



From left, Steven Kaufhold, Elizabeth Day,
Don Putterman, David Porter

SENIOR PARTNERS

OPENING THEIR OWN FIRMS

Nina Schuyler

With the economic news increasingly dour, it seems like the worst time to start a new business. But some Bay Area senior partners are finding opportunity in the downturn.

They've left big law behind and have opened their own specialty or solo firms in order better to serve their cost-conscious clients. Previously beholden to big law firms' policies, these senior partners can now be more flexible in fee arrangements, the sizes of cases they represent, and the kinds of cases they take.

FEE ARRANGEMENTS

Prior to opening a boutique firm in March, Steven Kaufhold, formerly with Akin Gump Strauss Hauer & Feld, and Jonathan Gaskin, previously with Orrick, Herrington & Sutcliffe, came up with a plan that factored in the difficult economic climate.

"Companies and individuals with business disputes are often concerned about churning of legal fees," says Kaufhold. "We decided we'd take business cases on full or partial contingency." That's something he could never have offered his clients before, all of whom went with Kaufhold to his new firm. Kaufhold and Gaskin first practiced together in the litigation department at Brobeck, Phleger & Harrison.

Feinberg Day Alberti & Thompson, which opened its doors in February, is taking the same approach. "With seven equal partners, one staff person, and low overhead,

we can take the financial risk associated with contingency because we don't have to worry about multiple offices around the world and a huge staff," says Elizabeth Day, a former partner at DLA Piper in East Palo Alto. The firm, composed of six former patent litigators from DLA Piper (including Day) and Ian Feinberg, a veteran Silicon Valley litigator who was with Mayer Brown, specializes in intellectual property litigation and, in particular, patent litigation.

In August, seasoned San Francisco litigator Don Putterman left New York-based Kasowitz Benson Torres & Friedman. Putterman knew William Logan from their days together at Pillsbury Winthrop Shaw Pittman. This year, he met up again with Logan when they worked closely together in Sacramento on a large piece of trust litigation. "We saw and respected each other's work," says Putterman, "and we got along well." Putterman joined Logan & Giles and the commercial litigation firm changed its name to Putterman Logan & Giles. It recently opened an office in San Francisco, though it will keep its existing office in Walnut Creek. "Alternative fee arrangements are the sign of the times," says Putterman. "We are open to considering all of that."

In March, David Porter, formerly a partner at Wood & Porter, left to open his own solo practice, specializing in taxation, business law, and litigation. "When I looked at the projected economics, I decided I could head out on my own. I didn't have to make a lateral move." Since opening his office at 580 California Street, he's been busy. Not only is he meeting his projected targets, but doing

better than expected. At his old firm, firm policy required a retainer that was “pretty large,” he says. “I was phased out of representing a lot of people.” He’s lowered his billable rate to be more competitive. Now, if someone needs something right away and he can fit it in, he takes the case. Recently, one of his clients wanted to form a corporation and got a quote from another lawyer. “I said I’d match it,” says Porter. “I didn’t even go into the billable hour analysis because I wanted to keep him as a client.”

KINDS OF CASES

Because of their extensive roster of clients, big firms have many conflicts, barring their lawyers from taking on certain matters. There’s a second type of conflict of interest that limits a practice. Big firms often are reluctant to take a case that might set a bad precedent for an industry they regularly serve—accounting, venture capital, finance, insurance, banks.

Now, at their own firms, these senior lawyers are no longer obligated by such restrictions.

“Ninety-five percent of what we did at Akin was on the defense side in securities,” says Kaufhold, who was one of two leaders at Akin who ran the firm’s securities practice. “We didn’t take positions adverse to accounting firms ever. We never represented investors or angel investors or investors in a public company.”

Currently at his new firm, he’s representing investors in companies and some founders. “In addition to defense work, we are now doing plaintiff work in the securities area,” he says. “I’m very excited about this because I think it’s an underserved area.” Kaufhold Gas-kin recently obtained a dismissal of all claims against a former chief legal officer following the company’s bankruptcy. In addition, the firm successfully represented Series A investors in

a private clean-tech company in confidential negotiations with the company and other venture investors regarding share ownership of various investor groups.

