

MEDIATION MARCH

One year after a state judge refused to hear a discrimination claim, another avenue of redress opens in the Rose City by Inga Sorensen



The Portland City Council approved the mediation program in late July

Think you were fired because of your sexual orientation? Perhaps you believe you were passed over for a promotion because you are gay, lesbian, bisexual—or yes, even heterosexual. Are you an employer who wants to foster an environment that is gay-friendly? You now may have a place to turn.

The city of Portland's new mediation program—designed to help settle disputes involving those who feel they may have been discriminated against due to their sexual orientation—is up and running.

In late July, the Portland City Council unanimously approved the one-year, \$50,000 mediation pilot program. During a hearing immediately prior to the vote, several people testified in favor of the move; no one spoke against it. The free program was opened for business effective Oct. 1.

According to mediator Mary Forst of Mary Forst Associates, a team of mediators is poised to handle an array of conflict-resolution situations.

"Maybe a person has already been fired and is seeking justice, or perhaps an employer wants to prevent such a situation from ever arising," she explains. "This program may be able to help with the preventative and the after-the-fact situations," she says.

Mediation proponents also contend the negotiation technique can sometimes lead to "creative solutions," as well as promote understanding of varying viewpoints in a safe, confidential setting—and in a way that is less antagonistic than utilizing the legal system.

It has been a long and laborious path getting to this point, and it is a path still being paved. Nearly seven years ago, the city commissioners unanimously approved an ordinance barring discrimination based on sexual orientation in employment, housing and public accommodations. In September 1997, 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, 2301 N.W. Savier St. in 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 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.)

Under state law, those claiming discrimination may use 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 ordinance still stands, Bricker's decision disposes of one of the two enforcement avenues for cases involving sexual orientation. Thus, a person claiming age discrimination within the city of Portland, for example, has an ability to enforce his or her rights at an agency level or in court. A gay or lesbian person suffering the same discrimination now only has redress through the agency process.

The city is appealing the decision, but in the interim attempted to find a way to address discrimination claims, hence the creation of the mediation program. Participation in mediation is voluntary, and the identities of the involved parties will remain confidential. All of the parties must agree on the mediator.

Though some politicians and community members have conceded it is far from a perfect solution, they note it's better than nothing.

Still, during the July 22 council meeting, Mayor Vera Katz and Commissioner Erik Sten were among those who commented on how they would like to see state and federal lawmakers approve anti-discrimination laws; if legislators previously had, they said, Portland's ordinance wouldn't be in such a precarious position.

■ To access the city of Portland's new MEDIATION PROGRAM, call 274-9886. The program is free, and callers may remain anonymous if they choose.

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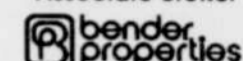
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