September 14, 2026

Carolyn A. Dubay, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, D.C. 20544

Re: Disclosure of Nonparty Participation in Litigation

Dear Ms. Dubay:

We write on behalf of our organizations to urge the Advisory Committee on Civil Rules (the "Advisory Committee") to amend the Federal Rules of Civil Procedure ("the Federal Rules" or "FRCP") to require disclosure of nonparty litigation funders who, under the current rules, participate in litigation and court judgments on a clandestine basis—that is, without disclosing their involvement and the nature of their interests to the court, to other parties, or to the general public. Specifically, we support adoption of the specific FRCP amendment proposed in the March 10, 2026, submission to the Advisory Committee by Lawyers for Civil Justice ("LCJ") and the U.S. Chamber Institute for Legal Reform ("ILR").[1]

The Federal Rules reflect and enforce a prevailing principle: courts, parties, and the public should be able to identify the persons and entities that have a financial interest in litigation. That principle underlies rules requiring litigation to proceed "in the name of the real party in interest" (FRCP 17), disclosure of business organizations with a 10 percent or greater ownership interest in a party (FRCP 7.1), and disclosure of insurance agreements where nonparty insurers may be liable for all or part of a judgment, which may give those insurers influence over the litigation or its resolution (FRCP 26(a)(1)(A)(iv)). Disclosure of nonparty financial interests is essential to the function of all of these.[2]

Given the Federal Rules' emphasis on transparency about financial interests in litigation, the absence of a TPLF disclosure requirement is inexplicable. Contracts for litigation funding directly or indirectly give nonparty funders a share of judgments and settlements and provide a basis for influencing or controlling litigation and settlement decisions. Indeed, a recent LCJ examination of TPLF contracts that have come to light demonstrates that they often give funders significant

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[1] Lawyers for Civil Justice and the U.S. Chamber Institute for Legal Reform, *A Revised Proposal: Amend Rule 26(a)(1)(A) to Guide Courts and Parties on TPLF Disclosure while Preserving Judicial Discretion and Protecting Parties' Assertions of Privilege* (Mar. 10, 2026), https://www.uscourts.gov/sites/default/files/document/26-cv-8_suggestion_from_lcj_ilr_-_rule_26.pdf ("*Rule Proposal*").

[2] Lawyers for Civil Justice and the U.S. Chamber Institute for Legal Reform, *It Is Time to Address the Patchwork of Inadequate Practices: How the Lack of FRCP Guidance Is Failing Courts and Parties Who Need a Uniform and Credible Procedure for Understanding Third-Party Litigation Funding Agreements*, at 2 (Oct. 2, 2024), https://www.uscourts.gov/sites/default/files/24-cv-v_suggestion_from_lcj_and_ilr_-_rule_26_tplf.pdf.

control or influence over strategic and settlement decisions.[3] In some cases, nonparty funders effectively exercise the same rights as the named parties.[4] After strenuously denying this for years, some funders are now acknowledging that they have the capacity to control the litigation they fund and sometimes exercise it.[5]

As many of us wrote previously:

> We cannot make informed decisions without knowing the stakeholders who control the litigation—and we cannot understand the control features of a TPLF agreement without reading the agreement. Without this information, the settlement process often unravels when the nominal plaintiff or its counsel needs to obtain approval from undisclosed non-party funders or uses the non-party as an excuse to retract a commitment to settle.[6]

The recognition that the parties and the court need to understand nonparty interests and engagement is causing judges to ask for information about nonparty funding arrangements, especially in large MDL proceedings,[7] class actions,[8] and patent cases.[9] Some federal district courts are adopting local disclosure rules specific to nonparty funders.[10] Some individual judges are instituting similar standing orders for their dockets.[11] These actions have become necessary

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[3] Lawyers for Civil Justice, *Uniform Disclosure of Third-Party Litigation Funding Contracts Is Necessary to Inform Judges' and Parties' Key Case Management Decisions*, at 2-3 (Sep. 3, 2025), https://www.uscourts.gov/sites/default/files/document/25-cv-l_suggestion_from_lcj_-_rule_26_tplf.pdf.

