

COMMENTS NEEDED ON PROPOSED AMENDMENTS TO FEDERAL CLASS ACTION RULES

by
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For the past 50 years, Federal Rule of Civil Procedure 23 (Rule 23) has governed class-action lawsuits filed in federal courts. America's legal culture has changed dramatically over those five decades, a period during which the class-action device has arguably drifted from its original purpose—an efficient method for adjudicating numerous, identical claims in one binding litigation. Perhaps motivated in part by recognition of this drift, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States (Advisory Committee) has been considering amendments to Rule 23 since 2011.

This past August, the Advisory Committee released a series of proposed amendments to Rule 23.¹ Interested parties can submit comments to the Advisory Committee until **February 15, 2017**. In addition, hearings on the proposed amendments will be held in Phoenix, Arizona on **January 4, 2017** and in Dallas, Texas on **February 16, 2017**.

The proposed amendments focus on class-action settlements and may be grouped into three categories: 1) the notice given to a class; 2) the presentation of a settlement to a court for approval; and 3) the objections to a class settlement. Generally, the amendments would codify the common practice of sending concurrent notice to class members for both the action itself and the potential settlement; allow notice through more modern means; and place more obligations on parties to provide the court with a record before notifications are sent out. Further, the amendments would mandate a hearing to determine if the proposed settlement is fair, reasonable, and adequate, and codifies a balancing test of factors. Finally, the amendments would provide additional requirements for class-member objections while eliminating courts' approval for each withdrawal of an objection.

While these proposed amendments might not reflect all the critical changes that class-action defendants and their counsel believe Rule 23 requires, this comment period gives stakeholders the ability to inform the committee about further necessary changes. Commenters should consider calling the Advisory Committee's attention to other needed revisions and advocate for rules that properly reflect and regulate the modern class-action practice.

¹ Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, *Preliminary Draft of Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure—Request for Comment* (2016), available at <http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>.

Those interested in submitting formal written comments can do so through the standard federal notice and comment website, [regulations.gov](https://www.regulations.gov).² The Advisory Committee's hearings are open to the public but require speakers to preregister by both emailing and mailing a letter of intent at least **30 days before the hearing**.³ Exact times and locations for the hearings can be found in the Federal Register.⁴

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² Specifically, <https://www.regulations.gov/docket?D=USC-RULES-CV-2016-0004>.

³ Directions for registration can be found at <https://www.regulations.gov/document?D=USC-RULES-CV-2016-0004-0001>.

⁴ <https://www.federalregister.gov/agencies/judicial-conference-of-the-united-states>.