

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

07 CVS 16422

CATHERINE M. EL-KHOURI, LAURA E.)
OBERBAUER, and W. ANTHONY PURCELL,)

Plaintiffs,)

v.)

MOTION TO DISMISS

STATE OF NORTH CAROLINA; THE NORTH)
CAROLINA STATE BAR; L. THOMAS)
LUNSFORD, II, in his official capacity as)
Secretary/Treasurer of the North Carolina State)
Bar; THE NORTH CAROLINA BAR)
ADMINISTRATIVE COMMITTEE;)
MARGARET M. HUNT, in her official capacity)
as Chairperson of the North Carolina Bar)
Administrative Committee; DAVID YATES)
BINGHAM, in his official capacity as)
Vice-Chairperson of the North Carolina Bar)
Administrative Committee; and RONALD G.)
BAKER, SR., GILBERT W. CHICHESTER,)
WILLIAM M. CLAYTOR, FORREST A.)
FERRELL, JOHN E. GEHRING, DOUGLAS R.)
GILL, SIDNEY J. HASSELL, JR., ISAAC)
HEARD, JR., PATRICIA HOLLAND, DAVID)
T. PHILLIPS, FRED D. POISSON, JR.,)
DONALD C. PRENTISS, and JAN H. SAMET,)
in their official capacities as members of the)
North Carolina Bar Administrative Committee,)

Defendants.)

NOW COME the defendants in this matter, by and through their undersigned counsel, and hereby move that this action be dismissed for lack of jurisdiction over the subject matter pursuant to N.C. R. Civ. P. 12(b)(1), for lack of jurisdiction over the person pursuant to N.C. R. Civ. P. 12(b)(2), and for failure to state a claim upon which relief can be granted pursuant to N.C. R. Civ. P. 12(b)(6), on the grounds that:

1. The action is barred, in whole or in part, by sovereign immunity;
2. Plaintiffs have failed to state a claim upon which relief can be granted, in that:
 - a. The judicial surcharge about which plaintiffs complain does not unconstitutionally burden plaintiffs' freedom of speech, freedom of association or due process rights under the First or Fourteenth Amendments to the Constitution of the United States;
 - b. The judicial surcharge does not unconstitutionally burden plaintiffs' freedom of speech under Article I, § 14, of the Constitution of the North Carolina;
 - c. The fact that the United States District Court for the Eastern District of North Carolina determined that the judicial surcharge constitutes a tax within the meaning of the federal Tax Injunction Act, 28 U.S.C. § 1341, does not mean that the judicial surcharge constitutes a tax within the meaning of North Carolina law;
 - d. The imposition of the judicial surcharge, whether it is considered a tax under North Carolina law or not, is not arbitrary or irrational and does not violate plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States or under Article I, § 19, of the Constitution of North Carolina;
 - e. Even if the judicial surcharge is considered a tax, the General Assembly has not delegated its taxing power to the North Carolina State Bar in violation of Article V, § 2(3), or Article I, § 6, of the Constitution of North Carolina, but rather has only designated the North Carolina State Bar as the agency

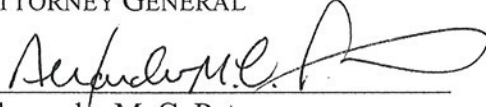
responsible for collecting the tax imposed by the General Assembly in N.C. Gen. Stat. § 84-34.

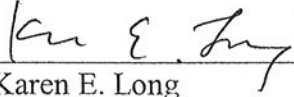
- f. The imposition of the judicial surcharge, if it is considered a tax under North Carolina law, only on active members of the North Carolina State Bar is not based on an unreasonable or arbitrary classification of taxpayers in violation of Article V, § 2(2), of the Constitution of North Carolina;
- g. The imposition of the judicial surcharge, if it is considered a tax under North Carolina law, only on active members of the North Carolina State Bar is not an unfair, unjust, inequitable, arbitrary or capricious exercise of the power of taxation in violation of Article V, § 2(1), of the Constitution of North Carolina;
- h. Plaintiffs are not entitled to entry of a declaratory judgment because the judicial surcharge is, as a matter of law, constitutional and lawful, and the facts as alleged, even if true, do not show otherwise.

Wherefore, defendants respectfully pray that this action be dismissed.

Respectfully submitted, this the 13th day of November, 2007.

ROY COOPER
ATTORNEY GENERAL


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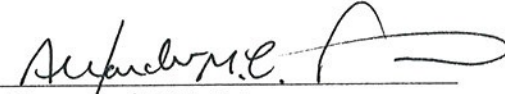
CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **MOTION TO DISMISS** in the above titled action upon all other parties to this cause by:

- Hand delivering a copy hereof to each said party or to the attorney thereof;
- Transmitting a copy hereof to each said party via facsimile transmittal; or
- Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

Jeanette Doran Brooks
North Carolina Institute for Constitutional Law
225 Hillsborough St., Suite 280
Raleigh, North Carolina 27603

This the 13th day of November, 2007.



Alexander M.C. Peters
Special Deputy Attorney General