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Timeliness of a Motion to Intervene: *Stotts v. Memphis Fire Department*

Rule 24 of the Federal Rules of Civil Procedure provides that

Upon *timely* application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, *unless* the applicant's interest is adequately represented by existing parties.¹

This note examines the relationship between the timeliness requirement of a motion to intervene and the adequacy of the representation of the proposed intervenor's interest by existing parties to an action. Although case law has delineated a number of factors to be considered in determining timeliness,² there is still confusion among the courts of appeals about the proper timeli-

1. Fed. R. Civ. P. 24(a) (emphasis added).

2. Factors considered in a timeliness inquiry include:

(1) "The length of time during which the would-be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene." *Stallworth v. Monsanto Co.*, 558 F.2d 257, 264 (5th Cir. 1977) (emphasis deleted); *see also* *Michigan Ass'n for Retarded Citizens v. Smith*, 657 F.2d 102, 105 (6th Cir. 1981); *Culbreath v. Dukakis*, 630 F.2d 15, 20 (1st Cir. 1980).

(2) "[T]he purpose for which intervention is sought . . ." *Retarded Citizens*, 657 F.2d at 105; *see also* *Hodgson v. United Mine Workers*, 473 F.2d 118, 129 (D.C. Cir. 1972).

(3) "[P]rejudice to the original parties due to the proposed intervenor's failure after he knew of or reasonably should have known of his interest in the case promptly to apply for intervention . . ." *Retarded Citizens*, 657 F.2d at 105; *see also* *Culbreath*, 630 F.2d at 21; *Stallworth*, 558 F.2d at 265.

(4) "[T]he existence of unusual circumstances militating against or in favor of intervention . . ." *Retarded Citizens*, 657 F.2d at 105; *see also* *Culbreath*, 630 F.2d at 24; *Stallworth*, 558 F.2d at 266.

(5) "The extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied." *Stallworth*, 558 F.2d at 265 (emphasis deleted); *see also* *Moten v. Bricklayer's Int'l Union*, 543 F.2d 224, 228 (D.C. Cir. 1976); *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1073 (5th Cir. 1970).

Furthermore, courts have generally concluded that the timeliness inquiry is to be made by the court in the exercise of its sound discretion. *NAACP v. New York*, 413 U.S. 345, 366 (1973); *see also* *Retarded Citizens*, 657 F.2d at 105; *Stallworth*, 558 F.2d at 263.

ness standards because rule 24 does not specify what constitutes a timely application to intervene. The Sixth Circuit's decision in *Stotts v. Memphis Fire Dept.*³ is an example of an incorrect application of timeliness principles and illustrates the unsound reasoning that has confused the application of rule 24.

I. *Stotts v. Memphis Fire Department*

In February 1977, Carl Stotts, a black fireman, sued the Memphis City Fire Department, the City of Memphis, and the Director of Fire Services for the City of Memphis alleging that he and similarly situated blacks had been denied promotions because of race.⁴ On February 25, 1980 the parties announced publicly that they were negotiating a consent decree.⁵ On April 25, 1980 the court conditionally approved a consent decree that provided a minority hiring goal of 50% and a minority promotion goal of 20%. On May 12, 1980 eleven nonminority firemen moved to intervene on behalf of all nonminority fire department employees. The district court found that the intervenors had adopted a "wait and see" attitude toward the litigation and ruled the motion to intervene untimely.⁶ The court concluded that the intervenors should have been aware months before the consent decree was posted that their interest *might* be adversely affected by the litigation.

The Sixth Circuit affirmed the district court's decision, specifically finding that the court's December 4, 1979 temporary restraining order on promotions constituted sufficient notice of the potential impact of the litigation on the intervenors. Therefore, the nonminority firemen knew or should have known as early as December 4, 1979 that their interests in promotions might be affected. The court concluded that the motion to intervene was untimely since the intervenors waited until May 12, 1980 to file it.⁷ The court of appeals focused on the time that had passed since the intervenors knew of their interest in the action, rather than the time that had passed since their interests became unprotected.

