

Rule 23. Class Actions**23.01 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

- (a) the class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law or fact common to the class;
- (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (d) the representative parties will fairly and adequately protect the interests of the class.

23.02 Class Actions Maintainable

An action may be maintained as a class action if the prerequisites of Rule 23.01 are satisfied, and in addition:

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

(1) 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

(2) 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

(b) 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

(c) 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: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action.

23.03 Determining by Order Whether to Certify a Class Action; Appointing Class Counsel; Notice and Membership in Class; Judgment; Multiple Classes and Subclasses**(a) Certification Order.**

(1) When a person sues or is sued as a representative of a class, the court must - at an early practicable time - determine by order whether to certify the action as a class action.

(2) An order certifying a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23.07.

(3) An order under Rule 23.03(a)(1) may be altered or amended before final judgment.

(b) Notice.

(1) For any class certified under Rule 23.02(a) or (b), the court may direct appropriate notice to the class.

(2) For any class certified under Rule 23.02(c), the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language:

- (A) the nature of the action,
- (B) the definition of the class certified,
- (C) the class claims, issues, or defenses,
- (D) that a class member may enter an appearance through counsel if the member so desires,
- (E) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded, and
- (F) the binding effect of a class judgment on class members under Rule 23.03(c).

(c) Identification of Class Members. The judgment in an action maintained as a class action under Rule 23.02(a) or (b), whether or not favorable to the class, shall 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 Rule 23.02(c), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in Rule 23.03(b) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(d) Issue Classes and Subclasses. When appropriate (1) an action may be brought or maintained as a class action with respect to particular issues, or (2) a class may be divided into subclasses and each subclass treated as a class; and the provisions of this rule shall then be construed and applied accordingly.

(Amended effective January 1, 2006.)

23.04 Orders in Conduct of Action

In the conduct of actions to which this rules applies, the court may make appropriate orders:

- (a) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;
- (b) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to enter the action;
- (c) imposing conditions on the representative parties or intervenors;
- (d) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; or
- (e) dealing with similar procedural matters.

The orders may be combined with an order pursuant to Rule 16, and may be altered or amended whenever necessary.

23.05 Settlement, Voluntary Dismissal, or Compromise

(a) Court Approval.

(1) A settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class is effective only if approved by the court.

(2) The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.

(3) The court may approve a settlement, voluntary dismissal, or compromise that would bind class members only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.

(b) Disclosure Required. The parties seeking approval of a settlement, voluntary dismissal, or compromise under Rule 23.05(a) must file a statement identifying any agreement made in connection with the proposed settlement, voluntary dismissal, or compromise.

(c) Additional Opt-Out Period. In an action previously certified as a class action under Rule 23.02(c), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(d) Objection to Settlement.

(1) Any class member may object to a proposed settlement, voluntary dismissal, or compromise that requires court approval under Rule 23.05(a)(1).

(2) An objection made under Rule 23.05(d)(1) may be withdrawn only with the court's approval.

(e) Distribution of Residual Funds, If Any. In the event there are residual funds that remain after payment of all approved class member claims (including any supplemental distributions to the class), expenses, litigation costs, attorney's fees, and other court-approved disbursements, the court shall direct notice regarding the distribution of these funds and establish a deadline by which potential recipients must submit a statement asserting a basis to designate the organization as a recipient of the residual funds. This notice shall be provided as directed by the court to any potential recipient of residual funds identified by the parties or the court and to the Legal Services Advisory Committee for the purpose of informing qualified legal services programs within the meaning of Minnesota Statutes, section 480.24, subdivision 3. The notice must include the deadline established by the court for submission of statements by potential recipients. Notice given to the Legal Services Advisory Committee shall be made using the form and delivery method required by State Court Administration.

In approving the distribution or other disposition of residual funds, the district court shall consider all relevant factors, including the recommendations of the parties, the nexus between the nature, purpose, and objectives of the class action and the interests of the class members, and the interests of potential recipients of the residual funds.

(Amended effective January 1, 2006; amended effective July 1, 2018; amended effective October 1, 2021.)

23.06 Appeals

The Court of Appeals may in its discretion permit an appeal from an order of a district court granting or denying class action certification under this rule. An application to appeal must be sought within the time provided in Minn. R. Civ. App. P. 105, and shall be subject to the other provisions of that rule. An appeal does not stay proceedings in the district court unless the district judge or the Court of Appeals so orders.

(Added effective January 1, 2006.)

23.07 Class Counsel**(a) Appointing Class Counsel.**

(1) Unless a statute provides otherwise, a court that certifies a class must appoint class counsel.

(2) An attorney appointed to serve as class counsel must fairly and adequately represent the interests of the class.

(3) In appointing class counsel, the court

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action,

(ii) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action,

(iii) counsel's knowledge of the applicable law, and

(iv) the resources counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may direct potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney fees and nontaxable costs; and

(D) may make further orders in connection with the appointment.

(b) Appointment Procedure.

(1) The court may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action.

