

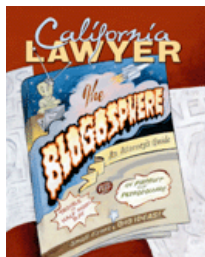


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**FEATURES**  
**THINKING BIG, STAYING SMALL**

Even in today's legal market, you can run a high-profile practice with fewer than ten lawyers.

By Deborah R. Rosenthal

**W**ith all the attention paid to the AmLaw 100, it may come as a surprise to learn that lawyers can have intellectually challenging-and financially rewarding-careers without joining the faceless ranks of mid-level associates. With a little luck and a lot of ingenuity, it's still possible to think big and stay small.

Todd Noah's career is a good example. Five years out of law school, Noah felt disenfranchised with his job as a big-firm intellectual property lawyer in San Francisco. It wasn't the work, Noah says. IP was all he ever wanted to do. What got to him-and to his colleague, Michael Dergosits-were the firm's long hours, layers of bureaucracy, and office politics.

"We started talking to other lawyers around town who were unhappy with their practices," Noah recalls. "We had monthly dinners and discussed starting a new firm, or beefing up someone else's IP department. But they just didn't have the guts to jump. It was too risky for them."

So in 1993, Noah and Dergosits set out on their own, taking a number of their clients with them. One of those clients, a company producing a liquid egg substitute, was engaged as a defendant in patent litigation with competitors over its manufacturing process. That case kept their fledgling practice, Dergosits & Noah, going for two years.

Then came the Internet boom. "We hit it at the right time," Noah says. "We just got swept up." In addition to representing a number of small companies seeking patent applications, the tiny firm landed Netscape Communications as a defense client in a high-profile patent-infringement lawsuit filed in 1997 by Wang Laboratories. Less than a year later, a federal judge dismissed all claims in the case; an appellate court affirmed. By the time of the dot-com bust in 2000, Dergosits & Noah had built a reputation strong enough to generate steady work.

Resourcefulness also is critical to a small firm's ability to compete. David M. Birka-White of San Francisco demonstrates the point. Since 1979, Birka-White has represented homeowners against the manufacturers of allegedly defective building materials. But he found he couldn't continue to represent clients in individual cases and still maintain a viable practice.

"No homeowner can pay an attorney \$300 an hour or more to litigate a \$10,000 problem," Birka-White says. "And no lawyer can take that case-which may involve an extremely complex product failure-because he's going to get a third of the way into it and discover he's working for free."

Class actions seemed to provide a solution. The trick was finding a way to show the commonality of damages needed to persuade a judge to grant class certification. So, using a bevy of scientific experts with various specialties, Birka-White developed a protocol for identifying defective building materials. Stephen Oroza, an attorney friend and colleague, figured out that the scope and breadth of the damages could be calculated on a classwide basis using sample groups within the class; statisticians could then determine an aggregate award.

The model proved to be a success. Nearly 30 years after Birka-White founded his own firm, he and Oroza now work together representing homeowners in class sizes that typically number in the thousands.

**GRADUAL GROWTH**

Strong small firms can also be built in more traditional ways. Before they hung out a shingle in 1998, Ed Swanson and Mary McNamara of Swanson, McNamara & Haller built their reputations in the white-collar criminal-defense bar, working for the federal public defender's office in San Francisco.

"We wanted to do our work in the public sector representing indigent clients, but neither of us thought we'd be there for an entire career," McNamara says. "We got to know the bench very well, and got to know a lot of other practitioners just from being in court every day." Those relationships garnered referrals that later helped their small practice succeed.

Of course, small firms tend to grow when they are successful. In 1991 Clifford Hirsch started a sole practice in Walnut Creek after separating from two other attorneys in a first-



Dale Higgins

Todd Noah says lucky timing and a couple of key IP cases helped his firm, Dergosits & Noah, get off the ground.

