

Does a Litigant Have to Be in Bais Din in Person?

Rav Dovid Grossman

Question: Reuven received a *hazmanah* from bais din but he is uncomfortable appearing in person. Is he allowed to send a *to'ein* to present his claims for him without him being there? Alternatively, can he submit his claims in writing or through a Zoom call?

Answer: Regarding witnesses, the Gemara says that a bais din has to hear the testimony directly from their mouths, and not through an interpreter. It relates a story where a man who only spoke a foreign language testified in a *din Torah* before Rava with the help of an interpreter. The Gemara explains that Rava understood the language the man spoke and was able to hear the claims directly from him. The interpreter was only there because Rava could not speak the language well and he translated his words to the witness.

The Poskim discuss the reason for this rule. The Ritvah suggests that this is learned from the *pasuk* of "*m'pihem v'lo m'pi kesavam.*" We learn from this *pasuk* that witnesses must testify orally and not in writing, and the Ritvah says that this halacha extends to the litigants as well. The Rivash offers several other reasons, the main one being that bais din can get a much better feel of a person if he speaks directly to them and they are better able to analyze his claims and reach a clear conclusion.

Accordingly, sending a *to'ein* to serve as a proxy for either party would be unacceptable unless both parties agree to this. If both sides agree to be represented in bais din, rather than coming themselves, they have the right to do so.

When video conferencing was first introduced, I asked Rav Elyashiv *zt"l* if it would be acceptable for a *din Torah*. He said that it would be fine to use it if both parties agree.

We sometimes suggest that if both parties aren't really interested in having a full *din Torah*, they can submit their claims in writing and a *Dayan* will issue *p'sak* for them based on their written claims. If they agree to this, it may be a way to avoid an official *din Torah*.