



ATTORNEY ACCOLADES

Portland attorney Lynn Nakamoto is helping to change the legal landscape for gay men and lesbians by Lisa Bradshaw

From the 30th-floor reception area in the offices of Markowitz, Herbold, Glade & Mehlhaf, the view is amazing. It seems to offer a window to the entire east side of Portland.

I hoped attorney Lynn Nakamoto would keep me waiting. She didn't.

No matter, the view from her office is almost as good. But most impressive is the work done here. From this modest corner office, Nakamoto has been at the forefront in helping to change the face of civil rights law in Oregon.

Nakamoto's firm practices employment law, which consists largely of business litigation—contracts, corporate matters, commercial transactions that "for some reason are not going well," she says.

Many of her personal cases, though, are about employee rights violations, often involving a challenge to discriminatory policies or unfair employment practices.

In 1992, the American Civil Liberties Union Foundation of Oregon got a call from Portland attorney Carl Kiss. He was asking for assistance on a case involving three lesbian Oregon Health Sciences University employees who were suing for domestic partner benefits. Could the ACLU provide a "friend of the court" to help with research and to present documentation? The ACLU turned to one of its volunteer lawyers who regularly worked with such cases. It was Nakamoto.

"I said yes. It sounded like a great thing," she recounts.

First, Nakamoto enlisted the help of the Lambda Legal Defense and Education Fund, a national advocacy organization for gay men and lesbians, then she got busy on a brief and began collecting supporting information.

It was important that the representatives for the plaintiffs present statistics about gay people that they "weren't really sure the judge would have," explains Nakamoto. "You know, that this is not some bad idea that's going to cost everybody a lot of money...that this is not unusual; a lot of people have done it. I think people assume that if we're talking about health care for gay people, that gay men and AIDS are going to just be a significant upfront cost that's going to be prohibitive for employers to make premiums, and that's just not been the case."

Nakamoto's debunking of gay and lesbian stereotypes must have had some impact, because in 1998 the Oregon Court of Appeals not only awarded the plaintiffs the benefits they sought, it said those same benefits were to be made available to every gay or lesbian government employee in the state of Oregon. The now famous *Tanner vs. Oregon Health Sciences University* decision covers all public agency and local government workers, while also making it illegal for Oregon's private employers to dis-

criminate on the basis of sexual orientation. The ruling went above and beyond what anyone involved in or closely following the case expected.

"It was thrilling; it was an amazing decision," says Nakamoto. "Personally, it was very exciting."

Although other states offer domestic partner benefits to state employees, *Tanner* is unique in the nation because of its basis in the state constitution.

A section of the Oregon Constitution, cited by the plaintiffs, states that it is an unlawful employment practice to discriminate against a person because of sex or because of the sex "of



any other person with whom the individual associates." Therefore, state agencies, by giving benefits only to the partners of married employees and not to the partners of gay and lesbian employees, are discriminating based on the sex of the partners with whom those employees associate.

"The case as a precedent is just fantastic, because the court went out there and said gay people can be considered a protected class. There's no appellate court decision that's not been overturned by a higher court that says that," notes Nakamoto.

Then there was the litigation around Portland's civil rights ordinance.

In 1991, Portland passed an ordinance to protect certain citizens who were not covered by the state's laws governing discrimination in employment, housing and public accommodation. Sexual orientation was included as a protected status in the ordinance, which gave citizens the right to file a claim in state court.

In a 1997 case known as *Sims vs. Besaw's Cafe*, a judge ruled the right-of-action clause in the ordinance was unenforceable.

"The argument by the defendant was you could have the city investigate and you could have the city make a determination and you could have all sorts of administrative remedies," Nakamoto explains, but the pro tem district judge claimed "the city had no right to authorize people to go into a state court to make a claim about that violation."

The city, the plaintiff and the ACLU disagreed, and Nakamoto received another phone call asking her to act as a friend of the court in the appeal process. She did. They won. Mem-

bers of the queer community can continue to pursue court action for discrimination in the same way as other protected classes.

Most recently, Nakamoto was in the news via her role as the attorney representing Damon Woodcock, a transsexual officer with the Portland Police Bureau.

The Portland Fire and Police Disability and Retirement Board recently denied Woodcock's claim that he suffered stress from harassment at work. Nakamoto and Woodcock maintain that Woodcock had been the target of a bias crime within the bureau due to his sex-reassignment surgery, and that the bias incident created fear and stress. (Woodcock hasn't worked since a locker defacement incident last summer.)

Of the board's decision, Nakamoto told the media: "We are definitely going to appeal this."

Did Nakamoto expect her career to take her to the front lines, expect to be part of so much progressive change? Sure.

"I did go to law school as an idealist, and I did intend to do public interest sorts of law," she says. "That really was a motivator for me to go to law school—to think that the law could do good things."

She even expected the gay rights movement to provide her with the kind of work she wanted to do.

"There was a very active lesbian and gay law students association where I went to law school. It clearly was going to develop into cutting-edge public interest law," she recalls.

Nakamoto grew up in Los Angeles, but relocated to Massachusetts to do her undergraduate work at Wellesley University, where she majored in philosophy. Although that chosen field of study upset her father—an electronics technician—she thinks she put it to good use in law school.

"You're taught argumentation and logic, putting forward your ideas clearly, articulating why the other side has not done so and is wrong," she says. "I think there's some application between the two disciplines."

While at Wellesley, Nakamoto, now 39, met her partner. After graduation, Nakamoto headed to the Big Apple to attend New York University School of Law. A year later, her girlfriend joined her in New York and attended NYU's School of Medicine. After the duo successfully completed their respective studies, they decided to head west.

"I told her, 'You pick anywhere on the West Coast and I'll go with you.' I'd never been to Oregon in my life," Nakamoto explains.

Her partner could not resist the residency program at Legacy Good Samaritan Hospital.

Nakamoto refers to the differences between the demographics of Portland and New York as "shocking" and acknowledges that the transition was somewhat difficult, but she says they are here "for the long haul."

She and her partner have a nearly 2-year-old daughter, and Nakamoto notes that parenting, like law, is hard yet rewarding work.

"We're getting old. We started out a little late on this parent thing," she says.

I joke that her dad must be very proud. "Yeah, I guess it's OK I'm not an engineer," she says.

I guess it's OK by Oregon, too.

■ LISA BRADSHAW is a Portland-based free-lance writer.



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