

GUIDELINES AND BEST PRACTICES  
IMPLEMENTING 2018 AMENDMENTS TO  
RULE 23 CLASS ACTION SETTLEMENT PROVISIONS

BOLCH JUDICIAL INSTITUTE, DUKE LAW SCHOOL

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BEST PRACTICE 3B: The parties should consider using a professional claims administrator to send notice and claim forms and distribute benefits.

Formulating a notice and administration plan typically requires the expertise of an experienced notice and claims administrator. Experienced claims administrators can provide guidance to the parties on forms of notice, the plan of allocation, and claim form.

Once selected, the parties should provide information to the court describing the claims administrator's experience with other similar settlements, the proposed notice plan for notifying the class of the proposed settlement and receiving class member claims, and the anticipated and estimated notice and claims administration costs.

The parties' explanation of the claims administration process should address the parties' proposed timeline for giving notice to the class, deadlines for opting out or objecting to the settlement, deadline for responding to objections, deadline for submitting claim forms, and a date for the settlement hearing required by Rule 23(e).

The court will consider the same information when it is deciding whether to grant final approval of the settlement at a later date under Rule 23(e)(2). At that stage, however, measuring

the proposed relief may require evaluation of the claims process if the anticipated rate of claims submitted cannot be determined.

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## CHAPTER 4

### MEANS, FORMAT, AND CONTENTS OF SETTLEMENT NOTICE

The 2018 amendments to Federal Rule of Civil Procedure 23(c)(2)(B) continue to require the “best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort” for certified (b)(3) litigation classes. The amendments expressly recognize the practice and propriety of sending a single, combined notice advising the class of the proposed certification and settlement of (b)(3) classes under both Rule 23(e)(1) and (c)(2)(B).<sup>1</sup>

The Rule 23(c)(2)(B) notice provision was amended to keep up with evolving means of communication and the rulings in some cases permitting notice by electronic means, including emails, digital media, and social media. The amendments expressly permit notice to be made by one or a combination of means, including “United States mail, electronic means, or other appropriate means.”

**GUIDELINE 12:** In determining whether the “best practicable notice” can be sent in a reasonable manner, the court should focus on the means or combination of means most likely to be effective in the case.

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<sup>1</sup> Subdivision (e)(1) (which applies to settlement classes) requires courts to “direct notice in a reasonable manner to all class members who would be bound by the proposal.” The 2018 amendments apply the requirements of subdivision (c)(2)(B) to the notice of class-action settlements for (b)(3) classes (“For any class certified under Rule 23(b)(3)—or upon ordering notice under Rule 23(e)(1) 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 . . . .”) (emphasis added). The committee notes for the amendments to subdivision (e) explain that “notice required under Rule 23(e)(1) . . . should also satisfy the notice requirements of amended Rule 23(c)(2)(B) for a class to be certified under Rule 23(b)(3)[.]”

No specific means of communication, including U.S. mail, is preferred across the board. Although the amendments acknowledge that U.S. mail may often be the preferred method, the use of electronic means as an alternative or an additional method of communication in certain circumstances may be more reliable and effective. The parties should explain the proposed method of giving notice and provide the court with a copy of each notice, including screen shots. Viewing the actual notice is especially important if electronic notice is used because contents viewed on screens assume a tone that varies with platform. Further, satisfying the Rule’s requirement that the notice “must clearly and concisely state in plain, easily understood language” may involve contextspecific consideration when dealing with electronic notice.

**BEST PRACTICE 12A:** In assessing whether the particular means of sending notice is most effective, a court should take into account the following general considerations: (1) will the notice effectively reach the class; (2) will the notice actually come to the attention of the class; (3) are the notices informative and easy to understand; and (4) are all class members’ rights and options easy to act upon?

Experts can calculate the percentage of a class that will be exposed to a notice by relying on generally accepted methodologies developed for advertising in non-litigation settings. A high percentage of class members can often reasonably be reached by a notice campaign. But if the identities of a significant percentage of class members are unknown, a campaign may require multiple types of notice (*e.g.*, direct notice, publication, digital, or broadcast).

Notices should be designed using contemporary design and layout techniques to command class members’ attention when presented with the notice, regardless of delivery format. If possible, notice formats should be tested to demonstrate that they enhance — and do not diminish — class member response. The form and type of the notice, as well as the number of times the notice is seen, directly influence class member engagement.

