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U.S. v. Lindstedt D.Or., 1995.

United States District Court, D. Oregon.

UNITED STATES of America, Plaintiff,

v.

Norman LINDSTEDT, as Personal Representative of
the Estate of Donald E. Kettleberg, Defendant.

Civil No. 95-0745-ST.

Dec. 4, 1995.

Riley J. Atkins, [Kristine Olson](#), U.S. Attorneys Office, Portland, OR, [Sanford W. Stark](#) (on brief), U.S. Dept. of Justice, Western Division, Washington, DC, for Plaintiff U.S.

[Norman L. Lindstedt](#) and [Patrick L. Block](#) (on brief), Lindstedt Bueno & Gordon, Portland, OR, for Defendant Norman Lindstedt, as personal representative of the Estate of Donald E. Kettleberg.

Janette Kent (on brief), Lake Oswego, OR, pro se.

ORDER

[REDDEN](#), District Judge.

*1 Magistrate Judge Stewart filed her Findings and Recommendation on October 27, 1995. The matter is now before me. See [28 U.S.C. § 636\(b\)\(1\)\(B\)](#) and [Fed.R.Civ.P. 72\(b\)](#). No objections have been timely filed. This relieves me of my obligation to give the factual findings *de novo* review. [Lorin Corp. v. Goto & Co., Ltd.](#), 700 F.2d 1202, 1206 (8th Cir.1983); See also [Britt v. Simi Valley Unified School Dist.](#), 708 F.2d 452, 454 (9th Cir.1983). Having reviewed the legal principles *de novo*, I find no error.

*1 Accordingly, I ADOPT Magistrate Judge Stewart's Findings and Recommendation (doc. # 26) that Janette Kent's Motion to Intervene (doc. # 5) is DENIED.

*1 IT SO ORDERED.

FINDINGS AND RECOMMENDATION
[STEWART](#), United States Magistrate Judge:

INTRODUCTION

*1 This action is brought by plaintiff, United States of America ("United States"), against defendant Norman Lindstedt ("Lindstedt"), personal representative of the Estate of Donald E. Kettleberg ("Estate"). The United States seeks to collect federal income tax assessments against Lindstedt in his capacity as personal representative of the Estate. The alleged income tax assessments arose from certain losses Donald E. Kettleberg had claimed in connection with his investment in certain limited partnerships in 1980 and 1984. The Estate disallowed a Proof of Claim filed by the United States in the pending probate proceedings.

*1 The sole residuary beneficiary of the Estate, Janette Kent ("Kent"), appearing *pro se*, has now filed a motion for joinder or to intervene in this litigation. Kent first filed a "Notice of Appearance" (docket # 5), a pleading which is not recognized in this court and which this court construed as a motion for joinder. After the United States and Lindstedt filed responses (dockets # 7 and # 8), Kent filed yet another Motion to Intervene (docket # 10), Amended Motion to Intervene (docket # 12), Supporting Memorandum (docket # 13), Supplemental Reply (docket # 16), Declaration and Pleading (docket # 18), and Affidavit (docket # 20), which this court has combined and treated as a Reply supporting her original motion. Kent moves to intervene both as a matter of right pursuant to [FRCP 24\(a\)](#), and alternatively, with the court's permission under [FRCP 24\(b\)](#). Kent also relies upon a number of other procedural rules, none of which is applicable to a motion to intervene. Both the United States and Lindstedt object to her motion.

*1 For the reasons set forth below, Kent's Motion to Intervene (docket # 5) should be denied.

BACKGROUND

*1 Donald E. Kettleberg ("Kettleberg") and Milton Brown ("Brown") were long-time business partners who together owned several corporations and numerous partnerships and joint ventures. In 1978, Kettleberg and Brown executed a Buy-Sell Agreement

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providing that, upon the death of one of them, the survivor could purchase some or all of the decedent's interest in the various joint business enterprises by means of a fixed valuation formula contained in the agreement. The formula used the most recent tax assessed value for each property. A second Buy-Sell Agreement was executed in 1984 containing an identical valuation formula.

*2 Kettleberg died intestate on May 23, 1985, leaving several million dollars in real and personal property. Carolyn Brune, Kettleberg's long-time secretary, was appointed personal representative of the intestate Estate. After Kettleberg's death, Brown exercised his right to purchase Kettleberg's interest in certain business ventures under the 1984 Agreement. Brune, as personal representative, filed a Petition seeking court approval for the proposed purchase. The Multnomah County Probate Court ("Probate Court") approved the transaction on May 11, 1987. Kent then established that she was the sole beneficiary of the Estate based on an oral contract to make a will. *Kent v. Brune*, 97 Or.App. 691, 776 P.2d 882 (1989). Probate of the Estate proceeded, and in October 1989 Lindstedt was appointed successor personal representative of the Estate.

