

Lesbian Sees A Question Of Honor

■ When an associate accused her former firm of bias and harassment, only the action she took was called unusual.

By Susan Kostal
Daily Journal Staff Writer

Shortly after she was hired as an associate at 13-attorney Capps, Staples, Ward, Hastings & Dodson in Walnut Creek, Lauren Smedley says senior associate Stephen Castronova took her aside.

Castronova told Smedley, then 25, that her lesbianism would not be tolerated by the firm, she says. They might let her work there a year, but if she hadn't left, the firm would probably find some way to fire her.

If true, it was a prophetic warning. On April 3, exactly a year after she was hired, Smedley, now 26, was abruptly terminated. In a closed-door meeting with other top partners, Smedley said managing partner William Staples told her "none of the partners was comfortable" working with her.

He left her two options: resign or be fired.

The ultimatum came one month after Smedley and attorney Sherry Glassman founded the Lesbian Feminist Bar Association. The Daily Journal ran a front-page story about the new group with a photo of Glassman and Smedley.

Smedley filed complaints with the state Department of Fair Employment and Housing and the federal Equal Employment Opportunity Commission in May.

After Smedley obtained a letter giving her permission to sue, she and her attorneys filed a sexual harassment and discrimination suit Aug. 8 in U.S. District Court in San Francisco. Five attorneys at the firm were named individually as defendants.

Neither the state nor the federal agency made any determination on the veracity of her claim. A status conference in the case is scheduled for Dec. 5 before U.S. District Judge William Orrick.

Smedley's suit is uncommon, but she said her experience is not. "An amazing number of lesbians fear for their jobs," she said.

Such public complaints about how gay and lesbian lawyers are treated in the Bay Area are rare. Private complaints, however, are plentiful.

The Bar Association of San Francisco's committee on gay and lesbian issues says blatant discrimination continues, and has catalogued some examples in an August report on the issue.

Attorneys are subject to conscious and unconscious discrimination, according to the study, as well as the belief that the firm's cli-



CRISTINA TACCONE/Daily Journal

THE ADVOCATES — "I have heard from a number of lawyers who have . . . acknowledged that there is a great deal of homophobia in the legal community," said Hannah Schwarzschild, left, who, with Jody I. LeWitter, right, is representing Lauren Smedley in her case against her former firm.

ents may prefer not to be represented by gay or lesbian attorneys.

Many legal employers in San Francisco have not yet "sensitized" themselves and their employees about attitudes, policies and practices that illegally and adversely affect gays and lesbians, said the committee, which attempted to address the status of gays and lesbians in law firms and offer suggestions for employers.

Being "out" about one's sexual orientation at work, even in the Bay Area, is still not

wholly condoned. One recruiter from a major firm, for example, has said that gays and lesbians should "do their work" and "keep their mouths shut," the BASF report said.

Heterosexuals associated with gay and lesbian causes face the same discrimination. A Hastings College of the Law student reported that when he listed his summer clerkship experience with National Gay Rights Advocates, he was not granted a single job interview. When he removed it from his re-

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sume, he received multiple interviews and several job offers.

Usually, such anecdotes are kept private. No names are used. Smedley's suit, however, has brought the issue into the open.

Liz Hendrickson, former cochairwoman of Bay Area Lawyers for Individual Freedom and executive director for the San Francisco-based National Center for Lesbian Rights, said she knows of no other lawyer who has suffered similar retaliation for participation in gay or lesbian legal groups.

Bruce Carolan, an attorney with the city attorney's office and cochairman of the BASF committee on gay and lesbian issues, agreed. "Most employers are more sophisticated," he said.

While Smedley's situation is "especially clear or oppressive," other attorneys face similar harassment, according to her attorney, Hannah Schwarzschild of Oakland's Doskow & Schwarzschild. "I have heard from a number of lawyers who have in one way or another acknowledged to me that there is a great deal of homophobia in the legal community," Schwarzschild said.

Nor was the treatment Smedley received as a woman different from that of other women, said Schwarzschild: "I think that as far as other sex harassment cases, this is not all that atypical."

Capps Staples and its attorneys have refused to comment on the litigation or Smedley's employment. The firm's attorneys, Richard E. Dodge and Denise Bilups-Slone of Walnut Creek's McNamara, Houston, Dodge, McClure & Ney, also refused to comment.

In their response to the suit, filed Oct. 21, the firm alleges Smedley "failed to use ordinary care and diligence in the performance of her duties and failed to comply substantially with the reasonable directions of her employer."

In other words, she was fired for cause.

In a summer interview with the Daily Journal, Staples said Smedley's allegations "are all completely false. There was no discrimination at all." Staples said the Daily Journal article had "nothing to do" with Smedley's departure.

Smedley admits she was young and naive in her expectations that she would fit in at Capps Staples. The firm, she says, is a conservative, traditional one. One of Smedley's two attorneys, Jody I. LeWitter of Oakland's Eggleston & Siegel, describes the firm as "a real Contra Costa County insurance defense firm. It's pretty white and male."

