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- [HOME](#)
- [EDITOR'S VIEW](#)
- [CHINUCH ROUNDTABLE](#)
- [WEEKLY NEWS ARTICLES](#)
- [E-MAIL EDITION SIGN UP](#)
- [YATED MEDIA KIT](#)
- [PERFIDY IN IOWA](#)

TEACHINGS FROM THE DAF

Chinuch RoundTable

E-mail Edition Sign Up

Editor's View

**Weekly News Articles**

A Year Of Miracles

The Abuse Problem We Can Easily Solve, An Interview With Rabbi Shammai Blobstein

**Oregon Court Scrutinizes Rebbetzin's Role In Trailblazing Case**

The Fortress

Yated Media Kit

Perfidy in Iowa

Teachings from the Daf

[Home](#) » [Weekly News Articles](#) »

## Oregon Court Scrutinizes Rebbetzin's Role In Trailblazing Case a a a

Thursday, September 24, 2015  
By Debbie Maimon

In a case that sparked a nationwide uproar, a female county clerk in Texas last month defied a court order to issue a marriage license in circumstances that violated her religious beliefs. Her refusal to comply landed her in jail. A recent case in Portland, Oregon tested the moral courage of two kollel wives in a different conflict of conscience: Disclose confidential information sought in a divorce case? Or cite religious convictions against breaching confidences and slandering people — and risk the consequences?

Is a rebbetzin a religious leader? Or is the term an honorary title denoting nothing more than "wife of a rabbi?"

The question lay at the heart of an unprecedented court case in Portland, Oregon, in which Mrs. Esther Fischer and Mrs. Sarah Goldblatt, two kollel wives employed with their husbands by the Portland Community Kollel, were subpoenaed in a divorce trial. The women were asked to disclose personal and confidential information they had received from the wife in the divorce case, which might have bearing on child custody issues coming before the court.

The women responded that such information, including confidences shared in person, by letter, over the phone and through emails and texts, was protected by the statute governing clergy privilege, similar to the law granting attorney-client privilege.

As rebbetzins in the Portland community, they said, their conversations with community members fell under the rubric of a state law protecting the confidentiality of information entrusted to clergymen. As advised by rabbonim, the women said they were not permitted to share personal information they had received from a woman they had taught or counseled.

### CAN ORTHODOX JEWISH WOMEN CLAIM CLERGY PRIVILEGE?

The opposing counsel rejected that argument, noting that the kollel wives were Orthodox Jews. As Orthodox Judaism does not ordain female rabbis, the husband's attorney argued in a scathing 20-page rebuttal, "rebbetzin" was nothing more than an honorary title and Mrs. Fischer and Mrs. Goldblatt could not rightfully present themselves as members of the clergy.

In contrast to rabbis who are certified to carry out rabbinic duties, the brief argued, the kollel rebbetzins were simply friends of the wife in question, and their communications were thus unprotected by the clergy-privilege statute.

"From the very outset, we felt this case had potentially explosive repercussions not only for Portland, but for kollelim, rebbetzins and rabbonim everywhere," noted Rabbi Tzvi Fischer, rosh kollel of the Portland Community Kollel, in an interview with Yated. Rabbi Fischer's wife was one of the kollel wives under subpoena.

"Rebbetzins do a lot of unofficial counseling. Some women feel more comfortable reaching out to a rebbetzin for guidance about marital issues and other sensitive matters best handled by a woman," Rabbi Fischer elaborated. "If the court ruled that a rebbetzin had no clergy-protected function and that information entrusted to her in confidence could be circulated, people would no longer feel safe confiding in either her or the rav. That could do severe damage to a community's relationship with its religious leaders."

Recognizing the broader implications of the case, the Kollel, on behalf of Mrs. Fischer and Mrs. Goldblatt sought advice from their posek, Rav Hillel David of Brooklyn, as to whether it was consistent with halacha and the spirit of the law to claim clergy-privilege in court.

"We were told there was no problem from a halachic standpoint. But we knew we'd have a stronger case if we could find some kind of legal precedent in civil law. We wrote to many frum organizations including the OU, RCA and Agudath Israel, asking them to point us to prior case law addressing the issue of whether a rebbetzin was considered clergy," related Rabbi Fischer. "In each case, the response was basically, 'Fascinating question, but to our knowledge, it's never been raised in a court of law. Sorry we can't be of help.'"

3 Images:

- 1
- 2
- 3



[+ Enlarged View](#)

## REBBETZINS AS RELIGIOUS GUIDES?

Then a friend of the kollel put Rabbi Fisher in touch with Shaul Stampfer, a leading professor of Jewish History at Hebrew University in Israel, whose field of expertise included the evolving role of the rabbinate from the European period through contemporary times. Professor Stampfer's research had also followed closely the active role rebbetzins play in contemporary American Jewish communities.

