

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
06 DHC 35

THE NORTH CAROLINA STATE BAR,

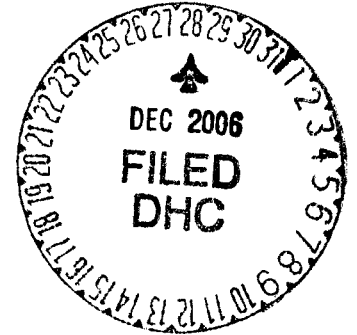
Plaintiff,

v.

MICHAEL B. NIFONG, Attorney,

Defendant.

COMPLAINT



Plaintiff, complaining of defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Michael B. Nifong, (hereinafter "Nifong" or "defendant"), was admitted to the North Carolina State Bar on August 19, 1978, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

Upon information and belief, plaintiff alleges:

3. During all times relevant to this complaint, Nifong actively engaged in the practice of law in the State of North Carolina as District Attorney for the Fourteenth Prosecutorial District in Durham County, North Carolina.

4. In the early morning hours of March 14, 2006, a woman reported that she had been raped by three men during a party at 610 North Buchanan Boulevard.

5. Durham Police initiated an investigation and executed a search warrant on the house at 610 North Buchanan Boulevard on March 16, 2006.

6. Police investigation also revealed that the residents of 610 Buchanan Boulevard were members of the Duke University lacrosse team, and that the other attendees at the March 13, 2006, party had also been members of the team.

7. On or about March 22, 2006, an investigator from the Durham Police Department contacted the Durham District Attorney's office for assistance in obtaining a Nontestimonial Identification Order (NTO), which would compel the suspects in the case to present themselves to authorities to be photographed and provide DNA samples.

8. Nifong learned of the case on March 22, 2006, when the NTO was granted and served on forty-six members of the Duke lacrosse team.

9. On or about March 27, 2006, Durham Police officials briefed Nifong on the case, which would often be referred to in the media as the "Duke Lacrosse rape case."

10. Beginning on or before March 27, 2006, Nifong made public comments and statements to the representatives of the news media about the Duke Lacrosse rape case.

11. Nifong participated in interviews with various newspapers and television stations beginning on March 27, 2006 on several different aspects of the case and investigation.

12. For example, Nifong made various statements to the news media about Duke lacrosse team members' alleged failure or refusal to cooperate with or make a statement to law enforcement authorities.

13. Nifong told a representative of the news media that lacrosse team members deny the rape accusations, that team members admitted that there was underage drinking at the party, and that otherwise team members were not cooperating with authorities.

14. Nifong made the statements referenced in paragraph 13 above to a reporter for WRAL news.

15. Nifong made the statements referenced in paragraph 13 above in March, 2006.

16. Nifong told a representative of the news media that he may also consider charging other players for not coming forward with information, stating "[m]y guess is

that some of this stonewall of silence that we have seen may tend to crumble once charges start to come out," Nifong said.

17. Nifong made the statements referenced in paragraph 16 above to a reporter for ABC 11 TV News.

18. Nifong made the statements referenced in paragraph 16 above in March, 2006.

19. Nifong stated to a representative of the news media: "[t]here are three people who went into the bathroom with the young lady, and whether the other people there knew what was going on at the time, they do now and have not come forward. I'm disappointed that no one has been enough of a man to come forward. And if they would have spoken up at the time, this may never have happened."

20. Nifong made the statements referenced in paragraph 19 above to a reporter for the New York Times.

21. Nifong made the statements referenced in paragraph 19 above in March, 2006.

22. Nifong stated to a representative of the news media that the lacrosse team members were standing together and refusing to talk with investigators.

23. Nifong made the statement referenced in paragraph 22 above to a reporter for NBC 17 News.

24. Nifong made the statement referenced in paragraph 22 above in March, 2006.

25. Nifong stated to a representative of the news media that he might bring aiding-and-abetting charges against some of the players who were not cooperating with Nifong's investigation.

