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**FILED** *J.H.*  
**3/30/2023**  
**STATE BAR COURT**  
**CLERK'S OFFICE**  
**LOS ANGELES**

10 STATE BAR COURT

11 HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of: ) Case No. SBC-23-O-30029  
14 JOHN CHARLES EASTMAN, )  
State Bar No. 193726, ) **STATE BAR'S MOTION IN LIMINE**  
15 ) **NO. 1 TO EXCLUDE EXPERT**  
16 An Attorney of the State Bar ) **TESTIMONY OF HON. JANICE**  
17 ) **ROGERS BROWN AND REBECCA**  
18 ) **ROIPEHE; MEMORANDUM OF**  
19 ) **POINTS AND AUTHORITIES**

19 The Office of Chief Trial Counsel of the State Bar of California (hereinafter "State  
20 Bar" or "OCTC") hereby moves this court for an order *in limine* excluding testimony from  
21 two of the seven expert witnesses that respondent identified in his Designation of Expert  
22 Witness Information filed on March 22, 2023.<sup>1</sup> The State Bar moves to exclude the testimony  
23 of Hon. Janice Rogers Brown on the grounds that her testimony is not relevant, and moves to  
24 exclude the testimony of Rebecca Roiphe on the grounds that her testimony is offered on  
25 matters which are within the province of the court to decide.

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27 <sup>1</sup> Under rule 5.65.1(D), respondent was required to file his expert disclosure at least 50 days prior  
28 to the first day of trial, or by March 21, 2023. OCTC does not object to the late filing of the  
disclosure.

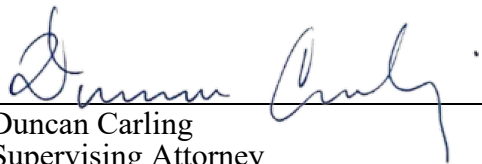
1 The State Bar will take the depositions of respondent's other expert witnesses and  
2 may move to exclude other experts after the nature and purpose of their testimony is clarified  
3 through deposition. Respondent has designated Joseph Fried, an accountant, to testify  
4 regarding "how an audit certification operates and his opinion whether the 2020 election  
5 should have been certified." The substance and basis of Fried's opinion is unclear, and his  
6 testimony may not be relevant. Respondent has designated Kurt Olsen, who he states was  
7 "one of the main drafters for *Texas v. Pennsylvania*," to testify regarding "evidence of illegal  
8 voting that may have been outcome determinative in several states," and "the legal basis for  
9 election challenges across the country." It is unclear whether Olsen is a percipient witness or  
10 an expert with relevant testimony. The State Bar reserves the right to object to additional  
11 experts after their testimony is clarified at their depositions.

12 This motion is based on all pleadings and records in this case, the attached  
13 memorandum of points and authorities, and upon any additional documentary or oral  
14 evidence which may be presented at a hearing on the motion.

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17 Respectfully submitted,

18 THE STATE BAR OF CALIFORNIA  
19 OFFICE OF CHIEF TRIAL COUNSEL

20 DATED: March 30, 2023

21 By:   
22 Duncan Carling  
23 Supervising Attorney  
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3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. JUDGE BROWN’S OPINION TESTIMONY IS NOT RELEVANT**

5 Respondent states in his expert disclosure that Judge Brown will testify “regarding  
6 her opinion that the California State Bar seems to be moving into uncharted territory with  
7 seeking to discipline an attorney on one side of a contentious legal fight.”

8 Judge Brown’s opinion that the State Bar is moving into “unchartered territory” with  
9 the charges in this case, or that attorneys who are involved in a “contentious legal fight”  
10 should not be subject to discipline, is not relevant to the court’s determination of whether  
11 respondent is culpable of the charges. Expert testimony is only appropriate where it will help  
12 the trier of fact. (Evid. Code § 801(a); *Day v. Rosenthal* (1985) 170 Cal.App.3d 1125, 1146.)

13 Furthermore, Judge Brown’s opinion that the State Bar is “moving into uncharted  
14 territory” with this case is factually incorrect. On May 3, 2021, the New York State Supreme  
15 Court Appellate Division suspended Rudolph Giuliani from the practice of law based on  
16 misrepresentations regarding fraud in the 2020 election which were similar to the charges in  
17 this case. Specifically, the court found that Giuliani made misrepresentations when he made  
18 “numerous false and misleading statements regarding the Georgia presidential election  
19 results . . . knowingly made with the object of casting doubt on the accuracy of the vote”;  
20 when he made “extensive and wide-ranging claims about Dominion Voting Systems Inc.  
21 voting machines manipulating the vote tallies”; and when he claimed that in Georgia, “illegal  
22 ballots were being surreptitiously retrieved from suitcases hidden under a table and then  
23 tabulated.” (*Matter of Giuliani* (N.Y. App. Div. 2021) 197 A.D.3d 1, 14, 18.) The court  
24 found that these were “demonstrably false and misleading statements,” and that “[Giuliani’s]  
25 conduct immediately threatens the public interest and warrants interim suspension from the  
26 practice of law, pending further [disciplinary] proceedings.” (*Id.* at 4.)<sup>2</sup>

27 <sup>2</sup> On December 15, 2021, in a separate disciplinary proceeding, the hearing committee for the  
28 Washington D.C. Bar’s Board on Professional Responsibility found, in a non-binding

1           On March 8, 2023, the Colorado Supreme Court approved a disciplinary stipulation in  
2 which attorney Jenna Ellis stipulated that, while serving as a senior legal advisor to President  
3 Trump, she “repeatedly made misrepresentations on national television and on Twitter,  
4 undermining the American public’s confidence in the 2020 presidential election.” (*People v.*  
5 *Ellis* (Colo. O.P.D.J., Mar. 8, 2023, No. 23PDJ004) 2023 WL 2602612, at 1.) Ellis stipulated  
6 that she made misrepresentations including her claims that “we have all kinds of statistics  
7 that show that this was a coordinated effort in all of these states to transfer votes either from  
8 Trump to Biden, to manipulate the ballots”; “there was widespread fraud in this election”;  
9 and “we know that the election was stolen from President Trump and we can prove that.” (*Id.*  
10 at 2.)

