EXHIBIT 1

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation

("MDL 1720"),

- and -

American Express Anti-Steering Rules Antitrust Litigation ("Amex Litigation").

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DECLARATION OF PROFESSOR ROY D. SIMON, JR.

PROFESSOR ROY D. SIMON, JR., pursuant to 28 U.S.C. § 1746, declares and says as follows:

Introduction

1. I am a Distinguished Professor of Legal Ethics Emeritus at Hofstra University School of Law, and I am an attorney admitted to practice and in good standing in New York, Illinois, and Missouri.
2. Counsel for Objectors retained me to render an objective expert evaluation of the conduct of attorneys Gary B. Friedman and Keila Ravelo in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* ("MDL 1720") and *American Express Anti-Steering Rules Antitrust Litigation* (the "Amex Litigation") in light of the New York Rules of Professional Conduct, general principles of a lawyer's fiduciary duties to clients, and my experience as a legal ethics advisor to lawyers and law firms for nearly thirty years.
3. My current c.v. is attached to this declaration as Exhibit A. A summary of my qualifications is attached as Exhibit B.

Documents Considered by the Witness

4. In preparing this Declaration, I reviewed all or parts of the documents listed in Exhibit C. I also spoke to some of the class representatives who were involved in the negotiations in MDL 1720.

Factual Assumptions

5. In forming my opinions, I understand and assume that the following facts are true.
6. The litigation in MDL 1720 was bitterly contested and lasted for approximately seven years before the parties reached a settlement. The District Court approved the settlement as fair, but at the time of approval the Court did not have the information about the improper transmission of documents and information from Mr. Friedman to Ms. Ravelo. (I am not offering any opinion on the substantive or procedural

fairness or merits of the settlement.)

7. Approximately one year after the Court approved the settlement, documents came to light in the files of Willkie Farr & Gallagher, Hunton & Williams, and the Law Offices of Gary B. Friedman showing that during the pendency of MDL 1720 and the Amex Litigation, Mr. Friedman sent many emails, texts, and attachments to Ms. Ravelo that contained (i) client confidential information, (ii) work product from himself or other attorneys representing the plaintiff class in both cases (MDL 1720 and the Amex Litigation), and (iii) summaries of and quotations from highly confidential, competitively sensitive business records and other documents that were covered by a protective order in the Amex Litigation. Ms. Ravelo's files also contained hard copies of certain documents. I refer to these materials collectively as the "Friedman-Ravelo documents."

8. The Friedman-Ravelo documents show that Mr. Friedman and Ms. Ravelo had an unusually close relationship that entailed financial dealings, business ventures, family vacations, frequent communications, numerous social activities, and professional endeavors together. Mr. Friedman and Ms. Ravelo also had an attorney-client relationship in at least three matters where Mr. Friedman acted as Ms. Ravelo's lawyer (including the criminal charges which Ms. Ravelo and her husband, Mel Feliz, are currently facing). Mr. Friedman and Ms. Ravelo also served as co-counsel in at least one matter.

9. The centerpiece of the injunctive relief in MDL 1720 was revising the Visa and MasterCard rules against surcharging. The surcharging relief is qualified by a so-called "level-playing-field" provision ("LPF"), which essentially permits merchants to surcharge Visa and MasterCard only on the same terms that those merchants are permitted to surcharge Amex.

10. Once the level-playing-field provision was introduced into the negotiations leading to the MDL 1720 settlement, the outcome in the Amex Litigation (which sought to change the surcharging rules of Amex) became highly material to the MDL 1720 settlement negotiations. Mr. Friedman possessed valuable information and insight into the potential impact of the level-playing-field provision.

11. Given Mr. Friedman's role as lead counsel for the putative class in the Amex Litigation, this information and insight was material to the MDL 1720 settlement. He shared this material information and insight with Ms. Ravelo, who was counsel for MasterCard, but apparently did not share it with his co-counsel in MDL 1720 or with his clients in MDL 1720.

12. Mr. Friedman was a senior member of the team in MDL 1720 and had primary responsibility for handling the negotiations for the surcharging relief that included the LPF term. At the same time, he was lead counsel for the class in the separate Amex Litigation. Virtually all members of the putative Amex class are merchants who also accept MasterCard and Visa, and are therefore members of both classes.

