

	Rule	Document type	Word limit	Page limit	Line limit
Parties' briefs (where no cross-appeal)	32(a)(7)	◦ Principal brief	13,000	30	1,300
	32(a)(7)	◦ Reply brief	6,500	15	650
Parties' briefs (where cross- appeal)	28.1(e)	◦ Appellant's principal brief	13,000	30	1,300
		◦ Appellant's response and reply brief			
	28.1(e)	◦ Appellee's principal and response brief	15,300	35	1,500
	28.1(e)	◦ Appellee's reply brief	6,500	15	650
Party's supplemental letter	28(j)	◦ Letter citing supplemental authorities	350	Not applicable	Not applicable
Amicus briefs	29(a)(5)	◦ Amicus brief during initial consideration of case on merits	One-half the length set by the Appellate Rules for a party's principal brief	One-half the length set by the Appellate Rules for a party's principal brief	One-half the length set by the Appellate Rules for a party's principal brief
	29(b)(4)	◦ Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable
Rehearing and en banc filings	35(b)(2) & 40(b)	◦ Petition for hearing en banc ◦ Petition for panel rehearing; petition for rehearing en banc	3,900	15	Not applicable

(As added Apr. 28, 2016, eff. Dec. 1, 2016.)

FEDERAL RULES OF CIVIL PROCEDURE

(As amended to December 1, 2022)

HISTORICAL NOTE

The original Rules of Civil Procedure for the District Courts were adopted by order of the Supreme Court on Dec. 20, 1937, transmitted to Congress by the Attorney General on Jan. 3, 1938, and became effective on Sept. 16, 1938.

The Rules have been amended Dec. 28, 1939, eff. Apr. 3, 1941; Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 30, 1951, eff. Aug. 1, 1951; Apr. 17, 1961, eff. July 19, 1961; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 30, 1970, eff. July 1, 1970; Mar. 1, 1971, eff. July 1, 1971; Nov. 20, 1972, and Dec. 18, 1972, eff. July 1, 1975; Apr. 29, 1980, eff. Aug. 1, 1980; Oct. 21, 1980, Pub. L. 96–481, title II, §205(a), (b), 94 Stat. 2330; Jan. 12, 1983, Pub. L. 97–462, §§2–4, 96 Stat. 2527–2530, eff. Feb. 26, 1983; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 25, 1988, eff. Aug. 1, 1988; Nov. 18, 1988, Pub. L. 100–690, title VII, §§7047(b), 7049, 7050, 102 Stat. 4401; Apr. 30, 1991, eff. Dec. 1, 1991; Dec. 9, 1991, Pub. L. 102–198, §11, 105 Stat. 1626; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 25, 2014, eff. Dec. 1, 2014; Apr. 29, 2015, eff. Dec. 1, 2015; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 27, 2017, eff. Dec. 1, 2017; Apr. 26, 2018, eff. Dec. 1, 2018; Apr. 27, 2020, eff. Dec. 1, 2020; Apr. 11, 2022, eff. Dec. 1, 2022.

TITLE I. SCOPE OF RULES; FORM OF ACTION

Rule

1. Scope and Purpose.

2. One Form of Action.

TITLE II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

3. Commencing an Action.

4. Summons.

4.1. Serving Other Process.

5. Serving and Filing Pleadings and Other Papers.

5.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention.

5.2. Privacy Protection For Filings Made with the Court.

6. Computing and Extending Time; Time for Motion Papers.

TITLE III. PLEADINGS AND MOTIONS

7. Pleadings Allowed; Form of Motions and Other Papers.

7.1. Disclosure Statement.

8. General Rules of Pleading.

9. Pleading Special Matters.

10. Form of Pleadings.

11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions.

12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing.

13. Counterclaim and Crossclaim.

14. Third-Party Practice.

15. Amended and Supplemental Pleadings.

16. Pretrial Conferences; Scheduling; Management.

TITLE IV. PARTIES

17. Plaintiff and Defendant; Capacity; Public Officers.

18. Joinder of Claims.

19. Required Joinder of Parties.

20. Permissive Joinder of Parties.

21. Misjoinder and Nonjoinder of Parties.

22. Interpleader.

23. Class Actions

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 22 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 23. Class Actions

(a) PREREQUISITES. One or more members of a class may sue or be sued as representative parties on behalf of all members 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) TYPES OF CLASS ACTIONS. A class action may be maintained if Rule 23(a) is satisfied and if:

- (1) prosecuting separate actions by or against individual class members would create a risk of:
 - (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
 - (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

- (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

(c) CERTIFICATION ORDER; NOTICE TO CLASS MEMBERS; JUDGMENT; ISSUES CLASSES; SUBCLASSES.

(1) *Certification Order.*

(A) *Time to Issue.* At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel.* An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) *Altering or Amending the Order.* An order that grants or denies class certification may be altered or amended before final judgment.

(2) *Notice.*

(A) *For (b)(1) or (b)(2) Classes.* For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) *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, 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 must clearly and concisely state in plain, easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) *Judgment.* Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) *Particular Issues.* When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) *Subclasses.* When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) CONDUCTING THE ACTION.

(1) *In General.* In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require—to protect class members and fairly conduct the action—giving appropriate notice to some or all class members of:

- (i) any step in the action;
- (ii) the proposed extent of the judgment; or
- (iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) *Combining and Amending Orders.* An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(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. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) *Notice to the Class.*

(A) *Information That Parties Must Provide to the Court.* The parties must provide the court

with information sufficient to enable it to determine whether to give notice of the proposal to the class.

(B) *Grounds for a Decision to Give Notice.* The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:

- (i) approve the proposal under Rule 23(e)(2); and
- (ii) certify the class for purposes of judgment on the proposal.

(2) *Approval of the Proposal.* If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

(3) *Identifying Agreements.* The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) *New Opportunity to Be Excluded.* If the class action was previously certified under Rule 23(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.

(5) *Class-Member Objections.*

(A) *In General.* Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.

(B) *Court Approval Required for Payment in Connection with an Objection.* Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:

- (i) forgoing or withdrawing an objection, or
- (ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

(C) *Procedure for Approval After an Appeal.* If approval under Rule 23(e)(5)(B) has not been obtained before an appeal is docketed in the court of appeals, the procedure of Rule 62.1 applies while the appeal remains pending.

(f) **APPEALS.** A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule, but not from an order under Rule 23(e)(1). A party must file a petition for permission to appeal with the circuit clerk within 14 days after the order is entered, or within 45 days after the order is entered if any party is the United States, a United States agency, or a United States officer or employee sued for an act or omission occurring in connection with duties performed on the United States' behalf. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

(g) **CLASS COUNSEL.**

(1) *Appointing Class Counsel.* Unless a statute provides otherwise, a court that certifies a class

must appoint class counsel. In appointing class counsel, the court:

(A) 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 the types of claims asserted in the action;
- (iii) counsel's knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) *Standard for Appointing Class Counsel.* When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) *Interim Counsel.* The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) *Duty of Class Counsel.* Class counsel must fairly and adequately represent the interests of the class.

(h) ATTORNEY'S FEES AND NONTAXABLE COSTS. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 26, 2018, eff. Dec. 1, 2018.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Note to Subdivision (a). This is a substantial restatement of [former] Equity Rule 38 (Representatives of Class) as that rule has been construed. It applies to all actions, whether formerly denominated legal or equitable. For a general analysis of class actions, effect of judgment, and requisites of jurisdiction see Moore, *Federal Rules of Civil Procedure: Some Problems Raised by the Preliminary Draft*, 25 Georgetown L.J. 551, 570 *et seq.* (1937); Moore and Cohn, *Federal Class Actions*, 32 Ill.L.Rev. 307 (1937); Moore and Cohn, *Federal Class Actions—Jurisdiction and Effect of Judgment*, 32 Ill.L.Rev. 555—567 (1938); Lesar, *Class Suits and the Federal Rules*, 22 Minn.L.Rev. 34 (1937); *cf.* Arnold and James, *Cases on Trials, Judgments and Appeals* (1936) 175; and see Blume, *Jurisdictional Amount in Representative Suits*, 15 Minn.L.Rev. 501 (1931).

The general test of [former] Equity Rule 38 (Representatives of Class) that the question should be "one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court," is a common test. For states which require the two elements of a common or general interest and numerous persons, as provided for in [former] Equity Rule 38, see Del.Ch.Rule 113; Fla.Comp.Gen.Laws Ann. (Supp., 1936) §4918 (7); Georgia Code (1933) §37-1002, and see *English Rules*

Under the Judicature Act (The Annual Practice, 1937) O. 16, r. 9. For statutory provisions providing for class actions when the question is one of common or general interest or when the parties are numerous, see Ala.Code Ann. (Michie, 1928) §5701; 2 Ind.Stat. Ann. (Burns, 1933) §2–220; N.Y.C.P.A. (1937) §195; Wis.Stat. (1935) §260.12. These statutes have, however, been uniformly construed as though phrased in the conjunctive. See *Garfein v. Stiglitz*, 260 Ky. 430, 86 S.W.(2d) 155 (1935). The rule adopts the test of [former] Equity Rule 38, but defines what constitutes a "common or general interest". Compare with code provisions which make the action dependent upon the propriety of joinder of the parties. See Blume, *The "Common Questions" Principle in the Code Provision for Representative Suits*, 30 Mich.L.Rev. 878 (1932). For discussion of what constitutes "numerous persons" see Wheaton, *Representative Suits Involving Numerous Litigants*, 19 Corn.L.Q. 399 (1934); Note, 36 Harv.L.Rev. 89 (1922).

Clause (1), Joint, Common, or Secondary Right. This clause is illustrated in actions brought by or against representatives of an unincorporated association. See *Oster v. Brotherhood of Locomotive Firemen and Enginemen*, 271 Pa. 419, 114 Atl. 377 (1921); *Pickett v. Walsh*, 192 Mass. 572, 78 N.E. 753, 6 L.R.A. (N.S.) 1067 (1906); *Colt v. Hicks*, 97 Ind.App. 177, 179 N.E. 335 (1932). Compare Rule 17(b) as to when an unincorporated association has capacity to sue or be sued in its common name; *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344 (1922) (an unincorporated association was sued as an entity for the purpose of enforcing against it a federal substantive right); Moore, *Federal Rules of Civil Procedure: Some Problems Raised by the Preliminary Draft*, 25 Georgetown L.J. 551, 566 (for discussion of jurisdictional requisites when an unincorporated association sues or is sued in its common name and jurisdiction is founded upon diversity of citizenship). For an action brought by representatives of one group against representatives of another group for distribution of a fund held by an unincorporated association, see *Smith v. Swarmstedt*, 16 How. 288 (U.S. 1853). Compare *Christopher, et al. v. Brusselback*, 58 S.Ct. 350 [302 U.S. 500] (1938).

For an action to enforce rights held in common by policyholders against the corporate issuer of the policies, see *Supreme Tribe of Ben Hur v. Cauble*, 255 U.S. 356 (1921). See also *Terry v. Little*, 101 U.S. 216 (1880); *John A. Roebeling's Sons Co. v. Kinnicutt*, 248 Fed. 596 (D.C.N.Y., 1917) dealing with the right held in common by creditors to enforce the statutory liability of stockholders.

Typical of a secondary action is a suit by stockholders to enforce a corporate right. For discussion of the general nature of these actions see *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936); Glenn, *The Stockholder's Suit—Corporate and Individual Grievances*, 33 Yale L.J. 580 (1924); McLaughlin, *Capacity of Plaintiff-Stockholder to Terminate a Stockholder's Suit*, 46 Yale L.J. 421 (1937). See also *Subdivision (b)* of this rule which deals with Shareholder's Action; Note, 15 Minn.L.Rev. 453 (1931).

Clause (2). A creditor's action for liquidation or reorganization of a corporation is illustrative of this clause. An action by a stockholder against certain named defendants as representatives of numerous claimants presents a situation converse to the creditor's action.

Clause (3). See *Everglades Drainage League v. Napoleon Broward Drainage Dist.*, 253 Fed. 246 (D.C.Fla., 1918); *Gramling v. Maxwell*, 52 F.(2d) 256 (D.C.N.C., 1931), approved in 30 Mich.L.Rev. 624 (1932); *Skinner v. Mitchell*, 108 Kan. 861, 197 Pac. 569 (1921); *Duke of Bedford v. Ellis* (1901) A.C. 1, for class actions when there were numerous persons and there was only a question of law or fact common to them; and see Blume, *The "Common Questions" Principle in the Code Provision for Representative Suits*, 30 Mich.L.Rev. 878 (1932).

Note to Subdivision (b). This is [former] Equity Rule 27 (Stockholder's Bill) with verbal changes. See also *Hawes v. Oakland*, 104 U.S. 450, 26 L.Ed. 827 (1882) and former Equity Rule 94, promulgated January 23, 1882, 104 U.S. IX.

Note to Subdivision (c). See McLaughlin, *Capacity of Plaintiff-Stockholder to Terminate a Stockholder's Suit*, 46 Yale L.J. 421 (1937).

NOTES OF ADVISORY COMMITTEE ON RULES—1946 AMENDMENT

Subdivision (b), relating to secondary actions by shareholders, provides among other things, that in, such an action the complainant "shall aver (1) that the plaintiff was a shareholder at the time of the transaction of which he complains or that his share thereafter devolved on him by operation of law . . ."

As a result of the decision in *Erie R. Co. v. Tompkins*, 304 U.S. 64 (decided April 25, 1938, after this rule was promulgated by the Supreme Court, though before it took effect) a question has arisen as to whether the provision above quoted deals with a matter of substantive right or is a matter of procedure. If it is a matter of substantive law or right, then under *Erie R. Co. v. Tompkins* clause (1) may not be validly applied in cases pending in states whose local law permits a shareholder to maintain such actions, although not a shareholder at

the time of the transactions complained of. The Advisory Committee, believing the question should be settled in the courts, proposes no change in Rule 23 but thinks rather that the situation should be explained in an appropriate note.

The rule has a long history. In *Hawes v. Oakland* (1882) 104 U.S. 450, the Court held that a shareholder could not maintain such an action unless he owned shares at the time of the transactions complained of, or unless they devolved on him by operation of law. At that time the decision in *Swift v. Tyson* (1842) 16 Peters 1, was the law, and the federal courts considered themselves free to establish their own principles of equity jurisprudence, so the Court was not in 1882 and has not been, until *Erie R. Co. v. Tompkins* in 1938, concerned with the question whether *Hawes v. Oakland* dealt with substantive right or procedure.

Following the decision in *Hawes v. Oakland*, and at the same term, the Court, to implement its decision, adopted [former] Equity Rule 94, which contained the same provision above quoted from Rule 23 F.R.C.P. The provision in [former] Equity Rule 94 was later embodied in [former] Equity Rule 27, of which the present Rule 23 is substantially a copy.

In *City of Quincy v. Steel* (1887) 120 U.S. 241, 245, the Court referring to *Hawes v. Oakland* said: "In order to give effect to the principles there laid down, this Court at that term adopted Rule 94 of the rules of practice for courts of equity of the United States."

Some other cases dealing with [former] Equity Rules 94 or 27 prior to the decision in *Erie R. Co. v. Tompkins* are *Dimpfel v. Ohio & Miss. R. R.* (1884) 110 U.S. 209; *Illinois Central R. Co. v. Adams* (1901) 180 U.S. 28, 34; *Venner v. Great Northern Ry.* (1908) 209 U.S. 24, 30; *Jacobson v. General Motors Corp.* (S.D.N.Y. 1938) 22 F.Supp. 255, 257. These cases generally treat *Hawes v. Oakland* as establishing a "principle" of equity, or as dealing not with jurisdiction but with the "right" to maintain an action, or have said that the defense under the equity rule is analogous to the defense that the plaintiff has no "title" and results in a dismissal "for want of equity."

Those state decisions which held that a shareholder acquiring stock after the event may maintain a derivative action are founded on the view that it is a right belonging to the shareholder at the time of the transaction and which passes as a right to the subsequent purchaser. See *Pollitz v. Gould* (1911) 202 N.Y. 11.

The first case arising after the decision in *Erie R. Co. v. Tompkins*, in which this problem was involved, was *Summers v. Hearst* (S.D.N.Y. 1938) 23 F.Supp. 986. It concerned [former] Equity Rule 27, as Federal Rule 23 was not then in effect. In a well considered opinion Judge Leibell reviewed the decisions and said: "The federal cases that discuss this section of Rule 27 support the view that it states a principle of substantive law." He quoted *Pollitz v. Gould* (1911) 202 N.Y. 11, as saying that the United States Supreme Court "seems to have been more concerned with establishing this rule as one of practice than of substantive law" but that "whether it be regarded as establishing a principle of law or a rule of practice, this authority has been subsequently followed in the United States courts."

He then concluded that, although the federal decisions treat the equity rule as "stating a principle of substantive law", if [former] "Equity Rule 27 is to be modified or revoked in view of *Erie R. Co. v. Tompkins*, it is not the province of this Court to suggest it, much less impliedly to follow that course by disregarding the mandatory provisions of the Rule."

Some other federal decisions since 1938 touch the question.

In *Piccard v. Sperry Corporation* (S.D.N.Y. 1941) 36 F.Supp. 1006, 1009–10, affirmed without opinion (C.C.A.2d, 1941) 120 F.(2d) 328, a shareholder, not such at the time of the transactions complained of, sought to intervene. The court held an intervenor was as much subject to Rule 23 as an original plaintiff; and that the requirement of Rule 23(b) was "a matter of practice," not substance, and applied in New York where the state law was otherwise, despite *Erie R. Co. v. Tompkins*. In *York v. Guaranty Trust Co. of New York* (C.C.A.2d, 1944) 143 F.(2d) 503, rev'd on other grounds (1945) 65 S.Ct. 1464, the court said: "Restrictions on the bringing of stockholders' actions, such as those imposed by F.R.C.P. 23(b) or other state statutes are procedural," citing the *Piccard* and other cases.

In *Gallup v. Caldwell* (C.C.A.3d, 1941) 120 F.(2d) 90, 95, arising in New Jersey, the point was raised but not decided, the court saying that it was not satisfied that the then New Jersey rule differed from Rule 23(b), and that "under the circumstances the proper course was to follow Rule 23(b)."

In *Mullins v. De Soto Securities Co.* (W.D.La. 1942) 45 F.Supp. 871, 878, the point was not decided, because the court found the Louisiana rule to be the same as that stated in Rule 23(b).

In *Toebelman v. Missouri-Kansas Pipe Line Co.* (D.Del. 1941) 41 F.Supp. 334, 340, the court dealt only with another part of Rule 23(b), relating to prior demands on the stockholders and did not discuss *Erie R. Co. v. Tompkins*, or its effect on the rule.

In *Perrott v. United States Banking Corp.* (D.Del. 1944) 53 F.Supp. 953, it appeared that the Delaware law does not require the plaintiff to have owned shares at the time of the transaction complained of. The court sustained Rule 23(b), after discussion of the authorities, saying:

"It seems to me the rule does not go beyond procedure. * * * Simply because a particular plaintiff cannot qualify as a proper party to maintain such an action does not destroy or even whittle at the cause of action. The cause of action exists until a qualified plaintiff can get it started in a federal court."

In *Bankers Nat. Corp. v. Barr* (S.D.N.Y. 1945) 9 Fed.Rules Serv. 23b.11, Case 1, the court held Rule 23(b) to be one of procedure, but that whether the plaintiff was a stockholder was a substantive question to be settled by state law.

The New York rule, as stated in *Pollitz v. Gould*, *supra*, has been altered by an act of the New York Legislature (Chapter 667, Laws of 1944, effective April 9, 1944, General Corporation Law, §61) which provides that "in any action brought by a shareholder in the right of a . . . corporation, it must appear that the plaintiff was a stockholder at the time of the transaction of which he complains, or that his stock thereafter devolved upon him by operation of law." At the same time a further and separate provision was enacted, requiring under certain circumstances the giving of security for reasonable expenses and attorney's fees, to which security the corporation in whose right the action is brought and the defendants therein may have recourse. (Chapter 668, Laws of 1944, effective April 9, 1944, General Corporation Law, §61-b.) These provisions are aimed at so-called "strike" stockholders' suits and their attendant abuses. *Shielcrawt v. Moffett* (Ct.App. 1945) 294 N.Y. 180, 61 N.E.(2d) 435, rev'g 51 N.Y.S.(2d) 188, aff'g 49 N.Y.S.(2d) 64; *Noel Associates, Inc. v. Merrill* (Sup.Ct. 1944) 184 Misc. 646, 53 N.Y.S.(2d) 143.

Insofar as §61 is concerned, it has been held that the section is procedural in nature. *Klum v. Clinton Trust Co.* (Sup.Ct. 1944) 183 Misc. 340, 48 N.Y.S.(2d) 267; *Noel Associates, Inc. v. Merrill*, *supra*. In the latter case the court pointed out that "The 1944 amendment to Section 61 rejected the rule laid down in the *Pollitz* case and substituted, in place thereof, in its precise language, the rule which has long prevailed in the Federal Courts and which is now Rule 23(b) . . ." There is, nevertheless, a difference of opinion regarding the application of the statute to pending actions. See *Klum v. Clinton Trust Co.*, *supra* (applicable); *Noel Associates, Inc. v. Merrill*, *supra* (inapplicable).

With respect to §61-b, which may be regarded as a separate problem (*Noel Associates, Inc. v. Merrill*, *supra*), it has been held that even though the statute is procedural in nature—a matter not definitely decided—the Legislature evinced no intent that the provision should apply to actions pending when it became effective. *Shielcrawt v. Moffett*, *supra*. As to actions instituted after the effective date of the legislation, the constitutionality of §61-b is in dispute. See *Wolf v. Atkinson* (Sup.Ct. 1944) 182 Misc. 675, 49 N.Y.S.(2d) 703 (constitutional); *Citron v. Mangel Stores Corp.* (Sup.Ct. 1944) — Misc. —, 50 N.Y.S.(2d) 416 (unconstitutional); Zlinkoff, *The American Investor and the Constitutionality of Section 61-B of the New York General Corporation Law* (1945) 54 Yale L.J. 352.