*2 Kent later objected to Brown's purchase of Kettleberg's business interests, alleging that the purchase price was substantially below fair market value, that Kettleberg's signature was forged on the 1984 Buy-Sell Agreement, and that Brune had converted assets from the Estate. In October 1990, a trial was held on Kent's objections to the petition for approval of final account and settlement. Judge Lee Johnson considered all of Kent's objections and approved the account. On January 2, 1991 the court also approved a settlement between the Estate and Brown and the sale of all Estate assets to Brown. With this settlement, certain claims against Brown were released by the Estate. The Oregon Court of Appeals affirmed the judgment. *In the Matter of the Estate of Donald E. Kettleberg, Deceased-Kent v. Brune*, 111 Or.App. 452, 826 P.2d 649 (1992) (aff'd without opinion). On September 29, 1992, the Oregon Supreme Court denied Kent's petition for review.

*2 In 1990, during the pendency of the probate pro-

ceedings, Kent filed an action in this court against Brown, Brune, Lindstedt and others claiming that the defendants violated the Racketeering Influenced Corrupt Organizations Act ("RICO"), [18 U.S.C. § 1961 et seq.](#), and Oregon RICO ("ORICO"), [ORS 166.715 et seq.](#), by conspiring to commit fraud, breach a fiduciary duty, and convert Estate assets in relation to the administration of the Estate. *Kent v. Brown*, Civil No. 90-526-MA. Judgment was entered in favor of the defendants. On January 31, 1992, the Ninth Circuit dismissed Kent's appeal and awarded sanctions to defendants. On August 21, 1992, Kent filed a second action in this court against Brown, Lindstedt, four Multnomah County Circuit Court judges, and certain other individuals. *Kent v. Brown*, Civil No. 92-6305-MA. The action was filed under [42 U.S.C. § 1983](#), again alleging that defendants conspired to deprive her of valuable property rights without due process of law. Specifically, Kent alleged that defendants' actions violated her Fourteenth Amendment right to due process by fraudulently preparing and altering certain documents, falsely valuing Estate assets, and wrongly diverting revenues. This court dismissed that action and granted sanctions against Kent; the Ninth Circuit affirmed.

*3 On June 29, 1995, after hearings on objections, the Probate Court approved Lindstedt's petition for a final account. The present action is one of the last remaining matters to be concluded in probate of the Estate. Apparently recognizing that the Estate administration is nearly concluded, and having failed in her earlier actions, Kent is attempting once again to prove her allegations of fraud and conspiracy to recover the Estate assets sold to Brown. Kent maintains that she has newly discovered evidence of fraud and conspiracy and can now prove that Lindstedt and Brown conspired to steal her inheritance and illegally evaded estate taxes in the process. Kent's ultimate objective is to increase her inheritance by assisting the United States in recovering assets she alleges belong to the Estate that would result in an additional \$5 million in taxes.

DISCUSSION

A. Intervention of Right

1. *Legal Standard*

*3 [FRCP 24\(a\)](#) permits intervention as a matter of right:

*3 (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by the existing parties.

*3 In the absence of a statutory right to intervene, the Ninth Circuit grants a motion to intervene as a matter of right when: (1) the motion is timely filed; (2) the applicant asserts a significantly protectable interest relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that without intervention the disposition may, as a practical matter, impair or impede her ability to protect that interest; and (4) the applicant's interest is not adequately represented by the existing parties. [Sierra Club v. United States EPA](#), 995 F.2d 1478, 1481 (9th Cir.1993). This rule is to be construed broadly in favor of an applicant for intervention. [Yorkshire v. United States IRS](#), 26 F.3d 942, 944 (9th Cir.1994), cert. denied, 513 U.S. 989, 115 S.Ct. 487, 130 L.Ed.2d 399 (1994). An applicant's failure to prove any one of these four criteria precludes intervention under [FRCP 24\(a\)\(2\)](#). See, e.g., [County of Orange v. Air California](#), 799 F.2d 535, 538 (9th Cir.1986), cert. denied, 480 U.S. 946, 107 S.Ct. 1605, 94 L.Ed.2d 791 (1987).

