

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO. 1:08-CV-119

EDWARD CARRINGTON, *et al.*, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 DUKE UNIVERSITY, *et al.*, )  
 )  
 Defendants. )

**ANSWER  
OF DEFENDANT  
MARSHA COVINGTON  
TO PLAINTIFFS'  
FIRST AMENDED COMPLAINT**

Defendant Marsha Saunders Covington (hereinafter referred to as “the Executrix”), by and through counsel, hereby responds to and answers Plaintiffs’ First Amended Complaint, and as a preface to responding to the allegations of the First Amended Complaint, states the following:

The Executrix was the wife of J. Wesley Covington (hereinafter referred to as “Wes Covington” or “Covington”), who had been named a defendant in the initial Complaint filed by Plaintiffs in February 2008. Wes Covington died on February 2, 2010, and pursuant to Rule 25(a) of the Federal Rules of Civil Procedure, the claims that had been asserted against him by Plaintiffs could no longer be pursued due to his death. Plaintiffs requested, pursuant to Rule 25(a), that the Executrix be substituted as a party-defendant for Wes Covington, and on May 10, 2010, the Court filed an Order allowing such substitution. As a result of a waiver of service executed by the Executrix on June 2, 2010, an Answer was to be filed by the Executrix by August 2, 2010. Because Plaintiffs’ First Amended Complaint is nearly identical to the initial Complaint to which Wes Covington filed an Answer on May 30, 2008 (hereinafter referred to as “Covington’s initial Answer”) [Docket # 70], and to reduce the length of the Executrix’s Answer to the First Amended Complaint, the Executrix, by and through counsel, will incorporate by

reference, where appropriate, the responses of Wes Covington to the initial Complaint that can be found in Wes Covington's initial Answer.

FIRST DEFENSE AND MOTION TO DISMISS

The Executrix incorporates by reference the First Defense and Motion to Dismiss contained in Covington's initial Answer.

SECOND DEFENSE

*(Responses to Specific Allegations of the Complaint)*

1. – 59. The Executrix incorporates by reference the responses contained in paragraphs 1 through 59 of Covington's initial Answer (including both paragraphs 10, 11, 12, and 13). However, for purposes of incorporating any responses referred to in this present Answer to the First Amended Complaint, references in Covington's initial Answer to "Plaintiffs' Complaint" or "Complaint" shall be deemed to mean "Plaintiffs' First Amended Complaint" or "First Amended Complaint." Additionally, references in the initial Answer to "Covington is without knowledge or information" shall be deemed to mean "the Executrix is without knowledge or information." References to matters "denied as to Wes Covington" shall be deemed to be "denied as to the Executrix," and references to "Covington incorporates herein by reference his responses above to the allegations contained in . . . Plaintiffs' Complaint" shall be deemed to mean "the Executrix incorporates herein by reference her responses above to the allegations contained in . . . Plaintiffs' First Amended Complaint."

60. It is admitted that Wes Covington had been an attorney in Durham, North Carolina. Except as specifically admitted herein, the allegations contained in paragraph 60 of Plaintiffs' First Amended Complaint are denied. Furthermore, the Executrix denies that she or

Wes Covington is a “Duke Defendant” or that it is appropriate to describe or label either of them as a “Duke Defendant.”

61. – 80. The Executrix incorporates by reference the responses contained in paragraphs 61 through 80 of Covington’s initial Answer.

81. It is admitted that some of the alleged claims which Plaintiffs have asserted in the First Amended Complaint arise under the United States Constitution and statutes, and some alleged claims purportedly arise under North Carolina law. It is also admitted that this Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over Plaintiffs’ “federal claims” against some defendants, but it is denied that Plaintiffs have any valid and cognizable federal claims against the Executrix. It is further admitted that this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiffs’ “state claims” against some defendants, but it is denied that the Court has supplemental jurisdiction over Plaintiffs’ state claims against the Executrix. The Executrix is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 81 of Plaintiffs’ First Amended Complaint.

82. – 168. The Executrix incorporates by reference the responses contained in paragraphs 82 through 168 of Covington’s initial Answer.

169. With respect to the allegations contained in the first sentence of paragraph 169 of Plaintiffs’ First Amended Complaint, the Executrix is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding what the players were told and by whom. However, it is admitted that Chris Kennedy telephoned Wes Covington on Friday, March 17, 2006, and asked him if he could meet with several lacrosse players regarding an alleged incident at a party. The allegations contained in the second sentence of paragraph 169 are

denied, except it is admitted that Wes Covington and Dean Wasiolek were friends. The allegations contained in the fourth sentence of paragraph 169 are denied. The Executrix is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 169 of Plaintiffs' First Amended Complaint.

170. – 174. The Executrix incorporates by reference the responses contained in paragraphs 170 through 174 of Covington's initial Answer.

