

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SCOTT G. WOLFE, JR., et al.,

Plaintiffs,

VERSUS

LOUISIANA ATTORNEY
DISCIPLINARY BOARD, et al.,

Defendants.

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* CIVIL ACTION NO. 08-4994
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* SECTION "F"
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* JUDGE FELDMAN
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* MAGISTRATE WILKINSON
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**ANSWER AND DEFENSES OF THE LOUISIANA ATTORNEY DISCIPLINARY
BOARD, BILLY R. PESNELL, AND CHARLES B. PLATTSMIER
TO PLAINTIFFS' COMPLAINT**

Defendants, the Louisiana Attorney Disciplinary Board, Billy R. Pesnell, and Charles B. Plattsmier (collectively, "defendants"), by and through their attorneys, admit, deny and allege as follows:

1.

In response to the allegations in Paragraph 1, defendants admit that this suit challenges the constitutionality of proposed amendments to the lawyer advertising provisions of the Louisiana Rules of Professional Conduct and that said amendments, originally scheduled to

become effective on December 1, 2008, are now scheduled to become effective on April 1, 2009.

Defendants also admit that plaintiffs seek declaratory and injunctive relief. In all other respects, the allegations in Paragraph 1 are denied.

2.

Defendants admit that this Court has subject matter jurisdiction over plaintiffs' claims, except to the extent such jurisdiction should not or cannot be exercised pursuant to the grounds set forth in defendants' affirmative defenses below.

3.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3.

4.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4.

5.

In response to the allegations in Paragraph 5, defendants admit that the Louisiana Attorney Disciplinary Board is the state agency responsible for administering lawyer discipline in the state. Defendants further admit that the Board investigates, prosecutes, and adjudicates claims regarding alleged violations of the Louisiana Rules of Professional Conduct, and makes recommendations to the Louisiana Supreme Court regarding lawyer discipline in appropriate circumstances. In all other respects, the allegations in Paragraph 5 are denied.

6.

Defendants admit the allegations in Paragraph 6.

7.

Defendants admit the allegations in Paragraph 7.

FACTS

8.

Defendants admit the allegations in Paragraph 8.

9.

Defendants admit the allegations in Paragraph 9.

10.

The allegations in Paragraph 10 are legal conclusions as to which no responsive pleading is required. To the extent that a response is deemed necessary, defendants state that the contents of the Louisiana Rules of Professional Conduct speak for themselves.

11.

In response to the allegations in Paragraph 11, defendants admit that amendments to the Louisiana Rules of Professional Conduct were adopted by the Louisiana Supreme Court on July 3, 2008. Defendants also admit that said amendments were initially scheduled to go into effect on December 1, 2008, but are now scheduled to go into effect on April 1, 2008. In all other respects, the allegations in Paragraph 11 are denied, except that the contents of the referenced concurrent resolution by the Louisiana State Senate speak for themselves.

12.

The allegations in Paragraph 12 are legal conclusions as to which no responsive pleading is required. To the extent that a response is deemed required, defendants state that the referenced Rule 7.2 speaks for itself.

13.

The allegations in Paragraph 13 are legal conclusions as to which no responsive pleading is required. To the extent that a response is deemed required, defendants state that the referenced portions of Rule 7.6 speak for themselves.

14.

In response to the allegations in Paragraph 14, defendants state that the contents of the referenced "Handbook on Lawyer Advertising and Solicitation" speak for themselves.

15.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15.

16.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16.

17.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17.

18.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18.

19.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19.

20.

Defendants deny the allegations in Paragraph 20.

21.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21.

22.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22. Further answering, defendants state that the referenced advertisement speaks for itself.

23.

The allegations in Paragraph 23 are legal conclusions as to which no responsive pleading is required. Further answering, defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the sophistication of "junk-mail filters." In all other respects, and to the extent a response is deemed required, the allegations in Paragraph 23 are denied.

24.

Defendants deny the allegations in Paragraph 24.

25.

Defendants deny the allegations in Paragraph 25.

26.

