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ב"ר משה גרוסמן זצ"ל
Dedicated in loving memory of
Harav Yosef Grossman zt"l

FRIEND OF THE COURT
May judges judge their friends?

Adapted from the writings of Dayan Yitzhak Grossman

A coalition of nine progressive groups has released a statement calling on Supreme Court Justice Brett Kavanaugh to recuse himself from an upcoming case involving Facebook due to his close friendship with the company's vice president of public policy, Joel Kaplan. Kaplan had previously said that he had "known Brett and Ashley Kavanaugh for twenty years," and that "they are my and my wife Laura's closest friends in D.C. I was in their wedding; he was in ours. Our kids have grown up together." In this article, we consider the halacha regarding the eligibility of a judge to preside over a case involving a personal friend.

OHEIV AND *SONEI*

The *mishnah* cites a dispute about whether a witness who is a friend (*oheiv*) of a litigant is eligible to testify in his case; R' Yehudah rules that an *oheiv* who is a groomsman (*shushbin*) of the litigant is ineligible, whereas the Sages disagree and assert that Jews are not suspected of testifying falsely due to friendship.[1] From the Gemara's discussion, it emerges that even the Sages agree that an *oheiv* is ineligible to **judge** his friend, and they only disagree regarding **testifying**.[2] Personal partiality will not induce a Jew to lie, but it will impair his judgment.

The Ri Migash explains (regarding the Gemara cited below) that there are actually two reasons why one should not judge his friend: he may be swayed in his favor, and if he escapes this pitfall and judges him fairly (and arrives at an adverse decision), he will then be guilty of repaying good with evil.[3]

The previous discussion seems to imply that the *oheiv* who is ineligible to serve as a judge is the *shushbin* that R' Yehudah considers ineligible to testify. Elsewhere, however, the Gemara states categorically, "A person should not judge a

1 Sanhedrin 27b and Rashi there.

2 Ibid. 29a.

3 Mishlei 17:13. Shu"t Ri Migash siman 202. Cf. Orach Mishpat (Chazan) ibid. os 21; Halacha Pesukah ibid. n. 233.

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The Bais Havaad on the Parsha
Bring the Parsha to Life!

Excerpted and adapted from a shiur by Rav Moshe Zev Granek

PARSHAS KI SEITZEI
BEARING WITNESS

Excerpted and adapted from a shiur by Dayan Yosef Greenwald

...And it shall be if she does not find favor in his eyes...

Devarim 24:1

The establishing or the dissolution of a marital bond (known as *devarim sheb'ervah*) requires two witnesses. These *eidim* are known as *eidei kiyum*, because their presence makes the marriage or divorce valid, rather than just serving as proof that it happened.

When it comes to marriage, all agree that these *eidei kiyum* must witness the marriage for it to be valid, but *tana'im* disagree (Gittin 3b, 86a) which stage of a divorce requires two *eidim*. According to R' Meir, they must sign the get—*eidei chasimah kartei*. According to R' Elazar, the *eidim* must witness the delivery of the get to the woman—*eidei mesirah kartei*, and the only reason that they sign the get is to confirm her status as divorced in case any doubt arises later.

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Q&A from the
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Neighborhood Watch

Q I babysit for a living. A neighbor asked me to watch her child, who was sleeping at the time. I told a friend who was present that I wasn't planning to charge for my services, because the client was struggling financially. Shortly after her mother left, the baby awoke and began to cry, and the job ended up much more difficult than I had anticipated. Because of this, I changed my mind and now I'd like to charge. May I do so?

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case involving one whom he loves...as he will not find any fault in him,"[4] implying that any level of friendship is disqualifying. There are two approaches in the *poskim* to this apparent contradiction:

- The Rambam (as understood by many *Acharonim*) understands that the latter Gemara clarifies that the Sages indeed disqualify **any** *oheiv* from serving as a judge, not just the *shushbin* that R' Yehudah disqualifies from testifying.[5] The *Acharonim* disagree, however, whether according to the Rambam the disqualification of an *oheiv* is only *lechatchilah*[6] or even *b'dieved*.[7]

- Many Ashkenazic *Rishonim* explain that while only a *shushbin* is absolutely ineligible (*pasul*) to serve as a judge, it is preferable that no *oheiv* should do so.[8] Within this school of thought that distinguishes between a *shushbin* and an ordinary *oheiv*, some maintain that even the latter is forbidden *lechatchilah* to serve as a judge,[9] while others maintain that this is only a *chumra*[10] or a *midas chasidus*.[11] Some understand this to actually be the view of the Rambam as well, that an *oheiv gamur* is absolutely *pasul* to serve as a judge, whereas an *oheiv she'aino gamur* is forbidden *lechatchilah*.[12] Additionally, some suggest that there may actually be three levels of *oheiv*: an *oheiv gamur* is *pasul*; an *oheiv she'aino gamur* is prohibited from judging *lechatchilah*; and someone with merely a slight partiality toward a litigant should refrain from judging him as a *midas chasidus*.[13]

Regarding the category of *shushbin*, many *poskim* assume that any close friend is in this category,[14] although there is a dissenting view.[15]

R' Refael Yosef Chazan and his son R' Rachamim Eliyahu Chazan both assert that a communal enactment that an appointed judge may judge even his relatives does not extend to allowing them to judge their enemies (whom they may not normally judge, similarly to their friends), since "this is not explicit" in the enactment.[16] The clear implication is that an enactment explicitly allowing judges to judge their enemies (or, presumably, their friends) would be valid.

