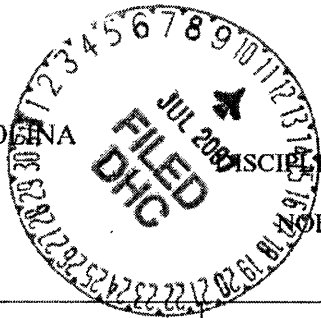


STATE OF NORTH CAROLINA  
WAKE COUNTY



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.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER OF DISCIPLINE

A hearing in this matter was conducted on June 12 through June 16, 2007, before a Hearing Committee composed of F. Lane Williamson, Chair, and members Sharon B. Alexander and R. Mitchel Tyler. Plaintiff, the North Carolina State Bar, was represented by Katherine E. Jean, Douglas J. Brocker, and Carmen K. Hoyme. Defendant, Michael B. Nifong, was represented by attorneys David B. Freedman and Dudley A. Witt. Based upon the admissions contained in the pleadings and upon the evidence presented at the hearing, this Hearing Committee makes, by clear, cogent and convincing evidence, the following

#### FINDINGS OF FACT

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.

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. Nifong was appointed District Attorney in 2005. In late March 2006, Nifong was engaged in a highly-contested political campaign to retain his office.

5. In the early morning hours of March 14, 2006, an exotic dancer named Crystal Mangum reported that she had been raped by three men during a party at 610 North Buchanan Boulevard in Durham. Ms. Mangum 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.

6. Various pieces of evidence were collected for later DNA testing, including evidence commonly referred to as a "rape kit," which contained cheek scrapings, oral, vaginal, and rectal swabs, a pubic hair combing, and a pair of Ms. Mangum's underwear.

7. The Durham Police Department (DPD) initiated an investigation in what would come to be known as "the Duke Lacrosse case" and executed a search warrant on the house at 610 North Buchanan Boulevard on March 16, 2006. The investigation revealed that the residents of 610 North Buchanan were captains of the Duke University lacrosse team, and that a majority of the other attendees at the March 13, 2006, party were members of the team.

8. On March 16, 2006, the three residents of 610 North Buchanan voluntarily assisted DPD in executing a search warrant at their residence. During the search, numerous pieces of evidence were seized for later testing. The three residents also provided voluntary statements and voluntarily submitted DNA samples for comparison testing purposes. One of the three residents was David Evans, who was later indicted for the alleged attack on Ms. Mangum.

9. On March 22, 2006, Nifong's office assisted a DPD investigator in obtaining a Nontestimonial Identification Order (NTO) to compel the suspects in the case to be photographed and to provide DNA samples.

10. On March 23, 2006, DNA samples from all 46 Caucasian members of the Duke University 2006 Men's Lacrosse Team were obtained pursuant to the NTO.

11. When Nifong learned of the case on March 24, 2006, he immediately recognized that the case would garner significant media attention and decided to handle the case himself, rather than having it handled by the assistant district attorney in his office who would ordinarily handle such cases.

12. On March 24, 2006, Nifong informed DPD that he was assuming primary responsibility for prosecuting any criminal charges resulting from the investigation and directed the DPD to go through him for direction as to the conduct of the factual investigation of those matters.

13. On March 27, 2006, the rape kit items and DNA samples from the lacrosse players were delivered to the State Bureau of Investigation (SBI) lab for testing and examination, including DNA testing.

14. On March 27, 2006, Nifong was briefed by Sergeant Gottlieb and Investigator Himan of the DPD about the status of the investigation to date. Gottlieb and Himan discussed with Nifong a number of weaknesses in the case, including that Ms. Mangum had made inconsistent statements to the police and had changed her story several times, that the other dancer who was present at the party during the alleged attack disputed Ms. Mangum's story of an alleged assault, that Ms. Mangum had already viewed two photo arrays and had not identified any alleged attackers, and that the three team captains had voluntarily cooperated with police and had denied that the alleged attack occurred.

15. During or within a few days of the initial briefing by Gottlieb and Himan, Nifong acknowledged to Gottlieb and Himan that the Duke Lacrosse case would be a very hard case to win in court and said "you know, we're fucked."

16. Beginning on March 27, within hours after he received the initial briefing from Gottlieb and Himan, Nifong made public comments and statements to representatives of the news media about the Duke Lacrosse case and participated in interviews with various newspapers and television stations and other representatives of news media.

17. Between March 27 and March 31, Nifong stated to a reporter for WRAL TV news that lacrosse team members denied 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.

18. Between March 27 and March 31, 2006, Nifong stated to a reporter for ABC 11 TV News that he might 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.”

19. Between March 27 and March 31, 2006, Nifong stated to a reporter for the New York Times, “There 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. Between March 27 and March 31, 2006, Nifong stated to a reporter for NBC 17 News that the lacrosse team members were standing together and refusing to talk with investigators and that he might bring aiding-and-abetting charges against some of the players who were not cooperating with the investigation.

21. Between March 27 and March 31, 2006, Nifong stated to a reporter for the Durham Herald Sun newspaper that lacrosse players still refused to speak with investigators.

22. Between March 27 and March 31, 2006, Nifong made the following statements to Rene Syler of CBS News: “The lacrosse team, clearly, has not been fully cooperative” in the investigation; “The 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”; “If 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?”; that he believed a crime occurred; that “the guilty will stand trial”; and “There’s no doubt a sexual assault took place.”

23. Between March 27 and March 31, 2006, Nifong made the following statements to a reporter for NBC 17 TV News: “The information that I have does lead me to conclude that a rape did occur”; “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"; "The 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"; and "This is not a case of people drinking and it getting out of hand from that. This is something much, much beyond that."

24. Between March 27 and March 31, 2006, Nifong stated to a reporter for ESPN, "And one would wonder why one needs an attorney if one was not charged and had not done anything wrong."

25. Between March 27 and March 31, 2006, Nifong stated to reporter for CBS News that "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."

26. Between March 27 and March 31, 2006, Nifong made the following statements to a reporter for MSNBC: "There is evidence of trauma in the victim's vaginal area that was noted when she was examined by a nurse at the hospital"; "her general demeanor was suggested-suggestive of the fact that she had been through a traumatic situation"; "I am convinced there was a rape, yes, sir"; and "The circumstances of the case are not suggestive of the alternate explanation that has been suggested by some of the members of the situation."

27. Between March 27 and March 31, 2006, Nifong stated to a reporter for the Raleigh News and Observer newspaper, "I am satisfied that she was sexually assaulted at this residence."

28. Between March 27 and March 31, 2006, Nifong stated to a reporter for the USA Today newspaper, "Somebody's wrong about that sexual assault. Either I'm wrong, or they're not telling the truth about it."

29. Between March 27 and March 31, 2006, Nifong made the following statements to a reporter for ABC 11 TV News: "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"; "In 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"; and "The contempt that was shown for the