26. Nifong made the statement referenced in paragraph 25 above to a reporter for NBC 17 News.

27. Nifong made the statement referenced in paragraph 25 above in March, 2006.

28. Nifong stated to a representative of the news media that lacrosse players still refused to speak with investigators.

29. Nifong made the statement referenced in paragraph 28 above to a reporter for the Herald Sun newspaper.

30. Nifong made the statement referenced in paragraph 28 above in March, 2006.

31. Nifong stated to a representative of the news media "[i]t just seems like a shame that they are not willing to violate this seeming sacred sense of loyalty to team for loyalty to community."

32. Nifong made the statement referenced in paragraph 31 above during an interview with a reporter for CNN.

33. Nifong made the statement referenced in paragraph 31 above on or about March 29, 2006.

34. Nifong stated to a representative of the news media that "[t]he lacrosse team, clearly, has not been fully cooperative" in the investigation and "[t]he university, I believe, has done pretty much everything that they can under the circumstances. They, obviously, don't have a lot of control over whether or not the lacrosse team members actually speak to the police. I think that their silence is as a result of advice with counsel."

35. Nifong made the statements referenced in paragraph 34 above to Rene Syler of the CBS news.

36. Nifong made the statements referenced in paragraph 34 above in March, 2006.

37. Nifong stated to a representative of the news media "[i]f it's not the way it's been reported, then why are they so unwilling to tell us what, in their words, did take place that night?"

38. Nifong made the statement referenced in paragraph 37 above to Rene Syler of the CBS news.

39. Nifong made the statement referenced in paragraph 37 above in March, 2006.

40. Nifong stated to a representative of the news media "[a]nd one would wonder why one needs an attorney if one was not charged and had not done anything wrong."

41. Nifong made the statement referenced in paragraph 40 above to George Smith, a reporter for ESPN.

42. Nifong made the statement referenced in paragraph 40 above in March 2006.

43. Nifong made statements to the news media, including but not limited to those set forth in paragraphs 13-42 above, that were improper commentary on the lacrosse team members' alleged failure or refusal to make a statement to law enforcement authorities and upon the lacrosse team members' alleged invocation of their constitutional rights.

44. Nifong also made various statements to the news media about the performance or results of tests performed as a part of the investigation.

45. Nifong stated to a representative of the news media "[m]y guess is that there are many questions that many people are asking that they would not be asking if they saw the results."

46. Nifong made the statement referenced in paragraph 45 above to a reporter for WRAL News.

47. Nifong made the statement referenced in paragraph 45 above in May, 2006.

48. Nifong stated to a representative of the news media "[t]hey're not things that the defense releases unless they unquestionably support their positions."

49. Nifong made the statement referenced in paragraph 48 above to a reporter for WRAL News.

50. Nifong made the statement referenced in paragraph 48 above in May, 2006.

51. Nifong stated to a representative of the news media "[s]o, the fact that they're making statements about what the reports are saying, and not actually showing the reports, should in and of itself raise some red flags."

52. Nifong made the statement referenced in paragraph 51 above to a reporter for WRAL News.

53. Nifong made the statement referenced in paragraph 51 above in May, 2006.

54. Nifong made statements to the news media, including but not limited to those set forth in paragraphs 45-53, that are improper commentary on the performance or results of tests performed as a part of the investigation.

55. Nifong also made various statements to the news media about the evidence and testimony expected to be presented in the trial of the case.

56. Nifong stated to a representative of the news media "[t]here is evidence of trauma in the victim's vaginal area that was noted when she was examined by a nurse at the hospital."

57. Nifong made the statement referenced in paragraph 56 above to a reporter for MSNBC.

58. Nifong made the statement referenced in paragraph 56 above in March, 2006.

59. Nifong stated to a representative of the news media that "her general demeanor was suggested-suggestive of the fact that she had been through a traumatic situation."

