

Taking On the Big Boys

A midsize firm competes by adding unusual practice groups

How does a midsize firm compete in the Boston legal market? How can they take on the big boys? Personal service was part of the answer we got from **David Rosenblatt**, managing partner of 125-lawyer **Burns & Levinson**. No shock there. But he also dispensed a few tidbits that may surprise you. The firm has built some unconventional practice groups, like one that handles divorce and family law work. And another that caters to the cannabis business. In the wake of all the state legalizations, it's (pardon the pun) growing. The interview has been edited for style and length.

MCC: You have been the managing partner at Burns & Levinson for almost 20 years. How has the business of law changed since you first took on this role, and how has Burns differentiated itself in an increasingly competitive environment?

Rosenblatt: One of the best parts of my job has been working on the front lines as law firms have become much more businesslike in their management practices. Better law firm management leads to the improved delivery of legal services to the marketplace and happier clients. At 125 lawyers, our firm is considered a midsize firm (we are the 13th largest in New England) and we really use that to our advantage. By design, we are populated with many more partners and partner-level attorneys than associates. We staff matters leanly without teams of lawyers at every conceivable level. We make sure that clients get direct access to partners and their expertise, and that they aren't paying for the training of young associate attorneys or for a lot of internal conferences.

MCC: Burns & Levinson launched a new brand identity and website last month. What can you tell us about it, and why was it important to the firm?

Rosenblatt: Our new brand identity is built around the concept of "amazing clients," which echoes the firm's decades of serving clients who are amazing at what they do. We try to amaze them in return with an intense focus on relationships, top-notch service and impressive results. I think the new brand will help us differentiate our firm from many of Boston's top-tier local firms that have merged with big, national, out-of-state firms to become "supersize." We've really seized the opportunity to turn our client-centered approach, smaller and more personalized service orientation and deep roots in New England into a competitive advantage.

MCC: How have clients' needs changed over the years, and how has your firm responded to client pressures to reduce the amount spent on legal work?

Rosenblatt: Clients are now demanding more expertise, efficiency and value from their outside counsel. As a Boston-based law firm, we see more and more national law firms coming into our region to take advantage of the exciting growth opportunities in important business sectors such as high tech, life sciences, health care, private equity and entrepreneurship. As a smaller law firm, we have more flexibility when it comes to fee arrangements for our clients, and our cost and overhead structure is substantially less than the very large firms.

MCC: Your corporate group has a reputation for "punching above its weight" – handling sophisticated M&A and private equity work that doesn't often go to midsize firms. Can you tell us a little about your corporate group – the type of work they do and your "secret sauce," so to speak?

Rosenblatt: As a firm, we have invested heavily over the years in building an impressive corporate group that can handle even the most complex mergers and acquisitions, securities issues and financing deals. The group also focuses on some niche industries that set us apart. We have an exciting sports practice with clients ranging from minor league baseball teams to leaders in the sports entertainment industry. For example, last year we helped the Modesto Nuts, a minor league baseball team, enter into a unique player development contract with the Seattle Mariners,

who were required (thanks to league rules) to become the majority owner of the Modesto Nuts franchise. We were able to creatively structure a deal that allowed the team to continue to run its day-to-day operations while giving up majority ownership.

Our secret sauce is probably our focus on being responsive to our clients' needs and providing the highest-quality legal services in an efficient and cost-effective way. The attorneys in our corporate group are driven by maintaining strong relationships with clients, not how many billable hours they can churn. This makes a meaningful difference to our clients.

MCC: Burns & Levinson has an impressive intellectual property group. Who are some of your IP clients, and what type of work does the firm do for them?

Rosenblatt: Our IP clients range from inventors looking to obtain patents to large corporations looking to protect their property with litigation. Our attorneys are skilled in issues involving patents, IP due diligence, trademarks, copyright, anti-counterfeiting, and privacy and security data. We have a team of seasoned litigators with knowledge in the technical and life sciences industries as well. Our IP team also has vast experience in food and drug law, and we have clients from large multinational corporations and emerging growth companies that look to us to help them navigate the many regulatory requirements in this industry.

