



News Update: Ball v. Kasich

Disability Rights Ohio asks court not to allow county boards as defendants

On December 23, attorneys representing the plaintiffs (led by Disability Rights Ohio) filed a motion in the U.S. District Court for the Southern District of Ohio asking the judge to overrule OACB's request to intervene as a defendant in *Ball v. Kasich*. Intervention can be granted either of two ways: (1) as a matter of right, or (2) permissively, which means that the court can choose to allow the intervention at the discretion of the court.

The plaintiff's attorneys make two main arguments against OACBDD's right to intervention – (1) the DD Boards have the same interests as the state defendants and, in essence, are agents of the state defendants and (2) the state defendants will adequately represent the interests of all DD Boards.

As would be expected, OACB does not share this view, and has responded to Disability Rights Ohio's motion reiterating the importance of having county boards of DD represented in the lawsuit. A full analysis of DRO's motion and OACB's response is below.

Why does Disability Rights Ohio (DRO) believe that county boards should not be permitted to intervene as defendants (via OACB)?

DRO argues that OACB fails to make the case that county boards have a right to intervene. They justify this argument by saying that OACB failed to meet all of the criteria required for intervention by right. These include:

1. OACB (on behalf of county boards) does not have "substantial legal interest" in the case, and
2. OACB (on behalf of county boards) has not demonstrated the interests of county boards are being inadequately represented by the current defendants.

Why does DRO believe OACB does not have substantial legal interest in the case?

DRO argues that OACB's major reasons for wanting to intervene – that county boards are largely responsible for funding the current system as well as implementing and monitoring any changes at the local level – do not set them apart enough from the state to be allowed to participate in the case. DRO further argues that the interests asserted by OACB are merely economic in nature, comparing the interests to those of private providers in other cases which were seeking to ensure that the providers received adequate funding. DRO argued that OACB can "protect the economic interests of its members through a variety of means, including advocacy, lobbying and contractual negotiations with the state."

How does DRO believe that the state agencies currently listed as defendants can adequately represent the interest of OACB (and county boards)?

DRO argues that county boards are "instrumentalities of the state agency defendants, not autonomous or independent actors." This means that DRO believes OACB/county boards are wholly controlled by the state agencies and therefore the court should not view them as separate entities. DRO goes on to list the ways that the state controls the activities of county boards, including administrative rules and policies as well as the structure of the state's Medicaid system. In short, DRO argues that a county board's role is "merely to act as an agent of the state," and therefore should not have a separate seat at the table.



Why does DRO believe the court should not exercise its discretion to allow OACB (and county boards) to intervene as defendants in this case?

DRO argues that having county boards as parties (represented by OACB) would add a layer of complexity and duplication to the judicial proceedings that they believe will slow down proceedings, and that the judge should dismiss OACB's motion to intervene "with prejudice," meaning that OACB could not bring the motion again except to appeal the judge's decision. DRO also argues that there could be significant disagreement among the 88 county boards, and therefore OACB could not sufficiently represent the interests of all boards equally.

How has OACB responded to DRO's arguments?

In general, OACB's responses focus on the legal basis (such as the past court cases referenced by DRO as precedent) that DRO uses to support their arguments. In each of the arguments made by DRO, plaintiffs have backed up their claims with previous cases that judges have decided similar arguments. In some instances, OACB disagrees that these cases apply, and for that reason, argues that the judge has no basis on which he can reasonably grant the plaintiff's request to exclude county boards from the case.

In other instances, OACB also provides direct evidence proving that the point being made by DRO is not only legally inapplicable, but also factually inaccurate. Examples include DRO's argument that boards are "extensions of the state" (county boards are under the control of local governing boards, not state agencies); that the proceedings will be unnecessarily complicated or made more complex by boards' participation (boards have been involved thus far without any delay or complication); and that arguments made by OACB in its motion to intervene are largely similar to the state (county board positions are contrasted with the state's prior arguments to show clear differences).

A full copy of OACB's response to DRO's filing can be [downloaded here](#).

What is the next step in this process?

Now that OACB has responded to DRO's motion, the court will review:

1. OACB's original motion to intervene,
2. DRO's request to deny OACB's motion to intervene, and
3. OACB's response to DRO's request.

The court will weigh the arguments made by both parties and issue a ruling on whether or not OACB will be permitted to enter the case as a defendant on behalf of county boards of DD. The court's decision will use rationale presented by one or both parties when making its decision.

When will the court make its decision?

While the judge is not under any time constraints to make this decision, it is reasonable to expect that a decision will be reached over the next few months.



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Will the case continue forward while the court is making its decision on whether OACB can join as a defendant on behalf of county boards?

Yes. The case will continue while the plaintiffs and defendants engage in a preliminary “discovery” process, which – at this stage – is limited to the issue of whether or not the case may move forward as a “class action” lawsuit. Discovery is the process in which each side gathers evidence and information they will use to either present their arguments before the court or to justify their position when negotiating a settlement. There are also other motions pending that have not yet been ruled upon, including the state’s original motions to dismiss ([click here to learn more](#)) and a motion on whether or not the case will be certified as a class action.

Who is representing OACB (and county boards) in these proceedings?

OACB General Counsel Franklin J. Hickman and attorney John R. Harrison of the law firm of Hickman & Lowder, Co. LPA represent the association and its members on this matter. Mr. Hickman has been OACB’s Counsel since the association was formed in 1983 and has represented county boards of DD in similar proceedings at the local, state, and federal levels for more than 35 years. Mr. Harrison is extremely well versed on the issues raised by the lawsuit and brings additional perspective from years of experience in the public and private sectors.

How can a county board of DD communicate about this case with OACB legal counsel?

OACB has set up a special email account – drolegal@oacbdd.org – to conduct attorney-client privileged communications between member boards and the lawyers working on the case. County board members and superintendents should feel free to send messages to this email address if they have any questions or feedback as legal proceedings move forward.

Updates and Additional Information

This document and all other documents prepared by OACB pertaining to Ball v. Kasich will be updated as this case evolves. OACB members will be kept up to date on all of the developments with this lawsuit via typical communications channels, including the OACB Insider, PolicyBrief, and other means. Where appropriate, OACB legal counsel may work directly with individual county boards of DD on specific issues related to these legal proceedings.