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His Eminence, Robert Cardinal Sarah
Prefect of the Congregation for Divine Worship and the Discipline of the Sacraments
Palazzo delle Congregazioni
Piazza Pio XII, 10
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6 November 2017,

Your Eminence,

You should have received by now my recourse that was dated 13 August 2017. I am making recourse against 3-months of silence from The Most Rev. James Checchio, Bishop of the Diocese of Metuchen, to whom I petitioned on 28 April 2017 for an administrative decree of separation of spouses and the implementation of canon 1695, “the judge is to use pastoral means to reconcile the spouses.”

I am not admitting a renunciation of my recourse to the Congregation for Divine Worship and the Discipline of the Sacraments.

Herein, I am providing you my responses to statements sent to me by the Rev. Robert Kolakowski, which further illustrate “just reasons” for my recourse (c. 1737 § 1). It seems the Bishop has delegated to Rev. Robert Kolakowski, JCL, the Bishop’s pastoral and administrative authority to decide about a decree of separation of spouses (c. 1692 §1). Rev. Kolakowski and another diocesan canon lawyer asked to meet with me on 10 October 2017. Below are my responses to statements made by Rev. Kolakowski in his letter to me, dated 27 October 2017.

1. Healing and Civil Ramifications

Rev. Kolakowski: [A]s we shared at our meeting, the path to healing following a civil divorce is unfortunately not found in the Church's issuing a decree of separation of spouses; the ecclesiastical infliction of a canonical penalty upon Jack Smith, and; an ecclesiastical contentious action to repair material damage - in the form of determining child custody, as well as spousal and child support - as you have requested of the Church in your petition.

During our meeting, we were gratified to hear of your understanding in this regard, as well as recognizing that an ecclesiastical decree has no civil ramifications in the United States. This includes an ecclesiastical decree of

separation of spouses which has no civil weight. It is not surprising that you are well aware of this fact as a civil lawyer.

Though I understand the meaning of Rev. Kolakowski's words, I do not agree with him. I would be comforted and find healing in a decree from our shepherd defending my marriage against illicit, immoral breakup when I have done nothing grave justifying separation of spouses. In discussing the concept of malicious abandonment as a ground for separation of spouses, the "Exegetical Commentary Code of Canon Law" from University of Navarra, shows that the concept of malicious abandonment is "the result of a work of jurisprudence and doctrine with the intent of specifically protecting compliance with every conjugal and family duty, and penalizing their omission." (p 1585; c. 1153). A decree from the Bishop could motivate my husband to comply with his conjugal duties which would result in great healing; my children would again have natural everyday interaction with their mother, and possibly a unified family again. Or, if nothing else, the scandal my husband is presently giving them would be mitigated; "The parties' children are being taught by the Respondent-spouse's example, that *marital abandonment* and *adultery* are acceptable" (28 April 2017 Petition, Par. 11(a)).

Precisely because I am a lawyer, I think that an ecclesiastic decree could have civil ramifications and civil weight, if only someone would argue for them in the civil forum. In the United States, all states, including New Jersey, are forbidden from impairing on the obligations of parties in a contract and marriage is recognized by the state as a contract. (The U.S. Constitution, Art. I, § 10). Unilateral no-fault divorce, forced by the Plaintiff, is arguably unconstitutional because it interferes with constitutionally protected rights of religious liberty and wrongly entangles the state civil judge with religious polity. For Catholics, divorce is a case of separation of spouses and Catholic marriage contracts, pursuant to our own canon law, include limited grounds for separation of spouses. The civil forum wrongly adds a ground for divorce (*i.e.* ground for separation) that is illicit for Catholics: "Irreconcilable differences which have caused the breakdown of the marriage for a period of six months and which make it appear that the marriage should be dissolved and that there is no reasonable prospect of reconciliation." (NJ Rev Stat § 2A:34-2(i) (2013)).

After an interested party legitimately proposes a petition for an administrative decree, it is unjust to deny a judgment because the Bishop's delegate feels it would not provide the path to healing.

2. Canonization of Government No-fault divorce is Impossible

Rev. Kolakowski: So long as civil laws are not contrary to divine law or unless canon law provides otherwise, canon law often defers to civil laws (1983 Code of Canon Law, canon 22). For example, the code canonizes the civil laws on

guardians of minors (canon 98 §2) and the merely civil effects of marriage (canon 1105 §2).

Making an example of canon 1105 §2 about document required for a proxy marriage, obfuscates the issue before the Bishop. I am exercising my right to a judgment of my petition for a separation decree, and a right for the implementation of canon 1695.

The “New Commentary on the Code of Canon Law,” illustrates how civil law should be evaluated relative to divine law.

When the civil law conflicts with divine law or canon law, the latter prevails. ... A better translation of the canon's opening words would be, ‘the civil laws to which the law (*ius*) of the Church yields,’ because canon law does not yield to civil laws in general, but only in certain matters. ... The civil laws (*leges*) in question are all pertinent norms of the State or society—not only legislation but also administrative law, customary law, and other norms. ... The explicit mention of the divine law calls attention to the necessity of evaluating the civil laws also in accord with the divine law, for example, as it is expressed in the moral teachings of the Church (p. 85; c. 22).

