

DAY IN MEDIATION

City council approves plan to hear discrimination complaints out-of-court by Inga Sorensen

It was a hard lesson for her son to learn, Donna Zenobia-Saffir told the Portland City Council.

Not that Zenobia-Saffir, mother of both a gay and a straight son, had that much explaining to do. After all, the city commissioners were vocal, adamant and unanimous in their support for the measure Zenobia-Saffir had come to bolster via her testimony.

"When my boys were growing up...we taught them that this country stood for liberty and justice for all," said Zenobia-Saffir, a highly active member of the Portland chapter of Parents, Families and Friends of Lesbians and Gays. She shared how her family experienced "great agony" as her gay son came to realize "liberty and justice for all didn't include him."

Zenobia-Saffir was among a handful of supporters who journeyed to City Hall July 22 to call upon Portland city commissioners to approve a mediation program to help settle disputes involving those who feel they may have been discriminated against due to their sexual orientation. No one spoke against the proposal.

Nearly seven years ago, the Portland City Council unanimously approved a landmark ordinance barring discrimination based on sexual orientation in employment, housing and public accommodations. Last September, however, a Multnomah County circuit judge declared a vital component of the measure invalid, obliterating the section that permitted individual citizens to enforce their rights under the ordinance in state court.

In a crisp, one-sentence finding, Judge Pro Tem Monte Bricker wrote: "I find that the city of Portland has no authority to confer by ordinance access to Circuit Court by a private party."

The ruling stemmed from a case involving Besaw's Cafe in Northwest Portland and plaintiff David Sims, who claims he was fired from his job as a Besaw's cook because he is gay—a charge Besaw's owners, Richard and Geri Beasley, have publicly denied.

In his ruling, Bricker did not consider the merits of that particular case, but instead agreed with the argument served by the defendants' attorney, Charles W. Carnese, who said Sims had no right to take a city matter to a state court.

Under the judge's ruling, those who feel they've been discriminated against on the basis of sexual orientation have no recourse in the courts, because sexual orientation is not a protected category under current state or federal civil rights laws. (People are covered on the basis of many other factors, including race, gender, national origin, religion and age.)

State law allows those claiming discrimination two methods to enforce their rights: They may make their case to the Oregon Bureau of Labor and Industries, and/or may exercise an independent right of access to the courts to directly enforce their rights.

While the city's ordinance still stands, Bricker's decision disposes of one of the two enforcement avenues for cases involving sexual orientation.

The city is appealing the decision, but in the

interim has attempted to find a way to address discrimination claims. Though council members conceded it's far from a perfect solution, at the July 22 hearing they approved a one-year, \$50,000 mediation pilot program to help settle disputes involving those who feel they may have been discriminated against due to sexual orientation. Participation in the mediation program—which should be in place by mid-September—is voluntary, and the identities of the involved parties will remain confidential.

Immediately prior to passing the measure, Mayor Vera Katz—along with Commissioner Erik Sten and Senior Deputy City Attorney Madelyn Wessel, who received a round of applause for her dedication to finding alternatives to addressing discrimination claims while the Sims case is on appeal—commented on the failure of state and federal lawmakers to approve anti-discrimination laws. If legislators previously had approved such laws, argued the trio, the Rose City's ordinance wouldn't be in such a precarious position.

"We need to make an issue of this now," said



Portland commissioners approve mediation program

Sten, as he chastised Oregon lawmakers' persistent refusal to pass an anti-discrimination law that includes sexual orientation.

"There's a tyranny of the minority going on in the Legislature," he said, adding that could change if people got involved in the political process.

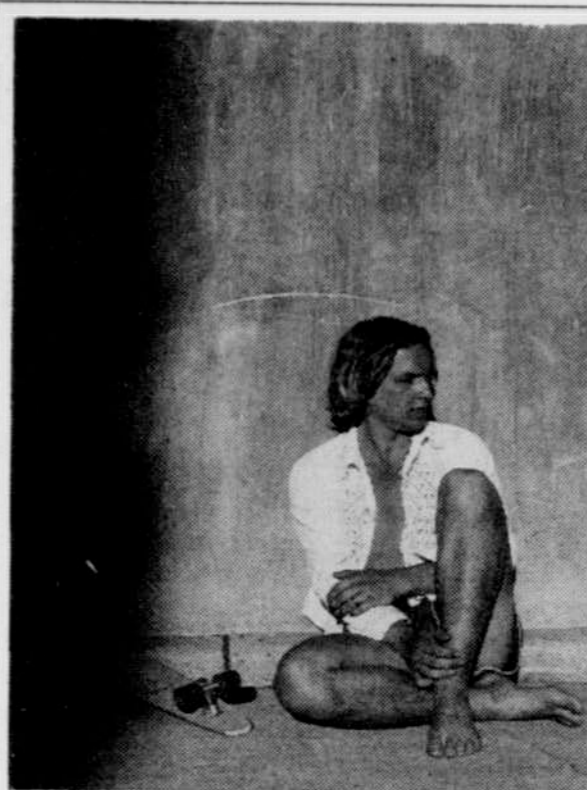
Diane Rosenbaum, a Democrat vying for the District 14 House seat in the November general election, told commissioners she wants to be one of those new legislators working toward equality. A longtime labor advocate and past chair of the Oregon Commission for Women, Rosenbaum also applauded the City Council's consideration of the mediation program, but said the project will only be effective if people know about it.

Samuel Imperati, executive director of the Portland-based Institute for Conflict Management and a part of the mediation team, says the team plans to conduct outreach. He adds he firmly believes mediation is a viable alternative for people caught in conflict.

"It gives folks a chance to explore their underlying business and personal personnel needs," he tells *Just Out*.

Imperati, who happens to be an attorney, maintains mediation—unlike the often-antagonistic litigation process—promotes understanding of varying viewpoints in a safe, confidential setting.

"The court system is not a vehicle to promote education and understanding," he says. "A skilled negotiator can do that, and help craft creative solutions as well."



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