



# A Practitioner's Guide to Class Actions

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## RHODE ISLAND

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### *I. Introduction*

Although not identical to its federal counterpart, Rhode Island Rule of Civil Procedure 23 (Rhode Island Rule) is substantially in accord with Federal Rule of Civil Procedure 23.<sup>1</sup> It differs primarily because Rhode Island has not adopted the 2003 amendments to Federal Rule 23.<sup>2</sup> In addition to this distinction, Rhode Island court decisions interpreting the rules governing class actions have shed light on several other nuances that have become apparent because of the courts' interpretation of Rhode Island Rule 23 and its interplay with other state statutes and rules.

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### *II. Jurisdiction*

As with any civil action, class actions must be commenced in a proper jurisdiction. Ordinarily class actions in Rhode Island are commenced in the superior court, which has original jurisdiction in all civil matters where the amount in controversy exceeds \$10,000 and concurrent jurisdiction with the district court in civil matters where the amount in controversy is between \$5,000 and \$10,000.<sup>3</sup> However, the Rhode Island Supreme Court has suggested that the district court, which has original jurisdiction in civil actions where the amount in controversy is less than \$5,000 and certain other matters specified by statute,<sup>4</sup> may entertain a class action notwithstanding the absence of any rule of procedure providing for such

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1. *Zarella v. Minn. Mut. Life Ins. Co.*, 824 A.2d 1249, 1263 n.16 (R.I. 2003) ("Rhode Island Rule 23 is a carbon copy of Rule 23 of the Federal Rules of Civil Procedure.").

2. ROBERT B. KENI, ET AL., RHODE ISLAND CIVIL AND APPELLATE PROCEDURE § 23:4 (2006).

3. R.I. GEN. LAWS § 8-2-14.

4. R.I. GEN. LAWS § 8-8-3.

an action.<sup>5</sup> In *Seibert v. Clark*,<sup>6</sup> the Rhode Island Supreme Court noted that “[t]he absence of a specific rule permitting class actions in District Court does not prohibit them in all cases.”<sup>7</sup> The court reasoned that class actions were available in the superior court long before the adoption of Rhode Island Rule of Civil Procedure 23 in 1966, therefore the fact that the district court has not adopted a similar version of Rule 23 does not foreclose the possibility of commencing a class action there.<sup>8</sup>

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### III. Class Certification

Having not adopted the 2003 amendments, the Rhode Island Superior Court is required to make class certification decisions “as soon as practicable.”<sup>9</sup> Relying on federal case law construing the pre-2003 Federal Rule, however, the Rhode Island Supreme Court has noted that “although the words ‘as soon as practicable’ are not without effect, ‘there is no set deadline by which the court must act.’”<sup>10</sup> Nevertheless, the court has held, given the facts and circumstances of one case, that an eight-and-a-half-year delay in seeking Rhode Island Rule 23 certification was untimely.<sup>11</sup> Conversely, however, the court has also affirmed a trial justice’s conclusion that a plaintiff’s motion, which sought class certification almost two years after the suit was initiated, was timely because the delay was caused by procedural issues that were resolved shortly before the plaintiff sought class certification.<sup>12</sup>

The hearing on a party’s motion for class certification must be on the record and may not be substituted by an unrecorded chambers conference.<sup>13</sup> At this hearing, a party seeking class certification bears the burden of proof, but this burden is light.<sup>14</sup> Identical to the federal Rule, in Rhode Island a party seeking class certification must show “(1) there are a sufficient number of class members to make joinder impracticable; (2) there are common legal or factual issues which can be efficiently adjudicated by the court on a classwide basis; (3) the claims of the chosen representative are typical of those of the members of the class; and (4) the chosen representative and attorney will vigorously and adequately represent the interest of all

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5. *Seibert v. Clark*, 619 A.2d 1108 (R.I. 1993).

6. *Id.*

7. *Id.* at 1112.

8. *Id.*

9. R.I. R. Civ. P. 23(c)(1).

10. *Zarella*, 824 A.2d at 1263 n.16 (quoting *Ayuda, Inc. v. Reno*, 7 F.3d 246, 253 (D.C. Cir. 1993)).

11. *Cabana v. Littler*, 612 A.2d 678, 686 (R.I. 1992).

12. *Zarella*, 824 A.2d at 1263 n.16.