Modern scholars show unilateral no-fault divorce as unjust and immoral. See Stephen Baskerville, Professor of Government at Patrick Henry College; Clay T. Rossi, author of “Seeking More: A Catholic Lawyer's Guide Based on the Life and Writings of Saint Thomas More;” Helen Alvare’, Professor of Law at the Antonin Scalia Law School, George Mason University; Jennifer Roback Morse, economics professor at Yale and George Mason and founder of the Ruth Institute; Donald Ascii, Professor of Theology at Franciscan University of Steubenville, with a Doctorate of Sacred Theology, Specialization in Moral Theology, Summa Cum Laude - Pontificia Università della Santa Croce (Rome, Italy); and Thomas Farr, Associate Professor of the Practice of Religion and World Affairs at Georgetown. In no-fault divorce, there is no expectation for the party who reneged on the marriage promises to repair damage, no concept of reconciliation after grounds for temporary separation passed, no expectation of permanent obligations, and no interest in protecting children from scandal given by the party who reneged on the marriage promises. In the civil forum, the spouse who is keeping the marriage promises and counting on them to be fulfilled by the other, will routinely be court-ordered to leave the marital home, forcibly separated most or much of the time from the children, and court-ordered to give property to the other spouse who is an abandoner or an adulterer. Divorce defendants know this routine, so a number sign coerced agreements in which an abandoner or adulterer is unconscionably relieved of most of his marriage obligations.

Moreover, the rights and obligations intrinsic to marriage are not merely civil effects of marriage. The obligation to maintain the common conjugal life is not a merely civil effect of marriage and no-fault divorce courts purport to relieve the plaintiff of that obligation. Rev. Robert T. Kennedy, J.D., J.U.D., in his discussion about canonization of civil laws in the “New Commentary on the Code of Canon Law,” lists civil laws that cannot be canonized regarding prescription: “Other obligations and rights of Christian spouses are also considered to be of divine law. It is axiomatic that a right or obligation which flows from divine law cannot be precluded by a law of human origin such as prescription.” (p. 232; cc. 197-199).

Precisely because the outcomes arranged by divorce lawyers and judges in the civil forum in New Jersey are immoral and contrary to divine law, the dioceses cannot canonize the civil laws about separation and divorce. The ground of “irreconcilable differences” claimed by my husband in the civil forum is not a ground for separation of spouses in accord with divine law, canon law, or natural law.

Furthermore, even if I had done something grave enough to justify temporary separation of spouses (which I deny), my husband is obligated to “work through marriage and family to build up the kingdom of God” (c. 226 §1). As evidenced by my husband’s refusal to cooperate with those expert in helping couples, he is reneging on his obligation to work through marriage and family to build up the kingdom counseling with the founder of the [*marriage friendly, Catholic Psychologist, name omitted*]. (28 April 2017 Petition, section 12a-b).

Another reason that the civil divorce laws of New Jersey for separation and divorce cannot be canonized is because canon law provides otherwise in universal law with canon 1152 §§ 2-3, 1153, and 1692, and with particular law. “In the United States, furthermore, we have the Third Plenary Council of Baltimore, Art. 126, which establishes the procedure in which no one is allowed to file for civil divorce without the permission of the bishop first.” (My follow-up letter to Rev. Kolakowski, 16 October 2107, p. 4).

It seems irrational to believe that a civil divorce system is in accord with divine law which, by court orders and coercion, purports to relieve an abandoning spouse of most of his obligations, to the detriment of the other spouse and children. As occurred in my case, the civil divorce system routinely financially rewards abandoners, and results in children losing normal everyday interaction to the other parent—who is keeping the marriage promises and wants an intact home. My husband’s financial position is better after the divorce and was able to purchase a third home. My financial situation is horrific and I cannot resurrect my career because I had been out of the workforce for seventeen years, as stay-at-home-mom (48 April 2017, Sec. 10).

3. Bishop's Permission if Civil Sentence Not Contrary Divine Law

Rev. Kolakowski: The diocesan Bishop may also even grant permission for spouses to approach the civil forum in those places where the civil sentence of separation is not contrary to the divine law (cf. canon 1692, §§2-3).

While this statement is true, it is irrelevant to my pending petition to the Bishop, wherein I did not ask for the Bishop's permission to file for civil divorce.

“Petitioner asks the Ordinary to issue a singular decree of separation of spouses based on the grounds of adultery and abandonment (*malitiosam desertionem*). Petitioner asks that parties be instructed about a separation plan that is in accord with divine law, specifying support (*mutuum adiutorium*) and preventing scandal to the children.” (28 April 2017 Petition, par. 3).

If my husband had submitted a petition to the Bishop seeking permission to approach the civil forum, the Bishop has competence to decide whether, or not, to grant said permission, only “after having weighed the special circumstances (*perpensis peculiaribus adiunctis*).” (c. 1692 §2). The Bishop never weighed our special circumstances before, or after, my husband approached the civil forum for a divorce (*i.e.* spousal separation).

If my husband had petitioned for judicial separation sentence, canon 1692 §3 shows that “if a case concerns only the merely civil effects of marriage, the judge, after having observed the prescript of §2, is to try to defer the case to the civil forum.” Prior to the judge trying to get my husband to petition in the civil forum, the judge is required to conform that the Bishop has granted permission for my husband to approach the civil forum. Furthermore, before the judge could have tried to get my husband to petition in the civil forum, the judge would have to be confident that the civil forum was only going to entangle itself with the merely civil effects of marriage. But, the tribunal judge would have no power to force my husband to petition in the civil forum.

