

## **THE DIFFERING STANDARDS OF REVIEW THAT HAVE BEEN APPLIED TO RULE 19 DETERMINATIONS**

The federal appellate courts differ regarding the standard of review to be applied to district court determinations under Rules 19(a) and (b) of the Federal Rules of Civil Procedure. Rule 19(a) governs whether an absent party is a required party who should be joined if feasible. Rule 19(b) governs whether the action should be dismissed if it is not feasible to join a required party.

The First, Second, Fourth, Fifth, and Eleventh Circuits apply an abuse of discretion standard in reviewing Rule 19(a) and 19(b) determinations. The Eighth Circuit also applies an abuse of discretion standard to Rule 19(b) determinations, but we were unable to find a decision clearly indicating the standard of review applied in that circuit for Rule 19(a) determinations. The Third Circuit applies an abuse of discretion standard to Rule 19(b) determinations, but reviews Rule 19(a) determinations *de novo* if based on conclusions of law, and reviews any subsidiary Rule 19(a) factual findings under a clear error standard. The Sixth Circuit reviews Rule 19(a) determinations under an abuse of discretion standard and Rule 19(b) determinations *de novo*. Both the Ninth and Tenth Circuits apply an abuse of discretion standard to Rule 19(a) and (b) determinations, unless they are based upon a legal conclusion, in which case those determinations are reviewed *de novo*. The Seventh Circuit has declined to adopt a standard of review.

This report discusses the split in authority and whether there is a meaningful difference in the standards being applied.

### **I. RULE 19**

In the American system of civil litigation, a plaintiff is afforded significant discretion to structure a litigation, including the option of whether, and to what extent, to name multiple plaintiffs or multiple defendants. *See* 7 C. Wright, A. Miller & M. Kane, Federal Prac.

& Proc.-Civil 3d, § 1602 (“Wright & Miller”); 4-19 Moore's Federal Practice - Civil § 19.02. However, the plaintiff's discretion is not absolute. Rule 19 is an exception to the general practice of allowing the plaintiff the right to choose who shall be parties to the litigation. Under Rule 19 a plaintiff's prerogative will be lost when significant considerations make joinder of particular absent parties desirable. *See* Wright & Miller § 1602. In *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102 (1968), the Supreme Court identified four interests that are relevant to the issue of joinder under Rule 19: (1) the interest of the plaintiff in having a forum; (2) a defendant's desire to avoid multiple litigations, or inconsistent relief, or sole responsibility for a liability it shares with another; (3) the interest of the absentee whom it would have been desirable to join; and (4) the interests of the courts and the public in complete, consistent, and efficient settlement of controversies. *Id.* at 738-39.

Rule 19 provides, in relevant part:

**Rule 19. Required Joinder of Parties**

**(a) Persons Required to Be Joined if Feasible.**

**(1) Required Party.** A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

\* \* \*

**(b) When Joinder Is Not Feasible.** If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

District courts generally apply a three-part analysis in determining Rule 19 motions to dismiss. First, the court determines under the standards set forth in Rule 19(a) whether the absent party is a required party who must be joined if feasible. *See* Rule 19(a); Wright & Miller § 1604, p. 39. If one or more of the tests is satisfied, the absent party is a required party who must be joined if feasible. *See* Rule 19(a); Wright & Miller § 1604, p. 39. If the absent party is not a required party, joinder may not be compelled. Moore's Federal Practice - Civil § 19.4[1][c].

If the court determines that an absent party is a required party within the meaning of Rule 19(a), it must then determine whether it is feasible to join that party - whether the absent party is subject to service of process or whether the absentee's joinder will deprive the court of subject matter jurisdiction. *See* Wright & Miller § 1604, pp. 40 & 65-66. "Subject to service of process" means that if service is properly effected, the court will have personal jurisdiction over the absent party." *See* Wright & Miller § 1610, pp. 153-154. If it is not feasible to join the absent party, the court must then decide whether the action should be dismissed under Rule

19(b). *See* Rule 19(b); *ConnTech Dev. Co. v. Univ. of Conn. Educ. Props.*, 102 F.3d 677, 681 (2d Cir. 1996); Wright & Miller § 1604, p. 40.

