

Can a Rov Who is Familiar With a Case Become a Dayan for That Din Torah?

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Question:

Two parties had a dispute and went to a *Rov* for mediation. Ultimately, he was not successful and the dispute is headed to a *din Torah*. Since this *Rov* is already familiar with the details of the case, is he allowed to be a *Dayan* in the *din Torah*?

Answer:

The Gemara in Sanhedrin (7B) derives from a *pasuk* that the arguments in a *din Torah* can only be heard in the presence of all parties. *Dayanim* may not listen to one person's claims without the other party being present, and the parties themselves are forbidden from presenting it to the *Dayanim*.

Therefore, if a *Dayan* speaks to one party first, [i.e. he was unaware that he would be asked to adjudicate], the other one can refuse to allow him to be a *Dayan*. If both sides are aware that he has already heard the case, and they still agree to allow him to be a *Dayan*, then it would be okay.

I see very often that hearing one side of the story first can give a *Dayan* one view of events, but when he hears from the other side, he gets a whole different story. The first impression is very important, which is why hearing from one side first without the other being there is a very big problem.

It often happens that the two parties have a *Rov* they trust and feel comfortable with and they want to try to negotiate through him before going to *bais din*. What I suggest is that they sign a *shtar* in which they agree to go to the *Rov* for mediation, and, if the negotiations through him alone fail, two other *Dayanim* will be added to create a *bais din*.