(2) When there is one applicant for appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23.07(a)(2) and (3). If more than one adequate applicant seeks appointment as class counsel, the court must appoint the applicant best able to represent the interests of the class.

(3) The order appointing class counsel may include provisions about the award of attorney fees or nontaxable costs under Rule 23.08.

(Added effective January 1, 2006.)

23.08 Attorney Fees Award

In an action certified as a class action, the court may award reasonable attorney fees and nontaxable costs authorized by law or by agreement of the parties as follows:

(a) Motion for Award of Attorney Fees. A claim for an award of attorney fees and nontaxable costs must be made by motion, subject to the provisions of this subdivision, at a time set by the court. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(b) Right to Object. A class member, or a party from whom payment is sought, may object to the motion.

(c) Hearing and Findings. The court may hold a hearing and must find the facts and state its conclusions of law on the motion under Rule 52.01.

(d) Reference to Special Master. The court may refer issues related to the amount of the award to a special master as provided in Rule 53.01(a).

(Added effective January 1, 2006.)

23.09 Derivative Actions by Shareholders or Members

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interest of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

(Added effective January 1, 2006.)

23.10 Actions Relating to Unincorporated Associations

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23.04 and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23.05.

(Added effective January 1, 2006.)

Advisory Committee Comment - 2006 Amendment

Rule 23 is extensively revamped by these amendments. The recommended changes primarily adopt the amendments made to Federal Rule 23 in 2003. The reasons for these amendments are set forth in the advisory committee notes that accompanied the federal rule amendments. See Fed. R. Civ. P. 23, Advis. Comm. Notes - 2003 Amends., reprinted in Fed. Civ. Jud. Proc. & Rules 132-

37 (West 2005 ed.). Those notes provide useful information on the purposes for these amendments and may be consulted for interpretation of these rules.

Rule 23.03(a)(1) requires class certification to be taken up "at an early practicable time" rather than "as soon as practicable." Although these standards are substantially similar, the former rule's phrasing occasionally prompted courts to feel they did not have the leeway to defer ruling on certification until a later, more logical time. In many cases, certification cannot be decided without consideration of the practicalities of trying the case, making early certification impractical. See generally *Manual For Complex Litigation (Fourth)* section 21.133 (Fed. Jud. Ctr. 2004). Rule 23.03(a)(2) places in the rule an express requirement that the class be defined at the time of certification and that class counsel be appointed. Precise definition of the class is necessary to identify the persons entitled to relief, bound by a judgment in the case, and entitled to notice. *Id.* section 21.222. The procedures for appointment of class counsel are set forth in Rule 23.07. The rule omits reference to a "conditional" certification, reflecting the disfavor this device has earned, but preserves the ability of courts to amend a certification order any time before final judgment is entered.

Rule 23.03(b) establishes the power of the court to direct notice to the class in actions certified under Rule 23.02(a) or (b) (where notice is not generally required) and also states the requirement that notice be given to members of classes certified under Rule 23.02(c). Rule 23.03(b)(2) provides guidance on the content and form of these required notices, and requires the use of plain language. Sample plain-language class notice documents are available on the Federal Judicial Center's website, <http://www.fjc.gov>. These requirements are intended to improve the amount of useful information available to potential class members and to inform their decision on class participation.

Rule 23.05 is expanded to define the procedures for review and approval of class settlements. The rule adopts the changes in Fed. R. Civ. P. 23(e) with one stylistic modification. The federal rule, read literally, might appear to suggest that a trial court must approve every settlement submitted for approval; the language is reworked in the proposed rule to make it clear that although court approval is required for a settlement to be effective, the court's options are not constrained. Indeed, many proposed settlements are properly rejected for not being in the interest of class members. Rule 23.05(a)(3) requires that a hearing be held, and Rule 23.05(b) creates an express requirement that any "side" agreements relating to the settlement must be identified in a statement filed with the court. Rule 23.05(a)(1) removes an ambiguity that existed under the old rule, and now expressly requires court approval only of claims of a certified class.

Rule 23.05(c) authorizes the court to allow a "second opt-out" right in actions certified under Rule 23.02(c). In these actions an opt-out deadline is typically established early in the period following certification. This provision allows the court to permit class members who have not opted out to do so with knowledge of the actual settlement terms.

Rule 23.06 makes it clear that decisions relating to class certification are subject to appellate review on a discretionary basis. This rule is slightly different from its federal counterpart because Minnesota has an established process for discretionary appeals of interlocutory orders, Minn. R. Civ. App. P. 105, that is not present in the federal system. This new provision does not substantially change existing Minnesota practice, as the Minnesota appellate courts have allowed discretionary appeals under Rule 105. See, e.g., *Gordon v. Microsoft Corp.*, 645 N.W.2d 393 (Minn. 2002). The federal rule adopts a shorter ten-day deadline for seeking appellate review of decisions relating to class certification decisions. The committee believes that consistency with the requirements for other discretionary appeals in Minnesota is more important than consistency with the federal rule on this point. The other provisions of Rule 105 and the appellate rules generally apply to appeals under Rule 23.06.