Notices should contain all of the information required by Rule 23 and should be written in clear, concise, and easily understood language. Calls to action and other significant information,

such as the mechanisms to file a claim, to request to be excluded, or to submit an objection, should be immediately and easily identifiable.

There should be no unnecessary hurdles for class members to exercise their rights to opt out, object, submit a claim, or make an appearance. All communications — websites, claim forms, and claims processes — should mirror commercial best practices where access to information and the ability to engage (in this case opt out, object, submit a claim, or make an appearance) are at a premium. These practices emphasize easily identifiable formats, buttons, and color schemes to ensure that mechanisms for participating are easily identifiable.

The parties and court should refer to the 10-page booklet on *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* issued by the Federal Judicial Center (FJC), which provides extensive guidance on the formatting and contents of class notices.<sup>2</sup>

**BEST PRACTICE 12B:** When selecting a means of giving notice, the parties and court should begin by assessing the reliability of the method of communication typically used by the defendant in its regular business to notify its customers or clients.

In determining which means of communication is the most effective to send class notice, the parties and court should analyze each potential means of communication on a case-by-case (and sometimes intra-case) basis. Among the questions that should be asked are: Is it appropriate and feasible to use the proposed means of communication? How does the defendant regularly conduct communications with its customers during the normal course of business? How do class members generally receive and process information (email, U.S. mail, etc.)? Knowing how a company acquires a contact list, which it uses as part of its regular business, is critical because such lists vary in completeness, accuracy, and up-to-datedness.

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<sup>2</sup> FED. JUDICIAL CTR., JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE (2010), <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>.

**GUIDELINE 13:** Best notice practicable includes individual notice to all members who can be identified through reasonable efforts. First-class U.S. mail may often be the preferred primary method of notice.

Historically, first-class U.S. mail was the default choice for direct individual class-member notice. In many cases, notification by mail will remain the most effective means of communication.

But new technology has dramatically altered how people communicate, most evident in younger generations. The Committee Note to amended Rule 23 underscores the effect of the cultural shift: “Counsel should consider which method or methods of giving notice will be most effective; simply assuming that the ‘traditional’ methods are best may disregard contemporary communication realities.”<sup>48</sup>

For a variety of reasons, including cost, customer preference, and effectiveness in context, companies are shifting from direct U.S. mail communication to email or other electronic forms of communication to interact with their customers.

**BEST PRACTICE 13A:** Individual notice to class members often is practicable when the defendant communicates directly with class members as part of its regular business, either relying on U.S. mail postal addresses or email addresses.

The defendant in most class actions is a company or business. In most instances, the defendant maintains a contact database that is used for transactions or billing. Marketing and ongoing business-to-customer lists are typically reliable and usually provide up-to-date contact information. Nonetheless, it is important for the court and parties to understand how the customer list was acquired and maintained.

**BEST PRACTICE 13B:** The deliverability rate of communications with customers can offer a useful indicator of the effectiveness of the means of communication.

In certain circumstances, the parties can determine anticipated delivery rates of either direct mail or email based on prior sent communications. If a company uses customer lists as part of its

marketing or promotional efforts, and if it regularly updates customer contact data, then the company will typically have a good understanding of the deliverability rate of communications with its customers based on past commercial communications. If the deliverability rate, either by U.S. mail or by email, has been poor, there is little reason to believe that using that list or method would result in a better deliverability rate for class notice.

**BEST PRACTICE 13C:** The parties and court should be skeptical about contact information that is compiled from free offerings, promotional sign-ups, or promotions.

The parties and court should be sensitive to the potential of bad customer data, which results when consumers provide inaccurate or partial contact information, such as providing false or secondary contact information when signing up for loyalty programs or free offerings in an attempt to minimize junk mail, either through U.S. mail or email. Studies have shown that consumers often give incorrect or incomplete information to a company simply to receive the offering, with no further intention of communicating with that company. Further, traditional and electronic notice deliverability may be limited if the data has been archived or knitted together from disparate sources, without previous database hygiene or updates.

**GUIDELINE 14:** Notice by email communication may be the best individual notice practicable under the circumstances if shown to be reliable. It may also be a lowcost supplemental means of notice.

If a company or business regularly conducts its business relying on email communications, such communication may be more effective than U.S. mail. The response rates to electronic notice may be better than those to U.S. mail for class members familiar with a defendant organization. Further, if the email notice is formatted such that a recipient has the ability to quickly scan information in a preview pane on her laptop, tablet, or mobile device, email notice response may be augmented.



