

Parting Ways Wisely

Partners behind Willoughby, Stuart & Bening maintained personal and business ties with their old firm.

By Amy Yarbrough/ Daily Journal Staff Writer

SAN JOSE — Willoughby, Stuart & Bening began somewhere along Highway 17 during a 30-minute commute from the Santa Cruz mountains to San Jose.

Bradley Bening was carpooling to work with Randy Willoughby, a colleague at Hoge, Fenton, Jones & Appel, when he confessed to Willoughby that he wanted a change.

“I said, ‘Randy, I’m looking for space,’” Bening recalled.

Willoughby was too, but with more than 20 years invested in Hoge Fenton, he didn’t want to move too quickly, and wanted to make sure he left under the best terms possible.

Willoughby, Bening and their colleague Alex Stuart, also a Hoge Fenton alum, made the definitive decision to go out on their own in the summer of 1991, while sitting on the deck at Willoughby’s house.

Nearly 20 years later, the three name partners couldn’t be happier with their firm, which specializes in insurance and business matters and a niche it has developed over time: policyholder representation.

And while there are nine lawyers now, including shareholders Ron Cook and Ellyn Nesbit, Willoughby, Stuart & Bening still strives to balance the three things the name partners sought by leaving their old firm: service, income and lifestyle, or SILS, an acronym they coined.

While being a lawyer certainly helps cover the income part, practicing in the less bureaucratic structure of a small firm has given Willoughby, Stuart & Bening’s attorneys more time to devote to life outside of work and to volunteering in the community.

“The focus here isn’t all work,” Willoughby explained in a recent interview. “The focus is making a good living and having a quality product that allows us to have the lifestyles we want.”

Both avid fly fishermen, Willoughby and Stuart serve as president-elect of the board of directors of Hospice of the Valley, and board member of the San Jose Downtown Foundation, respectively. Nesbit, who has been building an appellate practice at the firm, is co-chair of the Santa Clara County Bar Association’s Appellate Courts Committee with a justice from the 6th District Court of Appeal.

Bening, for his part, has served on the board of the Children’s Musical Theater of San Jose for years, and even lends his acting and singing talents whenever an adult is needed for a production. Bening has played Daddy Warbucks in *Annie* more than once and grew up in a talented family. His sister is Golden Globe-winning actress Annette Bening.

Aside from the civic activities, the firm has earned a reputation in the community as a resource plaintiffs’ attorneys can turn to if they need help deciphering headache-inducing insurance policies or finding coverage for clients



Randall E. Willoughby, left, Alexander F. Stuart and Bradley A. Bening.

S. Todd Rogers/Daily Journal

in desperate situations.

An estimated 50 percent of the firm’s work comes from referrals from plaintiffs and defense lawyers. Many of those, Stuart said, are from lawyers in the middle of cases grappling with how to win them.

“Lawyers in the community find we are someone who can solve their problems,” Stuart said.

Robert Allard, of San Jose’s Corsiglia McMahon & Allard, said he uses the firm both because Cook used to work for Allard’s father and because he’s a great attorney.

“I can’t even begin to tell you how many times I’ve used him to find insurance coverage where I thought none existed,” he said. “He’s really tremendous at what he does.”

As for the firm, Allard said, “I can’t think of a competitor, to be honest with you, in terms of that niche.”

It wasn’t always that way. When Willoughby, Stuart & Bening began in 1991, the firm mostly represented insurance companies — as the three name partners had at their previous firm — before making a conscious decision several years ago to shift to policyholders. Only Stuart maintains a handful of insurance industry clients.

Thanks to its past, many of the insurance companies they go up against already know Willoughby, Stuart & Bening’s attorneys and, importantly, the firm’s dogged reputation, Bening said.

“They will say, ‘oh, you guys,’” Bening said. “They know they are running into a buzz saw.”

Cook, who was one of the firm’s hires in 1991, said the firm’s knowledge of both sides gives them an added advantage.

“We know where to look — what cupboard in the kitchen to go to,” he said.

Policyholder representation has also proven to be vastly more rewarding, the attorneys say. Stuart, for example, was

involved in a case where he was able to help get separate coverage for two military officers who were injured when the supposedly fire-retardant suits they were wearing caught fire during a training exercise.

Bening, who also does mediations, has seen some rewarding outcomes of his own. One case he mediated involved the former board of a 600-unit condo association which stood to lose everything after they were sued over allegations the manager of their complex had embezzled millions on their watch.

In the course of the mediation, Bening was able to reach a settlement whereby the board’s liability and the loss would be covered by their directors and officers insurance.

“One of the members of the old board broke down and cried in the conference room,” Bening recalled.

Though it’s been years since that conversation during Bening and Willoughby’s commute, the two attorneys and Stuart would be hard pressed to forget where they came from.

Their San Jose office is so close to Hoge Fenton that they can see their old offices from their current ones.

Michael McSweeney, a shareholder at Hoge Fenton who worked with Willoughby, Stuart and Bening, said while their leaving was a big loss, the relationship between the two firms is solid.

“The parting was very amiable,” McSweeney said. “Over the years we’ve used them on various cases for our clients. We’ve referred cases to them.”

The fact that there weren’t hard feelings is testament to the careful way in which he and his partners orchestrated their departure, Willoughby said.

“When we left, we left in as positive way as anyone could,” he said. “We really were concerned about the people there and I think they understood.”