However, the petition before the Bishop is not from my husband; it is from me. My husband's actions do not interfere with, waive, or forfeit, my right to an administrative decree judging our case of separation of spouses.

4. “Merely” Civil Effect, not all Civil Effects

Rev. Kolakowski: Cases which concern the civil effects of marriage are more appropriately decided in the civil forum (canon 1671 §2 [revised 8 December 2015]), especially in those places such as the United States where the decisions of ecclesiastical authority are not recognized by the civil authority. The civil effects of marriage concern such matters as property division, spousal support, child support, child custody, and the like. By canonizing the civil laws on these matters the canon law avoids conflicts with the various laws of the many civil jurisdictions throughout the world. In addition, as we shared in our meeting, it is beyond the purview of this diocesan Tribunal to determine the entire body of civil family law, enacted by the Legislature of the State of New Jersey, as well as the Rules of the New Jersey Court, as contrary to divine law as you have essentially requested.

Rev. Kolakowski’s belief that it is beyond his purview to determine whether the divorce laws are contrary to divine law is incorrect. The divorce practices inflicted on Catholic families is most definitely within the scope and concern of the Church, because the effects of marriage are within the scope and concern of the Church. The primary goal of the Church is not the avoidance of conflict between canon law and civil law. The goal of the Church is to guide the faithful, and precisely because the divorce practices are in conflict the natural, divine, and moral law, they cannot be canonized. Throughout history, the Church has voiced its objection to immoral civil practices, such as abortion, racism, and slavery. Moreover, my petition is not asking for a ruling about the entire body of civil law.

Previously, I explained that I disagree with the Rev. Kolokowski’s belief that the decisions of the ecclesiastical authority will not be recognized by the civil authority. Furthermore, his statement “*The civil effects of marriage concern such matters as property division, spousal support, child support, child custody, and the like,*” is unsubstantiated by any authentic interpretation of canon law or magisterial teaching.

Canon 1671 §2, to which Rev. Kolakoski referred, is contained in Pope Francis’ new rules for streamlining the nullity process, and is irrelevant, because neither my husband or I have petitioned for a decree of invalidity of our marriage. Notably, this canon does not simply refer to “cases which concern *the civil effects* of marriage,” but it refers to “cases which concern *the merely civil effects* of marriage.” Rev. Kolakoski omitted the modifier “merely” which appears in the 1983 *CIC* canons 1059, 1672, and 1692.

Canon 1059: Even if only one party is Catholic, the marriage of Catholics is governed not only by divine law but also by canon law, without prejudice to the competence of civil authority concerning the merely civil effects of the same marriage.

In his 1944 canon law dissertation “The Competence of Church and State over Marriage,” Rev. J. William Goldsmith clarifies that if a temporal effect is connected to the supernatural, the civil government does not have legitimate power.

A third principle governing *res mixtae* concerns those that are either supernatural or supernaturalized. *The civil power can make no disposition with respect either to the substance or to the inseparable effects of supernatural or supernaturalized res mixtae; but the power of the State extends only to the merely civil (i.e. separable and temporal) effects of these things, the while it must preserve the proper subordination to the ecclesiastical law* (citing Cavgnis, Cappello, Coranata, and Ottaviani) (p. 25)

Because spouses are obligated to maintain a common conjugal life, property division is unavoidably connected with supernatural/moral/religious obligations, and it would seem unreasonable that property division would be a merely civil effect of marriage. Cardinal Raymond Burke, in his 10 August 2011 presentation at the Canon Law Conference at the Shrine of Our Lady of Guadalupe La Cross, Wisconsin, explained how the orientation toward the good of the spouses includes mutual assistance. “[T]he *bonum conjugum* understood as *mutuum adiutorium* can only refer in this context to the minimum and essential requirements of the same; that the mutual assistance of the spouses.” (1983 *CIC* c. 1055 §1; 1917 *CIC* c. 1013). Moreover, spousal support and child support cannot be merely civil effects of marriage because these obligations are intertwined with supernatural/moral/religious principles. Civil government judges who make support orders contrary to divine law, natural law, and justice are disrupting the effects of marriage that are not the merely civil effects of marriage. Catholics are to uphold general guidelines for Catholic spouses’ behavior which encompass property and support. The “Exegetical Commentary Code of Canon Law” from the University of Navarra shows, “Once matrimony takes place” [...] “living together is informed by a series of informing principles that constitute the general guidelines for spousal behavior.”

Spouses must tend to their mutual material or corporal perfection. This rule implies that spouses must help each other in the maintenance and improvement of the material aspects of their personal life. It also refers to the fact that matrimonial life must not involve a detriment to the corporal or material good of the other spouse.

Spouses must tend to the material and spiritual good of their children. This rule implies that spouses must tend to favor their dual wellbeing in connection with their offspring. Moreover, one must not cause any harm to their material or spiritual wellbeing, immorally or culpably (p. 1571-72; c. 1151).

