

LEGAL BRIEFS

"Breaking up is hard to do" Using Alternative Dispute Resolution

BY BETH ROBINSON AND SUSAN MURRAY

When Joanie and Lucy bought a house together, they used money from Joanie's retirement plan for a down payment. Since neither one of them could afford to pay for a house by herself, they agreed to contribute equally to the mortgage and upkeep. They pooled their paychecks in a joint account, and used this account to buy the treadmill that Joanie had always wanted, and the car that Lucy needed. Lucy was also the primary care provider for Joanie's young daughter, although they did not get a second parent adoption. After five years together, Lucy began seeing another woman, moved out of the house, stopped paying for half of the mortgage and expenses, and asked Joanie to buy out her half of the equity in the house. Joanie felt that all of the equity in the house was hers, since she had contributed the down payment five years earlier. She struggled to keep up with the house payments on one pay check, and refused to let Lucy spend any time with her daughter.

Ken and Ralph moved into a house Ralph had purchased as a fix-'er-upper. Since Ralph had a high paying job, they agreed that, instead of working outside the home, Ken would spend his time doing the carpentry, plumbing, electrical and landscaping work needed at the house. Ralph paid for all the materials, and Ken did all the labor. Once the fix-up work was done, Ken continued to stay at home, tending to the house and gardens, caring for their various animals, and doing all the cooking, cleaning, and other work around the house. Ken and Ralph never put the house in joint names, and never signed any other kind of agreement regarding their living arrangement. After ten years together, Ralph told Ken to move out of the house.

Joanie and Lucy, and Ken and Ralph, are not unusual; couples in our community frequently combine their resources and assets when they decide to live together, but they rarely sign any agreements to help them resolve their financial disputes should they break

up. Since they are not married, these couples cannot avail themselves of the divorce laws and the family courts, which are equipped to deal with break ups. Such couples must resort to filing breach of contract and partnership claims in the civil courts. Unfortunately, such lawsuits are very slow, very costly, and very hard to prove. They are also very public, which means that the couple must come out of the closet in legal documents that are open to the public, and will have all of their dirty laundry recorded in the courtroom for the all to read and hear.

Fortunately, there is an alternative: Alternative Dispute Resolution, or "ADR." The two most common forms of ADR are mediation and arbitration. Mediation involves hiring a neutral third party to sit down with both of the parties to try to help them resolve their disputes themselves. The mediator will try to flesh out each party's needs and fears, and will suggest possible solutions; the point is to empower both parties to work out a mutually agreeable solution. Mediation is not for everyone, however; if there has been abuse in the relationship, or an imbalance of power dynamic, mediators are not likely to agree to take on the case.

The theory of mediation is that parties are more likely to abide by a resolution if they work out the solution themselves, rather than have the solution imposed on them. Thus, although a mediator can prod and encourage, a mediator will not impose a solution on the parties.

In contrast, an arbitrator will make a "decision" for the parties. The arbitrator will listen to both sides, examine any documents the parties submit, and impose a resolution. Thus, an arbitrator is a neutral third party who acts as a kind of private judge, hired by the parties for that specific purpose.

Both arbitration and mediation have substantial advantages over a court proceeding. While a court action can take up to three years, mediation and arbitration usually are much faster proceedings, which means that the parties can get on with their lives

much more quickly. Mediation and arbitration can also be substantially cheaper than going to court; although the parties pay the mediator or arbitrator, they may not have to hire attorneys unless their financial arrangements are complex or unusual. Finally, mediation and arbitration have the advantage of allowing the parties to resolve their differences in private, without making their dispute a matter of public record.

One of the problems facing gay and lesbian couples who are breaking up is the scarcity of arbitrators or mediators who are knowledgeable about and sensitive to their particular needs as gay couples. As gay attorneys who frequently represent g/l clients and also practice family law, your writers offer mediation and arbitration services for g/l break-ups. There are also other qualified folks within and without our community who can serve as mediators and arbitrators. Breaking up is hard enough without also having to deal with the homophobia or ignorance of an arbitrator or mediator.

The g/l community would do well to try to use ADR to resolve its break-up disputes. Ideally, we would all enter into co-habitation or co-ownership agreements at the outset of our relationships and ensure that ADR provisions are included in those agreements. Even if we don't have such contracts, however, we can still agree at the end of a relationship to work through ADR to resolve our differences.

Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury, Vermont whose practices include employment issues, family matters, estate planning, personal injury and worker's compensation cases, and general commercial and civil litigation. This column features timely information about legal issues of interest to our community. We hope to provide information about important laws and court cases that may affect our rights, as well as practical nuts and bolts advice for protecting ourselves and our families. If you'd like to see us cover a particular topic, please feel free to write OITM or call us at 388-6356.

ON THE OTHER HAND...

Bisexuality, does it mean non-monogamy?

BY KIMBERLY A. WARD

There is a misconception common to any discussion on bisexuality or the acceptance of bisexuals into the queer community. The general argument against bisexuality (or why people insist it is a promiscuous, confused state in which to be), is that bisexuals are not satisfied with only one gender, hence neither are they satisfied with one person and that this is their ultimate downfall as honest or trustworthy people.

This misunderstanding is rooted in a basic lack of knowledge or understanding about the nature of the sexual orientation known mostly as "Bisexual", (How many people label themselves when they know that they love/or have loved people of all genders.) It would be nice to clear up this misconception once and for all. So Herein, will follow the myth buster.

First of all, when describing oneself as bisexual, people describe their "orientation" not their actions. It is a way of saying "I have been attracted to more than one gender in my life, and will probably always be". It does not mean that a person is saying, boy I can NEVER have sex with just women or just men. On the contrary, a bisexual's orientation is made up of the way they bond with people, have affection with people, communicate their innermost feelings with people and also desire people. This is a conglomeration of feelings and attractions related sometimes to sex and others to affection/trust/love.

This does not mean that bisexuals are "just like everyone else" and all monogamous, either. What it does say is that they are bisexual first, monogamous or polyamorous afterward. The fact is that people of all orientations have differing opinions about how relationships are formed and kept. For instance, the myth that all gay men are promiscuous people who can't commit because, one they are men and their hormones prevent it and two they are gay and their is no social construct for which they can look to is hogwash. So the fact that every talk show in the country has had a need to parade bisexual/polyamorous people on their shows and make their decisions about life a farce, does not mean we should believe it, anymore than we should believe that lesbians have penis envy.

The fact is a good proportion of the bisexual community that I have met in my work with Bisexual Network, USA have been outwardly polyamorous and this is not just a matter of sleeping around. these are people who form triads and have children with three adults in the family because they all agree they want to have a close life. These are people who believe that monogamy has become a bit of a regime in the world and don't want to fall in line.

There is also a good proportion of bisexuals that I know who find themselves swimming in a sea of inner biphobia because they do not want to be polyamorous and think they have to, along with many of us who know we are monogamous and fight daily to let people know that bisexual is a matter of what gender we are attracted to, not how many people we want at once.

But let me give some questions to you to ponder. If you are a gay man or lesbian woman, or if you are a transgender person who finds themselves to be gay or lesbian, when you are walking down the street alone, are you still gay or lesbian? Of course you are. It's not necessarily written on your forehead, but it is in your heart and head. If I am a bisexual dating a woman. Am I a lesbian really? No. I am still bisexual in my heart. I still see a nice looking man and can appreciate him. I don't have to sleep with everyone cute that I see. There are plenty of people of ALL orientations who do, though. As well, there are plenty of people who are happy being carefree and single. Who they sleep with is really none of our business.

Recently at the VCGLR town meeting there was a wonderful chance for the bisexual woman's and the lesbian community to meet. A lot of what I heard from the lesbian community made me frustrated. One of the things I remember hearing the most was that many of these women felt they had made a political decision to identify as lesbians. they still slept with men when the mood hit them and found that was their right, but did not understand why a woman would cut herself off from the affirming community of the lesbian world by identifying as bisexual. I would like to say that the fact is simply that bisexual women are standing up to be counted both for personal and political reasons as well. First of all, we feel a need to get the healing done and let our entire sexual orientations out, come out of the second closet as it were and be healthy inside ourselves. Secondly, I would have to say personally that it is also a political statement to not hide myself in the lesbian or straight worlds simply because repressing half of my personality will make others comfortable. I personally choose to claim a bisexual identity knowing that it means more work for me, and for the bisexual community it means a growth that we need, just as they choose to call themselves lesbian to help the women's community grow.

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