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INSIGHT

Q4 2025 Legal Review: Third-Party Litigation Funding (TPLF) Under Federal Judicial Scrutiny

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Federal judicial standing orders and state bar ethics opinions established rigorous disclosure and conflict-of-interest standards for third-party litigation funding.

During the final quarter of 2025, commercial third-party litigation funding (TPLF) faced heightened judicial scrutiny across federal and state courts. Through standing orders in prominent federal jurisdictions (including the Northern District of California and District of New Jersey) and updated ethics guidance, courts required disclosure of funding agreements to address conflicts of interest, foreign sovereign investment, and control over settlement authority.

I. The Rise of Mandatory TPLF Disclosure Orders

Traditionally treated as protected work product or confidential commercial agreements, litigation funding arrangements became the focus of mandatory disclosure initiatives. Federal courts implemented standing orders requiring parties in class actions, patent disputes, and multi-district litigation (MDL) to disclose:

- The identity of any third-party funder with a financial interest in the outcome of the litigation.
- Whether the funder possesses any approval authority over settlement agreements or litigation strategy.
- Whether foreign sovereign wealth funds or state-affiliated entities hold beneficial interests in the funding entity.

II. Ethical Guardrails: Independent Professional Judgment

Under California Rule of Professional Conduct 5.4 (Financial and Business Arrangements with Nonlawyers) and Rule 2.1 (Advisor), attorneys must maintain independent professional judgment and cannot permit a nonlawyer funder to direct or regulate the lawyer's professional judgment in rendering legal services.

Courts have invalidated funding agreements where the financial terms ceded veto power over settlement to the funding company, reiterating that the client maintains absolute constitutional authority over settlement under California law.

III. Best Practices for Litigators Utilizing Commercial Funding

For plaintiffs' firms and commercial litigators leveraging third-party capital:

- **Clear Contractual Delineation:** Funding agreements must explicitly state that the funder possesses zero control over litigation management, discovery choices, or settlement decisions.
- **Common Interest & Work Product Protection:** Draft common interest agreements prior to sharing confidential case evaluations with prospective funders to guard against inadvertent privilege waivers.
- **Compliance with Local Rules:** Always review district court local rules and individual judge standing orders at the outset of federal litigation to ensure timely disclosure of financial interests.

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