11           For these reasons, Judge Brown’s opinion testimony should be excluded on the  
12 grounds that it is not relevant.

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14 **II. REBECCA ROIPHE’S OPINION TESTIMONY IS ON MATTERS WITHIN**  
15 **THE PROVINCE OF THE COURT TO DECIDE**

16           Respondent states in his expert disclosure that Rebecca Roiphe will testify regarding  
17 “a lawyer’s First Amendment rights both in relation to a client and outside of any attorney-  
18 client relationship,” and she will also testify regarding “the circumstances in which a state  
19 bar may impose discipline against a lawyer for exercising a lawyer’s First Amendment  
20 rights.”

21           The extent to which the First Amendment protects an attorney from professional  
22 discipline based on speech has been considered and discussed by the State Bar Court and the  
23 Supreme Court, and this court does not need an expert to explain the relevant law. In  
24 *Ramirez v. State Bar* (1980) 28 Cal.3d 402, 411, the Supreme Court held that intentionally  
25 false statements and false statements made with reckless disregard for the truth are not

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27 preliminary decision, that Giuliani violated his ethical duties in his efforts to help President  
28 Trump challenge the results of the 2020 election and should be liable for professional sanctions.  
(See <https://www.washingtonpost.com/dc-md-va/2022/12/15/dc-bar-giuliani-law-license/> )

1 protected speech and may be the basis of attorney discipline.<sup>3</sup> In this case, the court will  
2 determine whether respondent’s statements were false, and if so, whether he made the false  
3 statements intentionally or with reckless disregard for the truth.

4 The question of whether respondent is protected from culpability based on his First  
5 Amendment rights, or whether the court should impose discipline in this case, is a legal issue  
6 for this court to decide. “[I]t is thoroughly established that experts may not give opinions on  
7 matters which are essentially within the province of the court to decide.” (*Sheldon Appel Co.*  
8 *v. Albert & Oliker* (1989) 47 Cal.3d 863, 884 (citations omitted).) Expert opinion testimony  
9 that is otherwise admissible is not inadmissible simply because it “embraces the ultimate  
10 issue to be decided by the trier of fact.” (Evid. Code section 805.) However, this principle  
11 does not “authorize an ‘expert’ to testify to legal conclusions in the guise of expert opinion.”  
12 (*Downer v. Bramet* (1984) 152 Cal.App.3d 837, 841.) Furthermore, an expert witness’s  
13 “general belief as to how the case should be decided” should be excluded, because “to  
14 receive it would tend to suggest that the judge and jury may shift responsibility for decision  
15 to the witnesses; and in any event it is wholly without value to the trier of fact in reaching a  
16 decision.” (*Summers v. A.L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1182-1183.)

17 For these reasons, Roiphe’s opinion testimony should be excluded on the grounds that  
18 her opinion is on matters which are within the province of the court to decide.

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27 <sup>3</sup> In the New York Giuliani disciplinary case, the court held that the disciplinary proceeding and  
28 interim suspension order did not violate Giuliani’s First Amendment rights. (*Matter of Giuliani*  
(N.Y. App. Div. 2021) 197 A.D.3d 1, 7.)

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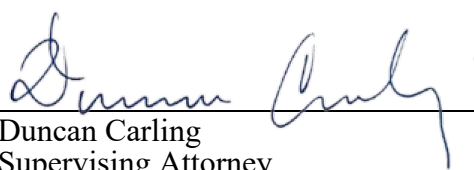
**CONCLUSION**

For the foregoing reasons, the State Bar respectfully requests that the court exclude the expert testimony of Judge Brown and Rebecca Roiphe.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL

DATED: March 30, 2023

By:   
Duncan Carling  
Supervising Attorney

DECLARATION OF SERVICE

CASE NUMBER(s): SBC-23-O-30029

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, Elizabeth.Zuniga@calbar.ca.gov, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

STATE BAR'S MOTION IN LIMINE NO. 1 TO EXCLUDE EXPERT TESTIMONY OF HON. JANICE ROGERS BROWN AND REBECCA ROIPHE; MEMORANDUM OF POINTS AND AUTHORITIES

By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

By U.S. Certified Mail: (CCP §§ 1013 and 1013(a)) - in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.

By Electronic Service: (CCP § 1010.6 and Rules of Proc. of State Bar, rule 5.26.2) Based on rule 5.26.2, a court order, or an agreement of the parties to accept service by electronic transmission, I caused the above-named document(s) to be transmitted by electronic means to the person(s) at the electronic address(es) listed below.

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article at Los Angeles, addressed to: (see below)

No.:

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking addressed to: (see below)

No.:

Table with 4 columns: Person Served, Business Address, Fax Number, and Courtesy Copy to. Includes electronic addresses for Randall A. Miller.

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ("UPS").

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: March 30, 2023

SIGNED: Elizabeth Zuniga, Elizabeth Zuniga Declarant