In the IP space, there is little we can't do even for the biggest companies. For example, we handle the patent prosecution portfolio for a large global medical technology business. They came to Burns when they were looking for a law firm to handle their high-volume, complex patent filings on a fixed-fee basis in order to better manage and control patent prosecution costs. They hired us because they knew we could deliver big-firm results at midsize pricing, which is far more competitive than larger firms.

MCC: Very few major corporate law firms handle divorce and family law work, but Burns & Levinson has made it a cornerstone practice. Why?

Rosenblatt: We have one of the largest and most reputable divorce and family law practices in the country, which is unique for a corporate law firm. Most of the lawyers operating in this area are solo practitioners or small boutique firms, so they don't have the level of expertise or in-house resources to handle the types of challenging cases that we take on. We have a team of 30 attorneys in our private client group who routinely handle the messiest of divorces and most complex family law matters. Often these private issues are complicated by business ownerships, earned or inherited wealth, and diverse asset management obligations, and we know how to navigate these land mines at the highest levels, from negotiating agreements to litigating disputes.

For example, last year we won a closely watched divorce case focused on the issue of trust assets as marital property in divorce proceedings at the Massachusetts Supreme Judicial Court. This case is now the definitive law on trust interests for division of marital assets in Massachusetts, and it also serves as guidance for every one of the more than 35 states that use a similar equitable division statute. We also saved our client from having to pay approximately \$1.4 million. This decision was widely heralded as the biggest family law case of the year. We won another important appellate victory last year for a client whose ex-wife had sought part of a \$20 million bonus that our client received nearly two years after the parties divorced. We were able to overturn the district court ruling that had awarded our client's ex-wife nearly \$6 million. The U.S. Court of Appeals for the First Circuit also remanded the case with prejudice, shutting the doors to the federal courts against future claims from disgruntled ex-spouses who try to get around their state court divorce rulings.

MCC: Are there any up-and-coming practice areas that you are especially excited about right now?

Rosenblatt: I'm excited about the expansion of our cannabis business advisory group, which helps clients navigate the complex legal and business framework that surrounds the rapidly growing marijuana industry. Burns was the first major Boston corporate law firm to develop a cannabis business practice three years ago, which was initially



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By Chad Ellsworth & Amy C. Cococcia / Fragomen, Del Rey, Bernsen & Loewy, LLP

Investing in Immigration

*All the attention is on the travel bans,
but Congress has unfinished visa business*

While the Trump administration's travel bans have been front and center in the news, there still remain legacy Obama administration legislative and regulatory immigration issues yet to be addressed. Take, for example, the EB-5 visa program. An attractive program for foreign investors seeking to obtain permanent residence in the United States, it's also an increasingly important option and alternative immigration path for private clients.

Here's how it works. If an investor invests \$500,000 in a business or a new commercial enterprise (NCE) within a targeted employment area (TEA), or \$1 million in a non-TEA, they are eligible to obtain a two-year conditional green card. TEAs are designated by individual states and are locations that have either a high unemployment rate (at least 150 percent of the national average) or are located within a rural area (as defined by regulation). Once an investor has a two-year conditional green card, the conditions can be removed to obtain a full-validity green card if the investor demonstrates that 10 full-time jobs were created and sustained within the two-year period. Investors can seek to remove conditions 90 days prior to the expiration of the conditional green card.