New Jersey also enacted a statute, similar to Chapters 667 and 668 of the New York law. See P.L. 1945, Ch. 131, R.S.Cum.Supp. 14:3–15. The New Jersey provision similar to Chapter 668 (§61-b) differs, however, in that it specifically applies retroactively. It has been held that this provision is procedural and hence will not govern a pending action brought against a New Jersey corporation in the New York courts. *Shielcrawt v. Moffett* (Sup.Ct.N.Y. 1945) 184 Misc. 1074, 56 N.Y.S.(2d) 134.

See also generally, 2 *Moore's Federal Practice* (1938) 2250–2253, and Cum.Supp. Supplement §23.05.

The decisions here discussed show that the question is a debatable one, and that there is respectable authority for either view, with a recent trend towards the view that Rule 23(b)(1) is procedural. There is reason to say that the question is one which should not be decided by the Supreme Court *ex parte*, but left to await a judicial decision in a litigated case, and that in the light of the material in this note, the only inference to be drawn from a failure to amend Rule 23(b) would be that the question is postponed to await a litigated case.

The Advisory Committee is unanimously of the opinion that this course should be followed.

If, however, the final conclusion is that the rule deals with a matter of substantive right, then the rule should be amended by adding a provision that Rule 23(b)(1) does not apply in jurisdictions where state law permits a shareholder to maintain a secondary action, although he was not a shareholder at the time of the transactions of which he complains.

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

Difficulties with the original rule. The categories of class actions in the original rule were defined in terms of the abstract nature of the rights involved: the so-called "true" category was defined as involving "joint, common, or secondary rights"; the "hybrid" category, as involving "several" rights related to "specific property"; the "spurious" category, as involving "several" rights affected by a common question and related to common relief. It was thought that the definitions accurately described the situations amendable to the class-suit device, and also would indicate the proper extent of the judgment in each category, which would in turn help to determine the res judicata effect of the judgment if questioned in a later action. Thus the judgments in "true" and "hybrid" class actions would extend to the class (although in somewhat different

ways); the judgment in a "spurious" class action would extend only to the parties including intervenors. See Moore, *Federal Rules of Civil Procedure: Some Problems Raised by the Preliminary Draft*, 25 Geo.L.J. 551, 570–76 (1937).

In practice, the terms "joint," "common," etc., which were used as the basis of the Rule 23 classification proved obscure and uncertain. See Chaffee, *Some Problems of Equity* 245–46, 256–57 (1950); Kalven & Rosenfield, *The Contemporary Function of the Class Suit*, 8 U. of Chi.L.Rev. 684, 707 & n. 73 (1941); Keeffe, Levy & Donovan, *Lee Defeats Ben Hur*, 33 Corn.L.Q. 327, 329–36 (1948); *Developments in the Law: Multiparty Litigation in the Federal Courts*, 71 Harv.L.Rev. 874, 931 (1958); Advisory Committee's Note to Rule 19, as amended. The courts had considerable difficulty with these terms. See, e.g., *Gullo v. Veterans' Coop. H. Assn.*, 13 F.R.D. 11 (D.D.C. 1952); *Shipley v. Pittsburgh & L. E. R. Co.*, 70 F.Supp. 870 (W.D.Pa. 1947); *Deckert v. Independence Shares Corp.*, 27 F.Supp. 763 (E.D.Pa. 1939), rev'd, 108 F.2d 51 (3d Cir. 1939), rev'd, 311 U.S. 282 (1940), on remand, 39 F.Supp. 592 (E.D.Pa. 1941), rev'd sub nom. *Pennsylvania Co. for Ins. on Lives v. Deckert*, 123 F.2d 979 (3d Cir. 1941) (see Chaffee, supra, at 264–65).

Nor did the rule provide an adequate guide to the proper extent of the judgments in class actions. First, we find instances of the courts classifying actions as "true" or intimating that the judgments would be decisive for the class where these results seemed appropriate but were reached by dint of depriving the word "several" of coherent meaning. See, e.g., *System Federation No. 91 v. Reed*, 180 F.2d 991 (6th Cir. 1950); *Wilson v. City of Paducah*, 100 F.Supp. 116 (W.D.Ky. 1951); *Citizens Banking Co. v. Monticello State Bank*, 143 F.2d 261 (8th Cir. 1944); *Redmond v. Commerce Trust Co.*, 144 F.2d 140 (8th Cir. 1944), cert. denied, 323 U.S. 776 (1944); *United States v. American Optical Co.*, 97 F.Supp. 66 (N.D.Ill. 1951); *National Hairdressers' & C. Assn. v. Philad. Co.*, 34 F.Supp. 264 (D.Del. 1940); 41 F.Supp. 701 (D.Del. 1940), aff'd mem., 129 F.2d 1020 (3d Cir. 1942). Second, we find cases classified by the courts as "spurious" in which, on a realistic view, it would seem fitting for the judgments to extend to the class. See, e.g., *Knapp v. Bankers Sec. Corp.*, 17 F.R.D. 245 (E.D.Pa. 1954); aff'd 230 F.2d 717 (3d Cir. 1956); *Giasecke v. Denver Tramway Corp.*, 81 F.Supp. 957 (D.Del. 1949); *York v. Guaranty Trust Co.*, 143 F.2d 503 (2d Cir. 1944), rev'd on grounds not here relevant, 326 U.S. 90 (1945) (see Chaffee, supra, at 208); cf. *Webster Eisenlohr, Inc. v. Kalodner*, 145 F.2d 316, 320 (3d Cir. 1944), cert. denied, 325 U.S. 807 (1945). But cf. the early decisions, *Duke of Bedford v. Ellis* [1901], A.C. 1; *Sheffield Waterworks v. Yeomans*, L.R. 2 Ch.App. 8 (1866); *Brown v. Vermuden*, 1 Ch.Cas. 272, 22 Eng.Rep. 796 (1676).

The "spurious" action envisaged by original Rule 23 was in any event an anomaly because, although denominated a "class" action and pleaded as such, it was supposed not to adjudicate the rights or liabilities of any person not a party. It was believed to be an advantage of the "spurious" category that it would invite decisions that a member of the "class" could, like a member of the class in a "true" or "hybrid" action, intervene on an ancillary basis without being required to show an independent basis of Federal jurisdiction, and have the benefit of the date of the commencement of the action for purposes of the statute of limitations. See 3 *Moore's Federal Practice*, pars. 23.10[1], 23.12 (2d ed. 1963). These results were attained in some instances but not in others. On the statute of limitations, see *Union Carbide & Carbon Corp. v. Nisley*, 300 F.2d 561 (10th Cir. 1961), pet. cert. dismissed, 371 U.S. 801 (1963); but cf. *P. W. Husserl, Inc. v. Newman*, 25 F.R.D. 264 (S.D.N.Y. 1960); *Athas v. Day*, 161 F.Supp. 916 (D.Colo. 1958). On ancillary intervention, see *Amen v. Black*, 234 F.2d 12 (10th Cir. 1956), cert. granted, 352 U.S. 888 (1956), dismissed on stip., 355 U.S. 600 (1958); but cf. *Wagner v. Kemper*, 13 F.R.D. 128 (W.D.Mo. 1952). The results, however, can hardly depend upon the mere appearance of a "spurious" category in the rule; they should turn on more basic considerations. See discussion of subdivision (c)(1) below.

Finally, the original rule did not squarely address itself to the question of the measures that might be taken during the course of the action to assure procedural fairness, particularly giving notice to members of the class, which may in turn be related in some instances to the extension of the judgment to the class. See Chaffee, supra, at 230–31; Keeffe, Levy & Donovan, supra; *Developments in the Law*, supra, 71 Harv.L.Rev. at 937–38; Note, *Binding Effect of Class Actions*, 67 Harv.L.Rev. 1059, 1062–65 (1954); Note, *Federal Class Actions: A Suggested Revision of Rule 23*, 46 Colum.L.Rev. 818, 833–36 (1946); Mich.Gen.Court R. 208.4 (effective Jan. 1, 1963); Idaho R.Civ.P. 23(d); Minn.R.Civ.P. 23.04; N.Dak.R.Civ.P. 23(d).

The amended rule describes in more practical terms the occasions for maintaining class actions; provides that all class actions maintained to the end as such will result in judgments including those whom the court finds to be members of the class, whether or not the judgment is favorable to the class; and refers to the measures which can be taken to assure the fair conduct of these actions.

Subdivision (a) states the prerequisites for maintaining any class action in terms of the numerosness of the class making joinder of the members impracticable, the existence of questions common to the class, and the desired qualifications of the representative parties. See Weinstein, *Revision of Procedure; Some Problems in Class Actions*, 9 Buffalo L.Rev. 433, 458–59 (1960); 2 Barron & Holtzoff, *Federal Practice & Procedure*

§562, at 265, §572, at 351–52 (Wright ed. 1961). These are necessary but not sufficient conditions for a class action. See, e.g., *Giordano v. Radio Corp. of Am.*, 183 F.2d 558, 560 (3d Cir. 1950); *Zachman v. Erwin*, 186 F.Supp. 681 (S.D.Tex. 1959); *Baim & Blank, Inc. v. Warren Connelly Co., Inc.*, 19 F.R.D. 108 (S.D.N.Y. 1956). Subdivision (b) describes the additional elements which in varying situations justify the use of a class action.

Subdivision (b)(1). The difficulties which would be likely to arise if resort were had to separate actions by or against the individual members of the class here furnish the reasons for, and the principal key to, the propriety and value of utilizing the class-action device. The considerations stated under clauses (A) and (B) are comparable to certain of the elements which define the persons whose joinder in an action is desirable as stated in Rule 19(a), as amended. See amended Rule 19(a)(2)(i) and (ii), and the Advisory Committee's Note thereto; Hazard, *Indispensable Party; The Historical Origin of a Procedural Phantom*, 61 Colum.L.Rev. 1254, 1259–60 (1961); cf. 3 *Moore*, supra, par. 23.08, at 3435.

Clause (A): One person may have rights against, or be under duties toward, numerous persons constituting a class, and be so positioned that conflicting or varying adjudications in lawsuits with individual members of the class might establish incompatible standards to govern his conduct. The class action device can be used effectively to obviate the actual or virtual dilemma which would thus confront the party opposing the class. The matter has been stated thus: "The felt necessity for a class action is greatest when the courts are called upon to order or sanction the alteration of the status quo in circumstances such that a large number of persons are in a position to call on a single person to alter the status quo, or to complain if it is altered, and the possibility exists that [the] actor might be called upon to act in inconsistent ways." Louisell & Hazard, *Pleading and Procedure; State and Federal* 719 (1962); see *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356, 366–67 (1921). To illustrate: Separate actions by individuals against a municipality to declare a bond issue invalid or condition or limit it, to prevent or limit the making of a particular appropriation or to compel or invalidate an assessment, might create a risk of inconsistent or varying determinations. In the same way, individual litigations of the rights and duties of riparian owners, or of landowners' rights and duties respecting a claimed nuisance, could create a possibility of incompatible adjudications. Actions by or against a class provide a ready and fair means of achieving unitary adjudication. See *Maricopa County Mun. Water Con. Dist. v. Looney*, 219 F.2d 529 (9th Cir. 1955); *Rank v. Krug*, 142 F.Supp. 1, 154–59 (S.D.Calif. 1956), on app., *State of California v. Rank*, 293 F.2d 340, 348 (9th Cir. 1961); *Gart v. Cole*, 263 F.2d 244 (2d Cir. 1959), cert. denied 359 U.S. 978 (1959); cf. *Martinez v. Maverick Cty. Water Con. & Imp. Dist.*, 219 F.2d 666 (5th Cir. 1955); 3 *Moore*, supra, par. 23.11[2], at 3458–59.

Clause (B): This clause takes in situations where the judgment in a nonclass action by or against an individual member of the class, while not technically concluding the other members, might do so as a practical matter. The vice of an individual actions would lie in the fact that the other members of the class, thus practically concluded, would have had no representation in the lawsuit. In an action by policy holders against a fraternal benefit association attacking a financial reorganization of the society, it would hardly have been practical, if indeed it would have been possible, to confine the effects of a validation of the reorganization to the individual plaintiffs. Consequently a class action was called for with adequate representation of all members of the class. See *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356 (1921); *Waybright v. Columbian Mut. Life Ins. Co.*, 30 F.Supp. 885 (W.D.Tenn. 1939); cf. *Smith v. Swormstedt*, 16 How. (57 U.S.) 288 (1853). For much the same reason actions by shareholders to compel the declaration of a dividend the proper recognition and handling of redemption or pre-emption rights, or the like (or actions by the corporation for corresponding declarations of rights), should ordinarily be conducted as class actions, although the matter has been much obscured by the insistence that each shareholder has an individual claim. See *Knapp v. Bankers Securities Corp.*, 17 F.R.D. 245 (E.D.Pa. 1954), aff'd, 230 F.2d 717 (3d Cir. 1956); *Giesecke v. Denver Tramway Corp.*, 81 F.Supp. 957 (D.Del. 1949); *Zahn v. Transamerica Corp.*, 162 F.2d 36 (3d Cir. 1947); *Speed v. Transamerica Corp.*, 100 F.Supp. 461 (D.Del. 1951); *Sobel v. Whittier Corp.*, 95 F.Supp. 643 (E.D.Mich. 1951), app. dismissed, 195 F.2d 361 (6th Cir. 1952); *Goldberg v. Whittier Corp.*, 111 F.Supp. 382 (E.D.Mich. 1953); *Dann v. Studebaker-Packard Corp.*, 288 F.2d 201 (6th Cir. 1961); *Edgerton v. Armour & Co.*, 94 F.Supp. 549 (S.D.Calif. 1950); *Ames v. Mengel Co.*, 190 F.2d 344 (2d Cir. 1951). (These shareholders' actions are to be distinguished from derivative actions by shareholders dealt with in new Rule 23.1). The same reasoning applies to an action which charges a breach of trust by an indenture trustee or other fiduciary similarly affecting the members of a large class of security holders or other beneficiaries, and which requires an accounting or like measures to restore the subject of the trust. See *Bosenberg v. Chicago T. & T. Co.*, 128 F.2d 245 (7th Cir. 1942); *Citizens Banking Co. v. Monticello State Bank*, 143 F.2d 261 (8th Cir. 1944); *Redmond v. Commerce Trust Co.*, 144 F.2d 140 (8th Cir. 1944), cert. denied, 323 U.S. 776 (1944); cf. *York v. Guaranty Trust Co.*, 143 F.2d 503 (2d Cir. 1944), rev'd on grounds not here relevant, 326 U.S. 99 (1945).

In various situations an adjudication as to one or more members of the class will necessarily or probably

have an adverse practical effect on the interests of other members who should therefore be represented in the lawsuit. This is plainly the case when claims are made by numerous persons against a fund insufficient to satisfy all claims. A class action by or against representative members to settle the validity of the claims as a whole, or in groups, followed by separate proof of the amount of each valid claim and proportionate distribution of the fund, meets the problem. Cf. *Dickinson v. Burnham*, 197 F.2d 973 (2d Cir. 1952), cert. denied, 344 U.S. 875 (1952); 3 Moore, *supra*, at par. 23.09. The same reasoning applies to an action by a creditor to set aside a fraudulent conveyance by the debtor and to appropriate the property to his claim, when the debtor's assets are insufficient to pay all creditors' claims. See *Hefferman v. Bennett & Armour*, 110 Cal.App.2d 564, 243 P.2d 846 (1952); cf. *City & County of San Francisco v. Market Street Ry.*, 95 Cal.App.2d 648, 213 P.2d 780 (1950). Similar problems, however, can arise in the absence of a fund either present or potential. A negative or mandatory injunction secured by one of a numerous class may disable the opposing party from performing claimed duties toward the other members of the class or materially affect his ability to do so. An adjudication as to movie "clearances and runs" nominally affecting only one exhibitor would often have practical effects on all the exhibitors in the same territorial area. Cf. *United States v. Paramount Pictures, Inc.*, 66 F.Supp. 323, 341–46 (S.D.N.Y. 1946); 334 U.S. 131, 144–48 (1948). Assuming a sufficiently numerous class of exhibitors, a class action would be advisable. (Here representation of subclasses of exhibitors could become necessary; see subdivision (c)(3)(B).)

Subdivision (b)(2). This subdivision is intended to reach situations where a party has taken action or refused to take action with respect to a class, and final relief of an injunctive nature or of a corresponding declaratory nature, settling the legality of the behavior with respect to the class as a whole, is appropriate. Declaratory relief "corresponds" to injunctive relief when as a practical matter it affords injunctive relief or serves as a basis for later injunctive relief. The subdivision does not extend to cases in which the appropriate final relief relates exclusively or predominantly to money damages. Action or inaction is directed to a class within the meaning of this subdivision even if it has taken effect or is threatened only as to one or a few members of the class, provided it is based on grounds which have general application to the class.

Illustrative are various actions in the civil-rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration. See *Potts v. Flax*, 313 F.2d 284 (5th Cir. 1963); *Bailey v. Patterson*, 323 F.2d 201 (5th Cir. 1963), cert. denied, 377 U.S. 972 (1964); *Brunson v. Board of Trustees of School District No. 1, Clarendon City, S.C.*, 311 F.2d 107 (4th Cir. 1962), cert. denied, 373 U.S. 933 (1963); *Green v. School Bd. of Roanoke, Va.*, 304 F.2d 118 (4th Cir. 1962); *Orleans Parish School Bd. v. Bush*, 242 F.2d 156 (5th Cir. 1957), cert. denied, 354 U.S. 921 (1957); *Mannings v. Board of Public Inst. of Hillsborough County, Fla.*, 277 F.2d 370 (5th Cir. 1960); *Northcross v. Board of Ed. of City of Memphis*, 302 F.2d 818 (6th Cir. 1962), cert. denied 370 U.S. 944 (1962); *Frasier v. Board of Trustees of Univ. of N.C.*, 134 F.Supp. 589 (M.D.N.C. 1955, 3-judge court), *aff'd*, 350 U.S. 979 (1956). Subdivision (b)(2) is not limited to civil-rights cases. Thus an action looking to specific or declaratory relief could be brought by a numerous class of purchasers, say retailers of a given description, against a seller alleged to have undertaken to sell to that class at prices higher than those set for other purchasers, say retailers of another description, when the applicable law forbids such a pricing differential. So also a patentee of a machine, charged with selling or licensing the machine on condition that purchasers or licensees also purchase or obtain licenses to use an ancillary unpatented machine, could be sued on a class basis by a numerous group of purchasers or licensees, or by a numerous group of competing sellers or licensors of the unpatented machine, to test the legality of the "tying" condition.

Subdivision (b)(3). In the situations to which this subdivision relates, class-action treatment is not as clearly called for as in those described above, but it may nevertheless be convenient and desirable depending upon the particular facts. Subdivision (b)(3) encompasses those cases in which a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results. Cf. Chafee, *supra*, at 201.

The court is required to find, as a condition of holding that a class action may be maintained under this subdivision, that the questions common to the class predominate over the questions affecting individual members. It is only where this predominance exists that economies can be achieved by means of the class-action device. In this view, a fraud perpetrated on numerous persons by the use of similar misrepresentations may be an appealing situation for a class action, and it may remain so despite the need, if liability is found, for separate determination of the damages suffered by individuals within the class. On the other hand, although having some common core, a fraud case may be unsuited for treatment as a class action if there was material variation in the representation made or in the kinds or degrees of reliance by the persons to whom they were addressed. See *Oppenheimer v. F. J. Young & Co., Inc.*, 144 F.2d 387 (2d Cir. 1944); *Miller v. National City Bank of N.Y.*, 166 F.2d 723 (2d Cir. 1948); and for like problems in other contexts, see *Hughes v. Encyclopaedia Britannica*, 199 F.2d 295 (7th Cir. 1952); *Sturgeon v. Great Lakes Steel Corp.*, 143

F.2d 819 (6th Cir. 1944). A "mass accident" resulting in injuries to numerous persons is ordinarily not appropriate for a class action because of the likelihood that significant questions, not only of damages but of liability and defenses of liability, would be present, affecting the individuals in different ways. In these circumstances an action conducted nominally as a class action would degenerate in practice into multiple lawsuits separately tried. See *Pennsylvania R.R. v. United States*, 111 F.Supp. 80 (D.N.J. 1953); cf. Weinstein, supra, 9 Buffalo L.Rev. at 469. Private damage claims by numerous individuals arising out of concerted antitrust violations may or may not involve predominating common questions. See *Union Carbide & Carbon Corp. v. Nisley*, 300 F.2d 561 (10th Cir. 1961), pet. cert. dismissed, 371 U.S. 801 (1963); cf. *Weeks v. Bareco Oil Co.*, 125 F.2d 84 (7th Cir. 1941); *Kainz v. Anheuser-Busch, Inc.*, 194 F.2d 737 (7th Cir. 1952); *Hess v. Anderson, Clayton & Co.*, 20 F.R.D. 466 (S.D.Calif. 1957).

That common questions predominate is not itself sufficient to justify a class action under subdivision (b)(3), for another method of handling the litigious situation may be available which has greater practical advantages. Thus one or more actions agreed to by the parties as test or model actions may be preferable to a class action; or it may prove feasible and preferable to consolidate actions. Cf. Weinstein, supra, 9 Buffalo L.Rev. at 438–54. Even when a number of separate actions are proceeding simultaneously, experience shows that the burdens on the parties and the courts can sometimes be reduced by arrangements for avoiding repetitious discovery or the like. Currently the Coordinating Committee on Multiple Litigation in the United States District Courts (a subcommittee of the Committee on Trial Practice and Technique of the Judicial Conference of the United States) is charged with developing methods for expediting such massive litigation. To reinforce the point that the court with the aid of the parties ought to assess the relative advantages of alternative procedures for handling the total controversy, subdivision (b)(3) requires, as a further condition of maintaining the class action, that the court shall find that that procedure is "superior" to the others in the particular circumstances.

