

ORANGE COUNTY

JOURNAL

Attorney

Volume 115, 2015 • \$6.95

Dos and Don'ts
of Representing
Your Brand
**Ashleigh
Walker**

McIntyre's Civil Alert
Organized Succinct Summaries
Monty A. McIntyre

Quick Tips for Finding the Right
Blog Topics for Your Law Firm
Guy Loranger

Law Firm of the Month
Gerald Klein and Mark Wilson of

Klein & Wilson, Newport Beach

A Time for Growth

Making Video
Work for Your Firm
Rob Fulton

How to Make Alternative
Fee Arrangements
Work for Your Law Firm
Stephen Fairley

Stop Treating Your Website
Leads Like They're Referrals
Tanner Jones



A TIME FOR GROWTH

Tough Trial Lawyers,
Gerald Klein & Mark Wilson
have Intentionally Kept Their Practice Small for
Two Decades...Until Now.

By Karen Gorden

For twenty years Klein & Wilson intentionally remained a small law firm comprised of just two lawyers. Founding partner Gerald Klein explains, "I grew a predecessor firm from two lawyers to seven lawyers in just two years before being acquired by a large firm. I had been happiest in a two-attorney practice." Klein's co-founder and partner Mark Wilson also had the same feelings about keeping their firm small.

"I prefer doing all of the work necessary to bring a case to trial. That way, I know every nook and cranny of the case," Wilson says. All the same, Klein & Wilson's small size did not prevent the firm from handling multi-million dollar cases and routinely facing off against much larger firms—and winning. According to Klein, the firm's secret to success is largely due to its early adaptation of cutting edge technology. "We decided from the beginning, that by using the latest and greatest technology and implementing other business efficiencies, we could compete against adversaries many times Klein & Wilson's size."

BETTER, NOT BIGGER

In a bet-the-company case years ago, Klein's opponent was one of the largest and most prominent law firms in the country. Days before the client's deposition, the *Los Angeles Times* came out with an article referring to that law firm as "The Marines of the Law." Unfortunately, Klein's client read the article and became despondent. On the day of his deposition preparation session, the client said to Klein, "They have the Marines, and I have you."

Klein & Wilson's confidence never wavered. "In our minds, we felt if the opposing side were the 'Marines' then we must be 'Seal Team 6!'" Like Seal Team 6, Klein & Wilson's philosophy is that a small contingent of highly trained, well equipped people can achieve remarkable results.

To the delight of the client, who worried about the "Marines of the law," the case settled favorably days before trial. Ironically, the defendant (who hired the "Marines") ultimately hired Klein & Wilson and became one of several Fortune 500 companies who hired the firm.

COMMITMENT TO TECHNOLOGY

Years before the Internet became what it is today and to compete on an equal footing with law firms that could staff cases with a dozen lawyers and a large support staff, Klein founded a small technology company that created digital animation exhibits for trial at affordable prices. He used this company to produce a digital animation for a complex accounting case to efficiently convey complex conceptual arguments not easily put into words. This allowed Klein to explain the theory of the case in just seconds. The net result was a trial verdict that led to a \$26 million dollar settlement including payment for punitive damages.

Since then, Wilson explains, "We now prefer to display exhibits digitally, allowing us to highlight key provisions for jurors. This helps jurors understand what a witness is saying about specific contract provisions and correspondence. Another benefit for digital display is reduced trial time, as





witnesses do not have to fumble with bulky notebooks to find exhibits. Moreover, we routinely videotape key depositions and edit the 'Kodak Moments' for trial. And we now have the capability of creating our own animations at a fraction of the cost of outsourcing."

Wilson developed an understanding of the importance of delivering clear messages to an audience between the ages of 10 and 20 while filming several national television commercials. When asked how that experience influences his trial presentations today, he explained that, "Making the client's message understandable in short sound bites with visually interesting material is critical. I am very aware that my audience has a limited attention span. Today, the most popular YouTube videos last for less than one minute. I need to grab the jury's attention and make my client's story memorable and easy to understand. When jurors deliberate, I want them talking about my client's themes, and giving the jurors an animation helps them do that, just like a television jingle helps consumers remember a product."

EXPERIENCED TRIAL LAWYERS, NOT LITIGATORS

Klein and Wilson are definitely achieving remarkable results, but it's not only due to the firm's creative and resourceful use of technology. "Many years ago, the concept of 'business litigation' implied actually trying business cases. That's no longer the case. As business cases became more complex and the amounts of money at issue grew, many lawyers shied away from trying cases. The fewer business cases that are tried, the more nervous lawyers are about trying them. This vicious cycle resulted in a dwindling supply of capable trial lawyers," Klein says.

