The North Carolina State Bar

208 Fayetteville Street, PO Box 25908, Raleigh, NC 27601

PRESS RELEASE

FOR IMMEDIATE RELEASE
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STATE BAR FILES AMENDED COMPLAINT AGAINST THE FORMER PROSECUTOR IN THE DUKE LACROSSE CASE

The N.C. State Bar filed an amended complaint on January 24, 2007 against Durham County District Attorney Michael Nifong which charges Mr. Nifong with, in addition to the conduct alleged in the original complaint, withholding DNA evidence from the defense and making misrepresentations to the presiding judge. The charges arise out of a case where three former Duke University lacrosse players are accused of sexual offense and kidnapping.

The State Bar is the state agency that regulates the professional conduct of licensed lawyers. It enforces an ethical code known as the Rules of Professional Conduct that has been approved by the N.C. Supreme Court.

The State Bar's amended complaint alleges violations of the following rules:

- Rule 3.3(a)(1) prohibits an attorney from making false statements of material fact or law to a tribunal.
- Rule 3.6 prohibits "extrajudicial statements that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding."
- Rule 3.8(f) prohibits a prosecutor from "making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused…"
- Former Rules 3.4(d) and 3.8(d), in effect until November 16, 2006, require an attorney to make a reasonably diligent effort to comply with a legally proper discovery request and require a prosecutor in a criminal case to make timely disclosure to the defense of all evidence or information known to him that tends to negate the guilt of the accused.
- Current Rules 3.4(c), 3.4(d)(3), 3.4(f) and 3.8(d), which went into effect on November 16, 2006, prohibit an attorney from knowingly disobeying an obligation under the rules of a tribunal, require an attorney to disclose evidence or information that he knew, or reasonably should have known, was subject to disclosure, prohibit an attorney from requesting a person other than a client to refrain from voluntarily giving relevant information to another party, and require a prosecutor in a criminal case, after making a reasonably diligent inquiry, to make timely disclosure to the defense of all evidence or

information required to be disclosed, including all evidence or information known to him that tends to negate the guilt of the accused.

- Rule 4.1 prohibits an attorney from making false statements of material fact to a third person in the course of representing a client.
- Rule 8.1(a) prohibits an attorney from knowingly making false statements of material fact in connection with a disciplinary matter.
- Rules 8.4 (c) and (d) prohibit conduct that involves "dishonesty, fraud, deceit or misrepresentation" as well as conduct that is "prejudicial to the administration of justice."

Echoing his statement in the press release that followed the filing of the original complaint with the Disciplinary Hearing Commission on December 28, 2006, the Bar's executive director, L. Thomas Lunsford II, said that, "The allegations in the amended complaint speak for themselves. Given the inordinate amount of publicity that this matter has already received and the fact that the criminal case is still pending, it would not be appropriate for the State Bar to elaborate publicly upon the substance of the complaint as amended."

The State Bar's original complaint charged Mr. Nifong with making public pretrial statements that violated several ethical rules. The charges contained in the amended complaint relate to circumstances that came to the State Bar's attention after its Grievance Committee ordered the filing of the original complaint last October. Those circumstances were reviewed by the Grievance Committee at its regular quarterly meeting on January 18, 2007. At that meeting, the Grievance Committee found reasonable cause to refer the additional charges to the Disciplinary Hearing Commission for trial.

The Disciplinary Hearing Commission is an independent administrative court that is composed of 12 lawyers and eight public members. It sits in panels of three to hear complaints in public proceedings, acting much like a Superior Court. Every hearing panel includes a non-lawyer public member. The State Bar's legal counsel acts as the prosecutor in such cases.

The Disciplinary Hearing Commission can dismiss a complaint, issue a letter of warning or impose an admonition, reprimand or censure. It can also suspend a lawyer's license for as long as five years or disbar the lawyer.

The case is being prosecuted by the State Bar's chief counsel, Katherine E. Jean, and Douglas J. Brocker, an attorney in private practice in Wake County and former deputy counsel to the State Bar. It has been calendared for trial on May 11, 2007. The chairman of the Disciplinary Hearing Commission, F. Lane Williamson, a lawyer from Charlotte, will chair the three-member Hearing Committee that will hear the case. Sharon B. Alexander, a lawyer from Hendersonville, and R. Mitchell Tyler, a non-lawyer from Lake Waccamaw, will also serve on the Hearing Committee.