In an unusual twist, the scholar happened to have lived for many years in Portland and had taught in Portland State University before moving to Israel. He wrote a 5-page letter of support testifying that even without rabbinic ordination, a rebbetzin today often "ministered" to female members of her community, especially in sensitive areas pertaining to Jewish laws governing married and family life. The affidavit stressed the critical component of confidentiality in these interactions.

"Many rebbetzins today have taken on pastoral responsibilities commensurate with those of rabbis," the Stampfer document noted. "Women turn to rebbetzins for advice not simply out of personal friendship but because of their roles as recognized spiritual advisors. Just as one would consult with a doctor or discuss a medical issue, so women turn to a rebbetzin for reliable guidance with regard to the many elements of Jewish law and tradition that affect the life of a Jewish woman."

"The rebbetzin's function as a religious guide is dependent on her holding in confidence whatever information she was given in a counseling or similar session," the letter of support stressed.

## KOLLEL WIVES' CREDENTIALS ASSAILED

Professor Stampfer's authoritative letter to the court encouraged the kollel wives. But the opposing counsel immediately challenged the "religious guide" argument, insisting that "counseling and other pastoral functions" in no way equate rabbinic ordination — the *sina qua non* of Orthodox Jewish clergy. To claim so was to distort the historic and traditional understanding of a rebbetzin's function, the opposing brief said.

"Esther Fischer, as a rabbi's wife or rebbetzin, does not take on, nor can she assume, roles associated with a rabbi in Jewish Orthodoxy," the opposing counsel asserted.

The brief assailed Mrs. Fischer from another angle, implying her portrayal of herself as a spiritual guide was not authentic. The brief noted that the kollel bio of Mrs. Esther Fischer listed her capacity as the Head Teacher of pre-school in the Maayan Torah Day School and the Director of the Portland Camp SEED.

"The bio of Esther Fischer refers to her as Mrs. Fischer, not even as rebbetzin. It focuses on her background in special education and her role as a pre-school teacher. There is no information suggesting she is qualified as a marriage counselor or a clergy member, and no information that she provides counseling of any kind to anyone."

The brief went on to attack Mrs. Goldblatt's qualifications in a similar manner, noting that "no information is presented in her resume or bio to suggest she is trained in counseling or counsels and receives confidence in a professional counseling capacity."

"Any confidences that Petitioner (the wife in the divorce case) shared with either Esther Fischer and Sarah Goldblatt were based on a friend-friend relationship between the women, not a clergy-penitent relationship," the brief concluded.

## KOLLEL WIVES ORDERED TO APPEAR IN COURT

The husband in the divorce case pressed his advantage by calling for oral arguments before the judge to resolve the dispute over whether the kollel wives, without rabbinic ordination, could legitimately claim the privileges of clergy. He then upped the ante, requesting the right to have his attorney question Mrs. Fischer and Mrs. Goldblatt in person at the oral hearing.

Judge Beth Allen of the Circuit Court of the State of Oregon granted the request, scheduling an oral hearing at which Mrs. Fischer and Mrs. Goldblatt were expected to testify.

"The date of the hearing fell out a week before Pesach... a very intense time. The kollel wives all work in the community in addition to running a busy home with young children. On top of this, we had a court case with potentially serious consequences. It was nerve-wracking," recalled Rabbi Tzvi Fischer.

"After discussing all the angles with our rov and with our attorneys, my wife and Mrs. Goldblatt came to a decision. Even if the judge ruled against them after the oral hearing, they were prepared to state that their religious convictions and communal duties still prevented them from sharing information about the wife in the divorce case. They understood they might be putting themselves in jeopardy."

"The opposition was relentless," Mrs. Greenblatt told Yated. "Imagine combing the country for an Orthodox *beis din* to support your demand that two kollel wives reveal the confidences of a woman in a divorce case. This wasn't about investigating criminal activity, mind you. The information being sought seemed to have no purpose other than harassment."

## DEFENDING CLERGY-PRIVILEGE FOR REBBETZINS

At the recommendation of senior officials of Agudath Israel of America, the Kollel reached out to attorney Mark Kurzmann, a former Department of Justice senior trial lawyer and a founding board member of Agudath Israel's Legal Services, an organization of volunteer lawyers.

"Although it was *erev Pesach* and an extremely pressured time for him, Mr. Kurzmann poured hours of legal work into the case *pro bono*," recalled Rabbi Fischer. "He had not only researched case law exhaustively and worked with Professor Stampfer in creating a hard-hitting legal affidavit from the Stampfer letter, he now spent many hours analyzing the legal parameters of the case with us and counseling Mrs. Fischer and Mrs. Goldblatt ahead of their court appearance."

"This was a challenging case," remarked Mr. Kurzmann in an interview with Yated. "We were seeking to defend the rebbetzins' right to claim clergy privilege without redefining the term "rebbetzin" or misrepresenting the *mesorah*."

Mr. Kurzmann agreed with Rabbi Fischer that it was reasonable to argue that despite Orthodoxy's position that women cannot be ordained rabbis, the kollel wives were in fact officially hired by the Kollel to "minister" to the community in crucial ways that overlapped with the duties of clergy.