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14A: The effectiveness of a notice sent by email can be assessed using available metrics. Among the metrics, the *read rate* is the most reliable.

Ascertaining the rate of notices communicated by email can be challenging. Fortunately, there are several recognized metrics that can provide useful information. It is important to understand what the metrics mean and what they are designed to measure.

The *delivered rate* does not report how many emails were sent to an inbox; it simply documents how many messages did not bounce back to the sender. Thus, the delivered rate will include all messages received by inbox placements, spam/junk box placements, and emails blocked without a bounce-back reply.

The *open rate* measures the proportion of messages opened.<sup>3</sup>

The *read rate* is similar to *open rate*, but far more useful, because it accounts for all emails viewed, regardless of image rendering. The *read rate* metric is important because it reveals how your subject lines are viewed by the recipients because the subject line is the first thing the recipients see when the message arrives in their mailbox.

The *ignore rate* is the total number of unread emails deleted out of total emails sent. A high *deleted-before-reading rate* is an indication of a failed campaign. A consistent high *deleted-before-reading rate* reveals problems with the list acquisition or management issues or lost interest in the overall email program.

The *bounce rate* is a hard, viable metric that records the proportion of emails returned to the sender because the recipient address is invalid.<sup>4</sup>

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<sup>3</sup> Certain applications, such as Ghostery and PixelBlock, can block email tracking, while others can render images as a preview. This creates false positive results for email opens, which further distorts the open rate.

<sup>4</sup> Hard bounces (as opposed to soft bounces) occur if the recipient's email address no longer exists. A *soft-bounce rate* is also a viable metric, though it typically occurs if the recipient's inbox is full.



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14B: The parties and court should consider the capacity and limits of email technology when evaluating its effectiveness for notice purposes.

The parties and court should consider the utility of email based on the demographics of the class and their ability and willingness to use email. Additionally, consideration should be given to the types of device typically used for viewing email, *i.e.*, cell phone, laptop, or desktop. Given that the majority of individuals read email on a smart phone or tablet, email must be personalized and optimized for quick scans on small screens. The wide variety of communication gadgets receiving email communications also raises challenges in determining its deliverability and read rates and effectiveness.

BEST PRACTICE 14C: If individual notice is not practicable or effective, the parties and court should consider notice by digital media to provide the most effective notice under the circumstances, either to supplement other means of notice or as a standalone means.

Individual notice may be impossible or cost-prohibitive under some circumstances. For example, identifying individual unknown customers in a consumer-beverage-labeling class action may be impossible. Similarly, incurring the cost of mailing notices when the individual settlement amount is less than the postage cost is not practicable. In these circumstances, online digital media notice can offer a more effective means of communication than U.S mail or publication in print newspapers.

The effectiveness of digital media reaching a consumer is largely dependent on the consumer/class demographic in a given case. If the demographic is largely comprised of regular/habitual Internet users, then digital media should play a vital role in the notice program. Correspondingly, if the product or service in question is generally consumed by a less technologically-savvy demographic, then the marketing/notice program(s) should be tailored accordingly.

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14D: The parties and court should consider whether the notice program is using an appropriate media mix that will reach the target population.

If individual notice is not practicable or effective, the parties and court should consider using electronic means. As noted above, the 2018 amendments to Rule 23(c)(2)(B) expressly envision sending notice by a combination of means, which could include direct individual and electronic notice, or might consist of several digital means of communication. Sending class notice using multiple digital media means makes particularly good sense if the attendant costs are relatively low.

American consumers represent many demographic and psychographic<sup>51</sup> groups. They do not all use media in the same way. Not everyone uses social media or even the Internet. Conversely, the number of people reading the print versions of newspapers is declining. Therefore, it is important to evaluate whether the suggested media program comports with the target population's media consumption habits.

**GUIDELINE 15:** Notice using social media, a subset of digital media, may be effective.

A notice program can include social media custom audiences. Custom audiences can include an audience of known class members. Care should be used to distinguish between demographic or psychographic-based custom audiences, and those based on known class members, such as using known class members' emails to specifically target those class members on social media.

According to a 2016 Pew Research Center study, Facebook continues to be America's most popular social networking platform by a substantial margin: Nearly eight in ten *online* Americans (79%) now use Facebook, more than double or triple the share that uses Twitter

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<sup>5151</sup> Study and classification of people according to their attitudes, aspirations, and other psychological criteria, especially in market research.