Please direct any inquiries to Executive Director L. Thomas Lunsford II at 919-828-4620. For an overview of the State Bar and its disciplinary process, please visit the public section of the Bar's web site: http://www.ncbar.gov/public.

STATE OF NORTH CAROLINA

WAKE COUNTY

JAN 2007
FILED
DHC

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.

AMENDED 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"), 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."

Improper Pretrial Public Statements and Misrepresentations

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.

Withholding or Failing to Provide Potentially Exculpatory DNA Evidence

182. During the investigation of the Duke Lacrosse rape cases, various pieces of evidence were collected for later DNA testing.

183. On March 14, 2006. a Sexual Assault Nurse Examiner (SANE) and physician examined the alleged victim and generated numerous evidentiary items, commonly referred to as a "rape kit."

184. The alleged victim asserted that she had been vaginally, rectally, and orally penetrated with no condom used during the assault and with at least some of the alleged perpetrators ejaculating.

185. The rape kit contained cheek scrapings, oral, vaginal, and rectal swabs, a pubic hair combing, and a pair of the alleged victim's underwear.

186. On March 16, 2006, the three residents of 610 North Buchanan, who were captains of the Duke lacrosse team, voluntarily assisted law enforcement in executing a search warrant at their residence. During the search, law enforcement seized numerous pieces of evidence for later testing, including several false fingernails in the bathroom and bedroom of the residence.

187. These three residents also provided voluntary statements and submitted DNA samples for comparison testing purposes. One of these three individuals was Dave Evans, who was subsequently indicted in the alleged crimes.

188. On March 23, 2006, swabbings of all 46 Caucasian members of the Duke University 2006 Men's Lacrosse Team (hereafter referred to collectively as, "lacrosse players") were obtained pursuant to the NTO sought by Nifong's office.

189. In the application seeking the NTO, Nifong's office represented that "the DNA evidence requested will immediately rule out any innocent persons, and show conclusive evidence as to who the suspect(s) are in the alleged violent attack upon this victim."

190. On or about March 24, 2006, Nifong assumed primary responsibility for prosecuting any criminal charges resulting from the investigation (hereafter, "underlying criminal cases") and directed the Durham Police Department (DPD) to go through him for any directions as to how to conduct the factual investigation of those matters.

191. On March 27, 2006, the rape kit items and referenced DNA samples from the lacrosse players were delivered to the SBI lab.

192. On March 28, 2006, the SBI lab examined the items from the rape kit and was unable to find any semen, blood, or saliva on any of those items.

193. On or about March 30, 2006, Nifong had a conversation with an agent in the DNA section of the SBI lab about the status of its testing of evidentiary items in the case.

194. On April 4, 2006, at Nifong's direction, Investigator Michelle Soucie of DPD contacted Dr. Brian Meehan, president and director of DNA Security, Inc. (DSI) a private laboratory located in Burlington, North Carolina.

195. The purpose of this contact was to determine if DSI could perform more sensitive or sophisticated DNA testing than the SBI lab.

196. On April 5, 2006, Nifong's office sought and obtained an Order permitting the transfer of the rape kit items to DSI from the SBI for Y chromosome DNA testing.

197. As justification for its order, the Court noted that the additional testing Nifong's office sought in its petition was "believed to be material and relevant to this investigation, and that any male cells found among the victim's swabs from the rape kit can be evidence of an assault and may lead to the identification of the perpetrator. "

198. The rape kit items were subsequently transferred to DSI, who shortly thereafter began testing and analysis on those items.

199. Between April 7 and April 10, 2006, DSI performed testing and analysis of DNA characteristics found on the rape kit items.

200. In performing this initial testing, DSI found DNA characteristics from up to four different males on epithelial and sperm fractions from several pieces of evidence from the rape kit.