The allegations in the first Paragraph numbered 26 are legal conclusions as to which no responsive pleading is required. To the extent that a response is deemed required, defendants state that the referenced Rule 7.6 speaks for itself. Further answering, defendants state that the portions of the "Handbook on Lawyer Advertising and Solicitation" referenced in the second Paragraph numbered 26 speak for themselves.

27.

In response to the allegations in Paragraph 27 and its subparts, defendants state that these allegations are legal conclusions as to which no responsive pleading is required. To

the extent that a response is deemed required, defendants state that the referenced portions of Rule 7.2 speak for themselves.

28.

In response to the allegations in Paragraph 28, defendants state that these allegations are vague in that the referenced portion of the amended rules is unidentified. Further answering, defendants state that these allegations are legal conclusions as to which no responsive pleading is required. To the extent that a response is deemed required, defendants state that the amended rules speak for themselves.

29.

In response to the allegations in Paragraph 29, defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding "posts" on plaintiffs' "own blog." In all other respects, the allegations in Paragraph 29 are denied. Further answering, defendants state that the referenced "posts" on plaintiffs' "own blog" speak for themselves.

30.

In response to the allegations in Paragraph 30 and its subparts, defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the content of plaintiffs' various submissions, comments, blog posts, "podcasts" and "videocasts." In all other respects, the allegations in Paragraph 30 are denied. Further answering, defendants state that the referenced submissions, comments, blog posts, "podcasts," and "videocasts" speak for themselves.

31.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31.

32.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32.

33.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33.

34.

The allegations in Paragraph 34 are legal conclusions as to which no responsive pleading is required. To the extent that a response is deemed required, defendants deny the allegations.

35.

Defendants deny the allegations in Paragraph 35.

36.

Defendants deny the allegations in Paragraph 36.

37.

Defendants deny the allegations in Paragraph 37.

38.

Defendants deny the allegations in Paragraph 38.

39.

Defendants deny the allegations in Paragraph 39.

40.

Defendants deny the allegations in Paragraph 40.

41.

Defendants deny the allegations in Paragraph 41.

42.

Defendants deny the allegations in Paragraph 42.

CLAIMS FOR RELIEF

43.

Defendants deny the allegations in Paragraph 43.

44.

Defendants deny the allegations in Paragraph 44.

45.

In response to the allegations in Paragraph 45, defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the nature of plaintiffs' marketing efforts and whether plaintiffs' advertisements are subject to the amended rules. In all other respects, the allegations in Paragraph 45 are denied.

46.

Defendants deny the allegations in Paragraph 46.

47.

Defendants deny the allegations in Paragraph 47.

48.

Defendants deny the allegations in Paragraph 48.

49.

Defendants deny the allegations in Paragraph 49.

50.

Defendants deny the allegations in Paragraph 50.

51.

Paragraph 51 and its subparts are requests for relief that do not require a response. Defendants deny that plaintiffs are entitled to any of the relief requested in Paragraph 51, or to any relief whatsoever.

ADDITIONAL DEFENSES

FIRST DEFENSE

The Court should decline to hear any argument related to plaintiffs' allegations pursuant to the Abstention Doctrine.

SECOND DEFENSE

Plaintiffs lack standing to bring this action.

THIRD DEFENSE

Plaintiffs' purported causes of action do not set forth an actual controversy upon which a judgment may be rendered to the extent that the dispute between plaintiffs and defendants is not ripe for adjudication.

Dated: December 16, 2008

Respectfully submitted,

/s/ Kathryn M. Knight

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*Attorneys for the Louisiana Attorney
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CERTIFICATE

I hereby certify that on this 16th day of December, 2008, a copy of the foregoing Answer and Defenses of the Louisiana Attorney Disciplinary Board, Billy R. Pesnell, and Charles B. Plattsmier to Plaintiffs' Complaint has been served upon each counsel of record by notice of electronic filing generated through the CM/ECF system, and/or by United States mail, facsimile, or e-mail for those counsel who are not participants in the CM/ECF system.

/s/ Kathryn M. Knight
