

WASHINGTON LEGAL FOUNDATION

2009 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D. C. 20036
202 588-0302
www.wlf.org

May 13, 2021

Via Electronic Mail

William T. Walsh, Clerk of Court
United States District Court for the District of New Jersey
Martin Luther King Jr. Federal Bldg. & U.S. Courthouse
50 Walnut St.
Newark, NJ 07101
localrules@njd.uscourts.gov

Re: Support for Proposed Local Civil Rule 7.1.1, Disclosure of Third-Party Litigation Funding

Dear Mr. Walsh:

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. WLF supports the adoption of proposed Local Civil Rule 7.1.1 and further recommends requiring the disclosure of third-party litigation funding (TPLF) agreements.

Disclosure of a third-party funder's role in a case will help ensure that lawyers satisfy their ethical obligations. TPLF can undermine lawyers' abilities to meet several ethical duties, including the duty to exercise independent judgment in litigation and settlement decisions.

TPLF disclosure also would provide important information for any court navigating the questions of undue burden and cost in discovery disputes. The justification for producer-subsidized discovery to meet the proportional needs of an ordinary citizen plaintiff falls away when an institutional investor funding a portfolio of cases for profit is effectively a real party in interest.

Adopting proposed Local Civil Rule 7.1.1 will put the Court in the legal mainstream and advance the goal of greater transparency. "Most courts already have rules requiring disclosure of the existence and identity of TPLF." David H. Levitt with Francis H. Brown III, *Third Party Litigation Funding: Civil Justice and the Need for Transparency*, DRI Ctr. for L. & Pub. Pol'y, Third Party Litigation Funding Working Group, at 31-32 (2018), at <https://bit.ly/3vZaWRZ>; see also Advisory Committee on Civil Rules, Agenda Book, Apr. 10, 2018, at 209 (Memorandum by Patrick A. Tighe, Rules Law Clerk of the Advisory Committee on Civil Rules, Feb. 7, 2018, re: Survey of Federal and State Disclosure Rules Regarding Litigation Funding), at <https://bit.ly/33H8lji>.

Sincerely,

Cory L. Andrews
General Counsel & Vice President of Litigation

John M. Masslon II
Senior Litigation Counsel