201. By April 10, 2006, DSI had analyzed the DNA characteristics from at least some of the evidence specimens from the rape kit containing multiple male DNA characteristics and excluded all of the lacrosse players as potential contributors of the DNA it had analyzed.

202. On April 10, 2006, Nifong met with Dr. Meehan and two DPD officers at the DSI office.

203. At that meeting, Dr. Meehan discussed with Nifong the results of the analyses performed by DSI to that point, including those referred to in paragraphs 199-201 above.

204. On April 17, 2006, Nifong sought and obtained indictments against Collin Finnerty and Reade Seligman for first-degree rape, first-degree sex offense, and kidnapping. (The indicted lacrosse players are hereafter referred to collectively as, "the Duke Defendants")

205. Nifong sought and obtained these indictments after receiving the preliminary results from Dr. Meehan and despite his office's prior representation in the application for the NTO that the "DNA evidence requested will immediately rule out any innocent persons."

206. Before the Duke Defendants were indicted, Nifong repeatedly refused offers from counsel for the players who were eventually indicted to consider evidence and information that they contended either provided an alibi or otherwise demonstrated that their clients did not commit any crime.

207. On April 19, 2006, two days after being indicted, Duke Defendant Reade Seligman through counsel served Nifong with a request or motion for discovery material, including witness statements, the results of any tests, all DNA analysis, and any exculpatory information, among various other requested items.

208. By April 20, 2006, DSI had performed additional DNA testing and analysis and found DNA characteristics from multiple males on at least one additional piece of evidence from the rape kit.

209. By April 20, 2006, from its testing and analysis, DSI had determined that all the lacrosse players could be excluded as contributors of the numerous DNA characteristics from multiple males found on several evidence items from the rape kit. Stated differently, DSI had determined that none of the DNA from multiple males found on several items from the rape kit matched any of the lacrosse players, including the two players who had already been indicted.

210. On April 21, 2006, Nifong again met with Dr. Meehan and the two DPD officers to discuss all of the results of the DNA testing and analyses performed by DSI to date.

211. At this April 21 meeting, Dr. Meehan told Nifong: (a) that DNA from multiple males had been found on several items from the rape kit, and (b) that all of the lacrosse players, including the two players that Nifong had already sought and obtained indictments against, were excluded as possible contributors of this DNA because none of their DNA profiles matched or were consistent with any of the multiple DNA characteristics found on the rape kit items.

212. The evidence and information referred to above in paragraphs 200-211 was potentially exculpatory of the Duke Defendants or other lacrosse player suspects in the investigation because it tended to negate the guilt of the accused (hereinafter referred to as "potentially exculpatory DNA test results" or "potentially exculpatory DNA evidence").

213. During one of the meetings in April, Nifong discussed and agreed with Dr. Meehan that the report to be produced concerning DSI's tests and examinations would only include tests for which DNA found on specific evidence items matched or was consistent with DNA from known reference specimens, the so-called "positive results."

214. Nifong and Dr. Meehan agreed that the final report would not include all of the results of the tests and examinations performed by DSI but would be limited only to the "positive" results.

215. This agreement between Nifong and Dr. Meehan meant that the potentially exculpatory DNA evidence and test results would not be included in DSI's report and, therefore, would not be provided to the Duke Defendants or the other player suspects.

216. On May 12, 2006, Nifong again met with Dr. Meehan and discussed the final results of DSI's testing, all of which had been completed by that point.

217. On that date, consistent with his prior agreement with Nifong, Dr. Meehan provided Nifong a 10-page report produced by DSI, which set forth the results of tests on only three evidence specimens containing DNA characteristics that were consistent with DNA profiles from several known reference specimens.

218. The three items in DSI's report concerned DNA characteristics on two fingernail specimens that were at least partially consistent with the DNA profile of two unindicted lacrosse players and a sperm fraction from the vaginal swab that was consistent with the DNA profile of the alleged victim's boyfriend.

219. The report contained no reference to any of the multiple unidentified male DNA characteristics, even though it listed the evidence items on which DSI had discovered this evidence. Moreover, the report did not even note that testing had been performed on those specific items on which the potentially exculpatory DNA evidence had been discovered.