In dissent, Judge Martin took issue with the majority's fo-

3. 679 F.2d 579 (6th Cir. 1982).

4. *Id.* at 580.

5. *Id.* at 587 (Martin, J., dissenting).

6. 679 F.2d at 581.

7. *Id.* at 583.

cus on when the would-be intervenors learned of their interest in the case. He argued that a person, knowing of his interest in a case, might have difficulty proving, during the early stages of litigation, that his or her interest was not adequately represented. Rule 24 prohibits intervention absent proof of such inadequate representation.⁸ He pointed out that under normal circumstances a state body (i.e. the fire department) is presumed to adequately represent its employees' interests.⁹ However, he further noted:

In this situation, the Department's interests were not clearly adverse to those of the white firefighters until the Department negotiated and signed the consent decree. At this juncture, the presumption of adequacy vanished. . . . This provision of the decree gives appellants a distinct divergent interest from that of the Department. *A fortiori*, the Department cannot protect it adequately.¹⁰

Judge Martin analyzed the timeliness of the intervention based on the amount of time that passed between when the intervenor's interest became unprotected and when the motion to intervene was made and concluded that, considering the amount of time that had elapsed, the motion to intervene was timely.¹¹

II. ANALYSIS

Courts analyzing the timeliness of a motion to intervene have developed different standards to measure the timeliness. This note posits that the approach taken by the court in *Stotts* is erroneous in light of case precedent and policy factors. The *Stotts* court wrongly denied the motion to intervene by failing to properly analyze the relationship between the adequacy of the representation of the intervenors' interest and the amount of time that passed before their application to intervene was made. A review of cases in which courts have analyzed the timeliness question is helpful in understanding the importance of this relationship.

8. *Id.* at 593 (Martin, J., dissenting).

9. *Id.* at 590.

10. *Id.*; see also *Jones v. Caddo Parish School Bd.*, 704 F.2d 206, 228 (5th Cir. 1983) (Goldberg, J., dissenting), *aff'd on rehearing en banc*, 735 F.2d 923 (5th Cir. 1984) (8-6 decision).

11. *Stotts*, 679 F.2d at 589-91 (Martin, J., dissenting).

A. Case Precedent

Two rules can be distilled from cases that have analyzed the timeliness of intervention problem. One line of cases requires immediate intervention only after a person becomes aware that his interest in the action is inadequately represented. The second line of cases, of which *Stotts* is representative, requires immediate intervention as soon as a person becomes aware that he has an interest in the case.

1. The "inadequate representation" standard

The most recent Supreme Court case addressing the timeliness issue is *United Airlines v. McDonald*.¹² *United Airlines* involved a Title VII class action suit brought by United Airlines stewardesses challenging a company policy that required stewardesses, but not stewards, to remain unmarried.¹³ After the class action was disallowed, a member of the putative class moved to intervene in the action within the thirty-day time limit for appeal.¹⁴ The district court denied intervention but was reversed on appeal by the Seventh Circuit.¹⁵ The Supreme Court affirmed the Seventh Circuit, citing *NAACP v. New York*,¹⁶ which held that a motion to intervene was untimely when the proposed intervenor failed to intervene as soon as he knew of the pendency of the action in which he had an interest. However, the *United Airlines* Court chose not to focus on the amount of time during which the respondent knew of the "pendency of the action" before intervening as had the *NAACP* Court. Rather, the Court found "critical" the fact

that once the entry of final judgment made the adverse class determination appealable, the respondent quickly sought to enter the litigation. In short, as soon as it became clear to the respondent that the interests of the unnamed class members would no longer be protected by the named class representatives, she promptly moved to intervene to protect those interests.¹⁷

12. 432 U.S. 385 (1977).

13. *Id.* at 387.

14. *Id.* at 390.

15. *Id.*

16. 413 U.S. 345, 366-69 (1973).

17. *United Airlines*, 432 U.S. at 394 (footnote omitted). *But cf.* *NAACP*, 413 U.S. at 366-68 (timeliness of intervention determined with reference to knowledge of pendency of the action).

