

## APPENDIX

FIGURE 2: PROPOSED RULE CHANGES AND POSSIBLE EFFECTS

Proposed Rule		Possible Effects
Rule 23(c)(1)(A)	Specifies that the decision to certify a class should be made "at an early practicable time" rather than "as soon as practicable."	May allow defendants to delay certification decision, increasing discovery costs to plaintiffs.
Rule 23(c)(1)(B)	Requires courts to issue certification orders defining the class to be certified and listing class issues, defenses, and claims.	Facilitates interlocutory appeal of certification decision.
Rule 23(c)(1)(C)	Permits courts to amend class certification at any time up to "final judgment" rather than until a "decision on the merits."	Clarifies ambiguity in the rules over conditional certification.
Rule 23(c)(2)(A)	Permits courts to order notice to (b)(1) and (b)(2) class actions.	May increase costs for civil liberties and other declaratory non-damage class actions.
Rule 23(c)(2)(B)	Requires notice of class action to be in "plain, easily understood language."	Codifies best practices in notifying class members.
Rule 23(e)(1)(A)	States that court approval is only required for settlements that bind the class.	Limits court approval to oversight of binding class decisions.
Rule 23(e)(1)(B)	Requires notice of proposed settlements when class members will be bound.	Dovetails with the second opt-out opportunity created in Rule 23(e)(3).
Rule 23(e)(1)(C)	Adopts settlement standard of "fair, reasonable, and adequate" and requires judges to make findings in approval of settlements.	Codifies current case law on settlement standards.
Rule 23(e)(2)	Requires parties to reveal to the court side deals that influence settlements.	May limit "sweetheart deals" that advantage attorneys more than class members.

Proposed Rule		Possible Effects
Rule 23(e)(3)	Permits courts to authorize a second opt-out period at the time of settlement.	May increase uncertainty for defendants. May result in lower settlement offers. May allow class members to make informed opt-out decision based on individual circumstances and the suitability of the proposed relief.
Rule 23(g)(1)(A)	Requires class counsel for each certified class.	Codifies best practices.
Rule 23(g)(1)(B)	Adopts standard that counsel must "fairly and adequately represent the interests of the class."	Provides benchmark for court's appointment of counsel.
Rule 23(g)(1)(C)	Adopts explicit criteria that must be considered in the appointment of counsel: work performed on the action; experience and substantive knowledge; resources to commit to the litigation.	Gives useful guidance to court appointment. May decrease incentive for small firms or new practitioners to investigate and file suits.
Rule 23(g)(2)(A)	Allows appointment of interim counsel during the pre-certification procedure.	Enables case to continue while judge considers appointment of counsel.
Rule 23(g)(2)(B)	Sets standard for appointment of counsel depending on whether there are multiple competitors for the position.	Standard encourages courts to appoint counsel that can best represent the class rather than the lowest bidding firm.
Rule 23(g)(2)(C)	Authorizes courts to require fee agreements in appointment of counsel.	May curb excessive fees.
Rule 23(h)(1)	Allows courts to set the time for the attorney fee motion and requires notice of the fee motion to the class.	Allows more flexibility to court and promotes more communication about fee awards with class members.
Rule 23(h)(2)	Permits objections to the attorney fee motion.	May create additional discovery, but also may curb excessive fees.
Rule 23(h)(3)	Requires courts to make findings on the approval of an attorney fee award.	Promotes effective appellate review.

## Attorney Appointment and Fees