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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1036

Filed 7 October 2026

N.C. State Bar, No. 25BCR2

IN RE PETITION OF REINSTATEMENT OF:

DAVID R. PAYNE

Appeal by Petitioner from order entered 19 June 2025 by the Disciplinary Hearing Commission of the North Carolina State Bar. Heard in the Court of Appeals 19 May 2026.

Dowling PLLC, by Troy D. Shelton, for petitioner-appellant.

The North Carolina State Bar, by Deputy Counsel Danielle Marquis Elder, for respondent-appellee.

STADING, Judge.

David R. Payne (“Petitioner”) appeals from the Discipline Hearing Commission’s (“DHC”) order denying his reinstatement to the North Carolina State Bar (“Respondent”). Petitioner contends the DHC erred by vacating his motion to voluntarily dismiss his petition and subsequently entering the denial order. For the following reasons, we affirm the DHC’s order.

I. Background

In October 2019 the Council of the North Carolina State Bar “entered an Order disbar[ing] [Petitioner], upon his submission of an affidavit of surrender.” Petitioner surrendered his license to practice law based on his guilty plea and conviction for knowingly making a false statement or report for the purpose of influencing the actions of a bank whose deposits are insured by the Federal Deposit Insurance Corporation in violation of 18 U.S.C. § 1014.

On 21 January 2025, Petitioner petitioned for the reinstatement of his license to practice law in North Carolina. On 10 April 2025, the DHC held a hearing on Petitioner’s reinstatement. During this hearing, Petitioner presented exhibits and testimony from multiple witnesses regarding his reinstatement pursuant to 27 N.C. Admin. Code 1B.0129. The North Carolina State Bar presented its evidence, and both parties made closing arguments. After a short deliberation, the DHC panel orally announced that it was recommending denial of Petitioner’s reinstatement.

On 28 April 2025, Petitioner filed a “Notice of Withdrawal / Dismissal” in an effort to dismiss his petition for reinstatement. At this point, the DHC had not filed its report. That same day, Respondent filed its motion to vacate Petitioner’s voluntary dismissal. On 7 May 2025, Petitioner filed a response to Respondent’s motion to vacate his voluntary dismissal. On 8 May 2025, Respondent filed another motion in response.

On 4 June 2025, the DHC entered an order vacating Petitioner’s voluntary dismissal. The DHC concluded that Petitioner’s dismissal was impermissible under Rule 41(a)(1) of the North Carolina Rules of Civil Procedure since Petitioner had already rested his case and since Petitioner voluntarily dismissed in bad faith. On 19 June 2025, the DHC filed its “REPORT OF THE HEARING PANEL RECOMMENDING REINSTATEMENT BE DENIED.” Petitioner entered notices of appeal.

II. Analysis

Petitioner argues that the DHC erred by vacating his motion to dismiss and filing a report denying his reinstatement. Specifically, Petitioner contends the North Carolina Rules of Civil Procedure permits him to take a voluntary dismissal after the DHC panel announces its recommendation, but before any proceedings with the State Bar Council (the “Council”).

Issues of subject matter jurisdiction are reviewed by this Court de novo. *Harper v. City of Asheville*, 160 N.C. App. 209, 213, 585 S.E.2d 240, 243 (2003). This Court reviews challenges to the applicability of the North Carolina Rules of Civil Procedure to administrative hearings and statutory interpretation de novo. *See Cole v. N.C. Dep’t of Pub. Safety*, 253 N.C. App. 270, 274, 800 S.E.2d 708, 711 (2017) (resolving the issue of Rule 41(a)(1)’s applicability to contested cases before the Office of Administrative Hearings).

“The Council is vested, as an agency of the State, with the authority to regulate the professional conduct of licensed lawyers and State Bar certified paralegals.” N.C. Gen. Stat. § 84-23(a) (2025). Further, “among other powers, the Council shall . . . grant or deny petitions for reinstatement” *Id.* (citation modified); *see also id.* § 84-32(c) (2025) (“Whenever any attorney has been deprived of the attorney’s license by suspension or disbarment, the Council or the disciplinary hearing commission or the secretary-treasurer may, in accordance with rules and regulations prescribed by the Council, restore the license upon due notice being given and satisfactory evidence produced of proper reformation of the suspended or disbarred attorney and of satisfaction of any conditions precedent to restoration.”). The North Carolina Administrative Code provides: “The Council of the North Carolina State Bar will have the power and duty . . . to review the report of any hearing panel upon a petition for reinstatement of a disbarred attorney and to make *final determination* as to whether the license will be restored.” 27 N.C. Admin. Code 1B.0104(7) (emphasis added).

