

**Concurring Opinion with Rabbi Joseph Prouser's Responsum
On "Ana Ger Ana: May a Convert to Judaism Serve on a Bet Din?"
Jonathan Lubliner – June 6, 2012**

This paper was submitted, in June 2012, as a concurrence to Ana Ger Ana: May a Convert to Judaism Serve on a Bet Din?" by Rabbi Joseph Prouser. Dissenting and concurring papers are not official positions of the CJLS.

I commend Rabbi Prouser for his thorough treatment of the halakhic literature regarding the permissibility of a convert serving on a *bet din*, and am in full accord with his conclusion in the affirmative.

Rabbi Prouser marshals many arguments in support of his position, including the contention that regarding conversion, "[a] Bet Din does not actually 'judge' in the usual sense: it does not render a legal decision so as to resolve conflicting claims. Any prohibition against a convert to Judaism 'judging' as a member of a Bet Din would, from this perspective, not apply."

In a similar vein, he concludes, "There is a body of opinion that a Bet Din convened for conversion proceedings is not actually 'judging' the aspiring convert at all; rather the aspiring convert effects his own religious transformation in the presence of the 'court' members. **There can be no prohibition against a convert to Judaism serving on a Bet Din that does not judge!**"

Whether as witnesses to the delivery of a *get* or the supervision of *giyyur*, most of the functions fulfilled by *batei din* in our movement do not include litigation between disputants. Although essentially theoretical, were we to employ the foregoing definition of "judging" to *halitzah*, it, too, could arguably fall within the category of those actions that are not intended to resolve conflicting claims, inasmuch as the court's role is simply to supervise and attest to the proper performance of the *halitzah* ritual – no more and no less.

It is not clear to me, however, that the absence of litigants implies that a *bet din* plays no role in judging, **especially** with regard to conversion. As Maimonides teaches:

The appropriate manner to perform the commandment [of conversion] is that when the individual comes to convert, we investigate him lest [his conversion] be for monetary gain, or for some position of authority that he may receive, or whether because of fear that he wishes to enter the religion. If he is a man, we investigate whether he has cast his eye on a Jewish woman, and if

she is a woman, we investigate whether she is doing so because of interest in a Jewish man.¹

While we might shape our list of concerns and considerations in a somewhat different way than Maimonides, the basic principle remains the same: in ascertaining the nature of an individual's *qabbalat ol mitzvot* and the motivations of a potential Jew-by-Choice, a *bet din* of necessity judges the integrity and sincerity of a candidate for conversion. That of all the elements of *halakhic* conversion, only *qabbalat ol mitzvot* requires the oversight of a *bet din ab initio* points to that body's deliberative role, one that calls for the exercise of judgment rather than attestation alone.² This function is most decidedly not a case of "the aspiring convert effect[ing] his own religious transformation in the presence of the 'court' members." Rare though it may be, *batei din* can and must reserve the right to judge an individual ineligible for conversion for any number of psychological or *halakhic* reasons.

Inasmuch as Rabbi Prouser offers multiple solutions to the potential problem posed by *Som Tasim*, there remains ample evidence to permit unequivocally the inclusion of *gerim* on *batei din* without a need to question the role of rabbinic courts in evaluating and deciding the readiness of individuals to live *tahat kanfei ha-Shekhinah* and accept the yoke of the commandments. Those blessed with the privilege of serving on *batei din* for *giyyur* function as judges in every sense of the word.

¹ *Mishneh Torah, Isurei Bi'ah* 13:14.

² In addition, because the declaration of *qabbalat ol mitzvot* must always take place during the day as would any other legal proceeding – unlike the other requirements of *giyyur* which, if they occur at night, are acceptable at least *ex post facto* – it would seem that *giyyur* was treated no differently than any other matter requiring rabbinic judgment. See *Shulhan Arukh, Yoreh Deah*, 268:3 and *Ta"Z ad loc.*