The court's determination under Rule 19(b) turns on the question of “whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed.” Rule 19(b). Although no prescribed formula exists to determine whether an absentee is deemed to be indispensable, and factors in addition to those set forth in Rule 19(b) may be considered, *see* Wright & Miller § 1607, p. 88, courts generally weigh four factors in making this determination: (1) the prejudice to the existing parties or the absent party if judgment is entered in the person’s absence; (2) whether the court can shape relief to lessen or avoid any prejudice; (3) whether the court can award an adequate remedy among the existing parties without the absent party; and (4) whether an alternative forum exists in which the plaintiff could obtain an adequate remedy if the court dismissed the action for nonjoinder. *See* Rule 19(b) Advisory Committee's Note.

## **II. STANDARD OF REVIEW EMPLOYED BY EACH CIRCUIT COURT**

As indicated above, the Circuit Courts differ regarding the standard of review to apply to district court determinations under Rules 19(a) and (b). The standard of review in each of those circuits, and the reasons for that standard, if given, are discussed below.

### **A. First Circuit**

The First Circuit applies an abuse of discretion standard of review to the district court's determinations under Fed. R. Civ. P. 19(a) and (b). *See Picciotto v. Cont'l Cas. Co.*, 512 F.3d 9, 14-15 (1st Cir. 2008); *Tell v. Dartmouth Coll.*, 145 F.3d 417, 418-19 (1st Cir. 1998); *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629, 634-35 (1st Cir. 1989).

In *Picciotto*, the First Circuit explained that it applies an abuse of discretion standard to a Rule 19(b) determination for the following reasons: “This deference is warranted because Rule

19(b) determinations ... are anything but pure legal conclusions.” 512 F.3d at 14 (quoting *Travelers Indem. Co.*, 884 F.2d at 635). “Instead, they involve the balancing of competing interests and must be steeped in pragmatic considerations.” *Travelers Indem. Co.*, 884 F.2d at 635.

In *Picciotto*, the First Circuit also decided that the abuse of discretion standard applies to a Rule 19(a) determination, something that the court had not previously determined. 512 F.3d at 14. “Like Rule 19(b), Rule 19(a) requires the trial court to make pragmatic judgments and to 'decide whether considerations of efficiency and fairness, growing out of the particular circumstances of the case, require that a particular person be joined as a party.’” *Id.* at 14-15. “Such pragmatic judgments generally warrant deference to the trial court because they 'turn [ ] on specific facts, will not recur in identical form and the district judge is closer to the facts ... and has a comparative advantage over a reviewing court.’” *Id.* at 15 (quoting *Tell*, 145 F.3d at 418 n.1).

The Court also pointed to the fact that “all of the circuits that have examined the question have applied an abuse of discretion standard to Rule 19(a) determinations.” *Id.* at 15 (citing decisions from the Fourth, Sixth, Ninth and Tenth Circuits). The Court did note that the Ninth and Tenth Circuits review Rule 19 determinations under an abuse of discretion standard, but review underlying legal conclusions supporting Rule 19 determinations *de novo*, citing *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1022 (9th Cir. 2002), and *Davis v. United States*, 192 F.3d 951, 957 (10th Cir. 1999). *Id.* at 15 n.9. The Court considered that standard to be “tantamount to an abuse of discretion review.” *Id.* “Because a district court by definition abuses its discretion when it makes an error of law, even under an abuse of discretion standard, we 'review the district court's answers to abstract questions of law *de novo*.’” *Id.* at 15 n. 9.

**B. Second Circuit**

The Second Circuit also reviews a district court's determinations under Rule 19 (a) and (b) for abuse of discretion. *Mastercard Int'l Inc. v. Visa Int'l Serv. Ass'n*, 471 F.3d 377, 385 (2d Cir. 2006). Although we found no decisions to explain why the Second Circuit applies this standard of review to Rule 19(a) determinations, a handful of decisions with respect to Rule 19(b) do, in fact, enumerate justification for an abuse of discretion standard. According to the Second Circuit, the district court is required to balance a variety of factors, more in the arena of a factual determination than a legal one, when making a Rule 19(b) determination. Therefore, the Second Circuit has determined that the district court should be granted “substantial discretion” to allow for a “flexible approach” in performing a Rule 19(b) analysis. *See Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 132 (2d Cir. 2013); *see also Universal Reinsurance Co. v. St. Paul Fire & Marine Ins. Co.*, 312 F.3d 82, 87 (2d Cir. 2002); *Envirotech Corp. v. Bethlehem Steel Corp.*, 729 F.2d 70, 75 (2d Cir. 1984).