220. The report contained no statement indicating that DSI had discovered multiple male DNA characteristics on any evidence specimen other than the three specifically set forth in the report.

221. Nifong personally received DSI's report from Dr. Meehan and later that day provided it to counsel for the two Duke Defendants who had been indicted and for Dave Evans, among others.

222. When he received DSI's report and provided it to counsel for the Duke Defendants, Nifong had just met with Dr. Meehan and was fully aware of the test results that were omitted from the DSI report, including the potentially exculpatory DNA test results.

223. Three days later, on May 15, 2006, Nifong sought and obtained an indictment against Dave Evans for first-degree rape, first-degree sex offense, and kidnapping.

224. On May 17, Duke Defendant Collin Finnerty served discovery requests on Nifong, which specifically asked that any expert witness "prepare, and furnish to the defendant, a report of the results of *any* (not only the ones about which the expert expects to testify) examinations or tests conducted by the expert."

225. On May 18, 2006, Nifong provided various discovery materials to all three Duke Defendants, including another copy of DSI's report, in connection with a hearing in the case on that same day.

226. The discovery materials Nifong provided on May 18 did not include any underlying data or information concerning DSI's testing and analysis. The materials Nifong provided also did not include any documentation or information indicating the presence of the potentially exculpatory DNA evidence or test results.

227. Nifong's failure to provide a complete report from DSI containing the results of all DSI's tests and examinations, including the potentially exculpatory DNA test results, was a violation of N.C. Gen. Stat. 15A-282, 15A-903(a)(1), and 15A-903(a)(2).

228. Nifong also did not provide in the discovery materials any written or recorded memorialization of the substance of Dr. Meehan's oral statements made during his meetings with Nifong in April and May 2006 concerning the results of all DSI's tests and examinations, including the exculpatory DNA test results (hereafter, "memorializations of Dr. Meehan's oral statements").

229. Nifong's failure to provide the Duke Defendants with memorializations of Dr. Meehan's oral statements was a violation of N.C. Gen. Stat. 15A-903(a)(1).

Misrepresentations and False Statements to Court and Opposing Counsel

230. Accompanying the discovery materials, Nifong served and filed with the Court written responses to the Duke Defendants' discovery requests. In these responses, Nifong stated: "The State is not aware of any additional material or information which may be exculpatory in nature with respect to the Defendant."

231. At the time he made these representations in his responses, Nifong was aware of the potentially exculpatory DNA test results and had provided the Duke Defendants only the DSI report, which contained no analysis of or other reference to the potentially exculpatory DNA test results.

232. At the time he made the representations in his discovery responses, Nifong also was aware that he had not provided the Duke Defendants with memorializations of Dr. Meehan's oral statements, as he was required to do by N.C. Gen. Stat. 15A-903(a)(1).

233. Nifong's above statements contained in his discovery responses were misrepresentations and false statements of material fact made to a tribunal and to third parties in the course of representing a client.

234. At the May 18, 2006 hearing, the Court asked Nifong if he had provided the Duke Defendants all the discovery materials.

235. In response to the Court's inquiry, Nifong stated: "I've turned over everything I have."

236. Nifong's response was a misrepresentation and false statement of material fact made to a tribunal because the materials he provided the Duke Defendants did not include any documentation or information indicating the presence of the potentially exculpatory DNA evidence or test results or memorializations of Dr. Meehan's oral statements about those and other test results.

237. In his May 18, 2006 discovery responses, Nifong also identified Dr. Meehan and R.W. Scales, another person at DSI, as expert witnesses reasonably expected to testify at the trial of the underlying criminal cases pursuant to N.C. Gen. Stat. § 15A-903(a)(2). Nifong also gave notice in these discovery responses of the State's intent to introduce scientific data accompanied by expert testimony.

238. On June 19, 2006, counsel for the Duke Defendants requested various materials from Nifong, including a report or written statement of the meeting between him and Dr. Meehan to discuss the DNA test results.

239. This request was addressed at a hearing before the Court on June 22, 2006.

240. In response to this request and in response to the Court's inquiry, Nifong represented that no information beyond what was in DSI's report was discussed at the meeting with Dr. Meehan.