Summary of Opinions

13. In brief, my opinion regarding attorney Gary B. Friedman, in his capacity as counsel

to the plaintiff classes in both MDL 1720 and the Amex Litigation, is that: (i) he breached his duties to his clients, his co-counsel, and the Courts by disclosing work product, attorney-client communications, and internal communications among plaintiffs' class counsel to Keila Ravelo; (ii) he had a conflict of interest because he treated opposing counsel, Keila Ravelo, as a covert, undisclosed member of his legal team; (iii) he had a personal conflict of interest arising out of his close, long, and multi-faceted relationship with Keila Ravelo that he did not disclose to his clients and for which he did not seek or obtain consent from his clients; (iv) he did not disclose the professional or personal conflicts to his clients in either case; (v) he gave material information to Ms. Ravelo but failed to disclose that information to his clients or co-counsel – or use that information and insight for the benefit of his own clients in MDL 1720 or in the Amex Litigation – and he thus failed to act as a zealous advocate in the manner that an unconflicted lawyer would have acted.

14. Given the materiality of the information that Mr. Friedman provided to Ms. Ravelo, she presumably used it on MasterCard's behalf, as a zealous advocate was bound to do. If it had become known that she possessed this information, she and her firm would have been disqualified to prevent the inherent unfairness of a defendant's counsel possessing material, sensitive, confidential information about the views of the plaintiffs and about the strategy and thinking of plaintiffs' counsel.

15. In my three decades studying professional responsibility for lawyers – more than 20 of those years advising class action lawyers – I cannot recall ever seeing such repeated and serious violations of professional duties by an attorney representing a class, or such willing participation in those violations by an attorney for a defendant in a class action. In my view, Mr. Friedman's disregard of his professional responsibilities was prejudicial to the administration of justice and creates an intolerable appearance of impropriety.

Opinions and Reasoning

A. General Principles of Attorney Conduct

16. The New York Rules of Professional Conduct contain black letter rules that state the minimum standards for attorneys practicing law in New York. The Eastern District of New York evaluates the conduct of attorneys according to the New York Rules of Professional Conduct – see Local Rule 1.5(b)(5). An attorney who violates a Rule of Professional Conduct is subject to discipline.

17. The two most fundamental duties articulated in the Rules of Professional Conduct are the duty of loyalty and the duty of confidentiality.

    17.1. The duty of loyalty requires a lawyer to avoid improper conflicts of interest and to exercise independent professional judgment solely in a client's best interests, free of competing or compromising influences. As expressed in Comment [1] to New York Rule 1.7:

> [1] Loyalty and independent judgment are ***essential aspects of a lawyer's relationship with a client***. The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the

> benefit of the client and free of compromising influences and loyalties. … [Emphasis added.]

17.2. The duty of confidentiality requires a lawyer to avoid improper use or disclosure of information received from and about clients. As expressed in Comment [2] to New York Rule 1.6:

> [2] A ***fundamental principle in the client-lawyer re***lationship is that, in the absence of the client's informed consent, or except as permitted or required by these Rules, the lawyer must not knowingly reveal information gained during and related to the representation, whatever its source. … The lawyer's duty of confidentiality contributes to the trust that is the hallmark of the client-lawyer relationship. … [Emphasis added.]

18. The duty of confidentiality is integrally bound up with the duty of loyalty. The Rules of Professional Conduct recognize that a lawyer's fulfillment of the duty of loyalty to a client goes hand in hand with the lawyer's adherence to the duty of confidentiality to that client. For example, Rule 1.9(a) prohibits a lawyer from opposing a former client in a substantially related matter absent the former client's informed consent, because otherwise the lawyer would be in a position to use the former client's confidential information to advance the interests of the former client's adversary.

19. A lawyer who improperly reveals confidential information to a *current* client's adversary is engaging in a breach of trust that is extremely disloyal and harmful to the client. A proceeding in which a lawyer clandestinely reveals key work product and confidential information to the opposing party's counsel flies in the face of the theory of the adversary system. The basic theory of the adversary system is that each opposing party has its own zealous and loyal advocate, and the clash of opposing views of the facts and the law will lead to a fair result. *See, e.g.,* Roy Simon, Carol Needham & Burnele Powell, LAWYERS AND THE LEGAL PROFESSION: CASES AND MATERIALS Ch. 14 ("Principles of the Adversary System") (Lexis/Nexis 4th ed. 2009). If opposing lawyers are colluding with each other, the clash of zealous advocates does not occur and the outcome of the proceeding cannot be trusted.

