Mary's Advocates
2721 Wagar Road ❖ Rocky River, OH 44116 ❖ 330-690-8942

May 13, 2017

His Eminence, Giuseppe Cardinal Versaldi
Prefect of the Congregation of Seminaries and Educational Institutions
Palazzo della Congregazioni
00193 Roma, Piazza Pio XII, 3

Your Eminence,

I am making recourse to the *Congregation of Seminaries and Educational Institutions* against an administrative decree from my Ordinary wherein he denied permission to publish an educational publication of which I am the author (Diocese of Cleveland, Prot. N. 74-2017). *Pastor Bonus* shows you have competence relating to education and civil society:

> Art. 114 — The Congregation makes every effort to see that the fundamental principles of Catholic education as set out by the magisterium of the Church be ever more deeply researched, championed, and known by the people of God.
>
> It also takes care that in this matter the Christian faithful may be able to fulfill their duties and also strive to bring civil society to recognize and protect their rights.

Controversy

I ask you to resolve the disagreement between Bishop Daniel Thomas and myself regarding these controversial statements that I wrote in my publication "*Separation and Divorce, Catholic Perspective.*"

> "In the United States, the permission of the Bishop or his mandated delegate, is required before a spouse can approaches the civil forum to obtain separation from bed and board. In other words, before a spouse files in the civil court for divorce or civil separation, he or she must have permission from the Bishop."

My position is that these statement should not be condemned and do not harm correct faith and good morals. I believe these statements are not contrary to theology, canon law, ecclesiastical history, and religious or moral disciplines (*cf.* can. 827 §2). Bishop Thomas' position is that he cannot grant permission to publish these statements because they are contradicted by Cardinal Coccompalmerio.

See my reasoning supporting my position in my letter dated 13 April 2017, wherein I sought the revocation and emendation of Bishop Thomas' decision on only these controversial statements in particular. Also see my letter dated 12 February 2017, wherein I included records from the Pontifical commission for the reorganization of the Code of Canon Law.

Furthermore, Pope Leo XIII's Encyclical on Christian Marriage, *Arcanum*, points out the importance of ecclesiastic intervention in contrast to the rulers of the state:

> 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. . . (par. 23)

After this controversy is resolved, an equitable solution might be reached relative to Bishop Thomas' other comments about my publication.

Chronology

30 December 2016 – In accordance with canon 824 §1, I wrote to Bishop Daniel Thomas asking for his permission to publish a 1300-word publication, "*Separation and Divorce, Catholic Perspective.*" The publication points readers to a template petition asking a bishop to intervene when there is a separation of spouses. For the Bishop's information, I included a copy of the "*Petition to Bishop to Pursue Reconciliation or Separation.*" I asked him whether he found in necessary to review both documents for consideration of his *imprimatur. See Ex. 1.*

5 January 2017 – My petition for permission to publish was delivered. *See Ex. 2. Label Details Label Number 9405 5036 9930 0463 2346 76.*

12 February 2017 – I followed up with Bishop Thomas and provided him scholarly references. The attached references include an 18-page document I had used as an Attachment to something else in December 2015, along with nine excerpts from the Pontifical commission for the reorganization of the Code of Canon Law. *See Ex. 3. Follow-up letter, table, 18-page Attachment from December 2015, various records from 1971 to 1982.*

16 February 2017 – My follow-up letter was delivered to Bishop Thomas' address. *See Ex. 4. Label Details Label Number 940550369930048644906 4*

2 March 2017 – I was asked by the diocese to send them a version of our publication formatted as it would appear as a trifold flyer. *See Ex. 5.*

16 March 2017 – I sent my publication as a trifold flyer and described the two revisions from the original sent on 30 December 2016, made only in the notes section. *See. Ex. 6.*

28 March 2017 – Bishop Thomas rejected by request for permission for publication. I received this rejection on 4 April 2017. One reason for rejection was that my statement, wherein I said a party needs the bishop's permission before filing in the civil forum for divorce. The Bishop said my statement was contrary to a statement made by Cardinal Coccopalmerio, dated 4 November 2015. *See Ex. 7.*

28 March 2017 – Attached for this Congregation's consideration is the opinion of Cardinal Coccopalmerio dated 4 November 2015 that was cited by Bishop Thomas. *See Ex. 8.*

13 April 2017 – Within ten days of receiving the Bishop's rejection, I sought revocation or emendation of his decision. I described four distinct possibilities for requesting that he change his mind. I only focused one: his concerns about whether, or not, a "*Party must have Bishop's permission*" before filing in the civil forum for divorce or civil separation (section number 2). I show why Cardinal Coccopalmerio's opinion is not an authentic interpretation of canon law and not supported by tradition and the sources for the Code of Canon Law. I point out how my controversial statements describe a spouse's obligation to have the bishop's permission before filing for civil divorce. The controversial statements do not address the considerations the bishop must weigh before granting, or denying, said permission. *See Ex. 9*

13 April 2017 – I hand delivered my request for revocation to the security desk in the main lobby of the diocesan offices at East Ninth Street, in Cleveland. I asked the attendant to sign for delivery and the signature is illegible "*Cpllanto Marsh.*" *See Ex. 10.*

2 May 2017 – I followed up with the Bishop regarding the 13 April 2017 request for revocation or emendation. I stated, "time limits for making recourse run from the thirtieth day." *See Ex. 11.*

Respectfully Yours in Christ,

Marie (Bai) Macfarlane
cc: Bishop Daniel Thomas

Exhibit 1

Mary's Advocates
2721 Wagar Road ❖ Rocky River, OH 44116 ❖ 330-690-8942

30 December 2016

Most Reverend Daniel E. Thomas
Diocese of Toledo
1933 Spielbusch Ave.
Toledo, OH 43604

Your Excellency,

I am contacting you as my Apostolic Administrator who possesses the power of my diocesan bishop. Thank you for your service to Christ's Church.

Herein is contained a publication I wrote for which I am seeking my local ordinary's *imprimatur* in accord with canon 824 §1. The publication "Separation and Divorce, a Catholic Perspective" is designed to be a 3-fold flyer. This same request was delivered to the Diocese of Cleveland on 24 December 2016.

With the organization Mary's Advocates, I work to reduce unilateral no-fault divorce and support those who are unjustly abandoned. Last year, I spoke at a symposium in Rome with a welcome letter from Cardinal Raymond Burke. My topic was "The Current Marriage Crisis in the Light of the Original Creation and the Code of Canon Law." The compilation of research findings about divorce on our website is unprecedented.

Because the text in "Separation and Divorce, a Catholic Perspective" points readers to another document, "Petition to Bishop to Pursue Reconciliation or Separation," I am sending you that document also. I ask whether you would find it necessary to review both documents for consideration of your *imprimatur*.

Respectfully Yours in Christ,

Marie (Bai) Macfarlane copy signed 12 May 2017

Marie (Bai) Macfarlane
Director, Mary's Advocates
ma.defending@marysadvocates.org

Enclosures:

Separation and Divorce, a Catholic Perspective (161222_1743_rev.9_join)
Petition to Bishop to Pursue Reconciliation, or Separation (Petition 161208)

Separation and Divorce, a Catholic Perspective

Marriage Rite

Assent to Three Conditions

Have you come here to enter into marriage without coercion, freely and wholeheartedly?

Are you prepared to love and honor each other for as long as you both shall live?

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 Promises

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, to love and to cherish until death do us part."

Canon Law

Obligation to Live in Same Home

Husband and wife should live together unless one did something severe enough to give the other legitimate cause to separate (see canon 104, 1151). Emotional detachment and simple annoyances are not a basis for separation.

Presumption of Validity

Whether a just reason exist for separation of spouses should be considered prior to questioning the validity of marriage. All marriages are presumed valid until proven otherwise (canon 1060).

Reasons to Separate: Danger or Adultery

If one spouse "causes grave mental or physical danger to the other spouse or to the offspring or otherwise renders common life too difficult, that spouse gives the other a legitimate cause for leaving"(canon 1153, § 1). For separation due to mental or physical cruelty to be justified, the behavior must be dangerous, it must be continuous, and separation must be the only way to solve the problem.[1] In these cases, when the cause for the separation ceases, conjugal living must be restored unless ecclesiastical authority has established otherwise (canon 1153, § 2).

An ecclesiastical separation decree or sentence authorizes spouses, who would otherwise have the obligation to live together, to live apart. The Catholic Church's global court of appeal has ruled, "light injustices from abusive words or the incompatibility of the personalities of the spouses which make cohabitation troublesome cannot be considered causes sufficient to separate the spouses."[2]

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 the innocent spouse has separated voluntarily, the spouse is to introduce a cause for separation within six months to the competent ecclesiastical authority (canon 1152, § 3). If, after having discovered the adultery, the innocent spouse lives with the other for six months and does not petition the ecclesiastical or civil authority, he or she is presumed to have forgiven the other (see canon 1152, § 2).

Desertion and Malicious Abandonment

If one spouse effectuates separation when the other has done nothing bad enough to justify it, the one who causes separation is an *abandoner*. Desertion, or malicious abandonment is considered by the Church to be a legitimate basis for an ecclesiastical separation decree or sentence.[3] The ecclesiastical decision can help an abandoner recognize the wrongful behavior and reform his or her conduct.

Divorce can only be Tolerated

Divorce is immoral and a grave offense against the natural law.[4] The separation of spouses can be legitimate in certain cases provided for by canon law.[5]

In the United States, the permission of the Bishop or his mandated delegate, is required before a spouse can approaches the civil forum to obtain separation from bed and board.[6] In other words, before a spouse files in the civil court for divorce or civil separation, he or she must have permission from the Bishop.

Proper Role of the Civil Courts

Marriage cases of the baptized belong to the ecclesiastical judge by proper right (canon 1671). Civil courts that attempt to relieve a spouse of his or her full obligation to support the marital home or maintain the common conjugal life, when the other has done nothing grave enough to justify separation, contradict divine and canon law.

Separation Plan in Accord with Divine Law

When spouses live apart, suitable child support and provisioning for the authentic education of children must always be provided for (see canon 1154). Historically, Church decrees normally gave the care of the children to the innocent party to be reared at the expense of the culpable partner.[7] The appellate Tribunal of the Roman Rota ruled that a spouse having caused the breakup of a marriage is not due support from the innocent party.[8]

The spouse that causes a marital breakup without a legitimate cause is obliged to reconcile, and should be accountable to contribute his or her share to the material upkeep of the family home. Ecclesiastical authority is competent to provide guidance regarding parties' obligations toward each other and their children in accord with divine law. The parties could confirm these obligations in writing with intent to give them binding effect 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 or her incapable of consent, then petitioning for a civil annulment might be more appropriate than seeking a civil divorce.

Civil annulment is the process by which a Court states that a marriage never legally existed. It 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 economic injuries be financially repaired.[10]

Petition the Bishop

To Try to Stop a Break-up

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

- Try pastoral means of reconciliation (canon 1695)
- Mediate between the spouses (canon 1446 §2)
- Issue a decree of separation in a case of malicious abandonment where the abandoner fails to reconcile
- Order reparation for material harm done (canon 1729 §1)
- Take effective measures to dispel any scandal
- Preserve the Sacraments from sacrilege
- Instruct parties about the parameters of a separation plan that would be in accord with divine law

Petition a faithful spouse can use to ask the bishop to intervene:
MarysAdvocates.org/petition_bishop.html

Justice

Separation Should be Rare

Spouses accept some level of difficulty, and common issues are listed in an 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

According to canon law, a spouse is not permitted to separate without a legitimate cause.

"No-fault Divorce" is against canon law and immoral because a divorce is granted when one spouse *merely* lives apart for a time, claims that the parties are incompatible or have irreconcilable differences, or claims that the relationship is irretrievably broken. With no-fault divorce, there is no obligation to maintain a common home for the spouse and any children. The party causing the breakup is routinely rewarded.

Nihil Obstat: Name Name, *Censores Librorum Deputati* Month xx, 201x
Imprimatur: Most Rev. Name Name, Bishop of (Arch)diocese, Month xx, 201x

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[1] Exegetical Commentary Code of Canon Law. Ed. Angel Marzoa, Jorge Miras, Rafael Rodriguez-Ocana. Woodridge, IL: Midwest Theological Forum, 2004, p. 1585

[2] Tribunal of the Roman Rota, *Coram Florczak*, Sentence of 30 June 1928, in *Sacrae Romanae Rotae Decisiones*, Vol. XX (1928), pp. 267-272. [Translation by Mary's Advocates]

[3] Exegetical Commentary of the Code of Canon Law. (Canon 1153, "Malicious Abandonment" p. 1585-1586); DOHEYN, William J.. Canonical Procedure in Matrimonial Cases: Informal Procedure, 2nd Ed., Vol. II, Milwaukee: The Bruce Publishing Company, 1948, pp. 635, 659

[4] Catechism of the Catholic Church (CCC), n. 2384, 2385

[5] Catechism of the Catholic Church (CCC), n. 2383

[6] The *Processibus Specialibus* precepts for cases of separation of spouses are contained 1983 *CIC* canon 1692, §§1-3. Canon 6 §2 shows "Insofar as they repeat former law, the canons of this [1983] Code must be assessed also in accord with canonical tradition." Canon 6, §1, shows that when the 1983 "Code takes force, the following are abrogated: 2° particular laws contrary to the prescripts of this Code unless other provision is expressly made for particular laws." Canon 1692 expressly makes provisions for particular laws contrary to its prescripts: "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 according to the norm of the following canons" (c. 1692, §1). No particular law, or decree, has been enacted validly by a plenary council of the USCCB that is contrary to the prescripts of canon 1692.
JUGIS, Peter J. in New Commentary on the Code of Canon Law. Ed. Beal, Coriden, Green. Mahwah: Paulist Press, 2000. p. 1791. ""The diocesan bishop may also grant permission for the spouses to approach the civil forum in those places where the civil sentence of separation is not contrary to divine law.";
BROWN, Phillip J. "Legal Separation: A Pastoral Alternative." Studies in Church Law IV. Bangalore, India: St. Peter's Pontifical Institute, 2008. 215-252, p. 246. "The competent authority for giving this permission [(Mary's Advocates' note) to approach the civil forum] is the Bishop of the diocese where the parties are living."

[7] KING, The Canonical Procedure in Separation Cases, a Historical Synopsis and a Commentary. Washington, D.C.: Catholic University of America, 1952. p. 51.

[8] *Coram Parrillo*, Sentence of 4 May 1929, *Sacrae Romanae Rotae Decisiones*, Vol. XXI, pp. 189-193, n. 4.

[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. The Sacrament of Reconciliation And Marriage. www.usccb.org, 2014.

PETITION TO BISHOP TO PURSUE RECONCILIATION, OR SEPARATION

Reconciliation

1) Petitioner asks The Most Reverend _____, [Arch]Bishop of _____, to cite the Respondent-spouse _____ for the purpose of implementing the pastoral means of agreement and conciliation, in order for the conjugal life to be reestablished peacefully, according to the prescript of canon 1695. As described in canon 49, Petitioner asks the Bishop to issue a singular precept urging the Respondent-spouse to uphold the lawful obligations to maintain common conjugal life; and instructing the Respondent-spouse that a judge in the civil forum has no competence to relieve the Respondent-spouse of the obligation to maintain common conjugal life.

2) Parties contracted marriage on date of _____ at church of _____. The Church was in the state of _____in the city of _____ (Attached Certificate of Marriage). On the date of _____, the Respondent-spouse abandoned the conjugal life, or filed for civil divorce. Further description is provided in the attached: *General Facts and Circumstances that will Prove the Allegations.*

3) Petitioner will participate in mediation in hopes of restoring/maintaining the common conjugal life. Petitioner asks the Ordinary to issue a precept in accord with canon 49, instructing the Respondent to cooperate in mediation. In accord with canon 1446 §2, Petitioner asks that the parties employ reputable persons to mediate between the parties. [(Optional) Petitioner proposes that _____be employed because _____ _____]

4) If Respondent-spouse remains unwilling to restore common conjugal life, a report to the Bishop from the reputable person will provide the Bishop with insights about the reasons Respondent-spouse chose to separate.

Separation Decree

5) In conformity with canon 57 §1, in consideration of canons 1151-1155, if Respondent-spouse does not restore common conjugal life, Petitioner asks the Ordinary to issue a singular decree of separation of spouses based on the ground of abandonment (*malitiosam desertionem*), to be in effect for an indefinite period of time ending when the Respondent-spouse chooses to cease the abandonment. 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 children.

6) Petitioner asserts that Petitioner has committed no offenses against the Respondent-spouse meriting the separation of spouses. If the Respondent-spouse suggests that another ground for separation exists (other than abandonment by the Respondent), then Petitioner upholds the right to be informed, in a general way, of the facts and proofs alleged by the Respondent-spouse to support another ground for separation.

Basis in Law and Rights

7) As described in canon 221 §1, the Petitioner is pursuing and vindicating rights associated with the Respondent-spouse's obligations to maintain a common conjugal life.

8) The marriage of Catholics is governed not only by divine law but also by canon law (cf. c. 1059).

9) The parties' marriage must be assumed valid until proven otherwise (c. 1060).

10) The Petitioner claims the right to the common conjugal life and rights to those things that belong to the partnership of conjugal life. The Respondent-spouse is bound by a special duty to work through marriage and family to build up the kingdom of God. Respondent-spouse is reneging on obligations (cf. cc. 104, 226 §1, 1151, 1135). Petitioner asserts that Respondent-spouse has no legitimate reason for separation, no *legitime separationis ratione vel alia iusta de causa.*

> Canon 104. Spouses are to have a common domicile or quasi-domicile; by reason of legitimate separation or some other just cause, both can have their own domicile or quasi-domicile.
>
> Canon 1151. Spouses have the duty and right to preserve conjugal living unless a legitimate cause excuses them.

