

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
07 DHC 20

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
JEFFREY A. HOWLE, Attorney,)
Defendant)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

On March 10, 2008, this matter came on to be heard before a hearing committee of the Disciplinary Hearing Commission composed of M. Ann Reed, Chair; T. Richard Kane, and Pamela U. Weis. A. Root Edmonson represented the North Carolina State Bar and Ernest (Jay) Reeves, Jr. represented Jeffrey A. Howle. Based upon the admissions in the Answer, the stipulations of fact in the Pre-Hearing Order, and the evidence presented at the hearing, the hearing committee finds that the following has been established by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. The plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. The defendant, Jeffrey A. Howle ("Howle"), was admitted to the North Carolina State Bar on September 12, 1997 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During the times relevant to this complaint, Howle actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Charlotte, Mecklenburg County, North Carolina.
4. From January 2002 until March 30, 2007, Howle was an associate in the Charlotte office of the firm of Cranfill, Sumner & Hartzog, L.L.P ("the firm").

5. The firm had a \$2,000 annual CLE allowance for each member of the firm, including its associates. Pursuant to the firm's CLE reimbursement guidelines, attorneys had to pre-pay CLE costs and submit the expenses for reimbursement after the cost had been incurred.

6. On January 6, 2004, Howle submitted a \$1,723.77 CLE expense reimbursement form to the firm seeking reimbursement of \$425 for a registration fee for an American Educational Institute ("AEI") seminar that was to occur August 2-6, 2004 in San Juan, Puerto Rico and \$1,298.77 for the air fare and hotel package for that seminar. Attached to the reimbursement form were:

- (1) a copy of an AEI registration form that Howle had completed by hand showing that he was registering for an AEI seminar in San Juan in August 2004;
- (2) a copy of Howle's personal check number 387 to Expedia Travel purportedly paying for the CLE travel package; and
- (3) a copy of the Expedia.com web page showing air and hotel arrangements for Howle to travel to and from San Juan with a stay at the Caribe Hilton San Juan in August 2004.

7. On January 8, 2004, the firm issued its check number 110551 in the amount of \$1,922.52 which included reimbursement to Howle for \$1,723.77 in CLE expense in addition to other expenses.

8. The firm issued its check number 110551 in reliance upon the representations contained in Howle's expense reimbursement forms, including his January 6, 2004 CLE reimbursement form.

9. At the time that Howle received and negotiated the firm's reimbursement check number 110551, he had not mailed a registration form to AEI for a seminar in San Juan, had not purchased the air and hotel package from Expedia, and had not otherwise incurred \$1,723.77 in reimbursable CLE expenses.

10. AEI did not have a seminar in San Juan in 2004.

11. Howle knew that his January 6, 2004 expense reimbursement request that he submitted to the firm was false.

12. By submitting a false expense reimbursement request to the firm for expenses he had not incurred, Howle obtained funds belonging to the firm, to which he was not entitled, by a false pretense.

13. On January 18, 2005, Howle submitted a \$1,840.90 CLE expense reimbursement form to the firm seeking reimbursement of \$455 for a registration fee for a Medical-Dental-Legal Update seminar that was to occur March 10-13, 2005 in Las Vegas, Nevada, \$438.30 for air fare

to and from Las Vegas, and \$947.60 for a hotel room at the MGM Grand Hotel and Casino for that seminar. Attached to the reimbursement form were:

- (1) a printout of an online registration form that Howle had completed;
- (2) a copy of the Expedia.com web page showing air fare for Howle to travel to and from Las Vegas; and
- (3) a copy of the Expedia.com web page showing the cost of a four night stay at the MGM Grand Hotel beginning March 9, 2005.

14. On January 25, 2005, the firm issued its check number 118618 in the amount of \$2,115.77 which included reimbursement to Howle for the \$1,815.00 remaining on his 2005 CLE allowance in addition to other expenses.

15. The firm issued its check number 118618 in reliance upon the representations contained in Howle's expense reimbursement forms, including his January 18, 2005 CLE reimbursement form.

16. At the time that Howle received and negotiated the firm's reimbursement check number 118618, he had not sent the online registration form for the 2005 Medical-Dental-Legal Update seminar, had not purchased the Las Vegas air fare or the MGM Grand Hotel reservations from Expedia, and had not otherwise incurred \$1,815.00 in reimbursable CLE expenses.

17. Howle knew that his January 18, 2005 expense reimbursement request that he submitted to the firm was false.

18. By submitting a false expense reimbursement request to the firm for expenses he had not incurred, Howle obtained funds belonging to the firm, to which he was not entitled, by a false pretense.

19. On January 17, 2006, Howle submitted a \$1,836.25 CLE expense reimbursement form to the firm seeking reimbursement of \$465 for a registration fee for a Medical-Dental-Legal Update seminar that was to occur February 16-20, 2006 in Las Vegas, Nevada, \$537.40 for air fare to and from Las Vegas, and \$833.85 for a hotel room at the Mirage Hotel for that seminar. Attached to the reimbursement form were:

- (1) a printout of an online registration form that Howle had completed;
- ~~(2) a copy of the U.S. Airways web page showing air fare for Howle to travel to and from Las Vegas; and~~
- (3) a copy of the Mirage web page showing the cost of a five night stay at the MGM Grand Hotel beginning February 15, 2006.

20. On January 24, 2006, the firm issued its check number 126010 in the amount of \$2,114.82 which included reimbursement to Howle for \$1,836.25 in CLE expense in addition to other expenses.

21. The firm issued its check number 126010 in reliance upon the representations contained in Howle's expense reimbursement forms, including his January 17, 2006 CLE reimbursement form.

