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### Summary of In re Discipline of Serota, 129 Nev. Adv. Op. 66

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PROFESSIONAL RESPONSIBILITY: MISAPPROPRIATION OF CLIENT'S FUNDS

**Summary**

The court determined whether an attorney's misappropriation of \$319,000 of a client's funds warrants disbarment from the practice of law.

**Disposition**

The egregiousness of misappropriating \$319,000 of a client's funds warrants disbarment from the practice of law. This conclusion is further supported by the presence of multiple aggravating factors.

**Factual and Procedural History**

Serota represented a client who allegedly violated federal law in an action by the SEC. In anticipation of the action's judgment, the client paid Serota 14 checks totaling \$319,901.59, written between July 2 and July 24, 2009. As these checks were being deposited, Serota misappropriated them by writing checks to companies that he had an ownership interest in. By the time that he had his client sign the consent to entry of judgment on August 3, 2009, Serota had misappropriated virtually the entire amount of the judgment.

On September 25, 2009, a final judgment was entered that required the client to pay \$319,901.59 within 10 business days. However, two days before the judgment was to be paid, Serota admitted his misappropriations to the state bar. As a result, a formal disciplinary hearing was held. The disciplinary panel found that Serota violated RPC 1.15 (safekeeping property) and RPC 8.4 (misconduct), and recommended that Serota be disbarred.

Serota's disciplinary matter was forwarded to the Nevada Supreme Court for automatic review.<sup>2</sup> Bar counsel filed an original petition<sup>3</sup> to inform the Court that Serota was convicted of one count of theft, a category B felony, for the same conduct underlying the disciplinary proceeding. Serota also filed an original petition<sup>4</sup> in which he sought dissolution of the Court's previous order on November 18, 2009, temporarily suspending him from the practice of law.

**Discussion**

The Court automatically reviews the panel's findings<sup>5</sup> de novo to determine if they are supported by clear and convincing evidence.<sup>6</sup> "In determining the proper disciplinary sanction, [the Court] considers: (1) the duty violated, (2) the lawyer's mental state, (3) the potential or

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<sup>1</sup> By Keivan Roebuck

<sup>2</sup> Docket No. 57960.

<sup>3</sup> Docket No. 59551.

<sup>4</sup> Docket No. 60719.

<sup>5</sup> SCR 105(3)(b).

<sup>6</sup> SCR 105(2)(e); *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

actual injury caused by the lawyer's misconduct, and (4) the existence of aggravating or mitigating circumstances.<sup>7</sup>

*The panel's findings are supported by clear and convincing evidence*

Serota violated RPC 1.15, "which requires a lawyer, among other things, to safekeep clients' property in the lawyer's possession." This was shown when Serota's client turned over money to him that was to be paid to the SEC to satisfy the judgment against the client, and Serota misappropriated the money for his own purposes. In addition, Serota violated RPC 8.4(c), "which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." This occurred when Serota allowed his client to sign the consent to entry of judgment, even though he knew that he had already misappropriated the money. Serota himself conceded that he violated both RPC 1.15 and RPC 8.4(c).

*Disbarment is the appropriate discipline*

Applying the four *Lerner* factors, the Court held that disbarment was the appropriate disciplinary action. Serota "violated duties to his client, the profession, and the public." His conduct was also "intentional and caused actual injury to his client." While those actions alone justified disbarment, the presence of aggravating circumstances further supported this outcome. Namely, Serota had a prior disciplinary offense, he had a dishonest or selfish motive, and he committed multiple offenses. He also engaged in "a pattern of misconduct where, prior to each misappropriation, Serota accepted several payments from the client beforehand, and hid his misconduct afterwards until its discovery was imminent."

Furthermore, in light of the egregiousness of his misconduct, the mitigating circumstances "do not justify a reduction in the degree of discipline to be imposed." Although his medical condition may have contributed to his behavior, that mitigating circumstance was insufficient to justify the severity of the misconduct. Also, his claimed mental disabilities were uncorroborated and lacked a causal connection to his conduct. While he was cooperative and did self-report, "discovery of his misconduct was imminent." Finally, the record did not support Serota's claimed rehabilitation, he failed to demonstrate genuine remorse, and his pro bono and community service work were insufficient to justify his actions.

For the forgoing reasons, the Court held that disbarment was the only viable option. As a result, the State Bar's petition in Docket No. 59551 and Serota's petition in Docket No. 60719 were rendered moot.

## **Conclusion**

Serota violated RPC 1.15 when he failed to safekeep his client's property, and RPC 8.4 when he engaged in misconduct. The egregiousness of misappropriating \$319,000 in client funds warranted disbarment. The presence of the aggravating circumstances further supported the conclusion. Consequently, bar counsel's petition regarding Serota's felony conviction and Serota's petition for dissolution of the Court's order temporarily suspending him from the practice of law were denied as moot. Serota was disbarred from the practice of law in Nevada.

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<sup>7</sup> In re Discipline of Lerner, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).