11) If a party broke off an engagement and refused to marry ones' fiancée, canon 1062 §2 shows that an action to repair damages could be warranted. The Respondent-spouse is likewise responsible to repair damage caused by breaking up after the wedding.

12) (Optional) For children born to this marriage, or adopted, the Petitioner claims the parental right to educate children in all ways natural to any child born to married parents; and the Petitioner claims the right to take care for the physical, social, cultural, moral, and religious education of children (*cf* cc. 226 §2, 1136).

13) (Optional) 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).

- Civil divorce is legally and factually known to the relatives, friends, and faith community of those involved. Separation (regardless of whether it is accompanied by a civil divorce) is subject to the power of governance of the Church. Therefore, a Catholic

should not exercise on his own behalf the power of ecclesiastical governance, or the pastoral and administrative power of the bishop.

- Because separation of spouses involves the public good, it requires the involvement of the Promoter of Justice (*cf.* c. 1696 CIC). When the Respondent-spouse initiates a civil divorce without the bishop's permission, there is no mechanism to insure the required involvement of the ecclesiastic authority to promote justice and defend the public good, particularly the defense of the rights of the children and an innocent spouse.
- Canon 1692 §2 shows the bishop "can grant permission" for a Catholic to approach the civil forum. Just because a bishop "can permit" a Catholic to initiate a divorce, does not mean that any Catholic on his own authority, can legitimately do so.
- When deciding whether or not to grant permission for a Catholic to initiate a civil divorce, the bishop is supposed to consider the situation "in light of their particular circumstances," or "after having weighed the special circumstances" *perpensis peculiaribus adiunctis*, (cf. c, 1692 §2). This implies that the bishop or his mandated delegate must learn about the special or particular circumstances of any Catholic that plans to file for civil divorce.

Initiate Process to Inflict Penalty (Optional Section)

14) In accord with canon 57 §1, the Petitioner proposes plea to obtain a decree initiating the process to inflict or declare a penalty. The Respondent-spouse has illegitimately abandoned marriage.

15) (Optional) The Petitioner is accusing another who should be admonished or penalized, because the other is an explicit, formal, cooperator with objective evil. The Respondent-spouse is the primary agent of morally wrong behavior: marital abandonment and all that it entails. The other accused is a formal cooperator because the other is a willing participant explicitly supporting and enabling the evil. The other is also a necessary, material, cooperator with objective evil, because without the other's material cooperation, the wrongful marital abandonment or divorce could not continue to occur.

16) The Petitioner asks the Ordinary to exercise fraternal correction, rebuke, or other means of pastoral solicitude in an attempt to sufficiently repair the scandal, restore justice, and reform the Respondent(s) (cf. c. 1341).

17) If the Respondent(s) does not repent, have the firm resolve to stop offenses, and make, or at least seriously promise to make, reparation for damage and scandal, the Petitioner proposes punishments would be appropriate in accordance with the law:

Canon 1315: Person in legislative power can strengthen divine or ecclesiastical law.

Canon 1319 §1: Insofar as a person can impose precepts in the external forum in virtue of the power of governance, the person can also threaten determinate penalties by precept, except perpetual expiatory penalties.

Canon 1371, 1°: Respondent(s) rejects moral teaching mentioned in Canon 752.

Canon 1371, 2°: Respondent(s) does not obey command of his Ordinary.

Canon 1393: Respondent(s) violates obligations imposed by Penalty.

Canon 1397: Respondent(s) gravely wounds *graviter vulnera* the Petitioner (Optional) and children.

Canon 1399: Respondent(s) is externally violating divine and canon law.

Repair Material / Financial Damages (Optional section)

18) (Optional) In addition to proposing that penal action should be initiated against the Respondent(s), the Petitioner brings a contentious action, per canon 1729 §1, and alleges that those Respondent(s) are bound to **repair material damage** caused. The Petitioner has lost significant money as a direct result of the actions of the Respondent(s). Had the Respondent-spouse only broken a promise to marry the Petitioner, breaking that promise could have given rise to an action to repair damages (c. 1062 §2). In today's action, the damages are far greater, because the Respondent-spouse is breaking the marital promises and the Respondent(s) are destroying the Petitioner's family, and the Petitioner's marital life.

Prevent Sacrilege and Scandal (Optional section)

19) The Petitioner alleges that the Respondent-spouse is in grave sin because the Respondent-spouse has unlawfully reneged on marital obligations and is destroying the parties' marriage and family. The former Prefect of the Apostolic *Signatura*, Cardinal Raymond Burke, wrote a book published in 2012 wherein he provided instruction regarding those in grave sin, Divine Love Made Flesh, The Holy Eucharist is the Sacrament of Charity:

> … If we receive holy Communion and then think, speak, and act in a way which betrays Christ, then we give scandal to others. We lead them to think that it is all right to receive Christ in to our soul and, at the same time, to ignore or contradict His teaching by the way we live. (page 176).

20) If the Respondent-spouse continues to persevere in the grave manifest sin of marital abandonment [or divorce], the Petitioner asks the Ordinary to advise the Respondent-spouse to not receive Holy Communion (c. 916), and to instruct that Holy Communion should be denied (c. 915).

21) (Optional) In accord with the same canons, the Petitioner asks the Bishop to advise other Respondent to not receive Holy Communion, and to instruct that Holy Communion should be denied.

Response to Respondent-Spouse's Petition for Decree of Invalidity (Optional Section)

Request Suspension or at least Simultaneous Proceeding

22) The Petitioner received a notice dated _____ from the Tribunal of the diocese of _____ advising the Petitioner that the Respondent-spouse has asked for a decree of invalidity of the parties' marriage: case number _____.

23) As an incidental matter in the nullity case, the Petitioner is asking the judge to suspend the cause for nullity until the Respondent-spouse restores common conjugal life, or until the Respondent-spouse obtains and follows instructions from the local Ordinary delimiting parameters of a separation plan that is not contrary to divine law for parties' special circumstances (*non contraria iuri divino [pro] perpensis peculiaribus adiunctis*).

24) Observing canon 1590 §2, the petitioner requests an interlocutory judgement answering Petitioner's request for a suspension of the nullity case. If Petitioner's request for suspension of nullity case is denied, Petitioner would find that the denial has the force of a definitive judgement as described in canon 1618. The denial prevents a trial that could give immediate relief to the Petitioner in the form of instructions to the Respondent-spouse about the parameters of a separation plan that is not contrary to divine law (*cf.* can. 1692 §2). The present separation arrangement obtained by the Respondent-spouse in the civil forum is contrary to divine law and entangles itself with effects of marriage that are beyond the merely civil effects.

25) If the tribunal judge will not suspend the Respondent-spouse cause for nullity, the Petitioner raises the actions herein as a counterclaim. As required by canon 1463, the counterclaim has been made before thirty days have passed after the joinder of the issue.

26) The Petitioner asserts that the Respondent-spouse's allegations of invalidity of parties' marriage are unfounded and the marriage is repairable. Even in a definitive sentence in a nullity case, the decree must instruct the parties of their moral obligations toward each other and their children (cf. *CIC* 1983 *c.* 1689. *Mitis Iudex* c. 1691 §1). The law strongly urges that a judge determine that conjugal life cannot be restored before he accepts a petition for nullity of marriage.

27) PETITIONER:

Petitioner's Full Name: _____

Address _____

City, State, Zip _____

28) RESPONDENT-SPOUSE:

Respondent-Spouse Name: _____

Address _____

City, State, Zip _____

29) RESPONDENT-2:

Respondent-Spouse Name: _____

Address _____

City, State, Zip _____

SIGNATURE

_____ Date _____

_____

Printed Name of Petitioner

_____

Signature of Notary

_____

30) Notary Seal Printed Name of Not

Exhibit 2

Label Details

Label Number:
9405503699300463234676

Terms

Acceptance Cutoff: 12/31/2016 2:00 PM

Acceptance Time: 01/03/2017 10:15 AM

Scheduled Date: 01/04/2017 12:00 AM

Delivery Status: Delivered, Front Desk/Reception
2017-01-05 10:35:00.0

Return Address:

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Delivery Address:

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DIOCESE OF TOLEDO
1933 SPIELBUSCH AVE
TOLEDO, OH 43604-5360

Package:

Ship Date: 12/31/16
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Exhibit 3

Mary's Advocates
2721 Wagar Road ❖ Rocky River, OH 44116 ❖ 330-690-8942

12 February 2017

Most Reverend Daniel E. Thomas
Diocese of Toledo
1933 Spielbusch Ave.
Toledo, OH 43604

Your Excellency,

I am following up on the letter delivered 3 January 2017 in which I asked for your *imprimatur* on a publication for which I am the author, "Separation and Divorce, a Catholic Perspective." The publication is designed to be a 3-fold flyer.

The publication makes statements about canon law *processibus*. Enclosed herein are copies of the records for these canons from the Pontifical commission for the reorganization of the Code of Canon Law and an 18-page attachment I prepared in December of 2015 summarizing my findings with some English translation.

I saw your interview in which you said your two biggest challenges are sin and apathy, starting with your own. Your humility is inspiring and I hope to model it. Mary's Advocates works to reduce unilateral no-fault divorce; sin and apathy are instrumental in leaving this injustice unaddressed. With your *imprimatur* on our publication, I pray we can lead Catholics to be less apathetic when their friends, and family members betray a spouse and force unilateral no-fault divorce on their family.

Respectfully Yours in Christ,

Marie (Bai) Macfarlane copy signed 12 May 2017
Marie (Bai) Macfarlane
Director, Mary's Advocates

Enclosures:

30 December 2016. Mary's Advocates letter to Most Rev. Daniel Thomas
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Petition to Bishop to Pursue Reconciliation, or Separation (Petition 161208)
23 December 2016, Mary's Advocates letter to Most Rev. Richard Lennon
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Table of Scholarly References
with 12 February 2017 follow-up to Bishop Daniel Thomas

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1971 April 19-21.
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1976 November 3
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1979 March 31
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1980 June 29
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De Causis Separationis Coniugum, Can. 1644 – 1648 (page 362 -363)

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There are no addatur for De Causis Separationis Coniugum, Can. 1644 – 1648 (page 332).

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De Causis Separationis Coniugum, Can. 1692-1696 (page 293)

ATTACHMENT

Records from *Commissionis Codici Iuris Canonici Recognoscendo*

1971 April 19

Book Title	*Communicationes Vol. XL – N. 1 (2008) [Vol. 40]*
Year Published	2008
Author	*Commissionis Codici Iuris Canonici Recognoscendo*
Publisher	*Pontificium Consilium De Legum Textibus*
Webpage	http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/deprocessibus/deProcessibus-Sessio-11.pdf
Section Header	**Ex actis Pont. Comm. CIC Recognoscendo. Coetus Studii << De Processibus >> Session XI (diebus 19-22 aprilis 1971 habita).** ***Adunatio I. die 19 aprilis 1971 mane habita [Schematis Canonum de Causis Separationis Coniugum]***
Book page number	144-149
PDF page number	4-9
Book page quoting	144

Latin

(page 144)

Adunatio I

die 19 aprilis 1971 mane habita

Huic adunationi praeest Card. Pericles Felici, Praeses Commissionis. Em.mus Praeses omnibus Consultoribus salutem dicit et quaerit num ipsi approbent Relationem laborum Sessionis Xae, quod attinet sive ad veritatem sive ad integritatem eorum quae referuntur.

Omnes Consultores Relationem approbant.

Rev.mus Secretarius exponit ordinem laborum, pro hac Sessione statutum, de examinandis scilicet schematibus canonum: a) de causis separations coniugum; b) de processu dispensationis super matrimonio rato et non consummato; c) de procedura administrativa.

Card. Praeses monet Consultores examen schematis de procedura administrativa dilatum iri, quia interim, de mandato Summi Pontificis, constituía est specialis Commissio Pontificia, cui munus concreditum est examinandi quaedam documenta, in quibus de iustitia administrativa tuenda cavetur, a quibusdam Conferentiis Episcoporum exarata. Ipsa quoque Commissio specialis munus habet apparandi legem generalem de iustitia administrativa, in quo opere perficiendo schema de procedura administrativa, a parvo Coetu apparatum, complebitur, ratione habita illorum elementorum, quae ex praedictis documentis particularibus desumi poterunt.

His praemissis incipit examen schematis canonum de causis separationis coniugum.

Rev.mus Relator legit antea schema canonum a parvo Coetu redactum:

Can. 1

§ 1. Causae separationis personalis coniugum baptizatorum ad iudicem ecclesiasticum deferantur, nisi iure particulari aliter caveatur.

§ 2. Ubi decisio ecclesiastica effectus civiles non sortitur, **et** quando sententia civilis praevidetur non infensa iuri Ecclesiae, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile

[(Mary's Advocates Note) Canons 2-14 of the schema, and discussion have been omitted].

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. . . Rev.mus Relator notat Secretariam opportune parvum Coetum constituisse ad hoc schema apparandum, quia hoc modo basis apta discussionis praebetur et celerius conclusiones deliberan possunt. Quae quidem consideratio pari ratione valet etiam pro alio schemate de processu dispensationis super matrimonio rato et non consummato.

Rev.mus Relator monet in hoc schemate de causis separationis coniugum haberi tantum leges adiectivas, quae quidem supponunt leges

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substantivas de eadem materia in libro de matrimonio. Praesumitur, ad effectum disponendi sequentes cánones, quod maneat in lege separatio *perpetua* et separatio *temporaria*.

1) *De competentia ad huiusmodi causas iudicandas*

Rev.mus Rektor dicit Consultores parvi Coetus censuisse non expedire quod causae separationis demandentur semper civili magistratui quia:

- in can. 1960 (iam recognito) edictum est: «causae matrimoniales baptizatorum iure proprio ad iudicem ecclesiasticum pertinent »;
- plura matrimonia sunt aliquando tantummodo canonica;
- in iure civili haud considerantur quaedam motiva separationis, apud Ecclesiam bene valida;
- si contrarium statueretur, Ecclesia officium et ius suum abdicaret; simulque consequeretur quod separatio contra legem divinam frequenter imponeretur vel denegaretur;
- separatio, in foro civili statuta, esset saepe basis supra quam, elapso statuto tempore, ipso iure inscriberetur divortio.

Attamen nec parva sunt incommoda duplicis iurisdictionis, quia, ad habendos civiles effectus circa pensionem et iura oeconomica, circa custodiam filiorum etc., pars cuius interest debet quoque adire forum laicum. Consequenter adest periculum fastidii et iacturae temporis et pecuniae pro partibus et possibilitas duarum decisionum quae sint sibi invicem contrariae et praeterea executio sententiae canonicae potest haberi ut delictum in foro civili, v.g. ob desertionem domicilii coniugalis et ita porro.

Ideo parvus Coetus proponit formulam, quae, salvo iure particulari (ut sunt concordata), ex una parte non abdicai ius et officium Ecclesiae et, ex alia parte, ita sit flexibilis ut magna ex parte supradicta incommoda vitentur.

Can. 1

§ 1. Causae separationis personalis coniugum baptizatorum ad iudicem ecclesiasticum deferantur, nisi iure particulari aliter caveatur.

§ 2. Ubi decisio ecclesiastica effectus civiles non sortitur, **et** quando sententia civilis praevidetur non infensa iuri Ecclesiae, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

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Rev.mus primus Consultor proponit ut § 1 ita mutetur: « Salvo iure particulari, causae separationis coniugum catholicorum ad iudicem ecclesiasticum deferantur». Hoc modo principium competentiae omittitur quia iam habetur in can. 1960, et lex restringitur ad solos catholicos.

Alii Consultores retiñere volunt in hoc canone principium competentiae.

Ad subiectum huius legis quod attinet, Consultores praeferunt locutionem « coniugum baptizatorum » sive quia ius particolare (« nisi iure particulari aliter caveatur») potest restringere legem ad solos catholicos (Rev.mi Secretarius et secundus Consultor), sive quia si diceretur «coniugum catholicorum » statim surgeret quaestio de matrimoniis mixtis (Rev.mus tertius Consultor).

Rev.mus quartus Consultor vellet dare competentiam harum causarum magistratui civili ita ut lex ita sonare deberet: «Causae separationis... ad iudicem civilem deferantur, nisi iure particulari aliter caveatur ».

Rev.mus Secretarius, contra Rev.mum quartum Consultorem, animadvertit causas separationis esse principaliter causas spirituales ideo non posse ex lege generali ad iudicem laicum deferri. Peculiares autem necessitates locales solvi possunt per legem particularem quae aliter cavere potest.

Rev.mus quartus Consultor instat in eo quod separado inducitur ex propria volúntate coniugum, ideo iudex nihil habet iudicandum sed tantum subscribere debet talem decisionem et effectus civiles statuere.

Rev.mus primus Consultor negat talem sententiam Rev.mi quarti Consultoris, quia causae separationis induunt rationem boni publici et ideo a publica auctoritate resolvi debent.

Suffragatur placeatne § 1 prout proposita a Rev.mo Relatore:

placet n. 6; non placet n. 1.

Ad § 2 quod attinet, Rev.mus primus Consultor censet distinguendas esse causas quae directe respiciunt bonum spirituale et causas quae directe respiciunt bonum temporale etsi adnexum sit bonum spirituale. Istae deferri possunt etiam ad forum laicum, illae autem semper deferri debent ad iudicem ecclesiasticum.