Much of Schwarzschild's practice involves representing plaintiffs in lesbian, gay and HIV discrimination cases. LeWitter represents a broader range of plaintiffs in employment discrimination cases.

According to the Martindale-Hubbell Law Directory, Capps Staples' clients include insurance companies and Contra Costa County. Several Walnut Creek attorneys said the firm is generally reputable.

The firm has represented defendants in civil rights cases. Staples recently represented a Walnut Creek apartment complex owner who was charged with discriminating against a black man by refusing repeatedly to rent him an apartment.

The Fair Employment and Housing Commission awarded the man \$50,000 in compensatory damages and \$40,635 in punitive damages. In August, the California Supreme Court slashed the award to

\$1,000, saying the department lacks the authority to award damages for emotional distress.

The notion that Smedley might not fit in at the Walnut Creek firm, which is miles away from San Francisco and perhaps worlds apart, did not occur to her, she said. She had suffered no job discrimination at her previous post at Protection and Advocacy Inc., a Oakland nonprofit group focusing on the rights of the mentally and developmentally disabled, and did not expect it anywhere else.

The Capps Staples partners learned they had hired a lesbian soon after she started in April 1990, she says. And they weren't happy. One associate told her a partner "loathed" the fact she is a lesbian.

Smedley said that in a handwritten note in September 1990, partner Kenneth C. Ward told her not to discuss lesbianism or lesbian political issues at firm social events.

"He [Ward] indicated associates were expressly prohibited" from any outside activity, Smedley said, and gave the example that if a young associate was active in the National Rifle Association, Ward would discourage it.

Smedley kept the note, now part of her case against Ward, a named defendant, and the firm.

Smedley said she made several attempts to leave the firm, but was cautioned by headhunters to stay at least one year. The few resumes she did send out got no response, she said.

So, according to her suit, she endured a year of sexual harassment and discrimination in an environment "requiring women to submit to sexual harassment as a term of employment."

The other women at the firm were aware of the harassment, Smedley said, and some suffered similar abuse. When she first started at the firm, partners Marsha L. Stephenson and D. Jean Hastings took her to lunch and "warned me about the sexism in the firm," Smedley said.

In Smedley's case, that harassment included sexual and homophobic comments her attorney described as "blatant and gross" and, her suit alleges, "unwanted physical touchings."

The suit specifically alleges that partner James A. Allen "repeatedly inflicted unwanted touchings on plaintiff," including holding her against a wall and putting his arm around her.

Another issue that divided Smedley and other firm members was the firm's smoking policy.

Smedley, who suffers from asthma, had complained that the smoke in the office made her ill. The firm, however, failed to remedy the problem, Smedley's suit alleged, forcing to her report the firm to the California Occupational Safety and Health Administration.

The tensions culminated, Smedley said, with her firing April 3 after she returned from a two-week vacation in Mexico.

When she returned to her office, her Dictaphone and several files were missing. While searching for them, she discovered the partners were holding a closed-door meeting in Staples' office.

Around midmorning, the meeting adjourned and she was asked to join Staples and partner John Hollingshead.

Staples began by telling her "none of the partners" was comfortable working with her, Smedley said.

"He said that some things I had done



SIBYLLA HERBRICH

LAUREN SMEDLEY — "They irreparably damaged my professional reputation. I have to clear my name."

made it clear I did not take my job seriously," Smedley said. It was clear Staples was referring to her recently publicized participation in the Lesbian Feminist Bar Association, Smedley said, which made the partners "livid."

Staples told her the only solution was to "sever the relationship," Smedley said.

"I was completely shocked," she said.

Though Smedley said she never before received a formal written review or even an informal assessment of her work at Capps Staples, Staples then handed her a typed document, purportedly her annual review.

In an attempt to fashion a paper trail that would show she was fired for cause, the partners had combed through her billing records, Smedley said. Criticisms included that she had worked .7 hours on a task that took a more experienced attorney .2 hours, Smedley said. None were serious or valid criticisms, she said.

Smedley was given two weeks' pay and told to leave that day. She is now working as a contract attorney while she looks for full-time employment.

According to Smedley, the harassment did not end after she was fired.

Smedley said that after she told a reporter she intended to file a discrimination complaint and the reporter sought the firm's comment, she received a threatening phone call. "You're gonna die," a caller told her in a raspy voice.

The Walnut Creek police investigated the threat, but made no arrests.

If the facts are as Smedley says and she was fired for her participation in the Lesbian Feminist Bar Association, the law is clearly on her side, and has been for years.

The state Labor Code prohibits employers from attempting to influence their employees' political activities and affiliations by way of discharge or threat of discharge.

In 1979, in *Gay Law Students Association v. Pacific Telephone and Telegraph*, 24 Cal.3d 458, the California Supreme Court ruled that discrimination against individuals who identify themselves as gay or lesbian violates the Labor Code.

Smedley said she had no choice but to file the suit.

"I am a professional. They irreparably damaged my professional reputation. I have to clear my name," Smedley said. But she realizes that filing the suit makes her a "less-desirable job candidate," she said.

The case will no doubt get dirty, said LeWitter. "It's the only way to defend a case like this," she said.