Two Congressional EB-5 Investment Channels

At its core, the EB-5 visa program is a jobs-creation program because investors have to demonstrate to U.S. Citizenship and Immigration Services (USCIS) that 10 jobs for qualified U.S. workers were created in order to obtain permanent residence. Investors can choose between a direct investment model or a regional center (RC) model. The direct investment model is a permanent program that Congress created in 1990, allowing investors to invest in, own and manage their businesses. In contrast, the RC program, created by Congress in 1992, is a temporary program that allows investors to pool their funds in an RC without requiring the investor to participate in the day-to-day management of operations. EB-5 investors overwhelmingly choose the RC model because it allows both direct and indirect jobs to count toward the 10-job requirement. Further, the RC model gives investors the flexibility to live and work in any geographic location, as they are not tied to a physical place while managing the business.

While the RC program continues to be temporary, it's a bit of a misnomer, given its 25-year history. On December 8, 2016, via a continuing resolution, Congress extended the RC program with its current regulations intact through April 28, 2017. This extension was not unique: The program has been extended throughout the years without any substantive changes. In 1997, it was extended for three years;

in 2000, for two; in 2003 for five. However, in recent years the extensions have gotten shorter as legislators have sought to draft a comprehensive bill.

The latest such effort is a bill in the House of Representatives (H.R.5992), introduced by Bob Goodlatte (R-Virginia), but it has made little headway. The debate and eventual gridlock occurred primarily because of differing opinions surrounding TEA designations, the concentration of EB-5 investments in metropolitan rather than rural areas and the required investment amounts.

USCIS Proposed Regulations

As noted by EB-5 Program Chief Nicholas Colucci during Judiciary Committee hearings last year, USCIS has the authority to make changes, including increasing the minimum investment amounts. In the absence of legislative agreement, USCIS issued its proposed regulations in January, and they are open for notice and comment through April 11, 2017. The proposed regulations include the following:

- **Increases to Investment Amounts** There has been no increase in the EB-5 investment amounts since the EB-5 Program's enactment in 1990. To account for inflation, USCIS proposes to raise the investment amount in a TEA from \$500,000 to \$1.3 million and the investment amount in a non-TEA from \$1 million to \$1.8 million. This is a dramatic increase compared to legislative proposals such as Goodlatte's Bill, which calls for \$800,000 in TEAs and \$1.2 million in non-TEAs.
- **TEA Designations** USCIS proposes to allow any city or town with high unemployment (at least 150 percent of the national average) and a population of 20,000 or more to qualify as a TEA. Second, USCIS seeks to federalize TEA designations of high unemployment areas, rather than leaving the decision to individual states, to reduce inconsistencies and ensure greater uniformity between and within states. However, this can result in increased processing times and USCIS officers who are not necessarily experts on the local economy.

Despite Colucci's public pronouncement during the House hearings that USCIS intends to act by regulation, there is uncertainty given the Trump administration's freeze on regulations with an annual effect on the economy of \$100 million or more.

While congressional action is certainly possible to reform the EB-5 program, there continues to be disagreement over TEA designations and investment amounts, making the possibility of another short-term extension increasingly likely. Given the uncertainty, many potential EB-5 investors are choosing to file their I-526 applications before the April 28, 2017 deadline, while existing rules remain in effect.

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started as a medical marijuana practice. Now we are considered among the top law firms in the country with substantial expertise handling high-level corporate and financing deals in the cannabis market. For example, we are currently handling the formation of a large private equity fund to invest in new cannabis technologies.

Overall, our cannabis client roster includes license holders, investors, dispensaries and cultivation centers. The attorneys who run this group have unrivaled experience in the industry in everything from formation and corporate structuring to real estate and labor and employment issues. We're basically a one-stop shop for our cannabis business clients across New England and the U.S.

MCC: What will Burns & Levinson look like five years from now?

Rosenblatt: In five years, I expect our niche practice areas will continue to grow and become increasingly important parts of our firm as a whole. As the industries we serve grow and change, and new specialized needs emerge, we will stay on the forefront of these developments. No matter what, Burns & Levinson's core values will remain the same. Building relationships with our clients and providing value-added service will continue to be the key to our success and the basis for everything we do.