Rev.mus Secretarius dicit quod si iudex laicus videret tales causas iure proprio, eius competentia extenderetur etiam ad effectus qui sunt ordinis ecclesiastici, quin dicatur quod perdifficile esset in singulis casibus iudicare utrum causa sit directe de bono spirituali an de bono temporali.

Rev.mus Relator censet quod causa separationis in se ipsa est semper causa spiritualis ex qua dimanare possunt etiam effectus ordinis temporalis, ideo forum ecclesiasticum ius nativum habet videndi tales causas.

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Rev.mus primus Consultor declarat se non voluisse impugnare competentiam iudicis ecclesiastici sed tantum normam practicam dare, scilicet ubi de bono temporali coniugis vel prolis agatur causae separationis deferantur (non pertinent) ad iudicem laicum.

Suffragatur placeatne § 2 prout proposita a Rev.mo Relatore:

placet n. 6; non placet n. 1.

English

[Translation by St. Louis Sanchez][6] Gathering I. On the 19th day of April 1971 – held in the morning

Cardinal Pericles Felici, president of the Commission, presided over this gathering. His Eminence greeted all of the consultors and asked whether they themselves approved the report of the work of Session X, with regards to the truth or to the correctness of it which they produced.

All consultors approved the report.

[6] Translation from Anthony St. Louis Sanchez http://www.academia.edu/6096431/The_Canonical_Obligation_of_Spouses_to_Approach_the_Ecclesiastical_Authority_for_a_Separation

The secretary explained the order of the work, established by this Session, namely considering the arrangement of the canons: a) about cases of separation of spouses; b) about the dispensation of a ratified and non consummated marriage; c) about the administrative procedure.

[Translation by Google Translate] Card. Warns the President of the Consultors would be put off for the examination of the draft of the administrative of the procedura, because in the meantime, by a mandate of the Supreme Pontiff's intentions, there is a special set up the Pontifical Commission, whose duty it is a kind of the documents to be examined, in which the administrative of justice is provided by the defense, and by some of the Conferences of Bishops of Lancaster. She also has the function of a special Commission of the righteousness of the preparation for the general administrative law, in which the scheme of perfecting a work of the procedura administrative, from the small Assembly of the equipment, it shall be fulfilled, taking account of these elements, which will be able to be taken out of the aforementioned documents of the particular.

[continue translation by St. Louis Sanchez] With this having been prefaced, the consideration of the arrangement of the canons about cases of separation of spouses began.

The relator formerly chose the arrangement of the canons treated by the little group:

Can. 1

§ 1. The personal cases of separation of spouses of the baptized are to be introduced to an ecclesiastical judge, unless otherwise provided by particular law.

§ 2. Where an ecclesiastical decision does not receive civil effects, **and** when the civil decision is not foreseen to be hostile to the law of the Church, the ordinary of the residence of the spouses will be able, in individual cases, with the particular circumstances having been weighed carefully, to give permission to approach the civil forum.

[(Mary's Advocates Note) Canons 2-14 of the schema, and discussion have been omitted].

. . . The relator noted that the secretary had fittingly established the little group to prepare this arrangement, because in this way a suitable basis of discussion is provided and the conclusions are able to be deliberated more swiftly. Indeed, for the same reason this consideration applies also for the other arrangement concerning the process of dispensation a ratified and not consummated marriage.

The relator called to mind that in this arrangement of cases of the separation of spouses there are only disciplinary laws, which indeed presuppose the substantial laws about the same material in the book

about marriage. It is presumed, for the execution of arranging the following canons, that the perpetual and temporary separation should remain in the law.

1) *Concerning the competence for judging these kinds of cases*

The relator said that the consultors of the little group had offered the opinion to not disentangle which cases of separation should always be entrusted to the civil magistrates because:

- in can. 1960 (already examined) it was declared: "matrimonial cases of the baptized belong by proper right to the ecclesiastical judge";
- several marriages are sometimes merely canonical
- if the contrary were established, the church would renounce its own duty and right; and at the same time it would follow that a separation against the divine law would frequently be imposed or denied;

- separation, established in the civil forum, if it were to be always of the foundation above, with the lapse of time, divorce would be inscribed in the law itself. But yet the disadvantages are not small of a double jurisdiction, because, to have civil effects about a pension and economic rights, about custody of children etc., the party of whom it concerns must also approach the lay forum. Consequently, the danger of aversion is present and the loss of time and money for the parties and the possibility of two decisions which are mutually contrary to themselves and further the execution of the canonical decision can be obtained as a crime in the civil forum, e.g., because of desertion of the conjugal dwelling and so on. Therefore the little group proposed the formula, which, without prejudice to particular law (as concordats are), on the one hand does not renounce the right and duty of the Church and, on the other hand, is so flexible that in large part the aforementioned disadvantages could be avoided.

Can. 1

§ 1. The personal cases of separation of spouses of the baptized are to be introduced to an ecclesiastical judge, unless otherwise provided by particular law.

§ 2. Where an ecclesiastical decision does not receive civil effects, **and** when the civil decision is not foreseen to be hostile to the law of the Church, the ordinary of the residence of the spouses will be able, in individual cases, with the particular circumstances having been weighed carefully, to give permission to approach the civil forum.

The first consultor proposed that § 1 be changed thus: "Salvo iure particulari, causae separationis coniugum catholicorum ad iudicem ecclesiasticum deferantur [Without prejudice to particular law, cases of

separation of catholic spouses are to be brought to an ecclesiastical judge.]" In this way the principle of competence is omitted because it is already considered in can. 1960, and the law is restricted to Catholics alone.

Other consultors wished to retain the principle of competence in this canon.

With regard to the subject of this law, the consultors preferred the saying "coniugum baptizatorum [of baptized spouses]" whether because the particular law ("nisi iure particulari aliter caveatur [unless otherwise provided by particular law]") is able to restrict the law to Catholics alone (the secretary and second consultor), or because if it were said "coniugum catholicorum [of Catholic spouses]" immediately there would arise the question about mixed marriages (the third consultor).

The fourth consultor wished to give competence of these cases to the civil magistrates so that the law would have to resound: "Causae separationis...ad iudicem civilem deferantur, nisi iure particulari aliter caveatur [Cases of separation...are to be introduced to the civil judge, unless otherwise provided by particular law]."

The secretary, against the fourth consultor, perceived the cases of separation to be principally spiritual cases therefore they are not able to be introduced to lay judges in the general law. However, particular local necessities can be resolved through particular law which it can otherwise provide for.

The fourth consultor insisted on it because separation is introduced from the particular will of the spouses, therefore the judge has nothing to judge but must only endorse such a decision and set up the civil effects.

The first consultor denied such an opinion of the fourth consultor, because cases of separation surround the reason of the public good and therefore they must be resolved by a public authority.

It was voted whether § 1 is agreeable as proposed by the relator:

Yes: 6; No: 1

For what pertains to § 2, the first consultor offered the opinion that the cases must be distinct which directly concern the spiritual good and cases which directly concern the temporal good even if it be connected to the spiritual good. The latter are also able to be introduced to the lay forum, but the former must always be introduced to the ecclesiastical judge.

The secretary said that if the lay judge were to consider such cases by proper right, his competence would be extended also to effects which are in the authority of the church, but it should not be said because it would be very difficult in individual cases to judge whether a case is directly about the spiritual good or about the temporal good.

The relator offered the opinion that a case of separation is always in itself a spiritual case from which can also emanate effects of the temporal order, therefore the ecclesiastical forum has the innate right of considering such cases.

[Translate Google] Rev. first counselor declares that he does not intend to challenge the competence of the ecclesiastical judge, but only in accordance with the practice of giving the spouse or child of time where good cause is a question of the separation of the reports (not connected) to a lay judge.

It was voted whether § 2 is agreeable as proposed by the relator:
Yes: 6; No: 1

Section Header	***Ex Actis Pont. Comm. CIC Recognoscendo. Appendix Schema Canonum. I. De Causis Separationis Coniugum***
PDF page number	22
Book page quoting	162
Latin	Can. 1 § 1. Causae separationis personalis coniugum baptizatorum ad iudicem ecclesiasticum deferantur, nisi iure particulari aliter caveatur. § 2. Ubi decisio ecclesiastica effectus civiles non sortitur, **et** quando sententia civilis praevidetur non infensa iuri Ecclesiae Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.
English	Can. 1 [(Mary's Advocates note) this is identical to that on page 144] § 1. The personal cases of separation of spouses of the baptized are to be introduced to an ecclesiastical judge, unless otherwise provided by particular law. §2. Where an ecclesiastical decision does not receive civil effects, **and** when the civil decision is not foreseen to be hostile to the law of the Church, the ordinary of the residence of the spouses will be able, in individual cases, with the particular circumstances having been weighed carefully, to give permission to approach the civil forum.

1976 November 3

Book Title	*Schema Canonum de Modo Procedendi Pro Tutela Iurium Seu De Processibus*
Year Published	1976 [*Notificiatio die 3 novembris 1976,* page 2 in pdf]
Author	*Pontificia Commission Codici Iuris Canonici Recognoscendo*
Publisher	*Typis Polyglottis Vaticanis*
Webpage	http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/schemata-canonumcic/deProcessibus.pdf
Section Header	**Notificatio, Romae, die 3 novembris 1976**
Book page number	none
PDF page number	2
Section Header	**Praenotanda: V. De Processu Conentioso Summari. Item 48 De obeicto processus summarii**
PDF page number	12
Book page quoting	13 (XIII)
Latin	48. De obiecto processus summarii. a) Quaenam materiae dilui possint per istum alveum, pendei partim a iure communi, partim a iure particulari. b) De iure communi proposito in adnexo schemate demandantur huic novae formae processuali: causae separationis coniugum (can. 357); causae incidentales (can. 246); causae de querela nullitatis (can. 284); nova causae propositio (can. 308); c) De iure particulari, lege a Conferentia Episcopali lata, determinationes peculiares haberi possunt circa usum huius processus (can. 318).
English	[Translation Google Translate] 48. The process of the Statement object. a) What is the investigation of the matter can be disposed of by means of this channel, bleeding, and partly by the common law, and partly to a particular law. b) Concerning the right to the common point in the form attached to the diagram of the procedural law to this new and commits to him: the cause of the separation of the couple (can. 357); incidentales the cause (can. 246); Cases concerning a plaint of nullity (can. 284); the new proposition of the cause (can. 308); c) Concerning the right of a particular case, the law was passed by the Conference of the Episcopal, the determinations of the special

character can not be understood with regard to the use of this process (can. 318).

Section Header	**Praenotanda: VII. De Causis Separationis Coniugum. Item 60 & 61**
PDF page number	15
Book page quoting	16 (XVI)
Latin	60. Cum in libro IV CIC nullibi sit sermo de huiusmodi causis, potius quam de recognitione, agitur de constructione nunc primitus facienda. *Principia quae direxerunt redactionem schematis*, haec praecipue fuerunt: a) Visum est imprimis *non expedire* quod causae separations demandarentur semper civili magistratui, idque pluribus de rationibus, sed praesertim ex declaration can. 335; b) ex alia parte consideratum est *nec parva esse incommoda duplicis in hoc re iurisdictionis*, ex qua contrariae decisiones dimanare possent; c) Insuper sarta tecta servanda erant *iura particularia*, statuta praesertim in Concordatis; d) Agnoscenda erat quoque facultas coniugis agitandi causam separationis via iudiciaria: de quo iure antea dubitabatur, adeo ut interrogata de re fuerit Commissio Interpres (cfr. A.A.S., 1932, p. 234). 61. Ad componenda haec diversa postulata propositum est quod: a) salvo iure particulari, separatio decerni possit via administrativa vel iudiciaria (can. 356, § 1): in via iudiciaria adhibeatur processus contentiosus summarius, nisi petatur processus Ordinarius (can. 357); b) quando decisio ecclesiastica non sorti tur effectus civiles, **et** sententia civilis non praevidetur contraria iuri divino, Episcopus poterit, iuxta adiuncta, licentiam concedere adeundi forum civile (can. 356, § 2); c) si causa respiciat effectus mere civiles, curandum est ut inde ab initio ad tale forum deferatur (can. 356, § 3)
English	[Translation Google Translate] 60. When questions of this kind we are talking about in the book of 4 Code of nowhere, rather than on the acknowledgment, the construction of the first of all is to be done now. *Which drew up the draft of the draft principles,* especially these were: a) in the first place it seemed good to the reason for separation is *not helpful* for him that is always demanded from the civil magistrate, and this is a number of reasons, but above all from the declaration can. 335; b) on the other hand it was decided that *a two-fold in this is no small matter of jurisdiction to be disadvantages*, from which they could be contrary to the decisions of the stems;

c) In addition, the breaches of the *rights of the particular* were to be observed, especially in the statutes of the Concordatis;

d) the ability to be acknowledged, too, was a cause for separation of his wife they chose the way of the judiciary: there was no question of the same right as before, so that the Commission is being asked of the interpreter to be improper (cfr. AAS, 1932, p. 234).

61. It is proposed to combine these different requirements:

a) without prejudice to the right of a particular situation, be able to decide the way of the administrative or the separation of the judiciary (cf. can. 356, § 1): the judiciary is to be used in the way of the process to be contentious summarius, unless you seek the process of ordinary (can. 357);

b) when the lot by the ecclesiastical decision does not produce civil effects, **and** it is foreseen that a civil sentence is not contrary to divine law, the Bishop will be able to, according to the circumstances, give them permission to approach the civil courts (cf. can. 356, § 2);

c) if the cause of the merely civil effects will look on you, take care of such a forum is to be referred to from the very beginning (cf. can. 356, § 3)

Section Header	**Pars Tertia, De Iudiciis Specialibus. Titulus II De Causis Separationis Coniugum**
PDF page number	101
Book page quoting	82
Latin	Can. 356 (novus). § 2. Ubi decisio ecclesiastica effectus civiles non sortitur, **vel** si sententia civilis praevidetur non contraria iuri divino, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile. § 3. Si causa versetur etiam circa effectus mere civiles matrimonii, satagat iudex ut, servato praescripto § 2, causa inde ab initio ad forum civile deferatur.
English	[Translation Google Translate] Can. 356 (new). § 2. Where the ecclesiastical decision does not produce civil effects by the lot, **or** if a civil sentence is not contrary to the divine law, the ordinary residence of the spouses is made in individual cases, in light of their particular circumstances, give them permission to approach the civil courts.

§ 3. If the case concerns only the merely civil effects of marriage, the judge, after having observed the provisions of § 2, the case brought before the civil court from the very beginning.

1976 November 3

Book Title	*Communicationes Vol. XLI – N.2 (2009)* [Vol. 41 see page 21 in pdf] *Communicationes Vol. VIII – N. 2 (1976)* [Vol. 8 pages 184-200]
Year Published	1976 (Notificatio pdf pg 23, , 3 novembris 1976)
Author	*Pontificia Commission Codici Iuris Canonici Recognoscendo*
Publisher	n/a
Webpage	http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/deprocessibus/schemaCanonumLibriVIIDeProcessibus.pdf
Section Header	***Ex Actis Ponti. Comm. CIC Recognoscendo. Pars Tertia, De Iudiciis Specialibus. Secto II De Causis Matrimonialibus. Titulus II De Causis Separationis Coniugum***
PDF page number	108
Book page quoting	434
Latin	Can. 356 (novus) § 2. Ubi decisio ecclesiastica effectus civiles non sortitur, **vel** si sententia civilis praevidetur non contraria iuri divino, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile. § 3. Si causa versetur etiam circa effectus mere civiles matrimonii, satagat iudex ut, servato praescripto § 2, causa inde ab initio ad forum civile deferatur.
English	[Translation Google Translate] Can. 356 (new). § 2. Where the ecclesiastical decision does not produce civil effects by the lot, **or** if a civil sentence is not contrary to the divine law, the ordinary residence of the spouses is made in individual cases, in light of their particular circumstances, give them permission to approach the civil courts. § 3. If the case concerns only the merely civil effects of marriage, the judge, after having observed the provisions of § 2, the case brought before the civil court from the very beginning.

1979 March 31 (die 31 martii 1979)

Book Title	*Communicationes Vol. XI – N. 2 (1979). [volume 11 (1979)]*
Year Published	1979
Author	*Pontificia Commission Codici Iuris Canonici Recognoscendo*
Publisher	*n/a*
Webpage	http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/deprocessibus/deProcessibus-SeriesAltera-Sessio-6.pdf

Section Header ***Acta Commissionis Opera Consultorum in Recognoscendis Schematibus***

PDF page number	3
Book page quoting	n/a
Latin	OPERA CONSULTORUM. IN RECOGNOSCENDIS SCHEMATIBUS I COETUS STUDIORUM DE PROCESSIBUS Praeside Card. Pericle Felici et moderante Exc.mo R.I. Castillo Lara, Secretario Commissionis, Relatore Exc.mo A. Sabattani, Coetus specialis « De Processibus » Sessiones habuit diebus 26-31 martii 1979 et 14-18 mai 1979, in quibus prosecutus est laborem ad examinandas animadversiones quae ab organis consultationis prolatae sunt circa Schema canonum de iure processuali (cf. Communicationes 10 [1978], pp. 209-272; 11 [1979], pp. 67-162).
English	[Translation Google Translate] OPERA CONSULTORS In revising the draft 1 ASSEMBLY OF STUDIES OF PROCEDURES President Card. Pericle Felici and controlling Exc.mo R.I. Castillo Lara, Secretary of the Commission, Exc.mo Reporter A. Sabattani, a special group of "De Processibus" sessions held during 26-31 March 1979 and 14-18 May 1979, in which he continued to work to examine the observations which were brought about by the organs of the consultation draft of the canons by the procedural law (cf. Communicationes 10 [1978], pp. 209-272; 11 [1979], pp. 67-162).

