

## Top Boutiques of 2015

### MALPRACTICE DEFENSE

## Nemecek & Cole



Alexander Drecun / Special to the Daily Journal

From left, Jonathan Cole, Frank Nemecek and Michael McCarthy

**S**tarted with humble aspirations, Sherman Oaks boutique Nemecek & Cole has evolved into a highly-regarded, professional liability and business litigation firm, based on the legal prowess and expertise of its attorneys.

The firm has distinguished itself from other boutiques by its vast reservoir of institutional knowledge in the professional liability area.

“We’ve dealt with so many legal malpractice cases that there are very few issues we haven’t seen before,” partner David B. Owen said. “We know the law as well or better than any attorneys, and usually much better than our opposing counsel.”

Steven A. Mindel, name partner at Feinberg, Mindel, Brandt & Klein LLP, who has worked with and against Nemecek & Cole for 25 years on a variety of cases,

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commended the attorneys for their empathy and grace.

“They are super knowledgeable, compassionate and non-judgmental about their clients,” he said. “Since a lot of their work is malpractice defense work, they approach situations in a very business-like manner. They try to achieve settlement and resolution. And if they can’t, they’re gracious litigators.”

Jonathan B. Cole and Frank W. Nemecek started the firm in 1984, with the simple goal of providing for their families, Cole said. The two had worked together on-and-off since 1976.

“We didn’t have any vision at that time to be a professional liability defense firm,” Cole said.

The firm started with the two name partners and now has 10 partners. Nemecek and Cole’s

somewhat opposite personalities — like oil and water — may flummox some people, Cole said, but this dynamic chemistry is one of the ingredients to their success.

“We bounce a lot of things off of each other and always have,” Cole said. “That’s a huge benefit of being part of a team.”

Defending lawyers is not easy, Cole acknowledged, “because you’re always going to be second-guessed and placed in a situation where you’re dealing with lawyers that know what’s best for them versus what we believe.”

But their finesse in serving the insurance carriers they deal with, as well as their legal clients, has catapulted them into the highest echelon of professional liability defense work.

“The biggest challenge is getting the [insurance] carriers to know and have confidence in us,” Cole said. “Your name has

to be respected and ours is highly respected. We’ve distinguished ourselves by being no-nonsense, mean and lean.”

One recent example of a case where the firm prevailed was in its defense against a legal malpractice claim arising out of a divorce settlement, *Namikas v. Miller*, 225 Cal.App.4th 1574 (Cal.App.2d Dist. April 14, 2014). The plaintiff sued, alleging that he had to pay excessive spousal support due to his attorney’s perceived failure to obtain proper expert analysis. Nemecek & Cole filed a motion for summary judgment on the grounds that there was no proof that the plaintiff’s ex-wife would have agreed to less than the court-ordered monthly payment. In granting summary judgment, the trial court determined that without any evidence that Nakimas’s ex-wife would have accepted lower support payments, the plaintiff could not establish any connection between the attorney’s alleged error and his claimed damages, where were in the hundreds of thousands of dollars.

In cases like this, the firm’s strategy is to attack the basic elements of the claim — which in this case was causation — undercutting the claim itself, according to partner Michael McCarthy.

Nemecek & Cole has also made its mark on case law over the decades, as its appellate department has more than 46 published decisions since the firm started, in areas including legal malpractice and employment. One example is the firm’s repeated victories in anti-SLAPP litigation. The firm has experienced an approximate 80 percent success rate on these cases.

— Deirdre Newman