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*Summarized by the State Bar Family Law Council
Amicus Committee Members*





MATZOH MATTER WITH THIS MARRIAGE? JEWISH DIVORCE FOR FAMILY LAWYERS

BY WILLIAM E. BERLIN

First comes love, then comes marriage. In some cases, however, what follows is divorce. The law of marriage, as family lawyers know, arises in contract.¹ When representing Jewish clients who observe traditional religious practices and beliefs, family lawyers must recognize that those clients follow the teachings of the Torah, the sacred text of Judaism. The Torah requires observant Jews living outside of Israel to adhere to the civil laws governing marriage of the political state or entity in which they are domiciled. Jewish marriage, as well as Jewish divorce, involves not only a civil proceeding, but also an additional religious proceeding before a Rabbi. For observant and traditional Jews in Michigan, marriage and divorce require not just one contractual arrangement, but two, which are the civil divorce proceedings and the religious divorce proceedings. Outside of Israel, Jewish law requires both a civil divorce and a Get to complete the divorce process.

In Jewish law, marriage is initiated with a marriage contract, or Ketubah. The Ketubah is an antenuptial agreement given from the husband to the wife before the ceremony under the chuppah, the wedding canopy with which most non-Jewish lawyers are familiar. The Ketubah states that if the husband divorces the wife, the husband is required to pay wife a sum certain for her support.² Some Rabbis claim the Ketubah is the first written document to provide women with specific rights.

Unlike civil divorce, Jewish divorce can only be initiated by the husband. The religious equivalent of the civil judgment of divorce is the Get. The Get states the parties are no longer married and are now free to marry others.³ Obtaining a Get has no effect on a civil divorce, but Jewish clients will likely require a Get releasing them from the religious bonds of marriage.

A Jewish Court or Beit Din, typically consisting of three rabbis, issues the Get (or in the plural, "Gitten"). The civil divorce should be complete with the parties living in separate residences before the parties can obtain a Get from the Beit Din. The basis for this requirement is Rabbinical concern that the parties' familiarity with one another may result in religiously unlawful sexual activity after the Get is given and the parties are religiously, but not civilly, divorced. Another reason the Beit Din prefers to have the civil divorce complete before issuing a Get is all financial aspects of the divorce should be

finalized in the civil judgment of divorce before a Get is issued. This prevents the husband from slandering the Get and complaining that he would have not given the Get had he known his financial settlement in the civil divorce would have been so unfavorable. All negotiated issues involved in the civil divorce should be complete before the Get is issued. If time or other constraints requires the religious divorce to occur before completion of the civil divorce, the procedural order may be reversed.

A significant difference between a civil divorce and a Jewish divorce is that a civil court issues a divorce decree and through its power terminates the marriage. In a Jewish Get ceremony, the parties hold the power to sever the marriage by the husband's act of providing the Get and the wife's acceptance of it. Unlike the court, the Beit Din simply certifies that the parties have properly carried out the Get procedures and are divorced. The Beit Din also maintains divorce records for the community it serves.

Similar to entering proofs on the record in civil divorce, the Get involves a ceremony which occurs in the presence of the parties, two valid witnesses, a Rabbi who has expertise in the preparation of Gitten, and a scribe or Sofer. At this ceremony, the husband directs the scribe to prepare a Get specifically for his wife, which precludes the use of form documents. The scribe drafts the Get on inerasable parchment type paper. The text of the Get consists of twelve lines, twelve being the numerical equivalent of the Hebrew word "Get." The Get historically may be written in any language but is customarily written in a mix of Aramaic and Hebrew. In modern times, to maintain uniformity, all Gitten are written in these two languages.

