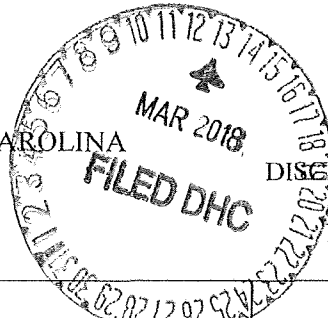


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
16 DHC 3R

THE NORTH CAROLINA STATE BAR,

Plaintiff/Respondent

v.

R. KELLY CALLOWAY, JR., Attorney,

Defendant/Movant

ORDER DENYING MOTION FOR
STAY OF SUSPENSION AND
IMPOSING MODIFIED
CONDITIONS FOR SEEKING STAY

This matter was heard on March 2, 2018 by a hearing panel of the Disciplinary Hearing Commission (“DHC”) composed of Allison C. Tomberlin, Chair, David W. Long, and Michael S. Edwards upon the Motion by the Defendant/Movant, R. Kelly Calloway, Jr., seeking a stay of the remaining period of his suspension. Defendant/Movant, R. Kelly Calloway, Jr., represented himself *pro se*. Deputy Counsel Barry S. McNeill appeared as counsel for the North Carolina State Bar (“State Bar”).

Based on the stipulations of the parties, the exhibits introduced into evidence by the parties, and the testimony presented at the hearing, the Hearing Panel hereby makes by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Defendant/Movant, R. Kelly Calloway, Jr. (“Calloway” or “Defendant”), was admitted to the State Bar on August 20, 1993, and actively engaged in the practice of law in Hendersonville, Henderson County, North Carolina until being administratively suspended by the Administrative Committee of the State Bar effective September 16, 2016.

2. On October 18, 2016, a panel of the DHC filed a Consent Order of Discipline (“Consent Order”) suspending Defendant for a period of four years, effective 30 days from service of the Consent Order upon Defendant.

3. The Consent Order provided that after one year of active suspension, Defendant could apply for 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 former 27 N.C. Admin. Code 1B § .0125(b) (now found in 27 N.C. Admin. Code 1B § .0129(b)), as well as certain conditions specified in the Consent Order.

4. Defendant accepted service of the Consent Order on October 18, 2016 (the Acceptance of Service was filed on October 19, 2016), and therefore Defendant's four-year DHC suspension became effective on November 17, 2016.

5. Defendant became eligible to seek a stay of the remaining period of suspension on November 17, 2017, one year from the effective date of his suspension.

6. Under 27 N.C. Admin. Code 1B § .0118(c)(1), Defendant may file a motion seeking a stay of the remaining period of suspension "no earlier than 60 days before the first date of eligibility to apply for a stay."

7. On October 24, 2017, Defendant filed the present Motion seeking a stay of the remaining period of his four-year DHC suspension. However, as Defendant acknowledged at the hearing, his Motion was not verified by him as required by the express language of the Consent Order.

8. Pursuant to 27 N.C. Admin. Code 1B § .0118(c)(2), as well as the express language in the Consent Order, Defendant has the burden of proving compliance with each condition by clear, cogent, and convincing evidence.

9. Defendant did not comply with the requirement of former 27 N.C. Admin. Code 1B § .0124 (now found in 27 N.C. Admin. Code 1B § .0128) that within 15 days of the effective date of the Consent Order, Defendant shall provide the State Bar's Office of Counsel with an address and telephone number at which clients seeking the return of files can communicate with Defendant and promptly obtain such files.

10. Defendant did not comply with the "wind down" provision of former 27 N.C. Admin. Code 1B § .0124(d) (now found in 27 N.C. Admin. Code 1B § .0128(d)) that "[w]ithin 10 days after the effective date of the . . . suspension order, the . . . suspended attorney will file with the secretary an affidavit showing that he or she has fully complied with the provisions of the order, with the provisions of this section, and with the provisions of all other state, federal, and administrative jurisdictions to which he or she is admitted to practice."

11. The Consent Order specified the following as a condition for Defendant to obtain a stay of the remaining period of his suspension:

- b) In addition to his annual requirement of 12 hours of CLE and within the next 12 months following the effective date of his suspension, Defendant shall complete an additional three (3) hours of CLE, approved in advance by the Office of Counsel, related to law office management;

12. Defendant did not timely meet the condition of taking the three (3) hours of CLE, approved in advance by the Office of Counsel, related to law office management. Defendant did eventually seek and obtain Deputy Counsel's approval of the CLE on January 12, 2018, and completed the three hours of law office management CLE on January 15 and 16, 2018.