241. Nifong represented to the Court: "That's pretty much correct, your Honor. We received the reports, which he has received, and we talked about how we would likely use that, and that's what we did."

242. Nifong's representations to the Court at the June 22 hearing were misrepresentations and false statements of material fact to a tribunal because Nifong had discussed with Dr. Meehan, including just over a month earlier, the potentially exculpatory DNA test results which were not included in DSI's report.

243. After the June 22 hearing, the Court entered an Order directing Nifong to provide Collin Finnerty and later all the Duke Defendants with, among other things: (1) "results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant," (2) statements of any witnesses taken during the investigation, with oral statements to be reduced to written or recorded form, and (3) a report of the results of any examinations or tests conducted by any expert witness the State reasonably expected to call as a witness at trial.

244. On August 31, 2006, the Duke Defendants collectively filed a joint omnibus motion to compel discovery. This motion sought, among other things, the complete file and all underlying data regarding DSI's work and the substance of any discoverable comments made by Dr. Meehan during his meetings with Nifong and two DPD officers on April 10, April 21, and May 12, 2006.

245. These discovery requests were addressed by the Court at a hearing on September 22, 2006.

246. In this hearing, counsel for the Duke Defendants specifically stated that they were seeking the results of any tests finding any additional DNA on the alleged victim even if it did not match any of the Duke Defendants or other individuals for whom the State had provided DNA specimens to the experts.

247. In response to a question from the Court, Nifong represented that DSI's report encompassed all tests performed by DSI and everything discussed at his meetings with Dr. Meehan in April and May 2006.

248. The following exchange occurred immediately thereafter on the Duke Defendants' request for memorializations of Dr. Meehan's oral statements:
Judge Smith: "So you represent there are no other statements from Dr. Meehan?"
Mr. Nifong: "No other statements. No other statements made to me."

249. Nifong's above statements and responses were misrepresentations and false statements of material fact to a tribunal because Nifong had discussed with Dr. Meehan only several months earlier the potentially exculpatory DNA test results and DSI's report did not include these results.

250. In the same hearing, Nifong referred to the Duke Defendants' request for the complete file and the underlying data from DSI as a "witch-hunt list."

251. Nifong also read into the record a letter prepared by Dr. Meehan at his request, which letter objected to the Duke Defendants' request and cited privacy and cost concerns.

252. Nifong raised no such concerns or objections in response to the Duke Defendants' request for the SBI's complete file and underlying data.

253. The Court ordered Nifong to provide the Duke Defendants the complete file and underlying data from both the SBI and DSI.

254. On October 27, 2006, Nifong provided 1,844 pages of underlying documents and materials to the Duke Defendants pursuant to the Court's September 22, 2006 order.

255. Even when Nifong ultimately provided the underlying documents and materials on October 27, he did not provide the Duke Defendants a complete report from DSI setting forth the results of all of its tests and examinations, including the potentially exculpatory DNA test results.

256. Nifong's failure to provide a complete report from DSI containing all of DSI's test results constituted a continuing violation of N.C. Gen. Stat. 15A-282, 15A-903(a)(1), and 15A-903(a)(2).

257. With the discovery materials he provided on October 27, Nifong also did not provide in written, recorded or any other form memorializations of Dr. Meehan's oral statements concerning the results of all examinations and tests conducted by DSI.

258. Nifong's failure to provide the Duke Defendants memorializations of Dr. Meehan's oral statements in written, recorded or any other form was a continuing violation of N.C. Gen. Stat. 15A-903(a)(1).

259. After an extensive and exhaustive review of the documentation Nifong provided on October 27, counsel for the Duke Defendants determined that DSI's report had not included the results of all DNA tests that DSI had performed and further realized that the report excluded the potentially exculpatory DNA test results and evidence.

260. On December 13, 2006, based on this review and determination, the Duke Defendants filed a motion entitled "Motion to Compel Discovery: Expert DNA Analysis."

261. In this motion, the Duke Defendants set forth in detail the potentially exculpatory DNA test results and evidence that had been excluded from DSI's report. The focus of this motion was the existence of the potentially exculpatory DNA test results and their exclusion from DSI's report.