Thus, the Court held that the respondent's failure to intervene while she knew of the pendency of the action did not render her motion untimely since at that time it was presumed that the class adequately protected her interest. Only when "the entry of final judgment made the adverse class determination appealable," did her interest become unprotected.¹⁸ Since the respondent moved quickly to intervene at that point the Court found her motion to be timely.

Subsequent to *United Airlines*, the Fifth Circuit addressed the timeliness issue in *Stallworth v. Monsanto Co.*,¹⁹ a case involving a class action by black employees attacking Monsanto's seniority and promotion systems. Monsanto argued that the remedies sought by the plaintiffs would adversely affect Monsanto's white employees and asked the court to notify the white employees of the pendency of the action to allow an opportunity to intervene. The court denied Monsanto's request for notification and granted the plaintiff's motion for partial summary judgment. Before the case went to trial, the parties reached a partial settlement and the court entered a consent order on some issues. As a result, some employees who had been told the litigation would not affect their job status were rolled back or moved to lower paying jobs. The affected employees filed a motion to intervene less than one month after entry of the order. The district court ruled the motion untimely and the intervenors appealed.

In reversing the district court, the Fifth Circuit analyzed prior cases dealing with the timeliness question and concluded there were four factors that must be considered in determining whether a motion to intervene is timely.²⁰ One of these factors was "[t]he length of time during which the would-be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene."²¹ This lan-

18. *United Airlines*, 432 U.S. at 394.

19. 558 F.2d 257 (5th Cir. 1977).

20. *Id.* at 264-66.

21. *Id.* at 264. The Fifth Circuit's statement of the rule differed slightly from the rule stated in both *NAACP* and *United Airlines*. The *NAACP* Court ran its timeliness inquiry from the time the proposed intervenor knew of the "pendency of the action," *NAACP*, 413 U.S. at 362, whereas the court in *Stallworth* stated that the timeliness inquiry runs from the time a proposed intervenor obtained a knowledge of his interest in the case. The *United Airlines* rule goes one step further and measures timeliness from the time the proposed intervenor knew her interest "would no longer be protected by the named class representatives." *United Airlines*, 432 U.S. at 394.

guage seemed to require the court to focus on the length of time that had passed since the would-be intervenor knew of his interest in the case. However, the court actually applied the rule of *United Airlines* and focused on the length of time between when the would-be intervenor learned that his interests were no longer adequately represented by existing litigants and the time when he moved for intervention.²²

The Fourth Circuit also discussed the timeliness issue in *Hill v. Western Electric Co.*²³ The lower court had denied a motion to intervene that was made after it was determined that no adequate representative existed for class members who allegedly were discriminatorily denied employment.²⁴ The Fourth Circuit vacated the order denying intervention and remanded the case. The court of appeals recognized "the lateness of the motion in the progress of the protracted litigation," but emphasized that "[i]n a class action the critical issue with respect to timeliness is whether the proposed intervenors moved to intervene 'as soon as it became clear . . . that the interests of the unnamed class members would no longer be protected by the named class representatives.'"²⁵

The courts deciding *United Airlines*, *Stallworth*, and *Hill*, viewed the timeliness inquiry as related to the question of adequacy of representation.²⁶ They suggested that any inquiry