Factors (A)–(D) are listed, non-exhaustively, as pertinent to the findings. The court is to consider the interests of individual members of the class in controlling their own litigations and carrying them on as they see fit. See *Weeks v. Bareco Oil Co.*, 125 F.2d 84, 88–90, 93–94 (7th Cir. 1941) (anti-trust action); see also *Pentland v. Dravo Corp.*, 152 F.2d 851 (3d Cir. 1945), and Chaffee, supra, at 273–75, regarding policy of Fair Labor Standards Act of 1938, §16(b), 29 U.S.C. §216(b), prior to amendment by Portal-to-Portal Act of 1947, §5(a). [The present provisions of 29 U.S.C. §216(b) are not intended to be affected by Rule 23, as amended.]

In this connection the court should inform itself of any litigation actually pending by or against the individuals. The interests of individuals in conducting separate lawsuits may be so strong as to call for denial of a class action. On the other hand, these interests may be theoretic rather than practical; the class may have a high degree of cohesion and prosecution of the action through representatives would be quite unobjectionable, or the amounts at stake for individuals may be so small that separate suits would be impracticable. The burden that separate suits would impose on the party opposing the class, or upon the court calendars, may also fairly be considered. (See the discussion, under subdivision (c)(2) below, of the right of members to be excluded from the class upon their request.)

Also pertinent is the question of the desirability of concentrating the trial of the claims in the particular forum by means of a class action, in contrast to allowing the claims to be litigated separately in forums to which they would ordinarily be brought. Finally, the court should consider the problems of management which are likely to arise in the conduct of a class action.

Subdivision (c)(1). In order to give clear definition to the action, this provision requires the court to determine, as early in the proceedings as may be practicable, whether an action brought as a class action is to be so maintained. The determination depends in each case on satisfaction of the terms of subdivision (a) and the relevant provisions of subdivision (b).

An order embodying a determination can be conditional; the court may rule, for example, that a class action may be maintained only if the representation is improved through intervention of additional parties of a stated type. A determination once made can be altered or amended before the decision on the merits if, upon fuller development of the facts, the original determination appears unsound. A negative determination means that the action should be stripped of its character as a class action. See subdivision (d)(4). Although an action thus becomes a nonclass action, the court may still be receptive to interventions before the decision on the merits so that the litigation may cover as many interests as can be conveniently handled; the questions whether the intervenors in the nonclass action shall be permitted to claim "ancillary" jurisdiction or the benefit of the date of the commencement of the action for purposes of the statute of limitations are to be decided by reference to the laws governing jurisdiction and limitations as they apply in particular contexts.

Whether the court should require notice to be given to members of the class of its intention to make a determination, or of the order embodying it, is left to the court's discretion under subdivision (d)(2).

Subdivision (c)(2) makes special provision for class actions maintained under subdivision (b)(3). As noted

in the discussion of the latter subdivision, the interests of the individuals in pursuing their own litigations may be so strong here as to warrant denial of a class action altogether. Even when a class action is maintained under subdivision (b)(3), this individual interest is respected. Thus the court is required to direct notice to the members of the class of the right of each member to be excluded from the class upon his request. A member who does not request exclusion may, if he wishes, enter an appearance in the action through his counsel; whether or not he does so, the judgment in the action will embrace him.

The notice setting forth the alternatives open to the members of the class, is to be the best practicable under the circumstances, and shall include individual notice to the members who can be identified through reasonable effort. (For further discussion of this notice, see the statement under subdivision (d)(2) below.)

Subdivision (c)(3). The judgment in a class action maintained as such to the end will embrace the class, that is, in a class action under subdivision (b)(1) or (b)(2), those found by the court to be class members; in a class action under subdivision (b)(3), those to whom the notice prescribed by subdivision (c)(2) was directed, excepting those who requested exclusion or who are ultimately found by the court not to be members of the class. The judgment has this scope whether it is favorable or unfavorable to the class. In a (b)(1) or (b)(2) action the judgment "describes" the members of the class, but need not specify the individual members; in a (b)(3) action the judgment "specifies" the individual members who have been identified and described the others.

Compare subdivision (c)(4) as to actions conducted as class actions only with respect to particular issues. Where the class-action character of the lawsuit is based solely on the existence of a "limited fund," the judgment, while extending to all claims of class members against the fund, has ordinarily left unaffected the personal claims of nonappearing members against the debtor. See 3 Moore, *supra*, par. 23.11[4].

Hitherto, in a few actions conducted as "spurious" class actions and thus nominally designed to extend only to parties and others intervening *before* the determination of liability, courts have held or intimated that class members might be permitted to intervene *after* a decision on the merits favorable to their interests, in order to secure the benefits of the decision for themselves, although they would presumably be unaffected by an unfavorable decision. See, as to the propriety of this so-called "one-way" intervention in "spurious" actions, the conflicting views expressed in *Union Carbide & Carbon Corp. v. Nisley*, 300 F.2d 561 (10th Cir. 1961), *pet. cert. dismissed*, 371 U.S. 801 (1963); *York v. Guaranty Trust Co.*, 143 F.2d 503, 529 (2d Cir. 1944), *rev'd on grounds not here relevant*, 326 U.S. 99 (1945); *Pentland v. Dravo Corp.*, 152 F.2d 851, 856 (3d Cir. 1945); *Speed v. Transamerica Corp.*, 100 F.Supp. 461, 463 (D.Del. 1951); *State Wholesale Grocers v. Great Atl. & Pac. Tea Co.*, 24 F.R.D. 510 (N.D.Ill. 1959); *Alabama Ind. Serv. Stat. Assn. v. Shell Pet Corp.*, 28 F.Supp. 386, 390 (N.D.Ala. 1939); *Tolliver v. Cudahy Packing Co.*, 39 F.Supp. 337, 339 (E.D.Tenn. 1941); Kalven & Rosenfield, *supra*, 8 U. of Chi.L.Rev. 684 (1941); Comment, 53 Nw.U.L.Rev. 627, 632-33 (1958); *Developments in the Law*, *supra*, 71 Harv.L.Rev. at 935; 2 Barron & Holtzoff, *supra*, §568; but cf. *Lockwood v. Hercules Powder Co.*, 7 F.R.D. 24, 28-29 (W.D.Mo. 1947); *Abram v. San Joaquin Cotton Oil Co.*, 46 F.Supp. 969, 976-77 (S.D.Calif. 1942); Chaffee, *supra*, at 280, 285; 3 Moore, *supra*, par. 23.12, at 3476. Under proposed subdivision (c)(3), one-way intervention is excluded; the action will have been early determined to be a class or nonclass action, and in the former case the judgment, whether or not favorable, will include the class, as above stated.

Although thus declaring that the judgment in a class action includes the class, as defined, subdivision (c)(3) does not disturb the recognized principle that the court conducting the action cannot predetermine the *res judicata* effect of the judgment; this can be tested only in a subsequent action. See Restatement, *Judgments* §86, comment (h), §116 (1942). The court, however, in framing the judgment in any suit brought as a class action, must decide what its extent or coverage shall be, and if the matter is carefully considered, questions of *res judicata* are less likely to be raised at a later time and if raised will be more satisfactorily answered. See Chaffee, *supra*, at 294; Weinstein, *supra*, 9 Buffalo L.Rev. at 460.

Subdivision (c)(4). This provision recognizes that an action may be maintained as a class action as to particular issues only. For example, in a fraud or similar case the action may retain its "class" character only through the adjudication of liability to the class; the members of the class may thereafter be required to come in individually and prove the amounts of their respective claims.

Two or more classes may be represented in a single action. Where a class is found to include subclasses divergent in interest, the class may be divided correspondingly, and each subclass treated as a class.

Subdivision (d) is concerned with the fair and efficient conduct of the action and lists some types of orders which may be appropriate.

The court should consider how the proceedings are to be arranged in sequence, and what measures should be taken to simplify the proof and argument. See subdivision (d)(1). The orders resulting from this consideration, like the others referred to in subdivision (d), may be combined with a pretrial order under Rule 16, and are subject to modification as the case proceeds.

Subdivision (d)(2) sets out a non-exhaustive list of possible occasions for orders requiring notice to the class. Such notice is not a novel conception. For example, in "limited fund" cases, members of the class have been notified to present individual claims after the basic class decision. Notice has gone to members of a class so that they might express any opposition to the representation, see *United States v. American Optical Co.*, 97 F.Supp. 66 (N.D.Ill. 1951), and 1950–51 CCH Trade Cases 64573–74 (par. 62869); cf. *Weeks v. Bareco Oil Co.*, 125 F.2d 84, 94 (7th Cir. 1941), and notice may encourage interventions to improve the representation of the class. Cf. *Oppenheimer v. F. J. Young & Co.*, 144 F.2d 387 (2d Cir. 1944). Notice has been used to poll members on a proposed modification of a consent decree. See record in *Sam Fox Publishing Co. v. United States*, 366 U.S. 683 (1961).

Subdivision (d)(2) does not require notice at any stage, but rather calls attention to its availability and invokes the court's discretion. In the degree that there is cohesiveness or unity in the class and the representation is effective, the need for notice to the class will tend toward a minimum. These indicators suggest that notice under subdivision (d)(2) may be particularly useful and advisable in certain class actions maintained under subdivision (b)(3), for example, to permit members of the class to object to the representation. Indeed, under subdivision (c)(2), notice must be ordered, and is not merely discretionary, to give the members in a subdivision (b)(3) class action an opportunity to secure exclusion from the class. This mandatory notice pursuant to subdivision (c)(2), together with any discretionary notice which the court may find it advisable to give under subdivision (d)(2), is designed to fulfill requirements of due process to which the class action procedure is of course subject. See *Hansberry v. Lee*, 311 U.S. 32 (1940); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); cf. *Dickinson v. Burnham*, 197 F.2d 973, 979 (2d Cir. 1952), and studies cited at 979 n. 4; see also *All American Airways, Inc. v. Elder*, 209 F.2d 247, 249 (2d Cir. 1954); *Gart v. Cole*, 263 F.2d 244, 248–49 (2d Cir. 1959), cert. denied, 359 U.S. 978 (1959).

Notice to members of the class, whenever employed under amended Rule 23, should be accommodated to the particular purpose but need not comply with the formalities for service of process. See Chafee, *supra*, at 230–31; *Brendle v. Smith*, 7 F.R.D. 119 (S.D.N.Y. 1946). The fact that notice is given at one stage of the action does not mean that it must be given at subsequent stages. Notice is available fundamentally "for the protection of the members of the class or otherwise for the fair conduct of the action" and should not be used merely as a device for the undesirable solicitation of claims. See the discussion in *Cherner v. Transitron Electronic Corp.*, 201 F.Supp. 934 (D.Mass. 1962); *Hormel v. United States*, 17 F.R.D. 303 (S.D.N.Y. 1955).

In appropriate cases the court should notify interested government agencies of the pendency of the action or of particular steps therein.

Subdivision (d)(3) reflects the possibility of conditioning the maintenance of a class action, e.g., on the strengthening of the representation, see subdivision (c)(1) above; and recognizes that the imposition of conditions on intervenors may be required for the proper and efficient conduct of the action.

As to orders under subdivision (d)(4), see subdivision (c)(1) above.

Subdivision (e) requires approval of the court, after notice, for the dismissal or compromise of any class action.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—1998 AMENDMENT

Subdivision (f). This permissive interlocutory appeal provision is adopted under the power conferred by 28 U.S.C. §1292(e). Appeal from an order granting or denying class certification is permitted in the sole discretion of the court of appeals. No other type of Rule 23 order is covered by this provision. The court of appeals is given unfettered discretion whether to permit the appeal, akin to the discretion exercised by the Supreme Court in acting on a petition for certiorari. This discretion suggests an analogy to the provision in 28 U.S.C. §1292(b) for permissive appeal on certification by a district court. Subdivision (f), however, departs from the §1292(b) model in two significant ways. It does not require that the district court certify the certification ruling for appeal, although the district court often can assist the parties and court of appeals by offering advice on the desirability of appeal. And it does not include the potentially limiting requirements of §1292(b) that the district court order "involve[] a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation."

The courts of appeals will develop standards for granting review that reflect the changing areas of uncertainty in class litigation. The Federal Judicial Center study supports the view that many suits with class-action allegations present familiar and almost routine issues that are no more worthy of immediate appeal than many other interlocutory rulings. Yet several concerns justify expansion of present opportunities to appeal. An order denying certification may confront the plaintiff with a situation in which the only sure

path to appellate review is by proceeding to final judgment on the merits of an individual claim that, standing alone, is far smaller than the costs of litigation. An order granting certification, on the other hand, may force a defendant to settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability. These concerns can be met at low cost by establishing in the court of appeals a discretionary power to grant interlocutory review in cases that show appeal-worthy certification issues.

Permission to appeal may be granted or denied on the basis of any consideration that the court of appeals finds persuasive. Permission is most likely to be granted when the certification decision turns on a novel or unsettled question of law, or when, as a practical matter, the decision on certification is likely dispositive of the litigation.

The district court, having worked through the certification decision, often will be able to provide cogent advice on the factors that bear on the decision whether to permit appeal. This advice can be particularly valuable if the certification decision is tentative. Even as to a firm certification decision, a statement of reasons bearing on the probable benefits and costs of immediate appeal can help focus the court of appeals decision, and may persuade the disappointed party that an attempt to appeal would be fruitless.

The 10-day period for seeking permission to appeal is designed to reduce the risk that attempted appeals will disrupt continuing proceedings. It is expected that the courts of appeals will act quickly in making the preliminary determination whether to permit appeal. Permission to appeal does not stay trial court proceedings. A stay should be sought first from the trial court. If the trial court refuses a stay, its action and any explanation of its views should weigh heavily with the court of appeals.

Appellate Rule 5 has been modified to establish the procedure for petitioning for leave to appeal under subdivision (f).

Changes Made after Publication (GAP Report). No changes were made in the text of Rule 23(f) as published.

Several changes were made in the published Committee Note. (1) References to 28 U.S.C. §1292(b) interlocutory appeals were revised to dispel any implication that the restrictive elements of §1292(b) should be read in to Rule 23(f). New emphasis was placed on court of appeals discretion by making explicit the analogy to certiorari discretion. (2) Suggestions that the new procedure is a "modest" expansion of appeal opportunities, to be applied with "restraint," and that permission "almost always will be denied when the certification decision turns on case-specific matters of fact and district court discretion," were deleted. It was thought better simply to observe that courts of appeals will develop standards "that reflect the changing areas of uncertainty in class litigation."

COMMITTEE NOTES ON RULES—2003 AMENDMENT

Subdivision (c). Subdivision (c) is amended in several respects. The requirement that the court determine whether to certify a class "as soon as practicable after commencement of an action" is replaced by requiring determination "at an early practicable time." The notice provisions are substantially revised.

Paragraph (1). Subdivision (c)(1)(A) is changed to require that the determination whether to certify a class be made "at an early practicable time." The "as soon as practicable" exaction neither reflects prevailing practice nor captures the many valid reasons that may justify deferring the initial certification decision. See Willging, Hooper & Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules 26–36* (Federal Judicial Center 1996).

Time may be needed to gather information necessary to make the certification decision. Although an evaluation of the probable outcome on the merits is not properly part of the certification decision, discovery in aid of the certification decision often includes information required to identify the nature of the issues that actually will be presented at trial. In this sense it is appropriate to conduct controlled discovery into the "merits," limited to those aspects relevant to making the certification decision on an informed basis. Active judicial supervision may be required to achieve the most effective balance that expedites an informed certification determination without forcing an artificial and ultimately wasteful division between "certification discovery" and "merits discovery." A critical need is to determine how the case will be tried. An increasing number of courts require a party requesting class certification to present a "trial plan" that describes the issues likely to be presented at trial and tests whether they are susceptible of class-wide proof. See Manual For Complex Litigation Third, §21.213, p. 44; §30.11, p. 214; §30.12, p. 215.

Other considerations may affect the timing of the certification decision. The party opposing the class may prefer to win dismissal or summary judgment as to the individual plaintiffs without certification and without binding the class that might have been certified. Time may be needed to explore designation of class counsel under Rule 23(g), recognizing that in many cases the need to progress toward the certification determination may require designation of interim counsel under Rule 23(g)(2)(A).

Although many circumstances may justify deferring the certification decision, active management may be

necessary to ensure that the certification decision is not unjustifiably delayed.

Subdivision (c)(1)(C) reflects two amendments. The provision that a class certification "may be conditional" is deleted. A court that is not satisfied that the requirements of Rule 23 have been met should refuse certification until they have been met. The provision that permits alteration or amendment of an order granting or denying class certification is amended to set the cut-off point at final judgment rather than "the decision on the merits." This change avoids the possible ambiguity in referring to "the decision on the merits." Following a determination of liability, for example, proceedings to define the remedy may demonstrate the need to amend the class definition or subdivide the class. In this setting the final judgment concept is pragmatic. It is not the same as the concept used for appeal purposes, but it should be flexible, particularly in protracted litigation.

The authority to amend an order under Rule 23(c)(1) before final judgment does not restore the practice of "one-way intervention" that was rejected by the 1966 revision of Rule 23. A determination of liability after certification, however, may show a need to amend the class definition. Decertification may be warranted after further proceedings.

If the definition of a class certified under Rule 23(b)(3) is altered to include members who have not been afforded notice and an opportunity to request exclusion, notice—including an opportunity to request exclusion—must be directed to the new class members under Rule 23(c)(2)(B).

Paragraph (2). The first change made in Rule 23(c)(2) is to call attention to the court's authority—already established in part by Rule 23(d)(2)—to direct notice of certification to a Rule 23(b)(1) or (b)(2) class. The present rule expressly requires notice only in actions certified under Rule 23(b)(3). Members of classes certified under Rules 23(b)(1) or (b)(2) have interests that may deserve protection by notice.

The authority to direct notice to class members in a (b)(1) or (b)(2) class action should be exercised with care. For several reasons, there may be less need for notice than in a (b)(3) class action. There is no right to request exclusion from a (b)(1) or (b)(2) class. The characteristics of the class may reduce the need for formal notice. The cost of providing notice, moreover, could easily cripple actions that do not seek damages. The court may decide not to direct notice after balancing the risk that notice costs may deter the pursuit of class relief against the benefits of notice.

When the court does direct certification notice in a (b)(1) or (b)(2) class action, the discretion and flexibility established by subdivision (c)(2)(A) extend to the method of giving notice. Notice facilitates the opportunity to participate. Notice calculated to reach a significant number of class members often will protect the interests of all. Informal methods may prove effective. A simple posting in a place visited by many class members, directing attention to a source of more detailed information, may suffice. The court should consider the costs of notice in relation to the probable reach of inexpensive methods.

If a Rule 23(b)(3) class is certified in conjunction with a (b)(2) class, the (c)(2)(B) notice requirements must be satisfied as to the (b)(3) class.

The direction that class-certification notice be couched in plain, easily understood language is a reminder of the need to work unrelentingly at the difficult task of communicating with class members. It is difficult to provide information about most class actions that is both accurate and easily understood by class members who are not themselves lawyers. Factual uncertainty, legal complexity, and the complication of class-action procedure raise the barriers high. The Federal Judicial Center has created illustrative clear-notice forms that provide a helpful starting point for actions similar to those described in the forms.

Subdivision (e). Subdivision (e) is amended to strengthen the process of reviewing proposed class-action settlements. Settlement may be a desirable means of resolving a class action. But court review and approval are essential to assure adequate representation of class members who have not participated in shaping the settlement.

Paragraph (1). Subdivision (e)(1)(A) expressly recognizes the power of a class representative to settle class claims, issues, or defenses.

Rule 23(e)(1)(A) resolves the ambiguity in former Rule 23(e)'s reference to dismissal or compromise of "a class action." That language could be—and at times was—read to require court approval of settlements with putative class representatives that resolved only individual claims. See Manual for Complex Litigation Third, §30.41. The new rule requires approval only if the claims, issues, or defenses of a certified class are resolved by a settlement, voluntary dismissal, or compromise.

Subdivision (e)(1)(B) carries forward the notice requirement of present Rule 23(e) when the settlement binds the class through claim or issue preclusion; notice is not required when the settlement binds only the individual class representatives. Notice of a settlement binding on the class is required either when the settlement follows class certification or when the decisions on certification and settlement proceed simultaneously.

Reasonable settlement notice may require individual notice in the manner required by Rule 23(c)(2)(B) for

certification notice to a Rule 23(b)(3) class. Individual notice is appropriate, for example, if class members are required to take action—such as filing claims—to participate in the judgment, or if the court orders a settlement opt-out opportunity under Rule 23(e)(3).

Subdivision (e)(1)(C) confirms and mandates the already common practice of holding hearings as part of the process of approving settlement, voluntary dismissal, or compromise that would bind members of a class.

Subdivision (e)(1)(C) states the standard for approving a proposed settlement that would bind class members. The settlement must be fair, reasonable, and adequate. A helpful review of many factors that may deserve consideration is provided by *In re: Prudential Ins. Co. America Sales Practice Litigation Agent Actions*, 148 F.3d 283, 316–324 (3d Cir. 1998). Further guidance can be found in the Manual for Complex Litigation.

The court must make findings that support the conclusion that the settlement is fair, reasonable, and adequate. The findings must be set out in sufficient detail to explain to class members and the appellate court the factors that bear on applying the standard.

Settlement review also may provide an occasion to review the cogency of the initial class definition. The terms of the settlement themselves, or objections, may reveal divergent interests of class members and demonstrate the need to redefine the class or to designate subclasses. Redefinition of a class certified under Rule 23(b)(3) may require notice to new class members under Rule 23(c)(2)(B). See Rule 23(c)(1)(C).

Paragraph (2). Subdivision (e)(2) requires parties seeking approval of a settlement, voluntary dismissal, or compromise under Rule 23(e)(1) to file a statement identifying any agreement made in connection with the settlement. This provision does not change the basic requirement that the parties disclose all terms of the settlement or compromise that the court must approve under Rule 23(e)(1). It aims instead at related undertakings that, although seemingly separate, may have influenced the terms of the settlement by trading away possible advantages for the class in return for advantages for others. Doubts should be resolved in favor of identification.

Further inquiry into the agreements identified by the parties should not become the occasion for discovery by the parties or objectors. The court may direct the parties to provide to the court or other parties a summary or copy of the full terms of any agreement identified by the parties. The court also may direct the parties to provide a summary or copy of any agreement not identified by the parties that the court considers relevant to its review of a proposed settlement. In exercising discretion under this rule, the court may act in steps, calling first for a summary of any agreement that may have affected the settlement and then for a complete version if the summary does not provide an adequate basis for review. A direction to disclose a summary or copy of an agreement may raise concerns of confidentiality. Some agreements may include information that merits protection against general disclosure. And the court must provide an opportunity to claim work-product or other protections.