20. In my opinion, Mr. Friedman violated his duty of confidentiality and his duty of loyalty during his representation of his clients in both MDL 1720 and in the Amex Litigation. These violations are especially serious in the context of this litigation, which has pitted historically hostile parties against each other for years. The stakes have been magnified by the class action process, which has essentially grouped every merchant in the United States who accepts Visa, MasterCard, or American Express – from Walmart to "small-mart" (my phrase) – into two mammoth parallel proceedings. I will now explain my opinions in greater detail.

B. Mr. Friedman's Breaches of Duties to Clients, Co-Counsel, and the Courts.

21. While representing his clients in MDL 1720 and in the Amex Litigation, Mr. Friedman repeatedly violated his duties of loyalty and confidentiality to his clients. Specifically:

21.1. He violated his duty of loyalty to his clients by engaging in serious conflicts of interest (effectively playing both sides) and by allowing his close personal relationship with Ms. Ravelo to cloud and adversely affect his independent professional judgment on behalf of his clients. Many times, he was more loyal to Ms. Ravelo than to his clients.

21.2. Compounding his disloyalty, Mr. Friedman failed to disclose his close relationship with Ms. Ravelo to his clients, failed to disclose that this close relationship created a conflict, and failed to obtain (or even to seek) his clients' consent to the conflict.

21.3. He violated his duty of confidentiality by giving Ms. Ravelo sensitive confidential information. For example, he gave her (i) his material insights into the potential effect of the LPF term; (ii) selected key portions and analysis of highly confidential, competitively sensitive Amex documents; (iii) an internal strategy document detailing his negotiating positions regarding the critical outstanding issues on the surcharging and LPF relief; and (iv) other work product that had been entrusted to him by his co-counsel in both cases.

C. <u>Mr. Friedman's Conflicts of Interest Among His Clients</u>.

22. Mr. Friedman engaged in unacceptable conflicts of interest among clients. For example, in his capacity as counsel to the plaintiff class in the Amex Litigation, Mr. Friedman covertly treated opposing counsel, Keila Ravelo, as a member of his team. He shared confidential information with her that a lawyer ordinarily could share only with a partner, associate, or of counsel in his own firm, or with attorneys from other firms operating under a properly documented common interest agreement. He did this over the life of the case, sharing documents relating to damages analysis, differential surcharging, parity surcharging, settlement strategy, settlement discussions, and appellate strategy.

23. Specifically, Mr. Friedman treated Ms. Ravelo as an undisclosed member of the plaintiffs' legal team in the Amex Litigation by (i) sharing confidential attorney-client communications with her; (ii) sharing attorney opinion work product with her; (iii) sharing communications from other co-counsel regarding developments or plans not yet made public or not yet communicated to defendants; and (iv) seeking her advice on legal positions and negotiating strategy that he proposed to use in the Amex Litigation.

24. Critically, on the eve of an important settlement conference in MDL 1720, Mr. [redacted] This unauthorized disclosure about the settlement terms Amex desired created two violations of Mr. Friedman's professional duties to his clients. First, he gave aid and comfort to the enemy. Second, he deprived his own clients, and apparently his co-counsel as well, of the benefit of his unique insights.

25. Once the issue of a level playing field was injected into the settlement negotiations, Mr. Friedman had a duty to use the insights he had gained in the Amex case for the benefit of the class in MDL 1720. This is fundamental to the concept of zealous advocacy on behalf of a client within the bounds of the law.

26. Mr. Friedman also counseled Ms. Ravelo on [redacted] By advising MasterCard's lawyer, Mr. Friedman was advising MasterCard. In effect, Mr. Friedman became co-counsel for MasterCard, a client whose interests diametrically differed from the interests of the class that Mr. Friedman represented in both MDL 1720 and the Amex Litigation. That was an impermissible conflict.

27. The most important rule governing conflicts of interest in New York is Rule 1.7 ("Conflict of Interest: Current Client"). Rule 1.7(a)(1) provides:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that … the representation will involve the lawyer in representing ***differing interests*** …. [Emphasis added.]

28. By teaming up with Ms. Ravelo and advising her about settlement terms that she should [redacted] Mr. Friedman became involved in representing "differing interests." ("Differing interests" are broadly defined in New York Rule 1.0(f) to include "every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.") It was as if Mr. Friedman was representing the plaintiff merchant classes by day and the defendant MasterCard by night. He was a double agent, appearing to be loyal to the class of merchants (which was composed of basically the same class members in both MDL 1720 and Amex) while secretly assisting the merchants' adversary. He was a turncoat.

