

FILED *J.H.*
5/23/2023
STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case No. SBC-23-O-30029-YDR
)
JOHN CHARLES EASTMAN,) ORDER GRANTING MOTION IN
) LIMINE
State Bar No. 193726.)
_____)

On March 30, 2023, the Office of Chief Trial Counsel of the State Bar (OCTC) filed Motion in Limine No. 1 to Exclude Expert Testimony of Hon. Janice Rogers Brown and Rebecca Roiphe. Respondent John Charles Eastman filed a timely opposition on April 10, 2023.

Testimony of the Honorable Janice Rogers Brown

OCTC moves to exclude the testimony of respondent John Charles Eastman’s designated expert Judge Brown, regarding “her opinion that the California State Bar seems to be moving into uncharted territory with seeking to discipline an attorney on one side of a contentious legal fight.” OCTC contends that Judge Brown’s opinion is not relevant for the court to determine whether Respondent is culpable of the alleged ethical violations. However, Respondent argues that Judge Brown is an expert who will provide testimony that addresses OCTC’s unprecedented “pursuit of charges against Respondent under the facts and circumstances presented in this matter.”

“[U]nder Evidence Code section 801, the trial court acts as a gatekeeper to exclude speculative or irrelevant expert opinion.” (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 770.) Moreover, “the foundational predicate for admission of

the expert testimony” is whether “the testimony [will] assist the trier of fact to evaluate the issues it must decide. [Citations.]” (*Ibid.*) Here, Judge Brown’s opinion regarding the unprecedented nature of OCTC pursuing charges against Respondent is not relevant to the court’s determination of Respondent’s culpability for violating the Rules of Professional Conduct or Business and Professions Code.

Testimony of Rebecca Roiphe

OCTC also seeks to exclude the testimony of Respondent’s designated expert Rebecca Roiphe, regarding “the circumstances in which a state bar may impose discipline against a lawyer for exercising a lawyer’s First Amendment right.” OCTC maintains that Roiphe’s testimony invades the purview of the court and is a legal issue for the court to decide.

Respondent argues, however, that Roiphe is an expert in legal ethics, but she will not provide an opinion on an ultimate issue of law but will testify that the “First Amendment limits what a disciplinary agency . . . is and is not permitted to do in the context of Respondent’s alleged underlying conduct.”

Expert testimony is admissible “when it is related to a subject that is sufficiently beyond common experience, that the opinion of an expert would assist the trier of fact” (Evid. Code section 801(a)) and “[t]estimony in the form of an opinion that is otherwise admissible is not objectionable because it embraces the ultimate issue to be decided by the trier of fact.” (*Summers v. A. L. Gilbert Co.* (1999) 69 Cal. App. 4th 1155, 1178; see also Evid. Code § 805). However, an expert is not authorized to “give opinions on matters which are essentially within the province of the court to decide. [Citations.]” (*Sheldon Appel Company v. Albert & Oliker* (1989) 47 Cal. 3d 863, 884; see also Witkin, Cal. Evid. (5th ed. 2012) Opinion, § 98, p. 745 [“expert cannot testify to legal conclusions in the guise of expert opinion”].)

It is well-established that “[d]isciplinary rules governing the legal profession cannot punish activity protected by the First Amendment. Even when an attorney violates an ethical rule that he or she swore to obey, the First Amendment protection remains. (*Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030, 1054.)” (*In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23, 30.) Nevertheless, knowingly false statements and false statements made with reckless disregard of the truth do not enjoy constitutional protection “because there is no constitutional value in such false statements of fact.” (*Ibid.*) These statements may be the basis of attorney discipline. (*Ramirez v. State Bar* (1980) 28 Cal.3d 402, 411.)

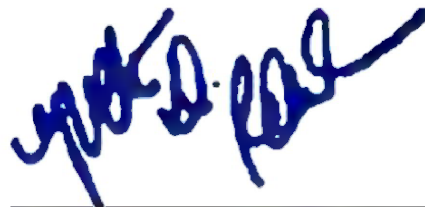
In this case, Roiphe’s testimony will be of no benefit to the court—the court will determine if Respondent’s statements warrant First Amendment Protection. Indeed, whether Respondent made false statements and if those statements were made knowingly or with reckless disregard of the truth, are issues that fall within the court’s purview.

ORDER

After consideration of the motion and opposition, OCTC’s motion in limine No. 1 to exclude expert testimony of the Honorable Janice Rogers Brown and Rebecca Roiphe is **GRANTED**. Respondent is precluded from offering any expert testimony regarding (1) whether OCTC is entering “unchartered territory” in charging Respondent with ethical violations under the facts and circumstances presented in this case, and (2) whether Respondent’s statements are constitutionally protected or if he may be disciplined for such statements.

IT IS SO ORDERED.

Dated: May 23, 2023



YVETTE D. ROLAND
Judge of the State Bar Court