Section Header ***Acta Commissionis. Diei 31 martii 1979. Titlus II De Causis Separationis Coniugum***

Book page number	272-273
PDF page number	32-33

Book page quoting 272

Latin

Can. 356 (novus)

§1. Separatio personalis coniugum baptizatorum, nisi aliter pro locis particularibus legitime provisum sit, decerni potest:

a) Ordinarii decreto, vel

b) Ecclesiastici iudicis sententia ad normam canonum qui sequuntur.

§2. Ubi decisio ecclesiastica effectus civiles non sortitur, **vel** si sententia civilis praevidetur non contraria iuri divino, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

§3. Si causa versetur etiam circa effectus mere civiles matrimonii, satagat iudex ut, servato praescripto §2, causa inde ab initio ad forum civile deferatur.

— De sententia quorundam organorum consultationis Titulus de causis separationis posset supprimi, quia coniuges numquam deferunt ad tribunal ecclesiasticum causas separationis, vel posset tota quaestio remitti ad ius particulare.

Consultores omnes, vero, tenent in lege generali deesse non posse hunc titulum, attenta competentia Ecclesiae circa causas separationis coniugum.

— Aliquis Consultor proponit ut in § 1, b, deleátur verbum « ecclesiastici », quod omnibus placet.

— Alter Consultor proponit ut deleantur verba « singulis in casibus », quae habentur in § 2. Suggestio omnibus placet.

— Aliqui Consultores proponunt ut dicatur « servatis cautelis de quibus in § 2 », loco « servato praescripto § 2 », ita ut non requiratur interven tus Ordinarii commorationis coniugum.

Fit sufiragatio an placeat haec propositio: placet 3, non placet 5.

English

[Translation. Anthony St. Louis Sanchez]

1979 COETUS ON PROCEDURAL LAW

The Work of the Consultors in Reviewing the Schema

The Study Group "On Procedures"

Gathering on the 31st day of March 1979

Title II. Concerning the Cases of the Separation of Spouses

Can. 356 (new)

§1. The personal separation of baptized spouses, unless otherwise legitimately provided for in a particular place, is able to be decided:

a) By a decree of the Ordinary, or

b) By a sentence of an ecclesiastical judge according to the norm of the following canons.

§2. Where an ecclesiastical decision does not obtain civil effects, **or** if the civil sentence is foreseen to be not contrary to divine law, the Ordinary of the residence of the spouses can grant permission to approach the civil forum, in an individual case, after having weighed the particular circumstances.

§3. 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 from the start.

— Concerning the opinion of a certain organ of consultation, namely that the title about cases of separation should be suppressed, because the spouses never bring cases of separation to the ecclesiastical tribunal, or the whole question should be referred to particular law. However, all the consultors considered that this title is not able to be absent from the general law, considering the competence of the Church in cases of separation of spouses.

— Another consultor proposed that in § 1, b, the word "ecclesiastici" be deleted, which was pleasing to all.

— One consultor proposed that the words "singulis in casibus" [in an individual case] be deleted, which are in § 2. The suggestion was pleasing to all.

— Other consultors proposed that it should say "servatis cautelis de quibus in § 2," [after having observed the precautions mentioned in §2] in place of "servato praescripto § 2," [after having observed the prescript of §2] so that the intervention of the Ordinary of the residence of the spouses is not required. It was voted whether this proposition was pleasing: Yes: 3; No: 5.

1980 June 29

Book Title	*Schema Codicis Iuris Canonici. Iuxta animadversions S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutorum vitae consecrate recognitum*
Year Published	1980 [*Praenotanda29 Iunni 1980. Pdf page 8. Book page X]*
Author	*Pontificia Commissio Codici Iuris Canonici Recognoscendo*
Publisher	*Libreria Editrice Vaticana, Typis Polyglottis Vaticanis*
Webpage	http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/schemata-canonumcic/schemaCIC1980.pdf
Section Header	***Liber VII. De processibus. Pars III. De iudiciis specialibus. Caput II. De Causis Separationis Coniugum***
Book page number	362-363
PDF page number	384-385
Book page quoting	362
Latin	Can. 1644 - §2. Ubi decisio ecclesiastica effectus civiles non sortitur, **vel** si sententia civilis praevidetur non contraria iuri divino, Episcopus dioecesis commorationis coniugum poterit, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.
English	[Translation from Vatican's website because matches current *CIC*] Can. 1644 - § 2. Where an ecclesiastical decision has no civil effects, **or** if a civil sentence is not contrary to the divine law, the bishop diocese of the residence of the spouses, after having weighed the special circumstances, can grant permission to approach the civil forum.

1981 July 16

Book Title	*Relatio. Complectens Synthesim Animadversionum AB EM.MIS Atque EXC.MIS Patribus Commissionis Ad Novissimum Schema Codicis Iuris Canonici Exhibitarum, Cum Responsionibus a Secretari Et Consultoribus Datis.*
Year Published	1981
Author	*Pontificia Commissio Codici Iuris Canonici Recognoscendo*
Publisher	*Yada*
Webpage	http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/schemata-canonumcic/relatioAnimadversionumadNovissimumSchemaCIC.pdf

Section Header	***Praenotanda***
Book page number	5-10
PDF page number	3-8
Book page quoting	10
Latin	Romae, die 19 iulii 1981
English	Rome, 16th day of July, 1981

Section Header	**Ad, R. (can. 1106, 1108)**
Book page number	265-266
PDF page number	263-264
Book page quoting	265
Latin	Ad can. 1106 Dicatur: « ... ius ipsi est, manente vinculo, solvendi coniugalem convictum », ut pateat quod vinculum matrimoniale non solvi tur separatione (Exc. Henriquez). R. Non est necessarium. Sufficienter dicitur in inscriptione articuli: « De separatione manente vinculo ». Ad can. 1108 Dicatur: « Instituta separatione coniugum, opportune semper cavendum est de debiía coniugis innocentis ei filiorum sustentatione, necnon de educatione prolis » (Card. Florit). R. Quaestio inter effectus mere civiles adnumeratur, quae per se ad tribunal civile spectat (cfr. cann. 1624 et 1644, § 3).
English	Ad can. 1106 Let it be said: «... has the right to, as long as the bond, sever conjugal living," as it is evident that the bond of marriage can not be loosed by the separation of the (Exc. Henriquez). A. It is not necessary. Enough said in the title of the article: "The separation of the remaining bond. " Ad can. 1108 Let it be said: "After the separation of the spouses, must always be out of debt the maintenance of an innocent spouse, as well as the education of the offspring "(Card. Florit). R. The question of the merely civil counted among the effects, which are by their looks to the tribunal civil (Cfr. Cann. 1624 and 1644, § 3).

1982 March 25

Book Title	*Codex Iuris Canonici. Schema Novissimum Iuxta Plaacita Patrum Commissionis Emendatum Atque Summo Pontifici Praesentatum*
Year Published	1982
Author	*Pontificia Commissio Codici Iuris Canonici Recognoscendo*
Publisher	*Typis Polyglottis Vaticanis*
Webpage	http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/schemata-canonumcic/schemaNovissimumCIC1982.pdf
Section Header	***Lib. VII – De processibus. Pars III – De quibusdam processibus specialibus***
PDF page number	313
Book page quoting	293
Latin	CAPUT II. DE CAUSIS SEPARATIONS CONIUGUM Can. 1692 - § 2. Ubi decisio ecclesiastica effectus civiles non sortitur, **vel** si sententia civilis praevidetur non contraria iuri divino, Episcopus dioecesis commorationis coniugum poterit, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.
English	CHAPTER 2 CASES OF SEPARATION OF SPOUSES [Translation from Vatican's website because matches current *CIC*] Can. 1692 - § 2. Where an ecclesiastical decision has no civil effects **or** if a civil sentence is not contrary to divine law, the bishop of the diocese of the residence of the spouses, after having weighted the special circumstances, can grant permission to approach the civil forum.

Adunatio I[a]
die 19 aprilis 1971 mane habita

Huic adunationi praeest Card. Pericles Felici, Praeses Commissionis. Em.mus Praeses omnibus Consultoribus salutem dicit et quaerit num ipsi approbent Relationem laborum Sessionis X[ae], quod attinet sive ad veritatem sive ad integritatem eorum quae referuntur.

Omnes Consultores Relationem approbant.

Rev.mus Secretarius exponit ordinem laborum, pro hac Sessione statutum, de examinandis scilicet schematibus canonum: *a*) de causis separationis coniugum; *b*) de processu dispensationis super matrimonio rato et non consummato; *c*) de procedura administrativa.

Card. Praeses monet Consultores examen schematis de procedura administrativa dilatum iri, quia interim, de mandato Summi Pontificis, constituta est specialis Commissio Pontificia, cui munus concreditum est examinandi quaedam documenta, in quibus de iustitia administrativa tuenda cavetur, a quibusdam Conferentiis Episcoporum exarata. Ipsa quoque Commissio specialis munus habet apparandi legem generalem de iustitia administrativa, in quo opere perficiendo schema de procedura administrativa, a parvo Coetu apparatum, complebitur, ratione habita illorum elementorum, quae ex praedictis documentis particularibus desumi poterunt.

His praemissis incipit examen schematis canonum de causis separationis coniugum.

Rev.mus Relator legit antea schema canonum a parvo Coetu redactum:

Can. 1

§ 1. Causae separationis personalis coniugum baptizatorum ad iudicem ecclesiasticum deferantur, nisi iure particulari aliter caveatur.

§ 2. Ubi decisio ecclesiastica effectus civiles non sortitur, et quando sententia civilis praevidetur non infensa iuri Ecclesiae, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

Can. 2

Quando petitur separatio perpetua, instaurari debet processus iudicialis saltem summarius, nisi pars actrix instet ad quaestionem via administrativa pertractandam et pars conventa necnon promotor iustitiae consentiant.

Can. 3

In causis separationis temporariae adhibetur forma administrativa, nisi ius particulare aliter statuat, vel pars actrix aut pars conventa aut promotor iustitiae, audito Ordinario, petant tractationem iudicialem.

Can. 4

Causa separationis, quae forma administrativa proponitur, sequitur ordinarium tramitem processus administrativi, servatis tamen peculiaribus normis quae infra traduntur.

Can. 5

In causis separationis, forma sive contentiosa sive administrativa pertractandis, praeter tribunalia de quibus in can. 1964, competens est quoque forum ultimae commorationis non precariae coniugum.

Can. 6

Quando proponitur causa separationis quae simul implicet quaestiones circa effectus mere civiles matrimonii, nisi ius particulare aliud caveat ad normam can. 1961, curet iudex ut causa ipsa, inde ab initio, de licentia Ordinarii deferatur ad forum civile.

Can. 7

In processu sive iudiciali sive administrativo separationis coniugum interveniat promotor iustitiae, qui curare debet ne absque causa consortia matrimonialia distrahantur, neve legitimae separationis causae haud recognoscantur.

Can. 8

Processui separationis, etiam forma administrativa pertractando, interesse oportet notarium, qui actuarii munere fungatur.

Can. 9

Partes uti possunt advocatis a se electis, etiam in processu administrativo separationis; iudex vero, si necessitas id postulet, constituat parti patronum ex officio.

Can. 10

Praemisso conatu conciliationis ad normam can. 1973, iudex etiam in processu administrativo directe audiat coniuges de quorum separatione agitur et inquirat quoque ab eorum parocho, nisi adiuncta aliud suadeant, de vicissitudinibus vitae coniugalis.

Can. 11

In processu, forma quoque administrativa peragendo, accurate definiatur an separatio temporaria vel perpetua, qua de causa quibusque argumentis petatur; patefiant probationes collectae partibus instantibus ut se defendere possint, etiam ope patroni, intra terminos a iudice statuendos; demum detur decretum scriptum decisionis continens, saltem summarie, et facti.

Can. 12

Quoties causa separationis, forma administrativa definita, non sit per recursum ad superiorem gradum delata, potest iudex, ex interpellatione alterutrius coniugis, auditis altera parte et promotore iustitiae, suum decretum revocare aut reformare, sive ob cognitam illius illegitimitatem, sive ob novas circumstantias quae diversam exigant decisionem.

Can. 13

Contra decretum decisionis, de quo in can. 12, dantur iuris impugnationes, quae praevidetur in processu administrativo, et praesertim, ad effectum obtinendi reformationem decisionis, patet recursus hierarchicus.

Can. 14

Processus separationis etiam post duplicem conformem decisionem retractari possunt, sed tantum ob nova et gravia argumenta vel adiuncta».

Rev.mus Relator notat Secretariam opportune parvum Coetum constituisse ad hoc schema apparandum, quia hoc modo basis apta discussionis praebetur et celerius conclusiones deliberari possunt. Quae quidem consideratio pari ratione valet etiam pro alio schemate de processu dispensationis super matrimonio rato et non consummato.

Rev.mus Relator monet in hoc schemate de causis separationis coniugum haberi tantum leges adiectivas, quae quidem supponunt leges sub-

stantivas de eadem materia in libro de matrimonio. Praesumitur, ad effectum disponendi sequentes canones, quod maneat in lege separatio *perpetua* et separatio *temporaria*.

1) *De competentia ad huiusmodi causas iudicandas*

Rev.mus Relator dicit Consultores parvi Coetus censuisse non expedire quod causae separationis demandentur semper civili magistratui quia:

– in can. 1960 (iam recognito) edictum est: «causae matrimoniales baptizatorum iure proprio ad iudicem ecclesiasticum pertinent»;

– plura matrimonia sunt aliquando tantummodo canonica;

– in iure civili haud considerantur quaedam motiva separationis, apud Ecclesiam bene valida;

– si contrarium statueretur, Ecclesia officium et ius suum abdicaret; simulque consequeretur quod separatio contra legem divinam frequenter imponeretur vel denegaretur;

– separatio, in foro civili statuta, esset saepe basis supra quam, elapso statuto tempore, ipso iure inscriberetur divortio.

Attamen nec parva sunt *incommoda duplicis iurisdictionis*, quia, ad habendos civiles effectus circa pensionem et iura oeconomica, circa custodiam filiorum etc., pars cuius interest debet quoque adire forum laicum. Consequenter adest periculum fastidii et iacturae temporis et pecuniae pro partibus et possibilitas duarum decisionum quae sint sibi invicem contrariae et praeterea executio sententiae canonicae potest haberi ut delictum in foro civili, v.g. ob desertionem domicilii coniugalis et ita porro.

Ideo parvus Coetus proponit formulam, quae, salvo iure particulari (ut sunt concordata), ex una parte non abdicat ius et officium Ecclesiae et, ex alia parte, ita sit flexibilis ut magna ex parte supradicta incommoda vitentur.

Can. 1

§ 1. Causae separationis personalis coniugum baptizatorum ad iudicem ecclesiasticum deferantur, nisi iure particulari aliter caveatur.

§ 2. Ubi decisio ecclesiastica effectus civiles non sortitur, et quando sententia civilis praevidetur non infensa iuri Ecclesiae, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

Rev.mus primus Consultor proponit ut § 1 ita mutetur: «Salvo iure particulari, causae separationis coniugum catholicorum ad iudicem ecclesiasticum deferantur». Hoc modo principium competentiae omittitur quia iam habetur in can. 1960, et lex restringitur ad solos catholicos.

Alii Consultores retinere volunt in hoc canone principium competentiae.

Ad subiectum huius legis quod attinet, Consultores praeferunt locutionem «coniugum baptizatorum» sive quia ius particolare («nisi iure particulari aliter caveatur») potest restringere legem ad solos catholicos (Rev.mi Secretarius et secundus Consultor), sive quia si diceretur «coniugum catholicorum» statim surgeret quaestio de matrimoniis mixtis (Rev.mus tertius Consultor).

Rev.mus quartus Consultor vellet dare competentiam harum causarum magistratui civili ita ut lex ita sonare deberet: «Causae separationis... ad iudicem civilem deferantur, nisi iure particulari aliter caveatur».

Rev.mus Secretarius, contra Rev.mum quartum Consultorem, animadvertit causas separationis esse principaliter causas spirituales ideo non posse ex lege generali ad iudicem laicum deferri. Peculiares autem necessitates locales solvi possunt per legem particularem quae aliter cavere potest.

Rev.mus quartus Consultor instat in eo quod separatio inducitur ex propria voluntate coniugum, ideo iudex nihil habet iudicandum sed tantum subscribere debet talem decisionem et effectus civiles statuere.

Rev.mus primus Consultor negat talem sententiam Rev.mi quarti Consultoris, quia causae separationis induunt rationem boni publici et ideo a publica auctoritate resolvi debent.

Suffragatur placeatne § 1 prout proposita a Rev.mo Relatore:

placet n. 6; non placet n. 1.

Ad § 2 quod attinet, Rev.mus primus Consultor censet distinguendas esse causas quae directe respiciunt bonum spirituale et causas quae directe respiciunt bonum temporale etsi adnexum sit bonum spirituale. Istae deferri possunt etiam ad forum laicum, illae autem semper deferri debent ad iudicem ecclesiasticum.

Rev.mus Secretarius dicit quod si iudex laicus videret tales causas iure proprio, eius competentia extenderetur etiam ad effectus qui sunt ordinis ecclesiastici, quin dicatur quod perdifficile esset in singulis casibus iudicare utrum causa sit directe de bono spirituali an de bono temporali.

Rev.mus Relator censet quod causa separationis in se ipsa est semper causa spiritualis *ex qua* dimanare possunt etiam effectus ordinis temporalis, ideo forum ecclesiasticum ius nativum habet videndi tales causas.