29. In practical terms, Mr. Friedman was simultaneously representing both the plaintiffs and the defendants in MDL 1720. Simultaneous representation of opposing parties in litigation is absolutely prohibited by the ethics rules. Representing parties on both sides of the same suit is one of the most extreme forms of conflict of interest, and it is never permitted under any circumstances, even if the parties desire it.

30. This absolute prohibition representing both sides in a lawsuit is made explicit in New York Rule 1.7(b)(3), which says:

> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
>
> > (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in same litigation or other proceeding before a tribunal ….

31. Rule 1.7(b)(3) is one of the only *per se* categories of nonconsentable conflicts.

Comment [17] to New York Rule 1.7 illuminates the rationale underlying Rule 1.7(b)(3) as follows:

> [17] Paragraph (b)(3) describes conflicts that are ***nonconsentable*** because of the institutional ***interest in vigorous development of each client's position*** when the clients are aligned directly against each other in the same litigation or proceeding before a tribunal. … [Emphasis added.]

32. When the LPF concept emerged as a central issue in the MDL 1720 negotiations, Mr. Friedman – uniquely among co-counsel in MDL 1720 – possessed valuable and material insight and ideas developed during the Amex case. He could and should have shared these insights and ideas with his clients and his co-counsel in MDL 1720 and in the Amex Litigation. If Mr. Friedman had been acting as a zealous advocate on behalf of his clients in MDL 1720 and the Amex Litigation, he would not have given valuable confidential information and work product to opposing counsel. Instead, he would have used his insight into surcharging and into the potential consequences of LPF relief to advance the interests of his clients, and he would have shared his insight with his co-counsel in MDL 1720 and the Amex Litigation. But Mr. Friedman turned the adversary system on its head, giving the MasterCard's lawyer the benefit of his unique insight but deliberately withholding that insight from his own clients.

33. The adversary system depends on independent counsel to vigorously develop and advance his client's position. Mr. Friedman's competing loyalties thus undermined the "vigorous development of each client's position," as Comment [17] warns against, particularly because of his role in the negotiations. The Court and the public cannot have confidence in the outcome of a proceeding in which a lawyer for the class who was primarily responsible for a key issue was essentially a traitor to his own clients.

D. <u>Mr. Friedman's Personal Conflicts of Interest</u>

34. Mr. Friedman was also burdened by a personal conflict of interest in MDL 1720 and in the Amex Litigation. Rule 1.7 required him to disclose this personal conflict to his clients, but he did not. Instead of disclosing it, he concealed it.

35. Mr. Friedman's personal conflict arose out of his remarkably close, long, frequent, and multi-faceted relationship with Ms. Ravelo. This was not just a good friendship or a typical social relationship. It was also a business relationship, a professional relationship, a co-counsel relationship, and an attorney-client relationship, carried on in person, by phone, by email, and by text, involving meals and money, vacations and communications, social events and secrets. For example:

    35.1. Mr. Friedman on two occasions extended a [redacted] loan to Ms. Ravelo and her husband, Mel Feliz.

    35.2. Mr. Friedman and Ms. Ravelo had previously served together as co-counsel in other matters, and Mr. Friedman asked Ms. Ravelo whether she could co-counsel with him in [redacted]

    35.3. Mr. Friedman and Ms. Ravelo considered going into business together, at one point [redacted]

[redacted]

35.4. Mr. Friedman had an attorney-client relationship with Ms. Ravelo, representing or advising her in at least three matters, including [redacted]

35.5. Mr. Friedman and Ms. Ravelo exchanged literally hundreds of text messages and emails, and these communications interlaced business and personal topics.

35.6. Mr. Friedman and Ms. Ravelo often met socially and ate many meals together, and they likely discussed both business and personal topics on many of these occasions.

36. Especially disturbing is that the tight relationship between Mr. Friedman and Ms. Ravelo blurred or obliterated the ethical lines between the personal and the professional. Their professional actions as attorneys for the class and for MasterCard in MDL 1720 were intertwined with their personal, social, and business, relationships.

37. The New York Rules of Professional Conduct treat personal conflicts of interest as seriously as they treat conflicts of interest among clients. Rule 1.7 sets forth the test for determining whether a lawyer's personal, business, or financial interests create an impermissible conflict of interest. Specifically, Rule 1.7(a)(2) provides:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that … (2) there is a ***significant risk*** that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other interests. [Emphasis added.]

