

Construction Niche

McInerney & Dillon focuses on upfront counseling to keep litigation at a distance.

By Banks Albach
Daily Journal Staff Writer

OAKLAND — Every business needs a savvy consigliere. This is especially true when it comes to the legal avenues in the construction industry.

Oakland-based McInerney & Dillon PC, a family-run boutique firm that launched in 1952, offers that skill set, whether it's contract risk analysis, subsidiary formation, estate planning or the less palatable path of litigation.

William H. McInerney Jr. and brother Timothy L. McInerney, the primary shareholders in the firm today, were inspired by their father's practice and came under his wing in the early 1980s. William McInerney Sr. died in 2012.

"Watching my father practice law and enjoy it?" William McInerney Jr. said, "It just seemed like a natural profession to go into."

Their father founded the firm with Fred "Doc" Haley after they worked briefly for the Alameda County district attorney's office.

After setting up shop, they took on every case that came through the door, but eventually realized a construction industry niche in the early 1960s.

"Growing up, I remember my dad would have clients over to our house," Timothy McInerney said. "We knew a lot of the clients before we went to law school."

With longtime clients, some going back 30 years, their caseload



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From left, William H. McInerney Jr., Timothy L. McInerney and Charles E. Toombs

is roughly 70 percent plaintiff cases and 30 percent defense.

Litigation, however, is a distant hurdle when proper upfront counseling is given, they both said. And that starts with reviewing contracts for property owners, contractors and subcontractors.

"I like to say we are the subcontractor of last resort," William McInerney Jr. said.

The firm bills by the hour, but keeps in close contact with its clients, including the unexpected phone call. There are 10 licensed lawyers — seven shareholders and three attorneys.

"Some long-term clients will have years when their projects are going well," Timothy McInerney said. "But the next year, they're in three pieces of litigation and we're meeting with them once a week."

Timothy McInerney recently arbitrated on behalf of a contractor

against a Bay Area school district recovering \$3.6 million in claims that involved matters such as project delays.

The firm preferred not to disclose certain client company names, but Monterey Mechanical Co. and Power Engineering Construction Co. have each stayed with the McInerney firm for 30 years.

John P. McGill, special counsel with Archer Norris PLC in Walnut Creek, took on Timothy McInerney in a case that displayed the layers of liability in construction law.

McInerney represented client Monterey as a subcontractor and McGill represented the contractor, DA McCosker Construction Co., which brought the case against the California Department of Water Resources. The case recently settled under confidential terms.

McGill said Timothy McInerney embodies his father's temperament

when it comes to legal proceedings.

"Tim is exactly like his dad," McGill said. "Their firm is highly professional and very skilled. They're very tenacious, but they don't make it personal, like you're getting sandbagged. There should be more firms like McInerney."

Trickle-down liability is a common expectation in construction law. A property owner might short-sell a contractor at the end of a project, and that slips down to the subcontractors.

"One of the favorite devices of an owner is to try to cram down a price discount on the contractor and chisel down his profit," said Charles E. Toombs, a shareholder with McInerney.

"Chuck" — as firm colleagues call him — has been there 30 years and handles the transactional corner: taxes, property acquisitions and subsidiary formations.

David Mik, president of Power Engineering Construction Co., has relied on the McInerney firm since he joined the company in 1992.

"We have a great relationship and we use them for just about everything," Mik said.

Brian Junginger, an attorney with the firm, said he enjoys working with these clients. He joined McInerney nearly 10 years ago.

"They're down-to-earth, smart guys, and hardworking," he said. "It's not a big pompous show. They just want to get paid and finish their project. I feel like I'm really helping these guys."