

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMES L. ALEXANDER, et al.

Plaintiffs,

ANSWER

-against-

THOMAS J. CAHILL, et al.

07-CV-117

Defendants.

FJS/GHL

Defendants Thomas J. Cahill, Mark S. Ochs, Diana Maxfield Kearse, Gary L. Casella, Rita E. Adler, Anthony J. Gigliotti, Daniel A. Drake and Vincent L. Scarsella, by their attorney, Andrew M. Cuomo, Attorney General of the State of New York, Nelson R. Sheingold and Bridget E. Holohan, Assistant Attorneys General, of counsel, answer the complaint as follows:

1. Paragraphs 1 and 2 of the Complaint merely state the bases of plaintiffs' claims and the Court's jurisdiction to which no response is required. To the extent a response is required, admit that the Court has original jurisdiction over claims brought pursuant to 42 U.S.C. §1983 and further aver that New York's disciplinary rules and regulations are constitutional.

2. Admit the allegations contained in paragraphs 6 through 13 of the Complaint to the extent that the named defendants occupied substantially the Titles enumerated at the time of the Complaint in regard to the Appellate Division of the New York State Supreme Court and not the New York State Court of Appeals.

3. Admit the allegations contained in paragraphs 14, 15 and 18 of the Complaint.

4. Admit the allegations contained in paragraphs 16 and 17 of the Complaint to the extent that the named defendants in their official capacities are responsible for investigating and prosecuting violations of New York's disciplinary rules for attorneys and there are a range of potential disciplinary penalties for violations of these rules.

5. Admit the allegations contained in paragraphs 19, 20, 21, 22, 23, and 24 of the Complaint to the extent consistent with the actual contents of the documents and regulations referenced. Deny the allegations to the extent inconsistent with the actual contents thereof.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3, 4, 5, and 31 of the Complaint of the complaint except admit that Plaintiff Alexander is a licensed attorney whose firm utilizes advertisements and a website and that plaintiff Public Citizen is a nonprofit public interest organization which also operates a website.

7. Deny the allegations contained in paragraphs 25, 26, 32, 39, 40, 41, 43 and 44 of the Complaint.

8. Deny the allegations contained in paragraphs 33, 34, 35, 36, 37, 38, and 42 of the Complaint which characterize the language and effects of the regulations and respectfully refer to the actual regulations cited as the best evidence of their contents. Specifically deny that the regulations have any effect on noncommercial speech.

9. Deny the allegations contained in paragraphs 27, 28,(a), 28(b), 29(a), 29(b) and 30 of the Complaint except admit the actual contents of the rules; that Alexander and Catalano have utilized commercials featuring techniques with no relevance to the selection of counsel; have utilized a trade name which is unverifiable and unsupported; and that they direct their irrelevant advertising

campaigns at consumers who are not experienced consumers of legal services who they believe rely upon such advertising in their selection of counsel.

10. Deny any allegation of the complaint not specifically responded to above.

Defenses

11. The complaint fails to state a claim upon which relief can be granted.
12. The complaint is barred, in whole or in part, under the Eleventh Amendment.

WHEREFORE, Defendants Thomas J. Cahill, Mark S. Ochs, Diana Maxfield Kearse, Gary L. Casella, Rita E. Adler, Anthony J. Gigliotti, Daniel A. Drake and Vincent L. Scarsella respectfully ask that this Court deny the relief requested, dismiss the complaint, and grant such other relief as to the Court shall seem is just and equitable.

Dated: Albany, NY
May 11, 2007

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