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LAW FIRM BUSINESS

Quiet Zone

Appellate specialists behind *Bien & Summers*, *Elliot Bien* and *Amy Margolin*, work from the law library or home.

By **John Roemer**

Daily Journal Staff Writer

Like many appellate lawyers, Elliot L. Bien is a bit of a loner, working from a home office, using a for-hire law library and expanding or contracting his two-attorney firm, *Bien & Summers*, as business waxes and wanes.

Bien, 66, shapes his career to fit the style of the courts of appeal before which he practices.

"Appellate judges sit up in their chambers looking from a distance at the law and making sure the courts are working properly," Bien said.

For years, he's had a similarly detached view from a window beyond his computer screen at a sylvan hillside in leafy Marin County, landscaped with ferns, wildflowers and a small waterfall.

"Over the years you gradually take on their perspective," he said of the judges who read his briefs. "You come to look at the case the way they may see it, what issues and facts may matter to them, avoiding the whiny and trivial."

Bien worked with firm co-founder E. Elizabeth Summers until she retired in 2008. He's now taken aboard an of counsel, Amy E. Margolin, who works from her San Francisco home. They limit their practice to civil appeals.

"Appellate practice lends itself well to a home office," Margolin said. "The basic tools are a computer, access to online legal research and the ability to think hard about interesting legal problems and craft persuasive briefs."

When Bien needs help with specialized research or the use of a downtown conference room, he uses the Mills Law Library in San Francisco.

"They'll even messenger your documents to court," he said. "It's like having a virtual law firm without paying for a full-time staff."

Appellate practitioners come in three styles. There are heavyweight firms such as Gibson, Dunn & Crutcher LLP, whose appellate partners have defended high-profile clients like Wal-Mart Stores Inc. There are boutiques that do appellate work exclusively, such as Horvitz & Levy LLP, which currently has three cases before the state Supreme Court.

And there are Bien and his solo colleagues, who often operate out of their homes. Prominent appellate attorney, Daniel U. Smith, for instance, keeps an apartment office in the same San Fran-



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Elliot L. Bien at the Mills Law Library in San Francisco where he often goes to work.

cisco building where his home apartment is. He's partners with his daughter, Valerie T. McGinty, who works from her San Mateo home.

"This is an evolving trend," Smith said. "When I started working from a home office in 1983, judges questioned me, wondering whether lawyers didn't need the credibility of being in a downtown law firm. That question has been answered. Appellate judges themselves often work from home. This is intellectual work based on legal research. There are no depositions, investigations or trial preparation. What we do lends itself to isolation."

There was a time when trial lawyers would stay with their cases as they wound upward on appeal, writing the briefs and arguing before appellate panels. Some still do. But that approach risks missing key issues that a specialized appellate eye might glimpse.

For Chicago business magnate Sam Zell, whose real estate arm owns many mobile home parks, Bien won reversal of a \$6 million punitive damages award plus \$700,000 in attorney fees in a case over claims that a Zell park in Santa Cruz violated a state statute limiting utility bills for mobile home residents. *De Anza Santa Cruz Mobile Estates Homeowners Ass'n v. De Anza*

Santa Cruz Mobile Estates, 94 Cal.App.4th 890 (2001).

"I got the reversal on a point that had not been argued at all by the trial lawyer," Bien said. "I read the statute closely and saw that it authorized civil penalties for violations but not punitives."

He's been working on appeals for Zell ever since. In 2008, he persuaded a 9th U.S. Circuit Court of Appeals panel that a San Diego County politician who accused Zell of rent-gouging senior citizens at trailer parks must face defamation charges, reversing a trial judge who'd held the comments were protected speech. *Manufactured Home Communities Inc. v. County of San Diego*, 544 F.3rd 959.

At present, Bien is busy with appeals in a huge toxic tort case over groundwater contamination, allegedly by dry cleaning chemicals, in Modesto. He represents the city against Dow Chemical and other defendants. For that massive undertaking he drove to a Central Valley warehouse to unearth documents and brought on a contract attorney, Jocelyn S. Sperling, a former staff attorney at the 9th U.S. Circuit Court of Appeals. "I stole her away from the 9th Circuit to work on this case," Bien said.