262. The motion did not allege or assert any attempt or agreement to conceal or hide the potentially exculpatory DNA evidence or test results.

263. This motion was addressed by the Court at a hearing on December 15, 2006.

264. In his initial comments about the motion, Nifong stated or implied to the Court that he was unaware of the potentially exculpatory DNA test results or their exclusion from DSI's report.

265. Nifong represented to the Court in response to the Duke Defendants' motion: "The first I heard of this particular situation was when I was served with these reports -- this motion on Wednesday of this week."

266. Nifong's statements indicating that he was unaware of the potentially exculpatory DNA test results or, alternatively, was unaware of their exclusion from DSI's report were misrepresentations and false statements of material fact to a tribunal.

267. During the hearing, Dr. Meehan testified under oath to the following statements:

a. he discussed with Nifong at the April 10, April 21, May 12 meetings the results of all tests conducted by DSI to date, including the potentially exculpatory DNA test results;

b. he and Nifong discussed and agreed that "we would only disclose or show on our report those reference specimens that matched evidence items;"

c. DSI's report did not set forth the results of all tests and examinations DSI conducted in the case but was limited to only some results;

d. the limited report was the result of "an intentional limitation" arrived at between him and Nifong "not to report on the results of all examinations and tests" that DSI performed;

e. the failure to provide all test and examination results purportedly was based on privacy concerns; and

f. he would have prepared a report setting forth the results of all DSI's tests and examinations if he had been requested to do so by Nifong or other representatives of the State of North Carolina at any time after May 12.

268. Immediately after the conclusion of the December 15 hearing, Nifong stated to a member of the news media: "And we were trying to, just as Dr. Meehan said, trying to avoid dragging any names through the mud but at the same time his report made it clear that all the information was available if they wanted it and they have every word of it."

269. Nifong's above statement stated or implied, contrary to his earlier representations to the Court but consistent with Dr. Meehan's testimony, that Nifong was aware of the potentially exculpatory DNA test results and was aware that this information had intentionally been omitted from DSI's report, purportedly for privacy reasons.

270. Up through the time of the December 15, 2006 hearing on the Duke Defendants' motion to compel expert DNA analysis, Nifong did not provide a complete report from DSI setting forth the results of all of the tests and examinations performed by DSI or memorializations of Dr. Meehan's oral statements concerning the results of all tests performed by DSI.

271. After seeking and obtaining DNA evidence from the lacrosse players pursuant to the NTO, N.C. Gen. Stat. § 15A-282 required that Nifong provide to all the lacrosse players who were the subject of the NTO or to their attorneys "a copy of any reports of test results as soon as the reports are available."

272. Once the Duke Defendants filed voluntary discovery requests or motions beginning on April 19, 2006, N.C. Gen. Stat. 15A-903(a)(1) required that Nifong disclose to the Duke Defendants all "witness statements" and mandated that all oral statements be reduced to written or recorded form.

273. N.C. Gen. Stat. 15A-903(a)(1) also required that Nifong disclose to each indicted Defendant the "results of tests and examinations or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant."

274. After identifying Dr. Meehan and Mr. Scales as potential experts in his May 18, 2006 discovery responses, N.C. Gen. Stat. 15A-903(a)(2) required Nifong to provide the Duke Defendants with "a report of the results of any examinations or tests conducted by the expert."

275. From at least May 12, 2006 through January 12, 2007, when he recused himself from the prosecution of the criminal cases, Nifong never provided the Duke Defendants a complete report setting forth the results of all examinations and tests conducted by Dr. Meehan, Mr. Scales, or others at DSI.

276. Nifong's failure to provide a complete report of the results of all examinations and tests conducted by DSI was in violation of the United States Constitution, N.C. Gen. Stat. § 15A-282, N.C. Gen. Stat. § 15A-903(a)(1), N.C. Gen. Stat. § 15A-903(a)(2), and the Court's June 22, 2006 order compelling discovery.

277. From at least May 12, 2006 through January 12, 2007, when he recused himself from the prosecution of the criminal cases, Nifong also never provided the Duke Defendants memorializations of Dr. Meehan's oral statements concerning the results of all examinations and tests conducted by DSI in written, recorded or any other form.

