NOTE TO MEDIA: David Slocum and other members of LeClairRyan's Professional Liability Defense practice are available as resources for bylined articles or interviews on various issues impacting professionals.

For: LeClairRyan, Boston
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FOR IMMEDIATE RELEASE

Courts Won't Tolerate Any Abuse Of Client Trust Funds Says LeClairRyan Attorney
Massachusetts case shows that even low-dollar diversion can mean sanctions, warns David Slocum

BOSTON (7/12/18)— A recent decision by the Massachusetts Supreme Judicial Court (SJC) demonstrates that size doesn't matter when it comes to handling client funds and adhering to all requirements of the Rules of Professional Conduct, says David Slocum, a Boston-based partner at national law firm LeClairRyan. Attorneys everywhere, not just in Massachusetts, should pay attention to this ruling, he adds.

"Even if a relatively small amount of money is involved; the client's deprivation of funds is temporary and relatively short-lived; and the attorney has not obtained a personal benefit, the *Matter of Strauss* (479 Mass. 294) makes clear that the Board of Bar Overseers and the Massachusetts Courts regard the misuse of client funds as among the gravest forms of professional misconduct, as they should," Slocum writes in a column, *No Harm, No Foul? Not When it Comes to Misuse of Client Funds*. The article appears in LeClairRyan's Summer 2018 Accountant and Attorney Liability NewsBrief.

The *Strauss* case involved an attorney who negotiated a $5,000 personal injury claim settlement for a client. In late December 2012, while the client was traveling, her attorney received the settlement funds and deposited them into his client trust account. The next day, the attorney withdrew his fee of $1,666.67 pursuant to the contingency fee agreement, but didn't give her any details about the account activity, Slocum notes.

The attorney later wrote a check against the trust account, payable to his father, which reduced the trust balance to $175. When the client returned in January, she asked for the settlement funds without delay. Less than two months later the attorney paid the client the entire amount due in cash, and she signed a receipt for it.

"Following an investigation, the Office of Bar Counsel filed a petition for discipline against the attorney, who said he had 'earmarked' the $3,000 for the client," Slocum relates. "The Board of Bar Overseers hearing committee didn't buy that, and further found the attorney had submitted 'reconstructed records' in an after-the-fact attempt to conceal his misuse of the client's funds. The BBO recommended suspending the attorney from the practice of law for an indefinite period of time, but a single justice of the SJC imposed a six-month suspension."

The attorney appealed that and the SJC — noting that attorneys are obliged to safeguard client funds regardless of the amount — suspended the attorney for a period of not less than five years.

"Attorneys often hold client funds for a variety of reasons, and when they do, the attorney's role is that of fiduciary and virtual trustee," Slocum advises. "Although it may seem obvious that property held in trust for a client belongs to that client and no one else, the SJC's decision in *Matter of Strauss* provides an important reminder that strict adherence to all rules regulating the safekeeping of client funds is of vital importance. Meticulous compliance with those rules protects the client's property, and protects the attorney from the perception of impropriety."

The full column is available at:
https://www.leclairryan.com/pubs/xprPubDetail.aspx?xpST=PubDetail&pub=1153

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