

## Five Questions

for Kevin O'Connell of  
O'Connell & Co.

Kevin O'Connell is the senior partner and virtually sole proprietor of O'Connell & Co., which was founded in 2000 and has offices in the District and in Hong Kong. O'Connell practices U.S. and international business and corporate and project finance law and is involved primarily in foreign direct investment and general business matters in the People's Republic of China. The firm has also represented companies and individuals before the Securities and Exchange Commission in connection with enforcement matters involving possible violations of U.S. securities laws and regularly counsels companies regarding their Foreign Corrupt Practices Act obligations.

Earlier this month, O'Connell sat down with *Legal Times Metro* editor Joel Chineson to answer "Five Questions" about his practice. Below are excerpts of that conversation, edited for reasons of space and clarity.



ROBERTO WESTBROOK

### Why did you decide to start your own practice?

I started as a corporate, M&A, securities, generalist kind of lawyer and always with an international bent, first at Miles & Stockbridge and then at Semmes, Bowen & Semmes. In the early 1980s, the China market was open to independent power producers. Some of them had offices in the Washington area, and some of them wound up coming to me. And one thing led to another, and I decided it was something I really liked. As my practice got more and more focused on China, it didn't necessarily fit in the classic options in terms of a midsize, 150-, 200-lawyer U.S. law firm.

The real growth in China during the next 20 years or so will be in what is coming to be called SMEs, or small- to medium-sized enterprises, which really translates to somewhere between 20 million and 150 million U.S. dollars in size. That's really too small a practice for a Clifford Chance or a Freshfields, who talk in multiples of seven figures.

The large global law firm model—as many fee-earners as you can, the biggest deals that you can, and charge as many hours as you can, and then you get paid—I'm not saying there is any-

thing bad about this, but it isn't necessarily working in Asia anymore and particularly not in China.

The multinational corporations have come in the first wave and there are a lot of regional general counsel offices—whether in Hong Kong, Shanghai, Singapore, whatever—with good staffs, and they are doing a lot of work themselves, even M&A, but particularly the day-to-day operations stuff. Say you need to buy the lot next door to your factory or fire the general manager because he has his hand in the till. They're not farming that stuff out anymore. And also some of the GCs are saying they don't see the magic anymore of [the large international firms].

The companies, large, small, midsize, whatever—they're much more concerned about tomorrow morning. And also out there in Asia, the quality of large law firms is very uneven. Firms—all of whom you'd recognize—some of them are fabulous, the way they are in Washington and New York. Some of them are really bad. Somebody who could be horrible last year may be superb this year because there is a lot of turnover in particularly midlevel and junior staff. It used to be that if you spoke Chinese, if you were a U.S. or Chinese lawyer, and you had a bar admission somewhere, you could get a job. It has now gotten a lot more competitive than it was.

I had always had fun practicing law. But before I opened my own practice, I was having less fun and I wasn't practicing a lot of law. Now I'm practicing law almost full time and I'm having a lot of fun doing it. The Chinese use the expression *joss*, which is sort of like a mix of luck and fate and the gods watching over you and whatever, and that's pretty much what it has been. It becomes a sort of a self-fulfilling prophecy that you know what you're doing generally and people start to recognize that, and instead of just knowing what you're doing, you're becoming an expert and there's fairly decent credibility there and it's real.

## Tell us about your clients.

Most of my clients are doing either joint ventures or creating what are called

WFOEs, wholly foreign-owned enterprises, to manufacture and sell into the China market. These companies are not doing a large export of U.S. jobs offshore. Most of them are privately held. They're probably in the \$50 million to \$150 million range.

The industries include automotive parts, one for sale to the new car manufacturers—GM Shanghai is a big customer—the other is aftermarket replacement stuff. There is a large-scale commercial industrial heating and refrigeration company—actually, there's two of them. There's a forest products company, which makes parts of paper boxes it's selling to a dozen Chinese companies that are owned indirectly by a Taiwan parent. There's a company specializing in industrial steam cleaning of small types of machines that make small types of products. There's a manufacturer of equine-related products that makes plastic horse boots. I did make a list: I have clients in Maryland, Virginia, Pennsylvania, Massachusetts, Texas, Arizona, and the United Kingdom. And we've got some clients in Hong Kong, some on the mainland. Actually I'm working with a couple of economic zones in connection with their economic development.

And the most fun has been representing a cartoonist, Larry Feign, who has created a character named Lily Wong. Lily, until she got sacked by *The South China Morning Post* for saying naughty things about the government up in Beijing, was a "Doonesbury" kind of strip. Lily's married to an American guy, they've got a little kid, she has a brother who's a horse race fan, and her parents live with them in a little Hong Kong flat. And the guy is very, very good. He has a new book. Mr. Feign provides a lot of fun, and so far the cartoon police haven't jumped on him, this time. So it's a very varied practice, I guess.

A lot of what I do in China is called off the radar screen. They're not thousand megawatt, hundreds of millions of U.S. dollar power projects. The central government is not involved, generally. The approval process or mechanism for these companies, or these types of transactions, are either at the provincial or municipal level. And the Chinese have a very interesting way of separating the government—whether it's the U.S. gov-

ernment or theirs—from the individual American. They genuinely like Americans if they know or recognize that you respect them, that you understand their culture, how it's done, that it's not the typical "Sign here, let's do the deal" kind of lawyer thing.