278. Nifong's failure to provide the Duke Defendants with memorializations of Dr. Meehan's oral statements was in violation of the United States Constitution, N.C. Gen. Stat. § 15A-903(a)(1), and the Court's June 22, 2006 order compelling discovery.

Misrepresentations and False Statements to State Bar's Grievance Committee

279. On or about December 20, 2006, Nifong received a letter of notice and substance of grievance from the Grievance Committee of the North Carolina State Bar alleging that (a) he failed to provide the Duke Defendants with the potentially

exculpatory DNA evidence and test results, (b) he agreed with Dr. Meehan not to provide those results, and (3) he falsely represented to the Court that he was unaware of these results or their omission from DSI's report prior to receiving the Duke Defendants' December 13 motion to compel discovery.

280. Nifong responded initially in a letter dated December 28, 2006 and supplemented his initial response, at the request of the State Bar's counsel, in a letter dated January 16, 2007.

281. In his responses to the Grievance Committee, Nifong acknowledged that he had discussed with Dr. Meehan during meetings in April and May 2006 the results of all DSI's testing, including the potentially exculpatory DNA test results.

282. Nifong denied in his responses to the Grievance Committee that he had agreed with Dr. Meehan to exclude the potentially exculpatory DNA test results from DSI's report.

283. Nifong represented in his responses to the Grievance Committee that the discussion and agreement with Dr. Meehan to limit the information in DSI's report was based on privacy concerns of releasing the names and DNA profiles of the lacrosse players and others providing known reference specimens.

284. DSI's report that was prepared and provided to the Duke Defendants, however, listed DNA profiles for the alleged victim, for the alleged victim's boyfriend, and for Dave Evans and Kevin Coleman, two lacrosse players neither of whom had been indicted at the time the report was released.

285. DSI's report that was prepared and provided to the Duke Defendants also listed the names of all 50 persons who had contributed known reference DNA specimens for testing.

286. Nifong's representations to the Grievance Committee that his agreement with Dr. Meehan to limit the information in DSI's report was based on privacy concerns of releasing the names and DNA profiles of individuals providing known reference specimens were knowingly false statements of material fact made in connection with a disciplinary matter.

287. Nifong further represented in his responses to the Grievance Committee that he did not realize that the potentially exculpatory DNA test results were not included in DSI's report when he provided it to the Duke Defendants or thereafter, until receiving their December 13 motion to compel.

288. Nifong's representations to the Grievance Committee that he did not realize that the potentially exculpatory DNA test results were not included in DSI's report from May 12 until he received the December 13 motion to compel discovery were knowingly false statements of material fact made in connection with a disciplinary matter.

289. Nifong also represented in his responses to the Grievance Committee that, in his statements to the Court at the beginning of the December 15 hearing referred to in paragraphs 264-265 above, he was referring not to the existence of the potentially exculpatory DNA test results but to the Duke Defendants' purported allegation that an intentional attempt had been made to conceal such evidence from them.

290. Counsel for the Duke Defendants did not allege any intentional attempt to conceal the potentially exculpatory information from them in either their December 13 motion to compel or their remarks to the Court prior to Nifong's comments.

291. Nifong's above statements to the Grievance Committee concerning his representations to the Court at the December 15, 2006 hearing were knowingly false statements of material fact made in connection with a disciplinary matter.

THEREFORE, plaintiff alleges that Nifong's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that he 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) and made extrajudicial statements that had a substantial likelihood of heightening public condemnation of the accused in violation of Rule 3.8(f) 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.

