



**KANSAS BAR
ASSOCIATION**

TO: The Honorable Kellie Warren
And Members of the Senate Judiciary Committee

FROM: Joseph Molina
On Behalf of the Kansas Bar Association

RE: HB 2510 — Authorizing a party to obtain discovery of the existence and content of an agreement for third-party funding of litigation under the code of civil procedure

DATE: March 21, 2024

Madam Chair and Members of the Senate Judiciary Committee:

The KBA appreciates the opportunity to provide this written testimony in **OPPOSITION** to **HB 2510** — Authorizing a party to obtain discovery of the existence and content of an agreement for third-party funding of litigation under the code of civil procedure.

The Kansas Bar Association has a long-standing policy of supporting access to justice and access to the courts. Access to justice commonly refers to an injury consisting of, or resulting from, denial of access to the courts and denial of procedural fairness and due process in relation to court proceedings. Requiring a party to disclose third-party agreements may lead to fewer opportunities for meritorious claims to be heard by the court because of a party's inability to fund the action. HB 2510 may curtail that access by removing a tool the financially underfunded could use to litigate claims. Third-party financing promotes equal access to the judicial system by removing the financial barriers. This prevents the legal system from favoring only those with significant financial resources.

HB 2510 could deter potential funders from investing in meritorious cases, particularly those involving marginalized communities or novel legal issues. As a result, many deserving plaintiffs would be left without the means to pursue justice, undermining the very principles our legal system seeks to uphold.

Furthermore, it is important to recognize that third-party financing is already subject to oversight through existing legal mechanisms, such as ethical rules governing attorney conduct. These safeguards ensure that litigants are protected from exploitation and that the integrity of the legal process is maintained. See, Kansas Rules of Professional Conduct 1.5(d).

In addition, Rule 1.8(f)(2) states that a lawyers shall not accept compensation for representing a client from one other than the client unless: "There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship." Comments to Rule 1.8 include Person Paying for a Lawyer's Service: "Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The

third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client." See also, Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs, or pays the lawyer to render legal services for another). Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client).

It is for these reasons the KBA opposes **HB 2510** — Authorizing a party to obtain discovery of the existence and content of an agreement for third-party funding of litigation under the code of civil procedure.

Thank you for your time and attention.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals. Its more than 5,500 members include lawyers, judges, law students, paralegal students, and paralegals. www.ksbar.org