

Mark E. Swirbalus

Director

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Mark is a probate litigator who focuses his practice on high-stakes trust and estate ("T&E") disputes and fiduciary litigation. Mark represents individuals, families, charitable organizations, and bank and trust companies as beneficiaries, trustees, executors, administrators, and personal representatives.

He handles a broad range of T&E-related disputes, including:

- trust and will contests involving allegations of undue influence, incompetency, and fraud;
- breach of fiduciary duty and removal actions;
- contested accountings;
- trust reformation, modification, and interpretation actions;
- irrevocable life insurance trust (ILIT) matters;
- trust and estate property disputes;
- family limited partnership (FLP) disputes;
- trust-held limited liability company (LLC) disputes; and
- reasonable deviation and cy pres matters.

Clients look to Mark not only to guide them to successful resolution of their 'once in a lifetime' legal matters through settlement or trial, but also to help them avoid litigation in the first place.

A Chambers High Net Worth (HNW) resource comments that Mark is "considered as Boston's pre-eminent probate litigator." Mark is seen as "one of the leading people in the city at what he does," peers say. "He's an excellent technician," offers another resource, and "he's got a big world view, he's not swayed by small details. He's a grown-up in this world – he doesn't have to be nasty to represent his client zealously." Other Chambers HNW resources add that Mark "has a good mind for strategy, he's creative and a good writer," and that Mark is "the first person I call when I have probate going to litigation." A Chambers USA resource comments that Mark is "top notch," "smart, and has an excellent knowledge of trust matters. He had a plan from day one to address our concerns." A fellow lawyer reports "tremendous respect for his practice. He is very strategic, smart

and ... very sensitive and understanding of family dynamics." This source continues: "He is able to step out and earn clients' trust and respect and take the emotion out of probate litigation."

Mark is co-Chair of the firm's Litigation group, and a Fellow of the American College of Trust and Estate Counsel (ACTEC), where he has been appointed to and serves on its Fiduciary Litigation Committee.

Accolades

- Chambers High Net Worth (HNW)
 - Individual Ranking, 2016-2020
 - Band 1 Firm Ranking, 2017-2020
- Chambers USA, leading litigator, 2010-2013
- Martindale Hubbell Peer Review Rated AV Preeminent™
- Massachusetts Super Lawyers, 2009-2020
 - Top 100 Massachusetts Super Lawyers, 2016

Affiliations

- American College of Trust and Estate Counsel (ACTEC), Fellow, Fiduciary Litigation Committee
- Greater Boston Fiduciary Law American Inn of Court, Co-Founder and Former President
- Boston Bar Association
 - Trusts & Estates Section, Public Policy Committee, 2012-2013
 - Trusts & Estates Section, Fiduciary Litigation Co-Chairman, 2010-2012
- Boston Probate and Estate Planning Forum, Treasurer (2013-present), Moderator (2012-2013) and Program Chair (2011-2012)
- Massachusetts Bar Association, Probate Litigation Practice Group, Probate Law Section Council, 2009-2010
- New Hampshire Bar Association
- Dartmouth Lawyers Association
- Dartmouth College, Alumni Enrollment Volunteer

Admissions

- Massachusetts

- New Hampshire

Education

- Dartmouth College (B.A., 1991)
- Boston College Law School (J.D., 1995)

Representative Matters

Defense of Trustees in an Action for Breach of Fiduciary Duty and Removal

A beneficiary sought the removal of two trustees of a Massachusetts Business Trust, alleging that the trustees had acted beyond their authority and breached their duties in carrying out a number of complicated transactions designed to place a conservation easement on family-owned land and exchange various parcels of land among several trusts. At trial, the Court found that the trustees had not breached their duties and awarded fees and costs to the trustees. The Appeals Court determined that the trustees had authority under the trust to effectuate the transactions at issue and affirmed the trial court's determination that no breach of fiduciary duty occurred.

Prominent Social-Services Charitable Organization

Representation of a prominent social-services charitable organization in an action to enforce the charity's rights under a century-old charitable bequest.

Representation of Trustees in Removal Action

Representation of trustees in a removal action based on allegations of breaches of fiduciary duty and self-dealing in connection with transfers of thousands of acres of land among multiple family trusts.

Will Contests

Representation of family-member beneficiaries in a will contest alleging undue influence, lack of testamentary capacity, and fraud.

No-Contest and In Terrorem Clauses in Trusts

Representation of trustees in an action to enforce the no-contest or in terrorem clause of a trust.

Death-Bed Conveyance

Representation of widow in defense of a death-bed conveyance by which her late husband deeded his ownership interest in an historic property to her.