CONCLUSION

A judge is completely disqualified from judging his *shushbin*, and according to most *poskim* this extends to any *oheiv gamur*. A judge should also not judge even an *oheiv she'aino gamur*, although some consider this obligatory (*lechatchilah*), while others consider it only a *chumra* or *midas chasidus*.

It appears, however, that a community has the right to allow appointed judges to judge their friends. Furthermore, it is unclear to me how these *halachos* apply to a case where the judge's friendship is not with the litigant himself, but merely to a senior officer of a corporate litigant.

4 Kesubos 105b.

5 Hilchos Sanhedrin 23:6; Kesef Mishneh ibid. and Beis Yosef C.M. siman 7; Radvaz ibid.; Shu"t Oholei Yaakov siman 49 p. 88a. Cf. Kesef Mishneh Hilchos Eidus 16:6 and Lechem Mishneh ibid.

6 Beis Yosef ibid.

7 Oholei Yaakov ibid.; Lechem Mishneh Hilchos Eidus 16:6; Shu"t Toras Emes siman 97. Cf. Shu"t Chaim Sha'al cheilek 2 siman 42 os 38, and Birkei Yosef ibid. os 18 at length.

8 Tosafos Kesubos ibid.; Rosh and Mordechai, cited in Beis Yosef ibid.

9 Rosh ibid.

10 Tosafos ibid.; Mordechai, cited in Shu"t Maharik shoresh 21.

11 Maharik ibid.

12 Shu"t Maharam Lublin siman 63. Oholei Yaakov ibid. proposes but rejects a similar interpretation of the Rambam. Cf. Orach Mishpat (Analik) ibid. s.v. Rama v'yeish omrim debeson'o mamash.

13 Maharam Lublin ibid. s.v. Ha'amnam. He proposes this as the view of the Tur, but he proceeds to note that Tosafos seems to acknowledge only two categories.

14 Tur ibid.; Rama to Shulchan Aruch ibid. se'if 7; and cf. Bach ibid.

15 Kenesses Hagedolah ibid. Hagahos Beis Yosef end of os 15. Cf. Shu"t Shevus Yaakov cheilek 1 siman 141; Birkei Yosef ibid. os 19.

16 Chikrei Lev C.M. cheilek 2 siman 24 p. 32a s.v. umilvad; Orach Mishpat (Chazan) ibid. os 14.

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The Bais Havaad on the Parsha — Bring the Parsha to Life!

The Rambam (*Hilchos Geirushin* 1:13) rules that *eidei mesirah kartei*, but he nevertheless states that if the signature of the *eidim* is present on the get, it is still valid even if no *eidim* witnessed the delivery. Many *Rishonim* wonder why that should be the case if the halacha is that *eidei mesirah kartei*. The Ran (Gittin 86a) explains that when *eidim* sign the get, they are testifying that it was written with the authorization of the husband or his agent. If we then see it in the wife's possession, this indicates that he gave it to her willingly and the divorce is valid. Thus, according to the Rambam, *eidei chasimah* can actually serve as *eidei kiyum* attesting to the delivery as well.

Practically, we make sure to have *eidim* both signed on the get as well as witnessing the delivery to accommodate both positions. *Bedi'eved,* though, the halacha, based on the Rambam, is that *eidei chasimah* alone suffice.

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DAYAN DANIEL DOMBROFF

A There are two components to this question.

The first is whether you were *mochel* (waived) the fee.

One reason the waiver may not be valid is that *mechilah* of an obligation generally does not work in a case of *lo va la'olam,* before the obligating event (here, the babysitting) has taken place. But perhaps the agreement that you would watch the baby wasn't the engagement of a professional to perform a service but a favor to a neighbor. Once the baby woke up, you felt things had gone beyond the scope of a neighborly favor and you decided to charge. In that case, there never was any *mechilah* because there was no liability to waive.

Another reason to discount the *mechilah* is that the client wasn't aware of it. According to the Aruch Hashulchan, *mechilah* in such a case does not take effect until the other party becomes aware of it.

The second component to the question is that of *nedarim* (vows). Because the mother is needy, your decision not to charge may constitute a type of *neder*—similar to a commitment to give tzedakah—which cannot be nullified later when the baby wakes up.

In practice, It would seem that you may charge despite the factors of *mechilah* and *neder,* because the decision not to charge was based on your mistaken impression that the baby would sleep the entire time. Had the baby been awake initially, you would have charged, so you may charge once the baby wakes up.