**SMALL FIRMS BIG IDEAS**

**DERGOSITS & NOAH**  
Founded: 1993  
Offices: San Francisco and Santa Rosa  
Attorneys: 9 (including 5 of counsel)  
Support staff: 2  
Practice areas: IP litigation, patent preparation and prosecution, counseling/opinion work

**BIRKA-WHITE LAW OFFICES**  
Founded: 1981  
Office: San Francisco  
Attorneys: 3 (including 1 of counsel)  
Support staff: 0  
Practice area: Defective building materials class actions

**SWANSON, McNAMARA & HALLER**  
Founded: 1998  
Office: San Francisco  
Attorneys: 4  
Support staff: 2  
Practice areas: White-collar criminal defense, complex civil litigation

**CLIFFORD HIRSCH, A Professional Law Corporation**  
Founded: 1991  
Offices: Walnut Creek and San Diego  
Attorneys: 7  
Support staff: 4  
Practice areas: Insurance coverage opinions and litigation, landslide litigation, construction defect and product liability defense

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party insurance defense firm. The case work, which often ensued from natural disasters such as mudslides and earthquakes, had always been statewide. So in 2004, when Southern California wildfires caused a surge in cases, Hirsch contacted Kellene McMillan, the daughter of a family friend who had worked in his office after being admitted to practice and was then in San Diego. His timing was perfect.

McMillan had grown dissatisfied with her job at a midsize insurance defense boutique. "Most of the people there were big-firm escapees who couldn't really shake the mentality," McMillan says. When Hirsch telephoned to ask if she would open a San Diego office for him, she jumped at the opportunity.

Hirsch says he intended the office to be a one-person branch, but "the minute clients realized we had somebody in San Diego, we attracted more Southern California work." With Hirsch's blessing, McMillan began hiring friends from among former colleagues and staff at her previous firm. "If you know someone who does good work and is a friend of yours, why wouldn't you want that person to work for you?" Hirsch asks.

#### BITING OFF ONLY WHAT THEY CAN CHEW

At the outset, running a small firm as a successful business requires careful appraisal and management of resources. Birka-White says he considers a large number of potential cases but takes relatively few, typically litigating fewer than ten class actions at any time, each ranging in value from a few million dollars to a few hundred million.

"We never file a case without serious investigation and scientific analysis," Birka-White says. "It's not uncommon to spend tens of thousands of dollars to research a product before deciding to take a case. Obviously, if I do that, it's because I think there's a common defect. But if I find there isn't a common defect, I have to be ready to walk away."

Keeping overhead low also is essential, which is why Birka-White has no employees. "We use independent contractors for support," he says. "Over the years, I've developed close working relationships with professionals who can respond immediately to my needs on a full-time basis."

The ability to function with little or no staff is a testament to the effectiveness of law office technology. Says Todd Noah: "It's not like it used to be, when you got a draft, marked it up, and gave it to the word processor to do overnight. With email, scanning, even document production—because [the] Adobe Acrobat [program] Bates-labels documents for you—it's so easy." Electronic filing, mandatory in the federal courts where Noah files most of his IP cases, also cuts down on the need for clerical services. "You don't even have to serve your adversaries," he says. "It's really streamlined."

Minimal staff also means minimal need for attention to personnel matters. "At this point, we're sort of self-sustaining," says Noah, who serves as his firm's managing partner but estimates he devotes only 10 percent to 15 percent of his time to management duties. "Issues do come up," he concedes. "But if a client wants a billing alternative, I just go next door to see Michael. We talk about it and it's done. I don't need a two-thirds majority vote."

McNamara, whose San Francisco criminal-defense practice consists of four attorneys and two support staff, concurs. "The machinery of a large firm dictates that you have to take on bigger and bigger projects and charge higher and higher rates," she says. "And that has an effect on who can afford you and what kind of cases you get."

