

Firming Up the Framework

As a psychological injury pioneer, Winer, McKenna & Burritt sees many harassment claims.

By Caroline Hart
Daily Journal Staff Writer

OAKLAND — Attorneys at Winer, McKenna & Burritt LLP specialize in taking legal action for injuries often unseen and for crimes which take place behind closed doors and in hushed tones.

The firm predominantly handles psychological injury cases, which founding senior partner John Winer said can range from workplace sexual harassment to the compounding impact of multiple car accidents.

He said that firm's approach to handling the cases is unique among plaintiff's attorneys.

"What separates us is the fact that we invite a preexisting condition that gets exacerbated by an event, or a trauma or an accident because we think that makes the case stronger," Winer said. "Where most plaintiff's attorneys feel it makes the case weaker if you have previous problems because the defense will say, 'You already had problems when you had the accident.' And that's kind of what gives us the leg up, usually."

Winer said that any plaintiff's personal injury lawyer will handle physical injury cases that have a psychological component, but his firm's practice differs in that the cases are predominantly psychological injuries without a physical injury.

Last fall, he sued UC Berkeley in a Title IX sexual harassment case in which a university therapist allegedly asked a freshman student intrusive questions of a sexual nature during a therapy session. *Roe v. The Regents of the University of California, et al.*, RG17876971 (Alameda Super. Ct., filed Sept. 28, 2017).

The lawsuit subsequently settled for \$250,000, Winer said.

He explained that the nature of the



From left: Alexis McKenna, John Winer and Kelli Burritt

Courtesy Photo

work requires attorneys to be highly attentive to clients.

Since it is not uncommon for clients to call in a state of crisis, the entire firm staff — from receptionists to associates — is adept at handling people with sensitivity and approaching issues on a case-by-case basis.

Winer said that he has a psychologist to whom he refers clients facing severe psychological distress and that this connection is critical as clients will sometimes reach out to the firm in emergency situations.

"There are very few people that have a severe psychological injury and didn't have some preexisting thing that made them vulnerable in the first place," partner Alexis McKenna said. "A lot of times people can handle one trauma — not necessarily — but a lot of people can. But when you've got multiple traumas, ... this was the straw that broke the camel's back."

Winer formed the Law Offices of John D. Winer after working for six years with Marvin Lewis, who pioneered the legal framework for trying psychological injury cases.

He worked independently for over 10 years then took on McKenna, who was an associate, as a partner along with another partner who no longer works at the firm. The firm has since expanded to seven attorneys and has

main offices in Oakland and Woodland Hills.

Winer said a majority of cases involve sexual harassment or misconduct. The remaining cases typically involve a kind of personal injury, discrimination or employment matter.

He partially credits the massive volume of cases his firm sees to a marketing decision — his purchase of the domain name sexualharassment.com in the late 1980s. The site receives traffic from victims of sexual assault and harassment who are looking for help after an incident, according to Winer, and sometimes they ultimately seek legal advice from the firm.

"We opened the Woodland Hills office about 10 years ago because a lot of this revolves around me having bought the domain name," he said. "With that domain name, we could get cases wherever we want."

Winer and his firm have handled misconduct-related revelations for more than three decades.

"There was a time in the late '80s where it was almost like this 'Me Too' thing, where a bunch of women who had had sexual relations with their therapists came out of the woodwork because it began getting some publicity," he said. "I tried, you know, two cases or three cases that got multimillion-dollar verdicts,

and so those got publicized and then people started coming out."

Winer said statute of limitations issues are consistent among many cases wherein a multitude of people come forward at the same time for a particular type of case which has received attention.

He said, ultimately, the cases he sees are rooted in power imbalances.

"We take cases usually where there's a power differential," Winer said. "And that could be an adult molesting a kid. We have a subspecialty in suing psychotherapists that have sex with their patients and doctors that have sex with their patients, which are both criminal acts."

Recently, the firm received an influx of cases in the wake of the "Me Too" movement.

"Our caseload has gone up since the whole 'Me Too' thing," Winer said. "For a while, it was almost double. But now it's still probably up about a third."

Winer said a lot of cases prompted by the movement are older, which decreases their chances of success. He said a large number of cases his firm received in response to the "Me Too" movement are pending.

He added that he has a number of high-profile clients who work in the entertainment industry.

McKenna said it is unfortunate when people with 20-year-old cases come to the firm for counsel because the statute of limitations prevents the attorneys from taking them. "You can't do anything about that," she said.

Winer and McKenna both said the process of vetting sensitive cases can be emotionally taxing.

"It's so hard," Winer said, "because people are just struggling to get the words out of their mouth that they've been holding in for 20 years."