All parties who enter Catholic marriages must consent to “bring [children] up according to the law of Christ and his Church;” (*The Rite of Marriage* (1970) §24; *The Order of Celebrating Matrimony* (2016) §60). Canon 1055 §1 shows that marriage is ordered by its nature to “the

procreation and education of offspring,” so the upbringing of children is inseparable from the supernatural/moral/religious effects of marriage, and it cannot be a merely civil effect of marriage. Divine law, natural law, and canon law guides the upbringing of children to prevent giving them scandal and ensure their good moral and religious formation. Historically, in cases of separation of spouses, custody of children is given to the innocent spouse. (Gumbleton, Thomas J. *Separation and Divorce a Comparative Study of the Code of the Canon Law of the Catholic Church and the Civil Law of the State of Michigan*. Pontifica Universitas Lateranensi. (1964) p. 143; King, James P. *The Canonical Procedure in Separation Cases*. (1952) p. 111; Forbes, Rev. Eugene. *The Canonical Separation of Consorts* (1948) p. 237-239). Civil government judges who make child support orders and parenting schedules contrary to divine law, natural law, and justice are disrupting the effects of marriage that are not the merely civil effects of marriage.

I am aggrieved by the diocese refusing to give my husband true teaching and advice pursuant to canon 1695, and refusing to make a judgment in my case. The Church’s pastoral and canonical intervention could prevent the giving of scandal to my children, and prevent material, corporal, spiritual, harm to our children and myself. My husband in having adulterous relationships in front of our children. (See Petition, sec. 11). These matters are not the merely civil effect of marriage.

5. Ecclesiastical Decree is Applicable

Rev. Kolakowski: At the same time, as you recognized during our meeting that an ecclesiastical decree has no civil ramifications and is not applicable to your circumstance,

Rev. Kolakowski is incorrect when he says that I recognize that an ecclesiastical decree has no civil ramifications and is not applicable to my circumstances. As previously stated, an ecclesiastical decree could have civil ramifications because of the constitutional limits on state powers in the US. My recourse to a Dicastery in the Roman Curia does not “exempt the competent authority from the obligation of issuing the decree” (c. 57 §3).

6. Irregular to use Nullity of Marriage Sentence Requirements

Rev. Kolakowski: Based on your request, we shall send a pastoral letter to you and Mr. Smith as a reminder of fulfilling the moral and civil obligations (cf. canon 1691 §1 [revised 8 December 2015]).

Rev. Kolakowski risks violating canon law when he invokes canon 1691 *Mitis Iudex* 8 Dec. 2015 in correspondence with my husband. That canon controls the judicial sentence concluding a case

challenging the invalidity of marriage; no challenge against the validity of our marriage has been raised, and Rev. Kolakoski is obligated by law to presume that our marriage is valid pursuant to canon 1060.

Outside a nullity trial, a bishop reminds the faithful of their obligations in a decree, a precept, or a rescript. After receiving a petition for an administrative decree or judicial sentence, canon 1695 shows the obligation of the judge (whether he be tribunal or bishop): “Canon 1695: Before accepting the case and whenever there is hope of a favorable outcome, the judge is to use pastoral means to reconcile the spouses and persuade them to restore conjugal living.” Carmelo De Diego-Lora, in his 1984 work published by *Libreria Editrice Vaticana* which I had sent to our diocesan Chancellor on 16 July 2017, says, “Next, the competent ecclesiastical authority will cite the spouses with the finality of implementing the pastoral means of agreement and conciliation, in order for the conjugal life to be reestablished peacefully, according to the prescript of can. 1695” (p. 399).

In my petition to our Bishop, I wrote, “As described in canon 49, Petitioner asks the Bishop to issue a singular precept urging the Respondent-spouse to uphold the *moral and canonical obligations*, and instructing the Respondent-spouse *that a judge in the civil forum has no competence to relieve the Respondent-spouse of the obligation to uphold his marriage promises*” (par. 1). Canon 49 describes the authority of a bishop and states, “a singular precept is a decree which directly and legitimately enjoins a specific person or persons to do or omit something, especially in order to urge the observance of law.”

Furthermore, outside a nullity trial, a tribunal judge in his sentence judging a petition for a judicial sentence of separation of spouses, must, in the final sentence, “determine what obligations have arisen for the parties from the trial and how they must be fulfilled.” (c. 1611 2^o). Those obligations would be explained to my husband after an investigation for a separation case, and I am asking that my husband be instructed of his obligations prior to an ecclesiastic separation investigation.

Because the ecclesiastic authority, not the civil authority, has competence to judge the effects of marriage that are moral/supernatural/religious, that is what I sought in my 28 April 2017 Petition, “Petitioner asks that parties be instructed about a separation plan that is in accord with divine law, specifying support (*mutuum adiutorium*) and preventing scandal to the children” (sec. 3). Any instruction to my husband and myself that simply shows that we must fulfil our moral and civil obligations, without any description of those obligations in our circumstances, would be heedless.

As stated in my 28 April 2017 Petition, “the Petitioner is pursuing and vindicating rights associated with the Respondent-spouse’s marital obligations” (par. 5). From the ecclesiastic authority, I sought teaching for my husband, advising him of his obligations which includes satisfying my “right to the common conjugal life and rights to those things that belong to the partnership of conjugal life” and his “duty to work through marriage and family” [...] “(cf. cc. 104, 226 §1, 1151, 1135)” (Petition sec. 8).