22. Fifth Circuit cases subsequent to *Stallworth* have also adopted the *Stallworth* rule. See *Lelsz v. Kavanagh*, 710 F.2d 1040, 1044 (5th Cir. 1983); *Piambino v. Bailey*, 610 F.2d 1306, 1325 (5th Cir. 1980). But see *Jones v. Caddo Parish School Bd.*, 704 F.2d 206 (5th Cir.), *aff'd on rehearing en banc*, 735 F.2d 923 (5th Cir. 1984) (8-6 decision). In *Caddo Parish* the Fifth Circuit read *Stallworth* differently. The *Caddo Parish* majority read *Stallworth* as requiring an examination of the length of time that passed after a proposed intervenor learned of his interest in the case. In dissent, Judge Goldberg admitted that the *Stallworth* court had so stated the rule. He pointed out, however, that "*Stallworth* did not explicitly distinguish between the time the movant became aware of the interest and the time the movant became aware of an inadequately represented interest." *Caddo Parish*, 704 F.2d at 229 (Goldberg, J., dissenting). He also noted that the court's application of *United Airlines*, along with the court's policy arguments, dictated a holding that contemplated "measuring time from the point when the intervenor first became aware that his or her interests were inadequately represented." *Id.* at 229-30. The Fifth Circuit has subsequently affirmed its decision in a rehearing en banc. *Jones v. Caddo Parish School Bd.*, 735 F.2d 923 (5th Cir. 1984).

23. 672 F.2d 381 (4th Cir. 1982); see also *Brink v. Dalesio*, 667 F.2d 420, 428 (4th Cir. 1981).

24. *Hill*, 672 F.2d at 385.

25. *Id.* at 386 (citing *United Airlines*, 432 U.S. at 394).

26. Both *United Airlines* and *Stallworth* involved class actions against an allegedly discriminating employer. Unlike *United Airlines*, however, *Stallworth* also stands for the proposition that someone other than a putative class member may intervene late in the

about the timeliness of a motion to intervene is inappropriate without considering whether the would-be intervenor's interest has been adequately represented by existing parties.

2. The "may be affected" standard

Although the Fourth, Fifth, and Seventh Circuits have chosen to measure timeliness from the moment an intervenor's interest becomes inadequately represented, other courts of appeals are not in agreement. Some courts of appeals have focused on the amount of time that has passed since the intervenors first learned their interests *might* be affected by pending litigation.²⁷ A recent First Circuit case, *Garrity v. Gallen*,²⁸ affirmed the denial of a school district's application to intervene in a class action brought by members of the New Hampshire Association for Retarded Citizens against various state affiliated defendants. On August 17, 1981 the district court concluded that the defendants had violated several state and federal statutes protecting handicapped children and ordered counsel to draft a consent decree to provide relief to the plaintiff class. On November 25, 1981 the court entered a modified implementation plan submitted by the defendants as a judgment. Two months later the school district filed a motion to intervene, which the district court denied as untimely. Citing *Culbreath v. Dukakis*,²⁹ the First Circuit upheld the denial of the motion and reasoned that the appellants knew of their interest in the case long before judgment was entered because the suit had been widely publicized.³⁰

In *Michigan Association for Retarded Citizens v. Smith*,³¹ the Sixth Circuit upheld denial of a motion to intervene by a union whose employees were threatened with layoffs caused by implementation of a consent decree. In ruling that the motion

course of the litigation when it is only then determined that their interest in the case is not adequately represented. *But see* *Garrity v. Gallen*, 697 F.2d 452, 458 (1st Cir. 1983). In distinguishing *United Airlines*, *Garrity* implies in dictum that only putative class members may appeal following final judgment on grounds that their interests have become unprotected.

27. In addition to the First and Sixth Circuit cases discussed herein, the Seventh Circuit has also adopted this rule. See *United States v. South Bend Community School Corp.*, 710 F.2d 394, 396 (7th Cir. 1983); see also *supra* note 22 (discussion of *Caddo Parish* case).

28. 697 F.2d 452 (1st Cir. 1983).

29. 630 F.2d 15 (1st Cir. 1980).

30. *Garrity*, 697 F.2d at 456.

31. 657 F.2d 102 (6th Cir. 1981).

was untimely, the court pointed out that the union was not "totally unaware of the possibility" that employment conditions would be affected.³² This language implies that knowledge that a person's interest *might* be affected is sufficient to require immediate intervention.