60. Nifong made the statement referenced in paragraph 59 above to a reporter for MSNBC.

61. Nifong made the statement referenced in paragraph 59 above in March, 2006.

62. Nifong stated to a representative of the news media "[a]nd the investigation at that time was certainly consistent with a sexual assault having taken place, as was the victim's demeanor at the time of the examination."

63. Nifong made the statement referenced in paragraph 62 above to a representative of CBS News.

64. Nifong made the statement referenced in paragraph 62 above in March, 2006.

65. Nifong stated to a representative of the news media that the police took the alleged victim to a hospital where a nurse concluded that she had suffered injuries consistent with a sexual assault.

66. Nifong made the statement referenced in paragraph 65 above to a reporter for Newsweek Magazine.

67. Nifong made the statement referenced in paragraph 65 above in April 2006.

68. Nifong stated to a representative of the news media that other DNA testing had not yet come back and that there was other evidence, including the accuser being able to identify at least one of the alleged attackers.

69. Nifong made the statement referenced in paragraph 68 above to a reporter for ABC 11 News.

70. Nifong made the statement referenced in paragraph 68 above in April, 2006.

71. Nifong stated to a representative of the news media that a rape examination of the victim done at Duke Medical Center the morning of the alleged attack revealed evidence of bruising consistent with a brutal sexual assault, "with the most likely place it happened at the lacrosse team party."

72. Nifong made the statements referenced in paragraph 71 above in March or April, 2006.

73. Nifong stated to a representative of the news media "[s]omebody had an arm around her like this, which she then had to struggle with in order to be able to breathe... She was struggling just to be able to breathe."

74. Nifong made the statement referenced in paragraph 73 above to a reporter for MSNBC.

75. Nifong made the statement referenced in paragraph 73 above on or about March 31, 2006.

76. Nifong made statements to the news media, including but not limited to those set forth in paragraphs 56-75 above, that are improper commentary on the evidence and testimony expected to be presented in the trial of the case.

77. Nifong also made various statements to the news media about his opinion of the guilt of the accused and/or about his opinion that a crime had occurred.

78. Nifong stated to a representative of the news media "[t]he information that I have does lead me to conclude that a rape did occur."

79. Nifong made the statement referenced in paragraph 78 above to a reporter for NBC 17 News.

80. Nifong made the statement referenced in paragraph 78 above in March, 2006.

81. Nifong stated to a representative of the news media "I'm making a statement to the Durham community and, as a citizen of Durham, I am making a statement for the Durham community. This is not the kind of activity we condone, and it must be dealt with quickly and harshly."

82. Nifong made the statements referenced in paragraph 81 above to a reporter for NBC 17 News.

83. Nifong made the statements referenced in paragraph 81 above in March, 2006.

84. Nifong stated to a representative of the news media "I am convinced there was a rape, yes, sir."

85. Nifong made the statement referenced in paragraph 84 above to a reporter for MSNBC.

86. Nifong made the statement referenced in paragraph 84 above in March, 2006.

87. Nifong stated to a representative of the news media that he believed a crime occurred.

88. Nifong made the statement referenced in paragraph 87 above to Rene Syler, an interviewer for the CBS Early Show.

89. Nifong made the statement referenced in paragraph 87 above in March, 2006.

90. Nifong stated to a representative of the news media "the guilty will stand trial."

91. Nifong made the statement referenced in paragraph 90 above to Rene Syler, an interviewer for the CBS Early Show.

92. Nifong made the statement referenced in paragraph 90 above in March, 2006.

93. Nifong stated to a representative of the news media "[t]here's no doubt a sexual assault took place."



94. Nifong made the statement referenced in paragraph 93 above to Rene Syler, an interviewer for the CBS Early Show.

95. Nifong made the statement referenced in paragraph 93 above in March, 2006.

96. Discussing the result of DNA testing, Nifong stated during a public forum that "[i]t doesn't mean nothing happened. It just means nothing was left behind."

