

GUIDELINES AND BEST PRACTICES

IMPLEMENTING 2018 AMENDMENTS TO

RULE 23 CLASS ACTION SETTLEMENT PROVISIONS

BOLCH JUDICIAL INSTITUTE, DUKE LAW SCHOOL

EXECUTIVE SUMMARY

DUKE LAW SCHOOL
AUGUST 2018

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**PROCEDURES AND STANDARDS FOR OBJECTIONS AND RESOLUTION OF OBJECTIONS UNDER
RULE 23(e)(5)**

GUIDELINE 6: A court should interpret the language of Rule 23(e)(5) broadly and liberally to accomplish its stated intent to avoid perpetuating a system that facilitates objections advanced for improper purposes.

BEST PRACTICE 6A: A court may consider any objection raised by a class member, even if the objector has nothing personally at stake in regard to the matter raised by the objection.

GUIDELINE 7: A class member objecting to a proposed settlement must state with specificity the grounds for objection sufficient to enable the parties to respond to them and the court to evaluate them.

BEST PRACTICE 7A: An objection should identify the specific settlement term or structure that is being challenged and the reasons for such challenge.

GUIDELINE 8: No payment or other consideration for forgoing or withdrawing an objection or forgoing, dismissing, or abandoning an appeal can be provided unless a court approves payment after holding a hearing.

BEST PRACTICE 8A: The parties must disclose the terms of all agreements between objector and the parties. What constitutes payment or other consideration to an objector for forgoing or withdrawing an objection or forgoing, dismissing, or abandoning an appeal should be broadly construed.

BEST PRACTICE 8B: A court should inquire into communications that class counsel may have had with individuals who decided not to pursue (forgo) objections.

BEST PRACTICE 8C: If the consideration involves a payment to counsel for an objector, the proper procedure to obtain a payment is by motion under Rule 23(h). The court should evaluate whether the objection added value to the class and therefore justifies the proposed payment.

GUIDELINE 9. If approval to forgo or withdraw an objection has not been obtained before an appeal is docketed in the court of appeals, Appellate Rule 12.1 and Civil Rule 62.1 indicative-ruling procedures apply while the appeal is pending.

BEST PRACTICE 9A: If the parties intend to settle with an objector, they should seek approval of the objection settlement prior to the filing of the appeal to avoid the delay of appeal.

BEST PRACTICE 9B: A court should hold a hearing and issue an indicative ruling once an appeal is filed and Rule 62.1 is in effect.

BEST PRACTICE 9C: If the objector has filed a motion for attorney's fees, the district court may inquire into settlement discussions between the objector and the parties regarding the fee motion.