STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 16 DHC 1R
IN THE MATTER OF Motion for Stay and Petition for Reinstatement of the License of DAWN E. ELY	ORDER

THIS MATTER was heard on November 6, 2018 before a Hearing Panel of the Disciplinary Hearing Commission composed of R. Lee Farmer, Chair, and members Stephanie N. Davis and Michael S. Edwards. 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 Hearing Panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. In an Order of Discipline filed August 24, 2016, a hearing panel of the Disciplinary Hearing Commission suspended Ely from the practice of law for five years effective thirty days from entry of the Order.

2. Ely was served with the Order on November 28, 2016, and the effective date of the Order was December 28, 2016.

3. The Order provides that Ely may apply for a stay of the remainder of her suspension after two years: "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" the other requirements of the Order.

4. 27 N.C.A.C. 1B § .0118(c) indicates, in part, that a "defendant shall file a motion for stay with the clerk and serve a copy of the motion and all attachments upon the counsel. Such motion shall be filed no earlier than 60 days before the first date of eligibility to apply for a stay. The commission will not consider any motion filed earlier than 60 days before the first date of eligibility to apply for a stay."

5. Two years after the effective date of the Order will be December 28, 2018.

6. Sixty days prior to the first date of eligibility to apply for a stay will be October 28, 2018.

7. Ely filed her "Motion for Stay and Petition for Reinstatement" on September 17, 2018

8. The Order of Discipline provides that, "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."

9. Ely has not "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."

10. 27 N.C.A.C. 1D § .0904(d)(4) indicates, in part, that "if 7 years or more have elapsed between the effective date of the suspension order and the date that the petition is filed, the member must obtain a passing grade on a regularly scheduled North Carolina bar examination."

11. Ely has been administratively suspended since June 10, 2011.

12. Seven years from the date of the administrative suspension was June 10, 2018.

13. Ely applied for reinstatement of her license on September 17, 2018.

14. As Ely has not obtained a passing grade on a regularly scheduled North Carolina bar examination, she has not satisfied the requirements of 27 N.C.A.C. 1D § .0904(d)(4).

15. Moreover, pursuant to this deficiency, on October 24, 2018, the Administrative Committee voted unanimously to deny Ely's petition for reinstatement.

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. Ely's petition for reinstatement is not timely filed and thus is not properly before the Disciplinary Hearing Commission in accordance with 27 N.C.A.C. 1B § .0118(c).

3. Ely has not satisfied all of the provisions of the Order of Discipline and is not entitled to a stay of the Order.

4. 27 N.C.A.C. 1B § .0115(l)(4) indicates that any "prehearing motion may be decided on the basis of the parties' written submissions" and that oral "argument may be allowed in the discretion of the chairperson of the hearing panel."

5. It is within the powers of the panel to grant judgment based on the written submissions, without the necessity of holding a hearing.

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

ORDER

1. The Office of Counsel's Motion for Judgment on the Written Submissions is hereby GRANTED;

2. Defendant Dawn E. Ely's Motion for a Stay is hereby DENIED; and

3. Nothing herein shall be construed to alter the terms or requirements of the Order of Discipline filed in this matter on or around August 24, 2016.

Signed by the Chair with the consent of the other Hearing Panel members, this the 7th day of November 2018.

R. Lee Farmer
Chair, Disciplinary Hearing Panel