

## 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)*, 2016-2019
- *Chambers USA*, leading litigator, 2010-2013
- Martindale Hubbell Peer Review Rated AV Preeminent™
- Massachusetts Super Lawyers, 2009-2018
  - 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

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 19, 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 14, 2018

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

October 1, 2018

**Probate and Fiduciary Litigation Newsletter - October 1, 2018**

August 27, 2018

**Probate and Fiduciary Litigation Newsletter August 27, 2018**

July 10, 2018

**Probate and Fiduciary Litigation Newsletter July 10, 2018**

November 21, 2017

**Probate and Fiduciary Litigation Newsletter November 21, 2017**

August 29, 2017

**Probate and Fiduciary Litigation Newsletter August 31, 2017**

June 28, 2017

**Probate and Fiduciary Litigation Newsletter June 28, 2017**

March 20, 2017

**Probate and Fiduciary Litigation Newsletter March 20, 2017**

February 14, 2017

**Probate and Fiduciary Litigation Newsletter February, 2017**

December 16, 2016

**Probate and Fiduciary Litigation Newsletter December 16, 2016**

November 30, 2016

**Probate and Fiduciary Litigation Newsletter November 30, 2016**

November 14, 2016

**T&E Litigation Newsletter- 11/14/16**

August 10, 2016

**T&E Litigation Newsletter- 8/10/16**

July 13, 2016

**T&E Litigation Newsletter- 7/13/16**

July 5, 2016

**T&E Litigation Newsletter- 7/5/16**

May 25, 2016

**T&E Litigation Newsletter- 5/25/16**

April 27, 2016

**T&E Litigation Newsletter- 4/27/16**

January 5, 2016

**T&E Litigation Newsletter- 1/5/16**

September 16, 2015

**T&E Litigation Newsletter- 9/16/15**

September 3, 2015

**T&E Litigation Newsletter- 9/3/15**

May 5, 2015

**T&E Litigation Newsletter- 5/5/15**

April 9, 2015

**T&E Litigation Newsletter- 4/9/15**

January 9, 2015

**T&E Litigation Newsletter - 1/9/15**

October 30, 2014

**T&E Litigation Newsletter - 10/30/14**

September 12, 2014

**T&E Litigation Newsletter - 9/12/14**

August 22, 2014

**T&E Litigation Newsletter – 8/22/14**

August 8, 2014

**T&E Litigation Newsletter – 8/8/14**

May 28, 2014

**T&E Litigation Newsletter - 5/28/14**

April 25, 2014

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

April 15, 2014

**T&E Litigation Newsletter – 4/15/14**

March 21, 2014

**T&E Litigation Newsletter - 3/21/14**

February 14, 2014

**T&E Litigation Newsletter - 2/14/14**

January 16, 2014

**T&E Litigation Newsletter - 1/16/14**