In *Envirotech Corp.*, the Southern District weighed the four factors listed in Rule 19(b) to determine that one of the two plaintiffs was an indispensable party to the counterclaim and was non-diverse to the plaintiff-counterclaim defendant, and therefore dismissed the counterclaim for lack of subject matter jurisdiction. The Second Circuit affirmed the Southern District's decision, holding that:

The language of Rule 19(b) leaves the district court with “substantial discretion in considering which factors to weigh and how heavily to emphasize certain considerations in deciding whether the action should go forward in the absence of someone needed for a complete adjudication of the dispute.” (citation omitted). Concluding that that latitude puts a Rule 19(b) determination more in the arena of a factual determination than a legal one, we have held appellate review to be limited to “abuse of discretion.” (citations omitted).

*Envirotech Corp.*, 729 F.2d at 75.

In the Second Circuit, a district court abuses its discretion when “(1) its decision rests on an error of law (such as application of the wrong legal principle) or a clearly erroneous factual finding, or (2) its decision – though not necessarily the product of a legal error or clearly erroneous factual finding – cannot be located within the range of permissible decisions.” *Mastercard Int’l Inc.*, 471 F.3d at 385 (applying abuse of discretion standard to Rule 19 determination).

**C. Third Circuit**

In the Third Circuit, if a Rule 19(a) determination is based on a conclusion of law, review is plenary. However, the Third Circuit reviews any subsidiary findings of fact for clear error. The Third Circuit applies an abuse of discretion standard for reviewing Rule 19(b) determinations. *See Huber v. Taylor*, 532 F.3d 237, 247 (3d Cir. 2008); *Gen. Refractories Co. v. First State Ins. Co.*, 500 F.3d 306, 312 (3d Cir. 2007); *Janney Montgomery Scott, Inc. v. Shepard Niles, Inc.*, 11 F.3d 399, 403-04 (3d Cir. 1993). We did not find any Third Circuit decision which explained the basis for the Court's decisions.

**D. Fourth Circuit**

Like the First and Second Circuits, the Fourth Circuit reviews a district court's determinations on a motion for joinder pursuant to Rule 19(a) and (b) under the abuse of discretion standard. *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Rite Aid of S.C., Inc.*, 210 F.3d 246, 250 (4th Cir. 2000) (“The district court's Rule 19 dismissal of National Union's action is reviewed for abuse of discretion.”); *Am. Gen. Life & Accident Ins. Co. v. Wood*, 429 F.3d 83, 92 (4th Cir. 2005) (“We review a district court's denial of a motion for joinder pursuant to Rule 19(a) or (b) under the abuse of discretion standard and its findings of fact under the clear error standard.”).

In *Coastal Modular Corp. v. Laminators, Inc.*, 635 F.2d 1102 (4th Cir. 1980), the plaintiff, a contractor hired by the Navy to produce modules for the construction of air traffic control towers, commenced suit against the defendant/third-party plaintiff, a manufacturer of panels used to construct the modules, for (among other things) breach of warranty. *Id.* at 1103. The defendant/third-party plaintiff moved under Rule 19 for an Order directing joinder of the Navy, arguing that if the Navy were not joined as a party to the action, there would be a substantial risk that the defendant/third-party plaintiff would incur multiple obligations. *Id.* at 1108. The district court denied the Rule 19 motion because the defendant “could only theorize the possibility that the Navy would institute suit against it” and “[n]othing before the court suggested a substantial likelihood of such a suit.” *Id.* In its decision affirming the district court’s ruling, the Fourth Circuit held: “The inquiry contemplated by Rule 19 is a practical one. 7 C. Wright & A. Miller, Federal Practice and Procedure § 1604 (1972). It is addressed to the sound discretion of the trial court. *General Tire & Rubber Co. v. Watkins*, 326 F.2d 926 (4th Cir.), *cert. denied*, (377 U.S. 952, 84 S. Ct. 1629, 12 L. Ed. 2d 498 (1964)). We find no abuse of discretion under the circumstances.” *Id.*

