

Navigating the new landscape of LGBTQ divorce

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Edited by

ABBIE E. GOLDBERG
and **ADAM P. ROMERO**

LGBTQ Divorce and Relationship Dissolution

*Psychological and Legal
Perspectives and Implications
for Practice*

OXFORD

Credit: Oxford University Press

The right to marry means same-sex couples have gained access to thousands of state and federal benefits like social security benefits and inheritance rights. But it also means the right to divorce. In their new book, [LGBTQ Divorce and Relationship Dissolution: Psychological and Legal Perspectives and Implications for Practice](#) (Oxford University Press), co-editors Adam Romero, Arnold D. Kassoy Scholar of Law and lecturer in the Williams Institute at UCLA School of Law, and Abbie Goldberg, professor of psychology at Clark University, provide a comprehensive resource for researchers, students, lawyers, therapists and LGBTQ people navigating their own relationships.

In a recent interview, Romero and Goldberg discuss some of topics in their book, including factors that make LGBTQ relationships unique, [legal issues](#) related to divorce and parenting, and advice for divorce attorneys working with LGBTQ clients.

Why did you decide to publish this book?

Romero: There is relatively little research on relationship and dissolution patterns among lesbian, gay, bisexual, transgender and queer people. Now that same-sex couples have the right to marry nationwide, we saw that there was a whole new phenomenon of same-sex divorce that needed scholarly attention. As we dug into the issue, all kinds of fascinating questions jumped out. For example, what are the divorce rates for LGBTQ people versus non-LGBTQ people? What happens when divorce law—which was developed around straight couples—is applied to LGBTQ people's relationships? How do marriage or children

impact LGBTQ relationships? What about LGBTQ people who lose a partner to death, which is another kind of dissolution? Our book brings together a wide variety of experts from different disciplines—law, psychology, sociology, political science, etc.—to explore these questions and others.

How are LGBTQ relationships different from straight relationships in terms of quality and longevity?

Romero: Research suggests that many of the same factors that create instability and strife in straight relationships, such as financial stress, also affect LGBTQ relationships. But LGBTQ people also experience unique factors that can affect their relationships. For example, same-sex couples tend to be more egalitarian than different-sex couples in terms of household labor, which is generally a protective factor for their relationships. But LGBTQ people also experience minority stressors, such as employment discrimination or unaccepting families of origin, which can destabilize relationships. More research is needed, however, including to better understand differences and nuances by race/ethnicity, socioeconomic status, geography and so forth. Also, keep in mind that many LGBTQ people—especially bisexuals and transgender people—may be in different-sex relationships.

Have same-sex couples rushed to the altar since same-sex marriage became legal nationwide?

Goldberg: As one would expect, there was a rush to get married in the years immediately following the Supreme Court's 2013 decision in *United States v. Windsor*, which granted same-sex spouses federal recognition of their marriages, and again after the 2015 decision in *Obergefell v. Hodges*. The number of same-sex couples marrying each

year seems to have leveled out now. In 2017, there were approximately 547,000 married same-sex couples in the U.S., up from 230,000 in 2013. Today, marriage is a reality—though it sometimes seems tenuous given the current political climate.

Does marriage mean same-sex couples are more likely to stay together?

Goldberg: Research on both same-sex and different-sex couples suggests that married couples are more likely to stay together than unmarried partners. For better or for worse, but hopefully for better, it is harder to leave a relationship once one is married, so same-sex couples—like different-sex couples—will be more likely to stick it out when they've made that legal commitment.

What are some specific legal issues LGBTQ people face when they divorce?

Romero: LGBTQ people going through a divorce are now largely treated like anyone divorcing. Yet, there are number of issues in divorce that are unique to LGBTQ people. For one, because divorce law was developed with different-sex couples in mind, LGBTQ people who have arranged their relationships differently could find that their expectations are incompatible with the law's commands. Another issue is that because same-sex couples were not permitted to marry for a very long time, many long-term couples who are now divorcing—together for 20, 30 or 40 years—are treated as only being together for the few years they were actually married, and this fundamentally impacts asset division and other divorce issues.

Another big issue for same-sex couples with children is the legal parentage of the non-biological parent. Through adoption and other legal

doctrines, the non-biological parent can establish a legal tie to the child, which protects that parents' right to custody and visitation, as well as the child's inheritance and other rights. Many states make it difficult, however. Only some states permit the non-biological parent to adopt her or his partner's child if the couple is not married; if the couple is married, the non-biological spouse should be able to adopt the child like a stepparent. Thus, marriage can be quite helpful in establishing a non-biological parent's rights. However, some states are still figuring out how to treat same-sex couples with respect to the "marital presumption," which says that when a woman gives birth, her spouse is presumed to be the other parent.

How are child custody disputes different for LGBTQ couples?

Goldberg: Marriage, divorce and custody have historically been conceptualized in a heterosexual framework where women are assumed the primary caregivers and key attachment figures for children and men the primary breadwinners. These assumptions have figured into alimony and custody decisions. Although such decisions are evolving, same-sex couples may still get caught in the cross-hairs of heteronormative divorce and child custody law. They might face a judge that assumes that the biological mother in a lesbian couple must be more of a mother because she carried the child for nine months and took a longer parental leave—even if the non-biological mother shared childcare equally. LGBTQ parents leaving different-sex relationships have historically, and still to this day, faced stigma and discrimination in family courts.

What are some unique challenges that transgender people experience when ending a relationship or divorcing?

Goldberg: While many couples in which one partner comes out as transgender stay together, many do not. The cisgender partner may see their partner coming out as transgender as a violation of trust, a threat to their own sexual identity and orientation, or simply an unexpected and insurmountable issue in the relationship. If there are children in the relationship, the cisgender partner may try to keep the transgender parent from seeing the children. Transgender people often contend with a lot of societal stigma and discrimination on the basis of their gender identities, which can impact their relationships.

How do stigma and prejudice impact the stability of LGBTQ relationships?

Goldberg: Navigating anti-LGBTQ stigma creates intrapersonal and interpersonal stress, which undermines relationship quality and stability. Stigma and prejudice indirectly affect the relationships of LGBTQ people, too. For example, employment and wage discrimination, which puts stress on the individual and couple. Social support is associated with relationship stability—in all types of couples. LGBTQ people often report lower family support than heterosexual people, which may impact relationship stability. However, LGBTQ people often report equivalent or higher levels of friend support, which can serve as a buffer to stress and [relationship](#) challenges. And, research has also started to shed light on LGBTQ people's resilience in the face of stigma and discrimination.

What advice would you give attorneys working with LGBTQ people going through a divorce?

Romero: Attorneys should begin by making sure their LGBTQ clients feel welcome and supported. This could mean asking for and using the client's preferred pronouns or noting their experience working with other LGBTQ clients. Attorneys also need to carefully research the applicable

law to uncover any issues that could complicate the [divorce](#) or child custody determination, such as one parent not having secured legal rights to their child and the other issues I mentioned previously. Attorneys should also consider whether mediation or collaborative law would benefit their client. These approaches offer LGBTQ clients more control over the dissolution process and outcomes and can be a way to avoid the courts, which LGBTQ people may perceive as inhospitable.

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