



Matthew P. Kostolnik

Attorney

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PRACTICE AREAS: Litigation, Professional Liability, Employment Law

“We are what we repeatedly do. Excellence, then, is not an act, but a habit.”

– Will Durant

Matt is chair of Moss & Barnett’s litigation practice group and General Counsel for the firm. As a litigator and trial lawyer, he successfully defends and prosecutes civil actions at all stages of litigation, from initial case filing through trial, appeal, or settlement. Matt provides advice to businesses and individuals related to litigation risks and opportunities in a variety of matters, most commonly including business disputes and negotiations, contracts, unfair competition/post-employment litigation, accountant law defense, insurance issues, construction, and tort claims. His trial background includes trying 12 cases to conclusion before a jury, as well as numerous bench trials and binding arbitration decisions.

In addition to his trial work, Matt has briefed and argued before the Minnesota Supreme Court and the Minnesota Court of Appeals. His litigation cases frequently require him to manage complex procedural and legal matters involving injunctions and restraining orders, dispositive and nondispositive motions, discovery and depositions, class actions, alternative dispute resolution, and administrative hearings.

Known among his legal peers as collegial and responsive, Matt is frequently relied upon as local counsel for out-of-state lawyers whose clients have cases located in the state and federal courts of Minnesota.

Matt is also a member of Moss & Barnett’s accountant law defense team and creditors’ remedies department.

Experience

- **Defense of \$8 million claim for theft of trade secrets, employee disloyalty, breach of non-solicitation agreement, and aiding and abetting.** Our client, a large truck parts supply company, hired the top two managers of one of its branch offices, with employment to start after a new branch office was built out by client. After waiting in place for three and a half months, the managers resigned from plaintiff's branch without notice and immediately began recruiting plaintiff's employees – and were successful in getting 55 percent of the workforce to join our client. The managers and all employees were “at will,” but one of the managers had a non-solicitation agreement, and the new employees brought customer lists with them. Plaintiff contended that the employee “lift out” irreparably destroyed their business in the state where the branch office was located. After a three-week jury trial in federal court, the jury returned a defense verdict on all counts.
- **Ponzi auditor exonerated.** *In re Kelley* (Bankr. D. Minn. 2015; File No. 12-0X008). After the collapse of a massive Ponzi scheme, the bankruptcy trustee sued an auditor of one of the special purpose entities used to conduct the fraud alleging the CPA had negligently failed to detect the fraud, causing damages of \$116 million. After a two-week trial, the arbitration panel rejected the claim and awarded a total defense victory to the CPA firm.
- **Successful resolution of a non-compete and non-solicitation dispute.** Client was a top executive of a national retail grocery, supply chain, and wholesale distribution company. After leaving the company to take a position at one of its largest competitors, client and his new employer were sued in federal court for breach of a non-competition and non-solicitation agreement, misappropriation of trade secrets, and interference with contractual relations. After persuading the court to refrain from issuing a temporary restraining order against our client that would have prevented him from working for the competitor, we successfully settled the dispute, and our client now enjoys unencumbered employment with his new employer.

Education

University of Minnesota Law School, J.D.; *cum laude*

St. John's University, B.A.; *cum laude*

Classes / Seminars Taught

“Minnesota State District Court Civil Practice Deskbook,” Minnesota State Bar Association Continuing Legal Education (March 2009)

“Regulatory Review/Certified Hazardous Materials Management,” Academy of Certified Hazardous Materials Managers, North Star Chapter

Admissions

Minnesota

U.S. District Court for the Southern District of Indiana

U.S. District Court for the Eastern District of Michigan

U.S. District Court for the District of Minnesota

U.S. District Court for the District of North Dakota

U.S. District Court for the Eastern District of Tennessee

U.S. District Court for the Eastern District of Wisconsin

U.S. District Court for the Western District of Wisconsin

U.S. Court of Appeals for the Eleventh Circuit

U.S. Court of Appeals for the Third Circuit

Honors & Recognitions

Minnesota Rising Stars (2005-2009, 2011-2012)

News

Deadline for Minnesota Employers to Begin Providing Earned Sick and Safe Time to their Minnesota Employees is January 1, 2024

12.11.2023

Alert: Noncompete Agreements Banned in Minnesota: Action Items for Employers

05.31.2023

Alert: Employers: Good Reason to Review Your Separation Agreement Forms

Moss & Barnett Advocate (Winter 2023 edition), 03.21.2023

Court Operations Update

Moss & Barnett Advocate (Spring 2021 edition), 05.26.2021

Publications

Minnesota State District Court Civil Practice Deskbook, Second Edition (2014)
Minnesota State Bar Association Continuing Legal Education, 04.01.2014

Professional Associations

Federal Bar Association

Minnesota State Bar Association

Hennepin County Bar Association

Amdahl Inn of Court

Association of Professional Responsibility Lawyers

Community Involvement

FBI Citizens' Academy Alumni Association

Volunteer, Eagle Brook Church

Volunteer, Mustang Wrestling

Volunteer, North Suburban Soccer Association

Volunteer, Mounds View Youth Football

Volunteer, Shoreview Parks & Recreation

Former solicitor, The Fund for the Legal Aid Society – One Hour of Sharing Associates Campaign