Paragraph (3). Subdivision (e)(3) authorizes the court to refuse to approve a settlement unless the settlement affords class members a new opportunity to request exclusion from a class certified under Rule 23(b)(3) after settlement terms are known. An agreement by the parties themselves to permit class members to elect exclusion at this point by the settlement agreement may be one factor supporting approval of the settlement. Often there is an opportunity to opt out at this point because the class is certified and settlement is reached in circumstances that lead to simultaneous notice of certification and notice of settlement. In these cases, the basic opportunity to elect exclusion applies without further complication. In some cases, particularly if settlement appears imminent at the time of certification, it may be possible to achieve equivalent protection by deferring notice and the opportunity to elect exclusion until actual settlement terms are known. This approach avoids the cost and potential confusion of providing two notices and makes the single notice more meaningful. But notice should not be delayed unduly after certification in the hope of settlement.

Rule 23(e)(3) authorizes the court to refuse to approve a settlement unless the settlement affords a new opportunity to elect exclusion in a case that settles after a certification decision if the earlier opportunity to elect exclusion provided with the certification notice has expired by the time of the settlement notice. A decision to remain in the class is likely to be more carefully considered and is better informed when settlement terms are known.

The opportunity to request exclusion from a proposed settlement is limited to members of a (b)(3) class. Exclusion may be requested only by individual class members; no class member may purport to opt out other class members by way of another class action.

The decision whether to approve a settlement that does not allow a new opportunity to elect exclusion is confided to the court's discretion. The court may make this decision before directing notice to the class under Rule 23(e)(1)(B) or after the Rule 23(e)(1)(C) hearing. Many factors may influence the court's decision. Among these are changes in the information available to class members since expiration of the first opportunity to request exclusion, and the nature of the individual class members' claims.

The terms set for permitting a new opportunity to elect exclusion from the proposed settlement of a Rule 23(b)(3) class action may address concerns of potential misuse. The court might direct, for example, that class members who elect exclusion are bound by rulings on the merits made before the settlement was proposed for approval. Still other terms or conditions may be appropriate.

Paragraph (4). Subdivision (e)(4) confirms the right of class members to object to a proposed settlement, voluntary dismissal, or compromise. The right is defined in relation to a disposition that, because it would bind the class, requires court approval under subdivision (e)(1)(C).

Subdivision (e)(4)(B) requires court approval for withdrawal of objections made under subdivision (e)(4)(A). Review follows automatically if the objections are withdrawn on terms that lead to modification of the settlement with the class. Review also is required if the objector formally withdraws the objections. If the objector simply abandons pursuit of the objection, the court may inquire into the circumstances.

Approval under paragraph (4)(B) may be given or denied with little need for further inquiry if the objection and the disposition go only to a protest that the individual treatment afforded the objector under the proposed settlement is unfair because of factors that distinguish the objector from other class members. Different considerations may apply if the objector has protested that the proposed settlement is not fair, reasonable, or adequate on grounds that apply generally to a class or subclass. Such objections, which purport to represent class-wide interests, may augment the opportunity for obstruction or delay. If such objections are surrendered on terms that do not affect the class settlement or the objector's participation in the class settlement, the court often can approve withdrawal of the objections without elaborate inquiry.

Once an objector appeals, control of the proceeding lies in the court of appeals. The court of appeals may undertake review and approval of a settlement with the objector, perhaps as part of appeal settlement procedures, or may remand to the district court to take advantage of the district court's familiarity with the action and settlement.

Subdivision (g). Subdivision (g) is new. It responds to the reality that the selection and activity of class counsel are often critically important to the successful handling of a class action. Until now, courts have scrutinized proposed class counsel as well as the class representative under Rule 23(a)(4). This experience has recognized the importance of judicial evaluation of the proposed lawyer for the class, and this new subdivision builds on that experience rather than introducing an entirely new element into the class certification process. Rule 23(a)(4) will continue to call for scrutiny of the proposed class representative, while this subdivision will guide the court in assessing proposed class counsel as part of the certification decision. This subdivision recognizes the importance of class counsel, states the obligation to represent the interests of the class, and provides a framework for selection of class counsel. The procedure and standards for appointment vary depending on whether there are multiple applicants to be class counsel. The new subdivision also provides a method by which the court may make directions from the outset about the potential fee award to class counsel in the event the action is successful.

Paragraph (1) sets out the basic requirement that class counsel be appointed if a class is certified and articulates the obligation of class counsel to represent the interests of the class, as opposed to the potentially conflicting interests of individual class members. It also sets out the factors the court should consider in assessing proposed class counsel.

Paragraph (1)(A) requires that the court appoint class counsel to represent the class. Class counsel must be appointed for all classes, including each subclass that the court certifies to represent divergent interests.

Paragraph (1)(A) does not apply if "a statute provides otherwise." This recognizes that provisions of the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995) (codified in various sections of 15 U.S.C.), contain directives that bear on selection of a lead plaintiff and the retention of counsel. This subdivision does not purport to supersede or to affect the interpretation of those provisions, or any similar provisions of other legislation.

Paragraph 1(B) recognizes that the primary responsibility of class counsel, resulting from appointment as class counsel, is to represent the best interests of the class. The rule thus establishes the obligation of class counsel, an obligation that may be different from the customary obligations of counsel to individual clients. Appointment as class counsel means that the primary obligation of counsel is to the class rather than to any individual members of it. The class representatives do not have an unfettered right to "fire" class counsel. In the same vein, the class representatives cannot command class counsel to accept or reject a settlement proposal. To the contrary, class counsel must determine whether seeking the court's approval of a settlement would be in the best interests of the class as a whole.

Paragraph (1)(C) articulates the basic responsibility of the court to appoint class counsel who will provide the adequate representation called for by paragraph (1)(B). It identifies criteria that must be considered and

invites the court to consider any other pertinent matters. Although couched in terms of the court's duty, the listing also informs counsel seeking appointment about the topics that should be addressed in an application for appointment or in the motion for class certification.

The court may direct potential class counsel to provide additional information about the topics mentioned in paragraph (1)(C) or about any other relevant topic. For example, the court may direct applicants to inform the court concerning any agreements about a prospective award of attorney fees or nontaxable costs, as such agreements may sometimes be significant in the selection of class counsel. The court might also direct that potential class counsel indicate how parallel litigation might be coordinated or consolidated with the action before the court.

The court may also direct counsel to propose terms for a potential award of attorney fees and nontaxable costs. Attorney fee awards are an important feature of class action practice, and attention to this subject from the outset may often be a productive technique. Paragraph (2)(C) therefore authorizes the court to provide directions about attorney fees and costs when appointing class counsel. Because there will be numerous class actions in which this information is not likely to be useful, the court need not consider it in all class actions.

Some information relevant to class counsel appointment may involve matters that include adversary preparation in a way that should be shielded from disclosure to other parties. An appropriate protective order may be necessary to preserve confidentiality.

In evaluating prospective class counsel, the court should weigh all pertinent factors. No single factor should necessarily be determinative in a given case. For example, the resources counsel will commit to the case must be appropriate to its needs, but the court should be careful not to limit consideration to lawyers with the greatest resources.

If, after review of all applicants, the court concludes that none would be satisfactory class counsel, it may deny class certification, reject all applications, recommend that an application be modified, invite new applications, or make any other appropriate order regarding selection and appointment of class counsel.

Paragraph (2). This paragraph sets out the procedure that should be followed in appointing class counsel. Although it affords substantial flexibility, it provides the framework for appointment of class counsel in all class actions. For counsel who filed the action, the materials submitted in support of the motion for class certification may suffice to justify appointment so long as the information described in paragraph (g)(1)(C) is included. If there are other applicants, they ordinarily would file a formal application detailing their suitability for the position.

In a plaintiff class action the court usually would appoint as class counsel only an attorney or attorneys who have sought appointment. Different considerations may apply in defendant class actions.

The rule states that the court should appoint "class counsel." In many instances, the applicant will be an individual attorney. In other cases, however, an entire firm, or perhaps numerous attorneys who are not otherwise affiliated but are collaborating on the action will apply. No rule of thumb exists to determine when such arrangements are appropriate; the court should be alert to the need for adequate staffing of the case, but also to the risk of overstaffing or an ungainly counsel structure.

Paragraph (2)(A) authorizes the court to designate interim counsel during the pre-certification period if necessary to protect the interests of the putative class. Rule 23(c)(1)(B) directs that the order certifying the class include appointment of class counsel. Before class certification, however, it will usually be important for an attorney to take action to prepare for the certification decision. The amendment to Rule 23(c)(1) recognizes that some discovery is often necessary for that determination. It also may be important to make or respond to motions before certification. Settlement may be discussed before certification. Ordinarily, such work is handled by the lawyer who filed the action. In some cases, however, there may be rivalry or uncertainty that makes formal designation of interim counsel appropriate. Rule 23(g)(2)(A) authorizes the court to designate interim counsel to act on behalf of the putative class before the certification decision is made. Failure to make the formal designation does not prevent the attorney who filed the action from proceeding in it. Whether or not formally designated interim counsel, an attorney who acts on behalf of the class before certification must act in the best interests of the class as a whole. For example, an attorney who negotiates a pre-certification settlement must seek a settlement that is fair, reasonable, and adequate for the class.

Rule 23(c)(1) provides that the court should decide whether to certify the class "at an early practicable time," and directs that class counsel should be appointed in the order certifying the class. In some cases, it may be appropriate for the court to allow a reasonable period after commencement of the action for filing applications to serve as class counsel. The primary ground for deferring appointment would be that there is reason to anticipate competing applications to serve as class counsel. Examples might include instances in which more than one class action has been filed, or in which other attorneys have filed individual actions on behalf of putative class members. The purpose of facilitating competing applications in such a case is to afford the best possible representation for the class. Another possible reason for deferring appointment would be that

the initial applicant was found inadequate, but it seems appropriate to permit additional applications rather than deny class certification.

Paragraph (2)(B) states the basic standard the court should use in deciding whether to certify the class and appoint class counsel in the single applicant situation—that the applicant be able to provide the representation called for by paragraph (1)(B) in light of the factors identified in paragraph (1)(C).

If there are multiple adequate applicants, paragraph (2)(B) directs the court to select the class counsel best able to represent the interests of the class. This decision should also be made using the factors outlined in paragraph (1)(C), but in the multiple applicant situation the court is to go beyond scrutinizing the adequacy of counsel and make a comparison of the strengths of the various applicants. As with the decision whether to appoint the sole applicant for the position, no single factor should be dispositive in selecting class counsel in cases in which there are multiple applicants. The fact that a given attorney filed the instant action, for example, might not weigh heavily in the decision if that lawyer had not done significant work identifying or investigating claims. Depending on the nature of the case, one important consideration might be the applicant's existing attorney-client relationship with the proposed class representative.

Paragraph (2)(C) builds on the appointment process by authorizing the court to include provisions regarding attorney fees in the order appointing class counsel. Courts may find it desirable to adopt guidelines for fees or nontaxable costs, or to direct class counsel to report to the court at regular intervals on the efforts undertaken in the action, to facilitate the court's later determination of a reasonable attorney fee.

Subdivision (h). Subdivision (h) is new. Fee awards are a powerful influence on the way attorneys initiate, develop, and conclude class actions. Class action attorney fee awards have heretofore been handled, along with all other attorney fee awards, under Rule 54(d)(2), but that rule is not addressed to the particular concerns of class actions. This subdivision is designed to work in tandem with new subdivision (g) on appointment of class counsel, which may afford an opportunity for the court to provide an early framework for an eventual fee award, or for monitoring the work of class counsel during the pendency of the action.

Subdivision (h) applies to "an action certified as a class action." This includes cases in which there is a simultaneous proposal for class certification and settlement even though technically the class may not be certified unless the court approves the settlement pursuant to review under Rule 23(e). When a settlement is proposed for Rule 23(e) approval, either after certification or with a request for certification, notice to class members about class counsel's fee motion would ordinarily accompany the notice to the class about the settlement proposal itself.

This subdivision does not undertake to create new grounds for an award of attorney fees or nontaxable costs. Instead, it applies when such awards are authorized by law or by agreement of the parties. Against that background, it provides a format for all awards of attorney fees and nontaxable costs in connection with a class action, not only the award to class counsel. In some situations, there may be a basis for making an award to other counsel whose work produced a beneficial result for the class, such as attorneys who acted for the class before certification but were not appointed class counsel, or attorneys who represented objectors to a proposed settlement under Rule 23(e) or to the fee motion of class counsel. Other situations in which fee awards are authorized by law or by agreement of the parties may exist.

This subdivision authorizes an award of "reasonable" attorney fees and nontaxable costs. This is the customary term for measurement of fee awards in cases in which counsel may obtain an award of fees under the "common fund" theory that applies in many class actions, and is used in many fee-shifting statutes. Depending on the circumstances, courts have approached the determination of what is reasonable in different ways. In particular, there is some variation among courts about whether in "common fund" cases the court should use the lodestar or a percentage method of determining what fee is reasonable. The rule does not attempt to resolve the question whether the lodestar or percentage approach should be viewed as preferable.

Active judicial involvement in measuring fee awards is singularly important to the proper operation of the class-action process. Continued reliance on caselaw development of fee-award measures does not diminish the court's responsibility. In a class action, the district court must ensure that the amount and mode of payment of attorney fees are fair and proper whether the fees come from a common fund or are otherwise paid. Even in the absence of objections, the court bears this responsibility.

Courts discharging this responsibility have looked to a variety of factors. One fundamental focus is the result actually achieved for class members, a basic consideration in any case in which fees are sought on the basis of a benefit achieved for class members. The Private Securities Litigation Reform Act of 1995 explicitly makes this factor a cap for a fee award in actions to which it applies. See 15 U.S.C. §§77z–1(a)(6); 78u–4(a)(6) (fee award should not exceed a "reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class"). For a percentage approach to fee measurement, results achieved is the basic starting point.

In many instances, the court may need to proceed with care in assessing the value conferred on class

members. Settlement regimes that provide for future payments, for example, may not result in significant actual payments to class members. In this connection, the court may need to scrutinize the manner and operation of any applicable claims procedure. In some cases, it may be appropriate to defer some portion of the fee award until actual payouts to class members are known. Settlements involving nonmonetary provisions for class members also deserve careful scrutiny to ensure that these provisions have actual value to the class. On occasion the court's Rule 23(e) review will provide a solid basis for this sort of evaluation, but in any event it is also important to assessing the fee award for the class.

At the same time, it is important to recognize that in some class actions the monetary relief obtained is not the sole determinant of an appropriate attorney fees award. Cf. *Blanchard v. Bergeron*, 489 U.S. 87, 95 (1989) (cautioning in an individual case against an "undesirable emphasis" on "the importance of the recovery of damages in civil rights litigation" that might "shortchange efforts to seek effective injunctive or declaratory relief").

Any directions or orders made by the court in connection with appointing class counsel under Rule 23(g) should weigh heavily in making a fee award under this subdivision.

Courts have also given weight to agreements among the parties regarding the fee motion, and to agreements between class counsel and others about the fees claimed by the motion. Rule 54(d)(2)(B) provides: "If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made." The agreement by a settling party not to oppose a fee application up to a certain amount, for example, is worthy of consideration, but the court remains responsible to determine a reasonable fee. "Side agreements" regarding fees provide at least perspective pertinent to an appropriate fee award.

In addition, courts may take account of the fees charged by class counsel or other attorneys for representing individual claimants or objectors in the case. In determining a fee for class counsel, the court's objective is to ensure an overall fee that is fair for counsel and equitable within the class. In some circumstances individual fee agreements between class counsel and class members might have provisions inconsistent with those goals, and the court might determine that adjustments in the class fee award were necessary as a result.

Finally, it is important to scrutinize separately the application for an award covering nontaxable costs. If costs were addressed in the order appointing class counsel, those directives should be a presumptive starting point in determining what is an appropriate award.

Paragraph (1). Any claim for an award of attorney fees must be sought by motion under Rule 54(d)(2), which invokes the provisions for timing of appeal in Rule 58 and Appellate Rule 4. Owing to the distinctive features of class action fee motions, however, the provisions of this subdivision control disposition of fee motions in class actions, while Rule 54(d)(2) applies to matters not addressed in this subdivision.

The court should direct when the fee motion must be filed. For motions by class counsel in cases subject to court review of a proposed settlement under Rule 23(e), it would be important to require the filing of at least the initial motion in time for inclusion of information about the motion in the notice to the class about the proposed settlement that is required by Rule 23(e). In cases litigated to judgment, the court might also order class counsel's motion to be filed promptly so that notice to the class under this subdivision (h) can be given.

Besides service of the motion on all parties, notice of class counsel's motion for attorney fees must be "directed to the class in a reasonable manner." Because members of the class have an interest in the arrangements for payment of class counsel whether that payment comes from the class fund or is made directly by another party, notice is required in all instances. In cases in which settlement approval is contemplated under Rule 23(e), notice of class counsel's fee motion should be combined with notice of the proposed settlement, and the provision regarding notice to the class is parallel to the requirements for notice under Rule 23(e). In adjudicated class actions, the court may calibrate the notice to avoid undue expense.

Paragraph (2). A class member and any party from whom payment is sought may object to the fee motion. Other parties—for example, nonsettling defendants—may not object because they lack a sufficient interest in the amount the court awards. The rule does not specify a time limit for making an objection. In setting the date objections are due, the court should provide sufficient time after the full fee motion is on file to enable potential objectors to examine the motion.

The court may allow an objector discovery relevant to the objections. In determining whether to allow discovery, the court should weigh the need for the information against the cost and delay that would attend discovery. See Rule 26(b)(2). One factor in determining whether to authorize discovery is the completeness of the material submitted in support of the fee motion, which depends in part on the fee measurement standard applicable to the case. If the motion provides thorough information, the burden should be on the objector to justify discovery to obtain further information.

Paragraph (3). Whether or not there are formal objections, the court must determine whether a fee award is justified and, if so, set a reasonable fee. The rule does not require a formal hearing in all cases. The form and

extent of a hearing depend on the circumstances of the case. The rule does require findings and conclusions under Rule 52(a).

Paragraph (4). By incorporating Rule 54(d)(2), this provision gives the court broad authority to obtain assistance in determining the appropriate amount to award. In deciding whether to direct submission of such questions to a special master or magistrate judge, the court should give appropriate consideration to the cost and delay that such a process might entail.

Changes Made After Publication and Comment. Rule 23(c)(1)(B) is changed to incorporate the counsel-appointment provisions of Rule 23(g). The statement of the method and time for requesting exclusion from a (b)(3) class has been moved to the notice of certification provision in Rule 23(c)(2)(B).

Rule 23(c)(1)(C) is changed by deleting all references to "conditional" certification.

Rule 23(c)(2)(A) is changed by deleting the requirement that class members be notified of certification of a (b)(1) or (b)(2) class. The new version provides only that the court may direct appropriate notice to the class.

Rule 23(c)(2)(B) is revised to require that the notice of class certification define the certified class in terms identical to the terms used in (c)(1)(B), and to incorporate the statement transferred from (c)(1)(B) on "when and how members may elect to be excluded."

Rule 23(e)(1) is revised to delete the requirement that the parties must win court approval for a precertification dismissal or settlement.

Rule 23(e)(2) is revised to change the provision that the court may direct the parties to file a copy or summary of any agreement or understanding made in connection with a proposed settlement. The new provision directs the parties to a proposed settlement to identify any agreement made in connection with the settlement.

Rule 23(e)(3) is proposed in a restyled form of the second version proposed for publication.

Rule 23(e)(4)(B) is restyled.

Rule 23(g)(1)(C) is a transposition of criteria for appointing class counsel that was published as Rule 23(g)(2)(B). The criteria are rearranged, and expanded to include consideration of experience in handling claims of the type asserted in the action and of counsel's knowledge of the applicable law.

Rule 23(g)(2)(A) is a new provision for designation of interim counsel to act on behalf of a putative class before a certification determination is made.

Rule 23(g)(2)(B) is revised to point up the differences between appointment of class counsel when there is only one applicant and when there are competing applicants. When there is only one applicant the court must determine that the applicant is able to fairly and adequately represent class interests. When there is more than one applicant the court must appoint the applicant best able to represent class interests.

Rule 23(h) is changed to require that notice of an attorney-fee motion by class counsel be "directed to class members," rather than "given to all class members."

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 23 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Amended Rule 23(d)(2) carries forward the provisions of former Rule 23(d) that recognize two separate propositions. First, a Rule 23(d) order may be combined with a pretrial order under Rule 16. Second, the standard for amending the Rule 23(d) order continues to be the more open-ended standard for amending Rule 23(d) orders, not the more exacting standard for amending Rule 16 orders.

As part of the general restyling, intensifiers that provide emphasis but add no meaning are consistently deleted. Amended Rule 23(f) omits as redundant the explicit reference to court of appeals discretion in deciding whether to permit an interlocutory appeal. The omission does not in any way limit the unfettered discretion established by the original rule.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6.

COMMITTEE NOTES ON RULES—2018 AMENDMENT

Rule 23 is amended mainly to address issues related to settlement, and also to take account of issues that have emerged since the rule was last amended in 2003.

Subdivision (c)(2). As amended, Rule 23(e)(1) provides that the court must direct notice to the class regarding a proposed class-action settlement only after determining that the prospect of class certification and approval of the proposed settlement justifies giving notice. This decision has been called "preliminary approval" of the proposed class certification in Rule 23(b)(3) actions. It is common to send notice to the class simultaneously under both Rule 23(e)(1) and Rule 23(c)(2)(B), including a provision for class members to

decide by a certain date whether to opt out. This amendment recognizes the propriety of this combined notice practice.

Subdivision (c)(2) is also amended to recognize contemporary methods of giving notice to class members. Since *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 since 1974 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.

