

## No straight line

### Building an LGBT trusts practice has its own unique challenges

By **Petra Pasternak**  
RECORDER STAFF WRITER

The future looked bright in the spring of last year at One Bush Street, home to BVH Law Group. Deb Kinney and her three partners discussed hiring staff to help buttress their expanding estate planning practice: managing the wealth of gay and lesbian individuals and their families.

That niche afforded plenty of work — thanks to continual updates to state domestic partnership statutes. California's domestic partnership act, passed in 2003, for the first time treated gay families as having the same rights and obligations as straight families. This equality hasn't extended to the federal level, creating a complex and uncertain framework that demands skilled legal advice.

But in October 2006, Kinney's five-lawyer firm began to unravel. One of its former partners says it started when one of them left for family reasons, altering the firm's internal dynamics. By March of this year, Kinney was the only lawyer left, and she decided to re-launch at the same address under a new name: DLK Law Group.

"I have two people in house who are still in law school who I fully expect will stay on with the firm as lawyers," Kinney said about her plans to rebuild her office. "In the meantime, I probably will reach out and hire or associate with one or more attorneys."

Attorneys in the field say trying to build a firm for LGBT trusts and estates planning is less straightforward than in other, well-established practice areas.

On the one hand, the practice — with its relatively low billing rates and individuals as clients (Kinney charges around \$325 per hour) — is tailored for a small-firm environment. And the trusts and estates planning practice is there for the taking, as big firms have turned to more lucrative practice areas. It is also an area of growth, in line with the increasing wealth among high net-worth individuals.

On the other hand, it's tough enough to add partners and associates to any tiny practice — where harmony among personalities is as important as the technical strengths of each partner. Adding lawyers in LGBT estate planning is even trickier. Few trained associates can be picked off from big firms, and to bring someone new up to speed



SHELLEY EADES

**TRICKY NICHE:** San Francisco trusts lawyer Deb Kinney is trying to build a T&E practice centered on the gay and lesbian community, a strategy that can be lucrative but presents problems, especially in terms of recruitment.

would take time and money that most small practitioners don't have in abundance.

M. Jean Johnston, of San Francisco's two-lawyer Johnston Childress, who has more than 20 years of experience in estate planning, said she would love to hire an associate. But she says she doesn't feel comfortable charging her clients for the training it will involve. Finding more experienced lawyers is also challenging. "There are some really smart people that are getting into this area," Johnston

said. "But they want to have their own practice."

For now, Kinney is doing some creative hiring acrobatics, such as training a third-year Boalt Hall student to eventually take over and help grow another office in Santa Rosa. But she'd like to add an associate or a more experienced lawyer, or both.

"You have to find the right personalities," she said. "I'm working out how to incorporate someone."

#### EVER-SHIFTING LAW

Practitioners who focus on wealth management for the gay and lesbian community say that the work requires a little extra creativity. Johnston, who advises both straight and gay couples, said that straight families tend to have more predictable plans, with parents typically wishing to pass their assets on to children, then grandchildren, and then nieces and nephews.

The gay family is more expansive, Johnston says, and the fear that family members will challenge estate plans is greater. T&E for them requires more aggressive planning, she added.

"When you're leaving money to a domestic partner, the family of the deceased partner often doesn't offer the same respect and accord as they would to a spouse," she said. "It becomes very important to articulate what the familial relationships are."

To complicate things further, the law has been changing. Starting in January 2008, registered domestic partners in California will be able to file state tax returns as married couples, with any income earned during the partnership considered community property, or belonging 50/50 to each partner.

And the passage of an update to the domestic partnership act in 2003 imposed family law rights and obligations that apply to spouses on registered gay and lesbian couples, including spousal support, community property and presumed parentage. But again, gay and lesbian couples are only considered family under state law, not federal law, under which they are still considered strangers.

The pace of changes sent some lawyers scurrying into other practice areas. "I actually got referrals from people who would say

they won't do this type of law [anymore]," said Virginia Palmer, head of the estates and trusts group at Fitzgerald, Abbott & Beardsley. "This was so new and so different that it was a concern for a lot of practitioners."

#### LOSING A BALANCE

But while some fled, others saw opportunity. Dale Boutiette and Susan von Herrmann opened the BVH Law Group in the spring of 2003 to focus on estate matters for LGBT clients.

Over the next three years, the firm grew to five lawyers: Boutiette, von Herrmann, Kinney, an associate and another partner who handled clients from Palm Springs. Boutiette said that to make the small practice tick, the three San Francisco partners carried out a balancing act between the rainmaking and the lawyering. He said he was the bridge between the technically skilled von Herrmann and the entrepreneurial Kinney.

Kinney joined BVH in the fall of 2003. She was a real estate agent before earning her J.D. from the New College of California School of Law in San Francisco in 1995.

"It became pretty clear pretty quickly that she was obviously very passionate in this area and had a lot to offer, so we brought her into the fold," Boutiette said.

Her former partners describe Kinney, one of two gay partners at the old firm, as full of energy, and an enthusiastic advocate for LGBT rights. She has worked closely with Equality California, a civil rights organization for gays and lesbians, drafting a bill that would protect registered domestic partners from property value reassessments after transfers from one partner to another.

"She's a dynamic speaker and was very effective at getting our message out," von Herrmann said.

Everyone's role at the old firm was defined. "Deb was out there bringing in business and explaining documents to clients and not doing a whole lot of drafting," Boutiette said. "And Susan loved to draft documents — she's literally the best legal writer I've ever met, bar none."

Then last fall, Boutiette announced that he would be leaving the firm for family reasons. In February, the partner in Palm Springs died.

The differences between Kinney's and von Herrmann's management styles bubbled, Boutiette said, and by March, von Herrmann had taken her practice to 30-lawyer Fitzgerald, Abbott in the East Bay.

Associate Emma Sobol left to join Han-son, Bridgett, Marcus, Vlahos & Rudy.

In an e-mail, von Herrmann said she "was never enamored with running my own business. At [Fitzgerald] someone else runs the business and I can [focus] on my law practice."

Kinney downplayed any differences in personal outlook, saying that it was the "unfortunate circumstances" that drove the partners apart. "I very much enjoyed working with Susan," she said. "We brought out the best in each other."

#### TOUGH TO CHERRY PICK

Despite the hit to headcount, Kinney said referrals from existing clients and other lawyers keep her busy. Just over half of her client base is LGBT, she says, and the rest straight. Among her clients are Margaret Van Camp, vice president and senior counsel at Union Bank of California, and San Francisco art dealer Michael Shapiro.

Recruiting lawyers is "tough," said Sideman & Bancroft estate planner Ellen Kahn, whose LGBT client base has been growing. "It used to be that the large firms all had estate planning practices and you'd get their trained associates."

Johnston, who charges \$375 per hour, said that even at discount rates, partners and associates at big firms would be too expensive.

Fitzgerald's Palmer hired von Herrmann earlier this year because "it would take so long to train someone up."

But Kinney remains optimistic. By next spring, she says her firm will employ up to two more attorneys and two more paralegals.

"I think that there's very, very smart people that are out there," she said, "and it's just a matter of finding the right people with whom to work."

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