38. In terms of Rule 1.7(a)(2), the close personal and relationship between Mr. Friedman and Ms. Ravelo created much more than a "significant ***risk***" that his personal interests would adversely affect his professional judgment of on behalf of the class. The relationship with Ms. Ravelo actually led Mr. Friedman to be disloyal to his clients and to breach his duty of confidentiality to his clients in MDL 1720 and the Amex Litigation. The lack of boundaries between his personal and professional roles caused him to engage in conduct that was unethical, inappropriate, and contrary to the interests of his clients.

39. As mentioned above in connection with my analysis of conflicts among clients, Mr. Friedman treated Ms. Ravelo as a covert member of his team in the Amex Litigation, and he counseled Ms. Ravelo during the negotiations in MDL 1720. Specifically:

39.1. He shared his critical insights from the Amex Litigation regarding the potential impact of an LPF provision in the settlement agreement with Ravelo, but not with his clients in MDL 1720 and apparently not with his co-counsel in MDL 1720.

39.2. He gave Ms. Ravelo work product created for the benefit of the putative

class of plaintiffs in the Amex Litigation, and he shared summaries of confidential and competitively sensitive Amex documents with Ms. Ravelo – but he did not use these materials to advocate for the plaintiff class in MDL 1720.

39.3. He shared privileged and confidential work product from MDL 1720 with Ms. Ravelo, including communications between class counsel. These communications included [redacted].

39.4. He counseled Ms. Ravelo during the MDL 1720 negotiations on how best to protect MasterCard's position.

40. In sum, the close, continuous, multi-faceted, and frequently surreptitious business/financial/personal/co-counsel/attorney-client relationships between Mr. Friedman and Ms. Ravelo created not only a significant risk of adversely affecting Mr. Friedman's zealous representation on behalf of the plaintiff class, but created an environment that actually blossomed into improper behavior on his part. The entangling personal, business, and professional relationships between Mr. Friedman and Ms. Ravelo compromised his duty of loyalty to his clients in MDL 1720 and the Amex Litigation, and his relationships with Ms. Ravelo overrode and distorted his independent professional judgment on behalf of his clients in those cases. Thus, Mr. Friedman had a serious conflict of interest under Rule 1.7(a)(2). Yet he did nothing to cure it despite the clear command in the Rules of Professional Conduct that obtain consent to the conflict or abandon the representation.

41. When a conflict of interest arises under Rule 1.7(a)(2), a lawyer can cure the conflict only by withdrawing from representation pursuant to Rule 1.16 or by complying with the waiver provisions in Rule 1.7(b), which provides as follows:

> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
>
> > (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
> >
> > (2) the representation is not prohibited by law;
> >
> > (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
> >
> > ***(4) each affected client gives informed consent, confirmed in writing.*** [Emphasis added.]

42. Here, Mr. Friedman did not disclose this remarkably close relationship to his clients or seek their consent to the conflict it created. He had a conflict of interest that he neither cured nor attempted to cure – and the undisclosed conflict caused harm to his clients in both cases.

43. Indeed, far from disclosing his personal interest conflict to his clients as Rule 1.7 required him to do, Mr. Friedman actively sought to conceal his illicit communications with Ms. Ravelo. [redacted]

44. Mr. Friedman's efforts at concealment made it difficult for his clients, his co-counsel, or others involved in the cases to discover Mr. Friedman's improper communications, and thus enabled those communications to go undetected for a long time, including during the time period when the settlements in MDL 1720 and the Amex Litigation were being negotiated.

E. Ms. Ravelo's Disqualifying Conflicts.

45. Because Ms. Ravelo was a "stealth" member of the Amex plaintiffs' team (my phrase), and thus gained possession of material confidential information provided by counsel for the plaintiff class, she also had a conflict of interest under Rule 1.7 and should have been disqualified from representing MasterCard. Moreover, under New York Rule 1.10(a), which imputes Rule 1.7 conflicts to all lawyers associated in a firm, Ms. Ravelo's entire firm should have been disqualified as well.

46. Disqualification of Ms. Ravelo and her firm would have been a just result because the law presumes that a lawyer, as a zealous advocate, shares material information with her firm, with her co-counsel, and with her client, and/or uses the information on behalf of her clients. The information at issue here that Ms. Ravelo presumably shared with the MasterCard team and used for the benefit of MasterCard was especially sensitive, and it may well have given an unfair and impermissible advantage to MasterCard.

Respectfully submitted,

Roy D. Simon, Jr.

Dated: July 28, 2015

New York City, New York

Exhibit A

Qualifications of the Expert

1. This exhibit summarizes my qualifications as an expert in the field of legal ethics and professional responsibility. (My full *curriculum vitae* is attached to this Declaration as Exhibit B.)