2. *Timeliness*

*3 The Ninth Circuit considers three factors in evaluating the timeliness of a motion to intervene: (1) the stage of the proceeding; (2) the prejudice to other parties; and (3) the reason for and length of delay in filing the motion to intervene. [United States v. Oregon](#), 913 F.2d 576, 588 (9th Cir.1990), cert. denied, 501 U.S. 1250, 111 S.Ct. 2889, 115 L.Ed.2d 1054 (1991).

*3 The United States filed the Complaint on June 5,

1995, and Lindstedt filed an Answer on July 31, 1995. Kent filed her Motion to Intervene on August 9, 1995. Neither party objects to Kent's Motion to Intervene based on timeliness. Under these circumstances, Kent's Motion to Intervene is timely filed.

3. *Applicant's Interest*

*4 Kent maintains that she has significantly protectable interests relating to the property or transaction which is the subject of this action. She argues that, as sole residuary beneficiary of the Estate, intervention is necessary to protect her inheritance, to ensure that all valid debts are paid, including all taxes owed to the United States, and to protect the reputation of the decedent as an honest taxpayer. Notice of Appearance, p. 2, and Supporting Memorandum, p. 9. She also claims an interest in the present litigation to prove fraud on the part of Lindstedt and to correct the record in the Probate Court as to the true value of the Estate. Supporting Memorandum, pp. 8-9. In addition, she claims an interest in protecting her petition to the Oregon Supreme Court for Writ of Mandamus, securing legal title to and possession of assets remaining in the Estate as verified by the Final Account, and in recovering legal title to properties she alleges were wrongfully converted by Brown and Lindstedt. Supporting Memorandum, p. 9.

*4 No clear definition has been established by the United States Supreme Court or the lower courts for the requisite "interest relating to the property or transaction which is the subject of the action." The Ninth Circuit has rejected the notion that a specific legal or equitable interest is required. [Portland Audubon Soc'y v. Hodel](#), 866 F.2d 302, 308, (9th Cir.1989), cert. denied, 492 U.S. 911, 109 S.Ct. 3229, 106 L.Ed.2d 577 (1989) (citation omitted). It has held, however, that a purely economic interest in the outcome of litigation, even if significant, is insufficient. [Greene v. United States](#), 996 F.2d 973, 976 (9th Cir.1993).

*4 Kent's interest in protecting Kettleberg's reputation as an honest taxpayer is not a significantly protectable interest. Ensuring payment of all debts and taxes is an interest properly protected by the personal representative, not by a beneficiary. Kent's other al-

leged interests are merely attempts to relitigate matters that have been settled by prior litigation. Moreover, these other alleged interests simply do not relate to the property or transaction which is the subject of this action. The sole issue in the present case is whether income taxes are owed for the years 1980 and 1984. Kent's fraud, conspiracy, and related allegations do not pertain to the question of whether taxes are owed for these years. Once these interests are dismissed, Kent is left solely with an economic interest in protecting her inheritance. This is not sufficient to require her intervention. *Id.*

*4 As previously explained, Kent has had ample opportunity to adjudicate her claims of fraud and conspiracy in the administration of the Estate. Indeed, Kent has brought numerous suits in both state and federal court on that very issue. In *Kent v. Brown*, Civil No. 92-6305MA, Judge Marsh ruled that Kent did not have standing to maintain claims for alleged wrongs inflicted upon the Estate, that she had a full opportunity to litigate and appeal her claims against the administrators of the Estate, and that she had been afforded all process available under both the state and federal judicial systems. Opinion (docket # 84) dated Feb. 12, 1993. Therefore, Judge Marsh ruled that Kent is precluded from relitigating these issues by the doctrines of *res judicata* and collateral estoppel.

*5 Accordingly, Kent has no significantly protectable interests in the subject of this action and, therefore, fails the second requirement under [FRCP 24\(a\)\(2\)](#). Although this is reason alone to deny intervention as a matter of right, Kent also fails to satisfy the remaining requirements, as discussed below.

4. Impairment of Applicant's Ability to Protect Interest

*5 Kent argues that her ability to protect her various alleged interests will be impaired if she is not allowed to participate. This court disagrees. Contrary to her assertion, Kent's ability to protect her economic interest will not be impaired if she is denied intervention. Under [ORS 114.265](#), it is the duty of the personal representative, and not the beneficiary, to satisfy all valid claims against the estate and to preserve and protect estate assets. Thus, Kent's beneficial interest

is protected by Lindstedt's active defense against the United States.