**E. Fifth Circuit**

The Fifth Circuit has stated that “[w]e review the district court’s decision to dismiss for failure to join an indispensable party for an abuse of discretion.” *Hood ex rel. Miss. v. City of Memphis, Tenn.*, 570 F.3d 625, 628 (5th Cir. 2009); *Pulitzer-Polster v. Pulitzer*, 784 F.2d 1305, 1308 (5th Cir. 1986). “Determining whether an entity is an indispensable party is a highly-practical, fact-based endeavor and '[Federal Rule of Civil Procedure] 19’s emphasis on a careful examination of the facts means that a district court will ordinarily be in a better position to make a Rule 19 decision than a circuit court would be.’” *Hood ex rel. Miss.*, 570 F.3d at 628 (quoting *Pulitzer-Polster*, 784 F.2d at 1309). Also, “[a] court abuses its discretion when its

ruling is based on an erroneous view of the law.” *Id.*

While not specifically addressing the standard of review for the Rule 19(a) and 19(b) components of such a ruling, it is likely that the Fifth Circuit intends to apply the abuse of discretion standard to both Rule 19(a) and 19(b) determinations.

#### **F. Sixth Circuit**

The Sixth Circuit had previously adopted an abuse of discretion standard for Rule 19 cases. *See Local 670 v. Int'l Union, United Rubber*, 822 F.2d 613, 618-19 (6th Cir. 1987). However, that standard was modified in 1993 in *Keweenaw Bay Indian Cmty. v. Michigan*, 11 F.3d 1341, 1346 (6th Cir. 1993), where the Sixth Circuit decided that it would “review a Rule 19(a) finding that a party is necessary to an action under an abuse of discretion standard,” but would “review a Rule 19(b) determination that a party is indispensable to an action *de novo*.” In adopting this modification, the Sixth Circuit determined that “Rule 19(b) is inherently a legal question,” whereas “the preliminary determination as to whether a party is necessary to the action, under Rule 19(a), is based solely on a district court's factual findings.” *Id.* This dual standard – abuse of discretion for Rule 19(a) determinations and *de novo* for Rule 19(b) determinations – remains the standard employed by the Sixth Circuit. *Laethem Equip. Co. v. Deere & Co.*, 485 F. App'x 39, 43 (6th Cir. 2012).

#### **G. Seventh Circuit**

The Seventh Circuit has considered, but not yet decided, whether to review decisions under Rule 19 *de novo* or for an abuse of discretion. *Askew v. Sheriff of Cook Cnty.*, 568 F.3d 632 (7th Cir. 2009); *Thomas v. United States*, 189 F.3d 662 (7th Cir. 1999).

In *Thomas*, elections were held to ratify two amendments to a tribal constitution. They were approved, prompting challenges by the losing faction. *Thomas*, 189 F.3d at 664. At the instigation of the losing faction, federal officials overturned the election results, thus causing

the plaintiffs to file a lawsuit against certain federal authorities (but not naming the tribal governing board as a party). *Id.* at 665. The district court dismissed the claims against the federal defendants for failure to join the tribal defendants under Rule 19. *Id.* The Seventh Circuit reversed. In its decision, the Seventh Circuit acknowledged that “respectable arguments can be made in favor of each standard [*i.e.*, *de novo* versus abuse of discretion]” and then held that:

In the cases we have thus far encountered, the result would have been the same using either standard of review. (citation omitted). This one is no different. Because the district court made a legal error in its analysis, we would reverse its determination under either standard. We therefore once again postpone resolving the question of the proper standard of review in Rule 19 cases for a day when that issue is of some consequence to the outcome.

*Id.* at 666.

