

## A Practical and Halakhic Explanation of a Boston Agunah Taskforce Accomplishment

By Rabbi Aryeh Klapper, BATF Member and Senior Dayyan, Beit Din of Boston

The Boston Agunah Taskforce works with all stakeholders to ensure that Jews who divorce civilly also become free to remarry Jewishly.

We work closely with the Beit Din of Boston. BATF member Mrs. Layah Lipsker participates in court planning sessions, builds prior relationships with women who will be clients of the Beit Din, and is present as a guide and support for women during the actual *get* process in Beit Din.

Through our GetYourGet website and its “Ask the Expert” function, we have served as a resource for spouses throughout the United States who are concerned about the possibility of get-refusal. We look forward to expanding that role in the coming semester.

We established the BATF Lawyer’s Advisory Committee, a team of Massachusetts family law experts and practitioners including Judge Spencer Kagan (retired), Attorneys Shanna Giora-Gorfajn, Arlene Bernstein, Alan Pransky, Ellen Poster, Miriam Altman, Amanda Clayman, and Debra Finkel. and Jewish educator Deborah Kram, to ensure that the religious and family courts work together rather than at cross-purposes.

The LAC’s work builds on an insight articulated by BATF member Rabbi Aryeh Klapper in his article “Systemic Misunderstanding between Rabbinical Courts and Civil Courts: The Perspective of an American Rabbinical Court Judge “, published in the anthology “Women’s Rights and Religious Law (London: Routledge , 2016)“, edited by BATF member Dr. Lisa Fishbayn Joffe. Rabbi Klapper argues that get-refusal and the threat of get-refusal are primarily the result of the overlap between the religious and secular systems, rather than of the internal dynamics of either system.

The LAC recently generated a set of practical instructions for family lawyers that we believe will have significant positive impact. What follows is a brief explanation of those instructions.

Our work is based on the reasonable assumption that couples who are divorcing civilly do not wish to remain married to each other Jewishly. We also think that

it is almost always true that when civilly divorcing couples reach an agreement on all issues other than the get, neither spouse will refuse to participate in a get if the alternative is going through a civil trial on all issues.

If these premises are true, get-refusal should never happen after a civil divorce decree has been obtained via agreement. But this is not so – such cases come before the Boston Beit Din regularly. Moreover, fear of becoming such a case drives spouses to accept terms in civil divorce agreements that they would otherwise refuse. Finally, the perception of being under such a threat drives spouses to anticipatory aggression and exacerbates ill-will, which is bad in itself and can make the fear of get-refusal a self-fulfilling prophecy.

These cases happen for several reasons.

- 1) One spouse may be more desperate for agreement on the civil law issue of custody or property than another, and be unwilling to raise the issue of a get lest it derail the agreement.
- 2) A spouse may commit verbally to cooperating in the get process once the civil decree is final – then renege once the decree has taken effect.
- 3) Even if the get-commitment is included in the civil decree on penalty of contempt, spouses are still entangled with each other economically and in child-rearing, and dislike initiating confrontations.
- 4) If a wife attempts to enforce such a commitment, a Beit Din may rule that the threat of a contempt citation means that the get cannot be given of the husband's free will, and is therefore invalid. The husband can then move to vacate any civil contempt citation on the ground that he has made a good faith effort to comply, but cannot while even the possibility of a contempt citation remains.
- 5) A civil court may have constitutional compunctions about directly putting someone in contempt for refusal to perform what is perceived to be a religious act, even if they had previously committed to performing it.

To resolve these issues, we sought a way to

- A. Support the development of a cultural norm that rejects get-based extortion and get refusal.
- B. Build on the work of those promoting the signing of halachic prenuptial agreements. We seek to create strategies for those who have not signed

such agreements, or who live in jurisdictions where the enforceability of such agreements may be challenged.

- C. Make addressing the *get* issue a standard part of the civil divorce process, rather than an issue which a spouse must raise on his or her own
- D. Develop a standard process which makes clear to both parties from the outset that any civil agreement must free both parties to remarry religiously, and that the removal of any barriers to remarriage is a *sine qua non* that will not itself be part of any financial or custody negotiations
- E. Develop a standard clause for inclusion in civil agreements to ensure that the *get* is given and received before the civil decree becomes final.
- F. As part of that clause, develop an enforcement mechanism that Family Court judges will use without fear of raising First Amendment issues, and that religious courts will not see as illegitimate coercion.

Here's what we developed:

- a. We will seek to have the Massachusetts Family Bar include in its boilerplate instructions for lawyers and pro se parties a checkbox that all religious barriers to the remarriage of either party have been removed.
- b. If the box cannot be checked, meaning that such barriers remain, for example that for a marriage between Jews no *get* has been given and received, then the parties should immediately sign a preliminary agreement to
  - 1) appear within X days before a specified rabbinic court for binding arbitration regarding a *get*;
  - 2) cooperate with any proceedings or directives of the rabbinic court on that issue
  - 3) pay any reasonable costs incurred by the other party to ensure that cooperation, including fees for the rabbinic court as arbitration panel and for legal representation in the relevant rabbinic and civil court proceedings
  - 4) waive any right to later claim in civil proceedings that the religious divorce is being coerced

Since the *get* frees both parties, this agreement should be in the interest of both.

- c. If for whatever reason either party is unwilling to sign such a preliminary agreement at the outset of the civil process, it should be made clear and agreed that identical language will be placed in the final overall divorce agreement, with one addition: The parties will ask that the finalization of the agreement be held in abeyance for a period of X+1 days, and that the judge be cognizant that the agreement will not become final unless all barriers to remarriage have been removed.
- d. If the designated beit din certifies that a valid *get* has been delivered and received within that time period, the civil agreement becomes final. If no such *get* has been delivered and received, the beit din will, at its discretion, direct the parties that they have a *mitzvah* to give and receive the *get*. If the *get* is still not delivered and received within the specified term, the beit din will formally notify the civil court which party has not cooperated with its directive. This will trigger the obligation for the recalcitrant party to pay all expenses associated with ensuring its cooperation, including as necessary appearances by one or both parties before the rabbinic court and the civil court.
- e. In the event that, for whatever reason, a party allows the civil agreement to become final before a valid *get* is delivered and received, this clause will still be in force and allow the civil court to compel appearance before the beit din and cooperation with its directives.

We are currently circulating this language by various means to relevant members of the bar and bench, and plan more formal educational endeavors for lawyers and judges in the coming semester.

It should be clear that this approach will not help in cases where the parties are determined to go to trial. But making it standard practice will significantly lower the instance of *get*-refusal, greatly diminish the instance of *get* blackmail, lower anxiety levels, and change the entire Jewish divorce environment for the better.