Rule 23(c)(2)(B) is amended to take account of these changes. The rule continues to call for giving class members "the best notice that is practicable." It does not specify any particular means as preferred. Although it may sometimes be true that electronic methods of notice, for example email, are the most promising, it is important to keep in mind that a significant portion of class members in certain cases may have limited or no access to email or the Internet.

Instead of preferring any one means of notice, therefore, the amended rule relies on courts and counsel to focus on the means or combination of means most likely to be effective in the case before the court. The court should exercise its discretion to select appropriate means of giving notice. In providing the court with sufficient information to enable it to decide whether to give notice to the class of a proposed class-action settlement under Rule 23(e)(1), it would ordinarily be important to include details about the proposed method of giving notice and to provide the court with a copy of each notice the parties propose to use.

In determining whether the proposed means of giving notice is appropriate, the court should also give careful attention to the content and format of the notice and, if notice is given under both Rule 23(e)(1) and Rule 23(c)(2)(B), any claim form class members must submit to obtain relief.

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. The ultimate goal of giving notice is to enable class members to make informed decisions about whether to opt out or, in instances where a proposed settlement is involved, to object or to make claims. Rule 23(c)(2)(B) directs that the notice be "in plain, easily understood language." Means, format, and content that would be appropriate for class members likely to be sophisticated, for example in a securities fraud class action, might not be appropriate for a class having many members likely to be less sophisticated. The court and counsel may wish to consider the use of class notice experts or professional claims administrators.

Attention should focus also on the method of opting out provided in the notice. The proposed method should be as convenient as possible, while protecting against unauthorized opt-out notices.

Subdivision (e). The introductory paragraph of Rule 23(e) is amended to make explicit that its procedural requirements apply in instances in which the court has not certified a class at the time that a proposed settlement is presented to the court. The notice required under Rule 23(e)(1) then should also satisfy the notice requirements of amended Rule 23(c)(2)(B) for a class to be certified under Rule 23(b)(3), and trigger the class members' time to request exclusion. Information about the opt-out rate could then be available to the court when it considers final approval of the proposed settlement.

Subdivision (e)(1). The decision to give notice of a proposed settlement to the class is an important event. It should be based on a solid record supporting the conclusion that the proposed settlement will likely earn final approval after notice and an opportunity to object. The parties must provide the court with information sufficient to determine whether notice should be sent. At the time they seek notice to the class, the proponents of the settlement should ordinarily provide the court with all available materials they intend to submit to support approval under Rule 23(e)(2) and that they intend to make available to class members. The amended rule also specifies the standard the court should use in deciding whether to send notice—that it likely will be able both to approve the settlement proposal under Rule 23(e)(2) and, if it has not previously certified a class, to certify the class for purposes of judgment on the proposal.

The subjects to be addressed depend on the specifics of the particular class action and proposed settlement. But some general observations can be made.

One key element is class certification. If the court has already certified a class, the only information ordinarily necessary is whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted. But if a class has not been certified, the parties must ensure that the court has a basis for concluding that it likely will be able, after the final hearing, to certify the class. Although the standards for certification differ for settlement and litigation purposes, the court cannot make the decision regarding the prospects for certification without a suitable basis in the record. The

ultimate decision to certify the class for purposes of settlement cannot be made until the hearing on final approval of the proposed settlement. If the settlement is not approved, the parties' positions regarding certification for settlement should not be considered if certification is later sought for purposes of litigation.

Regarding the proposed settlement, many types of information might appropriately be provided to the court. A basic focus is the extent and type of benefits that the settlement will confer on the members of the class. Depending on the nature of the proposed relief, that showing may include details of the contemplated claims process and the anticipated rate of claims by class members. Because some funds are frequently left unclaimed, the settlement agreement ordinarily should address the distribution of those funds.

The parties should also supply the court with information about the likely range of litigated outcomes, and about the risks that might attend full litigation. Information about the extent of discovery completed in the litigation or in parallel actions may often be important. In addition, as suggested by Rule 23(b)(3)(B), the parties should provide information about the existence of other pending or anticipated litigation on behalf of class members involving claims that would be released under the proposal.

The proposed handling of an award of attorney's fees under Rule 23(h) ordinarily should be addressed in the parties' submission to the court. In some cases, it will be important to relate the amount of an award of attorney's fees to the expected benefits to the class. One way to address this issue is to defer some or all of the award of attorney's fees until the court is advised of the actual claims rate and results.

Another topic that normally should be considered is any agreement that must be identified under Rule 23(e)(3).

The parties may supply information to the court on any other topic that they regard as pertinent to the determination whether the proposal is fair, reasonable, and adequate. The court may direct the parties to supply further information about the topics they do address, or to supply information on topics they do not address. The court should not direct notice to the class until the parties' submissions show it is likely that the court will be able to approve the proposal after notice to the class and a final approval hearing.

Subdivision (e)(2). The central concern in reviewing a proposed class-action settlement is that it be fair, reasonable, and adequate. Courts have generated lists of factors to shed light on this concern. Overall, these factors focus on comparable considerations, but each circuit has developed its own vocabulary for expressing these concerns. In some circuits, these lists have remained essentially unchanged for thirty or forty years. The goal of this amendment is not to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.

A lengthy list of factors can take on an independent life, potentially distracting attention from the central concerns that inform the settlement-review process. A circuit's list might include a dozen or more separately articulated factors. Some of those factors—perhaps many—may not be relevant to a particular case or settlement proposal. Those that are relevant may be more or less important to the particular case. Yet counsel and courts may feel it necessary to address every factor on a given circuit's list in every case. The sheer number of factors can distract both the court and the parties from the central concerns that bear on review under Rule 23(e)(2).

This amendment therefore directs the parties to present the settlement to the court in terms of a shorter list of core concerns, by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal.

Approval under Rule 23(e)(2) is required only when class members would be bound under Rule 23(c)(3). Accordingly, in addition to evaluating the proposal itself, the court must determine whether it can certify the class under the standards of Rule 23(a) and (b) for purposes of judgment based on the proposal.

Paragraphs (A) and (B). These paragraphs identify matters that might be described as "procedural" concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement. Attention to these matters is an important foundation for scrutinizing the substance of the proposed settlement. If the court has appointed class counsel or interim class counsel, it will have made an initial evaluation of counsel's capacities and experience. But the focus at this point is on the actual performance of counsel acting on behalf of the class.

The information submitted under Rule 23(e)(1) may provide a useful starting point in assessing these topics. For example, the nature and amount of discovery in this or other cases, or the actual outcomes of other cases, may indicate whether counsel negotiating on behalf of the class had an adequate information base. The pendency of other litigation about the same general subject on behalf of class members may also be pertinent. The conduct of the negotiations may be important as well. For example, the involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests. Particular attention might focus on the treatment of any award of attorney's fees, with respect to both the manner of negotiating the fee award and its terms.

Paragraphs (C) and (D). These paragraphs focus on what might be called a "substantive" review of the

terms of the proposed settlement. The relief that the settlement is expected to provide to class members is a central concern. Measuring the proposed relief may require evaluation of any proposed claims process; directing that the parties report back to the court about actual claims experience may be important. The contents of any agreement identified under Rule 23(e)(3) may also bear on the adequacy of the proposed relief, particularly regarding the equitable treatment of all members of the class.

Another central concern will relate to the cost and risk involved in pursuing a litigated outcome. Often, courts may need to forecast the likely range of possible classwide recoveries and the likelihood of success in obtaining such results. That forecast cannot be done with arithmetic accuracy, but it can provide a benchmark for comparison with the settlement figure.

If the class has not yet been certified for trial, the court may consider whether certification for litigation would be granted were the settlement not approved.

Examination of the attorney-fee provisions may also be valuable in assessing the fairness of the proposed settlement. Ultimately, any award of attorney's fees must be evaluated under Rule 23(h), and no rigid limits exist for such awards. Nonetheless, the relief actually delivered to the class can be a significant factor in determining the appropriate fee award.

Often it will be important for the court to scrutinize the method of claims processing to ensure that it facilitates filing legitimate claims. A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding.

Paragraph (D) calls attention to a concern that may apply to some class action settlements—inequitable treatment of some class members vis-a-vis others. Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief.

Subdivisions (e)(3) and (e)(4). Headings are added to subdivisions (e)(3) and (e)(4) in accord with style conventions. These additions are intended to be stylistic only.

Subdivision (e)(5). The submissions required by Rule 23(e)(1) may provide information critical to decisions whether to object or opt out. Objections by class members can provide the court with important information bearing on its determination under Rule 23(e)(2) whether to approve the proposal.

Subdivision (e)(5)(A). The rule is amended to remove the requirement of court approval for every withdrawal of an objection. An objector should be free to withdraw on concluding that an objection is not justified. But Rule 23(e)(5)(B)(i) requires court approval of any payment or other consideration in connection with withdrawing the objection.

The rule is also amended to clarify that objections must provide sufficient specifics to enable the parties to respond to them and the court to evaluate them. One feature required of objections is specification whether the objection asserts interests of only the objector, or of some subset of the class, or of all class members. Beyond that, the rule directs that the objection state its grounds "with specificity." Failure to provide needed specificity may be a basis for rejecting an objection. Courts should take care, however, to avoid unduly burdening class members who wish to object, and to recognize that a class member who is not represented by counsel may present objections that do not adhere to technical legal standards.

Subdivision (e)(5)(B). Good-faith objections can assist the court in evaluating a proposal under Rule 23(e)(2). It is legitimate for an objector to seek payment for providing such assistance under Rule 23(h).

But some objectors may be seeking only personal gain, and using objections to obtain benefits for themselves rather than assisting in the settlement-review process. At least in some instances, it seems that objectors—or their counsel—have sought to obtain consideration for withdrawing their objections or dismissing appeals from judgments approving class settlements. And class counsel sometimes may feel that avoiding the delay produced by an appeal justifies providing payment or other consideration to these objectors. Although the payment may advance class interests in a particular case, allowing payment perpetuates a system that can encourage objections advanced for improper purposes.

The court-approval requirement currently in Rule 23(e)(5) partly addresses this concern. Because the concern only applies when consideration is given in connection with withdrawal of an objection, however, the amendment requires approval under Rule 23(e)(5)(B)(i) only when consideration is involved. Although such payment is usually made to objectors or their counsel, the rule also requires court approval if a payment in connection with forgoing or withdrawing an objection or appeal is instead to another recipient. The term "consideration" should be broadly interpreted, particularly when the withdrawal includes some arrangements beneficial to objector counsel. If the consideration involves a payment to counsel for an objector, the proper procedure is by motion under Rule 23(h) for an award of fees.

Rule 23(e)(5)(B)(ii) applies to consideration in connection with forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal. Because an appeal by a class-action objector may produce

much longer delay than an objection before the district court, it is important to extend the court-approval requirement to apply in the appellate context. The district court is best positioned to determine whether to approve such arrangements; hence, the rule requires that the motion seeking approval be made to the district court.

Until the appeal is docketed by the circuit clerk, the district court may dismiss the appeal on stipulation of the parties or on the appellant's motion. See Fed. R. App. P. 42(a). Thereafter, the court of appeals has authority to decide whether to dismiss the appeal. This rule's requirement of district court approval of any consideration in connection with such dismissal by the court of appeals has no effect on the authority of the court of appeals to decide whether to dismiss the appeal. It is, instead, a requirement that applies only to providing consideration in connection with forgoing, dismissing, or abandoning an appeal.

Subdivision (e)(5)(C). Because the court of appeals has jurisdiction over an objector's appeal from the time that it is docketed in the court of appeals, the procedure of Rule 62.1 applies. That procedure does not apply after the court of appeals' mandate returns the case to the district court.

Subdivision (f). As amended, Rule 23(e)(1) provides that the court must direct notice to the class regarding a proposed class-action settlement only after determining that the prospect of eventual class certification justifies giving notice. But this decision does not grant or deny class certification, and review under Rule 23(f) would be premature. This amendment makes it clear that an appeal under this rule is not permitted until the district court decides whether to certify the class.

The rule is also amended to extend the time to file a petition for review of a class-action certification order to 45 days whenever a party is the United States, one of its agencies, or a United States officer or employee sued for an act or omission occurring in connection with duties performed on the United States' behalf. In such a case, the extension applies to a petition for permission to appeal by any party. The extension recognizes—as under Rules 4(i) and 12(a) and Appellate Rules 4(a)(1)(B) and 40(a)(1)—that the United States has a special need for additional time in regard to these matters. It applies whether the officer or employee is sued in an official capacity or an individual capacity. An action against a former officer or employee of the United States is covered by this provision in the same way as an action against a present officer or employee. Termination of the relationship between the individual defendant and the United States does not reduce the need for additional time.

Rule 23.1. Derivative Actions

(a) **PREREQUISITES.** This rule applies when one or more shareholders or members of a corporation or an unincorporated association bring a derivative action to enforce a right that the corporation or association may properly assert but has failed to enforce. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.

(b) **PLEADING REQUIREMENTS.** The complaint must be verified and must:

- (1) allege that the plaintiff was a shareholder or member at the time of the transaction complained of, or that the plaintiff's share or membership later devolved on it by operation of law;
- (2) allege that the action is not a collusive one to confer jurisdiction that the court would otherwise lack; and
- (3) state with particularity:
 - (A) any effort by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and
 - (B) the reasons for not obtaining the action or not making the effort.

(c) **SETTLEMENT, DISMISSAL, AND COMPROMISE.** A derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

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APPENDIXES

- App.1. Volumes of the study of judges and their judiciaries
- App.2. Offer of a presentation; and
Activities to support with donations and investment
- App.3. Number of subscribers to Judicial-Discipline-Reform.org
- App.4. Statement by LinkedIn that Dr. Cordero has “one of the top 5% most viewed LinkedIn profiles for 2012”
- App.5. Resume of Dr. Cordero
- App.6. Links to articles ready for review and publication; subjects for commissioned articles; and links to external sources of information
- App.7. Blocs of email addresses of the people to whom to send one’s story of judges’ abuse of power and financial criminality

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Dr. Richard Cordero, Esq.

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Judicial Discipline Reform

New York City

www.Judicial-Discipline-Reform.org

Volume II

**Exposing
Judges' Unaccountability
and
Consequent Riskless Wrongdoing
Pioneering
the news and publishing field
of
judicial unaccountability reporting**

A study of coordinated wrongdoing as judges' institutionalized modus operandi and its out-of-court exposure through a multidisciplinary academic and business venture based on strategic thinking centered on dynamic analysis of harmonious and conflicting interests

Volume II:

http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Honest_Jud_Advocates.pdf

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or

http://Judicial-Discipline-Reform.org/jur/DrRCordero_jud_unaccountability_reporting.pdf

or

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Exposing
Judges' Unaccountability
and
Consequent Riskless Abuse of Power

Pioneering the news and publishing field
of
judicial unaccountability reporting

A three-volume study of judges and their judiciaries that exposes their coordinated abuse of power as their institutionalized modus operandi; and promotes a generalized media investigation and unprecedented citizens hearings that inform and so outrage the national public as to stir it up to assert its right as *We the People*, the Masters of all public servants, including judicial public servants, to hold judges accountable for their performance and liable to compensate the victims of their abuse

VOLUME III:

http://Judicial-Discipline-Reform.org/OL3/DrRCordero-Honest_Jud_Advocates3.pdf

Volume I:

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Volume II:

http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Honest_Jud_Advocates2.pdf

December 23, 2022

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of the sections laying out the main concepts in Volume I,
with references to articles in Volumes II and III, of the study:

Exposing Judges' Unaccountability and Consequent Riskless Abuse of Power: Pioneering the news and publishing field of judicial unaccountability reporting * † ♣

This file contains only pages ggl:1-38. For a comprehensive list of articles, see Appendix 6. i.

Introduction: The goal is not only to expose judges' abuse of power, but also to enable *We the People*, the Masters of all public servants, to hold our judicial public servants accountable for their performance and liable to compensation, and thereby trigger history! jur:1

http://Judicial-Discipline-Reform.org/OL2/DrRCordero_Intro_trigger_history.pdf

ii. Tables compiling judicial statistics, and graphs, all supporting probable cause to believe that judges have complicitly coordinated an agreement for their 100% dismissal of complaints against any of them and 100% denial of petitions to review those dismissals, thus mutually ensuring their survival and continued abuse of power to grab illegal, unethical, and rules-disregarding gains and convenience jur:9

http://Judicial-Discipline-Reform.org/OL2/DrRCordero_complaint_dismissal_statistics&graphs.pdf

A. Means, motive, and opportunity of federal judges to engage in, and so to coordinate their, abuse of power as to make it their institutionalized modus operandi, thereby ensuring that the Federal Judiciary is a safe haven that they run as a racketeering enterprise..... jur:21

http://Judicial-Discipline-Reform.org/OL2/DrRCordero_means_motive_opportunity_for_abuse.pdf

B. *In re DeLano*, Then-Circuit Judge Sonia Sotomayor presiding, and her nomination to the Supreme Court by President Barak Obama: evidence of a bankruptcy fraud scheme and her concealment of assets dismissed with knowing indifference and willful blindness to a bankruptcy mill operated by the bankruptcy judges appointed under 28 U.S.C. §152 by the circuit judges: the appointers cover for their appointees jur:65

http://Judicial-Discipline-Reform.org/OL2/DrRCordero_bankruptcy_fraud_scheme_cover-up.pdf

C. Nature and forms of judges' abuse of power and strategy to expose their unaccountability and riskless abuse, e.g., auditing their decisions and other people's writings to detect their patterns, trends, and schemes of individual and coordinated abuse..... jur:81

http://Judicial-Discipline-Reform.org/OL2/DrRCordero_inform_outrage_abuse_notions.pdf

D. Multimedia public presentation made by judicial unaccountability reporters on:
i) the available evidence of judges' abuse of power and the *In re DeLano-J.* Sotomayor story;

* http://Judicial-Discipline-Reform.org/OL/DrRCordero-Honest_Jud_Advocates.pdf >all prefixes:# up to OL:393
† http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Honest_Jud_Advocates2.pdf >OL3:394-1143
♣ http://Judicial-Discipline-Reform.org/OL3/DrRCordero-Honest_Jud_Advocates3.pdf >OL3:1144-1555+

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iii) the <i>We accuse!</i> denunciation at a press conference, in articles, and through broadcast reportage.....	jur:97
http://Judicial-Discipline-Reform.org/OL2/DrRCordero_abuse_investigation_&_presentation.pdf	
E. Multidisciplinary academic and business venture leading up to the creation of the Institute of Judicial Unaccountability Reporting and Reform Advocacy.....	jur:119-169
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§5. Creation of the Institute of Judicial Unaccountability Reporting and Reform Advocacy.....	jur:130
http://Judicial-Discipline-Reform.org/OL2/DrRCordero_Institute_Judicial_Unaccountability_Reporting.pdf	
§§5-9. Establishment of an Inspector General for the Judiciary; proposed legislation; and precedent for a national, civic, apolitical movement for holding judges accountable and liable	jur:130-169
http://Judicial-Discipline-Reform.org/OL2/DrRCordero_IG_legislation_civic_movement.pdf	
§§6-9. Establishment of an Inspector General for the Judiciary; proposed legislation; and precedent for a national, civic, apolitical movement for holding judges accountable and liable	jur:158-169
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K. OL:1-393; first part of the OL series of articles; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_OL.1-393.pdf	OL:1

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none can be continued, let alone advanced, without money**

Support **Judicial Discipline Reform** and its [business plan](#) to:

1. continue its professional law research and writing, and [strategic thinking](#), which has produced a three-volume study of judges and their judiciaries, titled and downloadable thus:

**Exposing Judges' Unaccountability and Consequent Riskless Abuse of Power:
Pioneering the news and publishing field of judicial unaccountability reporting * † ‡**

2. turn the site at <http://www.Judicial-Discipline-Reform.org> –whose articles([Appendix 6§A](#)) have attracted so many webvisitors and they have reacted so positively that as of 23 Dec. 22, the number of those who had become subscribers was 45,959([App.3](#))– from an informational platform, into:
 - a. a clearinghouse for [complaints](#) against judges uploaded by anybody;
 - b. a [research center](#) for fee-paying clients [auditing](#) judges' decisions and searching many other writings from many sources that through [computer-assisted](#) statistical, linguistic, and literary analysis can reveal the most persuasive type of evidence: judges' [patterns](#), trends, and [schemes](#) of [abuse of power](#), e.g.; their [interception](#) of people's emails and mail; and
 - c. the digital portal of the plan's business venture leading up to the [Institute](#) of Judicial Unaccountability Reporting and Reform Advocacy at a university or news network;
3. organize and embark on a tour of [presentations](#) at law, journalism, business, and Information Technology [schools](#); media outlets; etc., via video conference or in person to form [local chapters](#) of a national movement to investigate and hold judges accountable and liable under *Strickland v. U.S.*;
4. hold together with academics, media outlets, and journalists, the proposed [UNPRECEDENTED CITIZENS HEARINGS](#), where people will be able to tell the national public [their stories](#) of judges' abuse;
5. [organize](#) the first-ever, and national conference on judges' abuse in [connivance](#) with politicians, who fear their power of retaliation, where the report on the citizens hearings will be presented;
6. publish an academics/journalists multidisciplinary [Annual](#) Report on Judicial Unaccountability and Riskless Abuse of Power-cum-citizens inspector general report on the judiciary;
7. launch an abuse [investigation](#) that attracts the media, for *Scandal sells & wins Pulitzer Prizes*;
8. promote the formation of a national, single issue, apolitical, civic movement for judicial abuse of power exposure, [compensation](#) of abusees, and reform through transformative change; etc.(¶57).

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- Feedback
- WooCommerce
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Senior Vice President, Products & User Experience

P.S. What does 200 million look like? [See the infographic](#)

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Dr. Richard Cordero, Esq.

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http://Judicial-Discipline-Reform.org/OL2/DrRCordero_resume_publication_list_links.docx & ...pdf

BAR MEMBERSHIP AND SPECIAL SKILLS: • U.S. citizen; member of the NYS Bar; specialized in field and library research and writing of legal briefs and business and IT studies

- I would like to work for you as a lawyer and researcher-writer strategist in a position where I can contribute to your business or legal problem solution a talent that gives me a competitive advantage: I can gather seemingly unconnected pieces of information, select those relevant to the prioritized objectives to be pursued, and imaginatively integrate them into a coherent new structure -expressed clearly and concisely both orally and in writing- that renders those pieces meaningful and useful, like a mosaic that depicts a realistic and decorative scene of the ancient Romans, yet originates in insignificant stone fragments expertly sifted from dirt and artfully set together to appeal to the spirit and the mind while serving the practical purpose of making money.