I sought from the Bishop teaching for my husband advising him that he must not wrongly interfere with my right to “educate children in all ways natural to any child parental right to educate children in all ways natural to any child born to married parents; and” [...] “the right to take care for the physical, social, cultural, moral, and religious education of children (cf cc. 226 §2, 1136)” (*ibid* sec. 10).

Where I asked the Bishop to implement canon 1695 and implement pastoral means of agreement and conciliation, I was seeking pastoral means that would include the Bishop advising my husband that he must not “cause any harm to their [our children’s] material or spiritual wellbeing, immorally or culpably,” and my husband’s actions “must not involve a detriment to the corporal or material good of the other spouse” (See above, no. 7, Exegetical Commentary, p. 1571-72).

The pastoral means that I sought from the ecclesiastic authority include teaching my husband, advising him of his obligation to undo, as much as possible, the damage he’s done to our family by his divorce action, because we know from the Catechism and canon law that I cited in my Petition, “Divorce is a grave offense against the natural law, immoral, and gravely wounds the deserted spouse and children (CCC 1607, 2383-2386, *damna gravia, profunde vulneratis*, citing CIC cc. 1151-1155).”

Pastoral means that I sought include teaching and enlightening my husband with truth. In my letter to Rev. Kolakowski, I described the pastoral means I was seeking by quoting *Familiaris Consortio*, “teaching and advice must therefore always be in full harmony with the authentic Magisterium of the Church, in such a way as to help the People of God to gain a correct sense of the faith, to be subsequently applied to practical life” (16 October 2017 letter, p. 2).

Our children and I need my husband to be instructed to work on reconciling our marriage, and cease adulterous relationships and romantic relationships with other women. For this reason, I am aggrieved by the diocesan refusal to accept and judge my petition. There appears to have been no attempt at “pastoral means to reconcile the spouses and persuade them to restore conjugal living” (c. 1695).

7. Cardinal Coccopalmerio 4 November 2015 Opinion Contrary to Learned Persons

Rev. Kolakowski: In response to your letter of October 16, 2017 and received on October 20, 2017, this Tribunal remains guided by the Response of the Pontifical Council for Legislative Texts, dated November 4, 2015 (Prot. N. 15181/2015) regarding authorization for a civil divorce.

Canon 1692 §1 establishes that "unless other provision is legitimately made in particular places, a decree of the diocesan bishop or a judicial sentence can decide the personal separation of baptized spouses." (Emphasis in the aforementioned Response).

The Council continues:

Since distinct positions are possible, depending on each conference of bishops' particular legislation as well as any concordat with the civil government, the diocesan bishop's permission for a Catholic spouse to initiate civil divorce may or may not be a requirement in a given place. In practice, this means that where there is no particular legislation or concordat to direct otherwise, and where the ecclesiastical decision has no civil effects (cf. canon 1692 §2), the local bishop's permission would not be an obligation - whether juridical or moral. (Emphasis added).

The opinion to which Rev. Kolakowski is referring was signed by one person, Cardinal Coccopalmerio. While it is related to cases of separation of spouses, the opinion is irrelevant to my petition to the Bishop for a judgment in an administrative case of separation of spouses. My husband's obligation, or lack thereof, to obtain the Bishop's permission prior to petitioning in the civil forum, does not waive or forfeit my right to an ecclesiastical judgment or the implementation of canon 1695.

The 4 November 2015 opinion of Cardinal Coccopalmerio does not have any authority as an authentic interpretation of canon law because it is not confirmed by the Pope and issued after consultation with the other Dicasteries concerned, as required by *Pastor Bonus*, Art. 155. The opinion is published on the Pontifical Council of Legislative Texts website under the heading "*Risposte Particolari*." The site introduces the particular responses.

Allo scopo di facilitare l'applicazione della legge canonica si riporta in questa Sezione il contenuto essenziale di alcune Risposte particolari date dal nostro Dicastero a singoli quesiti ritenuti di interesse generale. Queste Risposte non possiedono il valore formale di una Risposta autentica ai sensi dei cann. 16 §1 CIC e 1498 §1 CCEOe dell'art. 155 della cost. ap. Pastor bonus; esse sono il risultato dello

studio dell'argomento fatto dal Dicastero e indicano la posizione del Pontificio Consiglio per i Testi Legislativi su una questione determinata agli effetti indicati dai cann. 19 CIC e 1501 CCEO.

[machine translation] In order to facilitate the application of canon law, this section contains the essential contents of some specific Answers given by our Department to individual questions deemed to be of general interest. These Answers do not have the formal value of an Authentic Answer under the cann. 16 §1 CIC and 1498 §1 CCEO and art. 155 of the cost. ap. Pastor bonus; they are the result of the study of the topic made by the Dicastery and indicate the position of the Pontifical Council for Legislative Text on a matter determined by the effects indicated by cann. 19 CIC and 1501 CCEO.

Canon 19 shows, “If a custom or an express prescript of universal or particular law is lacking in a certain matter, a case, unless it is penal, must be resolved in light of laws issued in similar matters, general principles of law applied with canonical equity, the jurisprudence and practice of the Roman Curia, and the common and constant opinion of learned persons.” Notably, there already are prescripts of universal and particular law regarding the procedure for cases of separation of spouses prior to a party petitioning in the civil forum. Cardinal Coccopalmerio did not provide an opinion about a matter that was lacking in the law; he provided an opinion that was contrary to the law and contrary to the practice of the Roman Curia.

