STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 16 DHC 1
THE NORTH CAROLINA STATE BAR, Plaintiff v. DAWN E. ELY, ATTORNEY, Defendant	ORDER OF DISCIPLINE

THIS MATTER was heard on July 15, 2016 before a Hearing Panel of the Disciplinary Hearing Commission composed of William O. King, Chair, and members R. Lee Farmer and Patti Head. Joshua T. Walthall and Barry McNeill represented Plaintiff, the North Carolina State Bar. Defendant, Dawn E. Ely, was present and appeared *pro se*.

Based upon the pleadings, the stipulated facts, and the evidence admitted at the hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Defendant, Dawn E. Ely ("Defendant"), was admitted to the North Carolina State Bar on September 10, 1993, 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 State Bar, and the Rules of Professional Conduct.

2. Defendant was administratively suspended by the North Carolina State Bar on June 10, 2011 for failure to comply with Continuing Legal Education requirements.

3. As of July 15, 2016, Defendant was still administratively suspended in North Carolina.

4. Defendant is also a licensed attorney in Georgia but has been administratively suspended since July 1, 2011 due to her failure to pay mandatory bar dues.

5. As of July 15, 2016, Defendant was still administratively suspended in Georgia.

6. Defendant operates a business registered in Georgia called Palladium Legal Services, LLC ("PLS") that functions under the trade name Palladium Chief Legal Officers ("PCLO").

7. Neither PLS nor PCLO is authorized to provide legal services in North Carolina.

8. Defendant describes herself as the "President and Founder" of PCLO.

9. Defendant advertises the services of PCLO via email solicitations and a website, www.palladiumclos.com.

10. According to the PCLO website and Defendant's email solicitations, PCLO offers to provide various businesses with legal services through a number of lawyers on the PCLO staff, including Defendant.

11. According to the PCLO website and Defendant's email solicitations, Defendant holds herself out to residents of North Carolina and Georgia as able to provide them with legal services through PCLO despite not being actively licensed in either state.

12. Defendant offers the services of PCLO to businesses and individuals in various states, including those in North Carolina and Georgia.

13. Defendant describes the legal services PCLO offers as "in-house" legal counsel services provided by "Chief Legal Officers."

14. Defendant offers to provide the legal services of attorneys under contract with PCLO to other businesses on a temporary or as needed basis.

15. To obtain the services of these attorneys, clients must retain and pay PCLO which will then instruct one of its attorneys to provide legal services to the client upon payment from PCLO.

16. PCLO attorneys are employees of PCLO and not the companies they serve.

17. Defendant makes all hiring and firing decisions regarding the attorneys who work for PCLO.

18. PCLO attorneys are not paid directly by the businesses they serve, but rather are paid by PCLO.

19. Defendant has sent solicitation emails to potential clients in North Carolina and other states representing that PCLO could provide them with legal services and advice.

20. In August and September of 2012, Defendant sent emails to Tony Maupin, a North Carolina resident and the owner of a North Carolina company, soliciting his

business by offering to provide him with legal services through PCLO attorneys, including Defendant.

21. In Defendant's emails to Tony Maupin, she used the designation "Esq." after her name despite not being actively licensed to practice law in any state at the time.

22. The designation "Esq.," an abbreviation for "Esquire," has historically been used in the United States to indicate to others that someone is an attorney licensed to practice law. Defendant was using the designation "Esq." for this purpose.

23. In or around January 2008, Defendant sent a proposed employment contract to Henry Abelman ("Abelman"), a North Carolina licensed attorney who moved to inactive status in 1998, in an effort to hire him as an attorney employee of PCLO.

24. The contract Defendant sent to Abelman notes in one provision that Abelman "agrees to perform legal counsel services on behalf of Company [PCLO] to third party companies retaining Company[.]"

25. Abelman did not agree to the provisions in the contract and did not agree to become an employee of Defendant's company.

26. Defendant nonetheless held out on her website that Abelman was an employee of PCLO and was able to provide legal services to North Carolina residents on behalf of the company.

