

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING
COMMISSION
NORTH CAROLINA STATE BAR
06 DHC

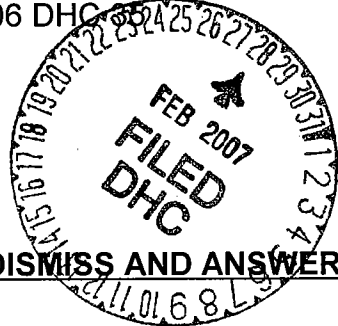
THE NORTH CAROLINA STATE BAR,

Plaintiff,

vs.

MICHAEL B. NIFONG,

Defendant.



MOTION TO DISMISS AND ANSWER

NOW COMES the defendant, by and through counsel, and answers the Amended Complaint of the plaintiff and alleges and says:

FIRST DEFENSE
MOTION TO DISMISS
N.C. RULE OF CIVIL PROCEDURE 12(b)(6)
FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

The defendant moves the court for entry of an Order dismissing the portions of the plaintiff's Amended Complaint as more specifically outlined in paragraphs (c) and (d) of the "Therefore" clause of said Amended Complaint. Plaintiff cannot establish as a matter of law that the defendant violated the provisions of the United States Constitution; N.C.G.S. § 15A-282, N.C.G.S. § 15A-903(a)(1) and N.C.G.S. § 15A-903(a)(2); or the June 22, 2006 Order. In support of said Motion, defendant alleges as follows:

1. The allegations of the Amended Complaint establish that the defendant did in fact provide the "Duke lacrosse defendants," through discovery, a report of the results of all tests and examinations performed by DSI as of October 27, 2006 (Amended Complaint, paragraphs 254, 259, 261). The Amended Complaint fails to allege as of October 27, 2006, or as of the date of the filing of the Amended Complaint, that a trial was held or that a trial date had been scheduled. Consequently, plaintiff cannot establish that the "Duke lacrosse defendants'" due process rights to a fair trial were affected, and therefore plaintiff cannot establish as a matter of law that the "Duke lacrosse defendants'" constitutional rights were violated. "For unless the omission deprived the defendant of a fair trial, there was no constitutional violation requiring that

