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Schnader Harrison Defends Retainer Accounting Amid Closing

By **Emma Cueto**

Law360 (September 21, 2023, 4:29 PM EDT) -- The recently shuttered Schnader Harrison Segal & Lewis LLP on Thursday responded to questions over its apparent difficulty refunding client retainers, saying clients had given consent for some retainer funds to be deposited into the firm's operating account instead of a trust account.

After a Law360 Pulse **exclusive on Monday revealed** the Philadelphia-based firm was unable to provide certain client refunds, telling partners that the firm's bank, WSFS Bank, was refusing to release the funds, the firm's general counsel and a member of its windup committee, Keith Whitson, clarified in a statement that WSFS was not blocking access to trust accounts or interest on lawyers' trust accounts — called IOLTA accounts — and said some clients had agreed that some funds could be deposited into an operating account.

"None of the funds held on account or client retainers at issue were held in trust and/or IOLTA accounts at WSFS," Whitson said in a statement.

"Schnader deposited, with client consent, certain client funds into Schnader's operating account with WSFS," the statement said. "WSFS has a security interest in Schnader's accounts, including its operating account. Upon notice of Schnader's intended dissolution, WSFS exercised its security interest in Schnader's operating account."

The statement also indicated all decisions about where Schnader Harrison client retainers were held were made by the firm, that the firm believes WSFS is complying with all rules concerning trust accounts, and that the funds being discussed in the emails obtained by Law360 Pulse were not held in trust accounts.

"The Schnader internal emails that were inappropriately shared with Law360 were taken out of context. To the extent the emails are being misinterpreted as a statement that WSFS was interfering with funds in trust and/or IOLTA accounts, that is not the case," the statement said.

Whitson also provided this statement regarding WSFS: "WSFS values its positive relationships within the legal community and takes issue with the article to the extent it could be interpreted as WSFS taking actions which were violative of attorney ethical requirements."

As noted in Law360 Pulse's story on Monday, attorneys in Pennsylvania and elsewhere have an obligation to refund client money, including retainers paid for work not yet performed, promptly upon request. Under the rules, such money should be held in a trust account.

Pennsylvania's Rules of Professional Conduct include an exception to the trust account requirement if "the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner."

When asked if client consent had been given via a written agreement, Whitson told Law360, "Yes, this language was part of Schnader's standard engagement letter with clients."

Regardless of where client money is held, according to Hilary Gerzhoy, vice chair of the D.C. Bar Rules of Professional Conduct Review Committee and a member of the American Bar Association's Ethics and Professional Responsibility Committee, that does not change the refund requirements.

"The client can give you informed consent to put the money somewhere else," she said. "It doesn't absolve you of your obligation to return that money. ... Regardless of where the money is held, it's still the client's money."

John E. Quinn of Quinn Logue LLC in Pittsburgh, who represents lawyers and judges facing disciplinary action, said he found the situation as described very unusual, but he expects that clients would be eligible to try recovering funds through Pennsylvania's Lawyers Fund for Client Security, which could then pursue the firm for the money after paying out the claim.

Quinn and Gerzhoy said it was unclear how long clients would have to wait for refunds before it would no longer be considered "prompt" under the Pennsylvania rules. Quinn said he would consider two months to be "about the outside you could expect."

Both also said it was unclear how much of the responsibility of repayment belonged to the firm and how much would fall on the individual attorneys, especially partners.

However, the situation was clearly not ideal, both said.

"As I see, they made a mistake when they put it into operating [accounts], even if it was with the consent of the [clients]," Quinn said.

Gerzhoy noted that there is very little incentive for clients to agree to such an arrangement, which is part of why they are rare. Quinn said he could potentially see scenarios where a long-standing client might agree to help out a trusted firm, but echoed Gerzhoy in saying that the situation was surprising.

Schnader Harrison, which had a **long and storied history** in Pennsylvania, announced Aug. 3 that it would **shut its doors** for good on Aug. 31 after almost 90 years in operation. At its height, the firm had some 300 attorneys, though its ranks had dwindled to about 90 by the time it announced its closure.

Since then, most of the attorneys have **found new positions**, with over 60 apparently having joined a new firm, moved in-house or found other employment. Another 10 attorneys have reportedly chosen to retire.

The largest group, led by longtime chairman David Smith, joined Dilworth Paxson LLP, with sizable groups also departing for Segal McCambridge Singer & Mahoney Ltd. and Offit Kurman.

In addition to struggling to refund client retainers, the firm also will not be providing liability insurance for former attorneys past 12:01 a.m. on Oct. 1, is not in a position to pay expected income partner compensation or 401(k) contributions, and has ended its short-term disability coverage.

--Editing by Alex Hubbard.