[4] *Id.*

[5] Kacey Wolmer, the Chief Operating Officer of litigation funder Contingency Capital and a member of the Board of Directors of the International Legal Finance Association, recently testified before the New Jersey Assembly Oversight Committee that "[t]here's lots of instances where financial backers do have control." *See* Assembly Oversight, Reform and Federal Relations, N.J. Legislature, at 1:29:50 (June 15, 2026), https://www.njleg.state.nj.us/archived-media/2026/AOF-meeting-list/media-player?committee=AOF&agendaDate=2026-06-15-14:00:00&agendaType=M&av=A.

[6] Letter from 124 companies to H. Thomas Byron III, Secretary, Committee on Rules of Practice and Procedure (Oct. 2, 2024), https://www.uscourts.gov/sites/default/files/24-cv-u_suggestion_from_124_companies_-_rule_26_tplf.pdf.

[7] *E.g.*, *In re Uber Techs., Inc., Passenger Sexual Assault Litig.*, No. 23-md-03084-CRB (LJC), 2025 WL 2968026 (N.D. Cal. Oct. 21, 2025); *In re Uber Techs., Inc., Passenger Sexual Assault Litig.*, No. 23-md-03084-CRB (LJC), 2025 WL 2201056 (N.D. Cal. Aug. 1, 2025); *In re Depo-Provera*, No. 3:25-md-3140, 2025 WL 1860996 (N.D. Fla. July 1, 2025).

[8] *E.g.*, *Corzo v. Brown Univ.*, No. 22 C 00125, 2026 WL 881598, at *24 (N.D. Ill. Mar. 31, 2026); *MSP Recovery Claims v. Sanofi-Aventis U.S. LLC*, No. 2:18-cv-2211(BRM)(LHG), 2024 WL 4913662, at *12 (D.N.J. Apr. 2, 2024).

[9] *E.g.*, *Preservation Techs. LLC v. Mindgeek USA, Inc.*, No. 2:17-cv-08906-DOC-JPR, 2020 WL 10965161, at *6 (C.D. Cal. Dec. 18, 2020); *Odyssey Wireless Inc. v. Samsung Elecs. Co.*, No. 3:15-cv-01738-H (RBB) et al., 2016 WL 7665898, at *6-7 (S.D. Cal. Sep. 20, 2016).

[10] *See* Civ. L.R. 7.1.1 (D.N.J. June 21, 2021); Standing Order for All Judges of the Northern District of California, Contents of Joint Case Management Statement ¶ 17 (N.D. Cal. Nov. 30, 2023), https://cand.uscourts.gov/sites/default/files/standing-orders/Standing_Order_All_Judges-11-30-2023.pdf.

[11] Standing Order Regarding Third-Party Litigation Funding Arrangements (D. Del. Apr. 18, 2022), https://www.ded.uscourts.gov/sites/ded/files/Standing%20Order%20Regarding%20Third-

because the Federal Rules are silent regarding the disclosure of nonparty funding arrangements.[12] But as the Advisory Committee well knows, the absence of such local rules and standing orders in many federal courts is allowing many nonparty funders to continue their operations in the shadows.[13] Further, the cacophony of disclosure practices is confusing to courts and litigants, allows for forum shopping by funded parties and is inconsistent with the Advisory Committee's mandate to provide uniform procedures.

Some commentators have proposed disclosure of nonparty funding arrangements, but only on an *ex parte* basis (that is, disclosure only to the court). Such proposals should be rejected. There are no secret disclosures in the Federal Rules. In fact, none of the Federal Rules' disclosure requirements contemplate *ex parte* communications with the judge. Disclosures of real parties in interest, corporate ownership of parties, insurance agreements, and amicus curiae are available to all parties and to the public. Allowing litigation funding disclosures to be made *ex parte* would depart from the Federal Rules' established disclosure framework and undermine the transparency those rules are designed to ensure.

