

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT  
MCHENRY COUNTY, ILLINOIS**

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J.	)	
POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

**NOTICE OF FILING**

**TO: All Attorneys of Record (See Attached Service List)**

PLEASE TAKE NOTICE that, on the 4<sup>th</sup> day of November 2019, we filed DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES, with the Clerk of the 22<sup>nd</sup> Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 4th day of November 2019.

George K. Flynn  
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**AFFIDAVIT OF SERVICE**

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed on November 4, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters  
Linda Walters

## **SERVICE LIST**

### **Plaintiff's Attorney**

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**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.  
AND HANS MAST’S AMENDED AFFIRMATIVE DEFENSES**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast plead the following amended affirmative defense in the alternative and without prejudice to Defendants’ earlier denials and contentions:

**FOURTH AFFIRMATIVE DEFENSE  
(Judgmental Immunity/Lawyer’s Judgement Rule)**

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff’s damages, if any, were due to Plaintiff’s own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff’s proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

- (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

- (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than \$100,000.
- (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
- (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a “high-low” agreement at a binding mediation which limited Dulberg’s potential recovery against the remaining Defendant, Gagnon.

3. Alternatively, this suit is barred by the attorney judgment rule. Errors in attorney judgment do not constitute negligence. *Goldstein*, 154 Ill. App. 3d at 599-601; *O’Brien & Assocs., P.C. v. Tim Thompson, Inc.*, 274 Ill. App. 3d 472, 479-480 (2nd Dist. 1995). Legal advice provided in areas “where there are no sure and definite answers” or where “future courses of action [cannot be determined] by precise mathematical equations” are areas where the attorney is afforded discretion in the exercise of judgment. *Goldstein*, 154 Ill. App. 3d at 600 (citation omitted). The fact that an unfavorable result is obtained in one of these scenarios does not suggest that any standard of care was breached. *Id.* Further, if the client must speculate as to how it would have been better off, there is no actionable harm. *O’Brien*, 274 Ill. App. 3d at 479-80.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that judgment be entered on their behalf and against Plaintiff, Dulberg.

Respectfully submitted,

/s/ George K. Flynn

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