

Cloudy future for rape prosecutor

By Aaron Beard
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Forced by allegations of misconduct to recuse himself, the prosecutor who drove the Duke lacrosse sexual assault case could end up losing much more than the opportunity to try a case he still believes in.

For Mike Nifong, the missteps of the past 10 months have the potential to end a career that started nearly three decades ago, when he signed up at the Durham County district attorney's office as an unpaid assistant.

"You don't easily recover from something like this," said James Coleman, a Duke University law professor and frequent Nifong critic. "That's what's so unfortunate about this. He had a career — a long career, a reputation of being an honest and fair prosecutor — and for some reason, his conduct in this case was inconsistent with that."

Nifong asked the state attorney general's office Friday to take over the case of three lacrosse players accused of sexually assaulting a stripper hired to perform at a team party.

Now, he must defend himself against ethics charges that could



AP PHOTO

Durham County (N.C.) District Attorney Mike Nifong, the embattled prosecutor in the Duke lacrosse sexual assault case asked the state attorney general's office to appoint a special prosecutor to take over the case.

lead to his being stripped of his law license. Should Attorney General Roy Cooper dismiss the case against Dave Evans, Collin Finnerty and Reade Seligmann — and legal experts have said there appears to be little evidence to support the charges — their families might try to sue Nifong.

If he returns to the courtroom, Nifong will have to rebuild a reputation tainted by the vast attention generated by the lacrosse case.

The state Conference of District

Attorneys offered Nifong a variety of assistance in September, an offer that went unanswered, said Garry Frank, a district attorney in four North Carolina counties and president of the conference. Frank said Nifong appeared surprised in late December that his colleagues were concerned about his handling of the case, and they later formally called on Nifong to recuse himself.

"Folks that have to do the things we do on a day-to-day basis quickly learn take good advice when you can get it," Frank said.

A more immediate concern for Nifong are the ethics charges that he made misleading and inflammatory comments about the lacrosse players, including calling them "nothing but a bunch of hooligans." A hearing on those charges is set for May.

University of North Carolina law professor Joseph Kennedy said the accuser's Dec. 21 interview with Nifong's investigator, in which she changed several key details in her description of the alleged attack, is also a concern.

Among the changes, the accuser offered a new timeline that put the attack outside of the apparent alibi window established by Seligmann's attorneys. She also said she could no longer be

sure she was penetrated vaginally by a penis, which could have helped Nifong explain to a jury why there was no DNA evidence.

"It's just troubling that ... nine months after the event, there's an interview and the interview reveals this fact which minimizes the importance of the evidence they didn't turn over," Kennedy said.

As a prosecutor, Nifong enjoys broad but not absolute immunity from civil litigation, and the families of the indicted players have hinted they plan to sue. Asked in an interview with CBS' "60 Minutes" what she would say to Nifong should they meet, Evans' mother said, "Mr. Nifong, you've picked on the wrong families ... and you will pay every day for the rest of your life."

For now, Nifong has no plans to resign, said his attorney, David Freedman.

"His reputation has always been straightforward and he does what he thinks is right, and he will continue to do that," he said.

But questions remain about whether a future jury in another case will be able to look past the countless hours of cable news coverage, newspaper headlines and online Web logs that highlighted Nifong's role in the lacrosse case.

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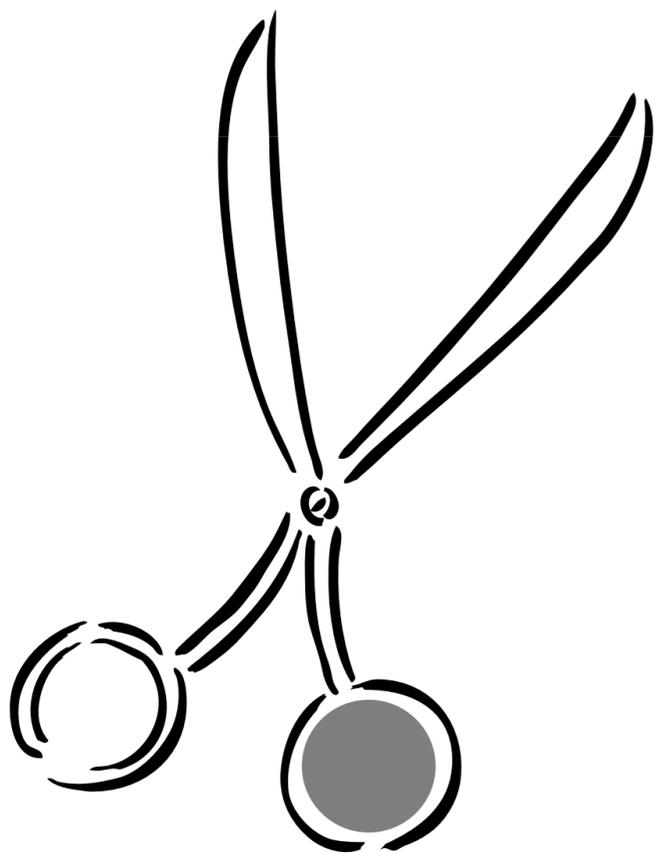
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