27. The contract Defendant had clients of Palladium sign indicated in numerous places that Palladium was providing legal services to the clients:

a. "This Attorney Engagement & Consulting Agreement for Services ("Agreement") is made and entered into effective as of the ___ day of _____, 2015, by and between **Palladium Legal Services, a Georgia LLC d/b/a Palladium Chief Legal Officers** ("Palladium" or "Company") with offices at 2625 Piedmont Rd., NE, Suite 56-117, Atlanta GA 30324 and _____, a _____ company with its principal offices located at _____ ("Client")."
b. "Client hereby engages Company [Palladium], to provide in-house legal services for the term and compensation described herein. Company agrees to assign an appropriate Paladium Attorney, who at the time of execution of this Agreement shall be _____ ("Attorney") to perform the services specified in the "Description of Services" (the "Services") attached to this Agreement as Exhibit A and incorporated herein by reference."
c. "Company [Palladium] warrants that it shall perform the Services utilizing at least the degree of skill and care exercised by diligent and prudent professionals performing similar services in accordance with best industry practices."

Based on the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All of the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Dawn E. Ely, and the subject matter.

2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

a) By holding herself out on her website as able to provide legal services and advice to North Carolina residents, Defendant made false or misleading statements about her services in violation of Rule 7.1(a) and engaged in the unauthorized practice of law in violation of Rule 5.5(b)(2);

b) By holding her company out on her website as able to provide legal services and advice to North Carolina residents, Defendant made false or misleading statements about her company's services in violation of Rule 7.1(a) and engaged in the unauthorized practice of law in violation of Rule 5.5(b)(2);

c) By contacting Tony Maupin via an email in which she designated herself as "Esq." and offered to provide him with legal services through her company, Defendant solicited professional employment from a North Carolina resident when a significant motive was Defendant's pecuniary gain in violation of Rule 7.3(a), made false or misleading statements about her and her company's services in violation of Rule 7.1(a), and engaged in the unauthorized practice of law in violation of Rule 5.5(b)(2); and

d) By claiming on her website that Henry Abelman was an attorney employed by her company when he was not, Defendant made false or misleading communications about her and her company's services in violation of Rule 7.1(a) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rules 8.4(c).

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 27 are reincorporated as if set forth herein.

2. Defendant has not acknowledged the wrongful nature of her conduct or indicated remorse.

3. By attempting to practice law in North Carolina despite not being actively licensed here, Defendant caused significant potential harm to her company's clients and to the standing of the profession in the eyes of the public because it showed her disregard for one of the foundational duties of an attorney – practicing law solely within the bounds

of licensure. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

4. The Hearing Panel finds by clear, cogent, and convincing evidence any additional facts that may be contained in the conclusions regarding discipline set out below.

5. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the Hearing Panel enters the following

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1), (2) and (3) of the Rules and Regulations of the State Bar, and concludes that the following factors are applicable:

27 N.C.A.C. 1B § .0114(w)(1)

a. Factor (B), Intent of the defendant to commit acts where the harm or potential harm is foreseeable; and

b. Factor (I), Acts of dishonesty, misrepresentation, deceit, or fabrication.

27 N.C.A.C. 1B § .0114(w)(2)

a. Factor (A), Acts of dishonesty, misrepresentation, deceit, or fabrication.

27 N.C.A.C. 1B § .0114(w)(3)

a. Factor (G), Multiple offenses; and

b. Factor (O), Refusal to acknowledge wrongful nature of conduct.

2. Although the Hearing Panel determined one of the factors under 27 N.C.A.C. 1B § .0114(w)(2) to be present, the Hearing Panel concluded that disbarment was not warranted in light of all of the circumstances of the case.

3. The Hearing Panel considered all of the disciplinary options available to it and determined that imposition of a suspension is appropriate and necessary.

4. The Hearing Panel concluded that Defendant, by unlawfully providing and offering to provide legal services to others through herself and her company, exposed the

public to significant potential harm. Whenever attorneys engage in the unauthorized practice of law, there is the potential for significant harm, particularly when money exchanges hands, court appearances are made, and legal forms are drafted or filed on behalf of others. The risks of this type of arrangement include divided loyalties, fee splitting, inadequate representation, excessive fees, a lack of understanding sufficient to adequately represent and protect the interests of clients in a given jurisdiction, and criminal activity. There is also the inherent danger that someone other than a licensed North Carolina attorney will provide legal services to North Carolina citizens, thereby hampering the State Bar's ability to protect the public by regulating the practice of law in this state.

5. The Hearing Panel considered all lesser sanctions and concluded that discipline short of an active suspension would not adequately protect the public. Imposition of lesser discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to members of the Bar and the public regarding the conduct expected of members of the Bar of this State.

