

**Rule 23-I. Class Actions: Procedure for Determining Whether Action May Be Maintained as Class Action; Additional Notice Requirements**

(a) CLASS ACTION ALLEGATIONS. In any case sought to be maintained as a class action, the complaint must contain under a separate heading styled "Class Action Allegations":

(1) a reference to the portion or portions of Rule 23, under which the suit is claimed properly to be maintainable as a class action; and

(2) appropriate allegations justifying the claim, including but not limited to:

(A) the size (or approximate size) and definition of the alleged class;

(B) the basis on which the plaintiff claims to be an adequate representative of the class, or if the class is comprised of defendants, that those named as parties are adequate representatives of the class;

(C) the alleged questions of law and fact claimed to be common to the class; and

(D) in actions claimed to be maintainable as class actions under Rule 23(b)(3), allegations supporting the findings required by that rule.

(b) MOTION FOR CERTIFICATION. Within 90 days after the filing of a complaint in a case sought to be maintained as a class action, unless the court in the exercise of its discretion has extended this period, the plaintiff must move for a certification under Rule 23(c)(1) that the case may be so maintained. In ruling on the motion, the court may allow the action to be so maintained, may deny the motion, or may order that a ruling be postponed pending discovery or other appropriate preliminary proceedings. A defendant may move at any time to strike the class action allegations or to dismiss the complaint.

(c) PROVISIONS AS TO NOTICE. In an action maintained under Rule 23(b)(3), the plaintiff must include in the motion for certification a statement proposing:

(1) how, when, by whom, and to whom the notice required by Rule 23(c)(2) must be given;

(2) how and by whom payment is to be made; and

(3) by whom the response to the notice is to be received.

In lieu of this statement, the movant may state reasons why a determination of these matters cannot be made at that time, and offer a proposal as to when the determination should be made. In certifying a class action as maintainable under Rule 23(b)(3), the court may include in its order the provisions for notice pursuant to Rule 23(c)(2) or may postpone a determination of the matter.

(d) APPLICABILITY TO COUNTERCLAIMS AND CROSSCLAIMS. The foregoing provisions apply, with appropriate adaptations, to any counterclaim or crossclaim alleged to be brought for or against a class.

**COMMENT TO 2017 AMENDMENTS**

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Subsections (b)(2) and (c)(2)-(4) were deleted as unnecessary because the material is covered by other rules.

## COMMENT

Rule 23-I. Section (a) incorporates the substance of U.S. District Court for D.C. Rule 23.1 which requires specific allegations, relating to the class character of the suit, to be included in the complaint. Section (b) has been amended to incorporate certain other features in U.S. District Court Rule 23.1. Section (b) provides a clear and simple procedure for promptly securing a Court ruling on the class character of the suit. The amendment requires a motion for certification as a class to be made within 90 days. Ten days is provided for an opposition to be filed. The procedure is similar to the local requirements for handling a motion for summary judgment set forth in Rule 12-I. However, the certification motion necessarily comes much earlier in the action than does a motion for summary judgment. Accordingly, Rule 23(c)(1) permits the Court to "alter or amend" its order later if there should develop matters not apparent to the Court at the time the order was entered. Note that the motion for certification and any opposition thereto should also contain any material with respect to notice procedure which may be required by Rule 23-I(c). Section (c) included matters which were previously contained in Rule 23-II, which is now vacant. This section provides a procedure for the Court to determine the manner in which notice to the class members is to be provided. The procedure is substantially identical to that of former Rule 23-II. As noted above, the use of "mini-hearings" as a tool for determining who should pay for the notice, which was found to be contrary to the language of *Federal Rule 23* in Eisen, is specifically authorized under the amendment to this Court's Rule 23. Section (d) is taken from U.S. District Court Rule 23-1. Accordingly, the word "claimant" is changed to "plaintiff" throughout the Rule.