Rev.mus primus Consultor declarat se non voluisse impugnare competentiam iudicis ecclesiastici sed tantum normam practicam dare, scilicet ubi de bono temporali coniugis vel prolis agatur causae separationis deferantur (non pertinent) ad iudicem laicum.

Suffragatur placeatne § 2 prout proposita a Rev.mo Relatore:

placet n. 6; non placet n. 1.

Adunatio II[a]
die 20 aprilis 1971 mane habita

2) *Quinam sit ritus processualis quoad separationem adhibendus*

Circa hanc quaestionem habentur in schemate parvi Coetus cann. 2-3, qui statuunt ordinarie ritum iudicialem, saltem summarium, pro causis separationis perpetuae et ritum processus administrativi pro causis separationis temporariae.

Rev.mus primus Consultor dicit quod unica ratio statuendi processum administrativum pro causis separationis temporariae est brevitas processus. Sed si in novo iure habebitur processus iudiciarius summarius, optata brevitas bene obtineri potest per talem processum, quin recurratur ad proceduram administrativam, eo vel magis quod, addit Rev.mus Secretarius, causae separationis sunt causae contentiosae et ideo ex natura sua solvi debent per processum iudiciarium.

Etiam Rev.mus Relator et alii Consultores concordant cum Rev.mis primo Consultore et Secretario circa naturam iudiciariam processus separationis et circa opportunitatem subtrahendi tale processum a via administrativa.

Ideo proponitur ut cann. 2 et 3 in unum tantum canonem contrahantur, qui, auctore Rev.mo Relatore, Rev.mi primus et secundus Consultores, ita redigitur:

«Can. 2. Quando petitur separatio sive perpetua sive temporaria, instauran debet processus iudiciarius summarius, nisi alterutra pars vel promotor iustitiae instent ut processus contentiosus ordinarius habeatur».

Suffragatur haec formula: placet n. 6; non placet n. 1.

3) *De ritu processuali adhibendo et de peculiaribus normis*

Rev.mus Secretarius proponit ut formula can. 4 schematis parvi Coetus ita mutetur:

«Nisi electus fuerit processus ordinarius, causa separationis sequitur communem tramitem processus summarii, servatis in utroque casu peculiaribus normis quae infra traduntur» (placet n. 6; non placet n. 1).

4) *De iudice in processu separationis*

Rev.mus Relator notat quod causae separationis, cum sint processus iudiciales, percurrere debent ordinariam hierarchiam tribunalium. At statuendi sunt tituli competentiae quia ex iure communi applicaretur semper principium «actor sequitur forum rei», quod incommoda practica afferre posset. Ad faciliorem causae instructionem reddendam, parvo Coetui visum est utile agnoscere competentiam tribunalis loci ultimi domicilii coniugalis, quia ibi convictus perturbatus est et ibi sunt testes qui possunt de re referre.

Rev.mus Relator ita formulam proponit:

«In causis separationis, praeter tribunalia de quibus in can. 1964, competens est quoque forum ultimae commorationis non praecarie coniugum».

Suffragatur haec formula: placet n. 6; non placet n. 1.

5) *Causae incidentes de effectibus mere civilibus*

Formula canonis, prout in schemate prostat, omnibus placet, excepto Rev.mo quarto Consultore.

6) *De interventu promotoris iustitiae in processu separationis*

Rev.mus Relator memorat novum canonem recognitum 1586 ter ubi statuitur interventum Prom. Iust. esse «ex natura rei necessarium in causis separationis coniugum». Reapse rei publicae communisque salutis interest connubia non separari ob pericula coniugum et filiorum. Etiam in foro laicali in huiusmodi causis intervenit Procurator Reipublicae. Ceterum finis intentus ab hac praesentia non est determinatus ad unum (sicut evenit pro defensore vinculi) sed potest esse tam pro quam contra separationem.

Ideo Rev.mus Relator formulam schematis parvi Coetus ita parum corrigit:

«In quolibet processu separationis coniugum interveniat promotor iustitiae, qui curare debet ne absque causa consortia matrimonialia distrahantur, neve legitimae separationis causae haud recognoscantur».

Suffragatur haec formula canonis: placet n. 6; non placet n. 1.

7) *Can. 8 schematis parvi Coetus*

Can. 8 schematis parvi Coetus supprimitur. Cum in processu separationis adhibeatur semper ritus iudiciarius, ideo valent normae generales de praesentia notarii.

8) *De advocatis in processu separationis*

Omnes Consultores concordes sunt circa opportunitatem admittendi advocatos in processu separationis, quia agitur de iure et non videtur cur partes privari deberent tali adiutorio.

Rev.mus Relator ita formulam corrigit: «Partes uti possunt advocatis a se electis; iudex vero, si necessitas id postulat, constituat partibus patronum ex officio».

Formula placet n. 6; non placet n. 1.

9) *De conatu conciliationis*

Rev.mus Relator memorat novum can. 1973 ubi statuitur munus iudicis ad curandam pacificationem coniugum. Dicit enim canon: «Ut causae matrimoniales, quantum fieri potest vitentur, iudex, antequam causam acceptet, media pastoralia adhibeat, prout res sinit, ad coniuges reconciliandos...».

Cum iam prostet hic canon generalis, sufficit in hac parte de processu separationis revocare hanc normam in sequenti canone.

Alii Consultores concordant cum Rev.mo Relatore.

10) *De utroque coniuge eorumque parocho audiendis*

Omnes Consultores concordant de directa auditione coniugum et de audiendo parocho, ideo Rev.mus Relator formulam canonis ita proponit:

«Praemisso conatu conciliationis ad normam can. 1973, iudex directe audiat coniuges de quorum separatione agitur et inquirat quoque ab eorum parocho, nisi adiuncta aliud suadeant, de vicissitudinibus vitae coniugalis».

Suffragatur formula: placet n. 6; non placet n. 1.

11) *De evolutione processus*

Rev.mus Relator notat canonem 11, prouti propositum in schemate parvi Coetus, praecipue redactum fuisse quia in illo schemate praevideba-

tur possibilitas adeundi viam procedurae administrativae et ideo statuere oportebat quaenam cautiones remanere deberent de formulatione petiti et causae petendi, de iure cognoscendi acta, de iure defensionis etc. Nunc vero, cum semper in causis separationis ritus iudiciarius adhibendus sit, ille canon supprimi posset quia valere debent normae generales processus contentiosi (vel summarii). Tamen Rev.mus Relator opportunum censet ut canon retineatur, ita tamen mutatus: « In processu accurate definiatur an separatio temporaria vel perpetua, qua de causa quibuslibet argumentis petatur; probationes collectae innotescant partibus ut se defendere possint, etiam ope patroni ».

Suffragatur haec formula: placet n. 6; non placet n. 1.

12) *Canones qui habentur in schemate sub nn. 12 et 13*

Canones qui habentur in schemate sub nn. 12 et 13 supprimuntur, quia referunt normas peculiares procedurae administrativae, non vero procedurae iudiciariae aptae.

13) *De re iudicata in causis separationis*

Etiam can. 14 schematis parvi Coetus supprimitur, quia ille canon positus fuit praesertim ad extendendum decisionibus quoque procedurae administrativae principium quod causae separationis non transeunt in rem iudicatam, cum sint causae de statu personarum.

Adunatio III^a^
die 22 aprilis 1971 mane habita

Incipit examen alterius schematis a parvo Coetu parati. Rev.mus Relator legit schema canonum:

De Processu Dispensationis
super matrimonio rato et non consummato

Can. 1

Coniuges, sive utraque parte rogante sive alterutra, invita quoque altera parte, ius habent petendi dispensationem super matrimonio rato et non consummato.

VII.

DE CAUSIS SEPARATIONIS CONIUGUM

60. Cum in libro IV CIC nullibi sit sermo de huiusmodi causis, potius quam de recognitione, agitur de constructione nunc primitus facienda.

Principia quae direxerunt redactionem schematis, haec praecipue fuerunt:

a) Visum est imprimis *non expedire* quod causae separationis demandarentur semper civili magistratui, idque pluribus de rationibus, sed praesertim ex declaratione can. 335;

b) ex alia parte consideratum est *nec parva esse incommoda duplicis in hoc re iurisdictionis,* ex qua contrariae decisiones dimanare possent;

c) Insuper sarta tecta servanda erant *iura particularia,* statuta praesertim in Concordatis;

d) Agnoscenda erat quoque facultas coniugis agitandi causam separationis via iudiciaria: de quo iure antea dubitabatur, adeo ut interrogata de re fuerit Commissio Interpres (cfr. *A.A.S.,* 1932, p. 234).

61. Ad componenda haec diversa postulata propositum est quod:

a) salvo iure particulari, separatio decerni possit via administrativa vel iudiciaria (can. 356, § 1): in via iudiciaria adhibeatur processus contentiosus summarius, nisi petatur processus ordinarius (can. 357);

b) quando decisio ecclesiastica non sortitur effectus civiles, et sententia civilis non praevidetur contraria iuri divino, Episcopus poterit, iuxta adiuncta, licentiam concedere adeundi forum civile (can. 356, § 2);

c) si causa respiciat effectus mere civiles, curandum est ut inde ab initio ad tale forum deferatur (can. 356, § 3).

VIII.

DE PROCESSU DISPENSATIONIS SUPER RATO

62. Nunc in CIC normae de hac materia permiscentur legibus quae dirigunt causas nullitatis matrimonii. Quod congruum non videtur, quia duo processus induunt naturam diversam, respective administrativam et contentiosam.

Necesse ideo erat apparare titulum appositum, non solum ad formalem perfectionem legis, sed ad utilitatem quoque tribunalium.

63. Confirmatur disciplina recenter inducta ab Instructione S. C. de disciplina Sacramentorum diei 4 martii 1972 circa competentiam Episcopi dioecesani accipiendi libellum pro dispensatione et instruendi processum. Haec Instructio tamen viget « usque ad CIC recogniti promulgationem ».

TITULUS II

DE CAUSIS SEPARATIONIS CONIUGUM

Can. 356 (novus). § 1. Separatio personalis coniugum baptizatorum, nisi aliter pro locis particularibus legitime provisum sit, decerni potest:

a) Ordinarii decreto vel

b) ecclesiastici iudicis sententia ad normam canonum qui sequuntur.

§ 2. Ubi decisio ecclesiastica effectus civiles non sortitur, vel si sententia civilis praevidetur non contraria iuri divino, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

§ 3. Si causa versetur etiam circa effectus mere civiles mátrimonii, satagat iudex ut, servato praescripto § 2, causa inde ab initio ad forum civile deferatur.

Can. 357 (novus). Nisi qua pars vel promotor iustitiae processum contentiosum ordinarium petant, processus contentiosus summarius adhibeatur.

Can. 358 (novus). Quod attinet ad tribunalis competentiam serventur praescripta can. 337.

Can. 359 (novus). Iudex, antequam causam acceptet et quotiescumque spem boni exitus perspiciat, pastoralia media adhibeat, ut coniuges concilientur et ad vitae communionem restaurandam inducantur.

Can. 360 (novus). Causae de coniugum separatione ad publicum quoque bonum spectant; ideoque iis interesse semper debet promotor iustitiae ad normam can. 32.

Can. 361 (novus). In ceteris quae ad rationem procedendi attinent, applicandi sunt, nisi rei natura obstet, canones de iudiciis in genere et de iudicio contentioso in genere, servatis specialibus normis circa causas de statu personarum et causas ad bonum publicum spectantes.

1976 December
Can. 60-61
(page 195-196).
1976 Dec.

Defensor vinculi apud tribunal appellationis non potest appellationi renuntiare (can. 347, §§ 1 et 2).

58. *Circa decretum ratihabitionis et ordinarium examen secundi gradus* confirmatur praesens disciplina inducta a M. P. « Causas Matrimoniales », VIII (can. 347, § 3).

Attamen, ex praecedenti can. 308, petita novae causae propositio contra duplicem decisionem pro nullitate exsecutionem sententiae non suspendit, nec in casu decreti ratihabitionis: contra id quod nunc evenit ex art. IX M. P. citati.

Tribunal appellationis potest tamen, in singulis casibus, huiusmodi suspensionem iubere.

59. *Processus matrimonialis summarius* dicitur nunc procedura antea nuncupata « De casibus exceptis » (cann. 1990-1992 CIC), et dein « De regulis in casibus specialibus » (M. P. Causas Matrimoniales, X-XIII). Nomen novum videtur magis respondere ordinationi systematicae materiae, dum praecedentes formulae exprimebant conceptum mere negativum.

Haec adnotanda veniunt:

a) substantia normarum mutuatur a M. P. citato;

b) competens ad hunc processum instruendum et definiendum est « *Vicarius Iudicialis* vel iudex ab ipso designatus » (can. 351); non amplius « Ordinarius loci », sicuti in CIC et in M. P. Et reapse nulla pretiosa ratio aderat cur huiusmodi processus, qui est « ordinis iudicialis, non administrativi » (*A.A.S.*, 1944, p. 94, n. 2) subtraheretur iudici ordinario, qui nunc potest esse « unicus clericus » (can. 24, § 4): eo vel magis quod fere semper Episcopi tale munus committebant Officiali iuxta art. 228 Instructionis *Provida Mater* S. C. Sacr. 15 augusti 1936.

c) Contra id quod nunc evenit, pars quae se gravatam putet a decisione primi gradus, ius habet appellandi (can. 352, § 2).

VII.

DE CAUSIS SEPARATIONIS CONIUGUM

60. Cum in libro IV CIC nullibi sit sermo de huiusmodi causis, potius quam de recognitione, agitur de constructione nunc primitus facienda.

Principia quae direxerunt redactionem schematis, haec praecipue fuerunt:

a) Visum est imprimis *non expedire* quod causae separationis demandarentur semper civili magistratui, idque pluribus de rationibus, sed praesertim ex declaratione can. 335;

b) ex alia parte consideratum est *nec parva esse incommoda duplicis in hoc re iurisdictionis,* ex qua contrariae decisiones dimanare possent;

c) Insuper sarta tecta servanda erant *iura particularia,* statuta praesertim in Concordatis;

d) Agnoscenda erat quoque facultas coniugis agitandi causam separationis via iudiciaria: de quo iure antea dubitabatur, adeo ut interrogata de re fuerit Commissio Interpres (cfr. *A.A.S.*, 1932, p. 234).

61. Ad componenda haec diversa postulata propositum est quod:

a) salvo iure particulari, separatio decerni possit via administrativa vel iudiciaria (can. 356, § 1): in via iudiciaria adhibeatur processus contentiosus summarius, nisi petatur processus ordinarius (can. 357);

b) quando decisio ecclesiastica non sortitur effectus civiles, et sententia civilis non praevidetur contraria iuri divino, Episcopus poterit, iuxta adiuncta, licentiam concedere adeundi forum civile (can. 356, § 2);

c) si causa respiciat effectus mere civiles, curandum est ut inde ab initio ad tale forum deferatur (can. 356, § 3).

VIII.

DE PROCESSU DISPENSATIONIS SUPER RATO

62. Nunc in CIC normae de hac materia permiscentur legibus quae dirigunt causas nullitatis matrimonii. Quod congruum non videtur, quia duo processus induunt naturam diversam, respective administrativam et contentiosam.

Necesse ideo erat apparare titulum appositum, non solum ad formalem perfectionem legis, sed ad utilitatem quoque tribunalium.

63. Confirmatur disciplina recenter inducta ab Instructione S. C. de disciplina Sacramentorum diei 4 martii 1972 circa competentiam Episcopi dioecesani accipiendi libellum pro dispensatione et instruendi processum. Haec Instructio tamen viget « usque ad CIC recogniti promulgationem ».

Schema determinat facultatem de qua supra competere Episcopo *domicilii vel commorationis non precariae oratoris* (can. 364).

64. *De patronis in processu super rato.*

a) Schema via media procedit inter contrarias omnino opiniones: nam ex praesentia advocatorum aliqua incommoda obvenire possunt, sed constat quoque causas super rato quandoque naufragium fecisse eo quod nemo suggerere potuit opportuna media instructionis.

Can. 355 (novus)

In ceteris quae ad rationem procedendi attinent, applicandi sunt, nisi rei natura obstet, canones de iudiciis in genere et de iudicio contentioso in genere, servatis specialibus normis circa causas de statu personarum et causas ad bonum publicum spectantes.

TITULUS II

DE CAUSIS SEPARATIONIS CONIUGUM

Can. 356 (novus)

§ 1. Separatio personalis coniugum baptizatorum, nisi aliter pro locis particularibus legitime provisum sit, decerni potest:

a) Ordinarii decreto vel

b) ecclesiastici iudicis sententia ad normam canonum qui sequuntur.

§ 2. Ubi decisio ecclesiastica effectus civiles non sortitur, vel si sententia civilis praevidetur non contraria iuri divino, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

§ 3. Si causa versetur etiam circa effectus mere civiles matrimonii, satagat iudex ut, servato praescripto § 2, causa inde ab initio ad forum civile deferatur.

Can. 357 (novus)

Nisi qua pars vel promotor iustitiae processum contentiosum ordinarium petant, processus contentiosus summarius adhibeatur.

Can. 358 (novus)

Quod attinet ad tribunalis competentiam serventur praescripta can. 337.

Can. 359 (novus)

Iudex, antequam causam acceptet et quotiescumque spem boni exitus perspiciat, pastoralia media adhibeat, ut coniuges concilientur et ad vitae communionem restaurandam inducantur.

Can. 360 (novus)

Causae de coniugum separatione ad publicum quoque bonum spectant; ideoque iis interesse semper debet promotor iustitiae ad normam can. 32.