This works to the benefit of Klein & Wilson's clients, according to Wilson. "We are trial lawyers, not business

litigators. We have more trial experience than most of our peers at bigger firms. Klein & Wilson uses its vast trial experience to achieve favorable settlements that otherwise would not have happened, because opposing counsel is often reluctant to go to trial. By contrast, we welcome the opportunity to go to trial," Wilson explained. "And our success record at trial currently stands at over 90%, with more than \$100 million recovered for our plaintiff clients," Klein adds.

THE ART OF TELLING A STORY

When asked about other strategies they've implemented over the years that have dramatically contributed to their success, Klein says, "It's been the art of telling a story." Both Klein and Wilson have spent time, energy and effort perfecting the art of telling their clients' story to jurors to win them over. "I recently taught a storytelling class to third-year law students at UCI School of Law," says Klein. "Initially, the students thought lawsuits were about contract breaches or trade secret theft. I taught them that when presenting cases to jurors, they must find the human element and present the case in a storytelling fashion. Cases are really about breaking promises, betrayal, the shattering of the American dream or selling out a long-time partner for personal gain. If you tell a story that jurors understand and want to believe, then you will win more cases. Being able to tell a compelling story requires practice," he adds.

MOCK TRIALS

Klein and Wilson both continue to adhere to a motto of practice makes perfect when it comes to storytelling, and as such utilize mock trials extensively. "There are two types of attorneys: the ones that admit they do not know what a jury is going to do and the ones that say they know what a jury will do but really do not," Wilson says. "Our firm fully

believes that the best way to evaluate the strength of a case going to jury trial is to conduct mock trials,” he adds.

Consistent with the firm’s commitment to doing everything itself, Klein & Wilson conducts its mock trials without the assistance of trial consultants or psychologists. Even still, the small but mighty firm has become known for its mock trials, resulting in law firms across the nation hiring the Newport Beach-based firm to conduct mock trials for their own cases.

“We use mock trials to test the strength of the case and case themes to see which ones are effective and which ones flop,” Wilson says. “Mock trials can also help identify the type of jurors which are favorable and unfavorable,” he adds. In particular, Wilson says the firm uses mock trials to formulate voir dire questions which can identify unfavorable jurors.

Mock trials have been so telling, according to Klein, that results they’ve received through conducting them have caused the firm to change its entire case presentation more than once. “I have been shocked a time or two, and remember finding that in one case, multiple mock jury panels awarded my client nothing in a bad faith insurance case,” he says. Armed with this defeat, Klein modified his case theme and presented his new theory to new jury panels and convinced all of them that his client should win. The shift in theme and tactic was a success. Subsequently, Klein & Wilson proceeded to trial with this new theme, wherein the jury awarded every penny the firm requested.

Klein says that while mock trials are expensive and not for every case, many of the cases Klein & Wilson has tried over the years were large enough to justify the cost of a mock trial. And it goes without saying that both Klein and Wilson firmly believe that they have won many trials based on what they learned during mock trials.

TAKING ON CASES OTHERS WON’T

Another highly distinguishing characteristic of Klein & Wilson which sets it apart from other civil litigation firms in Orange County includes its willingness to take on cases other firms refuse to accept. “Many civil litigation attorneys do not accept plaintiffs’ legal malpractice cases because they are concerned about being shunned by colleagues, or they do not want to handle cases that are almost always contentious,” says Wilson. “We don’t share these concerns. We have been handling and winning legal malpractice cases for several years,” he adds.

As a matter of fact, Wilson finds legal malpractice cases fascinating because, given the requirement to prove a “case within a case,” these cases allow him to work on issues that a business trial lawyer would not otherwise face. For instance, in one case, Klein & Wilson represented a public entity against its former City Attorney arising out of a conflict of interest that arose in the negotiation of a public works project. Since Klein & Wilson does not negotiate public works projects, they never would have had the opportunity to learn the conflicts rules that govern those projects, had they not taken the case.

Klein feels the same, and then some. “I have a significant respect for the legal profession, and I feel a sense of duty to expose unscrupulous attorneys and hold them accountable. One way for me to help the profession maintain credibility is to hold accountable the few attorneys who mistreat their clients. The California State Bar is not in the business of making victimized clients whole, so the profession needs attorneys willing to handle legal malpractice cases.”

