

# STATE OF NEW YORK

8034

2019-2020 Regular Sessions

## IN ASSEMBLY

May 30, 2019

Introduced by M. of A. DINOWITZ -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to class actions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision b of section 901 of the civil practice law and  
2 rules, as added by chapter 207 of the laws of 1975, is amended to read  
3 as follows:

4 b. [~~Unless a statute creating or imposing a penalty, or a minimum~~  
5 ~~measure of recovery specifically authorizes the recovery thereof in a~~  
6 ~~class action, an action to recover a penalty, or minimum measure of~~  
7 ~~recovery created or imposed by statute may not be maintained as a class~~  
8 ~~action]~~ Once the other prerequisites under subdivision a of this section  
9 have been satisfied, class certification shall not be considered an  
10 inferior method for fair and efficient adjudication on the grounds that  
11 the action involves a governmental party or governmental operations.

12 § 2. Section 902 of the civil practice law and rules, as amended by  
13 chapter 474 of the laws of 1975, is amended to read as follows:

14 § 902. Order allowing class action[~~. Within sixty days after the time~~  
15 ~~to serve a responsive pleading has expired for all persons named as~~  
16 ~~defendants in an action brought as a class action, the plaintiff shall~~  
17 ~~move for an order to determine whether it is to be so maintained]~~ and  
18 appointing class counsel. a. At an early practicable time after a person  
19 sues or is sued as a class representative, the court must determine by  
20 order whether to certify the action as a class action. An order under  
21 this section may be conditional, and may be altered or amended before  
22 the decision on the merits on the court's own motion or on motion of the  
23 parties. The action may be maintained as a class action only if the  
24 court finds that the prerequisites under section 901 of this article

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 have been satisfied. Among the matters which the court shall consider in  
2 determining whether the action may proceed as a class action are:

3 1. the interest of members of the class in individually controlling  
4 the prosecution or defense of separate actions;

5 2. the impracticability or inefficiency of prosecuting or defending  
6 separate actions;

7 3. the extent and nature of any litigation concerning the controversy  
8 already commenced by or against members of the class;

9 4. the desirability or undesirability of concentrating the litigation  
10 of the claim in the particular forum;

11 5. the difficulties likely to be encountered in the management of a  
12 class action.

13 b. Unless a statute provides otherwise, the order permitting a class  
14 action shall appoint class counsel. In appointing class counsel, the  
15 court:

16 1. shall consider:

17 (i) the work counsel has done in identifying or investigating poten-  
18 tial claims in the action;

19 (ii) counsel's experience in handling class actions, other complex  
20 litigation, and the types of claims asserted in the action;

21 (iii) counsel's knowledge of the applicable law; and

22 (iv) the resources that counsel will commit to representing the class;

23 2. may consider any other matter pertinent to counsel's ability to  
24 fairly and adequately represent the interests of the class;

25 3. may order potential class counsel to provide information on any  
26 subject pertinent to the appointment and to propose terms for attorneys'  
27 fees and nontaxable costs;

28 4. may include in the appointing order provisions about the award of  
29 attorneys' fees or nontaxable costs under rule 909 of this article; and

30 5. may make further orders in connection with the appointment.

31 c. When one applicant seeks appointment as class counsel, the court  
32 may appoint that applicant only if the applicant is adequate under  
33 subdivisions b and e of this section. If more than one adequate appli-  
34 cant seeks appointment, the court must appoint the applicant best able  
35 to represent the interests of the class.

36 d. The court may designate interim counsel to act on behalf of a puta-  
37 tive class before determining whether to certify the action as a class  
38 action.

39 e. Class counsel must fairly and adequately represent the interests of  
40 the class.

41 § 3. Rule 908 of the civil practice law and rules, as added by chapter  
42 207 of the laws of 1975, is amended to read as follows:

43 Rule 908. [~~Dismissal~~] Voluntary dismissal, discontinuance [~~or~~],  
44 compromise or settlement. [~~A class action~~] The claims, issues or

45 defenses of a class shall not be voluntarily dismissed, discontinued,  
46 [~~or~~] compromised, or settled without the approval of the court. [~~Notice~~

47 ~~of the proposed dismissal, discontinuance, or compromise shall be given~~  
48 ~~to all members of the class in such manner as the court directs.~~] The

49 following procedures apply to a proposed voluntary dismissal, discontin-  
50 uance, compromise or settlement:

51 a. In class actions where a class has been certified, reasonable  
52 notice of the proposal shall be given to the class in such a manner as  
53 the court directs to all class members who would be bound by the  
54 proposal.

55 b. The court shall direct that notice be given to members of a class  
56 or putative class not otherwise entitled to notice under subdivision a

1 of this rule where the court finds that such notice is necessary to  
2 protect the interest of such members.

3 c. The content of the notice and the expenses of notification shall be  
4 governed by subdivisions (c) and (d) of section 904 of this article.

5 d. If the proposal would bind class members, the court may approve it  
6 only after a hearing and on finding that it is fair, reasonable, and  
7 adequate.

8 e. The parties seeking approval must file a statement identifying any  
9 agreement made in connection with the proposal.

10 f. In class actions where notice to the class was given pursuant to  
11 subdivision (b) of section 904 of this article, the court, before  
12 approving a voluntary dismissal, discontinuance, compromise, or settle-  
13 ment of a class action, may direct that notice thereof afford a new  
14 opportunity to request exclusion from the class to class members who had  
15 an earlier opportunity to request exclusion but did not do so.

16 g. Any class member may object to the proposal if it requires court  
17 approval under this rule; the objection may be withdrawn only with the  
18 court's approval. Unless approved by the court, no payment or other  
19 consideration may be provided to an objector or objector's counsel in  
20 connection with (i) foregoing or withdrawing an objection, or (ii) fore-  
21 going, dismissing, or abandoning an appeal from a judgment approving the  
22 proposal.

23 § 4. Rule 909 of the civil practice law and rules, as amended by chap-  
24 ter 566 of the laws of 2011, is amended to read as follows:

25 Rule 909. Attorneys' fees. If a judgment in an action maintained as a  
26 class action is rendered in favor of the class, the court in its  
27 discretion may award attorneys' fees to the representatives of the class  
28 and/or to any other person that the court finds has acted to benefit the  
29 class based on the reasonable value of legal services rendered and if  
30 justice requires and to the extent not otherwise limited by law, allow  
31 recovery of the amount awarded from the opponent of the class.

32 § 5. This act shall take effect on the first of January next succeed-  
33 ing the date on which it shall have become a law.