97. Nifong made the statements referenced in paragraph 96 above at a public forum at North Carolina Central University.

98. Nifong made the statements referenced in paragraph 96 above to a reporter for ESPN News.

99. Nifong made the statements referenced in paragraph 96 above in April, 2006.

100. Nifong stated to a representative of the news media "I am satisfied that she was sexually assaulted at this residence."

101. Nifong made the statement referenced in paragraph 100 above to a reporter for the Raleigh News and Observer newspaper.

102. Nifong made the statement referenced in paragraph 100 above in March, 2006.

103. Nifong stated to a representative of the news media "[t]hey don't want to admit to the enormity of what they have done."

104. Nifong made the statement referenced in paragraph 103 above to a reporter for a publication called The Devil's Advocate.

105. Nifong made the statement referenced in paragraph 103 above in April, 2006.

106. On June 19, 2006, Nifong issued a press release stating "[n]one of the 'facts' I know at this time, indeed, none of the evidence I have seen from any source, has changed the opinion that I expressed initially."

107. Nifong's statements set forth in paragraphs 78-106 above were made at a time after suspects had been identified.

108. Nifong's statements set forth in paragraphs 78-106 above were made after suspects who had been identified had asserted that no crime occurred.

109. Nifong made statements to the news media, including but not limited to those referenced in paragraphs 78-106, that are improper commentary on Nifong's opinion about the guilt of the accused and/or about his opinion that a crime had occurred.

110. Nifong made various statements to the news media about "hypothetical" situations, evidence, or testimony concerning the alleged crime.

111. Nifong stated to a representative of the news media that the victim's "impaired state was not necessarily voluntary....[I]f I had a witness who saw her right before this and she was not intoxicated, and then I had a witness who said that she was given a drink at the party and after taking a few sips of that drink acted in a particular way, that could be evidence of something other than intoxication, or at least other than voluntary intoxication?"

112. Nifong made the statements set forth in paragraph 111 above to a reporter for Newsweek Magazine.

113. Nifong made the statements referenced in paragraph 111 above in May, 2006.

114. Nifong stated to a representative of the news media "[i]f a condom were used, then we might expect that there would not be any DNA evidence recovered from say a vaginal swab."

115. Nifong made the statement referenced in paragraph 114 above to a reporter for MSNBC.

116. Nifong made the statement referenced in paragraph 114 above on March 31, 2006.

117. Nifong stated to a representative of the news media "I would not be surprised if condoms were used. Probably an exotic dancer would not be your first choice for unprotected sex."

118. Nifong made the statements referenced in paragraph 117 above to a reporter for the Charlotte Observer newspaper.

119. Nifong made the statements referenced in paragraph 117 above on or after March 29, 2006.

120. Nifong represented to a representative of the news media that he had read the report of the emergency room nurse.

121. Nifong made the statement set forth in paragraph 120 above to a reporter for WRAL TV news.

122. Nifong made the statement referenced in paragraph 120 above on or before March 29, 2006.

123. The sexual assault exam report ("report") from the emergency room nurse reflected that the complaining witness stated the alleged attacker "did not use a condom."

124. The statements referenced in paragraphs 114 and 117 above were misleading in that they suggested that a condom was used during the alleged attack when Nifong had read or was in possession of the report in which the complaining witness stated that a condom was not used during the alleged attack.

125. When he made the statements referenced in paragraphs 114 and 117 above, Nifong knew that the statements were misleading.

126. Nifong, made statements to the news media, including but not limited to those set forth in paragraphs 111-119 above, that improperly suggested the existence of evidence of guilt or attempted to explain the existence of exculpatory evidence or the absence of incriminating evidence.

127. Nifong also made various statements to the news media about the character, credibility and reputation of the accused.

128. Nifong stated to a representative of the news media "[s]omebody's wrong about that sexual assault. Either I'm wrong, or they're not telling the truth about it."

129. Nifong made the statement referenced in paragraph 128 above to a reporter for USA Today.

130. Nifong made the statement referenced in paragraph 128 above in March, 2006.

131. Nifong stated to a representative of the news media "[t]he circumstances of the case are not suggestive of the alternate explanation that has been suggested by some of the members of the situation."

