

A homeowners' association sued a federal agency in a federal district court to enjoin the agency from issuing a license to a fracking company to drill near the homeowners' association's neighborhood. An environmental group that owns a park in the neighborhood seeks to join and fully participate in that case to obtain the same remedy as the homeowners' association.

What action should the environmental group take to achieve its goal?

- A. File a motion to intervene as a matter of right.
- B. File a motion to join as an indispensable party.
- C. File a motion to permissibly intervene.
- D. File an amicus brief.

Explanation:

Intervention

(FRCP 24)

Intervention of right

- On timely motion, court *must* permit intervention when either:
 - nonparty's interest in case not adequately represented by existing parties & deciding case may impair nonparty's ability to protect that interest
 - federal statute gives *unconditional* right to intervene

Permissive intervention

- On timely motion, court *may* permit intervention when either:
 - nonparty's claim or defense shares common question of law or fact with main action
 - federal statute gives *conditional* right to intervene
- Court must consider whether intervention will unduly delay or prejudice adjudication of original parties' rights

FRCP = Federal Rule of Civil Procedure.

The environmental group (nonparty) seeks to fully participate in the suit between the homeowners' association and the federal agency. A **nonparty can join** and fully participate in a pending suit to protect his/her interest by filing a **motion to intervene** under Federal Rule of Civil Procedure (FRCP) 24. There are two types of intervention:

- **Intervention of right** – the court *must* permit intervention when (1) the nonparty's **interest is inadequately represented** by the existing parties and (2) deciding the case may **impair** the nonparty's **ability to protect** that interest
- **Permissive intervention** – the court *may* permit intervention when the nonparty's claim or defense shares a **common question of law or fact with the main action***

The environmental group likely cannot intervene as a matter of right since the homeowners' association will adequately represent the group's interest in its park (**Choice A**). This is because both entities seek to enjoin the federal agency from issuing a fracking license near the neighborhood. But since both claims share common questions of law and fact, the group should file a motion to permissibly intervene in the case.

*Intervention is also allowed when a federal statute gives a person an unconditional or conditional right to intervene (not seen here).

(Choice B) Only a *party* may file an FRCP 19 motion to join an **indispensable party**. But the group is not indispensable because (1) complete relief can be provided to the existing

parties, (2) the group can protect its park through future litigation, and (3) no threat of inconsistent obligations exists since the entities seek the same remedy.

(Choice D) An amicus (ie, friend-of-the-court) brief is a legal document filed by a nonparty that provides the court with relevant information to help it decide the disputed issues. But amicus briefs do not allow the nonparty to fully participate in the case and are most commonly filed in appeals.

Educational objective:

A nonparty may intervene (1) as a matter of right, if the nonparty's interest is inadequately represented and a decision may impair the nonparty's ability to protect that interest or (2) permissively, if the nonparty's claim or defense shares a common question of law or fact with the main action.

References

- Fed. R. Civ. P. 14 (intervention).