

PETITION THE BISHOP To Try to Stop a Break-up

When a faithful spouse wants to stop a separation or divorce, he/she can ask the bishop to do the following:

- Use pastoral means to reconcile the spouses (c. 1695)
- Mediate (c. 1446 §2)
- If the other is unwilling to reconcile, give ecclesiastical decree of separation for malicious abandonment
- Direct reparation for material damages (c. 1729 §1)
- Prevent sacrilege and scandal; deny Communion to one who refuses to reconcile and obstinately forced divorce with no moral reason, which is immoral and a grave offense against nature (c. 915)
- Instruct parties about the parameters of a separation plan that would be in accord with divine law

If it is known that a marriage is invalid, a separation that is in accord with divine law should still be arranged (c. 1692 §2, 1689), in contrast to an unjust no-fault divorce. Church law requires that all marriages must be considered valid, until proven otherwise (c. 1060).

Petition a faithful spouse can use
to ask the bishop to intervene:

MarysAdvocates.org/petition_bishop.html

NOTES CONTINUED

(7) Doheny, p. 659

(8) Tribunal of the Roman Rota, coram Parrillo, 04 May 1929, in *Sacrae Romanae Rotae Decisiones*, 21 (1929), pp. 189-193, par. 4. trans. Mary's Advocates

(9) http://www.usmarriagelaws.com/search/united_states/annulment_laws/

(10) <http://contracts.uslegal.com/frequently-asked-questions/>

(11) Weinandy, Thomas, O.F.M. Cap. (Executive director of the Secretariat of Doctrine and Canonical Affairs of USCCB 2005-2013). The Two Shall Become One: The Sacrament of Reconciliation And Marriage. www.usccb.org, 2014.

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JUSTICE

Separation Should be Rare

Because Catholic marriage includes having each other as husband and wife for better or worse, spouses accept some level of difficulty. Examples of offenses that occur in marriage are listed on an in-depth evaluation of conscience published by the USCCB:

- manipulating in order to get one's own way
- speaking in a demeaning or negative way
- injuring the other through taunting and negative teasing
- bickering out of stubbornness and selfishness (11)

While these are sinful, they are not likely to be bad enough to justify separation of spouses, and the spouse being mistreated is to exercise forbearance. Other offenses listed on the USCCB's evaluation of conscience, however, can be grave enough to justify separation of spouses, for example, physical abuse or adultery.

By invoking canon law on separation of spouses, Catholics want only to have separations that are in accord with divine law.

NO-FAULT DIVORCE

One who promises marriage in the Catholic Rite should understand that he/she will not separate without a just reason, as defined in canon law and historical case law from the Church's legal system.

Catholics should not file for divorce without the bishop's permission and should abhor no-fault divorce. When no-fault divorce lawyers and judges control the proceedings, any spouse can get a divorce by simply living apart for a time, or claiming the parties are incompatible, have irreconcilable differences, or the relationship is irretrievably broken. In the civil forum, there is no obligation to maintain an intact home. With no-fault divorce, the party causing the break-up is routinely rewarded.



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SEPARATION & DIVORCE

CATHOLIC PERSPECTIVE

MARRIAGE RITE

Assent to Three Conditions

- Have you come here freely and without reservation to give yourselves to each other in marriage?
- Will you love and honor each other as man and wife for the rest of your lives?
- Will you accept children lovingly from God, and bring them up according to the law of Christ and his Church? (optional for elderly)

Consent – Solemn Vow

Those marrying make a promise, "I take you for my lawful wife (or husband), to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, until death do us part."

CANON LAW

Obligation to Live in Same Home

For parties in a Catholic marriage, the husband and wife must live together, except when one spouse does something bad enough that the other has a just cause for living apart (c. 104 & 1151) (note 1). Emotional detachment and simple annoyances are not a basis for separation.

Separation is the factual occurrence of spouses living apart.

Presumption of Validity

Marital separation is different from annulment. Questions about separation must be answered before questions about annulment. Each marriage must be presumed valid until proven otherwise (c. 1060).

Reasons to Separate: Danger or Adultery

Causing mental or physical danger and rendering the common life too difficult are offenses which justify separation (c. 1153). A spouse is not supposed to live apart on his own authority and should seek an ecclesiastical investigation and separation decree if he feels there is a morally legitimate reason to separate. For separation due to mental or physical cruelty to be justified, three conditions are necessary: the behavior must be dangerous, it must be repeated, and separation must be the only way to solve the problem (2). If delay is dangerous, a party can live apart on his own authority and define his marital status with an ecclesiastical decree thereafter.

A separation decree defines the status of the spouses who otherwise have the obligation to live together. The Church's appeals court, the Roman Rota, teaches, "light injustices from abusive words or the incompatibility of the personalities of the spouses which make cohabitation troublesome cannot be considered as sufficient causes to separate the spouses" (3).