132. Nifong made the statement referenced in paragraph 131 above to a reporter for MSNBC.

133. Nifong made the statement referenced in paragraph 131 above in March, 2006.

134. Nifong stated to a representative of the news media "I don't think you can classify anything about what went on as a prank that got out of hand or drinking that took place by people who are underage."

135. Nifong made the statement referenced in paragraph 134 above to a reporter for ABC 11 TV News.

136. Nifong made the statement referenced in paragraph 134 above in March, 2006.

137. Nifong stated to a representative of the news media "I would like to think that somebody [not involved in the attack] has the human decency to call up and say, "What am I doing covering up for a bunch of hooligans?"

138. Nifong made the statement referenced in paragraph 137 above to a reporter for the Raleigh News and Observer newspaper.

139. Nifong made the statement referenced in paragraph 137 above in April, 2006.

140. Nifong made statements to the news media, including but not limited to those set forth in paragraphs 128-139 above, that are improper commentary about the character, credibility and reputation of the accused.

141. Nifong made various statements to the news media about his views and opinions of the nature of the alleged crimes.

142. Nifong stated to a representative of the news media "[i]n this case, where you have the act of rape – essentially a gang rape – is bad enough in and of itself, but when it's made with racial epithets against the victim, I mean, it's just absolutely unconscionable."

143. Nifong made the statement referenced in paragraph 142 above to a reporter for ABC 11 TV News.

144. Nifong made the statement referenced in paragraph 142 above in March, 2006.

145. Nifong stated to a representative of the news media "[t]he contempt that was shown for the victim, based on her race was totally abhorrent. It adds another layer of reprehensibleness, to a crime that is already reprehensible."

146. Nifong made the statement referenced in paragraph 145 above to a reporter for ABC 11 TV News.

147. Nifong made the statement referenced in paragraph 145 above in March, 2006.

148. Nifong stated to a representative of the news media "[i]t is a case that talks about what this community stands for."

149. Nifong made the statement referenced in paragraph 148 above to a reporter for ABC News.

150. Nifong made the statement referenced in paragraph 148 above in March, 2006.

151. Nifong stated to a representative of the news media "[t]he thing that most of us found so abhorrent, and the reason I decided to take it over myself, was the combination gang-like rape activity accompanied by the racial slurs and general racial hostility."

152. Nifong made the statement referenced in paragraph 151 above during an interview with a reporter for the New York Times.

153. Nifong made the statement referenced in paragraph 151 above in March, 2006.

154. Nifong stated to a representative of the news media "[t]he circumstances of the rape indicated a deep racial motivation for some of the things that were done. It makes a crime that is by its nature one of the most offensive and invasive even more so."

155. Nifong made the statements referenced in paragraph 154 above to a reporter for NBC 17 News.

156. Nifong made the statements referenced in paragraph 154 above in March, 2006.

157. Nifong stated to a representative of the news media "[t]his is not a case of people drinking and it getting out of hand from that. This is something much, much beyond that."

158. Nifong made the statements referenced in paragraph 157 above to a reporter for NBC 17 News.

159. Nifong made the statements referenced in paragraph 157 above in March, 2006.

160. Nifong stated to a representative of the news media "[t]he racial slurs involved are relevant to show the mindset . . . involved in this particular attack."

161. Nifong made the statement referenced in paragraph 160 above to a reporter for CBS News.

162. Nifong made the statement referenced in paragraph 160 above in March, 2006.

163. Nifong stated to a representative of the news media "[a]nd obviously, it made what is already an extremely reprehensible act even more reprehensible."

164. Nifong made the statement referenced in paragraph 163 above to a reporter for CBS News.

165. Nifong made the statement referenced in paragraph 163 above in March, 2006.

166. Nifong stated to a representative of the news media "[w]hat happened here was one of the worst things that's happened since I have become district attorney."