13. *Cabana*, 612 A.2d at 684.

14. *Id.*

class members.”<sup>15</sup> The court must make a finding that the class action will fairly ensure adequate representation of the parties, and the “parties may not usurp this power from the court nor can the court abdicate this responsibility.”<sup>16</sup> Accordingly, “parties may not stipulate to the existence of a class in lieu of an independent judicial determination made after an on-the-record hearing.”<sup>17</sup> In addition to these stated prerequisites, as is the case with federal class actions, class actions in Rhode Island must satisfy one of the subsections in Rhode Island Rule 23(b).<sup>18</sup> Taking guidance from the federal courts, the Rhode Island Supreme Court has expressed preference for certifying class actions under Rule 23(b)(1) or (2) over certifying an action under Rule 23(b)(3).<sup>19</sup>

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#### IV. *Lawyers and Attorney Fees*

In view of the fact that Rhode Island has not adopted the 2003 amendments to Federal Rule 23, section (g) (“Class Counsel”) and section (h) (“Attorney’s Fees and Nontaxable Costs”) of Federal Rule 23 are absent from Rhode Island Rule 23. In practice, however, these omissions likely have little substantive impact on a case. For example, although Federal Rule 23(h) includes a provision for attorney fees, as a practical matter, it does not create any new grounds for an award of attorney fees. Therefore, as in federal class actions, an award of attorney fees in Rhode Island is dependent on whether such fees are otherwise authorized for the particular action.<sup>20</sup>

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#### V. *Appeals*

The Rhode Island Supreme Court affords great deference to a trial justice’s decision to certify a class pursuant to Rule 23.<sup>21</sup> Therefore, a trial justice’s decision “will not

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15. *Id.* at 685.

16. *Id.*

17. *Id.* (concluding that the trial justice erred in accepting a stipulation from the parties of class certification).

18. *DeCesare v. Lincoln Benefit Life Co.*, 852 A.2d 474, 490 (R.I. 2004); accord *Cazabat v. Metro. Prop. & Cas. Ins. Co.*, C.A. No. KC99-544, 2001 R.I. Super. LEXIS 27, at \*6 (Feb. 23, 2001).

19. *DeCesare*, 852 A.2d at 490 (recognizing that members of a class certified under Rule 23(b)(1) or (2) cannot opt out of the action, while members of a class certified under Rule 23(b)(3) are entitled to opt out).

20. Compare *Int’l Ass’n of Machinists & Aerospace Workers v. Affleck*, 504 A.2d 468, 471–72 (R.I. 1986) (upholding trial justice’s award of attorney fees in class action suit where such fees were authorized by statute) with *W. Sur. Co. v. Lums of Cranston, Inc.*, 618 F.2d 854, 855 (1st Cir. 1980) (upholding district court’s denial of attorney fees to a losing defendant class because Rhode Island law did not authorize such an award of fees).

21. *DeCesare*, 852 A.2d at 487 (likening the standard of review to that employed when reviewing findings of a trial justice sitting without a jury).

be disturbed unless the trial court misconceived material evidence, substantially abused its discretion, or was otherwise clearly wrong."<sup>22</sup>

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## VI. *Statutory Authorization for Certain Class Actions*

By statute, the Rhode Island General Assembly has authorized the maintenance of numerous class actions. As one example, subject to certain exceptions, Rhode Island General Laws section 6-47-1 authorizes the state's attorney general to maintain a class action on behalf of recipients of unsolicited advertisements received by facsimile.<sup>23</sup> Similarly, Rhode Island General Laws section 11-52.2-6 authorizes victims of software fraud and the state's attorney general to maintain class action suits for various forms of software fraud made unlawful under that chapter.<sup>24</sup> Despite the general assembly's statutory authorization of numerous forms of class actions, maintenance of such class actions remains subject to and governed by Rhode Island Rule 23.<sup>25</sup>

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22. *Id.*

23. R.I. GEN. LAWS § 6-47-1.

24. R.I. GEN. LAWS §§ 11-52.2-6; 6-13.1-5.2.

25. R.I. GEN. LAWS § 8-6-2(a) (specifying that Rhode Island's Rules of Civil Procedure prevail over conflicting state statutes); *see also Johnston Businessmen's Ass'n v. Aarussillo*, 108 R.I. 257, 261, 274 A.2d 433, 436 (1971).