I also think that this generation of leadership now is pretty nonideological and fairly pragmatic. But they're not going to give up control. There's not going to be a velvet revolution. But the trade-off is that it is becoming this huge capitalist country. They are concerned about stability. When they talk about progress and stability, they're concerned about keeping people working, because they don't want to be confronted with this large-scale social unrest by a lot of people who are out of work. That's why they really are fostering these foreign direct investment companies, because these are the companies that are going to absorb these people who are getting laid off from the air-conditioner and fan companies who were just making fans and throwing them in various warehouses.

## Where do you find your clients?

For starters, from referrals. Both direct, by which I would mean from one client to another, and indirect, sometimes from other law firms that don't have this capability, which is most. Their choices are few, which is nice, quite frankly. They know that I'm not going to steal their client. If you're Black & White LLP, in Philadelphia, and you've got some company in Harrisburg that suddenly finds it's going to go into a joint venture outside of Shanghai, you either go shopping for someone you feel comfortable with or you go to—well, you're familiar with the litany of big firms.

The regional law firms in the United States have had really bad experiences with [international] in terms of, suddenly, the securities work is gone or the other stuff is gone or they hire somebody as a general counsel sort of thing. So, we're not going to steal their client. In fact, most of the time the engagement letters reflect that our role is special counsel to your company for China and, as such, we look forward to working with your company with and in support of Black &

White LLP, your principal outside counsel. Everybody is, then, comfortable. The response that I get, then, from Mary Jones, who is the responsible partner for, you know, Schlunk Engineering, is entirely different than if I were at [a large international firm].

There's a fair amount of that. Or I will get cold calls. It may be a lawyer, it may be a company. A lot of times companies are not ready, but I'll talk to them for an hour and say, "Look, you need to do these six things or otherwise you'll get your head handed to you," and often—about half the time—they come back.

I also lecture occasionally—I've lectured at Wharton, I've lectured at Loyola, in their business programs. University of Maryland has the Institute for Global Chinese Affairs, and they bring in fairly sophisticated groups of upper lower, middle upper public and private executive types. This is not go to a couple of classes and then go to Disneyland or Vegas kind of thing. They're here for a month to six months. I've had an opportunity to speak to them and that has led to some in-country work. It's sort of a mixed thing. I sort of have a marketing plan, and it's sort of that. But there's also a lot of tacking and trimming.

My firm is the only nonlocal smaller law firm that is a member of the Hong Kong General Chamber of Commerce. It's also a member of the American Chamber of Commerce in Hong Kong. I'm an associate member of the Law Society of Hong Kong. I'm subject to their rules and regulations for associate members. I don't write much. I do speak selectively. That's good exposure.

It's a challenge to the time to develop business in the United States because when you're busy, you don't think about it, but when you're not busy, it's a panic and you're running around worrying who you can take to lunch.

I spoke to a legal marketer at one point. The big thing that he had was a page inside a notebook and it had one of those "no" signs—No random acts of lunch. There's got to be a focus. You've got to have a focused business development plan and use what resources are available.

## How do you measure business success?

Virtually all the work is hourly. There's a couple of matters that have involved, and do not at the moment involve, premium billing, or success fees. I do deal with melded rates, costs, budgets, that kind of thing, which is another reason why the big model doesn't work. But for the most part it's straight hourly. People at my level in Hong Kong with [an international firm] can charge out in the neighborhood of 750 U.S. dollars an hour. I don't charge that.

I have been profitable since day one. I had one big deal for the first year that basically fed everything although I wound up commuting back and forth every month. I started the practice in 2000. I came in with the millennium, I guess. I probably work 2,000 hours a year. In the big firms, you've got chargeable, nonchargeable codes, written down and accounted for. I'm still pretty hard on myself. I still use my old time sheets. I probably put in 2,000 hours a year, and I probably bill 1,300 or something like that. That obviously is not what I was billing five years ago. But I've got a measure of flexibility.

So the long and the short of it is, I guess, the criteria is that it's in the black, that it's providing a comfortable living. I don't feel like I'm totally the master of my destiny. I do occasionally feel that reality is snipping at my heels. Even

though it sometimes sounds like it, I don't think cheap is good. I don't do things on the cheap. At the same point in time, candidly, high overhead is how the firms, whether they're big or local or little in Hong Kong, also here, get into trouble. I'm not ashamed of my office here in Washington and the space we have in Hong Kong is in serviced offices that are quite attractive. The name is on the door, and Wilma Wu is there every day, but I'm not paying 350 U.S. dollars a foot for it. There's a different measure there.

Occasionally, I need to make decisions. We belonged to the National Association of Manufacturers for a year. It didn't really yield anything. I met some nice people, went to some good meetings. That amount now services the American Chamber of Commerce in Hong Kong and something called LAWASIA. And these kinds of decisions are a bang-for-the-buck kind of thing.

## What challenges to your practice do you foresee in the future?

Continuing to do what I do the way we do it and not get bogged down in the kind of bureaucracy that this stuff can lead to really fast. I don't want to grow anything significant in terms of size.

I'm agonizing now about whether I take on a full-time lawyer. There's a Chinese lawyer in New York with a big firm, and she's available and she's excellent. I'm just sort of thinking how do I do it, when do I do it? Do I post her back in Beijing, have her in Hong Kong, or whatever? I don't think I'm a control freak but part of the reason this works is that the clients know they've got all or part of me, even if it's a straight handoff to the folks in China. ■