2. I was the Howard Lichtenstein Distinguished Professor of Legal Ethics at Hofstra University School of Law from 2003 until September 1, 2011, when I resigned from my position at Hofstra. I continue to write my books and to participate actively in bar committees relating to professional responsibility.

3. I am admitted to practice law and am an active member in good standing of the Bar in New York, Illinois, and Missouri. I frequently advise lawyers in New York and elsewhere regarding issues of professional conduct, conflicts of interest, legal malpractice, fiduciary duties, and related issues. I sometimes serve as an expert consultant and expert witness regarding those issues.

4. I received my Bachelor of Arts degree *cum laude* in 1973 from Williams College in Williamstown, Massachusetts. I received my J.D. in 1977 from New York University School of Law, where I served as Editor-in-Chief of the *N.Y.U. Law Review.* After graduating from law school, I clerked for the Hon. Robert R. Merhige, Jr. in the United States District Court for the Eastern District of Virginia for one year, then practiced law for five years in Chicago before becoming a full-time law professor.

5. I devote virtually all of my scholarly time and effort to the field of professional responsibility (often called "legal ethics"). I am the author or co-author of three books on legal ethics, including:

   5.1. SIMON'S NEW YORK RULES OF PROFESSIONAL CONDUCT ANNOTATED (Thomson Reuters Westlaw) (seventeen editions since 1995 – the 2015 edition was the first edition written with a co-author).

   5.2. REGULATION OF LAWYERS: STATUTES AND STANDARDS (with three co-authors) (Wolters Kluwer) (twenty-six editions since 1989 – the 2015 edition was published in December of 2014).

   5.3. LAWYERS AND THE LEGAL PROFESSION: CASES AND MATERIALS (LexisNexis, 4th ed. 2009) (with Professors Carol Needham of St. Louis University and Burnele Powell of the University of South Carolina) (two editions since 1995).

6. From April 1998 until November 2011, I published an article every month (more than 160 articles in total) in the *New York Professional Responsibility Report*, a monthly newsletter with articles of interest to lawyers who practice in New York. Since the publisher's death in November 2011, I have published three articles in a similar newsletter called *New York Legal Ethics Reporter*, which began publication in January of 2015.

7. Since about 1991, I have published a column entitled "Developments in the Regulation of Lawyers" each spring and fall in the newsletter of the Professional Responsibility Section of the Association of American Law Schools, a publication

circulated primarily to other law professors who teach professional responsibility courses.

8. From August 2001 through November 2004, I published a column four times a year in the *New York Law Journal* on topics relating to professional responsibility.

9. I was a professor at Washington University in St. Louis for nine years, from 1983 to 1992, receiving tenure in 1989. I joined the faculty of Hofstra University School of Law with tenure in 1992. I resigned from Hofstra in 2011.

10. From 1985 through 2009, I taught a law school course in professional responsibility for lawyers at least once each year (a total of about thirty-five times).

11. I spend a substantial amount of time in bar association activities relating to legal ethics in New York State. My present and past positions include:

    11.1. Chair (since 2014), Chief Reporter (since 2003), and member (since 2000) of the New York State Bar Association's Committee on Standards of Attorney Conduct ("COSAC"), which monitors and proposes changes to the New York Rules of Professional Conduct and other standards regulating New York lawyers.

    11.2. Member (1995-present) and former Chair (2008-2011) of the New York State Bar Association Committee on Professional Ethics.

    11.3. Member (2005-2008) of the New York City Bar Committee on Professional Responsibility.

    11.4. Member (2002-2005 and 2012-2015) of the New York City Bar Committee on Professional and Judicial Ethics.

    11.5. Member (1995-1998) of the New York City Bar Committee on Professional Discipline.

    11.6. Member (1993-2012) and former Chair (1996-1998) of the Nassau County Bar Association Professional Ethics Committee.

    11.7. Member (2005-2006) of the New York City Bar's Task Force on the Role of the Lawyer in Corporate Governance (a special task force that has completed its work).

    11.8. Former chair (1993) of the Section on Professional Responsibility of the Association of American Law Schools ("AALS").

Exhibit B

Updated May 18, 2015

Roy D. Simon

Distinguished Professor of Legal Ethics Emeritus
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Education

1977 J.D., NEW YORK UNIVERSITY SCHOOL OF LAW, New York, N.Y.

Editor-in-Chief, *New York University Law Review*, 1976-1977.
Winner of John Norton Pomeroy Prize, 1975 (awarded to top 15 students in the first year class).

