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THOMAS G. CAVER, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

IN THE
UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

FILED

APR 7 1995

JOHNNY REYNOLDS, et al.,)
)
 Plaintiffs,)
)
 JOSH CHAPPLE,)
)
 Plaintiff-Intervenor,)
)
 v.)
)
 STATE OF ALABAMA, et al.)
)
 Defendants.)

THOMAS G. CAVER, CLERK
7Y
DEPT

CIVIL ACTION NUMBER:
CV-85-T-665-N

MOTION TO INTERVENE

COMES NOW the applicant, Josh Chapple, pursuant to Rule 24(b) of the Federal Rules of Civil Procedure, and applies to this Court for permission to intervene as a party plaintiff in the above-entitled action.

In support of his motion, applicant would show unto the Court as follows:

1. The applicant-in-intervention is a member of the class in this action who testified at the trial in June, 1992. The defendant retaliated against the applicant-in-intervention as a result of his participating in the trial of this lawsuit. The EEOC investigated that allegation and found probable cause to believe that it is true. The proposed complaint-in-intervention challenges the retaliation against the applicant because of his testimony and participation in the trial of this case.

2. The applicant-in-intervention already has claims against the defendants in this action that must be decided by the Court as a part of the Stage II trial required by Article 20 of the Consent Decree entered in this case.

3. This Motion is due to be granted, based upon the following factors:

(a) Applicant Suffered Harassment As a Result of His Testimony in the Above-Referenced Case.

Applicant was prompted to file an EEOC Charge and suit against the Department of Transportation because he was subjected to harassment and retaliation due to his appearance and testimony in June, 1992 as a witness for the plaintiff-class in the class action referenced above.

(b) Length of Time Applicant Has Known Of His Interest.

On March 16, 1995, Josh Chapple received a right-to-sue letter and determination regarding the charges that he had pending before the EEOC. Thus, there has been no unduly long delay on the part of the applicant in seeking intervention into this lawsuit. The applicant is a putative class member in this action.

(c) Prejudice To Parties From Failure To Move Sooner.

The parties will not be unduly prejudiced by the intervention sought herein. Plaintiff-intervenor suffered retaliation as a result of his testimony as a witness for the plaintiffs' class during trial. Therefore, this Court has ancillary jurisdiction over his retaliation claim. Gupta v. East Texas State University, 654 F.2d 411 (5th Cir. Unit A, 1981). By this intervention Mr. Chapple seeks to preserve his right rather than have it argued that he waived his right by not intervening when he had been issued a right to sue letter. Moreover, intervention will not unduly delay trial nor interfere with any ruling or negotiated settlement.

(d) Prejudice To Applicant If Intervention Denied.

Applicant will be unduly prejudiced by the necessity of maintaining an individual, separate lawsuit involving complex issues and costly experts.

- (e) Unusual Circumstances. The circumstances of the case militate in favor of intervention as it will prevent the duplicative and expensive re-trial of identical issues.

4. Applicant's claims and the claims of the named plaintiffs and plaintiff class in the case at bar have questions of law and fact in common, with minor changes and additions as follows:

- (a) The complaint in intervention raises some of the same claims or causes of action that have previously been raised by the plaintiffs in the pre-trial order entered on October 7, 1992 and the intervention does not alter the Consent Decree entered in this case.
- (b) The applicant filed a charge of discrimination with the EEOC after the passage of the Civil Rights Act of 1991. The complaint in intervention raises the claim of the plaintiff-intervenor that he was affected by the practices set forth in the plaintiffs' position statement in the pre-trial order both prior to and after the passage of the Civil Rights Act of 1991.
- (c) The complaint in intervention raises the issue of retaliation for participation in the above-reference class-action lawsuit in which the applicant seeks to intervene.

5. This Motion is accompanied by applicant's complaint-in-intervention, which is attached hereto.

6. A copy of this Motion is being served upon all parties, through their respective counsel

Mr. Frank Ussery
State of Alabama Personnel Department
402 James E. Folsom Administrative
Building
Montgomery, Alabama 36130-2301

This the 6th day of April, 1995.


OF COUNSEL