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September 1, 2026

EXPERT WITNESS REPORT
Jack Marshall
President, ProEthics Ltd.

RE: Reconsideration Request Matter, of Robert A. Kaplan, Esq. Docket No. 2026.2605

My name is Jack Marshall. I am submitting my report as a legal ethics expert in this matter. My full *curriculum vitae* is attached. I am an active member of the District of Columbia Bar Association and an inactive member of the Massachusetts Bar Association. I am President of ProEthics, a national ethics training and consulting firm. I have served as an Adjunct Professor of Legal Ethics at The Washington College of Law at American University in Washington, D.C. and teach CLE seminars in legal ethics to bar associations, law firms, corporations, state and local governments and U.S. government agencies across the country. I also regularly provide legal ethics counsel to law firms and attorneys. I have provided ethics training and consulting services to many New York firms, as well as New York's City Bar. USAID sent me to the Republic of Mongolia to assist the judiciary, prosecutors and other layers there in developing their own rules of professional conduct.

I submit the following statement:

I. Expert Opinions on Questions at Issue

A. Did New York lawyer Roberta Ann Kaplan violate the New York State Bar Rule of Professional Conduct 3.3, "Conduct Before a Tribunal," by failing to inform the court that her client, E. Jean Carroll, when asked in a deposition on October 14, 2022, under oath, whether "anyone else [is] paying your legal fees," by answering "No," was creating false evidence?

Yes. This is not a conclusion subject to reasonable dispute. New York State Bar Rule of Professional Conduct 3.3, "Conduct Before a Tribunal," states in relevant part,

(a) A lawyer shall not knowingly:

...

(3) offer or use evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. ...

Attorney Kaplan knew immediately that her client Carroll had answered the question falsely, because she knew that she, as Carroll's attorney, was being compensated in part by a third party, in this case, Reid Hoffman and his nonprofit American Future Republic.

For the purposes of this section of the report, it is irrelevant whether Carroll herself knew that Kaplan was being paid by a third party, or even who the third party was. Carroll's statement was false, thus making it false evidence that Kaplan was obligated to address by reasonable remedial measures in a timely fashion. [Kaplan's duty to inform Carroll of the third party's involvement raises a separate ethics issue which will be covered in Section B.] Ideally, Kaplan should have called a halt to the deposition immediately and instructed her client regarding the correct way to answer the question. I will not speculate on whether there could be justifiable circumstances whereby some delay in taking this action would be deemed acceptable, but waiting six months to "take reasonable remedial measures" is neither consistent with the letter or the spirit of Rule 3.3.

New York has one of the most stringent versions of the rule regarding an attorney's duty to act when a witness or a client makes a false statement that constitutes material false evidence.

City Bar Formal Opinion 2013-2 states that if a lawyer only discovers after the close of a proceeding that material evidence offered by the lawyer, the lawyer's client, or witness called by the lawyer during the underlying civil or criminal proceeding was false, the lawyer is obligated, under Rule 3.3(a)(3), to take "reasonable remedial measures," including disclosing the false evidence to the tribunal to which the evidence was originally presented. The opinion emphasizes how important this obligation is when it notes that [*emphasis mine*]:

"Rule 1.6 of the New York Rules of Professional Conduct, with limited exceptions, prohibits a lawyer from revealing 'confidential information,' which the rule defines as 'information gained during or relating to the representation of a client, whatever its source' that is (a) protected by the attorney client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential. However, in April 2009, when New York adopted the Model Rules format and amended a number of its rules, the courts promulgated Rule 3.3(c), mandating that under certain narrow *circumstances the lawyer's duty to protect the integrity of the adjudicative process trumps the lawyer's duties of confidentiality and loyalty to the client*. Indeed, "unlike in other jurisdictions, Rule 3.3 is the only mandatory exception in New York to the obligation of confidentiality contained in Rule 1.6."

