

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ALFRED G. OSTERWEIL

Plaintiff,

-against-

GEORGE R. BARTLETT III,

Defendant.

**ANSWER
09-CV-825
(GLS)(DRH)**

Defendant Bartlett, by his attorney, ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, James B. McGowan, Assistant Attorney General of Counsel, answers the complaint as follows:

1. Leaves the legal conclusions set forth in both paragraphs 1 of the complaint to the determination of the Court and otherwise denies plaintiff is entitled to any relief herein.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in both paragraphs 2 of the complaint and paragraph 11 of the complaint. .
3. Denies paragraph 3 on page 1 of the complaint.
4. Admits the allegations contained in paragraph 3 of page 2 of the complaint.
5. Denies the allegations contained in paragraphs 4, 5, 8, 12, 13, and 14 of the complaint and each of the paragraphs stylized therein as causes of action.
6. Respectfully refers the court to the materials cited in paragraphs 7, 9, and 10 of the complaint as the best evidence of the contents thereof and denies plaintiff's allegations insofar as they differ therefrom.
7. Deny any allegation of the complaint not specifically responded to above.

Defenses

8. The complaint fails to state a claim upon which relief can be granted.

9. At all relevant times Judge Bartlett acted under the reasonable belief that his conduct was in accordance with clearly established law. Reasonable licensing officials in his position would believe that they could conduct themselves as Judge Bartlett did without any violation of plaintiff's federally protected rights. Judge Bartlett, therefore, protected under the doctrine of qualified immunity.

10. The complaint is barred, in whole or in part, under the Eleventh Amendment.

11. Plaintiff has failed to exhaust administrative remedies.

12. Insofar as plaintiff admittedly brings no state law claims, this Court is not empowered to issue a license under State law and must, in the interests of sovereign immunity and comity, abstain from granting any license herein regardless of its determination of any federal question.

WHEREFORE, Defendant Bartlett demands that this Court deny the relief requested, dismiss the complaint, and grant defendant such other relief as to the Court shall seem is just and equitable.

Dated: Albany, New York
February 4, 2011

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