Rolling with the punches

By Alexandra Schwappach

NEWPORT BEACH - One morning about three months after starting their own firm, attorneys at Klatte Budensiek & Young-Agriesti LLP noticed the phone hadn’t rang in a while.

"Have you gotten any calls?" a worried Mark Budensiek asked fellow partner Ernest “Will” Klatte III.

"No, have you?"

By mid-afternoon they discovered that the labor and employment firm’s phone server had been hacked and loaded with a virus. A poorly worded note asked for a deposit of $500 into a Nigerian bank.

When the phone system was fixed, and after what had become a long and unproductive day, Klatte went home and reminded himself that he had signed on for a small firm environment and everything that accompanied it.

"I remember saying to myself, 'You wanted to do this, you wanted to do this,'” he said.

Wishing to be more entrepreneurial, name partners Klatte, Budensiek and Summer Young-Agriesti and paralegal Michelle Perciavalle, decided to say goodbye to Rutan & Tucker LLP in Costa Mesa in February 2012. That month, they launched their employer-side boutique in Newport Beach.

Just a year and a half later, the firm has handled several significant cases. But as with the phone system, the attorneys have experienced some unexpected twists and turns down the road.

"When you're small, every decision you're making is a big decision that has significant impact on the firm,” Klatte said.

For example, when the firm was considering hiring its first associate, it had to carefully weigh the move.

"[Hiring is] easier to do when you're a very large firm and when you're adding one person among hundreds," he said.

Klatte Budensiek made its first new attorney hire last August, adding Selwyn Chu. As part of his third year appellate clinic at UC Irvine School of Law, Chu had the opportunity to take on a real-life case - one that would make it all the way to the U.S. Supreme Court.

The client, John Dennis Apel, was a protester who habitually demonstrated outside of military bases, Chu said. In 2010, he protested outside of Vandenberg Air Force Base in Santa Barbara - after twice being barred from the area - and was convicted of three violations of the federal criminal trespass statute.

Chu and his classmates, under the supervision of UC Irvine School of Law Dean Erwin Chemerinsky, successfully argued before the 9th U.S. Circuit Court of Appeals in Pasadena that their client had the right to protest under the First Amendment.
They were able to oppose the government’s petition seeking an en banc rehearing, but not the petition for review to the Supreme Court. Oral argument is set for December. Chemerinsky will argue the case, but Chu and the firm will help compile the briefing, and Chu will be in the courtroom when the case is presented.

“The firm has been extremely supportive the entire time and accommodated me, especially when I was drafting our opposition brief,” Chu said. “I don’t know if I would have had the same opportunity elsewhere.”

The firm’s second associate, Ryan H. Crosner, has also gotten the opportunity to be involved in high-level cases, including drafting a petition for review before the California Supreme Court that the firm recently submitted in response to a June published decision by the 6th District Court of Appeal.

In its decision, the panel affirmed in part and reversed in part a lower court ruling that granted Morgan Tire & Auto LLC’s bid to compel individual arbitration in a proposed wage and hour class action brought by two former employees. The appeals court ruling allowed Morgan Tire to arbitrate the individual workers’ wage and hour claims, but held the employees could not be forced to arbitrate their claims for civil penalties under the Private Attorney General Act. Brown et al. v. Morgan Tire & Auto LLC et al., No. 14-69751.

Klatte, who represents Morgan Tire, said the second part of the court’s decision ran afoul of the U.S. Supreme Court’s landmark 2011 ruling in AT&T Mobility LLC v. Concepcion, in which the court held that the Federal Arbitration Act overrides state laws that act as a barrier to the enforcement of private arbitration agreements.

He said the firm is hoping the California Supreme Court will take the case and either hear it or hold it until a similar case, Iskanian v. CLS Transportation, gets decided.

“These issues are a hot topic for labor and employment attorneys,” Klatte said. “I think they will continue to be until the California Supreme Court provides some clarification.”

Young-Agriesti said that when she began practicing law, she tended to handle more typical employment defense cases such as retaliation, sexual harassment and discrimination, but in recent years the landscape has evolved, leading to more wage and hour cases.

“The way California employers pay their employees had been the subject of so much litigation,” she said. “The Private Attorney General Act of 2004 has changed the game on the way these cases are being litigated.”

The firm’s founding partners - who collectively have more than 50 years of experience - have seen many waves of change in the employment law industry. Klatte started his legal career in 1984, prior to the California Supreme Court’s 1988 decision in Foley v. Interactive Data Corp., a case that answered looming questions about common law wrongful termination claims. That was followed by the Americans with Disabilities Act of 1990, a key piece of legislation for labor and employment attorneys.

“As a relatively junior attorney, when you are faced with a piece of important new legislation or an emerging area of case law, you have the opportunity to see the law evolve,” Klatte said. “We are continuing to see this with other developing legal issues we are involved in.”

The firm has grown in the last year and a half from three attorneys to seven - including two of counsel - and expects to add another lawyer and paralegal soon. As the firm continues to expand, the partners have their eyes on new office space that would allow them to feel a little less crowded. From there, Klatte expects to grow only as needed.

“Our growth has really been a function of demand, so whatever further growth we experience, that’s the way we’re going to do it,” Klatte said. “Our original plan was to be a tiny firm with just enough work to keep the three of us busy. So much for that.”

alexandra_schwappach@dailyjournal.com

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