3. Summary of case precedent

Several courts have addressed the question of the knowledge necessary to require prompt intervention by would-be intervenors and have reached divergent conclusions. Two different rules have been developed. First, some courts, of which *Stotts* is representative, have held that the timeliness of a motion to intervene depends on the amount of time that has passed since the would-be intervenor learned his interest in an action might be affected.³³ Second, other courts have adopted a more liberal rule which provides that a timeliness inquiry depends on the amount of time that has passed since the would-be intervenors learned their interests were not adequately represented by existing litigants.³⁴

B. Application of Case Precedent to *Stotts*

The *Stotts* court analyzed the timeliness of the intervenor's motion by considering the list of factors set out by the Sixth Circuit in *Retarded Citizens*.³⁵ The court focused primarily on "the length of time preceding the application for intervention during which the proposed intervenor knew or reasonably should have known of his interest in the case."³⁶ The court purported to rely on *United Airlines* for the rule that the timeliness of a motion to intervene is determined by measuring the time that has passed since the intervenor became aware that his interest *might* be affected by the litigation.³⁷ Although the court cited *United Airlines* as support for its interpretation of the law, it did not directly follow *United Airlines*. The *Stotts* court failed to recognize that *United Airlines* emphasized that a motion to intervene

32. *Id.* at 105.

33. *See Hill*, 672 F.2d at 385.

34. *United Airlines*, 432 U.S. at 394; *Stallworth*, 558 F.2d at 264; *see also supra* note 22.

35. *Stotts*, 679 F.2d at 582.

36. *Id.* at 582-83.

37. *Id.* at 583.

was timely if applied for as soon as the intervenor knew his interest "would no longer be protected."³⁸

In applying what it thought to be the proper rule, the *Stotts* court stated:

The risk that the *Stotts* action may affect the Fire Department's promotion procedure was inherent from the outset of the litigation. Plaintiff *Stotts* filed this class action alleging that the Fire Department's promotion policies were racially discriminatory. Obviously, a chief objective of the action was to change the promotion policy. An awareness of the action, therefore, was knowledge that the litigation created a risk that the promotion procedure may be affected.³⁹

Thus, the *Stotts* majority mistakenly interpreted precedent by holding that a timeliness inquiry should measure the time that passes after a proposed intervenor knows his interest in the case might be affected, regardless of whether he knows that his interest is inadequately protected at that time.

In his dissent, Judge Martin refused to measure promptness by the length of time that passed after a proposed intervenor learned litigation was pending.⁴⁰ Citing *Stallworth* and *United Airlines*, he pointed out that these opinions

[m]easured promptness from the time the applicant first learned that her interests "would no longer be protected by the named class representatives," rather than from the time she first learned of the lawsuit. In my view, knowledge that litigation is pending is pertinent to Rule 24 timeliness only when its acquisition coincides with an applicant's realization that his interests are threatened and unprotected by existing parties.⁴¹

Judge Martin recognized that the *Stotts* litigation had received substantial local publicity. However, he emphasized that none of the local newspaper articles mentioned "the nature and scope of the broad affirmative relief" adopted in the consent decree.⁴² He concluded that the newspaper articles did not serve as adequate notice to the appellants since the articles failed to apprise the appellants that their interests were not adequately represented. Thus, in concluding that intervention should have been granted,

38. *United Airlines*, 432 U.S. at 394.

39. *Stotts*, 679 F.2d at 583 (emphasis added).

40. *Id.* at 591 (Martin, J., dissenting).

41. *Id.* (citing *United Airlines* 432 U.S. at 394) (citation omitted).

42. *Id.* at 594.

Judge Martin more correctly analyzed the timeliness of the motion by examining the timeliness and adequacy of representation factors together.

C. Policy Considerations

The *Stotts* court offered no reasons why a timeliness inquiry should begin to run when a person learns that his interest in the case may be affected. However, the Fifth Circuit in *Stallworth* did advance two reasons why a timeliness inquiry was not appropriate until a person became aware that his interest in the case was not adequately represented.⁴³

The first policy mentioned in *Stallworth* is the desire to avoid increased litigation. A rule requiring a person to intervene as soon as he knows of the "pendency of the action" or knows that his interest "might" be affected by the litigation undermines this policy.⁴⁴ Such a rule creates an incentive to intervene early in a proceeding since a party who knows of his interest in a case must intervene immediately if he is going to intervene at all. If he does not intervene immediately, he runs the risk of having his motion declared untimely. This results in needless motions and appeals if it is later determined that the intervenor's interest was not in fact threatened.⁴⁵

43. *Stallworth*, 558 F.2d at 264-65. The court noted "two important purposes of Rule 24: to foster economy of judicial administration; and to protect nonparties from having their interests adversely affected by litigation conducted without their participation."