Ten years after *Thomas* was decided, the Seventh Circuit was afforded another opportunity to adopt a bright-line standard of review for Rule 19 determinations. In *Askew*, 568 F.3d 632, the plaintiff (a detainee) filed a claim alleging that during the plaintiff's incarceration one of the defendants (an officer) threw the plaintiff to the ground without provocation and, after the plaintiff asked to be transferred to another division in the jail, the defendant/officer left him alone with other inmates who stabbed the plaintiff. *Id.* at 633. The district court dismissed the case under Rule 19 because, although the plaintiff named the Sheriff in the claim, the plaintiff failed to name the county. *Id.* at 634. In reversing the district court's decision, the Seventh Circuit again decided to postpone resolution of the question of the proper standard of review in Rule 19 cases because under either standard – *de novo* or abuse of discretion – the district court made a legal error in its analysis. *Id.*

## **H. Eighth Circuit**

The Eighth Circuit applies an abuse of discretion standard to a “district court's dismissal under Federal Rule of Civil Procedure 19(b).” *Scenic Holding, L.L.C. v. New Bd. of*

*Trs. of the Tabernacle Missionary Baptist Church, Inc.*, 506 F.3d 656, 665 (8th Cir. 2007).  
*Accord United States ex rel. Steele v. Turn Key Gaming, Inc.*, 135 F.3d 1249, 1251 (8th Cir. 1998); *Pembina Treaty Comm. v. Lujan*, 980 F.2d 543, 545 (8th Cir. 1992).

In *Baker Group, L.C. v. Burlington N. & Santa Fe Ry. Co.*, 451 F.3d 484 (8th Cir. 2006), the Eighth Circuit stated that it was reviewing the district court's decision denying a Rule 19 motion to dismiss under an abuse of discretion standard. *Id.* at 490. The Court did not review the Rule 19(a) determination, and instead limited its review to the rule 19(b) issues. Thus, it appears, but it is not certain, that the Eighth Circuit would apply an abuse of discretion standard of review to a Rule 19(a) determination, as it does with respect to Rule 19(b) determinations.

We did not find any case explaining why the Eighth Circuit chose to apply an abuse of discretion standard of review to Rule 19(b) determinations.

## **I. Ninth Circuit**

As of 1982, the standard of review for Rule 19 cases was unclear. *See Walsh v. Centeo*, 692 F.2d 1239 (9th Cir. 1982). In *Walsh*, the Ninth Circuit was called upon to resolve that issue. In determining that an abuse of discretion standard should apply, the Ninth Circuit held:

we are convinced that the abuse of discretion standard should apply. As the Supreme Court recognized in *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 19 L. Ed. 2d 936, 88 S. Ct. 733 (1968), there is no prescribed formula for determining indispensability. “The decision whether to dismiss (*i.e.*, the decision whether the person missing is 'indispensable ') must be based on factors varying with the different cases, some such factors being substantive, some procedural, some compelling by themselves, and some subject to balancing against opposing interests.” *Id.* at 118-19, 19 L. Ed. 2d at 950. Thus, Rule 19(b) requires the district court to analyze various equitable considerations within the context of particular litigation, rather than to decide a purely legal issue.

*Id.* at 1242.

In *Hughes v. United States*, 953 F.2d 531 (9th Cir. 1992), the Ninth Circuit held that *de novo* review applies to legal conclusions in Rule 19 cases. During the following ten years, the Ninth Circuit wrestled with whether the standard of review on Rule 19 determinations was simply abuse of discretion or also included *de novo* review for legal conclusions. Compare *Faunce v. Bird*, 52 F. App'x 401 (9th Cir. 2002) (abuse of discretion applied to Rule 19 determinations without mention of *de novo* review for legal conclusions); *Clinton v. Babbitt*, 180 F.3d 1081, 1087 (9th Cir. 1999) (same); *Mayes v. Fujimoto*, No. 98-16252, 1999 U.S. App. LEXIS 4876 (9th Cir. Mar. 19, 1999) (same); *Kescoli v. Babbitt*, 101 F.3d 1304, 1309 (9th Cir. 1996) (abuse of discretion applied to Rule 19 determinations, but *de novo* review applied to legal conclusions); *United States ex rel. Morongo Band of Mission Indians v. Rose*, 34 F.3d 901, 907 (9th Cir. 1994) (same).