175. The allegations contained in paragraph 175 of Plaintiffs' First Amended Complaint are denied.

176. – 200. The Executrix incorporates by reference the responses contained in paragraphs 176 through 200 of Covington's initial Answer.

201. It is admitted that Wes Covington may have met Larry Lamade. The remaining allegations contained in paragraph 201 of Plaintiffs' First Amended Complaint are denied.

202. – 423. The Executrix incorporates by reference the responses contained in paragraphs 202 through 423 of Covington's initial Answer.

[Unnumbered paragraph between paragraphs 423 and 424] The Executrix is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the unnumbered paragraph between paragraphs 423 and 424 of Plaintiffs' First Amended Complaint.

424. – 601. The Executrix incorporates by reference the responses contained in paragraphs 424 through 601 of Covington's initial Answer.

[602. – 605. Allegations withdrawn by Plaintiffs.]

606. – 634. The Executrix incorporates by reference the responses contained in paragraphs 606 through 634 of Covington's initial Answer.

COUNT TWENTY-TWO

*(Alleged Violation of and Conspiracy to Violate Fourteenth Amendment Rights  
under 42 U.S.C. § 1983 – Malicious Investigation  
Against All Defendants)*

635. The Executrix incorporates herein by reference her responses above to the allegations contained in paragraphs 1 through 634 of Plaintiffs' First Amended Complaint.

636. – 642. The allegations contained in paragraphs 636 through 642 of Plaintiffs' First Amended Complaint are denied.

COUNT TWENTY-THREE

*(Alleged Obstruction of and Conspiracy to Obstruct Public Justice  
Against All Defendants)*

643. The Executrix incorporates herein by reference her responses above to the allegations contained in paragraphs 1 through 642 of Plaintiffs' First Amended Complaint.

644. – 648. The allegations contained in paragraphs 644 through 648 of Plaintiffs' First Amended Complaint are denied.

649. – 746. The Executrix incorporates by reference the responses contained in paragraphs 649 through 746 of Covington's initial Answer.

COUNT THIRTY-TWO

*(Alleged Violation of N.C. Constitution Against City of Durham)*

747. The Executrix incorporates herein by reference her responses above to the allegations contained in paragraphs 1 through 746 of Plaintiffs' First Amended Complaint.

748. – 750. The allegations contained in paragraphs 748 through 750 of Plaintiffs' First Amended Complaint are denied.

PRAYER FOR RELIEF

751. Because paragraph 751 of Plaintiffs' First Amended Complaint is a prayer for relief, no formal response is required. However, in the event a specific response is deemed

necessary, then the Executrix denies that Plaintiffs are entitled to receive from her any damages of any kind or nature and any attorneys' fees, and hence the Executrix denies the allegations contained in paragraph 751 of Plaintiffs' First Amended Complaint which are directed against her and Wes Covington. Additionally, lacking sufficient knowledge and information to form any belief as to whether Plaintiffs are entitled to any damages of any kind from any other defendant, the Executrix denies that Plaintiffs are entitled to any damages.

FURTHER RESPONDING TO PLAINTIFFS' FIRST AMENDED COMPLAINT, MARSHA COVINGTON ASSERTS THE FOLLOWING ADDITIONAL DEFENSES:

THIRD DEFENSE

1. Any alleged act or omission of Wes Covington did not proximately cause any compensable injury or damage to Plaintiffs, and without proximate cause, Plaintiffs' claims against the Executrix should be dismissed.

FOURTH DEFENSE

2. The acts and omissions of others, especially Michael Nifong, constitute intervening and superseding acts and omissions, and therefore Plaintiffs are not entitled to recover damages from the Executrix.

WHEREFORE, having answered Plaintiffs' First Amended Complaint, Defendant Marsha Saunders Covington (the Executrix) requests the Court:

- (1) That Plaintiffs have and recover nothing of her in this action;
- (2) That this action be dismissed;
- (3) That the costs of this action be taxed against Plaintiffs;
- (4) That the Executrix's attorneys' fees for defending this action be awarded as part of the costs of this action pursuant to 42 U.S.C. § 1988(b) and/or N.C. Gen. Stat. § 6-21.5 ; and

(5) That the Court grant to the Executrix such other and further relief as may be just and proper.

A TRIAL BY JURY IS DEMANDED ON ALL TRIABLE ISSUES.

This the 2nd day of August, 2010.

/s/ Kenneth Kyre, Jr.  
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of August, 2010, I electronically filed the foregoing Answer to Plaintiffs' First Amended Complaint with the Clerk of Court using the ECF system, and notification of such filing (which constitutes service of this document) will be sent electronically by the ECF system to counsel of record in this case who have registered with that system.

This the 2nd day of August, 2008.

/s/ Kenneth Kyre, Jr.  
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