1973 B.A., WILLIAMS COLLEGE, Williamstown, Massachusetts.
Major in English.
Graduated Cum Laude and Phi Beta Kappa.

Academic Employment

1992-2011 HOFSTRA UNIVERSITY SCHOOL OF LAW, Hempstead, New York. Professor of Law (1992-2003); Howard Lichtenstein Distinguished Professor of Legal Ethics (2003-2011); Distinguished Professor of Legal Ethics Emeritus (beginning September 1, 2011).

Courses taught at Hofstra: (1) Ethics & Economics of Law Practice (also called Lawyers' Ethics) (1992-2009); (2) Civil Procedure (1997-2006); (3) Antitrust (2001-2004); (4) Insurance Law (1999, 2000, & 2003); (5) Contracts (2006-2010); (6) Disabilities Law Clinic (Director from 1992-1997); and (7) Law & Economics (2007-2009).

1983-1992 WASHINGTON UNIVERSITY SCHOOL OF LAW, St. Louis, Missouri. Assistant Professor, 1983-1986; promoted to Associate Professor on July 1, 1986; promoted to full professor, with tenure, on July 1, 1989.

Courses I taught at Washington University: (1) Legal Profession (1985-1992); (2) Pretrial Litigation (1983-1991); (3) Agency and Partnership (1992); (4) Trial Practice (1990-1991); (5) Complex Litigation (1990-1991); and (6) Clinical Courses, supervising law students handling actual cases in various government offices, including the United States Attorney's Office (Civil and Criminal Divisions), Legal Services of Eastern Missouri, and the Public Defender's Office (1983-1991).

Books, Articles, and Other Publications

A. Books.

SIMON'S NEW YORK RULES OF PROFESSIONAL CONDUCT ANNOTATED (Thomson Reuters 2015). This 2,000-page treatise, now in its seventeenth edition, annotates and explains the New York Rules of Professional Conduct and other sources regulating New York lawyers. (From 1995 through 2008, the book was entitled SIMON'S NEW YORK CODE OF PROFESSIONAL RESPONSIBILITY ANNOTATED.) In January 2015, the New York State Bar Association Committee on Professional Ethics presented me with the Sanford D. Levy Memorial Award for my "contributions to the field of legal ethics," including this book.

REGULATION OF LAWYERS: STATUTES AND STANDARDS (Aspen Law & Business 2015) (co-authored with Professor Stephen Gillers of N.Y.U. School of Law, Professor Andrew Perlman of Suffolk University Law School, and John Steele of California). This annual volume, now in its twenty-sixth edition, compiles and annotates the ABA Model Rules of Professional Conduct and various statutes, court rules, and other sources governing lawyers.

LAWYERS AND THE LEGAL PROFESSION: CASES AND MATERIALS (LexisNexis, 4th ed. 2009) (co-authored by Professors Carol Needham and Burnele Powell). This is a textbook for law students taking professional responsibility. I have been the lead co-author since 1992.

B. Law Review Articles.

Forward, *Symposium: The Ethics of Lawyers in Government,* 38 Hofstra L. Rev. 825 (2010).

Forward, *Like Gravity*, 34 Hofstra L. Rev. 635 (2006).

Forward, *Conference on Legal Ethics: What Needs Fixing?,* 30 Hofstra L. Rev. 685 (2002).

Legal Ethics Advisors and the Interests of Justice: In an Ethics Advisor a Conscience or a Co-Conspirator? 70 Fordham L. Rev. 1869 (2002).

The 1999 Amendments to the Ethical Considerations in New York's Code of Professional Responsibility, 29 Hofstra L. Rev. 265 (2000).

Gross Profits? An Introduction to a Program on Legal Fees, 22 Hofstra L. Rev. 625 (1994).

Fee Sharing Between Lawyers and Public Interest Groups, 98 Yale L. J. 1069 (1989).

The New Meaning of Rule 68: Marek v. Chesny *and Beyond*, 14 N.Y.U. Rev. of Law & Social Change 475 (1986) (lead article in symposium on attorneys' fees).

The Riddle of Rule 68, 54 Geo. Wash. L. Rev. 1 (1985) (selected by AALS Section on Civil Procedure as one of fifteen "particularly noteworthy" articles on civil procedure for 1986).

Rule 68 at the Crossroads: The Relationship Between Offers of Judgment and Statutory Attorneys' Fees, 53 U. Cin. L. Rev. 889 (1984) (cited by Justice Brennan, dissenting, in *Marek v. Chesny*, 473 U.S. 1, 34 n.50 (1985)).

