

IN THE COURT OF COMMON PLEAS

LORAIN COUNTY, OHIO

STATE OF OHIO, ex rel.,

Case No. 84934

Plaintiffs,

vs.

JUDGMENT ENTRY

BOARD OF ELECTIONS, et al.,

Defendants.

Immediately after the hearing on the Motion to Add Indispensable Parties, the Court was presented with the Attorney General's Memorandum in Opposition to the Motion. The Memorandum contains a Certificate of Service indicating mail delivery to counsel of record and Movant's counsel.

In the Motion, the choice of words "Indispensable Parties", and failure to cite a Civil Rule as authority to participate in this litigation places the Court in the position of playing a guessing game with Movant's counsel as to which Civil Rule is to be considered.

At the hearing, Movant's counsel indicated his position as coming within the entitlements of Civil Rule 19. The Attorney General indicates that Civil Rule 19 is governed by Civil Rule 12(B) and only parties already in the suit may utilize Civil Rule 19 for failure of one of the litigants to join a "necessary" party.

Civil Rule 19 makes mandatory that a party be joined if:

- "(1) in his absence complete relief cannot be accorded among those already parties, or
- (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (a) as a practical matter impair or impede his ability to protect that interest or (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of his claimed interest, or
- (3) (not applicable in our case.)"

The next portion of Civil Rule 19(A) narrates:

"If he has not been so joined, the court shall order that he be made a party upon timely assertion of the defense of failure to join a party as provided in Rule 12(B)(7)...."

This sentence substantiates the Attorney General's position that only a party in litigation can "move" in an outside party.

The alternative choice to the movant to participate in the litigation would be to intervene under Civil Rule 24 but since the Movant's counsel presented his position as coming within Civil Rule 19, the Court will not consider this approach.

Likewise, the non-service of the Board of Elections, though a failure of process, cannot be dispositive of the matter as the other two parties to the litigation were properly served.

The conclusion is inescapable that movants can become parties to this suit only by being granted status as an amicus curiae or by filing and having granted a valid motion to intervene under Rule 24. Neither of these types of relief are the subject of this Motion.

The Motion is denied.

  
Adrian F. Berleski, Judge