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(24%), Pinterest (31%), Instagram (32%), or LinkedIn (29%).<sup>5</sup> On a total population basis (accounting for Americans who do not use the Internet at all), that means that 68% of all U.S. adults are Facebook users, while 28% use Instagram, 26% use Pinterest, 25% use LinkedIn, and 21% use Twitter.<sup>6</sup> These statistics are presented for illustration only and may change at rapid pace as consumer Internet habits change and as social media platforms, and the devices that connect to them, continue to evolve.

Social media can be used to supplement a traditional media notice program. Supplemental social media notice can be effective as a reminder notice or as a stand-alone method to increase awareness. Because not all consumers are online, or exclusively use a specific social platform, it is important to remember that custom audiences on social platforms are subsets of: (1) the larger class population (*e.g.*, product purchasers); and (2) a subset of the social platform audience.

Social media can be a useful and efficient tool to reach class members. If social media platforms are included in a notice program, the percentage of the audience using those platforms may be quantified if audience members are readily identifiable.<sup>7</sup>

**GUIDELINE 16:** A court must evaluate the effectiveness of a notice program that relies on digital media, including social media, as a means to send notice.

The parties should provide the court with information about a notice program that will use electronic means to send notice. The notice program should be transparent, establishing an affected population base and citing all support and research tools used. All calculations for reaching assumptions should be disclosed. The notices should reach a significant percentage of class members, and the notice program should be scaled appropriately to the circumstance.

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<sup>5</sup> Shannon Greenwood, Andrew Perrin & Maeve Duggan, *Social Media Update 2016*, PEW RES. CTR. (Nov. 11, 2016), <http://www.pewinternet.org/2016/11/11/social-media-update-2016/>.

<sup>6</sup> *Id.*

<sup>7</sup> Data on the reach of social media come from sources such as GfK, MRI, comScore, Nielsen, or, in some cases, the defendant's own data.

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A notice program that has unusually low costs may be the product of shortcuts or may be inaccurately reported. Because of these concerns, low-bid programs may not be the most appropriate or effective notice programs.

**BEST PRACTICE 16A:** If notice is sent by digital media, the parties should evaluate and quantify the percentage of class members that the notice will reach.

The notice plan should include an analysis of the makeup of the class. The target audience should be defined and quantified. This can be established through using a known group of customers, or it can be based on a *proxy-media* definition. Both methods have been accepted by the courts and, more generally, by the advertising industry, to determine a population base. A third party is necessary to validate the metrics, particularly because online notice programs may be diminished by viewability issues, consumer distraction, and ad fraud.

If the total population base (or number of class members) is unknown, it is accepted advertising and communication practice to use a *proxy-media* definition, which is based on accepted media research tools and methods that will allow the notice expert to establish that number. The percentage of the population reached by supporting media can then be established.

The effectiveness of the means of communication is measured by *reach* and *frequency*. *Reach* is the number or percent of people exposed at least once to an advertising schedule over a specific period of time. *Net reach* excludes audience duplication across media groups.

*Frequency* is the average number of times that the average person is exposed to an advertising schedule in the specific period of time. It is important to note that there will clearly be people exposed fewer and more times to a message than what is reported as the average frequency. For example, if the average frequency is 3 times (which is generally regarded as necessary to generate action), there are people who will not have been exposed to the message at all, while, at

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the same time, there will be those who saw the message once and some who saw it 10 or more times, thus resulting in the above-referenced 3 times average.

If multiple electronic means of sending notice are used, reach figures for separate dissemination methods cannot simply be added to determine reach for the overall notice program. Total audience must be calculated for each publication and the net reach must be calculated for a combination of publications. The reach calculation removes overlap between those people exposed to two or more dissemination methods (*e.g.*, a person who receives a mailing may also be exposed to the notice in a publication).

**BEST PRACTICE 16B:** A low *lifetime frequency cap* (three or fewer) is ordinarily an insufficient level at which to expose a target audience sufficiently to the message.

Unlike an average frequency, a *lifetime frequency cap* is a tool to limit digital media transmissions, which is used to control the number of times a person is exposed to an Internet advertisement. It is not a measurement. A frequency cap enables advertisers to guard against “wast[ed] impressions on individuals who visit a specific website” frequently, but setting the cap too low may defeat the effectiveness of the banner advertisement because many who are “reached” by the banner—once or twice, for example—may not have noticed or engaged with the banner.<sup>8</sup> Frequency capping is typically accomplished using Internet browser cookies, which remember the number of times a particular ad appears. Commentators warn that “excessive ‘frequency capping’” may result in artificially inflated “reach” forecasts because measurement tools will “assume the ad can be spread more broadly (if possible) in order to meet the budgeted number of impressions and can result in a higher hypothetical reach for a low budget.”<sup>9</sup> What results sometimes is an

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<sup>8</sup> Cameron Azari & Stephanie Fiereck, *What You Need to Know About Frequency Capping in Online Class Action Notice Programs*, BLOOMBERGBNA: CLASS ACTION LITIG. REP. (June 13, 2014), <http://www.hilsoft.com/Docs/Class-Action-Reach-Frequency.pdf>.

