

RENEWAL OF MARRIAGES FOR COUPLES WITHOUT GET: A DISSENTING OPINION

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This paper was submitted as a dissent to "Renewal of Marriage for Couples Without Get" by Rabbis Kassel Abelson and Mayer E. Rabinowitz. Dissenting and concurring opinions are not official positions of the Committee on Jewish Law and Standards.

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

If a couple who had been married under Jewish law is divorced under civil law without terminating the marriage under Jewish law, and now wishes to restore their marital union, we all agree that: (A) They do not require a new Jewish marriage ceremony; (B) they may not have a new Jewish marriage ceremony; (C) they must have a new civil marriage ceremony; and, (D) a public re-affirmation of their marriage is desirable (though not required.) Rabbis Abelson and Rabinowitz call for the rabbi who conducts the public re-affirmation of their marriage to also – at the same time – officiate at their civil marriage ceremony.

Most, if not all jurisdictions in North America allow clergy to perform marriages on the same basis as civil officiants. Thus, a rabbi may be permitted by the state to solemnize the marriage of couple not eligible to be married under Jewish law. We have always discouraged rabbis from doing so. It is the policy of the Rabbinical Assembly that a rabbi may not officiate at a wedding which is a civil marriage but not in conformance with Jewish law. The Rabbinical Assembly has, in fact, imposed sanctions on rabbis who have done so. In the most extreme cases, the halakhic consideration would be that the officiating rabbi is labeled a *מומר לאותו דבר* and would be banned from solemnizing any marriages at all.

The fact that the state may permit us to do something does not mean we should permit ourselves to do it. We, as a rule, expect that a rabbi will solemnize only marriages which take place under Jewish law. While the couple in this case must be remarried under civil law, the fact that the rabbi conducts the ceremony allows all concerned to conclude that Jewish law recognizes their civil ceremony as binding. It makes it appear as if a new

religious ceremony is required and also makes it appear as if couples divorced under civil law may remarry under the auspices of a rabbi.

We would be much better advised to have the couple remarry in a civil ceremony conducted by a Justice of the Peace and reaffirm their marriage publicly in a separate religious ceremony such as the one proposed by Rabbis Abelson and Rabinowitz. Similarly, a couple who choose to be reunited after a lengthy separation who were never divorced under either legal system, may opt for the same re-affirmation ceremony which presupposes that the couple has always been married and is now restoring their family life. By the same token, a situation may arise in which a couple which had been divorced under civil law but not Jewish law chooses to re-marry (under civil law) and opts to forego the reaffirmation ceremony suggested by the authors of this responsum. In that case, it should be clear that a rabbi should not conduct the civil wedding ceremony under any circumstances.