In the sixteenth century, we had the Council of Trent clarify the role of Church over all marriage cases. “Since the Catholic doctrine that matrimonial causes belong to ecclesiastical judges is defined (Conc. Trent, Session XXIV, can. 12), it is not permitted for one to approach the civil tribunals unto the petitioning of separation from bed and board unless the cause first be approved by the ecclesiastical judge, ... and the case is reserved to the Bishop.” (Translation, *Acta et decreta quatuor conciliorum provincialium Cincinnatinsium* (1882), p. 223). In 1860, we had the Sacred Congregation of the Holy Office teach that a condition under which one could approach the civil forum required that “there must be present just causes for the separation in the judgment of the bishop.” (*Collectanea Sancti Congregationis de propaganda fide seu decreta instructiones rescripta pro apostolicis missionibus*. Vol. 2 Ann. 1867-1906. n. 2272. Rome: *Polyglotta* (1907)). In 1880, we had the Encyclical of Pope Leo, XIII, on Christian Marriage, *Arcanum Divinae*, “Let no one, then, be deceived by the distinction which some civil jurists have so strongly insisted upon – the distinction, namely, by virtue of which they sever the matrimonial contract from the sacrament, with intent to hand over the contract to the power and will of the rulers of the State.” (n. 23).

In 1886 in the United States, we had Article 126 of the Third Plenary Council of Baltimore:

“We lay down the precept to all those, who are married, that they not enter civil tribunals for obtaining separation from bed and table, without consulting ecclesiastical authority. But if anyone should have attempted it, let him know that he incurs grave guilt and is to be punished through the judgment of the bishop.”

In 1918, we had Very Rev. Henry A. Ayrinhac, President of St. Patrick Seminary, Menlo Park, California, Professor of Moral Theology, Pastoral Theology, and Canon Law, who wrote in “Marriage Legislation in the New Code of Canon Law,” about divorce and separation: “The Third Plenary Council of Baltimore, n. 126, forbids having recourse to the civil courts without consulting the Ordinary” (Sec. 320, p. 310). In 1958, we had “The Catholic Marriage Manual” published by Random House with a forward by the Archbishop of New York,

“Persons who believe that sufficient reasons exist to justify separation must request permission to do so from their Pastor. The pastor will refer the case to the judges of the marriage Court established by the diocese.” ... “Only a properly authorized representative of the bishop can grant permission to a Catholic to apply for a civil divorce.” (pp 165-166).

In 1947, we had Felix M. Cappello, S.I., Professor at Pontifical Gregorian University, in *Tractatus Canonico-Moralis de Sacramentis, Vol V. De Matrimonio*, “Since matrimonial cases pertain to the Church, it is not permissible for spouses to seek a civil divorce, unless they have obtained a canonical license of separation first (translation of Latin, *Cum causai matrimoniales ad Ecclesiam pertineant, non licet coniugibus petere divortium civile, nisi antea ob causam canonicam licentiam se separandi obtinuerint*) (Sec. 838).

On 19 April 1971, the consultors on *Commissionis Codici Iuris Canonici Recognoscendo* discussing *Schema de Processibus* on noted that “matrimonial cases of the baptized belong by proper right to the ecclesiastical judge” [...] “If the church would renounce its own duty and right, it would follow that a separation against the divine law would frequently be imposed or denied.” (translation of Latin original published. *Communicationes* XL (2008) p. 147). On 31 March 1979, they decided that the cases of separation of spouses must not be absent from the general law and must not be left only to particular law and they voted that the intervention of the Ordinary of the residence of the spouse must be required. (*Communicationes* XI – N. 2 (1979) pp. 272-273).

In 1984, Camelo De. Diego-Lora in “*Las Causas de Separación de Cónyuges Según el Nuevo Código*” published by the *Libreria Editrice Vaticana* said that the Bishop’s permission is required before filing for divorce. (*Dilexit iustitiam : Studia in Honorem Aurelii Card. Sabattani*. p. 391). In 1996, Luigi Chiappetta, in *Il Codice di diritto canonico : commento giuridico-pastorale (Seconda edizione)*, within his commentary on canon 1152 and 1153, he said that

canon 1692 requires the local Ordinary's permission. (pp. 419-420). In 2001, from the University of Navarra, we had the Spanish *En Comentario Exegético al Código de Derecho Canónico*, Vol. IV, 2 (pp. 1969); in 2004, we had the English translation of the Navarra "Code of Canon Law Annotated" and their "Exegetical Commentary" which all said that the bishop's permission is required before filing for divorce, unless particular law enacted by the bishops in the territory waives the requirement (c. 1692).

In 2000, Canon Law Society of America's "New Commentary on the Code of Canon Law" says "Canons 1692-1696 outline the process by which ecclesiastical authority determines the existence of a legitimate cause and, if one is proven, permits a separation of the spouses." (p. 1375-1376). In 2008, Rev. Philip Brown, in *Legal Separation: A Pastoral Alternative*, said the bishop's permission is required. (Studies in Church Law IV. Bangalore, India: St. Peter's Institute. p. 247).