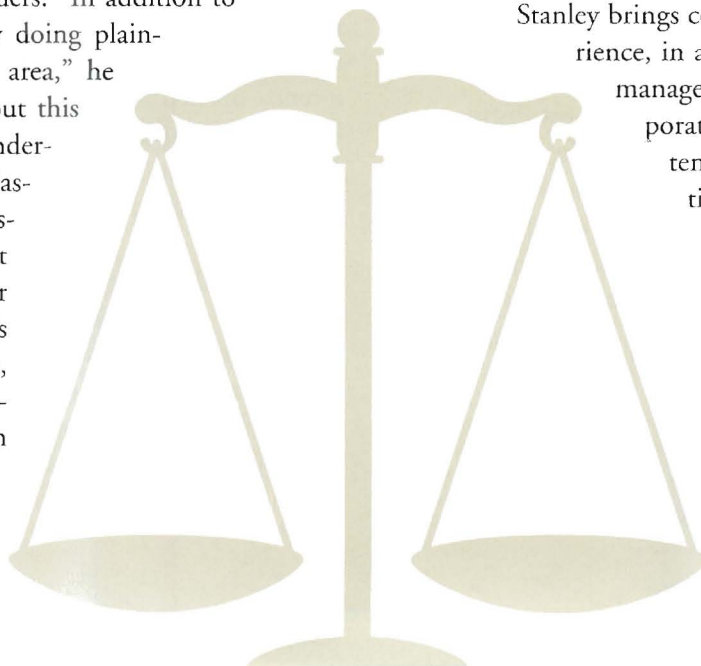
The firm has expanded into what it sees as an up-and-coming area: privacy class actions. It currently represents plaintiffs in privacy class actions against Apple, Facebook, and Zynga in the District Court for the Northern District of California.

While at Kasowitz, Putterman’s practice was focused on the middle market—cases involving \$500,000 to \$15 million. It’s a slice of the market that big firms “don’t care about much because the cases don’t generate the big headlines that from their perspective bring in other work,” says Putterman. He intends to keep his practice centered on the middle market. “People you know at big firms can’t always refer matters to you if you’re also at a big firm,” he says. “They are a lot more comfortable referring matters to you if you’re at a small firm.” While the risk of collection is higher and payment might be slower from this segment of the market, he says, you get a “regular influx of business.”

Prior to Putterman joining their firm, Logan and Anthony Giles, who worked together at Lasky, Haas & Cohler, focused on commercial litigation, arbitration, and mediation for clients such as U.S. Borax, First Republic Bank, and Howard Rite Construction Company. To expand their practice, Putterman says David Stanley, a former general counsel in Silicon Valley, serves as of counsel.

Stanley brings corporate and transaction experience, in addition to experience in crisis management, employment, and corporate governance. “We don’t intend to be only a litigation boutique,” says Putterman.

Like Putterman, Feinberg Day is focusing on what the firms’ lawyers have done for years—intellectual property litigation. But the way it handles



those cases is different from big law. They've structured the firm so the seven partners are all equal: the revenue is divided equally. Since there are no senior or junior partners or associates, clients are treated as clients of the firm, and not the individual lawyer. "Who handles the case depends on who is available and the skill set required," says Day. "There's no territorial nature of 'this is my client.'"

While Porter's expertise was and is tax, he's finding now that he's handling a wider range of different-sized projects. "This is the result of setting a lower retainer," he says. "The more people you work for, the more your name gets out there."

CHALLENGES

If they were good at multitasking before, these senior partners have had to become adept at it.

"What's most challenging is balancing the different considerations of starting a new business," says Kaufhold. That includes administration, marketing, and practicing law.

Porter echoes that. "It's certainly more of a roller-coaster," he says. "Some days the work flow is even. Then the next day, everyone is calling, needing something right away. I have a receptionist who does overflow work, but otherwise it's just me."

Putterman, however, says the challenges of big firm and small firm practice are the same. "Now I'm worried about whether business will come in," he says. "It's the same worry you have at a big firm. You have to have some confidence: if you were good at business generation before, it's likely you still will be."

INTANGIBLE BENEFITS

For Kaufhold, having his own firm was always a dream. "I went to law school not knowing any attorneys," he says. "My assumption was that I'd start my own firm or with a partner or two." In 2003, along with another partner, he opened the San Francisco office of Akin Gump. He

thought he'd satisfy his dream: he'd have a big-firm atmosphere, but some of the start-up aspects of his own firm. It worked for a while. What's been one of the most rewarding aspects in opening his own practice is the reaction from existing clients, he says. "They've been very encouraging," he says. So have his former partners.

Putterman says the experience of being part of a three-partner firm is deeply satisfying. "I'm much more of a lawyer and less of a case manager," he says. "I love doing legal work. I like the legal research and writing. There's a big psychic benefit because I'm enjoying what I'm doing more." He says his partners, Logan and Giles, enjoy sitting down and discussing active cases. "That's fun," says Putterman.

Day echoes that sentiment. Day has known Feinberg for years. Feinberg was her mentor at Gray Cary Ware & Freidenrich, and they'd kept in touch. "It's a pleasure to practice law with people you enjoy," she says. "We're all close friends. I find I have more free time to practice law and also for my life outside of law. We don't have billable hour requirements, so that stress is gone. And you don't have to worry about layoffs."

Running your own firm takes a lot of energy, so for Porter, the timing couldn't be more perfect. "You're not only practicing law, but running a business," he says. "I couldn't have done what I did as a young attorney because I hadn't made the connections yet to get the referrals. And I don't know that I'd have the energy as an older attorney." As for the flexibility? Not having required billable hours? "You can't beat it," he says.

Nina Schuyler is a lawyer whose first novel, The Painting, was published in 2004. Her next novel, Accidental Birds, will be published in 2012. She can be reached at ninaschuyler@hotmail.com.