Equally important to the success of a big-thinking small firm is a realistic understanding of the organization's upper limits. Swanson, McNamara & Haller, for instance, typically represents individual executives or witnesses involved in SEC or U.S. Attorney investigations, leaving institutional clients to the larger firms. For example, from 2003 to 2007 McNamara defended the director of a power-trading group at Reliant Energy who was named in a criminal prosecution charging the company and a number of its officers with wire fraud, price-fixing, and commodity-trading violations. After favorable evidentiary rulings, the government dropped its case against McNamara's client before trial.

Dergosits & Noah takes a similar approach to big patent cases. Noah says the firm handles the "day-to-day work" of providing opinion memoranda and patent prosecution for big clients such as Johnson & Johnson, but it leaves lengthy trials and higher-stakes legal matters to the larger firms.

#### FLEXIBILITY AND DIVERSIFICATION

Cooperating with big-firm competitors can help small firms stay afloat, but it makes them vulnerable to abrupt changes in the law, the legal market, and the industries they serve. Dergosits & Noah, for example, frequently provides IP expertise to bigger litigation firms. Thus it lost a sizable amount of work in 2005 when Howrey merged with Clements, O'Neill, Pierce, Wilson & Fulkerson, a Houston-based IP boutique.

Kellene McMillan has seen similar effects from consolidation in the insurance industry. "Companies go under all the time, or your friends in the industry might retire or get downsized," she says. On the other hand, when in-house counsel leave one company, they typically go to another, and that can add new business just as quickly for small firms they use for support.

In part, small firms navigate these changes the same way larger firms do: by diversifying. Although 95 percent of the Hirsch firm's work is still first-party insurance cases, Hirsch recently hired an attorney with a product liability defense book of business. The firm now also defends bicycle-helmet manufacturers and automobile dealers who have been sued under California's "lemon law."

Similarly, Dergosits & Noah opened a Santa Rosa office to serve the IP needs of Sonoma and Napa counties by hiring as of counsel a local attorney with an established trademark practice. Working with lawyers of counsel serves two purposes in a small firm: It deepens the reservoir of legal talent, and it keeps overhead down. "They have their own clients, and we provide the infrastructure," Noah says.

Birka-White manages his plaintiffs firm with a similar approach. Even though he and Oroza have worked together for more than two decades, "Steve's not my partner," Birka-

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White says. "We joint-venture everything. On each case, we have a separate agreement on how we're going to divide up the work and the fees, which means we can divorce each other at any time. We stay together because we want to be together."

At the San Diego office of the Hirsch firm, McMillan-the mother of three sons-says she finds the small-scale flexibility particularly helpful when her husband, a Navy reservist, is away from home. "We work like a team," she says of Hirsch in Walnut Creek. "We're aware of each other's cases. We meet weekly, and our computer system is synced so everyone knows what everyone's doing at all times. We all cover for each other if we feel overwhelmed."

#### LOVE WHAT YOU DO AND WHO YOU WORK WITH

Attorneys in small firms usually appreciate the opportunity to wear many hats. "Everybody here has tried at least a couple of cases," Hirsch says. "Not many coverage shops can say that. Being a small office, we didn't have the luxury of segregating duties-and that became a bonus instead of a handicap."

Noah, who left a New York law firm years before founding Dergosits & Noah, recalls the day his former boss attempted to acquire his firm as a San Francisco outpost. Noah declined the offer. "I had just finished my second federal appeal, and I thought, 'I'm doing soup-to-nuts here. I don't want to be a foot soldier. I'm doing all the exciting parts-I don't want to take a step backwards.' "

Mary McNamara seconds that sentiment. "What makes us happy is that we represent individuals and talk to them and feel like we have an effect on their lives," she says. "We don't have the pressure of attracting huge clients to meet a large overhead. The joy of this work is going to court and managing a tough legal problem for somebody and making a difference. We all get along really well. We know our strengths and our weaknesses. We're very lucky."

*Deborah R. Rosenthal is a practicing attorney in Berkeley and a former senior editor at California Lawyer.*



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