Rev. Kolakowski defers to the opinion of Cardinal Coccopalmerio, so I bring the aforementioned findings to the attention of the Congregation for Divine Worship and the Discipline of the Sacraments because the matter concerns the Dicastery.

8. Caccopalmerio's 4 November 2015 Opinion does Not Waive my Right to Judgment

Rev. Kolakowski: As such, based on the Response of the Pontifical Council for Legislative Texts, as there is no concordat between the United States and the Holy See which directs otherwise, and as an ecclesiastical decision has no civil effects in the United States as stated supra (cf. canon 1692 §2), the permission of the Bishop of Metuchen for a Catholic spouse to initiate a civil divorce would not be an obligation - whether juridical or moral.

My follow-up statements about concordats in my letter dated 16 October 2017 to Rev. Kolakowski address Cardinal Coccopalmerio's opinion also. "If a concordat exists between the civil government and the Church, the Church may, or may not, manage cases of separation of spouses, depending on the details of the concordat" (p. 3). The absence of a concordat, is not a factor that waives the requirement of a party to obtain the bishop's permission prior to filing divorce. The lack, or existence, of an ecclesiastic decision having civil effects does not waive the requirement of a party to obtain the bishop's permission prior to filing for civil divorce.

Even if Rev. Kolakowski's decision was controlled by the opinion of Cardinal Coccopalmerio, the Cardinal says that our conference of bishops' particular legislation determines whether, or not, a bishop's permission is required prior to a spouse initiating a civil divorce. We have Art. 126 of the Third Plenary Council of Baltimore promulgated by our conference of bishops that says the bishop's permission is required.

The effect of Cardinal Coccopalmerio's 4 November 2015 opinion is for the Church to utterly renounce her competence over cases of separation of spouses to the civil forum. According to him, only in those territories in which the bishops enacted particular law requiring any Church intervention, would Catholics be obligated to invoke the authority of the Church in cases of separation of spouses prior to a party filing for civil divorce. This interpretation is unreasonable considering canon 1696 demands the intervention of the Promoter of Justice in cases of separation of spouses because separation involves the public good. This interpretation is unfounded considering the teaching from the Council of Trent, Sacred Congregation of the Holy Office, and Pope Leo XIII.

None-the-less, nothing from Cardinal Coccopalmerio's opinion (correct, or not) waives my right to a judgment on my petition for a decree of separation of spouses and the implementation of canon 1695 (pastoral means to reconcile).

9. Moral Certainty, Presence of Lawful Causes involving Non-Compliance Conjugal Duties

Rev. Kolakowski: Even if this Tribunal could consider the petition, our Tribunal is not in a position to conclude with moral certainty - nor is it even in a position to determine otherwise - that there is a complete absence of lawful causes involving non-compliance or irregular compliance with conjugal rights and duties (cf. canons 1151; 1152; 1153) in this instance.

I did not submit to the tribunal a petition for a judicial sentence of separation of spouses managed in the judicial venue. I wrote, "Petitioner asks the Ordinary to issue a singular *decree of separation* of spouses based on the grounds of adultery and abandonment (*malitiosam desertionem*)." No request has been made by the Promoter of Justice or my husband to transfer my cause to the judicial venue.

Adultery is a ground for an ecclesiastic judgment of separation of spouses, and a cursory questioning of witnesses could provide the Bishop's mandated delegate with moral certainty about the issue. Rev. Kolakowski appears to be unaware of the lawful causes for separation of spouse involving the non-compliance with conjugal rights and duties. However, in canonical cases, non-compliance with conjugal duties is called malicious abandonment. Ana Fernández-Coronado González, who is now a Professor of Ecclesiastical Law at the Faculty of Law of the Complutense University of Madrid, published in 1985, her whole dissertation on the study of the jurisprudence on malicious abandonment, *El Abandono Malicioso : Estudio Jurisprudencial*. Furthermore, *Pastor Bonus* shows that the Tribunal of the Roman Rota "fosters unity of jurisprudence, and, by virtue of its own decisions, provides assistance to lower tribunals" (Art. 126). The jurisprudence of the Roman Rota shows that abandonment (*malicious desertionem*) is

a ground for a case of separation of spouses. (coram Jullien, Aug. 6, 1930: *Dec.* XLVII, n. 4. page 525; coram Parrillo, May 4, 1929, *Decisio* XXIII, pp. 189-193; coram Franciscus Morano, Dec. 4, 1929, *Decisio* LXIII, pp. 524-530; coram Florczak, June 30, 1928 *Decisio* XXIX, pp. 267-272; coram Perathoner, March 17, 1913, *Decisio* XIX: pp. 217-225)).

Rev. Kolakowski's assertion that moral certainty is unattainable is notable considering his tribunal makes judgments with moral certainty regularly pursuant to canon 1608 §1 in causes for nullity of marriage. In those cases, he investigates assertions about events many, many years ago. I am seeking an investigation regarding events that occurred three years ago and continually occur. His statements none-the-less, do not waive my right to a judgment on my petition for a decree of separation of spouses and the implementation of canon 1695 (pastoral means to reconcile).

10. One Responsible for the Divorce has the Obligation to Repair Evil

Rev. Kolakowski: You have also requested this Tribunal to instruct Jack Smith that "it is contrary to divine law and natural law for him to demand from [you] child support and force [you] to live away from [your] children."