The duty to act is required if the discovered evidence is "material" to the underlying proceeding, particularly when "the evidence is of a kind that could have changed the result." Surely the fact that the lawsuit was being advanced in part by a partisan political activist qualifies as "material," though the existence of any third-party funding in whole or in part litigation like that Ms. Carroll was undertaking would almost always be "material" by its very

nature. “If the false evidence is determined to be material, notes 2013-2, “it makes no difference if the falsity was intentional or inadvertent.”

Rule 3.3 does not specify when the obligation to take remedial action expires, but the opinion holds that under Rule 3.3(a)(3) the obligation survives the ‘conclusion of a proceeding’ where the false evidence was presented, and that “the courts’ rejection of an explicit statement that the obligation ends when the proceeding ends, makes it evident.” The obligations of a lawyer end only when a reasonable remedial measure is no longer available.

The opinion also states, “although disclosure may have grave adverse consequences for the client (in some instances including prosecution for perjury), the alternative – for the lawyer to become a willing participant in ‘deceiving the court [and] thereby subverting the truth-finding process’ – is untenable.”

B. Did Attorney Kaplan violate New York State Bar Rule 1.4, “Communication,” if she failed to inform her client regarding the third-party funding of her representation?

Yes.

New York State Bar Rules of Professional Conduct Rule 1.4, “Communication,” states in relevant part,

(a) A lawyer shall:

(1) promptly inform the client of:

- (i) any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(j), is required by these Rules;*
- (ii) any information required by court rule or other law to be communicated to a client; and*
- (iii) material developments in the matter including settlement or plea offers.*

(2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with a client’s reasonable requests for information;

and

...

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The fact that a third party is in any way providing funding to the litigation of a client’s matter raises the specter of undue influence and potential conflicts of interest. It is beyond question the kind of information of which a client must be informed, and indeed that a client must give informed consent to after being fully informed of its implications.

If Attorney Kaplan did not so inform her client, leading to the client’s falsely answering the question in deposition regarding third party funding of her case, that is a serious breach of the crucial ethical duties under Rule 1.4.

If, in the alternative, she did so inform her client as the Rule requires, then she immediately knew that her client's answer was false, obligating an attorney to take "reasonable remedial action."

C. Did Attorney Kaplan engage in conduct that violated the provisions of New York State Bar Rules of Professional Conduct Rule 8.4, "Misconduct," in her contorted and non-responsive "explanations" of her handling of this matter?

Again, yes.

Such misrepresentations must be intentional and are thus unethical.

New York State Bar Rules of Professional Conduct Rule 8.4, "Misconduct," states in part,

A lawyer or law firm shall not:

...

(c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...

From the Complaint Against ROBERTA ANN KAPLAN Regarding Litigation Funding From Reid Hoffman's American Future Republic in *E. Jean Carroll v. Trump*, page 3:

"The excuse Ms. Kaplan provided for the inordinate delay in correcting the record strains credulity and raises more questions than it answers. In her letter to opposing counsel Alina Habba on April 10, 2023, on the eve of trial, Ms. Kaplan explains:

*During the course of preparing for her testimony at trial, Ms. Carroll has recollected additional information. While Ms. Carroll stands by that testimony about this case being contingency case, she **now** recalls that **at some point** her counsel secured additional funding from a nonprofit organization to offset certain expenses and legal fees.*

"Confusingly, Ms. Kaplan later explained on April 13, 2023, to the trial court that presumably during either a break in the October 14, 2022, deposition or shortly thereafter she '*did make an appropriate inquiry **at the time** to determine that Carroll had testified truthfully given her then-existing knowledge.*'

"For that representation to be true, Ms. Kaplan apparently asked her client 'at the time' of the deposition (or shortly thereafter) whether she remembered that Ms. Kaplan's law firm was getting outside funding, and allegedly Ms. Carroll responded in the negative (meaning that either Ms. Carroll did not remember that fact or was never told of the outside funding by Ms. Kaplan) and therefore, it can be said that technically she testified '*truthfully given her **then-existing knowledge.***'

