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Survival plans

The risks and rewards of launching new firms.

Karen Sloan / Staff reporter

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William Easton and three other longtime criminal defense attorneys in upstate New York began laying the groundwork to start their own firm midway through 2008, with the goal of opening up shop in October.

Of course, the economy went into a virtual freefall just weeks before the planned launch date. In swift order, venerable investment houses went under or were bought at bargain prices, credit markets seized up and bemoaning 401(k) losses became something of a national pastime.

"Impeccable timing, right?" Easton now jokes.

The onset of tough financial times didn't dissuade Easton and his partners from pushing forward with their new business, however. Easton Thompson Kasperek Shiffrin, a criminal defense firm, opened on schedule in Rochester, N.Y. The fledgling firm has not been hurting for business in its first four months.

"The economy affects everything," Easton said. "We're not immune to it, but we specialize in criminal law. Our niche is a bit buffered from the economic problems."

Not waiting

It's difficult to gauge the impact that the economy is having on the number of firms launching during the past six months. Law firm mergers are closely watched, but very little data is available on new firms. The formation of the Rochester firm — and others like it across the country — offer proof that some lawyers aren't willing to wait out the bad economy before embarking on a new venture.

Carolyn Elefant, a Washington-based attorney who writes about solo practitioners and small law firms on her Web site MyShingle.com, said several trends have emerged since the economy went south.

"In terms of people who are working at law firms where they are unhappy, I think they are reluctant to leave and start their own practice," she said. "But I'm also hearing anecdotal evidence that people who have been laid off — or people who work at firms that are laying people off — are more willing to start their own practice."

A sampling of law firm openings in recent months shows that many new shops are focused in legal areas that are somewhat recession-proof. Litigation, criminal defense, family law and estate planning are common practice areas for startups.

Although their chosen fields are largely insulated from the wider financial problems, the faltering economy has played a role in the early days of these new law firms. For one thing, some firm founders have had a tougher-than-anticipated time securing small business loans due to the tightening availability of credit. On the positive side, leaders of new firms report that a wide array of office space is currently available, and prices have fallen considerably. Even computers and office equipment are cheaper than in the past, they say.

"It's a fantastic time to buy used office furniture," said Jason Kohlmeyer, who started a new criminal defense and family law practice in September with his friend Christopher Rosengren in Mankato, Minn. "Pennies on the dollar, really."



Hausfeld LLP's Michael Hausfeld



Pastore Osterberg's Joseph Pastore



Durie Tangri's Daralyn Durie

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The attorneys were practicing at two different local firms when Rosengren was passed over for partnership after eight years at his firm. That, coupled with a slowdown of work at their firms, prompted the two to strike out on their own. It took about two months of intense planning over the summer to work out the details. Initial discussions with local lenders about securing a line of credit didn't look positive, Kohlmeyer said, so they dipped into savings and 401(k) plans to finance the opening of Rosengren Kohlmeyer. The gamble looks to be paying off, as the firm has already repaid its startup costs.

"I'm on track to have the best month I've had in nine years of practicing law," Kohlmeyer said near the end of January. "We've been so busy that we had to hire a second staffer."

While some new law firms are founded by restless attorneys who dream of running their own legal show, others are forged under less desirable circumstances. Pastore Osterberg formed in late December after Dreier LLP fell apart following the arrest of founder Marc S. Dreier on charges that he attempted to sell fake promissory notes of a New York developer. The 12 attorneys associated with Pastore Osterberg had all been part of Dreier LLP's Stamford, Conn., office, and decided to go it alone on a temporary basis while entertaining offers to join a national firm.

More than a month later, partner Joseph Pastore III said that the ex-Dreier attorneys are enjoying the autonomy of running their own office. "We have a couple offers to become the Stamford office of some national firms," Pastore said. "But we like the fact that we're able to serve our clients as we see fit, unimpeded. We haven't made any final decision, but we're leaning toward keeping it as a separate firm."

The benefit of their new autonomy was underscored recently when a client offered to pay a flat fee as an alternative to hourly billing. Instead of checking with numerous committees to approve the decision, Pastore simply told the client yes.