ADVANCED KNOWLEDGE OF: • computers and their use for word processing, graphics composition, presentations, and research; and for developing IT products to audit cases through statistical, linguistic, and literary analysis of opinions to give lawyers an informational advantage

LANGUAGES: • I speak English, Spanish, and French; and converse in German and Italian.

RELEVANT EXPERIENCE

FOUNDER OF JUDICIAL DISCIPLINE REFORM, 2008-to date New York City

- A non-partisan and non-denominational organization that advocates the study of the judiciary and the adoption of legislation to replace the inherently biased and ineffective judges-judging-judges system of judicial self-discipline with a system based on independent boards of citizens unrelated to the judges and empowered to publicly receive, investigate, and resolve complaints

RESEARCHER AND WRITER ATTORNEY, 1995-to date New York City

- Prosecution of cases from bankruptcy, district, and circuit courts to the SCt; practice in NY courts
- Developed the Euro Project, a 3-prong business package consisting of the Euro Conference, the Euro Consulting Services, and the Euro Newsletter; aimed at enabling firms to capitalize on their expertise in the euro by providing services for the adaptation of business practices and IT systems to the European Union's new common currency that replaced its national currencies

WAYNE COUNTY EXECUTIVE OFFICE, 1994 Detroit, MI

- Developed economic and marketing features of the master plan for the intermodal transportation and industrial complex of Willow Run Tradeport in Detroit
- Drafted and implemented proposals for increasing office productivity using IT and equipment

LAWYERS COOPERATIVE PUBLISHING, 1991-1993 Rochester, NY

- Member of the editorial staff of LCP, the foremost publisher of analytical legal commentaries.
- Researched and wrote articles on securities regulations, antitrust, and banking under U.S. law

COMMISSION OF THE EUROPEAN COMMUNITIES, 1984-1985 Brussels, Belgium

- Devised proposals for harmonizing supervisory regulations on mortgage credit and on reporting large loan exposures by one and all members of a banking system to one and related borrowers
- My proposals were adopted by the EEC Banking Division and negotiated with the national experts in the supervision of financial institutions of the Member States
- Drafted replies to financial questions put by the European Parliament to the Commission

EDUCATION

THE UNIVERSITY OF CAMBRIDGE, Faculty of Law, Ph.D., 1988 Cambridge, England

- Doctoral dissertation analyzed the existing European legal and political environment and proposed a new system for harmonizing the regulation and supervision of financial institutions

THE UNIVERSITY OF MICHIGAN, Business School, MBA, 1995 Ann Arbor, Michigan

- Emphasis on corporate strategies to maximize profitability and competitiveness through the optimal use of IT expert systems using artificial intelligence, and telecommunications networks

LA SORBONNE, Faculty of Law and Economics, French law degree, 1982 Paris, France

- Was awarded a French Government scholarship
- Concentrated on the operation of a currency basket to achieve monetary stability and on the application of harmonized regulations & antitrust rules on companies with dominant positions

RESEARCH WORKS

1. Study of judges and their judiciaries, based on an original and innovative analysis of the Federal Judiciary' statistics submitted to Congress annually, reports, judges' statements and websites, etc

Exposing Judges' Unaccountability and Consequent Riskless Wrongdoing:

Pioneering the news and publishing field of judicial unaccountability reporting* †

2. List of articles on judges' unaccountability and riskless abuse of power offered for publication individually or as a series; †>[OL2:719§C](#);
3. Complaint against Judge Brett Kavanaugh, Chief Judge Merrick Garland, and their peers and colleagues of the District of Columbia Circuit (DCC), submitted to the DCC Court of Appeals and "Because of the exceptional circumstances related to this complaint", referred by it to Supreme Court Chief Justice John G. Roberts, Jr., who assigned it to the 11th Circuit for disposition; includes the official letters of referral and the decision of the 11th Circuit chief judge; <http://Judicial-Discipline-Reform.org/OL2/DrRCordero-11Circuit.pdf>
4. The official statistics of the U.S. District of Columbia Circuit show that P. Trump SCt noo inee Judge Brett Kavanaugh, P. Obama SCt nominee Chief Judge Merrick Garland, and their peers received during the 1oct06/30sep17 11-year period, 478 complaints against judges in their Circuit and dismissed 100% of them and denied 100% of the petitions for review of those dismissals, thus covering as a matter of policy for abusive judges regardless of the gravity of their abuse; 1jun18; http://Judicial-Discipline-Reform.org/publications/1DrRCordero_Judges_Unaccountability_Riskless_Abuse.pdf
5. Availability of an Implied Right of Action under the Tender Offer Provisions of §14d-f of the Securities Exchange Act of 1934 (15 USCS §78n(d)-(f)), added to the Exchange Act by the Williams Act of 1968, and Rules Promulgated thereunder by the SEC, **120 ALR Federal 145**; http://Judicial-Discipline-Reform.org/publications/2DrRCordero_120ALRFed145.pdf
6. Venue Provisions of the National Bank Act (12 USCS §94) As Affected By Other Federal Venue Provisions and Doctrines, **111 ALR Federal 235**; http://Judicial-Discipline-Reform.org/publications/3DrRCordero_111ALRFed235.pdf
7. Construction and Application of the Right to Financial Privacy Act of 1978 (12 USCS §§ 3401-3422), **112 ALR Federal 295**; http://Judicial-Discipline-Reform.org/publications/4DrRCordero_112ALRFederal295.pdf

8. Exemption or Immunity From Federal Antitrust Liability Under the McCarran-Ferguson Act (15 USCS §§1011-1013) and the State Action and Noerr-Pennington Doctrines for the Business of Insurance and Persons Engaged in It, **116 ALR Federal 163**; http://Judicial-Discipline-Reform.org/publications/5DrRCordero_116ALRFed163.pdf
9. Who May Maintain an Action Under §11(a) of the Securities Act of 1933 (15 USCS §77k (a)), in Connection With False or Misleading Registration Statements, **111 ALR Fed. 83**; http://Judicial-Discipline-Reform.org/publications/6DrRCordero_111ALRFed83.pdf
10. Judicial Conference's Reforms Will Not Fix the Problem of Abusive Judges Who Go Undisciplined, Letter to the Editor, National Law Journal, March 3, 2008; http://Judicial-Discipline-Reform.org/publications/7DrRCordero_Letters_To_Editor_NYLJ3mar8.pdf; <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1204212424055>
11. The Creation of a European Banking System: A study of its legal and technical aspects, Peter Lang, Inc., NY, XXXVI, 390 pp., 1990; http://Judicial-Discipline-Reform.org/publications/8DrRCordero_Creation_European_Banking_System.pdf; this book earned a grant from the Commission of the European Communities and was reviewed very favorably in 32 Harvard International Law Journal 603 (1991), http://Judicial-Discipline-Reform.org/docs/Harvard_Int_Law_J.pdf; and 24 New York University Journal of International Law and Politics 1019 (1992), http://Judicial-Discipline-Reform.org/docs/NYU_JIntLaw&Pol.pdf
12. Competition Strategies Must Adapt to the Euro, 17 Amicus Curiae of the Institute of Advanced Legal Studies, London, 27 (May 1999); http://Judicial-Discipline-Reform.org/publications/9DrRCordero_Compensation_Strategies_&_euro.pdf
13. Why Business Executives in Third Countries and Non-participating Member States Should Pay Attention to the Euro, European Financial Services Law 140 (March 1999); http://Judicial-Discipline-Reform.org/publications/10DrRCordero_6European_Financial_Services_Law93.pdf
14. Some Practical Consequences for Financial Management Brought About by the Euro, 5 European Financial Services Law 187 (1998); http://Judicial-Discipline-Reform.org/publications/11DrRCordero_5European_Financial_Services_Law_187.pdf
15. Impending Conversion to the Euro Prompts New Guidelines from the IRS, New York Law Journal, pg. 1, Friday, October 2, 1998; http://Judicial-Discipline-Reform.org/publications/12DrRCordero_Conversion_to_the_Euro_&_IRS_NYLJ.pdf
16. The Development of Video Dialtone Networks by Large Phone and Cable Companies and its Impact on their Small Counterparts, 1 Personal Technologies no. 2, 60 (Springer-Verlag London Ltd., 1997); http://Judicial-Discipline-Reform.org/publications/13DrRCordero_Dialtone_1Personal_Technologies2.pdf
17. Video Dialtone: Its Potential for Social Change, 15 Journal of Business Forecasting 16 (1996) http://Judicial-Discipline-Reform.org/publications/14DrRCordero_Dialtone_&_Social_Change_15JBF16.pdf
18. Video Dialtone Network Architectures, by Richard Cordero and Jeffery Joles, 15 Journal of Business Forecasting 16 (Summer 1996); http://Judicial-Discipline-Reform.org/publications/15DrRCordero_Dialtone_networks_15JBF16.pdf
19. A Strict but Liberalizing Interpretation of EEC Treaty Articles 67(1) and 68(1) on Capital Movements, 2 Legal Issues of European Integration 39 (1989); http://Judicial-Discipline-Reform.org/publications/16DrRCordero_Strict_but_liberalizing_interpretation_2LIEI39.pdf

January 23, 2023

APPENDIX 6

**A study and articles already written on
judicial abuse of power, compensation of abusees, and transformative reform;
subjects for articles that may be commissioned; and
links to external sources of information useful for law research and writing***

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B. Subjects for commissioning one or a series of articles.....	10
C. Links to external sources of information useful for law research and writing	12

A. The study and articles available for review and publication

1. The study

1. The three-volume study* † ♣ of judges and their judiciaries that supports the articles, which are downloadable as individual files

**Exposing Judges' Unaccountability and Consequent Riskless Abuse of Power:
Pioneering the news and publishing field of judicial unaccountability reporting* † ♣**

* Volume 1: http://Judicial-Discipline-Reform.org/OL/DrRCordero-Honest_Jud_Advocates.pdf >all
prefixes:page# up to prefix OL:page393

† Volume 2: http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Honest_Jud_Advocates2.pdf >from page
OL2:394-1143

* Volume 3: http://Judicial-Discipline-Reform.org/OL3/DrRCordero-Honest_Jud_Advocates3.pdf >from
OL3:1144-1555+

- i. Download the volume files using MS Edge, Firefox, or Chrome.
- ii. Open the downloaded files using [Adobe Acrobat Reader](https://acrobat.adobe.com/us/en/acrobat/pdf-reader.html), which is available for free at
<https://acrobat.adobe.com/us/en/acrobat/pdf-reader.html>.
- iii. In each downloaded file, go to the Menu bar >View >Navigation Panels >Bookmarks
panel and use its bookmarks, which make navigating to the contents' numerous(* † ♣
>blue footnote-like references) very easy.

2. Many of the articles have been posted to the website of **Judicial Discipline Reform** at
<http://www.Judicial-Discipline-Reform.org>.
3. Visit the website and join its 46,250,+ subscribers to its articles thus: [homepage](#) <left panel
↓Register or + New or Users >Add New.

2. The individual sections of Volume I of the study

1. jur:1; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_Intro_trigger_history.pdf

* http://Judicial-Discipline-Reform.org/OL3/DrRCordero-Honest_Jud_Advocates3.pdf >OL3:1144-1555+
*.../OL/....pdf >all prefixes:page# up to OL:393 †.../OL2/...2.pdf >OL2:394-1143
† http://Judicial-Discipline-Reform.org/OL2/DrRCordero_individual_files_links.pdf

2. jur:10; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_complaint_dismissal_statistics&graphs.pdf
3. jur:21§A; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_means_motive_opportunity_for_abuse.pdf
4. jur:65§B; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_bankruptcy_fraud_scheme_cover-up.pdf
5. jur:85§C; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_inform_outrage_abuse_notions.pdf
6. jur:97§D; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_presentation_to_launch_investigation.pdf
7. jur:119§§E1-4; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_marketing_brochures_Annual-Report_team.pdf
8. jur:130§E5; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_Institute_Judicial_Unaccountability_Reporting.pdf
9. jur:130§E5-9; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_Institute_Judicial_Unaccountability_Reporting&agenda.pdf
10. jur:158§§E6-9; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_IG_legislation_civic_movement.pdf
11. jur:171§F; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_presentation_to_trigger_history.pdf
12. ggl:1; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_email_accounts_interference.pdf
13. jur:i-lix; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_jur_i-lix_summarizing_articles.pdf
14. Lsch:1; http://Judicial-Discipline-Reform.org/Lsch/DrRCordero_presentation_at_schools.pdf; see also http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Deans_professors_students.pdf
15. DCC:1; The *DeLano* Case Course, with two 15-week syllabi for classwork of case investigation and organization of findings presentation conference; http://Judicial-Discipline-Reform.org/DCC/DrRCordero_DeLano_Case_Course.pdf; http://Judicial-Discipline-Reform.org/DCC/DrRCordero_DeLano_docs.pdf
16. CW:1; Creative writings: blurbs, synopses of novels and movie scripts, drama scenes, and a short story by Dr Cordero; http://Judicial-Discipline-Reform.org/CW/DrRCordero_creative_writings.pdf
17. <http://Judicial-Discipline-Reform.org/a&p/DrRCordero-Agent&Publisher.pdf>
18. OL:1-393; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_OL.1-393.pdf

3. The articles written and available for review and publication

19. http://Judicial-Discipline-Reform.org/OL2/DrRCordero_collected_statistics_complaints_v_judges.pdf. Cf.:
 - a. jur:11: while Then-Judge, Now-Justice Sonia **Sotomayor** served on the Court of Appeals for the Second Circuit, http://Judicial-Discipline-Reform.org/OL2/DrRCordero_complaint_dismissal_statistics.pdf
 - b. OL2:546; while Then-Judge, Now-Justice Neil **Gorsuch** served on the Court of Appeals for the Tenth Circuit, http://Judicial-Discipline-Reform.org/OL2/DrRCordero_individual_files_links.pdf

[Reform.org/OL2/DrRCordero_hearings_JGorsuch_complainants&parties.pdf](http://Judicial-Discipline-Reform.org/OL2/DrRCordero_hearings_JGorsuch_complainants&parties.pdf)

- c. OL2:748; Judge Brett **Kavanaugh**, Chief Judge Merrick **Garland**, and their peers and colleagues in the District of Columbia Circuit dismissed 478 complaints against them during the 1oct06-30sep17 11-year period; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_JJ_Kavanaugh-Garland_exoneration_policy.pdf; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_table_exonerations_by_JJ_Kavanaugh-Garland.pdf
 - d. OL2:1176; while Then-Judge, Now-Justice Amy Coney **Barrett** served on the Court of Appeals for the Seventh Circuit; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_JgACBarrett_condonation_judges_power_abuse.pdf
 - e. OL3:1229; <http://Judicial-Discipline-Reform.org/OL2/DrRCordero-JudgeRPratt.pdf> and <https://www.iasd.uscourts.gov/content/senior-district-judge-robert-w-pratt>
 - f. OL3:1237 on exposing attorney general designate Judge M. **Garland**; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_media_exposing_judges.pdf
 - g. Template to be filled out with the complaint statistics on any of the 15 reporting courts: http://Judicial-Discipline-Reform.org/OL2/DrRCordero_template_table_complaints_v_judges.pdf
20. jur:32§§2-3; Congress's finding of cronyism in the federal courts, http://Judicial-Discipline-Reform.org/OL/DrRCordero-Honest_Jud_Advocates.pdf
 21. jur:65; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_abuse_by_justices.pdf
 22. jur:72fn144d; <http://judicial-discipline-reform.org/journalists/CBS/11-5-18DrRCordero-ProdCScholl.pdf>
 23. jur:122; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_judicial_unaccountability_brochures_report.pdf
 24. jur:130; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_Institute_judicial_unaccountability_reporting.pdf
 25. Lsch:13; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_dynamic_analysis&strategic_thinking.pdf
 26. http://Judicial-Discipline-Reform.org/DoJ-FBI/9-2-3DrRCordero-FBI_Corruption_Unit.pdf
 27. OL:42; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_law_research_proposals.pdf
 28. OL:158; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_no_judicial_immunity.pdf
 29. OL:180 http://Judicial-Discipline-Reform.org/OL2/DrRCordero_turning_judges_clerks_into_irformants.pdf
 30. OL:190; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_institutionalized_judges_abuse_power.pdf
 31. OL:215; former CBS reporter Sharyl Attkisson and her suit against the Department of Justice for illegal electronic surveillance of her home and CBS office computers; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-CBS_Reporter_SAttkisson.pdf
 32. OL:255; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-university_law_research.pdf
 33. OL:274; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_auditing_judges.pdf
 34. OL:311; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-presidential_candidates.pdf

35. OL2:440; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-IT_investigate_interception.pdf
36. OL2:433; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_Yahoogroups.pdf
37. OL2:452; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Deans_professors_students.pdf
38. OL2:453; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_judicial_accountability_presentation.pdf
39. OL2:468; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_turning_court_clerks_into_informants.pdf
40. OL2:546; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_complaint_dismissal_statistics.pdf; see also infra OL2:792; see the supporting official statistical tables of the federal courts at http://Judicial-Discipline-Reform.org/statistics&tables/statistical_tables_complaints_v_judges.pdf
41. OL2:548; table of 100% complaint dismissal and a 100% dismissal review petitions denial while Then-Judge, Now-Justice Neil Gorsuch served on the 10th Circuit; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_hearings_JGorsuch_complainants&parties.pdf
42. OL2:567; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-The_Dissatisfied_with_Judicial_System.pdf
43. OL2:608, 760; article using official court statistics to demonstrate “the math of abuse”: neither judges nor clerks read the majority of briefs, disposing of them through 'dumping forms', which are unresearched, reasonless, arbitrary, ad-hoc fiat-like orders on a 5¢ rubberstamped form; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_judges_do_not_read.pdf
44. OL2:614; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_how_fraud_scheme_works.pdf
45. OL2:760; see OL2:608
46. OL2:768; <http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Congress.pdf>
47. OL2:773; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Harvard_Yale_prof_students.pdf
48. OL2:781; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_judges_intercepting_emails_mail.pdf
49. OL2:792; Complaint filed with Supreme Court Chief Justice John G. Roberts, Jr., and the U.S. Court of Appeals for the District of Columbia Circuit; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-SupCt_CJ_JGRoberts.pdf
50. OL2:799; <http://Judicial-Discipline-Reform.org/OL2/DrRCordero-RepJNadler.pdf>
51. †OL2:821; Programmatic presentation on forming a national civic movement for judicial abuse of power exposure, redress, and reform; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_programmatic_presentation.pdf
52. OL2:840; <http://www.Judicial-Discipline-Reform.org/OL2/DrRCordero-LDAD.pdf>;
53. >OL2:879; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_Black_Robed_Predators_documentary.pdf
54. OL2:901; <http://Judicial-Discipline-Reform.org/OL2/DrRCordero-LDAD.pdf>
55. OL2:918; File on the complaint's journey –from OL2:792– until its final disposition in the U.S. Court of Appeals for the 11th Circuit; <http://Judicial-Discipline-Reform.org/OL2/DrRCordero-11Circuit.pdf>
56. OL2:929; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-IT_investigate_interception.pdf

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58. OL2:947; <http://Judicial-Discipline-Reform.org/OL2/DrRCordero-media.pdf>
59. OL2:951; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_judges_abuse_citizens_hearings.pdf
60. OL2:957; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_judges_abuse_video.mp4
61. OL2:957; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_judges_abuse_slides.pdf
62. OL2:971; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Professors_students_journalists.pdf;
http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Professors_students_lawyers.pdf
63. OL2:983; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_introduction_video_slides_judges_abuse.pdf
64. OL2:991; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_on_SenEWarren.pdf
65. OL2:997; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_SenEWarren_plan_judges.pdf
66. OL2:1003; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-media_DARE.pdf
67. OL2:1006; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_pitch-Media.pdf
68. OL2:1022; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Capital_Investors.pdf
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70. OL2:1032; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_international_exposure_judges_abuse.pdf
71. OL2:1037; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_out_of_court_inform_outrage_strategy.pdf
72. OL2:1040; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-parties_invoking_impeachment_trial.pdf
73. OL2:1045; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Professors_Students_Journalists.pdf;
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75. OL2:1056; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-reporters_clerks.pdf = http://Judicial-Discipline-Reform.org/OL2/DrRCordero_sham_hearings.pdf
76. OL2:1066; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_adapting_to_new_legal_market.pdf,
discussing a proposal to LexisNexis
77. OL2:1073; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_inform_outrage_be_compensated.pdf
78. >OL2:1081; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_judges_intercepting_emails_mail.pdf
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81. >OL2:1093; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Washington_Post.pdf
82. OL2:1101; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-judicial_abusees&publishers.pdf
83. OL2:1104; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Hiring_manager.pdf

84. OL2:1108; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-International_Team.pdf
85. OL2:1116; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_research_documents&sources.pdf
86. OL2:1119; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_judicial_abuse_forms.pdf
87. OL2:1125; exposing the Federal Judiciary as a racketeering enterprise; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Reuters_judges_investigation.pdf
88. >OL2:1134; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Talkshow_hosts_coalition.pdf
89. OL3:1144; analysis of Thomson Reuters's report "The Teflon Robe"; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_your_story_for_Reuters.pdf
90. OL3:1154; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-American_Thinker.pdf
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92. OL3:1168; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_joining_forces_making_allies.pdf
93. OL3:1172; http://judicial-discipline-reform.org/OL2/DrRCordero_judges_exposure_election_justice.pdf
94. OL3:1176; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_JgACBarrett_condonation_judges_power_abuse.pdf
95. OL3:1187; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-LDAD_repairing_democracy.pdf
96. OL3:1197; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_citizens_hearings.pdf
97. OL3:1205; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Reuters_Law_Firm_Council.pdf
98. OL3:1212; agenda for video conference; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_preparing_video_conference.pdf
99. OL3:1221; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-News_Directors_on_judges_abuse.pdf
100. OL3:1228; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_emails_mail_intercepted_by_judges.pdf
101. OL3:1229; <http://Judicial-Discipline-Reform.org/OL2/DrRCordero-JudgeRPratt.pdf> and <https://www.iasd.uscourts.gov/content/senior-district-judge-robert-w-pratt>
102. OL3:1237; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_media_exposing_judges.pdf
103. OL3:1243; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_talkshow_hosts_coalition.pdf
104. OL3:1246; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-CLEs_lawyers_media.pdf
105. <http://Judicial-Discipline-Reform.org/OL2/DrRCordero-NYCBar.pdf>
106. OL3:1253; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_exposing_Judge_Garland&judges.pdf; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_actions_to_expose_judges_abuse.pdf
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108. OL3:1273; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Guardianship_Abuse_Symposium_slides.pdf
109. OL3:1283; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_facts_&_strategic_thinking.pdf