Based on the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, Dawn E. Ely, is hereby SUSPENDED from the practice of law for five years, effective 30 days from service of this Order upon Defendant. This suspension may be stayed after a period of two years, as set forth in paragraph 4 below.

2. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar's Office of Counsel with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files, and Defendant shall promptly provide client files to all clients who request return of their files.

3. Defendant shall pay the administrative fees and costs of this proceeding, including the costs of all depositions, as assessed by the Secretary of the North Carolina State Bar within 90 days after service of the statement of costs on her.

4. No earlier than two years after the effective date of this Order, Defendant may seek a stay of the remaining period of suspension by filing a verified motion demonstrating by clear, cogent and convincing evidence that Defendant has met all requirements for reinstatement set out in 27 N.C.A.C. 1B § .0125(b), and has complied with each of the following:

a. Defendant paid all administrative fees and costs of this proceeding as assessed by the Secretary within 90 days after service of the statement of costs on her;

b. Defendant did not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the suspension;

c. Defendant responded to all State Bar requests for information as required by Rule 8.1(b) of the Rules of Professional Conduct by the deadline stated in the communication or within 30 days of receipt;

d. Neither Defendant, Palladium, nor any other corporate entity with which Defendant is associated engaged or attempted to engage or held itself out as able to engage in the practice of law in North Carolina during the period of the suspension;

e. With reference to her administrative suspension by the Administrative Committee, Defendant shall have: (1) satisfied all requirements for reinstatement as established by the Administrative Committee of the North Carolina State Bar for reinstatement from the suspension imposed by the Administrative Committee, including, but not limited to, the payment of all fees to the Continuing Legal Education and membership departments of the North Carolina State Bar; (2) submitted her petition for reinstatement from the administrative suspension to the Administrative Committee; and (3) been reinstated by the Administrative Committee or approved for reinstatement by the Administrative Committee contingent upon the DHC granting her petition for stay of the DHC suspension; and

f. Defendant kept the North Carolina State Bar membership department advised of her current home and business street (no P.O. Box) addresses and telephone numbers during the period of the suspension.

5. If Defendant obtains a stay of her suspension pursuant to paragraph 4 of this Order of Discipline, she must comply and continue to comply with all of the following conditions, or the stay of the suspension of her law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules:

a. Defendant shall maintain all of her annual CLE requirements as required by the State Bar;

b. Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;

c. Defendant shall respond to all State Bar requests for information by the deadline stated in the communication or within 30 days of receipt, whichever is sooner;

d. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements; and

e. Defendant shall keep the North Carolina State Bar membership department advised of her current home and business street (no P.O. Box) addresses and telephone numbers.

6. If the stay of the suspension is lifted and the suspension is activated for any reason or if Defendant never obtains a stay of the suspension, the DHC may enter an Order imposing such conditions as it deems necessary for the reinstatement of Defendant's license at the end of the suspension. Furthermore, Defendant must have complied with each of the following conditions precedent to reinstatement before she can be reinstated to the active practice of law:

a. Submitted her license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating her suspension;

b. Complied with all provisions of 27 N.C.A.C. 1B, § .0124 of the North Carolina State Bar Discipline and Disability Rules on a timely basis;

c. With reference to her administrative suspension by the Administrative Committee, Defendant shall have: (1) satisfied all requirements for reinstatement as established by the Administrative Committee of the North Carolina State Bar for reinstatement from the suspension imposed by the Administrative Committee, including, but not limited to, the payment of all fees to the Continuing Legal Education and membership departments of the North Carolina State Bar; (2) submitted her petition for reinstatement from the administrative suspension to the Administrative Committee; and (3) been reinstated by the Administrative Committee or approved for reinstatement by the Administrative Committee contingent upon the DHC granting her petition for stay of the DHC suspension;

d. Paid any outstanding disciplinary administrative fees and costs; and

e. Within 15 days of the effective date of an order activating the suspension Defendant shall have provided the State Bar with an address and telephone number at which clients seeking return of files could communicate with Defendant and obtain such files, and Defendant shall have promptly returned all files to clients upon request.

7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period, if any, of the stayed suspension.

Signed by the Chair with the consent of the other Hearing Panel members, this the 24 day of August 2016.

William O. King
Chair, Disciplinary Hearing Panel