Drafting an appropriate rule requiring disclosure of nonparty litigation funding agreements would not be as difficult as some have suggested.[14] As discussed above, numerous courts, states, and other rulemaking bodies have already adopted (or are considering) disclosure requirements, and members of Congress have advanced federal statutory proposals with the same purpose.[15] Those efforts may not be perfect in every respect, but they demonstrate that drafting workable disclosure language is achievable. Other bodies are making the effort to craft rules that address TPLF disclosure directly, and the Advisory Committee should do likewise.

In formulating rule language, the Advisory Committee would not be working from a blank slate. Rule 26(a)(1)(A)(iv) already provides the text of a closely analogous and uncontroversial disclosure requirement for insurance agreements. In addition, LCJ and ILR jointly presented to the Advisory Committee the full text of a proposed TPLF disclosure rule and Committee Note.

Party%20Litigation%20Funding.pdf; Rule 26(f) Report of the Parties – Form at 13 ¶ 13 (N.D. Ohio updated Jan. 2, 2024); M.D. Fla. L.R. 3.03(a).

[12] In addition, at least one federal agency has proposed a TPLF disclosure rule. *See* https://www.federalregister.gov/documents/2026/04/30/2026-08445/section-337-adjudication-and-enforcement. And many states have enacted (or are considering) TPLF disclosure requirements. *See, e.g.*, Tennessee Litigation Financing Consumer Protection Act, codified at Tenn. Code Ann. §§ 47-16-101 through 47-16-110. Indeed, one state—North Carolina—recently enacted a statute banning TPLF usage. Prohibit Litigation Investments Act, codified at N.C.G.S. §§ 66-511 et seq.; Session Law 2026-14.

[13] *See* Memo from Patrick A. Tighe, Rules Law Clerk, to Ed Cooper, Dan Coquillette, Rick Marcus, and Cathie Struve, *Survey of Federal and State Disclosure Rules Regarding Litigation Funding* (Feb. 7, 2018), Agenda Book, Civil Rules Advisory Committee, at 209-29 (Apr. 10, 2018), https://www.uscourts.gov/sites/default/files/2018-04-civil-rules-agenda-book.pdf; *see also Depo-Provera*, 2025 WL 1860996, at *2 ("To the extent there is any doubt, the Court now confirms that such arrangements must be disclosed.").

[14] Report to the Standing Committee Advisory Committee on Civil Rules, at 356 (May 6, 2026), https://www.uscourts.gov/sites/default/files/document/advisory_committee_on_civil_rules_may_2026.pdf (noting "a lot of drafting issues").

[15] *See, e.g.*, Litigation Transparency Act (H.R. 1109); Protecting Our Courts from Foreign Manipulation Act (H.R. 2675).

The Subcommittee's most recent status reports do not appear to consider that comprehensive proposal. The language proposed by LCJ and ILR would amend Rule 26(a)(1)(A) by adding the following text:

> … the name, address, and telephone number of any nonparty individual or entity (other than counsel of record) that, whether directly or indirectly, is providing funding for the action and has a financial interest therein and, for inspection and copying as under Rule 34, any agreements or other documentation concerning the terms of the funding.[16]

This simple wording, mirroring the style and function of existing rules, would effectively provide the needed disclosures without inventing an unprecedented process or imposing any burdens on litigation-related commercial contracts beyond the sort already levied by the existing insurance disclosure rule. As with the existing insurance disclosure rule, this rule would allow for appropriate objections and redactions.

We urge the Advisory Committee to draft and propose a straightforward, uniform rule for disclosure of nonparty litigation funding contracts. Doing so would provide courts, litigants, and the public with information that is critical to managing cases and maintaining judicial integrity. A uniform rule would save courts from having to devise their own disclosure criteria and parties from having to guess which of the disparate disclosure protocols (if any) a court will employ in a particular case. We recommend the LCJ/ILR proposal that is pending before the Advisory Committee.

Thank you for your consideration.

Sincerely,

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[16] *See Rule Proposal*, *supra*, at 5-6.

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