



STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
16 DHC 3R2

THE NORTH CAROLINA STATE BAR,  
Plaintiff

v.

R. KELLY CALLOWAY, JR. Attorney,  
Defendant

ORDER STAYING REMAINDER  
OF SUSPENSION

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission (“DHC”) composed of Allison C. Tomberlin, Chair, and members David W. Long and Michael S. Edwards, pursuant to 27 N.C. Admin. Code 1B § .0118(c)(1) of the Rules and Regulations of the North Carolina State Bar. Plaintiff was represented by Barry S. McNeill, Deputy Counsel. Defendant, R. Kelly Calloway, Jr. (“Defendant” or “Calloway”), appeared *pro se*. On August 6, 2018, Defendant filed a verified Motion for Stay of the remaining portion of his suspension (“Motion”). The Plaintiff, the North Carolina State Bar (“State Bar”), pursuant to 27 N.C. Admin. Code 1B §§ .0118(c)(3), did not respond in opposition to the Motion. In his Motion, Defendant seeks a stay of the time remaining on his four-year suspension pursuant to the Consent Order of Discipline (“Order”) filed on October 18, 2016.

Based upon Defendant’s pleading and attachments and the matters of record, 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 a Motion seeking a stay of the remaining period of his four-year DHC suspension.

8. On November 9, 2017, Plaintiff filed a response opposing Defendant's Motion due to his failure to show compliance with a number of the conditions required by the rules and specified in the Consent Order.

9. A hearing on Defendant's Motion was held on March 2, 2018 before the present panel.

10. At the conclusion of the hearing, the panel denied Defendant's Motion, concluding from the evidence that, pursuant to 27 N.C. Admin. Code 1B § .0118(d)(3), Defendant had not shown by clear, cogent and convincing evidence that he met all requirements for reinstatement set out in 27 N.C. Admin. Code 1B §§ .0128(d) and .0129(b)(3), as well as the following specified conditions of the Consent Order for a stay of the remaining period of his suspension:

- a) 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;
- b) 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."

- c) 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, although he 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; and,
- d) Defendant did not pay the costs and administrative fee of his DHC proceeding as assessed by the Secretary within thirty (30) days after service of the notice of costs upon him.

11. The panel ordered that Defendant's four-year suspension remain in effect and not be stayed.

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

- a) That the Order denying his Motion and imposing the modified conditions for seeking a stay would become effective upon service upon Defendant pursuant to 27 N.C. Admin. Code 1B § .0116(g);
- b) That after six months from the effective date of the Order, Defendant could 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 had 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 10(a) and 10(b) above;
- c) That Defendant would not be required to again meet the specified conditions he untimely met referenced in Paragraphs 10(c) and 10(d) above, or again meet any other conditions he already had met;
- d) That within ten (10) days of the effective date of the Order, Defendant would contact the Lawyer Assistance Program ("LAP") of the State Bar to schedule and obtain an evaluation for treatment by LAP or its designee;
- e) That if deemed appropriate by LAP, Defendant would enter into a contract with LAP and would comply with all LAP treatment recommendations; and,
- f) That Defendant would sign a release so that LAP or its designee could 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.

13. Defendant accepted service of the March 13, 2018 Order that same date.

14. Six months from the effective date of the March 13, 2018 Order will be September 13, 2018.

15. Pursuant to 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."

16. On August 6, 2018, Defendant filed a new Motion seeking a stay of the remaining period of his four-year suspension.

17. Pursuant to 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." Therefore, even though Defendant technically will not be eligible for a stay of his four-year suspension until September 13, 2018, his Motion is not premature.

18. 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.

19. Defendant complied with the requirement of former 27 N.C. Admin. Code 1B § .0124 (now found in 27 N.C. Admin. Code 1B § .0128) by, on March 12, 2018, providing 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.

20. Defendant complied 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)) by filing with the secretary, on March 21, 2018, an affidavit showing that he has fully complied with the provisions of the Consent Order and the provisions of the applicable rule.

21. Within ten (10) days of the March 13, 2018 Order, Defendant contacted LAP to schedule and obtain an evaluation for treatment by LAP or its designee.

22. Defendant underwent a LAP evaluation on March 29, 2018, but LAP did not make any additional treatment recommendations for Defendant.

23. On April 6, 2018, Defendant signed a release so that LAP or its designee could consult with and furnish monthly reports to the State Bar's Office of Counsel concerning Defendant's compliance with his treatment recommendations, if any.

24. LAP's representative furnished the Office of Counsel with a report on Defendant on August 9, 2018 indicating no clinical evidence of substance abuse or other mental health disorder.

25. The Office of Counsel conferred with LAP's representative in early August 2018 about Defendant and is satisfied with LAP's assessment.

26. On or about March 14, 2018, the secretary assessed Defendant costs and administrative fees in the amount of \$1,965.67 for the March 2, 2018 hearing on his earlier Motion, and Defendant paid that amount to the State Bar on April 25, 2018 in compliance with the March 13, 2018 Order.

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 over Defendant/Movant, R. Kelly Calloway, Jr., and the subject matter of this proceeding.

2. Defendant has shown by clear, cogent and convincing evidence his compliance and/or substantial compliance with the conditions for staying the remainder of his four-year suspension.

Based upon the foregoing Findings of Fact and Conclusions of Law, the hearing panel enters the following

#### **ORDER**

1. A stay of the remaining portion of Defendant's four-year suspension is hereby ordered, and Defendant is hereby reinstated to practice law in North Carolina effective September 13, 2018 upon the filing of this Order.

2. The conditions of the Order are modified as follows: the stay of his suspension will remain in effect only if Defendant complies, and continues to comply, during the remainder of the stay of his suspension with the following conditions:

- a. Defendant keeps the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his stayed suspension;

- b. Defendant accepts all certified mail from the State Bar sent to the address on record with the Membership Department of the State Bar throughout the period of his stayed suspension;
- c. Defendant responds to all letters of notice and requests for information, if any, from the State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his stayed suspension;
- d. Defendant complies with CLE or membership obligations throughout the period of his stayed suspension;
- e. Defendant does not violate any of the Rules of Professional Conduct in effect during the period of his stayed suspension; and,
- f. Defendant does not violate any laws of the State of North Carolina or of the United States during the period of his stayed suspension.

3. Unless Defendant's obligations under the original Consent Order are modified by further order of the DHC, Defendant's obligations under the original Consent Order and this order end four years from the effective date of the original Consent Order (November 17, 2020) provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B § .0118(b) of the Rules and Regulations of the North Carolina State Bar, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the remaining suspension time in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any pending motion or show cause proceeding.

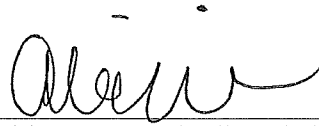
4. If an order staying any period of this suspension is entered and the Defendant fails to comply with any one or more of the conditions stated in Paragraph 2 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x) of the Rules and Regulations of the North Carolina State Bar.

5. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing an application for reinstatement demonstrating by clear, cogent, and convincing evidence the following:

- a. Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0129(b) of the Rules and Regulations of the North Carolina State Bar; and

- b. Compliance with the conditions set out in Paragraph 2 (a) – (f) above.

27 Signed by the Chair with the consent of the other hearing panel members, this the day of August, 2018.



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Allison C. Tomberlin, Chair  
Disciplinary Hearing Panel