110. OL3:1291. http://Judicial-Discipline-Reform.org/OL2/DrRCordero-ProPublica_&_media.pdf
111. OL3:1301; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Biden_ScT_reform_Commission.pdf
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114. OL3:1329; the two-phase method for writing in up to 500 words your story of judges' abuse of power that you have suffered or witnessed; http://judicial-discipline-reform.org/OL2/DrRCordero_method_for_writing_your_story.pdf
115. OL3:1338; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_joining_forces_to_tell_your_story.pdf
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117. OL3:1348; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_politicians-judges_connivance.pdf
118. OL3:1351; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_folly_of_pro_se.pdf
119. OL3:1367; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_becoming_teacher&leader.pdf
120. OL3:1371; proposal to apply to judges expertise in financial criminality investigations; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-media_to_investigate_judges_financial_criminality.pdf
121. http://Judicial-Discipline-Reform.org/OL2/financially_conflicted_judges.pdf
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129. OL3:1407; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_reading_strategizing_taking_action.pdf
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131. OL3:1415; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_concrete_actions_by_advocates.pdf
132. OL3:1417; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Reuters_journalists_lawyers_on_judges_power_abuse.pdf
133. OL3:1426; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_forming_local_chapters&appealing_to_schools.pdf

134. OL3:1430; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-ABC_investigate_judges_abuse.pdf
135. OL3:1436; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-CLE_webinar_exposing_judges.pdf
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137. OL3:1445; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_your_story_for_media&citizens_hearings.pdf
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139. OL3:1451; to publishers to offer them my articles and describe a plan of actions to enter jointly a multidisciplinary academic and business venture for judicial abuse exposure, compensation and reform; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_articles_actions_to_expose_judges.pdf
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141. OL3:1460; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-journalists_politicians_scooping_judges_racketeering.pdf
142. OL3:1470; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_Offshoot_Oases_Project.pdf
143. OL3:1473; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_offering_law_services&articles.pdf
144. OL3:1476; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-CIRS_&_trainees.pdf
145. OL3:1479; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_from_abortion_decision_to_new_constitution.pdf
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148. OL3:1489; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-ProfSRAckerman_ProfJSGersen.pdf
149. OL3:1491; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_presentation_to_professors&students.pdf
150. OL3:1493; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_recusal_principles.pdf
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152. OL3:1520; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-DAs_lawfirms_organizations_schools.pdf
153. OL3:1522; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Legal_Aid_Society.pdf
154. OL3:1525; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Commission_Judicial_Conduct.pdf
155. OL3:1527; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_proposal_for_class_actions.pdf
156. OL3:1530; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_assets_for_negotiating_table.pdf
157. OL3:1532; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_ReplyAll_read_write_your_story.pdf
158. OL3:1533; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_think_proceed_strategically_to_expose_abuse.pdf

159. OL3:1538; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_strategy_for_effective_action.pdf
160. OL3:1542; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_Medicare&HMO_class_action.pdf
161. OL3:1544; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Cybersecurity_experts.pdf
162. OL3:1550; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_strategy_for_IT_experts.pdf
163. OL3:1555; http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Presentation_to_Honest_Judiciaries_Advocates.pdf

B. Subjects for commissioning one or a series of articles

164. judges' unaccountability(*>OL:265) and their riskless abuse of power(*>jur:5§3; OL:154§3);
165. statistical analysis for the public(†>OL2:455§§B-E, 608§A) and for researchers(jur:131§b);

166. significance of federal circuit judges disposing of 93% of appeals in decisions “on procedural grounds [i.e., the pretext of “lack of jurisdiction”], unsigned, unpublished, by consolidation, without comment”, which are unresearched, reasonless, ad-hoc, arbitrary, fiat-like orders, in practice unappealable(OL2:453);
167. to receive ‘justice services’(OL2:607) parties pay courts filing fees, which constitute consideration, whereby a contract arises between them to be performed by the judges, who know that they will in most cases not even read their briefs(OL2:608§A), so that courts engage in false advertisement, fraud in the inducement, and breach of contract(OL2:609§2);
168. Justiceship Nominee Judge Neil Gorsuch said, “An attack on one of our brothers and sisters of the robe is an attack on all of us”: judges’ gang mentality and abusive hitting back(OL2:546);
169. fair criticism of judges who fail to “avoid even the appearance of impropriety”(jur:68^{123a});
170. abuse-enabling clerks(OL2:687), who fear arbitrary removal without recourse(jur:30§1);
171. law clerks’ vision at the end of their clerking for a judge of the latter’s glowing letter of recommendation (OL2:645§B) to a potential employer morally blinds them to their being used by the judge as executioners of his or her abuse;
172. judges dismiss 99.82% of complaints against them(jur:10-14; OL2:548), thus arrogating to themselves impunity by abusing their self-disciplining authority(jur:21§a);
173. escaping the futility of suing judges(OL2:713, 609§1): the out-of-court inform and outrage strategy to stir up the public into holding them accountable and liable to compensation(OL2:581);
174. how law professors and lawyers act in self-interest to cover up for judges so as to spare themselves and their schools, cases, and firms retaliation(jur:81§1; Lsch:17§C): their system of harmonious interests against the interests of the parties and the public(OL2:635, 593¶15);
175. turning insiders into Deep Throats(jur:106§C); outsiders into informants(OL2:468); and judges into criers of ‘MeToo! Abusers’(OL2:682¶¶7,8) that issue an *I accuse!*(jur:98§2) denunciation of judges’ abuse: thinking and acting strategically(OL2:635, 593¶15) to expose judges’ abuse by developing allies who want to become Workers of Justice(OL2:687), as opposed to being enforcers of abuse or enablers by endorsement or willful ignorance or blindness;
176. two unique national stories, not to replace a rogue judge, but to topple an abusive judiciary:
 - a. *Follow the money!* as judges grab(OL2:614), conceal(jur:65^{107a,c}), and launder(105²¹³) it;
 - b. The Silence of the Judges: their warrantless, 1st Amendment freedom of speech, press, and assembly-violative interception of people’s emails and mail to detect and suppress those of their critics(OL2:582§C;OL3:1228);
 - 1) made all the more credible by Former CBS Reporter Sharyl Attkisson’s \$35 million suit against the Department of Justice for its illegal intrusion into her computers to spy on her ground-breaking investigation and embarrassing reporting(OL2:612§b);
 - 2) by using Information Technology examination and statistical analysis, such interception and contents-based suppression can be exposed, which will provoke a scandal graver than that resulting from Edward Snowden’s revelations of NSA’s massive illegal collection of only non-personally identifiable metadata(OL2:583§3);

- 3) the exposure can be bankrolled as discreetly as Peter Thiel, co-founder of PayPal, bank-rolled the suit of Hulk Hogan against the tabloid Gawker for invasion of privacy and thereby made it possible to prosecute and win a judgment for more than \$140 million(OL2:528);
 - 4) principles can be asserted and money made by exposing judges' interception;
177. launching a Harvey Weinstein-like(jur:4¶¶10-14) generalized media investigation into judges' abuse of power as their institutionalized modus operandi; conducted also by journalists and me with the benefit of the numerous leads(OL:194§E) that I have gathered;
 178. **Black Robed Predators**(OL:85) or the making of a documentary as an original video content by a media company or an investigative TV show, with the testimony of judges' victims, clerks, lawyers, faculty, and students; and crowd funding to attract to its making and viewing the crowd that advocate honest judiciaries and the victims of judges' abuse of power;
 179. promoting the unprecedented to turn judges' abuse of power into a key mid-term elections issue and thereafter insert it in the national debate:
 - a. the holding by journalists, newsanchors, media outlets, and law, journalism, business, and IT schools in their own commercial, professional, and public interest as *We the People's* loudspeakers of nationally and statewide televised citizens hearings(OL2:675§2, 580§2) on judges' unaccountability and consequent riskless abuse;
 - b. a forensic investigation by Information Technology experts to determine whether judges intercept the communications of their critics(OL3:1228; OL2:633§D, OL2:582§C);
 - c. suits by individual parties and class actions to recover from judges, courts, and judiciaries filing fees paid by parties as consideration for 'justice services'(OL2:607) offered by the judges although the latter knew that it was mathematically(OL2:608§A; 457§D) impossible for them to deliver those services to all filed cases; so the judges committed false advertisement and fraud in the inducement to the formation of service contracts, and thereafter breach of contract by having their court and law clerks perfunctorily dispose of cases by filling out "dumping forms"(OL2:608¶5);
 - d. suits by clients to recover from their lawyers attorneys' fees charged for prosecuting cases that the lawyers knew or should have known(jur:90§§b, c) the judges did not have the manpower to deliver, or the need or the incentive to deal with personally, whereby the lawyers committed fraud by entering with their clients into illusory contracts that could not obtain the sought-for 'justice services'; and
 - e. suits in the public interest to recover the public funds paid to judges who have failed to earn their salaries by routinely not putting in an honest day's work, e.g., closing their courts before 5:00 p.m., thus committing fraud on the public and inflicting injury in fact on the parties who have been denied justice through its delay(cf. OL2:571¶24a);
 180. how parties can join forces to combine and search their documents for communality points (OL:274-280; 304-307) that permit the detection of patterns of abuse by one or more judges, which patterns the parties can use to persuade journalists to investigate their claims of abuse;
 181. the development of my website Judicial Discipline Reform at <http://www.Judicial-Discipline-Reform.org>, which as of 22 January 2023, had **46,250+** subscribers, into:
 - a. a **clearinghouse** for complaints against judges uploaded by the public;

- b. a **research center** for professionals and parties(OL2:575) to search documents for the most persuasive evidence of abuse: patterns of abuse by the same judge presiding over their cases, the judges of the same court, and the judges of a judiciary; and
 - c. the **showroom and shopping portal** of a multidisciplinary academic and business venture (jur:119§§1-4). It can be the precursor of the institute of judicial unaccountability reporting and reform advocacy attached to a top university or established by a consortium of media outlets and academic institutions(jur:130§5);
182. a tour of presentations(OL:197§G) by me sponsored by you on:
- a. judges' abuse(jur:5§3; OL:154 ¶ 3);
 - b. development of software to conduct fraud and forensic accounting(OL:42, 60); and to perform thanks to artificial intelligence a novel type of statistical, linguistic, and literary analysis of judges' decisions and other writings(jur:131§b) to detect bias and disregard of the requirements of due process and equal protection of the law;
 - c. promoting the participation of the audience in the investigation(OL:115) into judges' abuse; and their development of local chapters of investigators/researchers that coalesce into a Tea Party-like single issue, civic movement(jur:164§9) for holding judges accountable and liable to their victims: *the People's Sunrise*(OL:201§J);
 - d. announcement of a Continuing Legal Education course, a webinar, a seminar, and a writing contest(*>ddc:1), which can turn the audience into clients and followers;
183. a multimedia, multidisciplinary public conference(jur:97§1; *>dcc:13§C) on judges' abuses held at a top university(OL2:452) to pioneer the reporting thereon in our country and abroad;
- the call of the constitutional convention(OL:136§3) that 34 states have petitioned Congress to convene since April 2, 2014, satisfying the amending provisions of the [Constitution](#), Article V.

C. Links to external sources of information useful for law research and writing

1. Treatises

184. **Start your research here to gain an overview of the subject and proceed to the ever more specific:** <https://store.legal.thomsonreuters.com/law-products/Legal-Encyclopedias/American-Jurisprudence-2d/p/100027544>, covering state and federal, civil and criminal, substantive and procedural law
185. https://store.legal.thomsonreuters.com/law-products/Publication-Types/Treatises/c/20231?page=1&n=c%3d20231%3bcount%3d25%3bi%3d1%3bq1%3dFederal%3bsort%3dSC_Units%3bx1%3djurisdiction
186. https://store.legal.thomsonreuters.com/law-products/Publication-Types/Treatises/c/20231?page=1&n=c%3d20231%3bcount%3d25%3bi%3d1%3bq1%3dFederal%3bq2%3dCriminal%2bLaw%2band%2bProcedure%3bsort%3dSC_Units%3bx1%3djurisdiction%3bx2%3dPracticeArea

2. Law reviews and journals

187. Gain a narrower and more specialized understanding of particular topics;
<https://store.legal.thomsonreuters.com/law-products/Law-Reviews-and-Journals/Law-Reviews--Journals-Westlaw-PROtrade/p/104937407>

3. U.S. Constitution

188. U.S. Constitution, Preamble: “*We the People* of the United States, in Order to form a more perfect Union, establish Justice”; http://judicial-discipline-reform.org/docs/US_Constitution.pdf
189. U.S. Constitution, Article II, Section. 2. The President...shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment. http://Judicial-Discipline-Reform.org/docs/US_Constitution.pdf

4. U.S. Code (compilation of all federal, as opposed to state, laws)

190. <https://uscode.house.gov/download/download.shtml>; cf. Legal Information Institute (LII) of Cornell Law School; <https://www.law.cornell.edu/>
191. E.g., US Code, Title 11 (11 USC), Bankruptcy Code; *id.*; enhanced with bookmarks to facilitate navigation at http://Judicial-Discipline-Reform.org/docs/11usc_Bankruptcy_Code.pdf
192. E.g., US Code, Title 18 (18 USC), Criminal Code, containing all federal criminal laws;. *id.*; with bookmarks at http://Judicial-Discipline-Reform.org/docs/18usc_Criminal_Code.pdf

5. The law organizing the Federal Judiciary

193. U.S. Code, Title 28 (28 USC), The Judicial Code; <https://uscode.house.gov/download/download.shtml>; enhanced with bookmarks to facilitate navigation at http://Judicial-Discipline-Reform.org/docs/28usc_Judicial_Code.pdf

6. Federal rules of procedure applicable in all federal courts

194. U.S. Code, Title 11, Appendix (11 USC Appendix) containing the Federal Rules of **Bankruptcy** Procedure; <https://uscode.house.gov/download/download.shtml>; enhanced with bookmarks to facilitate navigation at http://Judicial-Discipline-Reform.org/docs/11usc_Bankruptcy_Rules.pdf
195. U.S. Code, Title 18, Appendix (18 USC Appendix) containing the Federal Rules of **Criminal** Procedure; <https://uscode.house.gov/download/download.shtml>; enhanced with bookmarks to facilitate navigation at http://Judicial-Discipline-Reform.org/docs/18usc_Criminal_Rules.pdf
196. U.S. Code, Title 28, Appendix (28 USC Appendix) containing the Federal Rules of **Civil and Appellate** Procedure and **Evidence**; *id.*; enhanced with bookmarks to facilitate navigation at http://Judicial-Discipline-Reform.org/docs/28usc_Civ_App_Evi_Rules.pdf
197. *Federal Civil Judicial Procedure and Rules*, 2022 ed.; 1,248 pages; Thomson Reuters; <https://store.legal.thomsonreuters.com/law-products/Statutes/Federal-Civil-Judicial-Procedure-and-Rules-2022-ed/p/106767284>
198. Federal Rules of Civil Procedure, Rules and Commentary, 2021 ed.; Steven S. Gensler and Lumen N. Mulligan; <https://store.legal.thomsonreuters.com/law-products/Treatises/Federal-Rules-of-Civil-Procedure-Rules-and-Commentary-2021-ed/p/106676872?trkcode=recspdpb&trktype=internal&FindMethod=recs>
199. Federal Civil Rules Handbook, 2022 ed.; Steven Baicker-McKee and William M. Janssen;

<https://store.legal.thomsonreuters.com/law-products/Treatises/Federal-Civil-Rules-Handbook-2022-ed/p/106744908>

200. For the rules of the Supreme Court, see subsection 15 infra.

7. Rules of procedure specific to each federal court

201. E.g. Local rules and internal operating procedure of the U.S. Court of Appeals for the Second Circuit; https://www.ca2.uscourts.gov/clerk/case_filing/rules/rules_home.html

8. Code of Federal Regulations

202. Regulations adopted by the federal administrative agencies that implement and enforce the applicable law; <https://www.govinfo.gov/app/collection/cfr/>

9. Bills pending (in committees and on the floor of the U.S. Senate and House of Representatives)

203. https://www.senate.gov/pagelayout/legislative/b_three_sections_with_teasers/active_leg_page.htm

204. <https://www.house.gov/legislative-activity>

10. Some federal laws of particular interest

205. The **Ethics** in Government Act of 1978, Appendix to 5 USC; <https://uscode.house.gov/download/download.shtml>; enhanced with bookmarks to facilitate navigation at http://Judicial-Discipline-Reform.org/docs/5usc_Ethics_in_Government.pdf

206. Duty to report abuse, **18 USC §3057**; <https://www.law.cornell.edu/uscode/text/18/3057>

207. Circuit justices, **28 USC 42**

208. bill S.1873, passed on October 30, 1979, and HR 7974, passed on September 15, 1980, entitled The Judicial Councils Reform and Judicial Conduct and Disability Act of 1980; Congressional Record, September 30, 1980; 28086; http://Judicial-Discipline-Reform.org/docs/Jud_Councils_Reform_bill_30sep80.pdf (see also [jur:159²⁸⁰](#))

209. The Reform part of the bill included a provision for opening the meetings of the judicial councils, but was excluded from the version that was adopted; 28 U.S.C. §332(d)(1), http://Judicial-Discipline-Reform.org/docs/28usc331-335_Conf_Councils.pdf (see also [jur:75¹⁴⁸](#))

210. **Judicial Conduct** and Disability Act of 1980; (**28 USC §§351-364**); <http://Judicial-Discipline-Reform.org/docs/28usc.pdf> (see also [jur:24^{18a}](#)), setting forth a procedure for anybody to file a complaint about a federal judge with the chief circuit judge where the complained-about judge sits

211. **Rules for Processing** Judicial Conduct and Disability Complaints; <https://www.uscourts.gov/judges-judgeships/judicial-conduct-disability>

212. https://www.law.cornell.edu/rules/frcp/rule_11 (duties of lawyers and pro ses who sign papers and make representations to the court; sanctions for non-compliance)

213. **Ethics** in Government Act of 1978; 5 U.S.C. Appendix; <https://uscode.house.gov/download/download.shtml>

214. **Racketeer Influenced** and Corrupt Organizations Act(**RICO**); 18 U.S.C. §§1961 to 1968; <https://uscode.house.gov/download/download.shtml>; http://Judicial-Discipline-Reform.org/docs/18usc1961_RICO.pdf

215. **Foreign Intelligence Surveillance Act**; 50 U.S.C §§1801-1885c; <https://uscode.house.gov/download/download.shtml>; enhanced with bookmarks to facilitate navigation at http://Judicial-Discipline-Reform.org/docs/50usc_FISA.pdf
216. Section 1902(n)(3)(B) of the **Social Security Act**, https://www.ssa.gov/OP_Home/ssact/ssact-toc.htm, found in **Title 42** of the U.S. Code of federal laws, <https://uscode.house.gov/download/download.shtml>, as modified by Section 4714 of the **Balanced Budget Act of 1997**, <https://www.cbpp.org/sites/default/files/archive/908mcaid.htm>, prohibits Medicare providers from balance billing Medicaid QMBs [Qualified Medicare Beneficiaries] for Medicare cost-sharing. The provider must submit its bill to Medicaid and accept as full payment what Medicaid pays. See also **Overview of Medicaid Provisions in the Balanced Budget Act of 1997, P.L. 105-33**; <https://www.cbpp.org/sites/default/files/archive/908mcaid.htm>.

11. U.S. Supreme Court cases, rules of procedure, and case statistics

217. <https://www.supremecourt.gov/>
218. https://www.supremecourt.gov/filingandrules/rules_guidance.aspx
219. The annual report of the Chief Justice of the Supreme Court, who discusses the key issues of the Federal Judiciary and statistics on the cases filed with it and those handled by its judges during the reported year:
- a. <https://www.supremecourt.gov/publicinfo/year-end/2021year-endreport.pdf>
 - b. <https://www.supremecourt.gov/publicinfo/year-end/2020year-endreport.pdf>
220. Cf. Workload of the Courts, Appendix to the Year-end Report of the Chief Justice; <https://www.supremecourt.gov/publicinfo/year-end/2020year-endreport.pdf>
221. Table 1

Federal cases disposed of or terminated in the fiscal year to September 30, 2020		
Supreme Court		69
Courts of appeals (12 regional circuit courts)	48,300	
Federal circuit	1,568	
94 District courts (civil cases)	271,256	
94 District courts (criminal cases)	58,589	
90 Bankruptcy courts	721,251	
U.S. Court of International Trade	631	
U.S. Court of Federal Claims	1,742	
Totals		1,103,337

12. Cases in the lower federal courts

249. *Strickland v. U.S.*, No. 21-1346, <https://www.ca4.uscourts.gov/opinions/211346.p.pdf>, a federal civil case decided on April 26, 2022, by the **U.S. Court of Appeals for the 4th Circuit**, <https://www.ca4.uscourts.gov/>, held that the Federal Judiciary itself and its officers, including judges in their official and individual capacities, can be held accountable for their performance and liable

to compensation.