Adultery by one party gives the other party an acceptable reason to live apart. Nevertheless, the innocent party is encouraged to forgive the adulterous partner. If an innocent spouse wants to exercise this reason for living apart, he must ask for a separation decree within six months after separating due to adultery. If the innocent spouse does not separate within six months after discovering the adultery, it is presumed that the adultery is forgiven and that the innocent spouse is willing to continue living together (c. 1152). An ecclesiastical separation decree must either come from a tribunal judge or the local bishop (c. 1692 §1).

Desertion and Malicious Abandonment

If one spouse causes separation when the other has done nothing bad enough to give a morally legitimate reason, the one who causes separation is an *abandoner*. Historically, desertion, also called malicious abandonment, has been considered by the Church to be a reason to issue an ecclesiastical separation decree (4). The decree can instruct the abandoner to reform his wrongful behavior.

Power of Governance of the Church

Civil courts purport to have jurisdiction to relieve a spouse of his full obligation to support the marital home when the other has done nothing grave enough to justify separation. This contradicts divine, natural, and canon law.

The Catechism teaches that divorce is a grave offense against nature and immoral and only permissible in limited circumstances as specified in canon law (CCC 2383-2386).

Overreach of Civil Courts

According to canon law, civil courts do not have limitless jurisdiction over matters that relate to spiritual and moral obligations (5). Civil courts cannot relieve someone's obligation to live in the same home with one's spouse. The upbringing of children (i.e. child custody) should not be under the sole authority of the civil forum, and neither should spousal and child support (i.e. obligation of help and assistance) (6).

A Catholic should not exercise on his own behalf the power of ecclesiastical governance, or the pastoral and administrative power of the bishop. The bishop is supposed to consider whether a decree from the civil forum will be in accord with divine law, and whether an ecclesiastical decision will have civil effects (c. 1692 §2).

Separation Plan in Accord with Divine Law

When the spouses live apart, the adequate support and education of children must always be suitably provided (c. 1154). Historically, Church decrees normally give the care of the children to the innocent party, reared at the expense of the guilty partner (7). One Roman Rota case explicitly said that the party at fault is not due support from the innocent party (8).

When there is no moral reason for separation, the spouse leaving the marriage is obligated to reconcile, and should be held accountable to contribute his or her full share to the material upkeep of the family home. When there is a moral reason for separation, the Church could instruct parties of their obligations in accord with divine law toward each other and their children. The parties could ratify these obligations and commit them to writing in the civil forum.

CIVIL ANNULMENT

If one party never truly entered a Catholic marriage (e.g., a woman marrying for money), then a just outcome might be achievable in a civil annulment. Or, if one party never truly entered a marriage because of a mental disturbance making him/her incapable of consent, then a civil annulment might be more applicable than a civil divorce.

Civil annulment is the process by which a Court states that a marriage never legally existed. An annulment must be based on mental illness, fraud, forced consent, physical incapacity to consummate the marriage, lack of consent to underage marriage or bigamy (9). In the case of civil annulment, the innocent party can claim no financial obligation to support or give property to the party at fault. In a fraudulent contract, the innocent party can claim the right that damages be financially repaired (10).

NOTES

- (1) The "c." precedes canon law number referenced. Travel or illness are acceptable reasons for temporary separation that are not covered in canon law.
- (2) *Instituto Martin de Azpilcueta. Exegetical Commentary Code of Canon Law*. Ed. Angel Marzoa, Jorge Miras, Rafael Rodriguez-Ocana. Woodridge, IL: Midwest Theological Forum, 2004, p. 1585
- (3) Tribunal of the Roman Rota, Coram Florczak, 30 June 1928, in *Sacrae Romanae Rotae Decisiones*, 20 (1928), pp. 267-272. trans. Mary's Advocates
- (4) *Instituto Martin de Azpilcueta. Exegetical Commentary Code of Canon Law*. (Canon 1153, "Malicious Abandonment" p. 1585-1586). Doheny, Msgr. William J. , C.S.C., J.U.D, Advocate and Procurator of the Tribunal of the Apostolic Signatura. *Canonical Procedure in Matrimonial Cases, Volume II, Informal Procedure*. Milwaukee: The Bruce Publishing Company, Copyright 1944. Second Edition 1948. (p. 635, 659)
- (5) Goldsmith, J. William. *The Competence of Church and State of Marriage - Disputed Points*. Washington, DC: Catholic University Press, 1944, p. 22
- (6) The old 1917 code lists this help as an end of marriage (*mutuum adiutorium*) and it is part of the "well-being of spouses" codified in canon 1055 of the 1983 code. See Bianchi, Paolo. *When is the Marriage Null*. p. 85 & 213. Also Burke, Raymond. "So Called New Grounds of Nullity." *Canon Law Conference. Shrine of Our Lady of Guadalupe, La Cross, Wisconsin*. 10 August 2011.