167. Nifong made the statement referenced in paragraph 166 above to a reporter for WRAL-TV News.

168. Nifong made the statement referenced in paragraph 166 above in March, 2006.

169. Nifong stated to a representative of the news media "[w]hen I look at what happened, I was appalled. I think that most people in this community are appalled."

170. Nifong made the statement referenced in paragraph 169 above to a reporter for WRAL-TV News.

171. Nifong made the statement referenced in paragraph 169 above in March, 2006.

172. In a conversation with a representative of the news media, Nifong compared the alleged rape to the quadruple homicide at Alpine Road Townhouse and multiple cross burnings that outraged the city of Durham in 2005.

173. Nifong made the comparison referenced in paragraph 172 above during a conversation with a reporter for the Raleigh News and Observer newspaper.

174. Nifong made the comparison referenced in paragraph 172 above in April, 2006.

175. Nifong stated to a representative of the news media "I'm not going to let Durham's view in the minds of the world to be a bunch of lacrosse players from Duke raping a black girl in Durham."

176. Nifong made the statement referenced in paragraph 175 above to a reporter for the Raleigh News and Observer newspaper.

177. Nifong made the statement referenced in paragraph 175 above in April, 2006.

178. Nifong made statements to the news media, including but not limited to those set forth in paragraphs 142-177 above, that had a substantial likelihood of heightening public condemnation of the accused.

179. Nifong made statements to the news media, including but not limited to those set forth in paragraphs 142-177 above, that constituted an expression of his personal opinion about the guilt of the suspects/accused and/or an expression of his personal opinion that a crime had occurred.

180. Nifong knew or reasonably should have known that his statements to representatives of the news media, including but not limited to those referenced in paragraphs 12-177 above, would be disseminated by means of public communication.

181. Nifong knew or reasonably should have known that his statements to representatives of the news media, including but not limited to those set forth in paragraphs 12-177 above, had a substantial likelihood of prejudicing the criminal adjudicative proceeding.

THEREFORE, plaintiff alleges that defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that defendant violated the Revised Rules of Professional Conduct as follows:

- (a) By making statements to representatives of the news media commenting on matters including but not limited to those set forth in paragraphs 12-177, Nifong made extrajudicial statements he knew or reasonably should have known would be disseminated by means of public communication and would have a substantial

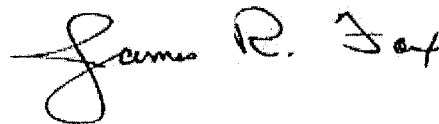
likelihood of materially prejudicing an adjudicative proceeding in the matter in violation of Rule 3.6(a), made extrajudicial statements that had a substantial likelihood of heightening public condemnation of the accused in violation of Rule 3.8(f), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) of the Revised Rules of Professional Conduct

- (b) By making statements to representatives of the news media including but not limited to those set forth in paragraphs 114-119, Nifong engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.

WHEREFORE, plaintiff prays that:

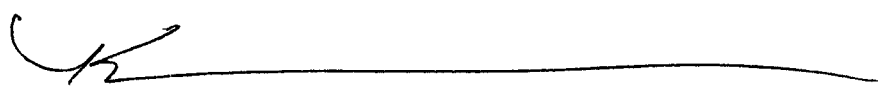
- (1) Disciplinary action be taken against defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;
- (2) Defendant be taxed with the costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

The 28 day of December 2006.



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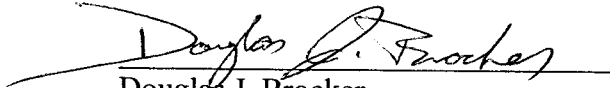
James R. Fox, Chair  
Grievance Committee



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A handwritten signature in cursive script, reading "Douglas J. Brocker", is written over a horizontal line.

Douglas J. Brocker  
The Brocker Law Firm, PA  
N.C. State Bar Number 22802

*Attorneys for Plaintiff*