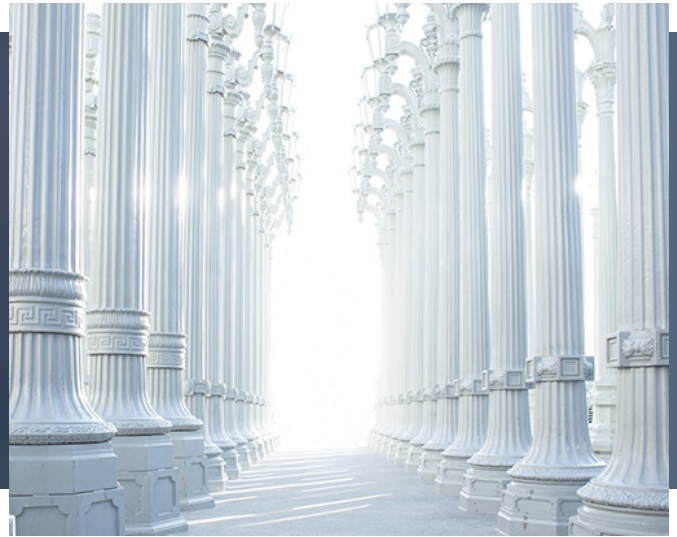


SERVICE

Professional Liability



ATTORNEYS

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Posternak attorneys have been representing attorneys and law firms in complex legal malpractice litigation since the Firm's founding. Posternak attorneys have argued many significant appellate decisions in Massachusetts in the field of legal malpractice and have been responsible for much of the favorable law that has developed.

Our defense of accountants has included cases arising from audit and non-audit engagements for corporations and individuals. We also have defended environmental services firms, engineers and architects against claims arising from various services they provide.

Posternak also handles claims against other professionals, including actions against psychologists, psychiatrists, real estate brokers, environmental consultants and educational institutions. The firm also represents professionals before boards of registration in disciplinary investigations and proceedings.

EXPERIENCE

PROFESSIONAL LIABILITY/LEGAL MALPRACTICE

- Posternak obtained summary judgment on in pari delicto grounds on behalf of a law firm in a case brought by a bankruptcy trustee seeking over \$75 million in damages for alleged negligent securities advice to a subprime automobile finance company.
- Posternak obtained dismissal of claims against an international law firm alleging that the law firm had aided and abetted a fraud upon promissory note creditors of a company.
- As a result of Posternak's advocacy, the Appeals Court ruled that attorneys who represent parties in challenges before local courts are protected by the anti-SLAPP (strategic lawsuit against public participation) statute in Massachusetts and may be entitled to attorneys' fees incurred in defending claims against them which violate the statute.
- In connection with Posternak's representation of an attorney client, the Appeals Court held

that a disappointed heir could only prove a testamentary interest contrary to the terms of a will by “clear and convincing” evidence and that the trial court could determine whether that standard was met, as a matter of law.

- The Appeals Court ruled that an attorney for a general partnership does not owe a duty to the individual partners, in a case in which Posternak represented the defendant attorney.
- Posternak handled the successful appeal in the seminal Massachusetts Supreme Judicial Court that established that a legal malpractice plaintiff has the burden of proving that he or she would have won the underlying case, that any judgment would have been collectable, the existence of a causal relationship between any malpractice and the alleged damages, and that mere negligence in handling legal matters does not constitute a Chapter 93A violation.
- The United States Court of Appeals for the First Circuit held, in a case in which Posternak represented the defendant attorney, that an inherent conflict of interest exists between the original mortgagee and the subsequent purchaser of the mortgage, which prevents the recognition of any attorney-client duty owed by the attorney for the original mortgagee to the purchaser of the mortgage and loan.
- Posternak argued, and the Supreme Judicial Court held that innocent partners may be liable vicariously only if the wrongdoing partner acted either with the apparent authority of the partnership or to benefit it.
- In a case Posternak handled, the Court that a bankruptcy attorney did not owe a duty of care to the parent corporation of a debtor corporation he represented, which the attorney advised should file for bankruptcy
- Posternak argued the case in which the Appeals Court held that in matters beyond the knowledge of lay persons, expert testimony is required to establish both the standard of care owed by an attorney in any given set of circumstances and the attorney’s departure from the standard.

OTHER PROFESSIONAL LIABILITY

- Posternak defended an accounting firm against claims it had mischaracterized, as personal income, millions of dollars of corporate expenses relating to inter-connected businesses involving a well-known local singing group.
- Posternak defended several environmental consulting firms against claims alleging errors in site assessments and remediations. For example, we defended a consulting firm that had allegedly failed properly to identify and to quantify the presence of hazardous materials at a former landfill.
- Posternak defended a claim against an educational institution, alleging discrimination and a failure properly to educate a child, arising out of the school’s claimed failure to properly diagnose the student’s learning disabilities.
- Posternak handled a case brought by adoptive parents against social workers and other

agencies and professionals, alleging negligent failure to advise of the abusive sexual tendencies of the adoptive children.

DISCIPLINARY PROCEEDINGS

- Represented many attorneys before the Commonwealth of Massachusetts Board of Bar Overseers in disciplinary matters.
- Represented hundreds of licensed psychologists and licensed social workers against complaints of professional misconduct by former clients.
- Successfully defended and achieved advantageous settlements for Massachusetts Licensed Site Professionals (LSPs), before the LSP Board; we have persuaded the LSP Board to dismiss third party complaints against our LSP clients.