Can. 361 (novus)

In ceteris quae ad rationem procedendi attinent, applicandi sunt, nisi rei natura obstet, canones de iudiciis in genere et de iudicio contentioso in genere, servatis specialibus normis circa causas de statu personarum et causas ad bonum publicum spectantes.

Titulus III

De Processu Ad Dispensationem Super Matrimonio Rato Et Non Consummato Obtinendam

Can. 362

Soli coniuges, vel alteruter altero invito, ius habent petendi gratiam dispensationis super matrimonio rato et non consummato.

Can. 363

§ 1. Una Sedes Apostolica cognoscit de facto inconsummationis matrimonii et de existentia iustae causae ad dispensationem concedendam.

§ 2. Dispensatio vero ab uno Romano Pontifice conceditur.

Can. 364

§ 1. Competentes ad accipiendum libellum, quo petitur dispensatio, sunt Episcopi dioecesani domicilii vel commorationis non precariae oratoris, qui si constiterit de fundamento precum, processus instructionem disponere debent.

§ 2. Si tamen casus propositus speciales habeat difficultates ordinis iuridici et moralis, Episcopus dioecesanus consulat Sedem Apostolicam.

§ 3. Adversus decretum quo Episcopus libellum reicit, patet recursus ad Sedem Apostolicam.

Can. 355 (novus)

In ceteris quae ad rationem procedendi attinent, applicandi sunt, nisi rei natura obstet, canones de iudiciis in genere et de iudicio contentioso in genere, servatis specialibus normis circa causas de statu personarum et causas ad bonum publicum spectantes.

— Dici debet « et de iudicio contentioso *ordinario* », loco « in genere ».

* * *

Consultoribus placet addere normam de monitione facienda partibus circa obligationes quas habet altera erga alteram partem et prolem, quod attinet ad sustentationem et educationem. Aliquis Consultor hanc formulam proponit, quae omnibus placet:

« In sententia partes moneantur de obligationibus moralibus vel etiam civilibus, quibus forte teneantur, altera erga alteram et erga prolem, ad sustentationem et educationem praestandam ».

Hic canon collocari debet sub art. 7, ante canonem 354.

TITULUS II

DE CAUSIS SEPARATIONIS CONIUGUM

Can. 356 (novus)

§ 1. Separatio personalis coniugum baptizatorum, nisi aliter pro locis particularibus legitime provisum sit, decerni potest:

a) *Ordinarii decreto, vel*

b) *ecclesiastici iudicis sententia ad normam canonum qui sequuntur.*

§ 2. Ubi decisio ecclesiastica effectus civiles non sortitur, vel si sententia civilis praevidetur non contraria iuri divino, Ordinarius commorationis coniugum poterit, singulis in casibus, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

§ 3. Si causa versetur etiam circa effectus mere civiles matrimonii, satagat iudex ut, servato praescripto § 2, causa inde ab initio ad forum civile deferatur.

— De sententia quorundam organorum consultationis Titulus de causis separationis posset supprimi, quia coniuges numquam deferunt

ad tribunal ecclesiasticum causas separationis, vel posset tota quaestio remitti ad ius particulare.

Consultores omnes, vero, tenent in lege generali deesse non posse hunc titulum, attenta competentia Ecclesiae circa causas separationis coniugum.

— Aliquis Consultor proponit ut in § 1, b, deleatur verbum « ecclesiastici », quod omnibus placet.

— Alter Consultor proponit ut deleantur verba « singulis in casibus », quae habentur in § 2. Suggestio omnibus placet.

— Aliqui Consultores proponunt ut dicatur « servatis cautelis de quibus in § 2 », loco « servato praescripto § 2 », ita ut non requiratur interventus Ordinarii commorationis coniugum.

Fit suffragatio an placeat haec propositio: placet 3, non placet 5.

Can. 357 (novus)

Nisi qua pars vel promotor iustitiae processum contentiosum ordinarium petant, processus contentiosus summarius adhibeatur.

— Dici debet « ... processus contentiosus *oralis* ».

— Nonnulli suggesserunt ut iudex, non obstantibus petitionibus partium, quae processum contentiosum ordinarium praeferant, decernere possit ut adhibeatur processus contentiosus oralis.

Propositio non placet Consultoribus.

— Aliquis Consultor proponit ut norma can. 347, de examine secundi gradus per decretum facto, applicetur etiam in causis separationis coniugum, quando in prima instantia adhibitus sit processus contentiosus ordinarius. Cum omnes alii Consultores concordes sint, additur § 2 ita redacta:

« Si processus contentiosus ordinarius adhibitus sit et appellatio proponatur, tribunal secundi gradus ad normam can. 347, § 2 procedat, servatis servandis ».

Can. 358 (novus)

Quod attinet ad tribunalis competentiam serventur praescripta can. 337.

Can. 359 (novus)

Iudex, antequam causam acceptet et quotiescumque spem boni

exitus perspiciat, pastoralia media adhibeat, ut coniuges concilientur et ad vitae communionem restaurandam inducantur.

— De his canonibus non factae sunt animadversiones.

Can. 360 (novus)

Causae de coniugum separatione ad publicum quoque bonum spectant; ideoque iis interesse semper debet promotor iustitiae ad normam can. 32.

— De sententia quorundam organorum consultationis, praesentia promotoris iustitiae non videtur necessaria.

Consultores autem non idem sentiunt, cum ratio boni publici suum habeat momentum.

— Quibusdam magis apta videtur praesentia defensoris vinculi. Sed Consultores respondent in istis causis nullum dubium moveri de vinculo matrimoniali et ideo praesentiam vinculi defensoris non esse ad rem.

Can. 361 (novus)

In ceteris quae ad rationem procedendi attinent, applicandi sunt, nisi rei natura obstet, canones de iudiciis in genere et de iudicio contentioso in genere, servatis specialibus normis circa causas de statu personarum et causas ad bonum publicum spectantes.

— Omnibus Consultoribus placet hunc canonem delere, quia per can. 357 sufficienter innuitur quinam sint canones applicandi in causis separationis quod attinet ad rationem procedendi.

SESSIO VII

(diebus 14-19 maii 1979 habita)

Adunatio diei 14 maii 1979

Can. 362

Soli coniuges, vel alteruter altero invito, ius habent petendi gratiam dispensationis super matrimonio rato et non consummato.

— Nonnullae animadversiones factae sunt circa rubricam Tituli III: est qui censeat meliorem esse rubricam « de processu dispensa-

Can. 1639 – § 1. Adversus hanc declarationem defensor vinculi, si prudenter existimaverit vel vitia de quibus in can. 1638 vel dispensationis defectum non esse certa, appellare debet ad iudicem secundae instantiae, ad quem acta sunt transmittenda quique scripto monendus est agi de processu documentali.

§ 2. Integrum manet parti, quae se gravatam putet, ius appellandi.

Can. 1640 – Iudex alterius instantiae, cum interventu defensoris vinculi et auditis partibus, decernet eodem modo de quo in can. 1638 utrum sententia sit confirmanda, an potius procedendum in causa sit ad ordinarium tramitem iuris; quo in casu eam remittit ad tribunal primae instantiae.

Art. 7
Normae generales

Can. 1641 – In sententia partes moneantur de obligationibus moralibus vel etiam civilibus, quibus forte teneantur, altera erga alteram et erga prolem, ad sustentationem et educationem praestandam.

Can. 1642 – Causae ad matrimonii nullitatem declarandam nequeunt processu contentioso orali tractari.

Can. 1643 – In ceteris quae ad rationem procedendi attinent, applicandi sunt, nisi rei natura obstet, canones de iudiciis in genere et de iudicio contentioso ordinario, servatis specialibus normis circa causas de statu personarum et causas ad bonum publicum spectantes.

Caput II
DE CAUSIS SEPARATIONIS CONIUGUM

Can. 1644 – § 1. Separatio personalis coniugum baptizatorum, nisi aliter pro locis particularibus legitime provisum sit, decerni potest:

1) Episcopi dioecesani decreto, vel
2) iudicis sententia ad normam canonum qui sequuntur.

§ 2. Ubi decisio ecclesiastica effectus civiles non sortitur, vel si sententia civilis praevidetur non contraria iuri divino, Episcopus dioecesis commorationis coniugum poterit, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

§ 3. Si causa versetur etiam circa effectus mere civiles matrimonii, satagat iudex ut, servato praescripto § 2, causa inde ab initio ad forum civile deferatur.

Can. 1645 – § 1. Nisi qua pars vel promotor iustitiae processum contentiosum ordinarium petant, processus contentiosus oralis adhibeatur.

§ 2. Si processus contentiosus ordinarius adhibitus sit et appellatio proponatur, tribunal secundi gradus ad normam can. 1634, § 2 procedat, servatis servandis.

Can. 1646 – Quod attinet ad tribunalis competentiam serventur praescripta can. 1625.

Can. 1647 – Iudex, antequam causam acceptet et quotiescumque spem boni exitus perspiciat, pastoralia media adhibeat, ut coniuges concilientur et ad vitae communionem restaurandam inducantur.

Can. 1648 – Causae de coniugum separatione ad publicum quoque bonum spectant; ideoque iis interesse semper debet promotor iustitiae ad normam can. 1385.

Caput III
DE PROCESSU AD DISPENSATIONEM SUPER MATRIMONIO RATO ET NON CONSUMMATO

Can. 1649 – Soli coniuges, vel alteruter, quamvis altero invito, ius habent petendi gratiam dispensationis super matrimonio rato et non consummato.

Can. 1650 – § 1. Una Sedes Apostolica cognoscit de facto inconsummationis matrimonii et de exsistentia iustae causae ad dispensationem concedendam.

§ 2. Dispensatio vero ab uno Romano Pontifice conceditur.

Ad can. 1642

Non excludantur causae matrimoniales ab hac optima procedura quae utiliter applicari potest ad causas de nullitate matrimonii, ita ut istae non amplius formalitatibus processus contentiosi ligentur. Proponitur: « Causae ad matrimonii nullitatem declarandam possunt processu contentioso orali tractari » (Card. Carter).

R. *Propositio admitti nequit. Processus contentiosus oralis non dat satisdationes* (« *garanzie* »), *quae processui matrimoniali propter vinculum sacramentale necessariae sunt.*

Immo, consultores unanimiter, ad praecavendos abusus hac in re, ad can. 1608, addere proponunt § 2 qui ita sonat:

« § 2. Si processus oralis adhibeatur extra casus iure permissos, actus iudiciales sunt nulli ».

Ad can. 1643

1. Iterum affirmatur contrarietas Conferentiae Episcoporum Australiae ut causae matrimoniales inter causas contentiosas adnumerentur (Card. Freeman; Exc. O'Connell).

R. Ad 1: *Cfr. can. 1352, § 1, 1°: « Obiectum iudicii sunt ... vel* facta iuridica declaranda » (cfr. quoque can. 1552, § 2 C.I.C.).

2. Addatur: « Ad amussim serventur *normae* quae a competentibus Dicasteriis Romanis interdum eduntur, utpote e latebunda consultatione ac diuturna experientia exaratae, optime conferunt ad res recte ac expedite dirimendas » — quia « nostris diebus cursitat opinio (saepe dogmatice expressa) has Normas libere interpretari ac iuxta "experientiam pastoralem" servari vel seponi posse. De facto consequitur saepe disperditio temporis ac temeritas sententiae » (Card. Cooray).

R. Ad 2: *Inutile et improprium esset.*

Ad can. 1663

Pars huius canonis quae iuris substantivi est, tollatur e iure processuali et, aliis praescriptis adaucta, transferatur vel ad Lib. I, Tit. VI,

Art. 7

NORMAE GENERALES

Can. 1689 – In sententia partes moneantur de obligationibus moralibus vel etiam civilibus, quibus forte tenentur, altera erga alteram et erga prolem, ad sustentationem et educationem praestandam.

Can. 1690 – Causae ad matrimonii nullitatem declarandam nequeunt processu contentioso orali tractari.

Can. 1691 – In ceteris quae ad rationem procedendi attinent, applicandi sunt, nisi rei natura obstet, canones de iudiciis in genere et de iudicio contentioso ordinario, servatis specialibus normis circa causas de statu personarum et causas ad bonum publicum spectantes.

CAPUT II
DE CAUSIS SEPARATIONIS CONIUGUM

Can. 1692 – § 1. Separatio personalis coniugum baptizatorum, nisi aliter pro locis particularibus legitime provisum sit, decerni potest Episcopi dioecesani decreto, vel iudicis sententia ad normam canonum qui sequuntur.

§ 2. Ubi decisio ecclesiastica effectus civiles non sortitur, vel si sententia civilis praevidetur non contraria iuri divino, Episcopus dioecesis commorationis coniugum poterit, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile.

§ 3. Si causa versetur etiam circa effectus mere civiles matrimonii, satagat iudex ut, servato praescripto § 2, causa inde ab initio ad forum civile deferatur.

Can. 1693 – § 1. Nisi qua pars vel promotor iustitiae processum contentiosum ordinarium petant, processus contentiosus oralis adhibeatur.

§ 2. Si processus contentiosus ordinarius adhibitus sit et appellatio proponatur, tribunal secundi gradus ad normam can. 1682, § 2 procedat, servatis servandis.

Can. 1694 – Quod attinet ad tribunalis competentiam, serventur praescripta can. 1673.

Can. 1695 – Iudex, antequam causam acceptet et quotiescumque spem boni exitus perspiciat, pastoralia media adhibeat, ut coniuges concilientur et ad coniugalem convictum restaurandum inducantur.

Can. 1696 – Causae de coniugum separatione ad publicum quoque bonum spectant; ideoque iis interesse semper debet promotor iustitiae, ad normam can. 1433.

Exhibit 4

Account # 8556835

Label Details

Label Number:
9405503699300486449064

Terms
Acceptance Cutoff: 02/13/2017 6:00 PM
Acceptance Time: 02/14/2017 11:36 AM
Scheduled Date: 02/15/2017 12:00 AM
Delivery Status: Delivered, Front Desk/Reception
2017-02-16 10:14:00.0

Label Actions

Return Address:
MARIE C MACFARLANE
2721 WAGAR RD
ROCKY RIVER, OH 44116-3321
ma.defending@marysadvocates.org

Delivery Address:
BISHOP DANIEL THOMAS
DIOCESE OF TOLEDO
1933 SPIELBUSCH AVE
TOLEDO, OH 43604-5360

Package:
Ship Date: 02/13/17
From: 44116

Service:
Priority Mail® 2-Day
Flat Rate Envelope
USPS Tracking®

Exhibit 5

Diocese of Cleveland
Cathedral Square

Mrs. Marie Macfarlane
2721 Wagar Road
Rocky River, OH 44116

March 2, 2017

Dear Mrs. Macfarlane,

I have received your request, addressed to Bishop Daniel Thomas as Apostolic Administrator of the Diocese of Cleveland, for ecclesiastical permission to publish your proposed flyer 'Separation and Divorce: A Catholic Perspective.'

You state that the proposed publication is designed to be a trifold flyer. The document you submitted appears to be three pages of text and a fourth page of references. Please submit the proposed publication formatted exactly as you intend to publish it.

Sincerely,

Donald P. Oleksiak

Rev. Donald P. Oleksiak
Delegate to the Apostolic Administrator

Cathedral Square Plaza ❖ 1404 East Ninth St. ❖ Cleveland, OH 44114 ❖ (216) 696-6525 ❖ Fax (216) 696-6547

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Cleveland, OH 44114-1722

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Mrs. Marie Macfarlane
2721 Wager Road
Rocky River, OH 44116

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Exhibit 6

Mary's Advocates
2721 Wagar Road ❖ Rocky River, OH 44116 ❖ 330-690-8942

16 March 2017

Rev. Donald P. Oleksiak
Diocese of Cleveland
1404 East Ninth Street
2nd Floor
Cleveland, OH 44114

Dear Fr. Oleksiak,

I received your letter postmarked 14 March 2017, about my proposed flyer, "Separation and Divorce: A Catholic Perspective." Your later is dated March 2, 2017.

The text for which I am asking Bishop Thomas' consideration for an *imprimatur* was mailed as three pages and a fourth page of references. The text is designed to be a trifold flyer.

Herein is the same text formatted as a trifold flyer, with two revisions only in the notes section.

- For note number seven (7), "KING, James P.," the author's first name and middle initial are now included that were mistakenly omitted before.
- Note number nine (9) in the document sent earlier references a webpage that has changed, so the citation in the attached trifold is from web.archive, rather than the source shown before.

Sincerely,

Marie (Bai) Macfarlane copy signed 12 May 2017

Marie (Bai) Macfarlane
Director, Mary's Advocates

PETITION THE BISHOP

To Try to Stop a Break-up

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

- Try pastoral means of reconciliation (canon 1695)
- Mediate between the spouses (canon 1446 §2)
- Issue a decree of separation in a case of malicious abandonment where the abandoner fails to reconcile
- Order reparation for material harm done (canon 1729 §1)
- Take effective measures to dispel any scandal
- Preserve the Sacraments from sacrilege
- Instruct parties about the parameters of a separation plan that would be in accord with divine law

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

MarysAdvocates.org/petition_bishop.html

NOTES CONTINUED

(6 continued) JUGIS, Peter J. in New Commentary on the Code of Canon Law. Ed. Beal, Coriden, Green. Mahwah: Paulist Press, 2000. p. 1791. "The diocesan bishop may also grant permission for the spouses to approach the civil forum in those places where the civil sentence of separation is not contrary to divine law."; BROWN, Phillip J. "Legal Separation: A Pastoral Alternative." Studies in Church Law IV. Bangalore, India: St. Peter's Pontifical Institute, 2008. 215-252, p. 246. "The competent authority for giving this permission [(Mary's Advocates' note) to approach the civil forum] is the Bishop of the diocese where the parties are living."