The DHC, “may hold hearings in discipline, incapacity and disability matters, make findings of fact and conclusions of law after these hearings, [and] enter orders necessary to carry out the duties delegated to it by the Council” N.C. Gen. Stat. § 84-28.1(b) (2025). The DHC’s powers and duties include: to hold hearings on “petitions seeking a determination of disability or reinstatement”; “to report to the council its findings of fact and recommendations after hearings on petitions for

reinstatement of disbarred attorneys”; and “to enter orders reinstating suspended attorneys or denying reinstatement.” 27 N.C. Admin. Code 1B.0109(1), (10), (12).

The North Carolina State Bar provides for the reinstatement of a disbarred attorney’s license “upon a verified petition for reinstatement, a hearing before a hearing panel of the commission, and entry of an order of reinstatement by the council as provided herein.” 27 N.C. Admin. Code 1B.0129(a)(1). At the conclusion of the hearing, the DHC hearing panel “will file a report containing its findings, conclusions, and recommendations with the secretary.” 27 N.C. Admin. Code 1B.0129(a)(7). There exists a distinction of procedure where the DHC recommends denial or approval. If the DHC hearing panel recommends that reinstatement be denied, the petitioner may appeal to the Council. 27 N.C. Admin. Code 1B.0129(a)(8). A recommendation by the DHC for denial of reinstatement that is not appealed becomes a final order. 27 N.C. Admin. Code 1B.0129(a)(8). But all DHC recommendations that approve the reinstatement of a petitioner’s license “shall be heard by the council and no notice of appeal need be filed by the North Carolina State Bar.” 27 N.C. Admin. Code 1B.0129(a)(8). Upon a petition reaching the Council from a DHC recommendation of denial, the Council “will review the report of the hearing panel and the record and determine whether, and upon what conditions, the petitioner will be reinstated.” 27 N.C. Admin. Code 1B.0129(a)(8)(F).

In the administration of these hearings, the Rules of Civil Procedure apply where North Carolina State Bar's Rules are silent. To this end, the State Bar's Code provides the following procedure applicable to all proceedings before the DHC:

Except where specific procedures are provided by these rules, pleadings and proceedings before a hearing panel will conform as nearly as practicable with the requirements of the North Carolina Rules of Civil Procedure and for trial of nonjury civil cases in the superior courts. Any specific procedure set out in these rules controls, and where specific procedures are set out in these rules, the Rules of Civil Procedure will be supplemental only.

27 N.C. Admin. Code 1B.0114(a). Since the State Bar's Code does not provide specific procedures controlling a petitioner's voluntary dismissal, we apply Rule 41(a) "as nearly as practicable[.]" *Id.*

Rule 41(a)(1) provides that "an action or any claim therein may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before the plaintiff rests his case" N.C. Gen. Stat. § 1A-1, Rule 41(a)(1) (2025). "A Rule 41(a)(1) notice of dismissal is an action taken by the plaintiff ending the suit, and *no action of the court* is necessary to give the notice its full effect." *Carter v. Clowers*, 102 N.C. App. 247, 251, 401 S.E.2d 662, 664 (1991) (citation modified). "It is well settled that '[a] Rule 41(a) dismissal strips the trial court of authority to enter further orders in the case, except as provided by Rule 41(d)[,] which authorizes the court to enter specific orders apportioning and taxing costs.'" *Brisson v. Santoriello*, 351 N.C. 589, 593, 528 S.E.2d 568, 570 (2000) (alteration in original) (citation

omitted).

In *Brisson*, our Supreme court commented upon Rule 41(a)(1)'s purpose:

The purpose of our long-standing rule allowing a plaintiff to take a voluntary dismissal and refile the claim within one year even though the statute of limitations has run subsequent to a plaintiff's filing of the original complaint is to provide a one-time opportunity where the plaintiff, for whatever reason, does not want to continue the suit. The range of reasons clearly includes those circumstances in which the plaintiff fears dismissal of the case for rule violations, shortcomings in the pleadings, evidentiary failures, or any other of the myriad reasons for which the cause of action might fail.