(c) By not providing to the Duke Defendants prior to November 16, 2006 a complete report setting forth the results of all tests or examinations conducted by DSI, including the potentially exculpatory DNA test results and evidence, and memorializations of Dr. Meehan's oral statements concerning the results of all examinations and tests conducted by DSI in written, recorded or any other form, despite repeated requests by the Duke Defendants and inquiries from the Court on these subjects, Nifong:

i. did not make timely disclosure to the defense of all evidence or information known to him that tended to negate the guilt of the accused in violation of former Rule 3.8(d) of the Revised Rules of Professional Conduct, as well as the United States Constitution, N.C. Gen. Stat. § 15A-282, N.C. Gen. Stat. § 15A-903(a)(1), N.C. Gen. Stat. § 15A-903(a)(2), and the Court's June 22, 2006 order compelling discovery; and

ii. failed to make a reasonably diligent effort to comply with a legally proper discovery request in violation of former Rule 3.4(d) of the Revised Rules of Professional Conduct, as well as N.C. Gen. Stat. § 15A-903(a)(1) and N.C. Gen. Stat. § 15A-903(a)(2),

(d) By never providing the Duke Defendants on or after November 16, 2006 and prior to his recusal on January 12, 2007 a report setting forth the results of all tests or examinations conducted by DSI, including the potentially exculpatory DNA test results and evidence, and memorializations of Dr. Meehan's oral statements concerning the results of all examinations and tests conducted by DSI in written, recorded or any other form, Nifong:

i. did not, after a reasonably diligent inquiry, make timely disclosure to the defense of all evidence or information required to be disclosed by applicable law, rules of procedure, or court opinions, including all evidence or information known to him that tended to negate the guilt of the accused in violation of current Rule 3.8(d) of the Revised Rules of Professional Conduct, as well as the United States Constitution, N.C. Gen. Stat. § 15A-282, N.C. Gen. Stat. § 15A-903(a)(1), N.C. Gen. Stat. § 15A-903(a)(2), and the Court's June 22, 2006 order compelling discovery; and

ii. failed to disclose evidence or information that he knew, or reasonably should have known, was subject to disclosure under applicable law, rules of procedure or evidence, or court opinions in violation of current Rule 3.4(d)(3) of the Revised Rules of Professional Conduct, as well as the United States Constitution, N.C. Gen. Stat. § 15A-282, N.C. Gen. Stat. § 15A-903(a)(1), N.C. Gen. Stat. § 15A-903(a)(2), and the Court's June 22, 2006 order compelling discovery.

(e) By agreeing with Dr. Meehan to intentionally limit DSI's report to disclose only the test results in which a positive result was reached between certain evidence specimens and known reference samples, which necessarily excluded reporting the potentially exculpatory DNA test results, Nifong:

i. knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c) of the Revised Rules of Professional Conduct; and

ii. requested a person other than a client to refrain from voluntarily giving relevant information to another party in violation of Rule 3.4(f) of the Revised Rules of Professional Conduct.

(f) By repeatedly misrepresenting to the Court and to counsel for the Duke Defendants that he had provided all potentially exculpatory evidence and that the substance of all Dr. Meehan's oral statements to him concerning the results of all examinations and tests conducted by DSI were included in DSI's report, Nifong made false statements of material fact or law to a tribunal in violation of Rule 3.3(a)(1), made false statements of material fact to a third person in the course of representing a client in violation of Rule 4.1, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.

(g) By representing or implying to the Court that he was not aware of the potentially exculpatory DNA tests results or, alternatively, was not aware of their exclusion from DSI's report at the beginning of the December 15, 2006 hearing, Nifong made false statements of material fact or law to a tribunal in violation of Rule 3.3(a)(1) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.

(h) By misrepresenting to the Grievance Committee of the State Bar: (i) that the agreement to limit the information in DSI's report was based on privacy concerns of releasing the names and DNA profiles of individuals providing known reference specimens, (ii) that he did not realize that the potentially exculpatory DNA test results were not included in DSI's report when he provided it to the Duke Defendants or thereafter, and (iii) that his statements to the Court at the beginning of the December 15 hearing referred not to the existence of the potentially exculpatory DNA test results but to the Duke Defendants' purported allegation that an intentional attempt had been made to conceal such evidence, Nifong made knowingly false statements of material fact in connection with a disciplinary matter in violation of Rule 8.1(a), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.

(i) By committing each of the violations set forth above in paragraphs (a)-(g) and by engaging in the pattern of misconduct and violations set forth in paragraphs 10-278 above, which constitutes a systematic abuse of prosecutorial discretion in the underlying criminal cases, Nifong engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) 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 24 day of January 2007.

James R. Fox, Chair
Grievance Committee

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