

FRIDAY, JANUARY 20, 2012

LAW FIRM BUSINESS

A Reversal of Fortunes

San Francisco environmental firm Shute, Mihaly & Weinberger LLP was formed after three attorneys lost their unit in the California attorney general's office in 1979.

By **Fiona Smith**

Daily Journal Staff Writer

SAN FRANCISCO — E. Clement “Clem” Shute, Jr., Marc Mihaly and Mark Weinberger were happily working in a cutting-edge environmental unit created by California Attorney General Evelle Younger when the bad news came: George Deukmejian, who had taken over from Younger in 1979, had decided to scuttle the program.

“We could have gotten ourselves assigned to criminal law, or something other than what we were doing, but we decided life was too short and we would try to see if we could carry the same model of going out and trying to promote enforcement of environmental laws and protect public values in private practice,” Shute said. “The traditional wisdom was you can’t do that and make money; you can’t do that and stay in business.”

Shute put a lien on his home to get Shute, Mihaly & Weinberger on its feet and the firm was still operating out of his house when he got a call from someone he’d advised while at the attorney general’s office. It was Tiburon’s city attorney — he’d heard Shute had opened up shop and wanted to know if he could take on a case headed to the U.S. Supreme Court.

The city on the San Francisco Bay was fighting a property owner who claimed a city zoning rule that limited development of her bay front property was a regulatory taking subject to compensation under the Fifth Amendment. In his first court appearance as a private attorney, Shute argued Tiburon’s case before the nation’s high court and won, *Agins v. Tiburon*, 447 U.S. 255 (1980).

That job paid for the firm’s furniture, but environmental law was still in its infancy and the men were not sure if they could find enough work. Their big win, however, boosted their profile and the calls started coming in.

For 31 years now, the firm has thrived representing public agencies and community groups. Its list of longtime clients includes: Sierra Club, East Bay Regional Parks District, Save The Bay, Alameda County Waste Management Authority and the University of California. The firm is currently general counsel for the Transbay Joint Powers Authority, which is planning the \$4 billion regional transit hub in San Francisco, and is also working for the Delta Stewardship Council, which is overseeing efforts to manage the water supply and environmental issues of the Sacramento San Joaquin River Delta.

From the get-go, the firm decided that while public agencies had bigger budgets than a lot of the community groups they worked with, the public agency work should not subsidize the community work, said Fran Layton, who joined the firm in 1983.

“When you have a tension between two different parts of the practice, it can create all kinds of competition and I think the hallmark of this firm ... is the absence of competition,” Layton said. “Everyone here works on both



S. Todd Rogers / Daily Journal

Attorneys Rachel Hooper and E. Clement Shute, Jr. at their firm, which is housed in an old Victorian home in Hayes Valley.

Shute, Mihaly & Weinberger LLP

San Francisco

Number of Attorneys: 25

Date formed: 1980

Specialty: environmental, land use

kinds of cases and we think we’re better lawyers and that our clients on both sides benefit from that.”

There are other ways the firm works to foster a non-competitive spirit among the attorneys. The firm’s 25 lawyers are not paid based on which clients they bring in or how many hours they bill, but by seniority. Lawyers also become eligible for the occasional four-month sabbatical based on seniority and while attorneys at other firms might worry about having their clients stolen away in their absence, it’s not an issue for them, said Layton.

“We’ve all had clients that others in the firm will take over for one reason or another,” Layton said. “That’s just not something we worry about — you want your clients to be happy and so we don’t compete for them as long as their work is getting done.”

Layton and current managing partner Rachel Hooper were among the first attorneys Shute Mihaly hired as it began to expand in its early years. With the promotion of Layton, Hooper and others, the firm is now majority woman-owned.

Shute himself stepped away from the practice a few years ago, although he is still a close adviser. Marc Mihaly left the firm in 2005 to become a professor at Vermont Law School and Mark Weinberger died that same year after a long illness.

The firm has stayed roughly at its current size of 25 attorneys for many years now and staying small enables them to represent the kinds of clients they want to work for,

Hooper said.

“We want to keep our niche practice, we want to be working on just the sort of cases that fit the vision that Clem and his partners came up with so I think there’s only a certain volume there for that kind of business, so we don’t really want to grow and become a large firm,” Hooper said.

The firm also makes its business work by keeping its rates low through a law fellow program it’s run for 26 years. The highly competitive program brings in entry-level lawyers for a two-year stint doing research and writing. The program gives the firm a constant supply of lower billing attorneys and the fellows get top-notch training and help with their next career move, said Layton.

New fellows and other newcomers to the firm are all given a map — an essential tool in getting around the labyrinthine office, which is a converted Victorian home in San Francisco’s chic Hayes Valley neighborhood.

While the office is now nestled between restaurants and boutiques, the area was down and out when they first moved into the building in 1980. But the firm stuck with it, slowly taking over suites as they went vacant and adorning their walls with pictures of open spaces they’ve helped preserve, such as the Martis Valley near Lake Tahoe and rolling green hills in Marin County.

Across the San Francisco Bay from their office, the firm helped the city of Berkeley fight off development of the remaining open space around its waterfront and marina. The landowner, the Santa Fe Railroad, wanted to build it up, but voters passed a measure in the 1980s that set limits on any development. The company sued, claiming a regulatory taking. Shute Mihaly represented Berkeley and won both in district court and at the 9th U.S. Circuit Court of Appeals.