

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JAMES M. MALONEY,

Plaintiff,

- against -

**ANSWER**

03-cv-786 (ADS)(MLO)

ELIOT SPITZER, in his official capacity as Attorney General  
Of the State of New York, GEORGE PATAKI, in his  
Official capacity as Governor of the State of New York,  
And DENIS DILLON, in his official capacity as District Attorney  
Of the County of Nassau, and their successors,

Defendants.  
-----X

The defendant, DENIS DILLON, District Attorney of the County of Nassau, by his undersigned counsel, for his Answer to the Amended Complaint, responds as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.
2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.
3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3.
4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 and leave all questions of law for the Court to determine.
5. Admit the allegations in paragraph 5.
6. Deny the allegations in paragraph 6, but aver that the District Attorney of Nassau County has the authority to prosecute crimes within the County of Nassau.

7. Admit that paragraph 7 purports to set forth the jurisdictional basis for this action.

8. Admit that paragraph 8 purports to set forth the venue for this action.

9. Admit the allegations in paragraph 9.

10. Admit the allegations in paragraph 10.

11. Deny the allegations in paragraph 11 and leave all questions of law to the Court to determine.

12. Deny the allegations in paragraph 12, but aver that plaintiff pled guilty to a violation, and consented to the destruction of certain items as a condition of his plea, specifically, three revolvers and chukka sticks.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 and leave all questions of law to the Court to determine.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 14 through 29.

15. Admit that paragraphs 30 through 36 purport to set forth New York Penal Law §§265.01 and 265.02 and its origin and leave all questions of law to the Court to determine.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 37 through 44.

#### **FIRST CAUSE OF ACTION**

17. Defendant repeats and realleges each response set forth in the foregoing paragraphs 1 through 16 as if fully set forth herein.

18. Deny the allegations in paragraph 46 and leave all questions of law for the Court to determine.

**SECOND CAUSE OF ACTION**

19. Defendant repeats and reallege each response set forth in the foregoing paragraphs 1 through 18 as if fully set forth herein.

20. Deny the allegations in paragraphs 48 through 52 and leave all questions of law for the Court to determine.

**THIRD CAUSE OF ACTION**

21. Defendant repeats and reallege each response set forth in the foregoing paragraphs 1 through 20 as if fully set forth herein.

22. Deny the allegations in paragraph 54 and leave all questions of law for the Court to determine.

**FOURTH CAUSE OF ACTION**

23. Defendant repeats and reallege each response set forth in the foregoing paragraphs 1 through 20 as if fully set forth herein.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 56 through 64 and leave all questions of law for the Court to determine.

**AFFIRMATIVE DEFENSES**

25. The complaint fails to state a claim upon which relief may be granted.

26. The alleged actions of defendant were made in good faith and were in full accord with the law, and did not violate plaintiff's federal constitutional rights.

27. The defendant is immune from suit under the doctrines of qualified and prosecutorial immunity.

**WHEREFORE**, the defendant respectfully requests that the Court dismiss the Complaint in its entirety, enter judgment for defendant, and award defendants their costs and expenses in this action.

Dated: Mineola, New York  
September 29, 2005

LORNA B. GOODMAN  
Nassau County Attorney

By: \_\_\_\_\_  
Tatum J. Fox (TF-5905)  
Deputy County Attorney  
One West Street  
Mineola, New York 11501  
(516) 571-3044

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JAMES M. MALONEY,

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**CERTIFICATE OF  
SERVICE**

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ELIOT SPITZER, in his official capacity as Attorney General  
Of the State of New York, GEORGE PATAKI, in his  
Official capacity as Governor of the State of New York,  
And DENIS DILLON, in his official capacity as District Attorney  
Of the County of Nassau, and their successors,

Defendants.

-----X

I hereby certify that on September 29, 2005 the ANSWER TO THE AMENDED COMPLAINT was served in accordance with the Federal Rules of Civil Procedure, the Eastern District's Local Rules, and the Eastern Districts Rules of Electronic Service upon the following parties:

James M. Maloney, Pro Se Plaintiff  
33 Bayview Avenue  
Port Washinton, New York 11050

Elliot Spitzer  
Office of the New York State Attorney General  
200 Old Country Road  
Suite 460  
Mineola, NY 11501

Dated: Mineola, New York  
September 29, 2005

LORNA B. GOODMAN  
Nassau County Attorney

By: \_\_\_\_\_  
Tatum J. Fox (TF-5905)  
Deputy County Attorney  
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