ruling which provided the basis for Ms. Hampel to consider intervening at the Sixth circuit for Ms. Hampel's deceased mother. A brief overview follows on the aforementioned Sixth circuit process: (1) a death notice was timely filed before the East. Mich. district court which Peggy Hampel sought substitution at the district court, (2) the district court denied substitution, (3) Ms. Hampel appealed the denial to the Sixth circuit

which ruled that intervention applies in this case instead of substitution, and (4) Ms. Hampel timely sought with a very minimal and no undue delay to be an intervenor in this case at the Sixth circuit since there is no basis of any prejudice to the Appellees or Mr. Donaldson since the case is in its very early stages, no discovery has occurred, and there are no known unusual circumstances militating against Peggy Hampel, deceased Vera Bay's daughter and her requested intervention.

As set forth in Cameron, this court is guided by the "policies underlying intervention" in the district courts, *Automobile Workers v. Scofield*, 382 U. S. 205, 217, n. 10, including the legal "interest" that a party seeks to "protect" through intervention on appeal, Fed. Rule Civ. Proc. 24(a)(2), in which the Sixth Circuit erred in denying Peggy Hampel's motion to intervene. Mr. Donaldson cannot protect Vera Bay's claims, legal interests and rights since he is pro se and Peggy Hampel is Vera Bay's only living adult child who can legally protect her deceased mother's claims and legal rights via intervention in this case. In Cameron, this court specifically stated:

Resolution of a motion for permissive intervention is committed to the discretion of the court before which intervention is sought, see *Automobile Workers*, 382 U. S., at 217, n. 10; Fed. Rule Civ. Proc. 24(b)(1)(a). But a court fails to exercise its discretion soundly when it "base[s] its ruling on an erroneous view of the law," *Cooter & Gell v. Hartmarx Corp.*, 496 U. S. 384, 405

in which the Sixth circuit panel failed to exercise its discretion by (1) outright stopping a timely request for an en banc rehearing determination, (2) by not even allowing a consideration by the Sixth circuit judges of the en banc rehearing request, and (3) denying Ms. Hampel's intervention. Throughout the first amended complaint the now deceased Vera Bay claims are clearly stated and as her only living child Peggy Hampel can represent her claims and legal interests. Furthermore, having a substantial interest as Vera Bay's daughter is not seeking any additional relief but only the relief as indicated in the first amended complaint so standing is not an issue, see Chapman

v. Tristar Prods., Inc., 940 F.3d 299, 304 (6th Cir. 2019). More importantly, Ms. Hampel's legal interests are distinct from Mr. Donaldson, (who cannot represent my mother Vera Bay), in which I can legally represent my mother Vera Bay and her claims, legal interests and rights in this case. The Sixth circuit erred in not granting my permissive intervention motion 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." and in the United States v. Michigan, 424 F.3d 438, 445 (6th Cir. 2005) since "Once these two requirements are established, the district [or appellate] court must then balance undue delay and prejudice to the original parties". My deceased mother Vera Bay's legal interests, claims and relief are already specifically stated throughout the amended complaint in which my mother Ms. Bay does have at least one common question of law or fact with Mr. Donaldson's claims that are stated in the first amended complaint and (1) I do not seek additional relief except the relief as stated within the first amended complaint, (2) there is no prejudice to the parties in particular since Mr. Donaldson cannot represent my mother's legal interests, claims, and relief, and (3) there was no undue delay since I did timely file my intervention motion at the Sixth circuit after the Sixth circuit denied Ms. Hampel's substitution appeal which provided a basis for my intervention.

## **II. *Sixth circuit en banc standard.***

Rule 35 of the Federal Rules of Appellate Procedure ("F.R.A.P.") is the general rule that governs en banc determination in which en banc consideration is necessary to secure or maintain uniformity of the court's decisions involving the Sixth circuit pro se and/or intervention standards. The en banc rehearing request was timely and properly requested at the Sixth circuit thus at least consideration by the Sixth circuit judges of en banc request would then follow. Also, the Sixth

circuit three judge panel original order refused to apply the pro se standard involving Peggy Hampel including to her filings at the Sixth circuit including the use of and application of Mr. Donaldson's forma pauperis amended complaint which conflicts now with their intervention standard set by the Supreme Court so again my en banc rehearing is now appropriate in this case.

### **III. *Sixth circuit violated intervention standard.***

The Sixth circuit intervention standard provides under *Chapman v. Tristar Prods., Inc.*, 940 F.3d 299, 304 (6th Cir. 2019) that I do not need to establish standing since I do not seek additional relief then that which is already stated in the amended complaint. Also, I can legally represent in Michigan my deceased mother's claims, legal interests, and rights in this federal case.

#### **A. *Sixth circuit violated permissive intervention standard in Cameron and FRCP 24 (b).***

Peggy Hampel is a pro se intervenor and the Sixth circuit panel: (1) failed to consider her intervention motion filing as a pro se filing before the Sixth circuit and (2) failed to consider Vera Bay's claims in the amended complaint as true with her daughter's legal interests as required in *Cameron* and FRCP 24(b) which in part clearly states: "To intervene permissively, a proposed intervenor must establish that the motion for intervention" in which several allegations combined both Mr. Donaldson & Ms. Bay's common question of law or fact in the amended complaint and must be accepted as true and instead the COA changed "establish" in FRCP 24(b) to "address":

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.

The amended complaint's allegations must be accepted as true involving my intervention & the applying of a pro se Ms. Hampel's actual reply's argument, statements made to the Sixth circuit:


intervention from the COA ruling stating: “for purposes of discovery and the underlying action” & this case’s discovery that had not begun yet so Ms. Hampel’s intervention would allow her to take part in discovery and the underlying action involving the same defendants as May did in Meyer.

### **EXTRAORDINARY CIRCUMSTANCES**

1. This court has the authority to remand this case to have the already timely requested en banc consideration at the Sixth circuit to now occur by the judges of the Sixth circuit since there is no other adequate relief that can be obtained in any other form from any other court.
2. My en banc consideration was already timely requested before the Sixth circuit and no en banc consideration occurred. The removal of en banc consideration process was done at the Sixth circuit which thwarted and violated appellate rules involving my en banc filing and did not even allow for an en banc consideration by the judges of the Sixth circuit. It is one thing for my timely requested en banc consideration to have at least been told to and/or considered by the Sixth circuit judges but to not even allow for any possible consideration of my requested en banc consideration by the Sixth circuit judges creates an abusive due process environment. No one can read the minds of the Sixth circuit judges & what they might consider so a remand needs to occur in which, at a minimal, my en banc request will at least circulated and considered by all the judges.

### **RELIEF**

The requested relief in this motion specifically seeks remand by this honorable court would allow for the already and timely requested en banc consideration to be circulated and/or occur before the Sixth circuit judges and/or any other relief in this case on behalf of the Petitioner(s).



Mark P. Donaldson

Respectfully Submitted,

Date : July 21, 2022



Peggy Hampel