MPL | MEDICAL PROFESSIONAL LIABILITY ASSOCIATION

April 30, 2025

SUBMITTED ELECTRONICALLY
4/30/2025

Clerk of the Supreme Court
1501 West Washington St.
Room 402
Phoenix, AZ 85007

**RE:** R-25-0003 Petition to Amend Rule 8, Rules of Civil Procedure

To Whom It May Concern:

On behalf of the Medical Professional Liability (MPL) Association and its more than four dozen domestic medical professional liability insurers and self-insured members, including entities domiciled and/or doing business in Arizona, I am writing in regard to the proposal to amend the Arizona Rules of Civil Procedure to require limited disclosure of third-party litigation funding agreements.

By way of introduction, the MPL Association is the nation's leading trade association representing insurance companies, risk retention groups, captives, trusts, and other entities owned and/or operated by their policy holders, as well as other insurance carriers with a substantial commitment to the MPL line. MPL Association members insure more than 2.5 million healthcare professionals around the world— doctors, dentists, oral surgeons, nurses and nurse practitioners, podiatrists, and other healthcare providers. MPL Association members also insure more than 3,000 hospitals and 50,000 medical facilities and group practices globally.

MPL Association members are committed to ensuring a fair and equitable system of justice for both healthcare professionals and those who suffer from adverse outcomes resulting from medical procedures. For this reason, they support numerous reforms to reduce litigation and make our justice system more efficient and effective. Unchecked third-party litigation funding, however, may have exactly the opposite effect, drawing out litigation and making resolution far more difficult to achieve. This is especially true when such funding arrangements are hidden from those involved in pending litigation.

In this regard, we wish to express our support for the proposal to add a new subsection (j) to Rule 8 of the Rules of Civil Procedure to require limited disclosure of third-party litigation funding agreements to parties to a claim.

We applaud the amendment's requirement that a certificate disclosing the existence of a third-party litigation funding agreement be filed promptly with the filing of a complaint or upon execution of such an agreement if it occurs after the complaint is filed. We also applaud the requirements for the contents of the certificate, especially the obligation to disclose the nature of the funder's financial interests and whether the agreement permits the funder's involvement in any aspect of the litigation, including decisions about whether or for how much to settle a claim. All of this information is directly relevant to the litigation/settlement process and is vital to ensure an efficient resolution process.

When parties to an MPL lawsuit attempt to achieve an appropriate resolution, it is important that all the facts are available to both parties. If a plaintiff owes a substantial portion of a potential award or settlement to a third party, that is a critical fact that will undoubtedly play a role in influencing the course of negotiations aimed at resolving the claim. If the defense is unaware of such an arrangement, however, it is impossible to accurately assess the plaintiff's needs. This can lead to both needless confusion and frustration as negotiations play out. We believe that the new subject (j) will help address this issue.

We would also recommend two adjustments to the proposal to further the effort to improve the litigation system. First, we recommend deleting paragraph (j)(2)(B) from the proposal. While we understand, and appreciate, the intent behind exempting funding that is used for items such as living expenses or medical needs, the justice system is not well served when third-party interests to litigation are not revealed. Applying subsection (j) to all circumstances in which a third party has an immediate, vested financial interest in the outcome of legal proceedings will bring needed transparency to the justice system. Second, we recommend deleting "In extraordinary circumstances and" from subsection (j)(4). We believe the decision as to whether the funding agreement itself should be disclosed should not be limited to only "extraordinary circumstances," but would be best left in the judge's discretion based on the specific circumstances of the litigation. The limitations on disclosing such agreements found later in (j)(4) are sufficient to protect all of the plaintiff's relevant interests while allowing for more detailed disclosure as appropriate.

We appreciate this opportunity to comment on behalf of the medical professional liability community. The court system in Arizona and its stakeholders would be well served by the addition of subsection (j) to Rule 8 of the Rules of Civil Procedure.

Thank you again for this opportunity to comment.

Sincerely,

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