*5 Furthermore, as discussed above, Kent does not allege any significantly protectable interests which require protection. In addition, disposition of the pending action without her participation will have no controlling effect on her asserted interests because those interests have already been foreclosed by the doctrines of *res judicata* and collateral estoppel. See, [Sierra Club, 995 F.2d at 1486](#). Therefore, Kent also fails the third requirement for intervention under [FRCP 24\(a\)\(2\)](#).

5. Adequate Representation

*5 An applicant for intervention has the burden to demonstrate that her interests may not be adequately represented by the existing parties to the suit. See, [Blake v. Pallan, 554 F.2d 947, 954 \(9th Cir.1977\)](#); [Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 528 \(9th Cir.1983\)](#). The Ninth Circuit considers three factors in determining adequacy of representation: (1) whether the interest of a present party is such that the party will undoubtedly raise the same arguments as the intervenor; (2) whether the present party is capable of and willing to make such arguments; and (3) whether the intervenor would offer any necessary elements to the proceedings that the existing parties would neglect. [California v. Tahoe Regional Planning Agency, 792 F.2d 775, 778 \(9th Cir.1986\)](#). The applicant is only required to make a minimal showing that representation of his or her interests may be inadequate. *Id.*

*5 It is unclear on which side of the action Kent wishes to intervene. Kent's Notice of Appearance, Motion to Intervene, and Amended Motion to Intervene all indicate that she intends to intervene as a party defendant in this action. In their Responses, both the United States and Lindstedt treat her motion as an attempt to intervene as a defendant. However, in her Supporting Memorandum, Kent argues inadequate representation by both Lindstedt and the United States. The captions in her Affidavit, Pleading, and Declaration, as well as the claims contained in her Affidavit and Pleading, clearly indicate that she intends to intervene as a plaintiff in this action.

This court will attempt to address both conflicting positions.

a. *Intervention as a Defendant*

*6 Kent argues that Lindstedt cannot adequately represent her interests in the present action because he breached his fiduciary and contractual obligations to her. Supporting Memorandum, pp. 11-12. In addition, she maintains that her purpose and claim for relief are adverse to Lindstedt. She seeks to expose the alleged fraud and conspiracy and claim legal title to a larger inheritance, while Lindstedt is allegedly using the present action to further conceal his fraud. *Id.*, p. 10.

*6 As previously explained, Kent has no significantly protectable interests in the present litigation. She has only a derivative interest as sole beneficiary. Stripped of her fraud and conspiracy allegations, Kent's only conceivable interest must be to preserve Estate assets, an interest that is statutorily protected by the personal representative. This court finds that Lindstedt is capable of and willing to make the necessary arguments to defend the assets of the Estate against the tax claim of the United States. Indeed, Lindstedt, a licensed attorney, has denied the substantive allegations in the Complaint against him and alleged six affirmative defenses. In addition, Kent's participation will not assist this court in determining whether income taxes are owed for the years in question. Her intervention into the suit as a defendant would likely cause delay and confusion.

b. *Intervention as a Plaintiff*

*6 Kent also argues that the United States, proceeding alone, cannot adequately represent her interests or even its own interests. *See*, Supporting Memorandum, p. 11. Apparently, this is because the United States has taken no action to resolve Kent's allegations that the Estate was falsely undervalued. Kent asserts that her intervention is therefore necessary to "assure that justice prevails in this case and the IRS collects all taxes due." *Id.* p. 7. Kent appears to argue that the United States will fail to collect all taxes allegedly due unless she intervenes. That argument is absurd. Kent apparently has advised various government officials of the alleged undervaluation and tax

evasion scheme. The United States is no doubt aware that all of Kent's lawsuits alleging fraud and conspiracy have been dismissed and that no credible evidence of fraud or malfeasance has been presented. Accordingly, the United States' interest is adequately represented by the existing parties to the suit. Intervention of right under [FRCP 24\(a\)\(2\)](#), therefore, is not appropriate.

B. *Permissive Intervention*

1. *Legal Standard*

*6 [FRCP 24\(b\)](#) allows permissive intervention upon timely application:

*6 (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common.

*6 The court has discretion in allowing permissive intervention and must consider whether "the intervention will unduly delay or prejudice the rights of the original parties." [FRCP 24\(b\)](#). Kent does not allege a conditional right to intervene under any federal statute. Thus, she may intervene if she: (1) moves for intervention in a timely fashion; (2) raises a claim that has a question of law or fact in common with the main case; and (3) shows an independent ground for jurisdiction. [Garza v. County of Los Angeles](#), 918 F.2d 763, 777 (9th Cir.1990), *cert. denied*, 498 U.S. 1028, 111 S.Ct. 681, 112 L.Ed.2d 673 (1991).

