

THE GAY PLACEMENT QUESTION

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This paper was submitted as a dissenting opinion to Rabbi Kassel Abelson's "Placing Homosexual Rabbis in Congregations." 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.

Rabbi Abelson, in denying the avowed homosexual the services of the Placement Commission, relies for the most part on the wording of the "consensus" resolution of the CJLS in which avowed homosexuals and lesbians were not to be admitted to the Seminary Rabbinical School. The resolution also states, however, that no investigation, witch hunt, or oath of non-homosexuality will be required of candidates for admission to the Rabbinical School. Rabbi Abelson argues that to be consistent with that resolution which denies the avowed homosexual admission to the Rabbinical School, we must also deny the avowed homosexual member the services of the Placement Commission. The argument is flawed on several grounds.

First of all, the analogy does not hold. On the one hand, I believe that the resolution is silent on the matter of the rabbinical student whose homosexuality is discovered after admission as a student. Now, one can argue that the implication of the resolution denying admission indicates the present stance of the Seminary not to ordain homosexuals. Therefore, a student who is found to be homosexual will be expelled or, if allowed to continue his or her studies, would not be on an "ordination track." This is a reasonable inference. However, the analogy to the situation under consideration would require the expulsion of the homosexual member from the Rabbinical Assembly, which is not being contemplated at this time.

Secondly, the resolution must be seen within the context of all other relevant resolutions and pronouncements. Simultaneously with the "consensus" resolution, there was also passed a resolution calling for the establishment of a commission to study the issue. One can reasonably infer, from that fact, that the "consensus" resolution only reflected the status quo, which might be subject to change. Otherwise, why establish a commission mandated to study the question and to report to the CJLS in three years? The CJLS, at that point, no matter what the recommendation of the Study Commission might be, could reaffirm the present position or reject or amend it. The "consensus" resolution, therefore, only

reflects a present and not necessarily unalterable position. Had the Seminary and United Synagogue gone along to participate in the Study Commission, one might have made the argument that the purpose of the Commission was to study the issue from a theological, moral, ethical, philosophical and sociological standpoint without necessarily having implications for *הלכה למעשה*. Once it is the CJLS alone that is undertaking the study and to whom the Commission makes regular reports, the implication becomes all the stronger that the purpose of the study is to have possible effect on *הלכה למעשה*. Therefore, one can argue that the resolution only reflects the status quo, and if analogy to the Rabbinical Assembly membership is in order, the status quo obtains there as well.

Thirdly, denial of the services of the Placement Commission to a member of the Rabbinical Assembly is curiously inconsistent with the resolution on the treatment of homosexuals passed several years ago by the RA in convention assembled. That resolution called for an end to discrimination against homosexuals precisely, in addition to other areas, in employment. Denying the services of the Placement Commission to an RA member who is homosexual is precisely discriminating in the area of employment.

Which is precisely what brings me to the fourth and possibly most cogent argument, which I present as a member of the California Bar. Denying the services of the Placement Commission to a member of the RA, who has paid his or her dues faithfully, and who is retained as a member in good standing, would make the RA vulnerable to a very grievous lawsuit.

Without stating my own personal views, let it be said that the alternative could be the expulsion of the avowed homosexual from membership in the RA. That, however, is not the prerogative of the CJLS and, besides prejudging and preempting the result of the Study Commission, has serious policy and public relations implications. Failing that step, however, the RA cannot deny the avowed homosexual member access to any of its services which are available to every other member.