Oregon Supreme Court Disbars Attorney for Misappropriation of Partnership Funds

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Lawyers for the Profession® Alert

In re Renshaw, 353 Or. 411, 298 P.3d 1216 (2013)

Brief Summary

The Oregon Supreme Court disbarred an attorney for taking approximately $100,000 in partnership funds over a four-year period. The court held that under Oregon law the firm's funds were the property of the firm and not of individual lawyers and that misappropriating funds from the firm was comparable to misappropriating client funds.

Complete Summary

The Oregon Supreme Court reviewed a cross-appeal of a trial panel opinion finding violations of two subsections of Rule of Professional Conduct (RPC) 8.4 and suspending the attorney for one year. The attorney argued that the sanction was appropriate and acknowledged violating RPC 8.4(a)(3) (prohibiting conduct involving "dishonesty, fraud, deceit or misrepresentation"). However, he contested whether he had violated RPC 8.4(a)(2) (prohibiting commission of a "criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer"). The Bar contested only the sanction, contending that disbarment was appropriate.

The attorney admitted to misappropriating $100,000 in funds from his law firm, where he partnered equally with two other attorneys. The attorney was responsible for day-to-day firm operations including bill payments and shareholder distributions.

The misappropriation of funds took two forms. First, in 2006 and 2007 the attorney made seven partner distributions only to himself. Second, between 2005 and 2008 he made other payments and transfers out of the firm's account to cover personal expenses, frequently miscoding the transactions to cover his tracks.

The attorney argued that his actions did not constitute a criminal act. Although the firm was organized as a professional corporation under Oregon law and an S corporation under the Internal Revenue Code, the attorney argued that the firm did not observe corporate formalities and operated as a partnership. He

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therefore argued the firm's funds were jointly owned by the partners, so he could not have committed theft under applicable statutes because his conduct did not satisfy the "property of another" element. Alternatively, the attorney argued that he reasonably believed that he was entitled to the property.

The Oregon Supreme Court rejected both arguments. First, under Oregon law, "Property acquired by a partnership is the property of the partnership and not of the partners individually." Or. Rev. Stat. § 67.060. Second, the lawyer's miscoding of many of his transactions in the firm's books belied his argument that he thought he was entitled to the property. Notably, the Court concluded that *de minimis* personal charges that were occasionally charged to the firm by other partners did not disrupt this conclusion because of the magnitude of the funds taken by the attorney.

The Court held that the attorney's actions were serious crimes because of their duration, magnitude and systematic nature and that the attorney acted intentionally. It further held that they seriously adversely reflected on his fitness to practice law. Quoting precedent, it noted that taking funds from law partners was "no less abhorrent" than taking funds of clients. Finding no basis to distinguish this case from similar cases where disbarment was the result, the Court determined that disbarment was the appropriate sanction here.

Significance of Opinion

This opinion demonstrates that the question of whether disbarment is appropriate in Oregon for intentional misappropriation of firm funds may turn on the magnitude and duration of the misappropriation.

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