22. At the time that Howle received and negotiated the firm's reimbursement check number 126010, he had not sent the online registration form for the 2006 Medical-Dental-Legal Update seminar, had not purchased the Las Vegas air fare or the MGM Grand Hotel reservations from Expedia, and had not otherwise incurred \$1,836.25 in reimbursable CLE expenses.

23. Howle knew that his January 17, 2006 expense reimbursement request that he submitted to the firm was false.

24. By submitting a false expense reimbursement request to the firm for expenses he had not incurred, Howle obtained funds belonging to the firm, to which he was not entitled, by a false pretense.

25. On February 14, 2007, Howle submitted a \$1,739.49 CLE expense reimbursement form to the firm seeking reimbursement of \$485 for a registration fee for an AEI Medical-Dental-Legal Update seminar that was to occur March 29-April 1, 2007 in Las Vegas, Nevada and \$1,254.49 for the air fare and hotel package for that seminar. Attached to the reimbursement form were:

- (1) a printout of an online registration form that Howle had completed; and
- (2) a copy of the Expedia.com web page showing air and hotel arrangements for Howle to travel to and from Las Vegas with a stay at the Mirage Resort and Casino.

26. At the time that Howle presented this CLE reimbursement form to the firm for reimbursement of CLE expenses, he had not sent the online registration form for the 2007 Medical-Dental-Legal Update seminar, had not purchased the Las Vegas air fare or the Mirage Resort reservations from Expedia, and had not otherwise incurred \$1,739.49 in reimbursable CLE expenses.

27. Howle knew that his February 14, 2007 expense reimbursement request that he submitted to the firm was false.

28. By submitting a false expense reimbursement request to the firm for expenses he had not incurred, Howle attempted to obtain funds belonging to the firm, to which he was not entitled, by a false pretense.

29. Due primarily to the intervention of a financial services employee of the firm, Howle was not successful in receiving reimbursement from the firm for his February 14, 2007 reimbursement request.

30. By letter dated April 18, 2007, Howle made representations to the North Carolina State Bar intended to be considered by the State Bar in a disciplinary investigation into his conduct relating to his submission of multiple false expense reimbursement requests submitted to the firm. In part, Howle represented to the North Carolina State Bar:

In 2004, 2005, and 2006, I submitted expense reports and received payment for CLE trips I planned on taking, but did not take. I did not refund the advance payments, although **I did apply the funds to other CLE courses and trips taken in those years.** [Bold print added.]

31. Howle's April 18, 2007 representation to the State Bar was false in that Howle applied no more than \$400 on CLE trips in any of the years that he submitted false CLE reimbursement forms.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee of the Disciplinary Hearing Commission and the hearing committee has jurisdiction over Howle and the subject matter.

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

- (a) By obtaining funds belonging to the firm, to which he was not entitled, through the submission of false CLE reimbursement request forms on January 6, 2004, January 18, 2005 and January 17, 2006, Howle committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- (b) By attempting to obtain funds belonging to the firm, to which he was not entitled, through the submission of a false CLE reimbursement form on February 14, 2007, Howle attempted to commit a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rules 8.4(a) and 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and

- (c) By making false representations in his April 18, 2007 letter to the North Carolina State Bar relating to his having applied the CLE funds he had received from the firm to other CLE's in the relevant years when he had applied no more than \$400 on CLE in any of the relevant years, Howle made false statements of material fact to a tribunal in violation of Rule 3.3(a)(1); and knowingly made a false statement of material fact in a disciplinary matter in violation of Rule 8.1(a).

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the evidence presented at the hearing and the arguments of counsel, the hearing committee hereby makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Howle's misconduct is aggravated by the following factors:
 - (a) A dishonest or selfish motive;
 - (b) A pattern of misconduct;
 - (c) Multiple offenses;
 - (d) Submission of false statements during the disciplinary process; and
2. Howle's misconduct is mitigated by the following factors:
 - (a) Absence of a prior disciplinary record; and
 - (b) Otherwise good character and reputation; and
 - (c) Personal or emotional problems.
3. The aggravating factors outweigh the mitigating factors.

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. Disbarment is the only sanction that can adequately protect the public for the following reasons:

- (a) Theft is one of the most serious offenses that an attorney can commit, whether the theft is from a client or from a law firm. Such an offense demonstrates that the offending attorney is not trustworthy. Clients are entitled to have trustworthy attorneys. When an attorney violates that trust, it harms the public. No discipline short of disbarment can protect the public from an untrustworthy member of the legal profession.

(b) In addition to the public harm, an untrustworthy attorney harms the legal profession and the administration of justice. No discipline short of disbarment can maintain the reputation of the legal profession and instill the public's trust in the administration of justice.

(c) Entry of an order imposing discipline short of disbarment would fail to acknowledge the seriousness of the offenses that Howle committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

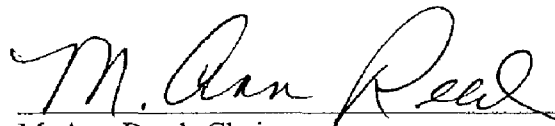
(d) The protection of the public, the legal profession and the administration of justice requires that Howle not be permitted to resume the practice of law until he demonstrates that he has reformed, and that permitting him to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice. Disbarred attorneys must show reformation, among other things, before they resume the practice of law, whereas no such showing of reformation is required of an attorney whose license is merely suspended for a term certain.

BASED UPON the foregoing Findings of Fact Regarding Discipline and the arguments of counsel, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, Jeffrey A. Howle, is hereby disbarred.
2. Howle shall surrender his license and membership card to the Secretary within 30 days of the effective date of this order.
3. The costs of this proceeding are taxed to Howle and shall be paid as assessed by the Secretary within 90 days of the entry date of this order.

Signed by the Chair with the consent of the other members of the hearing committee this the 17th day of March 2008.



M. Ann Reed, Chair
Hearing Committee