Today, it appears that the Ninth Circuit employs an abuse of discretion standard in Rule 19 cases, but applies *de novo* review of legal conclusions. See *Alto v. Black*, 738 F.3d 1111, 1125 (9th Cir. 2013) (“We review the district court's denial of the Band's Rule 19 motion for abuse of discretion, but review the legal conclusions underlying that determination *de novo*.”); *Salt River Project Agr. Imp. & Power Dist. v. Lee*, 672 F.3d 1176, 1179 (9th Cir. 2012) (“We review a Rule 19 dismissal for abuse of discretion and underlying legal conclusions *de novo*.”); *Cachil Dehe Band of Wintun Indians v. California*, 547 F.3d 962 (9th Cir. 2008) (stating that standard of review of a district court's Rule 19 determination is abuse of discretion, but “[t]o the extent that in its inquiry the district court “decided a question of law, we review that determination *de novo*.”); *San Pasqual Band of Mission Indians v. Cal.*, 295 F. App'x 880, 880-81 (9th Cir. 2008) (“*De novo* review may therefore extend to determinations whether a third party's interests would be impaired within the meaning of the joinder rules, if that determination decided a question of law.”)

None of the cases explain the basis for the Ninth Circuit's determination as to the applicable standard of review.

**J. Tenth Circuit**

Similar to the Ninth Circuit, the Tenth Circuit also reviews Rule 19 determinations under an abuse of discretion standard and underlying legal conclusions supporting Rule 19 determinations *de novo*. *Davis*, 192 F.3d at 957; *Merrill Scott & Assocs. v. Concilium Ins. Servs.*, 253 F. App'x 756, 762 (10th Cir. 2007). According to the Tenth Circuit, in determining whether the district court abused its discretion, it “must consider 'whether the decision maker failed to consider a relevant factor, whether he [or she] relied on an improper factor, and whether the reasons given reasonably support the conclusion.’” *Rishell v. Jane Phillips Episcopal Mem. Med. Ctr.*, 94 F.3d 1407, 1411 (10th Cir. 1996) (citations omitted). The Tenth Circuit further expanded on its rationale for an abuse of discretion standard for Rule 19 cases, by stating: “[t]he standards set out in Rule 19 for assessing whether an absent party is indispensable are to be applied 'in a practical and pragmatic but equitable manner.’” *Id.* (citing *Francis Oil & Gas, Inc. v. Exxon Corp.*, 661 F.2d 873, 878 (10th Cir. 1981)).

**K. Eleventh Circuit**

The Eleventh Circuit appears to apply an abuse of discretion standard of review to determinations under both Rule 19(a) and Rule 19(b). *See Winn-Dixie Stores, Inc. v. Dolgencorp., L.L.C.*, 746 F.3d 1008, 1039 (11th Cir. 2014) (“We review a district court's decision regarding the joinder of indispensable parties for abuse of discretion”); *United States v. Rigel Ships Agencies, Inc.*, 432 F.3d 1282, 1291 (11th Cir. 2005). “A district court abuses its discretion when, in reaching a decision, it applies an incorrect legal standard, follows improper procedures in making the determination, or makes findings of fact that are clearly erroneous.” *Winn-Dixie Stores*, 746 F.3d at 1039 (internal quotation marks and citation omitted). The court

further stated that “Federal Rule of Civil Procedure 19 sets out two steps for determining whether a party must be joined as indispensable,” and then discussed both Rules 19(a) and 19(b).  
*Id.*

We did not find any case explaining the basis for the Eleventh Circuit's decision to apply an abuse of discretion standard of review.

### **III. DISCUSSION**

Although there is technically a split in authority concerning the standard of review to be applied to district court determinations under Rule 19, each Circuit (except for the Sixth Circuit) grants a district court significant deference in making factual determinations in a Rule 19 case and will only reverse a district court’s factual finding where that district court has abused its discretion. The Sixth Circuit is the only appellate court to employ a *de novo* standard of review to Rule 19(b) determinations. Even though the Third, Ninth and Tenth Circuits have held that legal conclusions in Rule 19 motions are reviewed *de novo*, this subtlety does not change the outcome of appellate review, since a district court that makes a legal error in its analysis is subject to reversal under either a *de novo* or abuse of discretion standard. Therefore, although different standards are employed by the various appellate courts, the difference is without significant consequence (with the exception of the Sixth Circuit).

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