"Ms. Kaplan would have the court believe that while preparing Ms. Carroll for the upcoming trial in *Carroll II* in April 2023, which centers around her encounter with President Trump, she *sua sponte* remembered an extraneous fact that "at some point" ... her counsel "*secured*

additional funding from [an unnamed] nonprofit to offset certain expenses and legal fees.” Why would Ms. “Carroll spontaneously recollect that supposedly irrelevant fact (as Ms. Kaplan maintains) “now” but not six months earlier during her October 14, 2022, deposition when she was specifically asked about it *and* when Ms. Kaplan allegedly informed Mr. Carroll “at the time” that she was indeed getting outside funding? Was her recollection refreshed? Yet again? By Ms. Kaplan? Moreover, *Carroll II* was filed on November 24, 2022, a month *after* her October 14 deposition regarding outside funding for *Carroll I*.”

It should not be necessary to dissect such obvious mendacity beyond its clear implications. Whether her client mistakenly stated under oath at the deposition that her legal expenses were not being to some extent paid for by a third party, as Attorney Kaplan had duly informed her because she was ethically bound to do, or whether Carroll misstated the facts because Ms. Kaplan had failed that obligation, as an attorney-at-law practicing in the State of New York, Attorney Kaplan was duty-bound to follow the provisions of **New York State Bar Rule of Professional Conduct 3.3, “Conduct Before a Tribunal”** and “take reasonable remedial measures.” This she did not do.

Attorney Kaplan’s desperate rigmarole and verbal tap-dance to attempt to avoid the consequences of her unethical conduct in this matter would be mordantly amusing if it did not represent exactly the kind of unethical behavior the Rules of Professional Conduct exist to prevent.

D. Conclusion

The deliberate failure of Attorney Robert Kaplan to follow the requirements of the New York State Bar’s Rules of Professional conduct was serious and substantial. It caused significant harm to her client’s adversary and the administration of justice in the case at issue, as any distortion of the relevant facts in any matter will. The record, in my expert opinion, demonstrates Ms. Kaplan’s lack of honesty, trustworthiness and competence, rendering her continued engagement in the practice of law to be a threat to the integrity and reputation of the legal profession.

II. Materials and Data Considered

- A. The ABA Model Rules of Professional Conduct, annotated (2025).
- B. The New York State Bar Rules of Professional Conduct (2025).
- C. The District of Columbia Rules of Professional Conduct (2025)
- D. American Bar Association Canons (1908)
- E. Geoffrey Hazard, Susan Kroniak, Roger Crampton and George Cohen, “The Law and Ethics of Lawyering, 4th Edition; Foundation Press, 2005
- F. Deborah Rhode and David Luban, “Legal Ethics”; Foundation Press, 2004
- G. Ronald D. Rotunda and John S. Dzienkowski, Professional Responsibility; The ABA Center for Professional Responsibility, West Publishing, 2012

H. New York City Bar Formal Opinion 2013-2: “Lawyer’s obligation to take action if, after the conclusion of a proceeding, the lawyer comes to know that material evidence offered by the lawyer, the lawyer’s client or a witness called by the lawyer during the proceeding was false.”

I. Complaint Against ROBERTA ANN KAPLAN Regarding Litigation Funding From Reid Hoffeman’s American Future Republic in *E. Jean Carroll v. Trump*

J. National Legal Policy Center, “That Was Quick: NY Bar Bounces Complaint Against E. Jean Carroll’s Lawyer,” Aug. 7, 2026

K. Aug 3, 2026 letter of Aug, 3, 2026 [by email] from George Topico, Chief Attorney, State of New York Attorney Grievance Committee to Atty. Paul Kamenar regarding Matter of Roberta A. Kaplan, Esq. Docket No. 2026.2605

III. The Witness’s Qualifications: My full *curriculum vitae* is attached.

IV. Previous cases in which the witness testified in court or by deposition

Adetu v. Altman, Spence, Mitchell & Brown, P.C. et al.

V. Compensation: I customarily bill my legal work at \$720 an hour. I am submitting this ethics report *pro bono*.

I declare under penalty of perjury that the foregoing is true and correct to a reasonable degree of professional certainty.

Signed,

Jack Marshall

Jack Marshall, Esq
President, ProEthics Ltd.