Id. at 597, 528 S.E.2d at 573. However, "a plaintiff's right to take a voluntary dismissal is, in fact, 'fettered' by the requirements that such a dismissal not be taken in bad faith or after a party has rested its case." *Mkt. Am., Inc. v. Lee*, 257 N.C. App. 98, 107, 809 S.E.2d 32, 39 (2017); *see also Brisson*, 351 N.C. at 597, 528 S.E.2d at 573 ("The only limitations are that the dismissal not be done in bad faith and that it be done prior to a trial court's ruling dismissing plaintiff's claim or otherwise ruling against plaintiff at any time prior to plaintiff resting his or her case at trial.").

Here, Petitioner presented exhibits and testimony from witnesses to the DHC during his reinstatement hearing. After a recess, the DHC hearing panel asked Petitioner's counsel if any further evidence was to be provided. Petitioner's counsel responded: "No, ma'am. The Petitioner rests with the understanding that we've already moved to admit our exhibits at the beginning of the matter today." After the DHC hearing panel confirmed admission of the exhibits, Petitioner's counsel clarified:

“Excellent. Nothing further from the Petitioner. Thank you.” Respondent then presented evidence, and both parties made closing arguments. The DHC panel deliberated and returned to announce to the parties that its recommendation was to deny Petitioner’s reinstatement. The record shows Petitioner “rested his case” before the DHC. *See Pardue v. Darnell*, 148 N.C. App. 152, 155, 557 S.E.2d 172, 175 (2001) (“In the instant case, the record demonstrates that after concluding their presentation of witnesses, plaintiffs stated: ‘And with that we’ll rest.’ We conclude that plaintiffs rested their case at that point.”).

Notwithstanding Petitioner resting his case, he argues since the DHC was not the tribunal empowered to make the final decision of his reinstatement, he could not have rested his case within the meaning of Rule 41(a)(1) in the context of reinstatement hearings. Petitioner supports his argument by citing this Court’s precedent on voluntary dismissals in the context of summary judgment. To be sure, according to the State Bar’s own procedure, the DHC’s report is merely a recommendation, as the Council makes the final decision about reinstatement after disbarment. *See In re Garrison*, 44 N.C. App. 158, 162, 260 S.E.2d 445, 448 (1979) (“The ultimate determination belonged to the Council, not the Hearing Committee.”); *see also DOT v. Blue*, 147 N.C. App. 596, 606, 556 S.E.2d 609, 619 (2001) (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 797, 112 S. Ct. 2767 (1992)) (“Third, in determining whether a particular agency action is final, ‘the core question is whether the agency has completed its decisionmaking process, and whether the result of that

process is one that will directly affect the parties.’ ”). However, a petitioner need not reach the Council for his case to be deemed rested within the meaning of Rule 41(a)(1) in the context of the reinstatement proceedings of a disbarred attorney.

To begin, the Code provides that “pleadings and proceedings before a hearing panel will conform as nearly as practicable with the requirements of the North Carolina Rules of Civil Procedure and for trial of nonjury civil cases in the superior courts.” 27 N.C. Admin. Code 1B.0114(a). In the context of reinstatement, a petitioner presents his case-in-chief and rests his case to the DHC. *See Allied Spectrum, LLC v. German Auto Ctr., Inc.*, 250 N.C. App. 308, 311, 793 S.E.2d 271, 273 (2016) (brackets in original) (quoting *Roberts v. Young*, 120 N.C. App. 720, 726, 464 S.E.2d 78, 83 (1995) (“[A] plaintiff is vested with the authority to dismiss any of its claims prior to close of its case-in-chief.”). “Case-in-chief” is defined as “[t]he evidence presented at trial by a party between the time the party calls the first witness and the time the party rests.” *Case-in-chief*, BLACK’S LAW DICTIONARY (12th ed. 2024). “Rest” is defined as “to voluntarily conclude presenting evidence in a trial.” *Rest*, BLACK’S LAW DICTIONARY (12th ed. 2024).

