

SUPREME COURT OF ARIZONA

In the Matter of ) Arizona Supreme Court  
 ) No. R-20-0025  
RULE 23, ARIZONA RULES OF CIVIL )  
PROCEDURE )  
 ) **FILED: 8/26/2020**  
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**ORDER  
AMENDING RULE 23 OF THE  
ARIZONA RULES OF CIVIL PROCEDURE**

A petition having been filed to amend Rules 23(c) and (e) of the Arizona Rules of Civil Procedure, and no comments having been received, upon consideration,

**IT IS ORDERED** that Rules 23(c) and (e) of the Arizona Rules of Civil Procedure are amended in accordance with the attachment to this order, effective January 1, 2021.

DATED this 26th day of August, 2020.

\_\_\_\_\_/s/\_\_\_\_\_  
ROBERT BRUTINEL  
Chief Justice

TO:

Rule 28 Distribution  
Lisa M. Panahi

**ATTACHMENT<sup>1</sup>**

**ARIZONA RULES OF CIVIL PROCEDURE**

**Rule 23. Class Actions**

\* \* \*

**(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.**

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*(2) Notice.*

(A) For (b)(1) or (b)(2) Classes. For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) For (b)(3) Classes. For any class certified under Rule 23(b)(3)~~, or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)~~—or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)—the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

\* \* \*

**(e) Settlement, Voluntary Dismissal, or Compromise.** The claims, issues, or defenses of a certified class~~—or a class proposed to be certified for purposes of settlement—~~ may be settled, voluntarily dismissed, or compromised only with the court’s approval.

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<sup>1</sup> Additions to the text of the rule are shown by underscoring and deletions of text are shown by ~~strike-through~~.

The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) Notice to the Class.

(A) Information that Parties Must Provide to the Court. The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.

(B) Grounds for a Decision to Give Notice. The court must direct notice in a reasonable manner to all class members who would be bound by the proposal; if giving notice is justified by the parties' showing that the court will likely be able to:

(i) approve the proposal under Rule 23(e)(2); and

(ii) certify the class for purposes of judgment on the proposal.

(2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate; after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

(3) Identifying Agreements. The parties seeking approval must file a statement identifying any agreement made in connection with the proposal;

(4) New Opportunity to Be Excluded. If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion by individual class members who had an earlier opportunity to request exclusion but did not do so; ~~and~~

(5) *Class-Member Objections.* any class member may object to the proposal if it requires court approval under this rule; the objection may be withdrawn only with the court's approval.

(A) Generally. Any class member may object to the proposal if it requires court approval under Rule 23(e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with the grounds for the objection.

(B) Court Approval Required for Payment in Connection with an Objection. Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:

(i) forgoing or withdrawing an objection; or

(ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

(C) Procedure for Approval After an Appeal. If approval under Rule 23(e)(5)(B) has not been obtained before a notice of appeal is filed, the following procedure applies as to any motion for approval under Rule 23(e)(5)(B) while the appeal remains pending:

(i) Relief Pending Appeal. In addressing the motion, the court may:

(a) defer considering the motion;

(b) deny the motion; or

(c) state either that it would grant the motion if the Court of Appeals remands for that purpose or that the motion raises a substantial issue.

(ii) Motion to the Court of Appeals. If the court states that it would grant the motion or that the motion raises a substantial issue, the movant must promptly move the Court of Appeals under Arizona Rule of Civil Appellate Procedure 3(b) to suspend the appeal and to revest jurisdiction in the superior court to allow the superior court to consider the motion under Rule 23(e)(5)(B).

(iii) Remand. The superior court may decide the motion if the Court of Appeals remands for that purpose.