



State of North Carolina

Department of Justice
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REPLY TO: Grayson G. Kelley
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ROY COOPER
ATTORNEY GENERAL

October 16, 2007

Mr. Michael B. Nifong
615 November Drive
Durham, North Carolina 27712

Re: *David F. Evans, Collin Finnerty and Reade Seligmann v.
The City of Durham, NC, Michael B. Nifong, et al*
No. 1:07 CV 739 (MDNC)

Dear Mr. Nifong:

I have received a copy of a letter dated October 8, 2007 which you sent to Ralph Walker, Director of the Administrative Office of the Courts. In this letter you request that the State of North Carolina provide you with legal representation in the above-referenced civil action filed on October 5, 2007, in the United States District Court for the Middle District of North Carolina. This action seeks damages and declaratory relief against you and other defendants for alleged civil rights violations in connection with criminal charges brought against the plaintiffs in the so-called "Duke Lacrosse" case.

Pursuant to Chapter 143, Article 31A of the North Carolina General Statutes, a State employee may request that the State provide for the defense of any civil or criminal action brought against the employee on account of actions or omissions made within the scope of his employment. The State must refuse to provide for such representation if the Attorney General determines that the actions or omissions were not within the scope of the employee's official duties; the acts or omissions involved fraud, corruption or malice; defense of the action would create a conflict of interest; or, defense of the action would not be in the best interests of the State. N.C.G.S. § 143-300.4.

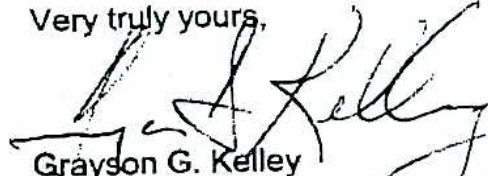
As you are aware, this office acquired direct knowledge of many of the facts underlying this lawsuit as a result of your request that the Attorney General's Special Prosecutions Section assume responsibility for the Duke Lacrosse case. Additional information concerning your actions in prosecuting the case has become available through public hearings and written findings and conclusions by the North Carolina State Bar, as well as through a hearing held on August 31, 2007 by Judge Osmond Smith regarding certain aspects of your conduct.

After reviewing the allegations against you in the Complaint and considering those allegations within the context of the factual information available to me, it is my conclusion that one or more of the determinations in N.C.G.S. § 143-300.4 are applicable to your

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actions. Your request that legal representation be provided by the State of North Carolina is therefore denied.

Very truly yours,



Grayson G. Kelley
Chief Deputy Attorney General

GGK/fa

cc: Judge Ralph Walker, Director
Administrative Office of the Courts

James B. Craven III
Attorney at Law