Reasonable Deviation from Trust Terms

Representation of proposed interveners in an action seeking reasonable deviation from the terms of the oldest charitable trust in the country (c. 1660) for the benefit of a public school system.

Predecessor Trustees Disputes

Representation of trustees and primary beneficiary of a trust in action against predecessor trustees for self-dealing and other breaches of fiduciary duty.

Commitment to Excellence

Mark is one of a small handful of lawyers in the Boston area who dedicates his practice entirely to handling T&E-related disputes, which can be a highly specialized and nuanced area of the law. The focus and dedication of Mark and his teammates has helped to establish Goulston & Storrs as the preeminent probate and fiduciary litigation firm in Boston.

He appreciates the trust that clients place in him and is sensitive to the personal nature of their legal matters. This kind of litigation can be stressful and disruptive, but he works hard to enable his clients to continue their daily lives, knowing they are in his diligent care.

Mark finds this work deeply gratifying and is pleased to serve as a sounding board on a wide range of issues for individuals and the future generations of their families.

Publications

April 20, 2021

Probate & Fiduciary Litigation Newsletter - April 2021

February 5, 2021

Probate & Fiduciary Litigation Newsletter - February 2021

November 30, 2020

Probate & Fiduciary Litigation Newsletter - November 2020

October 29, 2020

Victims' Son Can Access Murder's Spendthrift Trust

Massachusetts Lawyers Weekly

September 2, 2020

Probate & Fiduciary Litigation Newsletter - September 2020

June 4, 2020

Revocation-Upon-Divorce Statute Applies to Life Policy

Massachusetts Lawyers Weekly

February 7, 2020

Probate & Fiduciary Litigation Newsletter: February 2020

December 17, 2019

Probate & Fiduciary Litigation Newsletter - December 2019

October 15, 2019

Probate & Fiduciary Litigation Newsletter - October 2019

August 28, 2019

Probate & Fiduciary Litigation Newsletter - August 2019

June 27, 2019

Probate & Fiduciary Litigation Newsletter - June 2019

May 20, 2019

Probate & Fiduciary Litigation Newsletter - May 2019

April 23, 2019

Probate & Fiduciary Litigation Newsletter - April 2019

February 2019

Probate and Fiduciary Litigation Newsletter - February 19, 2019

November 15, 2018

Appeals Court Ruling Highlights Risks of Pre-Printed Forms

Massachusetts Lawyers Weekly

November 2018

New York's Article 77: A Useful Tool for Expediting Trust Litigation

October 2018

Probate and Fiduciary Litigation Newsletter - October 1, 2018

August 2018

Probate and Fiduciary Litigation Newsletter August 27, 2018

July 2018

Probate and Fiduciary Litigation Newsletter July 10, 2018

November 2017

Probate and Fiduciary Litigation Newsletter November 21, 2017

August 2017

Probate and Fiduciary Litigation Newsletter August 31, 2017

June 2017

Probate and Fiduciary Litigation Newsletter June 28, 2017

March 2017

Probate and Fiduciary Litigation Newsletter March 20, 2017

February 2017

Probate and Fiduciary Litigation Newsletter February, 2017

December 2016

Probate and Fiduciary Litigation Newsletter December 16, 2016

November 2016

Probate and Fiduciary Litigation Newsletter November 30, 2016

November 2016

T&E Litigation Newsletter- 11/14/16

August 2016

T&E Litigation Newsletter- 8/10/16

July 2016

T&E Litigation Newsletter- 7/13/16

July 2016

T&E Litigation Newsletter- 7/5/16

May 2016

T&E Litigation Newsletter- 5/25/16

April 2016

T&E Litigation Newsletter- 4/27/16

January 2016

T&E Litigation Newsletter- 1/5/16

September 2015

T&E Litigation Newsletter- 9/16/15

September 2015

T&E Litigation Newsletter- 9/3/15

May 2015

T&E Litigation Newsletter- 5/5/15

April 2015

T&E Litigation Newsletter- 4/9/15

January 2015

T&E Litigation Newsletter - 1/9/15

October 2014

T&E Litigation Newsletter - 10/30/14

September 2014

T&E Litigation Newsletter - 9/12/14

August 2014

T&E Litigation Newsletter - 8/22/14

August 2014

T&E Litigation Newsletter - 8/8/14

May 2014

T&E Litigation Newsletter - 5/28/14

April 2014

New E-Discovery Rules Bring Changes, Challenges and Cutting Edge Discovery Issues to Trust and Estate Litigation

April 2014

T&E Litigation Newsletter - 4/15/14

March 2014

T&E Litigation Newsletter - 3/21/14

February 2014

T&E Litigation Newsletter - 2/14/14

January 2014

T&E Litigation Newsletter - 1/16/14