44. Here the court noted that

[a] rule making knowledge of the pendency of the litigation the critical event would be unsound because it would induce both too much and too little intervention. It would encourage individuals to seek intervention at a time when they ordinarily can possess only a small amount of information concerning the character and potential ramifications of the lawsuit, and when the probability that they will misjudge the need for intervention is correspondingly high. Often the protective step of seeking intervention will later prove to have been unnecessary, and the result will be needless prejudice to the existing parties and the would-be intervenor if his motion is granted, and purposeless appeals if his motion is denied. In either event, scarce judicial resources would be squandered, and the litigation costs of the parties would be increased.

Id.

45. Disallowing intervention could also cause needless litigation of another sort—a collateral attack against a decree. In *Society Hill Civic Ass'n v. Harris*, 632 F.2d 1045, 1050 n.4 (3d Cir. 1980) (plaintiff allowed to collaterally attack a consent decree after her intervention motion was denied on grounds of untimeliness) the court held that a collateral attack on a consent decree would be allowed where the plaintiffs had not been parties to the original suit, and would have been denied intervention and an adjudication on the issues raised by them in the collateral attack. Though it noted that a collateral at-

The second policy mentioned by the *Stallworth* court is the need to protect nonparties from having their interests adversely affected by litigation conducted without their participation.⁴⁶ A timeliness inquiry divorced from consideration of the representational adequacy of the proposed intervenor's interest defeats this policy. This becomes evident when a proposed intervenor's interest is adequately protected at the outset of an action and the timeliness of the intervention motion is measured by the amount of time that passes after a proposed intervenor learned that his interest might be affected. When a would-be intervenor's interests is adequately represented at the outset of the litigation, rule 24 prevents his immediate intervention.⁴⁷ Later, if his interest becomes unprotected, he is foreclosed from intervening (assuming sufficient time has passed), since the court measures timeliness from the moment he first learned that his interest *might* be affected. Conceivably, a person might easily recognize early in the litigation that he has an interest that would be affected by disposition of the action. Since rule 24 prevents his intervention early in the proceeding, and the timeliness bar precludes it later, there is a possibility that his interest would be adversely affected without his ever having an opportunity to participate in the litigation.

Although the *Stotts* majority failed to explicitly identify a rationale for its timeliness rule, other courts have attempted to justify the rule requiring prompt intervention after a person discovers his interest in the case. Citing *Culbreath*, the *Garrity* court identified such a rationale and concluded that its timeli-

tack would be allowed, the court opined that "intervention is a far better course than subsequent collateral attack." *Id.* at 1052. It is axiomatic that allowing a person to intervene will require the commitment of fewer judicial resources than entertaining a collateral attack on a judgment.

46. Here Judge Clark stated: "Such a rule would also mean that many individuals who excusably failed to appreciate the significance of a suit at the time it was filed would be barred from intervening to protect their interests when its importance became apparent to them later on." *Stallworth*, 558 F.2d at 265.

47. Dissenting in *Stotts*, Judge Martin observed:

Any applicant who moved to intervene in a proceeding asserting a *possibility* this his interests *might* be affected by some aspect of a future judgment would face an uphill battle indeed to satisfy Rule 24(a)(2)'s interest, inadequacy, and impairment requirements. . . . The majority's interpretation of the Rule requires an applicant to move for intervention at a time when it would be impractical and impossible to predict the ramifications of a lawsuit upon the applicant.