THE RELUCTANT DECISION TO GROW

For the two-man powerhouse team of Klein & Wilson, who spent two decades refusing to grow even though it had



sufficient business to do so, the latest success in its practice surprises even its founders. Wilson laughs when admitting that he and Klein are “control freaks who prefer doing everything themselves.” As such, when the partners’ caseloads grew too large, they simply stopped accepting new cases and referred them to trusted colleagues instead. While this practice made Klein & Wilson popular with colleagues, it meant the firm was rejecting quality clients with interesting cases.

After what Wilson calls a “deep soul searching,” he and Klein decided to grow the firm. In a period of just 90 days, the firm added three lawyers, thereby effectively growing by 150%. According to Wilson, the new lawyers are learning to embrace the firm’s three tenets: (1) integrity; (2) hard work; and (3) devotion to clients. To accommodate its growth, the firm purchased a new building on the corner of Von Karman and Campus in Newport Beach, gutted the interior, and converted it into a state of the art law facility.

But what about keeping the firm small by design? Why fix something that wasn’t broken? “Many of my friends and colleagues say I am crazy. But I had to think of the firm’s clients and my partner when the red ambulance takes me away from my desk,” Klein chuckles. “I also recognized I had to give something back to a profession that has rewarded me so well. The best way to do that is train a new generation of trial lawyers who can take over the firm after Wilson and I are gone.” ■

Contact:

Mark Wilson
Klein & Wilson
www.kleinandwilson.com
wilson@kleinandwilson.com
Phone: 949-631-3300
4770 Von Karman Avenue
Newport Beach, CA 92660

EXPERIENCE



GERALD KLEIN

» EDUCATION

- **University of California at Los Angeles School of Law, Los Angeles, California:** J.D. - 1982; Honors: Russell P. Serber Memorial Scholar
- **State University of New York, Albany, New York:** B.A. *magna cum laude* - 1978; Honors: New York State Regents Scholar; Honors: Phi Alpha Theta Award for History and Classics; Major: Greek and Roman Classics and History

» PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

- American Board of Trial Advocates, Associate, 2009 - Present
- Orange County Trial Lawyers Association Board, 2002 - 2009; Member, 2007 - Present
- Orange County Bar Association, Member, 1991 - Present; Society of Fellows. Since 2014

» HONORS AND AWARDS

- Trial Lawyer of the Year, Professional Negligence, Orange County Trial Lawyers Association - 2009
- Trial Lawyer of the Year, Business Litigation, Orange County Trial Lawyers Association - 2003
- Super Lawyers® 2012-2016
- Perfect 10 rating on AVVO
- Martindale-Hubbell highest rating AV-Preeminent
- OC’s Top Attorneys - Raising the Bar and Setting New Precedents, OC Metro - 2013
- OC’s Most Notable Lawyers, OC Metro - August 2012
- The Dean’s List - OC’s Top Attorneys, OC Metro - August 2011
- The Legal Eagles - OC’s Top Attorneys, OC Metro - August 2010



MARK WILSON

» EDUCATION

- **Loyola Law School, Los Angeles, California:** J.D. - 1988; Honors: Scott Moot Court Honors Board, 1987-1988; Honors: Jurisprudence Book Award, Legal Research and Writing, 1986
- **University of Southern California, Los Angeles, California:** B.S. - 1985; Major: Public Administration

» PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

- Co-Chair of the Orange County Bar Association’s (“OCBA”) Business Litigation section - 2015
- Orange County Bar Association, Business Litigation Section, Chair - 2016
- Orange County Trial Lawyers Association, Board of Directors 2002 - 2008, Member 2009 - Present
- Banyard Inn of Court, Master Benchers, 2000 - Present
- Association of Business Trial Lawyers, Member, 2004 - Present
- Orange County Bar Association, Member, 1994 - Present
- Orange County Bar Foundation, Society of Fellows. Since 2014

» HONORS AND AWARDS

- Super Lawyers® 2012-2016
- Perfect 10 rating on AVVO
- Martindale-Hubbell highest rating AV-Preeminent
- OC’s Top Attorneys - Raising the Bar and Setting New Precedents, OC Metro - 2013
- OC’s Most Notable Lawyers, OC Metro - August 2012
- The Dean’s List - OC’s Top Attorneys, OC Metro - August 2011
- The Legal Eagles - OC’s Top Attorneys, OC Metro - August 2010