<sup>9</sup> *Id.*

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ineffective campaign marked by low response rates. Accordingly, a notice program that includes an average frequency of less than three advertisement exposures should be carefully scrutinized and heavily vetted.

**BEST PRACTICE 16C:** The parties should provide the court with an analysis of the metrics that the parties rely on to determine the effectiveness of the means of class notice. If a notice program is reporting reach, it must be supported and validated in a transparent manner.

The estimated scope of the intended notice program should be defined as a validated reach statistic. Media research companies offer services to properly quantify the reach to targeted consumers. These research services provide detailed insight on consumer behaviors and media consumption habits of various populations. These services can calculate net audience reached and should disclose the percent of the class using various media, including television (network, cable, or digital), radio (terrestrial or online), online and social or mobile media.

Several media research tools are available to determine *reach* and *frequency* and filtering invalid traffic.

- GfK Mediamark Research and Intelligence LLC provides demographic, brand preference, and media-use habits. It also reports on print reach. It does not report on net reach for an online or a social media program. MRI can report on net audience reach for print programs.
- Scarborough reports on newspaper reach and can report on net audience reach for newspaper.
- comScore reports on digital media use, and through various reach and frequency tools, reports net audience reach online including certain social media.
- Nielsen reports on television, radio, and online. It can report net reach through certain reach and frequency tools.
- Both Telmar and IMS have media mixing tools. These software platforms combine audience reach data from the various sources listed above and can report one net audience reach. Mixing tools are like calculators and rely on the user to input *validated* reach data from one of the sources above.

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- Integral Ad Science reports on bot fraud and non-human traffic. They are also able to stop impressions from limiting or removing wasted media dollars.

BEST PRACTICE 16D: Social media metrics, such as *clicks*, should not be used as a substitute for a validated reach statistic.

*Clicks* may not be an accurate or reliable performance metric.<sup>10</sup>

Third-party validation is critical to provide the court with an accurate representation of the entire population that is reached. In this rapidly evolving electronic-media world, it is crucial to investigate and evaluate a wide range of social media metrics, including shares, likes, and clicks, while recognizing that the importance of any of these metrics is limited as a stand-alone measure.

BEST PRACTICE 16E: The parties and court should monitor the effectiveness of class notice sent by digital media throughout the notice period.

A notice program should allow for an ongoing analysis of its effectiveness. If multiple formats are used, they should be evaluated and their effectiveness analyzed to minimize factors that diminish class members' ability to exercise their rights. Steps should be taken to ensure that the notice program provides validated impressions (in view, right target audience, right geography, and human traffic) to effectively measure the success of the notice in reaching class members. Any technical measures to limit the number of times a class member will be exposed to the notice should be disclosed and justified with respect to effectiveness. The destination of notices, websites, applications, or network flagship site should be disclosed. The notice program should report on its implementation and disclose the specific sites on which the notice ran. Reporting that a notice ran on a network of sites is insufficient because these networks include sites that vary significantly in popularity. Different websites and different versions of a digital notice can have substantial impact

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<sup>10</sup> Clicks may include non-human traffic (bots or "scrapers," which are groups of bots), accidental clicks, or clicks that abandon the action without visiting the website. Clicks are not necessarily accurate or representative of how many people saw the advertisement.



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on class member engagement and response rates. In certain examples, responses are reduced to a fraction on what could otherwise be obtained if the digital notice campaign were managed.

Website selection, changing ad sizes, word selection, and placement of a court logo on the advertisement are all examples of changes that influence response rates and engagement. Notices can appear in premium positions alongside navigational bars or embedded within articles and editorials. They can expand or take over the screen to call attention to the importance of the content. The length of time the notice appears on the website is important. Without monitoring these, it is possible to provide the illusion of notice without meaningful opportunity for class members to respond.

**GUIDELINE 17:** A class-notice expert or professional claims administrator can assist the parties and court in ascertaining the effectiveness of using digital media to send notice.

