RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) Persons to Be Joined if Feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

Explanation of Amendment
November 1, 1966

Rule 19 as completely redrafted was taken from a 1966 amendment to F.R. 19, with omissions of certain matters applicable only to federal jurisdiction and venue. F.R. 19 has been much criticized. The use of "indispensable" and "joint

interest" gave the rule an appearance of rigidity in adhering to technical concepts which is inconsistent with modern notions. It also introduced into Maine practice a new terminology. See § 19.2 of the text. It is plainly desirable for all persons materially interested in the subject of an action to be joined as parties so that a complete disposition can be made. When this is impossible, the court should decide on pragmatic grounds between dismissing the action and proceeding with it in the absence of particular interested persons. Rule 19 tended to divert the courts from this basic objective. Sensible results have often been achieved despite the rule, but some courts have gone astray. The rewritten rule is designed to correct the demonstrated defects and to point out clearly to the courts the proper basis for decision.

Subdivision (a) defines the persons whose joinder in the action is desirable. Clause (1) looks to the joinder of all persons whose absence will make impossible complete relief to those already parties. Clause (2) recognizes the importance of protecting an absentee from practical prejudice to his interests by an adjudication in his absence and also the importance of not leaving a party to the action in a position where a person not joined can later subject him to a double or otherwise inconsistent liability.

Subdivision (b) deals with what happens when a person described in subdivision (a) cannot be made a party. It sets out four relevant considerations to be taken into account in deciding whether to proceed with the parties before it or to dismiss. The first is the adverse effect on the absentee in a practical sense of a judgment in the action. The second deals with the possibility of lessening or avoiding this prejudice by the shaping of relief or otherwise. The third, tied closely with the shaping of relief just mentioned, calls attention to the extent of the relief that can be accorded among the parties joined. The fourth looks to the availability to the plaintiff of an adequate remedy elsewhere where better joinder would be possible.

The term "indispensable" appearing in subdivision (b) clearly does not read back into the rule the old formalistic concepts. As the federal Advisory Committee's Note states:

> "The subdivision uses the word 'indispensable' only in a conclusory sense, that is, a person is 'regarded as indispensable' when he cannot be made a party and, upon consideration of the factors above-mentioned, it is

> determined that in his absence it would be preferable to dismiss the action, rather than to retain it."

Subdivision (c) essentially duplicates the corresponding subdivision of the old rule. Subdivision (d) repeats the exception in the first clause of the superseded Rule 19(a) with respect to class actions.

Reporter's Notes
December 1, 1959

This rule is like Federal Rule 19 except for the omission of phrases relating to the jurisdiction of federal district courts. Rule 19(a) is a general statement of the common law and equity rules. It is not intended to change any tests laid down by statute or decision, at law or in equity, as to who must be joined. Necessary joinder applies to indispensable parties. Indispensable parties are those without whose presence the action cannot proceed. They are to be distinguished from necessary parties, who are dealt with in Rule 19(b). Necessary parties are those who should be joined if feasible, but whose presence is not essential. In Maine the terminology has been different. "Necessary" and "indispensable" seem to be treated as synonymous, and they are distinguished from "proper" parties. The results in terms of case law appear to have been essentially the same as in federal practice. *Medico v. Employers Liability Assurance Corp.*, 132 Me. 422, 172 A. 1 (1934).