Rev. Kolakowski misunderstands my request. I have not asked for the tribunal to do anything. I have asked for my case to be managed on the administrative venue by the Bishop or his mandated delegate. The Bishop or his mandated delegate have competence to give my husband instructions of his obligations. This is within the competence of the ecclesiastic authorities. In 1993 the Italian Bishops conference published *Directorio Di Pastorale Familiare per la Chiesa in Italia*, that has an introduction by Saint Pope John Paul II. Regarding cases of separation of spouses, they made the distinction between the spouse who has suffered divorce, and one who has requested and obtained a divorce as a consequence of their own morally incorrect behavior. The one who is responsible for the divorce has the obligation to repair evil, *e riparare concretamente il male compiuto*. (section 212).

The ruling of the Church on these matters is supported by the jurisprudence of the Roman Rota. One Rota case explicitly said that a party at fault in separation is not due support from the innocent party. "It is certain that a [reliable spouse], who was abandoned by [an abandoner] without a just and legitimate cause, has the right to support, until it is demonstrated from the judicial definitive sentence that the marital partnership did not cease on account of [abandoner's] fault" (coram Parrillo, May 4, 1929, par. no. 4). With an administrative decree, prior to, and after, a separation decree, our Bishop can instruct parties of obligations (c. 49). In a judicial sentence, in a case of separation of spouses, the judge must determine parties' obligations (c. 1611 2°).

In the government's no-fault divorce system, my husband is being given instructions that are contrary to the good of our children, myself, and the public good of the Church.

Parties do not "experience" divorce as if it is an outside force thrust upon them. One, or both parties are reneging on their marital obligations if one files for divorce. I have not reneged on my marital obligations, and my husband has. I am asking the Church to instruct him of his obligations to cease having adulterous and romantic relationships with other woman, and to instruct him of his obligation to maintain our common marital home. If he refuses to cooperate, I am asking for a decree of separation of spouses, for the good of his soul, to prevent scandal, and to promote justice.

The "New Commentary on the Code of Canon Law" discusses cases of separation of spouses:

The revised code instead speaks generally of actions or inactions by one spouse that pose a physical or spiritual danger to the other spouse or the children or that 'render common life too difficult.' The language of canon 1153, §1 is flexible enough to include a large variety of behaviors on the part of one spouse as justifications for requests for separation. Nevertheless, it does not include a spouse's pervasive dissatisfaction with the quality of the marital relationship, difficulties for which neither spouse bears objective responsibility, or problems caused by the one seeking the separation. Although the causes of marital breakdown are rarely black and white, the granting of permission to separate by ecclesiastical authority presupposes that one spouse was relatively innocent and the other relatively guilty (c. 1153, p. 1377).

My husband mistakenly believes he's justified in breaking up our family solely because of his dissatisfaction with the quality of the marital relationship. Simultaneously, he refuses to cooperate with those expert in improving the marital relationship. I'm aggrieved by the diocesan failure to implement canon 1695 and refusal to make a judgement in our case, because the mistake my husband is making is left uncorrected.

11. Recourse to Dicastery is still Pending, Matter not Concluded

Rev. Kolakowski: As the aforementioned Response of the Pontifical Council for Legislative Texts indicates, I am happy to have answered your remaining questions or doubts concerning the matter and that you have felt free to address them directly. We will now consider this matter concluded.

If find the answers from Rev. Kolakowski unsatisfactory, and I am aggrieved by Bishop Checchio's three-months of silence after my petition for a decree of separation of spouses.

I bring this correspondence to His Eminence Robert Cardinal Sarah, with hopes that the Congregation of Divine Worship and Discipline of the Sacraments will assist our diocese in

providing pastoral care to my husband, children, and myself. After my 10 October 2017 meeting with Rev. Kolakowski, I reiterated my request in my 16 October 2017 follow-up letter:

I wish for the disinformation that my husband was given to be corrected. He appears to believe there is nothing wrong with civilly divorcing me, forcing me out of our family home, and leaving me financially destitute. He told me five priests affirmed him. This advice seems contrary to the teaching of the authentic Magisterium of the Church (p. 1).

12. Conclusion

I recognize that my husband is dissatisfied with our marriage, and I know the solution to his dissatisfaction is not our permanent separation. We can draw upon the grace of our sacrament. The Bishop, or his mandated delegate, can plant the seed that can lead to my husband's conversion of heart, so he to can recognize the beautiful family God has given us. The *Retrouvaille* Program teaches that there are four stages of marriage: Romance, Disillusionment, Misery, and Awakened Joy. My husband seems stuck in the middle stages, and I'm asking the Bishop, or his mandated delegate, to encourage my husband to invest his energies and prayers in moving toward the fourth stage of awakened joy.

Respectfully Yours in Christ,

Jane Smith

Enclosures:

16 October 2017 Jane Smith's letter to Rev. Kolakowski (6 pages)
27 October 2017 Rev. Kolakowski's letter to Jane Smith (4 pages)
13 August 2017 Recourse to CDWDS after 3-month silence from Bishop (cover letter only)

cc: Rev. Kolakowski, Diocese of Metuchen
Most Reverend James F. Checchio, Bishop of Diocese of Metuchen