(7) KING, James P. The Canonical Procedure in Separation Cases, a Historical Synopsis and a Commentary. Washington, D.C.: Catholic University of America, 1952. p. 51.

(8) *Coram Parrillo*, Sentence of 4 May 1929, *Sacrae Romanae Rotae Decisiones*, Vol. XXI, pp. 189-193, n. 4.

(9) https://web.archive.org/web/20151008061644/http://www.usmarriagelaws.com/search/united_states/annulment_laws

(10) https://contracts.uslegal.com/frequently-asked-questions/.

(11) WEINANDY, Thomas, O.F.M. Cap. The Sacrament of Reconciliation And Marriage. www.usccb.org, 2014.

170315

JUSTICE

Separation Should be Rare

Spouses accept some level of difficulty, and common issues are listed in an 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 According to canon law, a spouse is not permitted to separate without a legitimate cause.

"No-fault Divorce" is against canon law and immoral because a divorce is granted when one spouse merely lives apart for a time, claims that the parties are incompatible or have irreconcilable differences, or claims that the relationship is irretrievably broken. With no-fault divorce, there is no obligation to maintain a common home for the spouse and any children. The party causing the breakup is routinely rewarded.

Nihil Obstat: Name Name,
Censores Librorum Deputati Month xx, 201x

Imprimatur: Most Rev. Name Name,
Bishop of Namedname Diocese, Month xx, 201x

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Mary's Advocates

SEPARATION & DIVORCE

CATHOLIC PERSPECTIVE

MARRIAGE RITE

Assent to Three Conditions

- Have you come here to enter into marriage without coercion, freely and wholeheartedly?
- Are you prepared to love and honor each other for as long as you both shall live?
- 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, to love and to cherish until death do us part."

CANON LAW

Obligation to Live in Same Home

Husband and wife should live together unless one did something severe enough to give the other legitimate cause to separate (see canon 104, 1151). Emotional detachment and simple annoyances are not a basis for separation.

Presumption of Validity

Whether a just reason exist for separation of spouses should be considered prior to questioning the validity of marriage. All marriages are presumed valid until proven otherwise (canon 1060).

Reasons to Separate: Danger or Adultery

If one spouse "causes grave mental or physical danger to the other spouse or to the offspring or otherwise renders common life too difficult, that spouse gives the other a legitimate cause for leaving" (canon 1153, § 1). For separation due to mental or physical cruelty to be justified, the behavior must be dangerous, it must be continuous, and separation must be the only way to solve the problem (note 1). In these cases, when the cause for the separation ceases, conjugal living must be restored unless ecclesiastical authority has established otherwise (canon 1153, § 2).

An ecclesiastical separation decree or sentence authorizes spouses, who would otherwise have the obligation to live together, to live apart. The Catholic Church's global court of appeal has ruled, "light injustices from abusive words or the incompatibility of the personalities of the spouses which make cohabitation troublesome cannot be considered causes sufficient to separate the spouses" (2).

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 the innocent spouse has separated voluntarily, the spouse is to introduce a cause for separation within six months to the competent ecclesiastical authority (canon 1152, § 3). If, after having discovered the adultery, the innocent spouse lives with the other for six months and does not petition the ecclesiastical or civil authority, he or she is presumed to have forgiven the other (see canon 1152, § 2).

Desertion and Malicious Abandonment

If one spouse effectuates separation when the other has done nothing bad enough to justify it, the one who causes separation is an *abandoner*. Desertion, or malicious abandonment is considered by the Church to be a legitimate basis for an ecclesiastical separation decree or sentence (3). The ecclesiastical decision can help an abandoner recognize the wrongful behavior and reform his or her conduct.

Divorce can only be Tolerated

Divorce is immoral and a grave offense against the natural law (4). The separation of spouses can be legitimate in certain cases provided for by canon law (5).

In the United States, the permission of the Bishop or his mandated delegate, is required before a spouse can approaches the civil forum to obtain separation from bed and board (6). In other words, before a spouse files in the civil court for divorce or civil separation, he or she must have permission from the Bishop.

Proper Role of the Civil Courts

Marriage cases of the baptized belong to the ecclesiastical judge by proper right (canon 1671). Civil courts that attempt to relieve a spouse of his or her full obligation to support the marital home or maintain the common conjugal life, when the other has done nothing grave enough to justify separation, contradict divine and canon law.

Separation Plan in Accord with Divine Law

When spouses live apart, suitable child support and provisioning for the authentic education of children must always be provided for (see canon 1154). Historically, Church decrees normally gave the care of the children to the innocent party to be reared at the expense of the culpable partner (7). The appellate Tribunal of the Roman Rota ruled that a spouse having caused the breakup of a marriage is not due support from the innocent party (8).

The spouse that causes a marital breakup without a legitimate cause is obliged to reconcile, and should be accountable to contribute his or her share to the material upkeep of the family home. Ecclesiastical authority is competent to provide guidance regarding parties' obligations toward each other and their children in accord with divine law. The parties could confirm these obligations in writing with intent to give them binding effect 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 or her incapable of consent, then petitioning for a civil annulment might be more appropriate than seeking a civil divorce.

Civil annulment is the process by which a Court states that a marriage never legally existed. It 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 economic injuries be financially repaired (10).

NOTES

(1) Exegetical Commentary Code of Canon Law. Ed. Angel Marzoa, Jorge Miras, Rafael Rodriguez-Ocana. Woodridge, IL: Midwest Theological Forum, 2004, p. 1585.

(2) Tribunal of the Roman Rota, *Coram Florczak,* Sentence of 30 June 1928, *in Sacrae Romanae Rotae Decisiones*, Vol. XX (1928), pp. 267-272. [Translation by Mary's Advocates]

(3) Exegetical Commentary of the Code of Canon Law. (Canon 1153, "Malicious Abandonment" p. 1585-1586); DOHEYN, William J.. Canonical Procedure in Matrimonial Cases: Informal Procedure, 2nd Ed., Vol. II, Milwaukee: The Bruce Publishing Company, 1948, pp. 635, 659.

(4) Catechism of the Catholic Church (CCC), n. 2384, 2385.

(5) Catechism of the Catholic Church (CCC), n. 2383.

(6) The *Processibus Specialibus* precepts for cases of separation of spouses are contained 1983 *CIC* canon 1692, §§1-3. Canon 6 §2 shows "Insofar as they repeat former law, the canons of this [1983] Code must be assessed also in accord with canonical tradition." Canon 6, §1, shows that when the 1983 "Code takes force, the following are abrogated: 2° particular laws contrary to the prescripts of this Code unless other provision is expressly made for particular laws." Canon 1692 expressly makes provisions for particular laws contrary to its prescripts: "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 according to the norm of the following canons" (c. 1692, §1). No particular law, or decree, has been enacted validly by a plenary council of the USCCB that is contrary to the prescripts of canon 1692. (continued)

Exhibit 7

Diocese of Cleveland
Cathedral Square

Mrs. Marie Macfarlane
2721 Wagar Road
Rocky River, OH 44116

Prot. N. 74-2017

March 28, 2017

Dear Mrs. Macfarlane,

I have received your proposed trifold flyer '*Separation and Divorce : Catholic Perspective*,' for which you are requesting ecclesiastical permission to publish (c. 827), together with the printed supplemental materials you submitted.

There are many problems with the proposed flyer which prevent me from being able to grant the requested ecclesiastical permission to publish. Rather than detailing each of these now, however, I would like to draw your attention to two problems in particular which you need to resolve before you ask me to review this flyer again. You submitted a similar flyer to Bishop Lennon last year, and asked the Congregation for the Doctrine of the Faith to review his reasons for denying you the requested ecclesiastical permission to publish. The Congregation informed you that "the necessary revisions that Bishop Lennon sent to you with his letter of September 6, 2016 are well founded." The changes you have made do not address the substance of the necessary revisions specified in that letter.

Your recently submitted flyer states,

> In the United States, the permission of the Bishop or his mandated delegate, is required before a spouse can approaches [*sic*] the civil forum to obtain separation from bed and board. In other words, before a spouse files in the civil court for divorce or civil separation, he or she must have permission from the Bishop.

This is contrary to the explanation given to you in the letter of the Pontifical Council for Legislative Texts (November 4, 2015, Prot. N. 15181/2015) and repeated in Bishop Lennon's letter of September 6, 2016, which clearly states:

> [i]n 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. c. 1692 §2 *CIC*), the local bishop's permission would not be an obligation—whether juridical or moral.

Your footnote (6) in no way addresses this problem: the sources you quote states that the diocesan bishop "can" or "may" address the separation of spouses or grant permission to approach the civil authority, not that the spouses are required or obliged to submit these matters to him.

If you submit a revised version of this flyer or any other publication regarding the separation of spouses, **you must note the fact that in the United States, it is not a moral or canonical obligation to seek the bishop's permission to approach the civil authorities for separation or divorce.**

Secondly, you state that "Divorce is immoral and a grave offense against the natural law," paraphrasing paragraphs 2384 and 2385 of the *Catechism of the Catholic Church*. You also note that "the separation of spouses can be legitimate in certain cases provided for my canon law," quoting paragraph 2383. I am concerned that these statements, taken in the context of the whole of the flyer, may cause confusion among the faithful. Therefore, if you submit a revised version of this flyer or any other publication concerning divorce, **you must quote paragraph 2383 of the *Catechism of the Catholic Church* that "[i]f civil divorce remains the only possible way of ensuring certain legal rights, the care of the children, or the protection of inheritance, it can be tolerated and does not constitute a moral offense."**

Related to these matters, I remind you that we are obliged to follow the laws and teachings of the Church as they are, not as they might have been. Your submitted documents on the history of *Processibus* 356 showing the change from *et* to *vel* in no way prove that canon 1692, §2, should be interpreted to mean "where an ecclesiastical decision has no civil effects and [not, as the canon actually says, 'or'] if a civil sentence is not contrary to divine law…" Indeed, where a change has been made in the history of the drafting of a canon, canonists generally understand that the change was made for a reason (even if that reason is not recorded in *Communicationes*) and that the change is itself a positive indication that the final canon is intended to mean exactly what it says. Therefore, your research into the history of *Processibus* 356 actually undermines your own argument.

Please ensure that the above-mentioned errors are corrected before any submission of this flyer (or any publication addressing similar themes) again for judgment. After you have corrected these errors, I will be willing to address the many other problems in your flyer.

Sincerely yours in Christ Jesus,

+Daniel E. Thomas

Most Reverend Daniel E. Thomas
Apostolic Administrator of the Diocese of Cleveland

Diocese of Cleveland Cathedral Square
1404 East Ninth Street
Cleveland, OH 44114-1722

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Mrs. Marie Macfarlane
2721 Wagar Road
Rocky River, OH 44116

Received April 4, 2017

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Exhibit 8

PONTIFICIUM CONSILIUM
DE LEGUM TEXTIBUS

Il Presidente

http://www.delegumtextibus.va/content/testilegislativi/it/risposte-particolari/codex-iuris-canonici.html

http://www.delegumtextibus.va/content/dam/testilegislativi/risposte-particolari/cic/On%20whether%20a%20bishop%27s%20permission%20is%20needed%20for%20a%20civil%20divorce%20%28can.%201692%20CIC%29.pdf

Prot. N. 15181/2015

Vatican City, 4 November 2015

Your Excellency,

In regard to the matter indicated in your communications of September 5, 2014 (No. 8896), November 8, 2014 (No. 9388), February 4, 2015 (No. 8896) and February 5, 2015 (No. 1876), I write to offer the following indications that may be helpful to Your Excellency in advising those who inquire about whether or not the local bishop's permission is required for a baptized Catholic to initiate a civil divorce.

Canon 1692 §1 *CIC* 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". 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. c. 1692 §2 *CIC*), the local bishop's permission would not be an obligation—whether juridical or moral. However, the faithful may request advice from their bishop for reasons of prudence, pastoral clarification, or avoidance of scandals.

Concerning a related question about whether the decision by a Catholic spouse to initiate a civil divorce without a bishop's permission is contrary to divine law, it must be noted that, from a moral point of view, the Church recognizes the right to conjugal separation when there are lawful causes involving non-compliance or irregular compliance with conjugal rights and duties (cf. cc. 1151; 1152; 1153 *CIC*). The *Catechism of the Catholic Church* states clearly that "if civil divorce remains the only possible way of ensuring certain legal rights, the care of the children, or the

./.

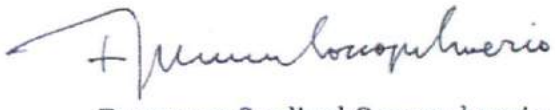
protection of inheritance, it can be tolerated and does not constitute a moral offense" (cf. *CCC*, No. 2383).

Should any question or doubt remain concerning this matter, the faithful should feel free to address them directly to their diocesan bishop or his judicial vicar.

I hope the above will be helpful to Your Excellency in addressing these and other similar questions as they arise from time to time.

Most grateful for your concern in this important matter and with sentiments of fraternal esteem, I am

Sincerely yours in Christ,



Francesco Cardinal Coccopalmerio
President

Exhibit 9

Prot. No. 74-2017

Marie. C. Macfarlane
Marys Advocates
2721 Wagar Road
Rocky River OH 44116

13 April 2017

Most Rev. Daniel Thomas
Diocese of Cleveland, Apostolic Administrator
1404 East Ninth Street
6th Floor
Cleveland, OH 44114

Your Excellency,

Within ten days after receiving your reply

Thank you for your reply dated 28 March 2017. I received it on 4 April 2017. Within ten days after receiving your reply/decree, I am seeking the revocation or emendation of your reply as described in canon 1734 §1. For clarity, I am keeping the distinctions you made, addressing particular problems separately.

Four Distinct Requests, Revocation or Emendation

1. Unspecified many problems

You explained that there were many problems that you are not detailing now which prevent you from being able to grant the requested ecclesiastical permission to publish. I am not asking anything, at this time, relative to the unspecified problems which do not need to be addressed until after addressing other problems in particular.

2. Party must have Bishop's permission

After reviewing my thoughts herein and included *List of Sources in Chronological Order*, will you amend your reply about my statement that a party is obligated to have the bishop's permission before filing in the civil forum?

My flyer states "before a spouse files in the civil court for divorce or civil separation, he or she must have permission ~~for~~ from the Bishop." You instructed me to "note the fact that in the United

States, it is not a moral or canonical obligation to seek the bishop's permission to approach the civil authorities of ~~respiration~~ separation or divorce."

To support your instruction, you wrote that the statement on my flyer is "contrary to the explanation given to you in the letter of the Pontifical Council for Legislative Texts." Thereafter you quote a letter from Cardinal Francesco Coccopalmerio, who wrote, "[i]n practice, this means that ~~were~~ where there is no particular legislation or concordat to direct otherwise, and where the ecclesiastical decision has no civil effects (cf. c. 1692 §2 CIC), the local bishop's permission would not be an obligation—whether juridical or moral."

At the end of my comments herein, I include a *List of Sources in Chronological Order*, that support my statement (that is contrary to the opinion of Cardinal Coccopalmerio).

The letter from Cardinal Coccopalmerio is not supported by tradition and the sources of the 1983 Code of Canon Law or the sources/*fontes* of the 1917 Code. The statement you cited from ~~Carinal~~ Cardinal Coccopalmerio is not an authentic interpretation of canon law because it does not satisfy the requirements specified in *Pastor Bonus*, Art. 155. While he does hold a position of responsibility at the Pontifical Council for the Interpretation of Legislative Texts, his letter only has the authority of a private opinion.

Cardinal Coccopalmerio's letter turns canon law upside down. The law, for centuries, had specified that a party is obligated to have the bishop's permission before filing in the civil forum, unless particular law in the party's territory waives the requirement. Cardinal Coccopalmerio's letter seems to say the opposite; only if the bishops of a party's territory make a particular law requiring bishop's permission, then is said permission required. Regarding the procedural law for the U.S. territory, the United States bishops' conference enacted a particular law in 1886 requiring a party to have the bishop's permission before filing for civil separation or divorce in the civil forum. Find details in my List of Sources, 1886 Third Plenary Council of Baltimore, Art. 126.

The statement of concern in my flyer is about the obligation of a party before filing in the civil forum, ~~no~~ not about the obligation of the bishop when deciding. Please consider these distinctions:

- party's legal competence to choose to separate if grave danger in delay
- party's legal competence to choose to separate if other commits adultery
- party's legal competence to independently relieve oneself permanently of the obligation to maintain the common conjugal life
- civil forum's competence to relieve a party of the obligation to maintain the common conjugal life
- party's legal competence to independently, on one's own authority, to file for civil divorce

- couple's legal competence together to jointly, on their own authority, to file for civil divorce
- bishop and tribunal's obligation to judge whether a legitimate basis for separation exists
- bishop's obligation to weigh a couple's special circumstances (1692 §2)
- bishop's obligation to judge if civil sentence will be contrary to divine law
- bishop's obligation to judge if an ecclesiastical decision has civil effects

I do not specify that a party needs the bishop's permission to separate in grave danger or in the cases of adultery. I say that a party is obligated to have the bishop's permission to file for civil separation or divorce in the civil forum. It is within the bishop's competence, prior to granting said permission, to judge whether legitimate cause for separation exists, whether a civil sentence will be contrary to divine law, and whether an ecclesiastical decision has civil effects.

Because the United States is a territory in which the U.S. constitution restricts states from making laws contrary to the intended obligations of parties in a contract, I argue that an ecclesiastic decision could be shown in the civil forum to have civil effects.

