



Rolling with the punches

By Alexandra Schwappach

NEWPORT BEACH - One morning about three months after starting their own firm, attorneys at Klatt 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" Klatt 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, Klatt 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 Klatt, 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," Klatt 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.

Klatt 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 classmate, 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.



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Judges and Judiciary

Funding slashed across state's trial courts

Despite a \$60 million increase in state funding compared to last year, California's 58 trial courts are making do with less this fiscal year, according to the judicial branch's final budget allocation plan.

Litigation

NCAA putting distance between itself and Electronic Arts in student-athlete battle

A federal judge still must decide whether to certify a class of athletes that may change the fortunes of the NCAA, but in the meantime, the athletic organization is doing what it can to limit how badly such a decision might hurt.

Corporate

Conatus, AcelRx strengthen biotech IPO trend

Two initial public offerings in California this week extend the trend of biotech and pharmaceutical companies reaching out to the public markets amid dwindling investment from private sources.

Mergers & Acquisitions

Dealmakers

A roundup of recent mergers and acquisitions and financing activity and the lawyers involved.

California Supreme Court

State high court tosses Ecstasy conviction, faulting prosecutors

The state Supreme Court overturned the conviction of a man who sold the drug Ecstasy at a rave party because Los Angeles County prosecutors failed to prove the blue pills he sold to an undercover cop were a controlled substance.

Litigation

Suit against China's largest oil producer seeks \$5B

A lawsuit against China's largest oil producer seeks more than \$5 billion in compensation for a former rival oil company executive who was allegedly imprisoned at the behest of the state-affiliated conglomerate.

Government

San Francisco deputy city attorney nominated for federal bench

President Barack Obama nominated San Francisco Deputy City Attorney Vince G. Chhabria Thursday to a seat on the Northern District of California bench.

U.S. Court of Appeals for the 9th Circuit

Baby's death can equal persecution, 9th Circuit rules in immigration case

Harm to an immigrant's child in the home country can equal past persecution of the parent when based on the parent's race, religion, nationality, politics or social group membership, a 9th Circuit panel held Thursday

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.*, H037271.

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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Entertainment & Sports

Fox, FilmOn settle trade libel suit

The broadcaster and the online upstart that transmits TV over the Internet have reached a confidential settlement, lawyers said.

Law Practice

Rolling with the punches

Wishing to be more entrepreneurial, the name partners of Newport Beach's Klatté, Budensiek & Young-Agriesti said goodbye to life at a larger firm last year and launched their small, employment-side operation.

Alternative Dispute Resolution

Peter J. Ippolito

Peter Ippolito's experience and simple, straightforward approach has made him one of the most sought-after neutrals in the construction-related space, according to several attorneys who've used his mediation and arbitration services.

U.S. Court of Appeals for the 9th Circuit

Judge wrongly relied on own knowledge of street fights

A federal judge erred when he tossed a wrongful death suit after discounting plaintiff's expert testimony and relying on his own personal experience in street fights, according to a 9th U.S. Circuit Court of Appeals opinion published Thursd

Government

Palmdale's elections violates state Voting Rights Act

In what appears to be the first case of its kind to go to trial against a city, a judge has ruled that the city of Palmdale has violated the California Voting Rights Act, calling it irrelevant whether the city intended to discriminate.

Litigation

Contractual attorney fee awards, for tort claims?

A recent appellate decision is a reminder that a party can lose the contract claims and still be the prevailing party for an attorney fee award. By **Gary A. Watt**

Tax

IRS: collecting taxes 30 years after the fact

That may sound crazy, but sometimes the IRS has a memory like an elephant. And the IRS can come down like an elephant on top of you, too. By **Robert W. Wood**

Perspective

Comic book crime

In "Comic Book Crime: Truth, Justice and the American Way," authors **Nickie D. Phillips** and **Staci Strobl** examine of the portrayal of crime and justice in contemporary American comic books.

Uncover the real 'trial of the 20th century'

Author **Lise Pearlman** explores the highly politicized trial of Black Panther leader Huey Newton involving an early morning shootout in the volatile summer of 1968. A diverse jury surprised everyone with its verdict. So what happened?

Alternative Dispute Resolution

Working to restore the efficiencies of arbitration

Many arbitrators, ADR providers and counsel are working to manage the process and restore the advantages of arbitration: limited discovery, efficient hearings and the prompt issuance of a final award. By **Zee Claiborne**