

RULERule 23. CLASS ACTIONSClass Actions

(a) **Prerequisites to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if:

_____ (1) ~~the~~ the class is so numerous that joinder of all members is impracticable;

_____ (2) ~~there~~ there are questions of law or fact common to the class;

_____ (3) ~~the~~ the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

_____ (4) ~~the~~ the representative parties will fairly and adequately protect the interests of the class.

(b) **Aggregation.** The representative parties may aggregate the value of the individual claims of all potential class members to establish district court jurisdiction over a class action.

(c) **Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of ~~subdivision~~ Rule 23(a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; ~~or~~

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

_____ (A) ~~the~~ interest of members of the class in individually controlling the prosecution or defense of separate actions;

_____ (B) ~~the~~ extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

_____ (C) ~~the~~ desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

_____ (D) ~~the~~ difficulties likely to be encountered in the management of a class action.

(d) Determination by Order Whether Class Action to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court ~~shall~~must determine by order whether it is to be so maintained. ~~An~~The order ~~under this subdivision~~ may be conditional, and may be altered or amended before the decision on the merits.

(2) ~~When~~ determining whether an action may be maintained as a class action, the representative party's rejection of an offer made under Rule 68 or other offer of compromise that offers to resolve less than all of the class

claims asserted by or against the representative party ~~shall have~~has no impact on the representative party's ability to satisfy the requirements of ~~subdivision—Rule 23~~(a)(4). When the representative party is unable or unwilling to continue as the class representative, the court ~~shall~~must permit class members an opportunity to substitute themselves as the class representative except in cases where the representative party has been sued.

(3) In any class action maintained under ~~subdivision—Rule 23~~(b)(3), the court ~~shall~~must direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice ~~shall~~must advise each member that-:

_____ (A)- the court will exclude the member from the class if the member so requests by a specified date;

_____ (B)- the judgment, whether favorable or not, will include all members who do not request exclusion; and

_____ (C)- any member who does not request exclusion may, if the member desires, enter an appearance through the member's counsel.

(4) The judgment in an action maintained as a class action under ~~subdivision—Rule 23~~(b)(1) or ~~(b)~~(2), whether or not favorable to the class, ~~shall~~must include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under ~~subdivision—Rule 23~~(b)(3), whether or not favorable to the class, ~~shall~~must include and specify or describe those to whom the notice provided in ~~subdivision—Rule 23~~(c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(5) When appropriate—~~(A)~~, an action may be brought or maintained as a class action with respect to particular issues, or ~~(B)~~ a class

may be divided into subclasses and each subclass treated as a class, and the provisions of this rule ~~shall~~ must then be construed and applied accordingly.

(e) **Orders in Conduct of Actions.** ~~In the conduct of~~

(1) When conducting actions to which this rule applies, the court may make appropriate orders: ~~(1)~~

(A) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; ~~(2)~~

(B) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given to some or all of the members in such manner as the court may direct ~~to some or all of the members~~;

(i) of any step in the action, ~~or~~;

(ii) of the proposed extent of the judgment, ~~or~~;

(iii) of the opportunity of members to signify whether they consider the representation fair and adequate,;

(iv) to intervene and present claims or defenses,; or

(v) to otherwise to come into the action; ~~(3)~~

(C) imposing conditions on the representative parties or on interveners; ~~(4)~~

(D) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; or ~~(5) dealing with similar procedural matters.~~

~~The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.~~

(E) dealing with similar procedural matters.

(2) The orders may be combined with an order under Rule 16, and may be altered or amended.

(f) **Dismissal or Compromise.** A class action ~~shall~~must not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise ~~shall~~must be given to all members of the class in such manner as the court directs.

Advisory Committee Note—2018 Amendment

[This rule may need a note].