Determining whether notice by means of digital media is most likely to be effective requires an understanding of how media is used and, most importantly, how successful it is in reaching targeted populations. Reach calculation methodology is commonly practiced in advertising and media-planning disciplines, and the expert or claims administrator should be competent to assess the reach of class-action notification. It is important to note, however, that the media landscape is so broad that training and experience in one area does not imply expertise in developing and implementing programs involving multiple forms of media.

A class-notice expert or professional claims administrator should provide evidence demonstrating that the proposed means of electronic notice will: (1) provide the “best practicable” notice; (2) effectively reach a significant percentage of the class; and (3) provide the class members an adequate opportunity to exercise their rights and that those opportunities are not diminished by the structure of the plan. The notice expert should have training or experience in developing and evaluating communications programs that integrate the forms of notice that are being proposed.

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**BEST PRACTICE 17A:** The parties and court should ensure that the class notice expert or claims administrator is competent to assist them in evaluating the effectiveness of notice by digital media.

In assessing the qualifications of a class-notice expert or professional claims administrator, the parties and court may consider the expert's or administrator's: (1) experience or education with the specific types of media under consideration; (2) professional experience with respect to advertising; (3) membership in an advertising-standards committee; (4) any professional certifications; (5) any credentials or additional training with respect to advertising using both traditional forms and digital; (6) requisite skills to provide an opinion on digital advertising; (7) specific knowledge of current advertising industry, emerging trends, and technology; and (8) any prior experience testifying about class action notice.

**BEST PRACTICE 17B:** The parties and court should carefully review the class-notice expert's or administrator's methodology in concluding that notice sent by an electronic means is most effective.

Communication practices and standards evolve alongside new technologies. In a nonlitigation setting, this includes the integration of different types of media and evaluation of those media's effectiveness to ensure the best practicable communications program and highest return on investment.

The methodologies and analysis adopted by the class-notice expert or administrator should be consistent with generally-accepted practices and methodologies adopted for developing and evaluating communications programs in a non-litigation setting. With respect to notice plans that integrate traditional and digital media, these methodologies and standards are promulgated by the Media Rating Council. These methodologies and standards provide a conservative, commonly-accepted, standard way of defining and measuring advertising exposure that is independent of the media being used.

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**GUIDELINE 18:** Language text and formatting may appear differently, depending on the medium it is viewed on. The differences can be sufficiently substantial to degrade the effectiveness of the communication.

The 2018 amendments to Rule 23 do not revise the requirements that the information required by the rule must be stated “clearly and concisely . . . in plain, easily understood language.”<sup>11</sup>

The parties should provide the court with demonstrations of how notices will appear on various platforms — such as smart phones, personal computers, and tablets — to determine whether they are consistent with the guidance provided in the FJC booklet.

**BEST PRACTICE 18A:** Notices sent by digital media should be formatted appropriately for maximum effectiveness that is consistent with the FJC guidance.

Readers may not read a message on digital media unless they know immediately that it is relevant to them. Drawing reader attention through subheadings and section headers breaks up the content and allows readers to get the most relevant information in a quick scan of the notice. Summary notices should be limited to 500 to 900 words, with links to the full notice.

Headlines should be kept short and succinct. Do not include the entire class definition in the headline of a summary notice or banner notice. Although each component of the definition may be important to the reader, most readers with short attention spans will avoid a wordy headline. A short and broader headline that includes one or two keywords will catch the reader’s attention. If more detail regarding the class is necessary, it can be added in the first or second paragraph of body text or in a subhead. When crafting the headline, limit the use of dates or other information that can instead be included in the body text.

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<sup>11</sup> FED. R. CIV. P. 23 committee note to the proposed 2018 amendment. The Federal Judicial Center’s guidance on class action notices provides helpful instructions about drafting and formatting these notices. *See generally* JUDGES’ CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST, *supra*, note 47.

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The text of banner notices should be under 200 characters, including spaces, in order to be readable and eye catching. Banner notice text should not be bogged down with detail. Only the basics should be included. Although there may be key qualifying information that relates to the class it's better to be broad. The goal is to get the readers to the settlement website where they can review the summary notice and other relevant information to determine whether they are included in the class.

The flow of text on the page is also important. Ideally, a line of copy shouldn't span more than 50–60 characters across a column. If a line of text is too long a reader's eyes will have difficulty focusing on the text. Where necessary use more columns that are narrower as opposed to one very wide column. This enables ease of reading.