

## RULE 4:32. Class Actions

### 4:32-1. Requirements for Maintaining Class Action

- **(a) General Prerequisites to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
- **(b) Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of paragraph (a) are satisfied, and in addition:
  - **(1)** the prosecution of separate actions by or against individual members of the class would create a risk either of :
    - **(A)** inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class, or
    - **(B)** adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
  - **(2)** the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
  - **(3)** the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The factors pertinent to the findings include:
    - **(A)** the interest of members of the class in individually controlling the prosecution or defense of separate actions;
    - **(B)** the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
    - **(C)** the desirability or undesirability in concentrating the litigation of the claims in the particular forum; and
    - **(D)** the difficulties likely to be encountered in the management of a class action.

Note: Source - R.R. 4:36-1; paragraphs (b)(1) and (b)(3) amended July 27, 2006 to be effective September 1, 2006.

### 4:32-2. Determining by Order Whether to Certify a Class Action; Appointing Class Counsel; Notice and Membership in the Class; Multiple Classes and Subclasses

- **(a) Order Determining Maintainability; Certifying Class.** When a person sues or is sued as a representative of a class, the court shall, at an early practicable time, determine by order whether to certify the action as a class action. An order certifying a class action shall define the class and the class claims, issues or defenses, and shall appoint class counsel in accordance with paragraph (g) of this rule. The order may be altered or amended prior to the entry of final judgment.
- **(b) Notice.**
  - **(1)** If a class is certified pursuant to R. 4:32-1(b)(1) or (b)(2), the court may direct appropriate notice to the class.
  - **(2)** If a class is certified pursuant to R. 4:32-1(b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances,

consistent with the due process of law. The notice shall state the following in concise, clear and easily understood language:

- **(A)** the nature of the action;
  - **(B)** the definition of the class certified;
  - **(C)** the class claims, issues or defenses;
  - **(D)** that a class member may enter an appearance through counsel if the member so desires;
  - **(E)** that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and
  - **(F)** the binding effect of a class judgment on class members pursuant to paragraph (c) of this rule.
- **(3)** The cost of notice may be assessed against any party present before the court, or may be allocated among parties present before the court, pending final disposition of the cause.
- **(c) Judgment.** The judgment in an action maintained as a class action under R. 4:32-1(b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under R. 4:32-1(b)(3), whether or not favorable to the class, shall, to the extent practicable under the circumstances, consistent with due process of law, describe the class and specify those who have been excluded from the class. In any class action, the judgment may, consistent with due process of law, confer benefits upon a fluid class, whose members may be, but need not have been members of the class in suit.
  - **(d) Partial Class Actions; Subdivided Classes.** If appropriate, an action may be brought or maintained as a class action with respect to particular issues. A class may also be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.
  - **(e) Settlement, Voluntary Dismissal, or Compromise.**
    - **(1)(A)** The court shall approve any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class.
    - **(B)** The court shall direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.
    - **(C)** The court may approve a settlement, voluntary dismissal, or compromise that would bind class members only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.
    - **(2)** The parties seeking approval of a settlement, voluntary dismissal, or compromise under this rule shall file a statement identifying any agreement made in connection with the proposed settlement, voluntary dismissal, or compromise.
    - **(3)** In an action previously certified as a class action under R. 4:32-1(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.
    - **(4)** Any class member may object to a proposed settlement, voluntary dismissal, or compromise that requires court approval under paragraph (e)(1)(A) of this rule. An objection made under this paragraph may be withdrawn only with the court's approval.
  - **(f) Orders in Conduct of Actions.** In the conduct of actions to which this rule applies, the court may make appropriate orders:
    - **(1)** determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;
    - **(2)** requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given to some or all of the members of the class in such manner as the court may direct of (A) any step in the action, (B) the proposed extent of the judgment, or (C) the opportunity of members to

signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

- **(3)** imposing conditions on the representative parties or on intervenors;
- **(4)** requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;
- **(5)** dealing with similar procedural matters.

These orders may be combined with an order under R. 4:32-2(a) and may be altered or amended as may be desirable from time to time.

