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Great minds thinking alike

Three appellate justices all landed jobs at the same Fresno firm.

By **Laura Ernde**/Daily Journal Staff Writer

FRESNO — At one Central Valley firm, it's pretty easy to round up a moot court. All you have to do is yell down the hall for Jim, Nick and Steve.

The three former appellate justices wound up at the same place — Dowling, Aaron & Keeler in Fresno — after they retired from the 5th District Court of Appeal.

James F. Thaxter was the first to arrive after he retired from the bench in 2001. Thaxter lured former colleague Nikolas J. Dibiaso in 2006. And last year Steven M. Vartabedian came on board to complete the panel.

While a number of firms have hired former justices, no other firm in the state is believed to boast three at one time.

"That's quite impressive," said Kevin M. Fong of Pillsbury Winthrop Shaw Pittman LLP, a former president of the California Academy of Appellate Lawyers.

Thaxter, Dibiaso and Vartabedian all were appointed to the 5th District by Gov. George Deukmejian in 1989, the year a ninth spot was added to the Fresno-based court.

Because they enjoyed working together on the court for so many years, they decided it would be nice to practice together as well.

The three of counsels share an office in a converted conference room at Dowling. Most of their work involves alternative dispute resolution, but they've also been helping the firm develop an appellate practice.

Although Thaxter has cut back on his hours, the other two are moving full-steam ahead.

Vartabedian said collaborating with attorneys and clients has been a nice change of pace from the monastic life of an appellate justice.

"People chat with us all the time. For me it's kind of exciting," he said.

The work also suits the gregarious Dibiaso, who loved being a trial judge and lists his most important accomplishment at the appellate court as doing away with ties and coats in chambers.

Thaxter said he gravitated to the firm because his niece, Lynne Thaxter Brown, practices there.

Brown said she likes to joke that Thaxter is her associate — one who shows great promise.

"They're all so fun to work with," she said. "It's heaven to me."

Another shareholder, Stephanie Hamilton Borchers left the Eastern District U.S. Attorney's office for Dowling in 2009 for the opportunity to work with the former justices. Borchers had also spent five years as a research attorney at the 5th District.



THREE'S COMPANY: Former appellate justices Steven M. Vartabedian, James F. Thaxter, and Nikolas J. Dibiaso at Dowling, Aaron & Keeler in Fresno.

"I consult with one of them on every one of my cases," she said. "They just have an experience that you can't replace, no matter how many years you practice law. There's nothing like having a judge to go talk to."

The state's major firms long have recognized the benefits of having a retired appellate justice on board.

Morrison & Foerster LLP brought on former 2nd District Justice Miriam A. Vogel in 2008. Reed Smith LLP snagged former 2nd District Justice Margaret M. Grignon in 2005. And Gibson, Dunn & Crutcher LLP hired former 3rd District Justice Daniel M. Kolkey in 2003. More recently, Irell & Manella LLP scooped up former Supreme Court Justice Carlos R. Moreno, who retired from the court earlier this year.

Dowling, Aaron & Keeler is smaller than all of those firms, although it's one of the largest in Fresno. Outside of neutral organizations like JAMS or ADR Services, there's probably nowhere you can find three former justices at one place.

"The firm is a powerhouse in appellate practice largely because of the experience of the three former appellate justices," said Myron Moskowitz, a professor at Golden Gate University School of Law in San Francisco who joined Dowling as of counsel about six months ago.

Although most of the state's major appellate work is done in San Francisco and Los Angeles, the Fresno justices point out that they can offer

the same services at about half the price because of lower overhead costs.

One case the firm is working on seeks to change worker's compensation law. Under a 1953 court ruling, companies can be held liable for fall injuries caused by seizures, even when the seizure isn't work-related.

"A lot has changed since 1953," Vartabedian said. "Companies aren't allowed to inquire about disabilities. It puts an employer in a difficult position." The case pending at the 5th District is *Harris Ranch Inn and Restaurant v. WCAB*, F063006.

The former justices are also able to size up cases to advise which ones have the greatest chance of success.

Lawyers inside and outside the firm have used the justices to test out their oral arguments in moot courts.

To mimic real life, the justices don't let attorneys give a prepared speech. They jump right in with tough questions, and they don't hold back.

Borchers said she was practicing arguing a case that involved the Department of Labor Standards Enforcement when Dibiaso asked her a question she hadn't thought of about the broader implications for the agency. Sure enough, she got that question at oral argument and was prepared with an answer.

"Appellate justices are always looking at the big picture," she said.

S. Todd Rogers / Daily Journal