"We're functioning almost the same way as we did when we were with Dreier, except that the buck now stops on our desk," Pastore said.

Washington-based Hausfeld LLP also had a somewhat tumultuous beginning. In November, partner Michael Hausfeld was unceremoniously voted out of his longtime firm Cohen, Milstein, Hausfeld & Toll, where he had built a reputation as a top antitrust class action attorney. Hausfeld and his former partners reportedly disagreed over the future of the firm, with Hausfeld wanting a more international focus and foreign offices. Shortly thereafter Hausfeld formed Hausfeld LLP, which has 17 attorneys who followed him from Cohen Milstein, as well as three other attorneys. The new firm's focus is on large, international and national litigation involving individuals, corporations and organizations.

Hausfeld said he's not worried about a lack of business in the down economy. "If anything, we have more work than we can presently handle. We've been overwhelmed with interest in the services we provide," he said.

But there was at least one tangible benefit to setting up shop in the current economic climate. "It was somewhat easy to find office space. There was a lot of space available because other firms have disbanded," Hausfeld said.

Hausfeld LLP initially operated out of temporary space in Venable's Washington office but recently moved into larger, permanent space. The space is under lease by Morrison & Foerster, but has been subleased by several different entities, Hausfeld said.

For some attorneys, starting a new firm is simply an opportunity to have an adventure and be their own boss.

That's the case with trial attorney Henry Frohsin, who recently left the Birmingham, Ala., firm where he had worked for 24 years to start his own shop with longtime colleague Jim Barger.

In 2008, the two attorneys successfully defended Alabama-based defense contractor Axion Corp. against charges that it illegally gave technical drawings for a Blackhawk helicopter part to manufacturers in China.

Frohsin jokes that he must have been crazy to launch his firm at age 65, right as the economy was falling apart, but he said his niche practice — which focuses on white-collar criminal defense, complex litigation and whistleblower litigation — should be secure. "It's been a kick and a real lucrative thing," Frohsin said of his new venture.

Glenn Mandalas and Kevin Baird had been working as associates in the Dover, Del., office of a 30-attorney firm based in Wilmington, Del., when they realized that they had to commit to the partnership track or break away and form their own firm. They chose the latter, and in January opened Baird Mandalas in Dover.

"The economy was staring us in the face, and we had to look at that," Baird said. "But we also had faith in our practices, and we felt the timing was right. We evaluated our client base and we figured that our clients are just about as economy-proof as you can get."

Baird Mandalas focuses on municipal law, estate planning and business law, among other things. The two have seen their land-use planning work fall off, however.

While Baird and Mandalas initially worried that they wouldn't be able to secure a line of credit to start their firm, they developed a comprehensive business plan and obtained loans in November. That line of credit was key, since they don't expect client payments to roll in until mid-March. If things go according to plan, the firm will open a second office in a neighboring county in about a year.

"Glenn and I see a lot of opportunity right now," Baird said. "There are still unmet needs if you are in the right practice area."

Elefant, the attorney who maintains a Web site geared toward solos and small practices, agrees. She said the economy is forcing companies to rein in their legal spending, which in turn has created more demand for lower-cost legal services.

Small firms — particularly those run by attorneys with previous experience at large, nationally recognized firms — are in a good position to pick up business with lower rates.

"I think there has never been a better time to start a small firm," Elefant said.

That's just what Daralyn Durie and the four other founding partners of Durie Tangri Lemley Roberts & Kent are hoping. The new litigation firm — headed by partners who were previously at venerable litigation boutique Kecker & Van Nest — opened in San Francisco at the beginning of February. The longtime friends had been toying with the idea of starting their own firm since their years at the University of California, Berkeley School of Law two decades ago. The partners discussed whether it was the right time to move forward with the plan and decided to go for it. The fledgling firm, which handles intellectual property, complex contract and commercial matters, antitrust and class action litigation, currently has one associate. The plan is to add two or three more attorneys in short order.

"I think it's easier to be a small firm in this economic climate. We've got lower overhead, and we can be more flexible in our rate structure. We're going to be very efficient because we aren't very leveraged," Durie said. "It's either a really good time or a really bad time to start a new firm. I guess we'll find out."

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