▪ **(g) Class Counsel.**

• **(1) Appointing Class Counsel.**

- **(A)** Unless a statute provides otherwise, a court that certifies a class must appoint class counsel.
- **(B)** An attorney appointed to serve as class counsel must fairly and adequately represent the interests of the class.
- **(C)** In appointing class counsel, the court must consider: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action; (iii) counsel's knowledge of the applicable law, and (iv) the resources counsel will commit to representing the class.

The court also may consider any other matter pertinent to counsel's ability to represent fairly and adequately the interest of the class and may direct potential class counsel to provide information on any subject pertinent to the appointment and to the proposed terms for attorney fees and nontaxable costs. The court may make further orders in connection with the appointment.

• **(2) Appointment Procedure.**

- **(A)** The court may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action.
- **(B)** When there is one applicant for appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under this rule. If more than one adequate applicant seeks appointment as class counsel, the court must appoint the applicant best able to represent the interests of the class.
- **(C)** The order appointing class counsel may include provisions about the award of attorney fees or nontaxable costs under paragraph (h) of this rule.

- **(h) Attorney's Fees and Litigation Expenses.** In an action certified as a class action, an application for the award of attorney's fees and litigation expenses, if fees and costs are authorized by law, rule, or the parties' agreement, shall be made in accordance with R. 4:42-9. Notice of the motion shall be served on all parties. A motion by class counsel shall be directed to class members in a reasonable manner. A party from whom payment is sought as well as any class member may object to the motion.

Note: Effective September 8, 1969; paragraphs (b) and (c) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; caption amended, paragraphs (a) and (d) caption and text amended, paragraph (b) amended, former R. 4:32-4 deleted and readopted as amended as new paragraph (e), former R. 4:32-3 deleted and adopted as reformatted as new paragraph (f), and new paragraphs (g) and (h) adopted July 27, 2006 to be effective September 1, 2006, paragraph (a) amended October 9, 2007, to be effective immediately; paragraph (e)(4) amended July 9, 2008 to be effective September 1, 2008; paragraph (h) caption and text amended July 23, 2010 to be effective September 1, 2010.

### **4:32-3. Derivative Action by Shareholders**

In an action brought to enforce a secondary right on the part of one or more shareholders in an association, incorporated or unincorporated, because the association refuses to enforce rights which may properly be asserted by it, the complaint shall be verified and allege that the plaintiff was a shareholder at the time of the transaction complained of, or that the share thereafter devolved by operation of law. The complaint shall also set forth with particularity the efforts of the plaintiff to secure from the managing directors or trustees and, if necessary, from the shareholders such action as is desired, and the reasons for the failure to obtain such action or the reasons for not making such effort. Immediately on filing the complaint and issuing the summons, the plaintiff shall give such notice of the pendency and object of the action to the other shareholders as the court by order directs. The derivative action may not be maintained if it appears that the plaintiff does not fairly represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. Rule 4:32-2(e) ("Settlement, Voluntary Dismissal, or Compromise") is applicable to actions brought under this rule.

**Note:** Source - R.R. 4:36-2; adopted as R. 4:32-5 effective September 8, 1969; amended July 13, 1994 to be effective September 1, 1994; redesignated as R. 4:32-3 and amended July 27, 2006 to be effective September 1, 2006.

### **[ 4:32-3. Orders in Conduct of Actions ] [Deleted]**

**Note:** R. 4:32-3 deleted, with text reformatted and reallocated to R. 4:32-2(f), and former R. 4:32-5 amended and redesignated as R. 4:32-3, July 27, 2006 to be effective September 1, 2006.

### **[ 4:32-4. Dismissal or Compromise ] [Deleted]**

**Note:** Source - R.R. 4:36-3; adopted as R. 4:32-4 effective September 8, 1969; R. 4:32-4 deleted, with text incorporated in R. 4:32-2(e) July 27, 2006 to be effective September 1, 2006.

### **[4:32-5. Derivative Action by Shareholders] [Deleted]**

**Note:** Source-R.R. 4:36-2; amended July 13, 1994 to be effective September 1, 1994, redesignated as R. 4:32-3 and amended July 27, 2006 to be effective September 1, 2006