13. The Consent Order specified the following as a condition for Defendant to obtain a stay of the remaining portion of his suspension:

- j) Defendant shall pay all costs and administrative fees of this proceeding as assessed by the Secretary within thirty (30) days after service of the notice of costs on him.

14. Defendant acknowledged that the DHC Clerk twice sent the invoice for costs to him by certified mail, but both were returned to the DHC Clerk as unclaimed by him.

15. On October 19, 2017, during the preparation of his present Motion, Defendant became aware that he had not received the bill for the costs of the administrative fees assessed by the Secretary of the State Bar.

16. On October 20, 2017, Defendant contacted the DHC Clerk as to the amount and remitted a check for the costs that same date. The DHC Clerk received the check in the amount of \$1,162.96 from Defendant and deposited the check on October 25, 2017.

17. Therefore, Defendant did not timely comply with the costs and administrative fees payment condition.

18. In explaining his failures to comply or timely comply with the conditions for obtaining a stay of the remaining period of his suspension, Defendant testified that he had been in a state of depression due to the circumstances of his State Bar disciplinary proceeding and marital problems, but had not sought counseling or treatment from a professional due to lack of access to financial resources.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction of Defendant/Movant, R. Kelly Calloway, Jr., and his Motion seeking a stay of the remaining period of his suspension.

2. The panel, in its discretion, concludes pursuant to 27 N.C. Admin. Code 1B § .0118(d)(3), that Defendant has not shown by clear, cogent and convincing evidence that he has met all requirements for reinstatement set out in 27 N.C. Admin. Code 1B §§ .0128(d) and .0129(b)(3), as well as the specified conditions for a stay of the remaining period of his suspension referenced in findings of fact Paragraphs 9, 10, 12, and 17 above.

3. The four-year suspension entered by the DHC panel, effective November 17, 2016, shall remain in effect and is not stayed.

4. Pursuant to its authority under 27 N.C. Admin. Code 1B § .0118(e), the Hearing Panel imposes modified and/or additional conditions for Defendant's eligibility for a stay during his current period of suspension.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby enters the following:

ORDER

1. Defendant's Motion is denied since he has not shown by clear, cogent and convincing evidence that he has met all requirements for reinstatement set out in 27 N.C. Admin. Code 1B §§ .0128(d) and .0129(b)(3), as well as the specified conditions for a stay of the remaining period of his suspension referenced in findings of fact Paragraphs 9, 10, 12, and 17 above.

2. The four-year suspension entered by the DHC panel, effective November 17, 2016, shall remain in effect and is not stayed.

3. The Hearing Panel imposes the following modified and/or additional conditions for Defendant's eligibility for a stay during his current period of suspension:

- a) This Order will become effective upon service upon Defendant pursuant to 27 N.C. Admin. Code 1B § .0116(g);
- b) After six months from the effective date of this Order, Defendant may again apply for a stay of the remaining period of his suspension by filing a motion in this proceeding pursuant to 27 N.C. Admin. Code 1B § .0118(c) demonstrating by clear, cogent and convincing evidence that he has met all requirements for reinstatement set out in 27 N.C. Admin. Code 1B §§ .0128(d) and .0129(b)(3), as well as any previously unmet conditions referenced in findings of fact Paragraphs 9 and 10 above;
- c) Defendant shall not be required to again meet the specified conditions he untimely met referenced in findings of fact Paragraphs 12 and 17 above, or again meet any other conditions he already has met;
- d) Within ten (10) days of the effective date of this Order, Defendant shall contact the Lawyer Assistance Program ("LAP") of the State Bar to schedule and obtain an evaluation for treatment by LAP or its designee;
- e) If deemed appropriate by LAP, Defendant shall enter into a contract with LAP and shall comply with all LAP treatment recommendations; and,
- f) Defendant shall sign a release so that LAP or its designee may consult with and furnish monthly reports to the State Bar's Office of Counsel concerning Defendant's compliance with any treatment recommendations, with the first report being due to the Office of Counsel on or before March 31, 2018, and successive monthly reports thereafter due to the Office of Counsel on or

before the last day of the month until Defendant is terminated from his contract with LAP.

4. Defendant shall bear the costs and administrative fees of this proceeding.

Signed by the Chair with the consent of the other Hearing Panel members this the 13
day of MARCH, 2018.



Allison C. Tomberlin, Chair
Disciplinary Hearing Panel