Clinical Programs That Allow Both Credit and Compensation: A Model Program For Law Schools, 61 Wash. U. L.Q. 1015 (1984) (with Tom Leahy).

C. Book Chapters.

Attorney Fees and Conflicts of Interest, a chapter in a six-volume set entitled ENVIRONMENTAL LAW PRACTICE GUIDE (Matthew Bender 1992).

Rule 68 in Civil Rights Litigation, a chapter in 3 J. Lobel & B. Wolvovitz, eds., CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK (Clark Boardman 1987).

D. Additional Publications.

Developments in the Regulation of Lawyers, a column each Spring and Fall since 1991 in the Newsletter of the AALS Section on Professional Responsibility (distributed to approximately 800 law professors who teach professional responsibility).

Chief Editorial Advisor and lead writer (1998 – 2011), *New York Professional Responsibility Report* ("NYPRR"), a monthly newsletter that focused on professional responsibility issues for lawyers practicing in New York. The newsletter began publication in April 1998, and I contributed an article to virtually every monthly issue -- more than 160 articles – until the newsletter ceased publication after the publisher's death in November 2011. I now write articles for and serve on the Editorial Board of *New York Legal Ethics Reporter* ("NYLER"), which commenced publication in January 2015.

New York Law Journal "Back Page," quarterly column on ethics issues August 2001 – November 2004.

The Ethical Patchwork -- The Rules in Federal Court, Federal Bar Council News, June 1997.

Lawsuit Syndication: Selling Stock in Justice, Business & Society Review No. 69 (Spring 1989).

Current Practice Under Rule 68: A Guide to the Existing Rule (Practising Law Institute 1984).

The 1984 Proposal to Amend Rule 68: A Line-by-Line Analysis (Practising Law Institute 1984).

Previous Legal Employment

1976	Summer Associate, DAVIS POLK & WARDWELL, New York, New York. (Received but declined permanent offer.)
1977-78	Law Clerk, HON. ROBERT R. MERHIGE, JR., United States District Court for the Eastern District of Virginia, Richmond, Virginia.
1978-82	Associate, JENNER & BLOCK, Chicago, Illinois.
1982-83	Associate, HANNAFAN & HANDLER, LTD. Chicago, Illinois.

Professional Activities

Chair and Chief Reporter, New York State Bar Association Committee on Standards of Attorney Conduct ("COSAC"). This Committee drafted proposed New York Rules of Professional Conduct from 2003 to 2008. COSAC continues to monitor and propose amendments to the New York Rules of Professional Conduct, and it comments on other existing and proposed rules, standards, and guidelines affecting lawyers.

Member (1995-present) and former Chair (2008-2011) of the New York State Bar Association Committee on Professional Responsibility. This Committee responds to ethics inquiries from attorneys regarding the New York Rules of Professional Conduct, and the Committee comments on proposals affecting regulation of lawyers. In January of 2015, the Committee presented me with the Sanford P. Levy Award to recognize a lifetime of achievement for publications in the field of legal ethics.

Member, Association of the Bar of the City of New York Committee on Professional Responsibility, September 2005 - August 2008.

Member, New York City Bar Committee on Professional Ethics, 2002-2005 (three year term) and September 2012 - present.

Member (1993-2012) and former Chair (1996-1998) of the Nassau County Bar Committee on Professional Ethics.

Member, New York City Bar Task Force on the Role of the Lawyer in Corporate Governance from inception to completion, 2005 to 2006.

Member, New York City Bar Ethics 2000 Committee. This seven-member special committee, appointed by the President of the Association, spent two years reviewing and commenting on the work of the American Bar Association's Ethics 2000 Commission.

Member, New York City Bar Committee on Professional Discipline, 1995-1998 (three-year term). Chair of Subcommittee on Ethics Rules in Federal Courts.

Chair, AALS Section of Professional Responsibility, 1993. Member of the Section's Executive Committee from 1990 through 1994.

Chair, AALS Section of Litigation, 1994.

Testified before the Advisory Committee on Civil Rules about a pending proposal to amend Fed. R. Civ. P. 68, Washington, D.C., February 1, 1985.

Active member in good standing of the New York, Illinois, and Missouri Bars.

[End]

Exhibit C

Materials Reviewed by Professor Roy Simon as Objectors' Expert on Legal Ethics

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Declaration of Douglas Kantor, dated July 27, 2015