The Get ceremony is a short procedure usually occurring in under two hours. After the scribe prepares the Get, he provides it to the husband, who in turn, hands the document to the wife. The wife voluntarily accepts and possesses the Get, and, to demonstrate ownership, walks with the document for a prescribed distance until the presiding Rabbi is satisfied. The wife then returns the Get to the Rabbi, who cuts the parchment so it cannot be reused, and retains the document in the permanent files of the Beit Din. The ceremony concludes and the Rabbi acknowledges that he will provide each party a cer-

tificate (called a Ptur) indicating they are divorced. The Ptur is later provided to the parties after the original Get is filed in the offices of the Beit Din. The parties are not permitted to retain the actual Get.

As stated previously, all financial aspects of the divorce should be finalized in the civil judgment of divorce including the financial support as promised in the Ketubah. The wife, who has retained possession of the Ketubah during the marriage, typically returns it to her former husband upon his satisfaction of the financial support as promised in that document.

Judaism and Jewish law are based on acts and deeds rather than beliefs. This concept is displayed in the Get ceremony as well as in the wife's return of the Ketubah following satisfaction of payment as provided in the document. The parties to the divorce, or their agents, must physically give and receive the Get which is effectuated by tangible acts. Some of the earliest legal principles are established in the Torah, and some of these concepts found in ancient Jewish law have survived into the present day including this procedure of giving and receiving a Get.⁴ Some of these ancient religious laws conflict with modern civil law. Recently, the Supreme Court held that states cannot ban same-sex marriage.⁵ Orthodox Jewish law, however, continues its prohibition on same-sex marriage.

All Jewish divorces are "no Fault" but the Rabbi conducting the ceremony should be made aware of and sensitive to

any acrimony between the parties, domestic violence, or other issues that may make a party uncomfortable or afraid to be in the presence of the other. While the Torah describes specific instances when divorce is appropriate, neither party is required to state the reasons for the divorce and a Get will be issued if the husband is willing to give the Get and the wife is willing to accept it. Either party may bring another individual to the ceremony for support such as a friend, relative, rabbi, or civil attorney. Many Rabbinical tribunals maintain individuals on staff who are available to assist the husband and/or the wife. When the parties cannot or will not be present in the same place at the same time, or time constraints do not permit the parties to be present for almost two hours, proxies may be used to give a Get. In such circumstances the husband must provide specific instructions to the Beit Din regarding his authorization to use his proxy and his willingness to provide his wife with a Get.

Jewish law prohibits compelling a husband to provide a wife with a Get. This religious prohibition extends so far as to negate and invalidate any Get that is considered compelled or given involuntarily. Thus, a compelled divorce is invalid and considered null and void.

Because of the inherent inequality between the parties who are subject to a Get, an unscrupulous husband may use the process for leverage in his civil divorce. A corrupt husband may demand large property awards, custody, or a generous parenting time schedule as a condition precedent to giving the Get. In high conflict divorces, or divorces between parties experiencing mental health or psychological issues, a husband may refuse to provide a Get under any circumstances. Most experts in the area of Gitten consider threats to refuse giving a Get, or refusal to provide a Get, as domestic abuse. Attorneys, Rabbis, Judges and others involved in the Get process should be aware of these threats as they may be an indication of other domestic abuse present in the relationship.

If a Beit Din determines that a Get has been illegally compelled, the Beit Din will adjudicate the Get and declare the entire Jewish divorce invalid. Attorneys and secular courts have erred, for example, by incarcerating a husband who refused to provide a Get. Typically, a Get that is given to avoid incarceration (except under strictly prescribed circumstances described below) will be adjudicated invalid.

Where the Get process has failed, an Agunah, (literally an "anchored woman") may result.⁶ When a husband and wife are estranged, and/or divorced under civil law and the husband refuses to provide the wife with a Get, the wife is prohibited from remarrying. If an Agunah marries another Jewish man and has children with her new husband, the children are prohibited from marrying other observant Jews except those from similar discordant post-judgment religious backgrounds. A similar situation arises when a wife refuses to accept a Get from her husband, but Jewish law provides for a sometimes

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controversial procedure allowing the husband to remarry. The remedies are unequal.

