AMERICAN CIVIL ACCOUNTABILITY ALLIANCE

February 13, 2026

Carolyn A. Dubay, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544
RulesCommittee_Secretary@ao.uscourts.gov

Re: Proposed Amendment to Federal Rule of Civil Procedure 7.1 [USC-RULES-CV-2025-0004-0001]

Dear Members of the Committee:

The American Civil Accountability Alliance (ACAA) respectfully submits this comment on the proposed amendment to Federal Rule of Civil Procedure 7.1. The ACAA is a nonpartisan, nonprofit advocacy organization dedicated to preserving Americans' ability to pursue justice through the courts. We are building a coalition of litigation finance professionals, legal practitioners, academics, and consumer advocacy organizations.

The ACAA supports the core purpose of Rule 7.1 -- namely, enabling judges to identify potential financial conflicts of interest that may require recusal, thereby safeguarding judicial impartiality and public confidence in the courts. Given the evolving legal structures of many businesses, we agree that it makes sense to narrowly expand the scope of Rule 7.1, as the drafted amendment does, to include limited liability partnerships and other "business organizations" that are not organized as "corporations."

However, we urge you to reject any attempts to extend the scope of Rule 7.1 beyond the drafted amendment's narrow, targeted expansion. Turning Rule 7.1 into a sweeping disclosure mandate for litigants who rely on third-party financing -- as some have proposed -- would impose unnecessary and arguably unconstitutional burdens on those litigants and undermine their access to justice, all while doing nothing to actually help judges identify genuine conflicts of interest.

Requiring early, public disclosure of third-party financing agreements, could expose information that parties would not otherwise be required to reveal, such as internal ownership structures, confidential financial terms and budgets, and strategic

assessments. Mandatory disclosure of this information could give opposing parties an unfair advantage by offering them a clear view of the funded party's financial position and litigation strategy.

The ACAA is particularly concerned about the chilling effect that overly broad disclosure requirements may have on Americans' access to the courts in practice, not merely in theory. Commercial litigation is expensive, and small businesses and individuals frequently turn to external sources of financing to defend their rights.

If third parties fear that overbroad disclosure requirements will bring them negative publicity that jeopardizes their professional and commercial relationships, they may hesitate to provide the funding that small businesses and individuals need.

And in cases such as NAACP v. Button, 371 U.S. 415 (1963), the Supreme Court has recognized that the First Amendment protects Americans' right to fund and support litigation as a form of political expression and association. Similarly, in cases such as NAACP v. Alabama, 357 U.S. 449 (1958), the Court has held that onerous disclosure requirements can be used to chill the exercise of those rights. In other words, disclosure requirements that are transparently meant to deter third-party litigation financing are not merely unwise -- they are arguably unconstitutional.

A disclosure regime that targets only contingent, non-recourse litigation finance -- capital advanced in exchange for a share of any recovery -- would disproportionately burden small businesses, individuals, and families who lack the resources to self-fund complex cases.

Yet, such a regime would ignore the far more pervasive third-party capital available to well-resourced defendants, including general-recourse loans, equity financing, insurance-funded defense, and trade association support. All are forms of third-party financing, but only one would be singled out for special scrutiny. This asymmetry would undermine, rather than advance, the fairness and access to justice that the Federal Rules are designed to protect.

Extensive new disclosure requirements are also unnecessary. Numerous district courts have already used existing rules -- such as Rule 83 -- to review third-party funding agreements in-camera and determine any possible conflicts of interest, without revealing sensitive information to opposing parties.

Such disclosures actually threaten to obscure, rather than reveal, conflicts of interest. As the Advisory Committee noted when it adopted Rule 7.1, "[u]nnecessary disclosure of volumes of information may create a risk that a judge will overlook the one bit of information that might require disqualification."

It's worth mentioning that genuine conflicts of interest regarding third-party litigation financing are extraordinarily, almost inconceivably rare -- due to the fact that litigation funders typically maintain diversified portfolios spanning numerous unrelated cases, and are often diversified across industries entirely unrelated to litigation funding. A judge's hypothetical investment in a funder that in some manner invested in a particular case wouldn't impact his or her ability to fairly adjudicate any specific case, just as a judge's investment in an S&P 500 index fund doesn't preclude him or her from hearing cases involving large, publicly traded companies.

For these reasons, ACAA respectfully urges the Committee to reject any attempts to expand the scope of Rule 7.1 beyond the draft amendment's narrow clarification. Such attempts would jeopardize equal access to the courts without delivering any meaningful benefits. Thank you for the opportunity to submit these comments. We welcome any opportunity to engage further on this issue.

Sincerely,

American Civil Accountability Alliance