"Ordainment — *semicha* — is about *halacha*, applicable to men exclusively. While women have no authority in that area, we were

determined to prove that they do have the authority under Orthodox Judaism to educate, guide and inspire, especially regarding family and marriage issues." Kurzmann said.

"Even more important, we wanted to demonstrate that in contemporary times, a rebbetzin can be so defined even if the woman is not the wife of a rabbi. There are several examples of renowned rebbetzins whose husbands are fine upstanding Jews but not rabbis."

#### STANDING THEIR GROUND

On the day of the hearing, Mrs. Fischer was grilled on the stand for almost an hour about her qualifications and training, the venue for her counseling activities and why her interactions with the wife in the divorce case qualified as anything more than friendship. Mrs. Goldblatt was interrogated similarly by phone.

"When did you go from not being a rebbetzin to becoming one?" the opposing attorney challenged Mrs. Fischer.

"When my husband and I were hired by the kollel, that's when my role began," Mrs. Fischer answered.

In response to questions posed, she cited her training under the renowned Tehilla Abramov in Jewish marriage education and her certificate from Ner L'elef in Jerusalem that coaches Orthodox Jewish men and women for out-of-town teaching and outreach positions. She testified to being hired by the Kollel to teach and reach out to women in the community and to bring them closer to their Jewish roots. Holding confidences in trust, she says, was a crucial part of her job.

"How do you separate out when someone talking just as a friend and when it's private?"

"I see it as a sacred duty to keep all personal information confidential. Unless the comments are made in a social setting before a lot of people."

"Why 'sacred'?" the attorney probed.

"According to Torah law, whatever one trusts you with must be kept confidential."

"Is that because you're a wife of rabbi?"

"Rebbetzin can also mean a religious woman leader. I've had rebbetzins whose husbands were not rabbis."

"Why do you assume someone is sharing with you because you're a rebbetzin?"

"I assume that to be on the safe side," Mrs. Fischer responded. "I'm held to a certain standard in the community because of my role. People recognize that. That goes with being a role model."

Mrs. Goldblatt, who testified by phone, cited her years of running a girls' orphanage in Byelorussia and her earlier training in Jerusalem as qualifying her for her present position working for the Portland Community Kollel as teacher and religious guide.

"Mrs. Goldblatt, do you consider all your conversations with people to be confidential?" the attorney asked.

"In my role as a rebbetzin, yes. Women speak to me about what's going on in their lives. They're often looking for a spiritual view of feminine issues and don't want to speak to a man."

"Come now. Aren't some of your relationships based simply on friendship?"

"There's certainly an element of friendship, but it's very clear that it's primarily my role as a rebbetzin that's at play."

"Who brings up the issue of confidentiality when people speak to you? Assuming that it is even mentioned?"

"That's a clear understanding due to my role in the community. It doesn't have to be spelled out. It's only right and fair to the women who trust me that whatever they discuss is kept private."

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As the testimony and deposition continued, the atmosphere in the room seemed to change. The questioning came to an end and Judge Beth Allen, in an unusual departure from protocol, issued her ruling on the spot.

"It seems pretty clear," she said, "that the issue here is not about official ordainment as a means of identifying Orthodox Jewish clergy. The state is not in a position to dictate to religious organizations how to define their clergy. The key seems to be how the movement itself identifies its religious leaders."

"In Orthodox Judaism, where only men can be rabbis, men can have their confidences protected by the law when they talk to the rabbi. But what about the women who prefer not to talk to male clergymen about deeply personal matters and turn to women religious leaders for guidance? Is it reasonable that women who prefer to open their hearts to other women should be deprived of the law's protection?"

"I don't believe that is what the statute governing clergy privilege intended," the judge concluded, granting the kollel wives in this precedent-setting case their motion to void the subpoena.

Pesach this year was celebrated in Portland, Oregon — and in homes across the country where people were monitoring this case — with an added measure of jubilation and gratitude.

The Portland Community Kollel was founded in 2006 by Rabbi Avrohom David of the Seattle Kollel and Rabbi Chaim Noson Segal of Torah Umesorah, under the guidance of Rabbi Hillel David.

Since its inception, the Kollel has witnessed remarkable growth. Eight kollel members deliver a wide array of classes and programs to all sectors of the Portland community, including classes in daf yomi, dirshu, mishna berura, and nightly classes on topics of halacha and hashkafa.

The kollel wives have created multi-faceted programming for women, children and teens, along with a summer youth camp and a Campus Outreach project at the University of Oregon.

In their ten years of working with the community, the kollel has strengthened the infrastructure of the traditional Jewish community. It has built the membership of the main shul from a Shabbos morning minyan to daily minyanim for all tefillos, becoming a growing source of Jewish education and community for Jews from across the spectrum.

The community has founded a new Torah Day School and this year opened a girls' high school, with a beginning class of eight students. An eruv enclosing 5 miles squared services the community.

Portland is beginning to attract an influx of families who are drawn to its growing Torah presence.

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