

CLIENT ALERT

New Jersey District Court Adopts Rule Requiring Broad Disclosure of Litigation Funding

July 7, 2021

The U.S. District Court for the District of New Jersey adopted a new local rule, starting on June 21, 2021, requiring disclosure by litigants regarding the use of litigation funding. While several federal courts have implemented rules requiring disclosure of the existence and identity of litigation funders, New Jersey's rule goes much further, requiring all parties to further disclose:

- the scope of the funder's rights to approve of litigation decisions or settlement decisions; and
- a brief description of the funder's financial interest in the litigation.

The new rule is designed to promote transparency in the litigation process and thereby ferret out the "true" decisionmakers in the litigation. It may be used to prevent ethical violations by counsel as well as to ensure compliance with state laws against champerty and maintenance.

The new rule contains a number of ambiguities, however, that raise concerns that it may unnecessarily delay the litigation by increasing the frequency of motion practice over discovery. For example, following the mandatory disclosures cited above, the new rule specifically contemplates the possibility of further discovery upon a showing of "good cause," or where "such other disclosure is necessary to any issue in the case."

In addition, as drafted, the rule may require disclosure of contingency-based attorney engagements, as it requires disclosure of "any person or entity that is not a party" who is funding litigation costs in exchange for "a contingent financial interest based upon the results of the litigation." Similarly, the rule may encompass common contractual indemnification agreements, as it requires disclosure of non-parties providing litigation funding in exchange for any "non-monetary result that is not in the nature of a personal or bank loan, or insurance."

The new rule goes into effect immediately, applies to all pending cases, and requires the filing of the required disclosures on or before August 5, 2021. In the coming year, New Jersey federal courts will likely be called upon to resolve a number of disputes over the scope and effect of the new rule.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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