13. Forms

250. E.g., District Courts—Civil (Vols. 2-4A, West's® Federal Forms); <https://store.legal.thomsonreuters.com/law-products/Forms---Topical/District-CourtsmdashCivil-Vols-2-4A-Westsreg-Federal-Forms/p/100001667>
251. Bankruptcy Courts (Vols. 6-6C, West's® Federal Forms); <https://store.legal.thomsonreuters.com/law-products/Forms---Topical/Bankruptcy-Courts-Vols-6-6C-Wests174-Federal-Forms/p/100001669>

14. Judicial Conference of the U.S. (the highest policy-making and disciplinary body of the Federal Judiciary)

252. 28 USC §331. Judicial Conference; <https://uscode.house.gov/download/download.shtml>
253. <https://www.uscourts.gov/about-federal-courts/governance-judicial-conference>, which contains a list of its 20 committees
254. The Chief Justice appoints the members of the Judicial Conference committees; <https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference>
255. Reports of the Judicial Conference's biannual meetings, <https://www.uscourts.gov/about-federal-courts/reports-proceedings-judicial-conference-us>
256. Regulations on judges' annual mandatory financial disclosure reports, <https://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies/financial-disclosure-report-regulations>

15. Administrative Office of the U.S. Courts (federal, as opposed to state, courts)

257. **Administrative Office** of the U.S. Courts (AO); <https://www.uscourts.gov/>
258. <https://www.uscourts.gov/federal-court-finder/search>
259. Administrative Office of the U.S. Courts; (**28 USC §§601-613**); <http://Judicial-Discipline-Reform.org/docs/28usc.pdf>
260. <https://www.uscourts.gov/statistics-reports>
261. Annual Report of the Director of the Administrative Office of the U.S. Courts, filed with Congress as a public document(**28 USC §604(a)(3-4)**); the Director is appointed by the Chief Justice of the Supreme Court(**§601**); <https://www.uscourts.gov/statistics-reports/analysis-reports/directors-annual-report>
262. <https://www.uscourts.gov/statistics-reports/annual-report-2021>
263. https://www.uscourts.gov/news/2022/03/15/judiciary-releases-annual-report-and-judicial-business-2021?utm_campaign=usc-news&utm_medium=email&utm_source=govdelivery
264. <https://www.uscourts.gov/statistics-reports/judicial-business-2020>
265. <https://www.uscourts.gov/statistics-reports/analysis-reports/judicial-facts-and-figures>
266. http://Judicial-Discipline-Reform.org/statistics&tables/num_jud_officers.pdf
267. Table 2

Number of federal judicial officers			
https://www.uscourts.gov/statistics-reports/judicial-business-2020			
Categories of federal judicial officers	30sep18	30sep19	30sep20
Supreme Court justices	9	9	9
circuit judges	166	175	179
senior circuit judges (semi-retired)	96	100	99
district judges id.	562	585	621
senior district judges	412	423	419
bankruptcy judges (including recalled judges)	350	344	334
magistrates (including recalled judges)	664	671	680
Totals	2259	2307	2341

309. <https://www.uscourts.gov/statistics-reports/judicial-business-2020-tables>; and
310. <https://www.uscourts.gov/statistics-reports/annual-report-2019>
311. <https://www.uscourts.gov/judicial-business-2019-tables>
312. AO’s 1997-2019 judicial business reports, containing the statistics on complaints about federal judges in Table S-22(28 USC §604(h)(2)); <https://www.uscourts.gov/statistics-reports/analysis-reports/judicial-business-united-states-courts>
313. <https://www.uscourts.gov/statistics-reports/judicial-business-2019j>
314. Judicial misconduct procedure, e.g., in the Court of Appeals for the District of Columbia Circuit; <https://www.cadc.uscourts.gov/internet/home.nsf/Content/Judicial+Misconduct>
315. <https://www.uscourts.gov/services-forms/fees/court-appeals-miscellaneous-fee-schedule>

16. Federal Judicial Center (for research; and education of judges)

316. <https://www.fjc.gov>
317. List of the 8 impeached federal judges since the creation of the Federal Judiciary in 1789; <https://www.fjc.gov/history/judges/impeachments-federal-judges>

17. PACER and other and other case and court finders

318. Public Access to Court Electronic Records (PACER); <https://pacer.uscourts.gov/>
319. Case Management/Electronic Case Filing (CM/ECF); <https://www.uscourts.gov/court-records/electronic-filing-cmecf>
320. Cf. <https://store.legal.thomsonreuters.com/law-products/Publication-Types/Statutes/c/20196>
321. To find the website of each federal court, where its cases are posted go to <https://www.uscourts.gov/federal-court-finder/search>

18. Other federal entities and people

322. White House press release of April 9, 2021, “**President Biden to Sign Executive Order Creating the Presidential Commission on the Supreme Court of the United States**”; <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/09/president-biden-to-sign-executive-order-creating-the-presidential-commission-on-the-supreme-court-of-the-united-states/>
323. Presidential Commission on the Supreme Court of the United States (PCSCOTUS): Commission charge and public comment policy; 14 June 2021; <https://www.regulations.gov/document/PCSCOTUS-2021-0001-0003/comment>
324. Office of Professional Responsibility of the U.S. Department of Justice; <https://www.justice.gov/opr>
325. Judges’ annual mandatory financial disclosure reports, collected by, and downloadable from, JudicialWatch.org; <https://www.judicialwatch.org/documents/categories/financial-disclosure/>
326. <https://www.iasd.uscourts.gov/content/senior-district-judge-robert-w-pratt>

19. United States Postal Service

327. <https://facts.usps.com/#:~:text=For%2055%20cents%2C%20anyone%20can%20send%20a%20letter%2C,mail%20pieces%20each%20day.%20Zero%20tax%20dollars%20used>

20. Sources of state legal authority

a. Treatises

328. E.g., <https://store.legal.thomsonreuters.com/law-products/Publication-Types/Treatises/c/20231>

b. State constitution and laws

329. https://legal.thomsonreuters.com/en/products/law-books/jurisdictions?gclid=EAlaIqobChMImbuX1sHh8gIVh9zICh0mTgt-EAAYASACEgl0nfD_BwE&searchid=TRPPCSOL/Google/PrintUS_PP_Law-Books_Main_Search_Brand-Phrase_US/TRLegalBooks-Phrase&chl=ppc&cid=9015549&sfidccampaignid=7014000000vZOgQAM&ef_id=EAlaIqobChMImbuX1sHh8gIVh9zICh0mTgt-EAAYASACEgl0nfD_BwE:G:s&s_kwid=AL!7944!3!440994957489!p!!g!!!thomson%20reuters%20legal%20books
330. Search for a compilation of all state codes, laws, rules, and regulations; e.g., [McKinney's Consolidated Laws of New York Annotated® \(Annotated Statute & Code Series\)](https://store.legal.thomsonreuters.com/law-products/search?r=13001&s=KEYWORDSEARCH&q=consolidated+laws+of+new+york); <https://store.legal.thomsonreuters.com/law-products/search?r=13001&s=KEYWORDSEARCH&q=consolidated+laws+of+new+york>

c. Uniform laws (the product of agreements among the states)

331. Uniform Laws Annotated; <https://store.legal.thomsonreuters.com/law-products/Uniform-Laws-Annotated/Uniform-Laws-Annotated/p/100028543>
332. Uniform Commercial Code; <https://store.legal.thomsonreuters.com/law-products/Uniform-Laws-Annotated/Uniform-Commercial-Code-2020-2021-ed/p/106675446?trkcode=recspdpb&trktype=internal&FindMethod=recs>

d. Restatement of laws

333. <https://store.legal.thomsonreuters.com/law-products/search?r=13001&s=KEYWORDSEARCH&q=restatement+of+laws>

e. Rules of procedure applicable in all the courts of a state

334. E.g., [McKinney's New York Civil Practice Law and Rules](https://store.legal.thomsonreuters.com/law-products/Jurisdictions/New-York/c/20075), 2020 ed.; <https://store.legal.thomsonreuters.com/law-products/Jurisdictions/New-York/c/20075>

1) Rules of the specific court where a brief is being filed; e.g., in New York; <https://www.nycourts.gov/courts/index.shtml>

335. Rules of the Chief Judge, <http://ww2.nycourts.gov/rules/chiefjudge/index.shtml>, of the Court of Appeals, <https://www.nycourts.gov/courts/courtofAppeals.shtml>, the highest NY State court (#1- to 81)
336. Rules of the Chief Administrative Judge (#100 to 154), <http://ww2.nycourts.gov/rules/chiefadmin/index.shtml>
337. Uniform Rules of the New York State trial courts (#200 to 221), <http://ww2.nycourts.gov/rules/trialcourts/index.shtml>; e.g., the supreme and the county courts; <http://ww2.nycourts.gov/rules/trialcourts/202.shtml>.
- a. Rules of the First Department Supreme Court [of four departments], which in NY is a trial court; <http://ww2.nycourts.gov/courts/1jd/supctmanh/Commencement-of-Cases-2.shtml>
 - b. There are uniform rules (#205 to 221) for specialized courts, e.g., family and surrogate, capital cases, and particular activities, e.g., jury selection, depositions
338. Joint Rules of the Departments of the Appellate Division (partial: 22 NYCRR Parts 1200-1400); <http://ww2.nycourts.gov/rules/jointappellate/index.shtml>
- a. Rules of the Appellate Division, First Judicial Department, of the Supreme Court of the State of New York; <https://nycourts.gov/courts/AD1/Practice&Procedures/index.shtml>
339. Each court may have supplementary rules of its own as well as rules of specific judges...so much for a New York State Unified Court System.

f. Regulations of the state administrative agencies

340. Go to the state's department of state; Google the state administrative agency; or search for a compilation of the state codes, laws, rules, and regulations
341. E.g., <https://govt.westlaw.com/nycrr/Index?bhcp=1&transitionType=Default&contextData=%28sc.Default%29>
342. E.g., <https://store.legal.thomsonreuters.com/law-products/Statutes/New-York-Codes-Rules-and-Regulations-NYCRR/p/100019553>

g. Bills pending in the state legislature

343. E.g. <https://www.nysenate.gov/legislation>

h. State cases

344. For information on state cases Google the highest court in the state, which may have a state court

locator or a “Links of interest”; otherwise, Google the lower state court in question, which may have a website and post its cases to it; e.g., <https://nycourts.gov/courts/>

345. E.g., Court of Appeals of the State of New York (the highest court in New York State), <https://www.nycourts.gov/ctapps/index.htm>
346. E.g., <https://nycourts.gov/courts/cts-NYC-SUPREME.shtml> (the supreme courts in NYS are trial courts)
347. E.g., Supreme Court for the County of New York (Manhattan and Bronx) <http://ww2.nycourts.gov/courts/1jd/supctmanh/index.shtml>

i. Forms

348. E.g., Domestic Relations (Volume 7, West’s Legal Forms); <https://store.legal.thomsonreuters.com/law-products/Forms---Topical/Domestic-Relations-Vol-7-Westsreg-Legal-Forms/p/100001671>

j. Cases from the Federal Judiciary and from other states

21. Entities representing state courts and compiling their statistics

349. Conference of **Chief Justices** of the states; <https://ccj.ncsc.org>
350. National Center for State Courts; www.ncsc.org/services-and-experts/areas-of-expertise/court-statistics
351. Court Statistics Project; <https://www.courtstatistics.org/court-statistics>
<https://www.courtstatistics.org/court-statistics>
352. Conference of State Court **Administrators** (COSCA); <https://cosca.ncsc.org>
353. National Association for Court **Management** (NACM); <https://nacmnet.org>
354. National Conference of Appellate **Court Clerks** (NCACC); www.appellatecourtclerks.org
355. Number of cases filed in state courts annually; http://Judicial-Discipline-Reform.org/docs/num_state_cases_07.pdf

22. Rules and codes of conduct for judges and lawyers

356. Code of Conduct for U.S. Judges; <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>
357. American Bar Association Model **Rules** of Professional Conduct; https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/
358. American Bar Association Model **Code** of Judicial Conduct; https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/
359. New York Rules of Professional Conduct; <https://nysba.org/attorney-resources/professional-standards/>

23. Reports by media outlets and VIPs that have exposed judges

a. Reports exposing judges

360. The Teflon Robe; Michael Berens and John Shiffman; Thomson Reuters:

- a. Part 1, 30jun20; <https://www.reuters.com/investigates/special-report/usa-judges-misconduct/>
- b. Part 2, 9july20; <https://www.reuters.com/investigates/special-report/usa-judges-deals/>
- c. Part 3, 14juy21; <https://www.reuters.com/investigates/special-report/usa-judges-commissions/>
- d. <https://www.reuters.com/article/us-usa-judges-commissions-snapshot-idUSKCN24F1E4>
- e. 30jun20; <https://www.reuters.com/investigates/special-report/usa-judges-methodology-ganda/>
- f. <https://www.reuters.com/investigates/special-report/usa-judges-data/>

361. In the secret courts of Massachusetts – A Globe Spotlight report; Jenn Abelson, Nicole Dungca, and Todd Wallack; edited by Patricia Wen; The Boston Globe; 30sep18

- a. <https://apps.bostonglobe.com/spotlight/secret-courts/>

362. *The Wall Street Journal*; James.Grimaldi@wsj.com; <https://www.wsj.com/news/author/james-v-grimaldi>; Coulter.Jones@wsj.com; <https://www.wsj.com/news/author/coulter-jones>; reach Mr. Jones at 212-416-3778; Joe.Palazzolo@wsj.com; <https://www.wsj.com/news/author/joe-palazzolo>

- a. 131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest; https://www.wsj.com/articles/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-a-financial-interest-11632834421?fbclid=IwAR17veisSou0tQJdrn4VM9Ssvk_JYFqCY-Foselbnkb1SsNx2ia1Fji1GAQ; 28sep21;

1) updated under the title "Federal Judges Heard Cases Despite a Financial Interest"; 29sep21; https://www.wsj.com/articles/how-the-journal-found-judges-violations-of-law-on-conflicts-11632833775?mod=Searchresults_pos11&page=1

2) updated under the title: Dozens of Federal Judges Had Financial Conflicts: What You Need to Know: A Wall Street Journal investigation finds more than 130 federal judges unlawfully ruled in cases involving companies in which they or their families held shares; *Michael Siconolfi, Coulter Jones, Joe Palazzolo, and James V. Grimaldi*; WSJ; April 27, 2022; <https://www.wsj.com/articles/dozens-of-federal-judges-broke-the-law-on-conflicts-what-you-need-to-know-11632922140>

A Wall Street Journal investigation found that 152 federal judges around the nation have violated U.S. law and judicial ethics by overseeing 1,076 [court cases](#) involving companies in which they or their family owned stock.

As a result of the Journal's reporting, judges in 883 cases have notified courts that they presided in the lawsuits improperly and that the cases are eligible to be reopened.

- b. Texas Judge Leads Tally of Cases With Financial Conflicts --- Gilstrap didn't recuse in 138 suits involving firms in which he or his wife had an interest; 30sep21
- c. Judges or Their Brokers Bought And Sold Stocks of Litigants --- 61 report trades made while they oversaw suits involving the companies; 16oct21
- d. U.S. News: Bill Would Toughen Stock-Trading Rules for Federal Judges; 26oct21
- e. Hidden Interests - Federal Judge Files Recusal Notices in 138 Cases After WSJ Queries. Rodney Gilstrap initially argued he didn't violate financial-conflicts law; 2nov21

- f. U.S. News: Judge Acknowledges Possible Recusal Errors; 3nov21
 - g. U.S. News: Bill on Judge Disclosures Passes House Panel; 18nov21
 - h. U.S. News: Bill Gains To Speed Disclosure by Judges; 2dec21
363. Federal Judges Admit Conflicts Of Interests, Leaving Litigants Reeling; HuffPost Latest News; Henry Kerali contributed to this report; Center For Public Integrity; Apr 28, 2014, 12:50 PM; https://www.huffpost.com/entry/judges-conflicts-of-interest_n_5227031
364. House panel to explore impeachment, judicial ethics in wake of Ginni Thomas texts; Emily Brooks; *The Hill*; April 2, 2022; [https://thehill.com/news/house/3466200-house-panel-to-explore-impeachment-judicial-ethics-in-wake-of-ginni-thomas-texts/?email=dcd9182650c7057d9562f94b9683d2cb21956491&emaila=196e19bbfcd9590d53fee9f4e29783&emailb=3ec1a5012e1dfb515ec80cc7ab0f7d18aedc7608c79a990da27e4e0908e91fd4&utm_source=Sailthru&utm_medium=email&utm_campaign=04.26.22%20RZ%20The%20Hill%20News%20Alert%20SCOTUS%20impeachments&utm_term=News%20Alerts](https://thehill.com/news/house/3466200-house-panel-to-explore-impeachment-judicial-ethics-in-wake-of-ginni-thomas-texts/?email=dcd9182650c7057d9562f94b9683d2cb21956491&emaila=196e19bbfcd9590d53fee9f4e29783&emailb=3ec1a5012e1dfb515ec80cc7ab0f7d18aedc7608c79a990da27e4e0908e91fd4&utm_source=Sailthru&utm_medium=email&utm_campaign=04.26.22%20RZ%20The%20Hill%20News%20Alert%20SCOTUS%20impeachments&utm_term=News%20Alertshttps://thehill.com/news/house/3466200-house-panel-to-explore-impeachment-judicial-ethics-in-wake-of-ginni-thomas-texts/?email=dcd9182650c7057d9562f94b9683d2cb21956491&emaila=196e19bbfcd9590d53fee9f4e29783&emailb=3ec1a5012e1dfb515ec80cc7ab0f7d18aedc7608c79a990da27e4e0908e91fd4&utm_source=Sailthru&utm_medium=email&utm_campaign=04.26.22%20RZ%20The%20Hill%20News%20Alert%20SCOTUS%20impeachments&utm_term=News%20Alerts)
365. Senator Elizabeth Warren’s “I have a plan for the Federal Judiciary too”; <https://elizabethwarren.com/plans/restore-trust?source=soc-WB-ew-tw-ro>
366. Several of the above-listed reports are collected at http://Judicial-Discipline-Reform.org/OL2/financially_conflicted_judges.pdf

b. Reports with leads and methodology useful for investigating judges

367. Pandora Papers; International Consortium of Investigative Journalists, Washington, D.C.; 3oct21; <https://www.icij.org/investigations/pandora-papers/>

24. Journalists and media outlets

368. CBS newsanchor Norah O'Donnell interviews Candidate Joe Biden on October 22, 2020, on 'packing the Supreme Court'; <https://www.youtube.com/watch?v=enEzm-QL5RY>
369. *Biden’s court-reform commission hears from experts on term limits and judicial review*; Mitchell Jagodinski; SCOTUSblog (July 1, 2021, 8:45 AM); <https://www.scotusblog.com/2021/07/bidens-court-reform-commission-hears-from-experts-on-term-limits-and-judicial-review/>
370. **The Associated Press**; <https://www.ap.org/about/>

25. Entities accrediting educational institutions (and serving as portals to them)

371. (journalism schools) <http://www.acejmc.org/accreditation-reviews/accredited-programs/accreditedreaccredited/>
372. https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/
373. (business schools) <https://acbsp.org/page/contact-event>
374. https://www.academia.edu/upgrade?feature=searchm&stm_copy=a+thesis+chapter&trigger=stm; consortium of 16,941+ universities to enable the storage and retrieval of professional articles and reports)

26. Law book publishers

375. <https://legal.thomsonreuters.com/en/products/law-books>
376. <https://legal.thomsonreuters.com/en/support#contact>
377. https://store.legal.thomsonreuters.com/law-products/Jurisdictions/New-York/c/20075?elq_mid=23169&elq_cid=15386188&elq_ename=P_PRNT_PRD_9030215_EMUSNPR1REMNyTitles_em1_20201209&cid=9030215&email=drrcordero%40judicial-discipline-reform.org&sfdccampaignid=7014O000000vZOgQAM&campaignCode=&chl=Em&utm_medium=email&utm_source=eloqua&utm_campaign=P_PRNT_PRD_9030215_EMUSNPR1REMNyTitles_20201209&utm_content=9030215
378. <https://www.lexisnexis.com/en-us/home.page>

27. Other private entities and people

379. American Association of University Professors, <https://www.aaup.org/report/statement-professional-ethics>
380. American Association of Retired People; <https://press.aarp.org/?intcmp=FTR-LINKS-PRO-PRESS2-EWHERE>
381. Judicial Watch, <https://www.judicialwatch.org>
 - a. Judicial Watch's repository of judges' financial disclosure reports, <https://www.judicialwatch.org/documents/categories/financial-disclosure/>
 - b. Judicial Watch representing former CBS reporter Sharyl Attkisson in her suit against the U.S. Department of Justice for hacking her office and home computers, for which she is demanding \$35 million in damages; <https://www.judicialwatch.org/cases/sharyl-attkisson-judicial-watch-v-u-s-department-justice-no114-cv-01944/>

Appendix 7

Two blocs of email addresses of journalists, media outlets, professors, and students who can be persuaded to hold **UNPRECEDENTED CITIZENS HEARINGS** on judges' unaccountability and consequent riskless abuse of power.

Place each in the To: box of separate emails containing your story of abuse that you have suffered or witnessed. You can easily write it in up to 500 words by applying the [two-phase method](#). By so doing, your story will be informative, accurate, and verifiable by those who can enable you to tell it at the hearings.‡

To: [journalists and media officers]

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twallack@gmail.com, newstip@globe.com, spotlight@globe.com, brian.mcgrory@globe.com,
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jimwdean@aol.com, investigate@ap.org, ajaffe@thehill.com, Thehill@email.thehill.com,
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communication@lexisnexis.com, aglantz@stanford.edu, joepatrice@abovethelaw.com,
info@mail.huffpost.com, tips@thedailybeast.com, aturturro@alm.com, Opencourt@cnn.com,
letters@nytimes.com, contact_us@spectacularjournals.org, Matt.Rocheleau@globe.com,
oped@nytimes.com, jmaxeiner@ubalt.edu, Jackie.Botts@thomsonreuters.com,
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To: [lawyers and professors]

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mkang@northwestern.edu, ojohns@law.columbia.edu, lacroix@uchicago.edu,
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End Page

‡ http://Judicial-Discipline-Reform.org/OL2/DrRCordero_individual_files_links.pdf

* http://Judicial-Discipline-Reform.org/OL3/DrRCordero-Honest_Jud_Advocates3.pdf >OL3:1143-1555+

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