For family lawyers, a good practice tip is to include language in the civil judgment of divorce which indicates the husband will provide a Get and initiate orthodox Jewish divorce proceedings, and the wife will accept the Get on or before a specific date or occurrence. The civil judgment of divorce should also include a determination as to who will pay the expense for the Get (usually \$250 to \$500) or how these expenses will be allocated. The language should avoid any penalty clause for failure to abide by these provisions, with the exception of a penalty clause that has been reviewed and accepted by the Rabbinical tribunal.

The following judgment language has been approved by a local (Oakland County) Beit Din:

It is further ordered and adjudged that upon seven days written notice from wife to husband, husband shall contact an Orthodox Jewish Rabbinical tribunal (Beit Din) for the purpose of initiating Jewish divorce proceedings and obtaining a Get. In the event husband fails to contact said tribunal within seven days of written notice from wife, husband shall pay wife \$_____ per day which shall be considered spousal support from the husband to the wife to continue until husband initiates Jewish divorce proceedings. The cost of preparing the Get will be equally divided by the parties.

With this language and under these circumstances, Rabbinis have ruled that the Get is valid and not compelled. Procedurally, if the husband then refuses to give the Get and further refuses to pay the prescribed court ordered spousal support, the husband may be show-caused and the circuit court may ultimately incarcerate the husband for failure to pay spousal support. If the husband then chooses to cooperate in giving the Get, the Get is considered valid and not subject to compulsion.⁷

Family law requires knowing a little something about everything. Family lawyers often admit that our knowledge is a mile wide and an inch deep. While most family lawyers cannot claim to be experts in the area of religious divorce, we can certainly play a role in properly facilitating this process and guiding our clients during a stressful time. While the Get process is facially simple and non-adversarial, especially when compared to civil divorce, it remains a traumatic event that often resurrects a client's hurtful and negative emotions. A familiarity with the basics of the Get process and sensitive counseling can assist clients through this critical procedure.⁸

About the Author

William E. Berlin has practiced family law exclusively since 1990. He is the founding partner of Berlin Family Law Group, PLLC⁹ in Troy, Michigan. He served as family lawyer with the Oakland County Citizen Friend of the Court Advisory Committee, is a member of the Michigan Inter-Professional Association on Marriage, Divorce and the Family, and is a Life Fellow of the Oakland County Bar Foundation. He also serves on the Board of Directors of Young Israel of Oak Park.

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Endnotes

- 1 *Ritzer v. Ritzer*, 243 Mich 406, 220 NW 812 (1928); *Wilson v. Wilson*, 179 Mich App 519, 446 NW2d 496 (1989).
- 2 See, Maurice Lamm, "The Marriage Contract (Ketubah)" http://www.chabad.org/library/article_cdo/aid/465168/jewish/The-Marriage-Contract-Ketubah.htm for sample Ketubah language. See also Rabbi Louis Jacobs, "The Get, or Bill of Divorce" My Jewish Learning, <http://www.myjewishlearning.com/article/the-get-or-bill-of-divorce/>.
- 3 See, "Text of the Get" http://www.chabad.org/library/article_cdo/aid/557971/jewish/Text-of-the-Get.htm for sample Get language.
- 4 Deuteronomy, Chapter 21, verse 1.
- 5 *Obergefell v. Hodges*, 135 S. Ct. 2071 (2015).
- 6 See, "Retying the Knot, Unchaining the Agunah" <https://www.facebook.com/RetyingTheKnot/?fref=ts>.
- 7 For a comprehensive list of national divorce case summaries regarding enforcement of Get provisions in a civil judgment of divorce, see "Jewish Law Case Summaries, Examining Halacha, Jewish Issues and Secular Law" <http://www.jlaw.com/Summary/divorce.html>.
- 8 For more information on the Get procedure see Reuven P. Bulka, "The Get Procedure" http://www.chabad.org/library/article_cdo/aid/560113/jewish/The-Get-Procedure.htm.
- 9 <http://www.berlinfamilylawgroup.com/>.