

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY**

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**KIMBERLY HURRELL-HARRING, JAMES ADAMS,  
JOSEPH BRIGGS, RICKY LEE GLOVER, RICHARD  
LOVE, JACQUELINE WINBRONE, LANE LOYZELLE,  
TOSHA STEELE, BRUCE WASHINGTON, SHAWN CHASE,  
JEMAR JOHNSON, ROBERT TOMBERELLI,  
CHRISTOPHER YAW, LUTHER WOODROW OF  
BOOKER, JR., EDWARD KAMINSKI, JOY METZLER,  
VICTOR TURNER, CANDACE BROOKINS, RANDY  
HABSHI, and RONALD McINTYRE, on behalf of  
Themselves and all others similarly situated,**

Plaintiffs

**ANSWER**

Index No. 8866-07

v.

**THE STATE OF NEW YORK, GOVERNOR DAVID  
PATERSON, in his official capacity, THE COUNTY OF  
ONONDAGA, NEW YORK, THE COUNTY OF  
ONTARIO, NEW YORK, THE COUNTY OF  
SCHUYLER, NEW YORK, THE COUNTY OF  
SUFFOLK, NEW YORK and THE COUNTY OF  
WASHINGTON, NEW YORK,**

Defendants,

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Defendant County of Ontario, by their attorneys, Ontario County Attorney's Office by  
Michael G. Reinhardt, Esq., answer the complaint, herein alleges:

1. DENY the allegations of the complaint which allege in any manner that the actions of the Defendant resulting in a deprivation of the Plaintiff's New York State and/or constitutional rights.
2. DENY the commission or awareness of, or responsibility for, any acts or omissions or commissions relative to Plaintiffs' allegations constituting a violation of any rule, regulation, directive, policy, or statute of the State of New York or the United States, or the Constitution of either, which would confer jurisdiction upon this Court.

3. DENY the allegations in the complaint which allege in any manner that the actions of the Defendant resulting in “violating or will violate plaintiffs’ rights to meaningful and effective assistance of counsel and to due process of law ...”
4. DENY the allegations in the complaint which allege in any manner that the actions of the Defendant resulted in “violating or will violate plaintiffs’ rights under New York County Law §§ 717, 722-c; and New York Criminal Procedure Law §§ 170.10, 180.10, 180.80, 190.50 and 210.15 by failing to provide meaningful and effective assistance of counsel”.
5. DENY Plaintiff has alleged facts, actions, occurrences, or omissions sufficient to establish a claim for equitable or monetary relief, or a cause of action against the Defendants pursuant to 42 U.S.C. § 1983.
6. DENY having personal knowledge or information sufficient to form a belief as to the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404 and 405.
7. ADMIT the allegations in paragraph 38.

8. DENY the allegations in paragraphs 406, 407, 408, 409, 410, 411, 412, 413, 415, and 417.
9. As to paragraph 414, Defendant repeats and reiterates the responses to paragraphs 1-413.
10. As to paragraph 416, Defendant repeats and reiterates the responses to paragraphs 1-417.
11. Defendant DENIES each and every other allegation of the complaint not heretofore admitted, denied or otherwise controverted.

#### **FIRST AFFIRMATIVE DEFENSE**

12. That the complaint fails, in whole or in part, to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE:**

13. That the alleged conduct was, in whole or in part, properly within the discretionary authority committed to the Defendant to perform its official functions and the relief prayed for would constitute an improper intrusion by the State Judiciary into said discretionary authority.

#### **THIRD AFFIRMATIVE DEFENSE**

14. That this action is barred, in whole or in part, by the applicable statute of limitations.

#### **FOURTH AFFIRMATIVE DEFENSE**

15. This action is barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel.

#### **FIFTH AFFIRMATIVE DEFENSE**

16. That the Defendant is entitled to qualified immunity in this case.

### **SIXTH AFFIRMATIVE DEFENSE**

17. The Defendant is immune from Plaintiffs' civil rights claim in that:
- A. It was subjectively reasonable for such Defendant to believe that its alleged act did not violate Plaintiffs' rights and/or
  - B. The legal norms allegedly violated by Defendant were not clearly established.

### **SEVENTH AFFIRMATIVE DEFENSE**

18. Plaintiffs' complaint fails to satisfy the prerequisites to an action against Defendant pursuant to §§50e and 50i of the New York General Municipal Law.
19. Pursuant to General Municipal Law §§50e and 50i, Plaintiffs' claim and/or claims against Answering Defendant must be dismissed.

### **EIGHTH AFFIRMATIVE DEFENSE**

20. That any injuries or damages allegedly sustained by the Plaintiffs were not caused by any culpable conduct on the part of the Defendant, but were caused solely or in part by the culpable conduct of the Plaintiffs, or some other party or parties over whom the Defendant had no control, and that said culpable conduct on the part of the Plaintiffs or some other party or parties over whom the Defendant had no control contributed to and/or caused the injuries or damages complained of.

### **NINTH AFFIRMATIVE DEFENSE**

21. To the extent that the complaint seeks to hold the County of Ontario liable for the alleged wrongful acts of its Assigned Counsel Program, directors and their employees on the theory of *respondeat superior* or vicarious liability, the County is immune from such claims.

#### **TENTH AFFIRMATIVE DEFENSE**

22. In the event that any prior or subsequent settlement entered into between Plaintiffs' and another person or persons liable in tort for the same injury, Defendant herein asserts all relevant provisions of General Obligations Law §15-108.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

23. Ontario County Plaintiffs had an adequate remedy at the trial level, namely invoking the supervisory powers of the various courts in which their cases were docketed. It is the continuing responsibility of the trial judiciary to oversee the proper exercise of a criminal defendant's constitutional rights.

#### **TWELFTH AFFIRMATIVE DEFENSE**

24. Allegations of counsel failure in various cases while failing to name the defense attorneys involved deprives those attorneys of an opportunity to be heard in vindication.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

25. The court has ruled that the individual Defendant counties are necessary parties. It would therefore seem that the potential financial impact on all 62 New York counties would be an equally pertinent consideration requiring the naming of all counties as parties to this action.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

26. A classification in accordance with Article 9 of the CPLR is inappropriate because:
- A. Every Assigned Counsel client has a unique situation and hence lacks commonality with other Plaintiffs.
  - B. The issues complained of are not identical as among the Plaintiffs.
  - C. Criminal defendants have adequate recourse within the criminal justice system.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

27. Government entities are not subject to a class action under the circumstances alleged by Plaintiffs.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

28. Insofar as Plaintiffs' concerned claim that they were improperly denied access to public defense due to improper application of indigency standards, such denial(s) should have been reviewed via Article 78 proceedings, the statute of limitations on which has long expired.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

29. The court lacks subject matter jurisdiction.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

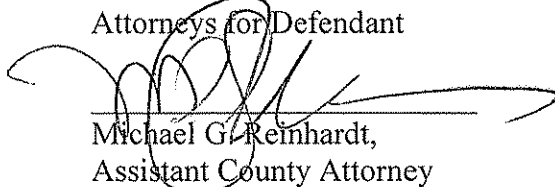
30. Plaintiffs lack standing to challenge the matters that they are attempting to challenge. CPLR 3211(a)(3).

Wherefore, the Defendant Ontario County requests:

- A. The dismissal of Plaintiffs' Complaint in its entirety.
- B. Alternatively, if Plaintiffs should prevail in the action and be awarded attorneys fees, such fees be declared the exclusive responsibility of NYS in accordance with CPLR 8601.
- C. Such other and further relief as the Court deems just.

Dated: October 24, 2008

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