A reinstatement petitioner “will have the burden of proving by clear, cogent, and convincing evidence” the elements listed in 27 N.C. Admin. Code 1B.0129(a)(3)(A)–(P). A DHC hearing is held “to report to the council its findings of fact and recommendations after hearings on petitions for reinstatement of disbarred attorneys.” 27 N.C. Admin. Code 1B.0109(10). The DHC hearing is held to hear the

evidence and arguments, such as openings and closings, as was done here. Although the final determination comes from the Council, it merely reviews “the report of the hearing panel and the record and determine whether, and upon what conditions, the petitioner will be reinstated.” 27 N.C. Admin. Code 1B.0129(a)(8)(F). The Council’s review procedure sets out how the parties are to handle the transcript, exhibits, pleadings, motions, and orders in composing and settling the record. 27 N.C. Admin. Code 1B.0129(a)(8)(A)-(D). Thus, the evidentiary phase of the proceeding is complete by the time a petition for reinstatement has reached the Council.

Petitioner notes that the Council is not precluded by North Carolina law from hearing new evidence. *See* N.C. Gen. Stat. § 84-29 (2025) (“In any investigation of charges of professional misconduct or disability or in petitions for reinstatement, the Council and any committee thereof, and the disciplinary hearing commission, and any committee thereof, may administer oaths and affirmations and shall have the power to subpoena and examine witnesses under oath, and to compel their attendance, and the production of books, papers and other documents or writings deemed by it necessary or material to the inquiry.”). However, N.C. Gen. Stat. § 84-32(c) delegates the procedures of reinstatement to the Council. *See* N.C. Gen. Stat. § 84-32(c) (“Whenever any attorney has been deprived of the attorney’s license by suspension or disbarment, the Council or the disciplinary hearing commission or the secretary-treasurer may, in accordance with rules and regulations prescribed by the Council, restore the license upon due notice being given and satisfactory evidence

produced of proper reformation of the suspended or disbarred attorney and of satisfaction of any conditions precedent to restoration.”). In this procedure, the Council only reviews “the report of the hearing panel and the record and determine[s] whether, and upon what conditions, the petitioner will be reinstated.” 27 N.C. Admin. Code 1B.0129(a)(8)(F); *see also* 27 N.C. Admin. Code 1B.0104(7) (“The Council of the North Carolina State Bar will have the power and duty . . . to review the report of any hearing panel upon a petition for reinstatement of a disbarred attorney and to make final determination as to whether the license will be restored.”). Nowhere does the reinstatement procedure provide for a petitioner to continue his case-in-chief.

The DHC’s report is one on the merits of the case; where the parties have “an opportunity to present evidence on the question before the court.” *See, e.g., Maurice*, 38 N.C. App. at 591, 248 S.E.2d at 432. Unlike summary judgment, there is a gap in time and tribunal between when a petitioner presents his case-in-chief and when the final decision is ultimately made. However, for the reasons stated, the fact that the final decision is ultimately held by the Council—if a denial is appealed within thirty days or if the DHC recommends approval for reinstatement—is not determinative in this context of whether a petitioner rested his case. *See McCarley v. McCarley*, 289 N.C. 109, 112, 221 S.E.2d 490, 493 (1976) (cleaned up) (“We agree with the Court of Appeals’ holding that Rule 41(a)(1) ‘had the effect of changing our former practice only to the extent that the plaintiff desiring to take a voluntary [dismissal] must now act before he rests his case, whereas under our former practice he could do so at any

time before the verdict. In other respects, however, our former practice was not expressly changed by Rule 41(a)(1) as it finally became effective.’ ”). Further, Petitioner requests the allowance of a dismissal after the announcement of an adverse ruling, but before the ruling is filed. As in *Maurice*, allowing such a dismissal would undermine reinstatement proceedings. 38 N.C. App. at 592, 248 S.E.2d at 433 (stating a plaintiff “cannot thereafter take a voluntary dismissal under Rule 41(a)(1)(i). To rule otherwise would make a mockery of summary judgment proceedings”).

III. Conclusion

For the reasons stated, the DHC did not err in vacating Petitioner’s voluntary dismissal.

AFFIRMED.

Chief Judge DILLON and Judge GORE concur.

Report per Rule 30(e).