2. *Timeliness*

*7 As discussed above, Kent's Motion to Intervene is timely.

3. *Common Question of Law or Fact*

*7 Kent maintains that she has asserted a question of law or fact in common with the main case involving the actual amount of taxes owed to the United States. Supporting Memorandum, p. 15. In determining whether common questions of law or fact exist, a court must examine whether the intervenor will contribute to a full development of the issues in the lawsuit. [Oregon Envtl. Council v. Department of Envtl. Quality](#), 775 F.Supp. 353, 359 (D.Or.1991) (citation

omitted).

*7 Kent pleads and alleges numerous claims and demands for relief contained in seven "Counts." Pleading, ¶¶ 16-62. None of these seven claims raises a question of law or fact in common with the main action; they are simply back door attempts to once again attack the administration of the Estate. This time, however, Kent is attempting to circumvent the state court findings by turning the case into an investigation of tax evasion. As discussed below, all of Kent's claims raise extraneous issues which do not pertain to the question of whether the Estate must pay approximately \$94,000 in income tax assessments for the years 1980 and 1984.

*7 Count One requests this court, pursuant to [28 U.S.C. § 1361](#), to order the District Director of the Internal Revenue Service, Carolyn Leonard, to perform her duty to collect \$5 million in Estate taxes which Kent alleges are actually due. [Section 1361](#) provides:

*7 The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

*7 In the present action, the United States seeks only to collect back income taxes owed by Kettleberg for the years 1980 and 1984. Kent's [§ 1361](#) claim seeks to force the United States to collect additional taxes based on a finding that the Estate was actually undervalued. The factual issues involved in that determination are completely foreign to those presented in the United States' claim. Therefore, a claim under this section presents no question of law or fact in common with the main action.

*7 Count Two alleges that, pursuant to [26 U.S.C. § 7426](#), the United States' "levy against [her] ownership interest in her (Kettleberg Estate) property was wrongfully inadequate due to application of improper procedures and/or assumptions used by government when it made assessment and levied on the subject property." Pleading, ¶ 25. [26 U.S.C. § 7426\(a\)\(1\)](#) provides:

*7 If a levy has been made on property or property

has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary.

*8 This claim is essentially a restatement of Count One, as Kent is simply attempting to reestablish the value of the Estate. Again, no common question of law or fact exists between this claim and the very narrow scope of the United States' claim. Contrary to Kent's characterization, the issue presented in the United States' claim is not the total amount of estate taxes owed, but rather, whether the Estate must pay income tax assessments for the years 1980 and 1984.

*8 Count Three is an action pursuant to [26 U.S.C. § 7402\(e\)](#) and [28 U.S.C. §§ 2409](#) and [2410](#) wherein Kent asks this court to quiet title to certain properties she alleges belong to the Estate. Pleading, ¶¶ 33 & 34. Specifically, she requests this court to "partition and sell the real properties which belonged to the estate on May 23, 1985, howsoever title may now appear, divide the net proceeds of sale as Kettleberg's interest shall appear, extract the proper tax without penalty or interest, and deliver the balance to this court for further disposition by the Court." Pleading, p. 16. Kent also requests that any tax owed to the United States be taken from Lindstedt's fees and not from any remaining Estate assets. Supplemental Memorandum, p. 16. Kent's claim under these sections also fails to establish a common question of law or fact with the main action. A quiet title action would interject extraneous matters that have nothing to do with the income tax assessments at issue here.

*8 Count Four alleges "fraud on the Court and fraud against the Estate and fraud against the United States and fraud against Kent." Pleading, ¶ 37. Kent asks this court to set aside the judgment in the Probate Court pursuant to [FRCP 60](#). Pleading, ¶ 36. Here again, Kent seeks to correct the record in the probate court as to the true value of the Estate. Not only does FRCP apply solely to judgments by federal courts

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and not to judgments in state probate courts, but the factual issues involved in that determination have no questions of law or fact in common with the United States' claim.

