

IN THE SUPREME COURT OF ALABAMA
March 31, 2021

ORDER

IT IS ORDERED that Rule 23(c)(1), Rule 23(c)(2), and Rule 23(e), Alabama Rules of Civil Procedure, be amended to read in accordance with Appendices A, B, and C to this order;

IT IS FURTHER ORDERED that the Committee Comments to the amendment to Rule 23 be adopted to read in accordance with Appendix D to this order;

IT IS FURTHER ORDERED that the District Court Committee Comments to Rule 23 be amended to read in accordance with Appendix E to this order;

IT IS FURTHER ORDERED that the amendment of Rule 23(c)(1), Rule 23(c)(2), and Rule 23(e), the adoption of the Committee Comments thereto, and the amendment to the District Court Committee Comments to Rule 23 are effective May 1, 2021; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to the follow Rule 23:

"Note from the reporter of decisions: The order amending Rule 23(c)(1), Rule 23(c)(2), and Rule 23(e), adopting the Committee Comments thereto, and amending the District Court Committee Comments to Rule 23, effective May 1, 2021, is published in that volume of Alabama Reporter that contains Alabama cases from __ So. 3d."

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.

Witness my hand this 31st day of March, 2021.

A handwritten signature in black ink that reads "Julia Jordan Weller". The signature is written in a cursive style.

**Clerk of Court,
Supreme Court of Alabama**

**FILED
March 31, 2021
2:49 pm
Clerk
Supreme Court of Alabama**

APPENDIX A

Rule 23(c)(1), Ala. R. Civ. P.

(1) At an early practicable time, consistent with Alabama statutory law, the court shall determine by order whether an action brought as a class action is to be so maintained. An order that grants or denies class certification may be altered or amended before final judgment.

APPENDIX B

Rule 23(c)(2), Ala. R. Civ. P.

(2) For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class. For any class certified under Rule 23(b)(3) -- or upon ordering notice under Rule 23(e) 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 shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

APPENDIX C

Rule 23(e), Ala. R. Civ. P.

(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, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

APPENDIX D

Committee Comments to Amendment to Rule 23 Effective May 1, 2021

The amendments are intended to bring Rule 23 into conformance with current practice and with §§ 6-5-640 through -642, Ala. Code 1975. Those statutes should be read carefully because they include provisions that govern important procedures for class actions in Alabama, including: (1) certain deadlines, (2) a planning conference, (3) potential stays of certain types of discovery, (4) requirements for any class-certification order, and (5) appeals.

The change to Rule 23(c)(1) is intended to make clear that the deadlines in Ala. Code 1975, § 6-5-641, govern rather than the previous admonition in the rule to decide class certification "as soon as practicable."

Further, Rule 23(c)(1) is amended to eliminate the reference to a "conditional" certification. Any certification must meet the full requirements of Rule 23 and Ala. Code 1975, § 6-5-641.

Additionally, the amendments update the notice provisions of Rule 23(c)(2) to (1) make clear that the trial court has the discretion to require notice in actions under Rule 23(b)(1) or (b)(2), as it determines is appropriate, and (2) to recognize the possibility of using notice methods other than traditional mail. Since the United States Supreme Court, in Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974), interpreted the individual-notice requirement for class members in Rule 23(b)(3) class actions, many courts have read the rule to require notice by first-class mail in every case. But technological change has introduced other means of communication that may sometimes provide a reliable additional or alternative method for giving notice. Although first-class mail may often be the preferred primary method of giving notice, courts and counsel have begun to employ new technology to make notice more effective. Because there is no reason to expect that technological change will cease, when selecting a method or methods of giving notice courts should consider the capacity and limits of current technology, including class members' likely access to such technology.

Finally, Rule 23(e) is amended to clarify that court approval is required for dismissal only after a class has been certified, consistent with current practice and the amendments to the Federal Rules of Civil Procedure. The amendment is not intended to affect or displace any provision of the Alabama Code.

APPENDIX E

District Court Committee Comments

The complexities of class actions and the jurisdictional limitations of the district court make it necessary to withhold applicability of Rule 23.