Stotts, 679 F.2d at 593 (Martin, J., dissenting) (citation omitted).

ness analysis was designed "to prevent last minute disruption of painstaking work by the parties and the court."⁴⁸

This rationale was also adopted in *Jones v. Caddo Parish School Board*,⁴⁹ a desegregation case that was litigated for sixteen years. The appellant's attempt to intervene after entry of a consent decree was ruled untimely. The appellant contended that she had "presumed that the United States would represent the best interest of herself and the class she [sought] to represent" and that she did not know of the consent decree's content until after its entry.⁵⁰ Noting that public input into the year-long settlement negotiations had been solicited, Judge Garwood held the intervention untimely. He cited a "proper regard for the settlement process" as a significant factor in the decision.⁵¹ In concurrence, Judge Williams opined that concern for finality in judgments outweighed the consideration that not everyone would be satisfied with the judgment.⁵²

However, the *Caddo Parish* majority failed to address the adequacy of representation issue. The court did not recognize that until the Justice Department was found to inadequately protect the proposed intervenor's interest, rule 24 precluded her from intervening.⁵³ Since the movant did not learn that the government had inadequately represented the interest of her putative class until publication of the consent decree, she could not be expected to intervene before then. The fact that the litigation had proceeded slowly for many years probably influenced the court's decision. However, while finality of judgment is an important interest, it should not operate to deprive a person of the right to adequate representation of a legitimate interest.

III. CONCLUSION

A conflict exists among the courts of appeals about how to determine when a motion to intervene is timely. The Sixth Cir-

48. *Garrity*, 697 F.2d at 458 (quoting *Culbreath*, 630 F.2d at 22).

49. 704 F.2d 206, 221 (5th Cir.), *aff'd on rehearing en banc*, 735 F.2d 923 (5th Cir. 1984).

50. *Id.* at 220.

51. *Id.* at 221.

52. *Id.* at 223.

53. Judge Goldberg noted in dissent: "a movant has a greater burden when attempting to show that the government is an inadequate representative of the movant's interest." *Caddo Parish*, 704 F.2d at 228 (Goldberg, J., dissenting); see also *supra* note 10 and accompanying text.

cuit in *Stotts*, as well as the First and Seventh Circuits,⁵⁴ have opted for a rule that measures timeliness from the moment a party knows his interest *may* be affected. In contrast, the Fourth and Fifth Circuits⁵⁵ measure timeliness from the time a proposed intervenor first knows his interest was not adequately represented. A careful reading of *United Airlines*, the most recent Supreme Court case to consider the question, supports the latter rule.⁵⁶ Furthermore, as pointed out in *Stallworth*, the underlying policies of rule 24 are best served by this construction.⁵⁷ *Stotts* was incorrectly decided because the court mistakenly held that the intervenors' motion was untimely because of their failure to intervene as soon as they became aware that their interests might be affected. Since the city in *Stotts* was presumed to adequately protect the intervenors' interest, the court should have measured the timeliness of the motion to intervene with reference to the time when the proposed intervenors finally knew that the city would not adequately protect their interests.

To avoid this error when ruling on motions to intervene, courts should first determine whether the proposed intervenor's interest is adequately represented by existing parties. This adequacy determination should be made before the court analyzes the timeliness of the motion. If the intervenor's interest is adequately represented the motion to intervene should be denied. However, if it is not adequately represented the court should proceed to analyze the timeliness question. At this point, the court should determine when the intervenor learned his interest in the case was not adequately represented. Once this has been determined, the court should examine the timeliness of the motion in light of the time that has passed between when the intervenor learned or should have learned that his interest was not adequately represented and when he filed his motion to intervene. Although other factors⁵⁸ should also be considered in determining a motion's timeliness, this factor should be given the most weight. By adhering to this analysis federal courts may avoid repeating the error made by the *Stotts* court.

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54. See *supra* note 27 and accompanying text.

55. See *supra* notes 19-26 and accompanying text.

56. See *supra* notes 12-18 and accompanying text.

57. See *supra* notes 43-46 and accompanying text.

58. See *supra* note 2.