*8 Count Five alleges that certain Orders issued by Judge Johnson and Chief Justice Carson are void as a matter of law because they exceed judicial authority. Pleading, ¶ 43. Kent claims that Judge Johnson “unlawfully declined Kent's timely motion and affidavit of prejudice for change of judge in 1990” and that Chief Justice Carson “unlawfully refused to accept jurisdiction of Kent's petition for mandamus to remove Judge Johnson for cause shown, and to otherwise require that the probate court obey the published rules of court and law....” Pleading, ¶¶ 44-47. Kent asks this court to “order that the Oregon Supreme Court take jurisdiction of Kent's Petition for Writ of Mandamus, and to properly hear her petition seeking to require obedience by the probate court to rules of court and law.” Pleading, p. 16. Clearly, the factual and legal issues involved in this claim are outside the ambit of the United States' claim. Moreover, federal courts have no power to order state court judges to comply with state law. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984).

*9 In Count Six, Kent pleads violation of her civil rights under the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and under [42 U.S.C. § 1983](#). Pleading, ¶ 51 and Supplemental Memorandum, p. 2. Kent alleges that she was deprived of valuable property rights without due process of law through Lindstedt's fraud, the issuance of the above described “void” orders, and through the acts of certain named and unnamed agents of the State of Oregon. Plainly, a civil rights action has no question of law or fact in common with the income tax assessments involved in this litigation.

*9 Count Seven alleges that Kent is entitled, pursuant to [28 U.S.C. § 1357](#), “to recover damages for any injury to her person or property resulting from her efforts herewith, and elsewhere, to protect the revenue base of the United States and to enhance collection of estate tax revenue here demanded.” [Section 1357](#) provides:

*9 The district courts shall have original jurisdiction of any civil action commenced by any person to recover damages for any injury to his [or her] person or property on account of any act done by him, under any Act of Congress, for the protection or collection of any of the revenues, or to enforce the right of citizens of the United States to vote in any State.

*9 Again, a civil damage claim has no questions of law or fact in common with the claim involved in the present action.

*9 Because Kent does not assert any claims that have a question of law or fact in common with the main case, she fails to meet the second requirement for permissive intervention under [FRCP 24\(b\)\(2\)](#).

4. Independent Ground for Jurisdiction

*9 To intervene under [Rule 24\(b\)\(2\)](#), an applicant for intervention also must establish an independent ground for federal subject matter jurisdiction. *Blake*, [554 F.2d at 955](#). The putative intervenor must show federal subject matter jurisdiction both for permissive intervention in the first instance, and for any newly raised claims or causes of action. *Id* at [956](#).

*9 As established above, Kent has no interest to protect as a defendant in this action. Therefore, she must initially intervene as a plaintiff. However, Kent may not intervene as a plaintiff in this action based on federal question jurisdiction under [28 U.S.C. § 1357](#) because she is not the taxpayer involved in the present dispute. *Id*. A tax dispute is between the taxpayer and the United States alone, even if a third person is directly affected by the eventual outcome. *United States v. Formige*, [659 F.2d 206, 208 \(D.C.Cir.1981\)](#). Kent cannot assert the United States' claim against Lindstedt, and, in fact, does not attempt to do so. Instead, she seeks to assert new causes of action against Lindstedt, Judge Johnson, Chief Justice Carson, and other named and unnamed individuals.

*9 Kent also may not intervene as a plaintiff in this action based on diversity jurisdiction. Kent alleges that she is a citizen of Oregon and that the amount in controversy exceeds \$50,000. Pleading, ¶¶ 4 and 10. However, Lindstedt, Judge Johnson, and Chief Justice Carson also are citizens of Oregon. *Id.*, ¶¶

8-10. Thus, complete diversity of citizenship does not exist.

*10 Because Kent does not establish an independent ground for federal subject matter jurisdiction for intervention into this action, she also fails the third requirement for permissive intervention under [FRCP 24\(b\)\(2\)](#).

5. Judicial Discretion

*10 Even assuming that Kent can show a cognizable claim that has a question of law or fact in common with the main action and can meet federal subject matter jurisdiction requirements, this court, in exercising its discretion, must deny Kent permission to intervene. The addition of Kent to this litigation would unduly delay and complicate this action by injecting extraneous issues. Kent simply has not presented any compelling reason to show why her intervention would serve any useful purpose; she seeks only to assert claims she has already litigated. Therefore, permissive intervention under [FRCP 24\(b\)](#) is not appropriate.

RECOMMENDATION

*10 Because Janette Kent fails to satisfy the requirements for intervention under [FRCP 24\(a\) and \(b\)](#), her Motion to Intervene (docket # 5) should be DENIED.

*10 DATED this 27th day of October, 1995.

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