In Cardinal Coccoplamerio's letter, he did not offer his opinion on what the law requires. He offered his opinion on the practice. In my flyer, I am not trying to publicize the practice, I am trying to publicize the law.

To Cardinal Coccopalmerio's phrase, "where there is no particular legislation or concordat to direct otherwise," I add that in the United States in 1886, the bishops' conference in the Third Plenary Council of Baltimore enacted Article 126 that specifies that a party is obligated to have the bishop's permission before filing for civil divorce. This law is only partly derogated by the 1983 Code. The automatic penalty is abrogated. However, the requirement to have bishops' permission is not abrogated. No subsequent conference of U.S. bishops has abrogated this requirement.

To Cardinal Coccopalmerio's phrase, "where the ecclesiastical decision has no civil effects," I add that this is only one of the judgements to be made by a bishop after having weighed the spouses' special circumstance" (cf c. 1692 §2). The other judgement is whether the civil sentence is not contrary to divine law.

If a bishop were to make no judgement, then he is, by default, passing authority to every party wanting divorce to make his/her own determination. With the U.S. practice of no-fault divorce, every party who petitions in the civil forum gets a divorce, and in the civil forum, no distinction is made between the party who reneges on the marriage promises and the party who is counting on those promises to be upheld. If the bishop makes no judgement about whether, or not, a petitioner has legitimate basis for separation–then even a party who maliciously abandons marriage can get a civil divorce and is purportedly relieved by the civil forum of the obligation

toward the other spouse and children to maintain an intact home, and to provide his full share of *mutuum auditorium* (mutual help).

Cardinal Coccopalmerio's statement, that you cited is unsupported for the following reasons:

The civil forum judge purports to relieve a Catholic of his obligation to maintain the common conjugal life, but the civil judge has no independent competence to do so. Even if only one party is Catholic, the marriage of Catholics is governed not only by divine law but also by canon law (cf. c. 1059 *CIC)*.

In other canons, the phrase "can permit" applies in situations where the normal lawful situation is defined, and special permission is required for a party to veer outside of the norm. For example, canon 1118 §2 shows that the bishop can grant permission for marriage to be celebrated someplace other than the parish church. Just because the canon says "can permit," it does not mean that a Catholic, on his own authority can marry in any place he chooses. Canon 1692 §2 shows the bishop "can grant permission" for a Catholic to approach the civil forum. Just because a bishop "can permit" a Catholic to initiate a divorce, does not mean that any Catholic on his own authority, can legitimately do so. Consider an example; when a Catholic's neighbor owns a 7-passenger minivan, the owner "can give permission" to the Catholic to borrow the minivan for a family vacation. But this does not mean that the Catholic can decide on his own authority to just take the minivan for a week.

The normal lawful situation for couples is defined in Canon 104 and 1151. "Spouses are to have a common domicile or quasi-domicile; by reason of legitimate separation or some other just cause, both can have their own domicile or quasi-domicile." … "Spouses have the duty and right to preserve conjugal living unless a legitimate cause excuses them." A Catholic can only legitimately separate on his own authority for two reasons: adultery and danger in delay (cf. cc. 1152 §3, 1153 §1). Separation is a substantively different occurrence than civil divorce. Just because a Catholic can legitimately separate on his own authority does not mean he can initiate a civil divorce on his own authority.

Civil divorce is legally and factually known to the relatives, friends, and faith community of those involved. Separation (regardless of whether it is accompanied by a civil divorce) is subject to the power of governance of the Church. Therefore, a Catholic should not exercise on his own behalf the power of ecclesiastical governance, or the pastoral and administrative power of the bishop.

Separation of spouses involves the public good and requires the involvement of the Promoter of Justice (cf. c. 1696 *CIC*). If a Catholic initiates a civil divorce without the bishop's permission, there is no mechanism to insure the required involvement of the ecclesiastic

authority to promote justice and defend the public good, particularly the defense of the rights of the children and an innocent spouse.

When deciding whether, or not, to grant permission for a Catholic to initiate a civil divorce, the bishop is supposed to consider the situation "in light of their particular circumstances," or "after having weighed the special circumstances" *perpensis peculiaribus adiunctis*, (cf. c, 1692 §2c *CIC*). This implies that the bishop or his mandated delegate must learn about the special or particular circumstances of any Catholic that plans to file for civil divorce. The bishop would never learn about the special or particular circumstances of a family, if a Catholic were not required to consult with the bishop before initiating a civil divorce.

Cardinal Coccopalmerio's letter contradicts interpretations published by other entities.

The University of Navarra published annotations about canon law for which the English translation was given an endorsement by Cardinal Julian Herranz, who served as the President of the Pontifical Council for Legislative Texts from 1994 to 2007. Annotations from the University of Navarra show, "Since divorce laws have proliferated in many countries, the need to request the diocesan bishop's authorization is a necessary precaution, which prevents the fostering of trials whose judgments violate precepts of divine law, to the detriment of the spouses and with the risk of scandal to others."[1]

The Vatican Publishing House *Libreria Editrice Vaticana*, published an instruction about the 1983 Code of Canon law and cases of separation of spouses. In their instruction, it shows, "*Sin embargo, el Can. 1692 § 2 parece requerir de la previa licencia del Obispo de la diócesis de la residencia de los cónyuges —perpensis peculiaribus adiunctispara que estos puedan acudir al fuero civil* [(Tran. from Spanish) However, Can. 1692 §2 appears to require the previous permission of the Bishop of the diocese of the residence of the spouses–*perpensis peculiaribus adiunctis* [particular circumstances]–so that the spouses can approach the civil forum" (page 391).[2]

I reiterate my request. Will you amend your reply about my statement that a party is obligated to have the bishop's permission before filing in the civil forum?

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[1] Instituto Martin de Azpilcueta. "Code of Canon Law Annotated Second edition revised and updated of the 6th Spanish language edition." Woodridge, IL: Midwest Theological Forum, 2004.

[2] Diego-Lora, Carmelo De. *"Las Causas de Separación de Cónyuges Según el Nuevo Código." Dilexit iustitiam : Studia in Honorem Aurelii Card. Sabattani. Libreria Editrice Vaticana: Città del Vaticano,* 1984: 389-403.

3. Confusion caused "cases provided for by canon law"

About my statement, "the separation of spouse can be legitimate in certain cases provided for by canon law" you described your concerned that my statement "taken in the context of the whole of the flyer, may cause confusion among the faithful." Furthermore, you asked me to quote part of CCC paragraph 2383.

I am not asking you to revoke or emend this response until after it is determined whether we can resolve the problem about my statement that the bishop's permission is required before filing for civil divorce.

4. Canon 1692 conjunction "and" / "or"

About my submitted documents on the history of *processibus 356,* I am not asking you to revoke or emend your response at this time.

Supposed "Certain Legal Rights Ensured in Civil Divorce

The Catechism shows that divorce may be tolerated to ensure certain legal rights. In the United States, with no-fault divorce, the supposed rights that a petitioner ensures, are the rights to cause harm to one's own spouse and children. Herein is an excerpt of presentation made by Stephen Baskerville, an associate professor of government at Patrick Henry College and research fellow at the Howard Center for Family, Religion, and Society. He is the author of the book, "Taken into Custody: The War Against Fathers, Marriage, and the Family," and he spoke at the World Congress of Families in Amsterdam in 2009.[3] In his presentation, he listed outcomes experienced by the party who did nothing grave to justify separation of spouses:

> We have reached the point where "divorce" today has become a euphemism for an unprecedented government invasion of private life, as innocent Americans find their families taken over and themselves criminalized. In the name of divorce, legally unimpeachable citizens – citizens (parents) convicted of no crime, citizens (parents) charged with no legal infraction, criminal or civil, citizens (parents) sitting in their own homes minding their own business – are summoned to court and subject to repressive measures never before seen in the United States. No one denies that these measures are now routine in America; each is simply rationalized by a euphemism from the jargon of family law:
>
> • Parents are ordered out of their homes ("divorce").

[3] Baskerville, Stephen. "Stephen Baskerville in Amsterdam at the 5th World Congress of Families." https://www.youtube.com/watch?v=bFRBegsm3n4. August 11, 2009. Transcript provided to Mary's Advocates.

• Parents are told they may not see their children, on pain of arrest and incarceration ("child custody").

• Children are summarily removed from their parents, with no evidence of wrongdoing ("child abuse").

• Parents find their property, including their homes, are summarily confiscated ("division of property").

• Parents are summarily ordered to pay huge sums to officials they have not hired for services they have neither received nor sought, on pain of incarceration ("reasonable attorneys' fees").

• Parents are handcuffed and forcibly removed from their homes, and separated from their children, without being formally charged with or tried for any crime ("domestic violence").

• Parents are summarily ordered to pay staggering sums to which they never agreed, assigned "debts" they did nothing to incur, and their wages are confiscated, all on pain of incarceration ("child support").

• Parents are jailed without trial ("deadbeat dads," "domestic abusers").

• Parents (in some cases) are beaten.

• Parents are ordered not to speak to the media about these abuses, on pain of incarceration ("family privacy").

I repeat, all these measures are now routine in the United States, and no one denies they are taking place. What may be most astonishing is the absence of any opposition or outcry or media attention.

List of Sources in Chronological Order

Prior to 1917 Code

Herein are shown many sources prior to 1917 that were collected by Rev. James Patrick King[4] in his JCD dissertation published in 1952 that has an *Imprimatur* from Archbishop of *Broooklyniensis*. The text and footnotes shown below are from his chapter titled "The Procedure in Cases of Separation from the Council of Trent (1545-1563) to the Code of Canon Law (1918)" on pages 42-45:

> Further legal enactments particularly pertinent to procedural law were the Instruction of the Sacred Congregation of the Council, issued on August 22, 1840 (note 5). and an Instruction of the Sacred Congregation of the Holy Office of June 22, 1883, addressed to Oriental bishops (note 6). This last directive was incorporated for

[4] King, Reverend James Patrick, J.C.L., The Canonical Procedure in Separation Cases, a Historical Synopsis and a Commentary. Washington, D.C.: Catholic University of America, 1952. (*Imprimatur* from Archbishop of Broooklyniensis)

the most part by the Sacred Congregation for the Propagation of the Faith in its Instruction of the same year as sent to the bishops of the United States.(note 7) This Instruction was incorporated along with the Constitution *Dei miseratione*, of Benedict XIV in the Acta of the III Plenary Council of Baltimore in 1884.(note 8) The assembly of the hierarchy also recommended to the attention of the American bishops the procedural norms of the Austrian Instruction of 1855. This Instruction was promulgated by Joseph Cardinal Rauscher (1797 - 1875), Archbishop of Vienna, in the meeting of the Austrian hierarchy in 1855 and it was approved by the Holy See as a particular law of the Austrian Empire (note 9).

Not only the Council of Trent but the Holy See through several papal letters and through Instructions of the Congregations insisted upon the right of the Church to hear marriage cases. These suits, it was pointed out, were not a matter of the mixed forum, but belonged to the exclusive jurisdiction of the Church. The reason for this declaration, was based on the nature of such cases as "*causae spirituales*"; thus the Church alone was competent. The same applied to separation cases. These cases, since they affected the very status of persons, were considered "*res gravissimae*" and were to be judged solely by an ecclesiastical tribunal (note 10).

It was not intended that the jurisdiction of the Church was exclusive in only vincular cases. Separation, even if it was only temporary, was considered a public matter and contrary to the nature of marriage. As a result, it not only looked to ecclesiastical recognition but also necessitated the intervention of ecclesiastical authority. Moreover, the actual hearing before the Church was to be considered not simply as a recommendation, but rather as a compulsory mandate (note 11).

Furthermore, this hearing before the Church was a serious matter. Even in this late post-Tridentine period the solemn process was still the ordinary mode of judging such suits. The summary and administrative methods were doubtless in use, but the law still considered the formal procedure to be the accepted practice. It was not until the latter part of this era that the more informal method received ecclesiastical sanction (note 12).

Note 5: Fontes, n. 4069. This Congregation was erected on August 2, 1564 by Pope Pius IV (1559-1565) to provide for the execution of the Tridentine decrees. Its power was extended by Pope St. Pius V (1566-1572) and Gregory XIII (1572-1585). Finally Pope Sixtus V (1585-1590) in a constitution of Jan. 22, 1588, Immensa aeterni Dei, gave it the full faculty of interpreting the decrees of the Council, but reserved to the Pope any interpretation of dogma——Zamboni, Collectio Declarationum Sacrae Congregationis Cardinalium Sacri Concilii Tridentini Interpretum (4 vols., Atrebati, 1860-1868), I, XIV (hereafter cited as Collectio Declarationum S.C.C.); Bouix, Tractatus de Curia Romana (Parisiis, 1859), p. 169. This Congregation shared the hearing of marriage cases with the Sacred Roman Rota, although the latter was not very active until the present century. Pope Pius X (1903-1914), by his constitution, Sapienti Consilio, of June 29, 1908, revived the Sacred Roman Rota and gave it jurisdiction to hear "causae omnes contentiosae non maiores," which included cases of separation——Fontes, n. 682.

Note 6: S. C. S. Off., instr. (ad Ep. Rituum Orient.), a. 1883—Fontes, n. 1076.

Note 7: S. C. de Prop. Fide, instr., Causae Matrimoniales, a. 1883—Fontes, n. 4901; Collectanea S. Congregationis de Propaganda Fide (2 vols., Vol. I, ann. 1622-1866, Nn. 1-1299; Vol. II, ann. 1867-1906, Nn. 1300-2317, Romae: S. C. de Propaganda Fide, 1907), II, n. 1587 (hereafter referred to as Collectanea). Although there is no title of address prefaced to this Instruction in the Fontes or the Collectanea, it follows immediately upon another Instruction to the bishops of the United States regarding the manner of procedure in criminal and disciplinary cases of clerics. Many authors refer to it as directed to the bishops in the missionary territories of the world, but the better opinion confines it to the bishops of the United States. This view is substantiated by a response of the Sacred Congregation of the Holy Office, which refers to it as sent to the hierarchy of this country—cf. S. C. S. Off. (Colonien), 23 inn. 1903, n. 2—Fontes, n. 1266.

Note 8: "In agendis hisce causis pro rei gravitate exacte servetur tum Constitutio Benedict XIV, Dei Miseratione, 3 nov. 1741, tum Instructio a S. Cong. de Prop. Fide Nobis communicata quae incipit Causae Matrimoniales . . :'Acta et Decreta Concilii Plenarii Baltimorensis Tertii, A. D. MDCCCLXXXIV (Baltimore: John Murphy and Co., 1886), n. 304.

Note 9: "Utiliter etiam consuli poterit Instructio pro judiciis acclesiasticis Imperii Austriaci in causis matrimonialibus, a. 1855 a gravis theologis et canonistis Romanis, licet solo privato suo judicio, commendata"—loc. cit.; cf. Instructio Austriaca Josephi Cardinalis Rauscher, 4 maii 1855—Acta et Decreta Sacrorum Conciliorum Recentiorum, Collectio Lacensis (7 vols., Friburgi Brisgoviae: Herder, 1870-1890), V, coll. 1286-1316 (hereafter referred to as Collectio Lacensis); Analecta Iuris Pontificii (Romae, 1855-1869; Parisiis, 1872-1891), II (1857), 2515-2562.

Note 10: "Si quis dixerit, causas matrimoniales non spectare ad iudices ecclesiasticos: anathema sit."—Conc. Trident., sess. XXIV, de matrimonio, canon 12; Pius VI, const. Auctorem fidei, 28 aug. 1794, Prop. 58, 59, 60—Fontes, n. 475; Pius IX, Syllabus Errorum (a. 1864), Prop. 74—Fontes, n. 543; idem., litt. ap. Ad apostolicae 22 aug. 1852, n. 2—Fontes, n. 511; Idem., ailocut. "Acerbissimum," 27 sept. 1852, n. 3—Fontes, n. 515; instr. S. C. De Prop. Fide (a. 1883), n. 1—Collectanea, II, n. 1587. The authors of this period clearly confined separation cases to the ecclesiastical forum—Schmalzgrueber, Ius Ecclesisticum Universum (5 vols. in 12, Romae, 1843-1845), II, tit. 1, n. 53 (hereafter cited as Schmalzgrueber) ; Gasparri, Tractatus Canonicus de Matrimonio, 3. ed., II, nn. 1457, 1458; Wernz, Ius Decretalium, IV, n. 731.

Note 11: "Et propterea net al est coniuges fideles se, propria voluntate aut arbitrio, a coniugali toro separare, nisi ex causa a sacris canonibus permissa et auctoritate ac iudicio Ecclesiae cognita et probata."—Sixtus V, coast. Ad compescendunt, 30 oct. 1586—Bullarum Diplomatum et Privilegiorum Romanorum Pontificum Taurinensis Editio (24 vols. et Appendix, Augustae Taurinorum, 1857-1872), VIII (1572-1588), 789. The III Plenary Council of Baltimore (1884) was faced

with a special problem of Catholics seeking a civil separation without ecclesiastical permission. Such people were warned of the gravity of this offense and reminded of the penalty which he bishop might inflict at his own discretion—Acta et Decreta Concilii Pknaril Baltimorensis Tertii, A.D. MDCCCLXXXIV, n. 126.

Note 12: Wernz, Ius Decretalium, IV, n. 714.

1886 Third Plenary Council of Baltimore, Art. 126

Herein is shown article number 126 that was enacted for the United States in the III Plenary Council of Baltimore.[5] The conference of U.S. Bishops has not abrogated the procedural requirement of this law.

126. Praeterea, quo magia magisque dignitati matrimonii consulatur, quod magnum in Ecclcesia. Sacramentum est, a quo innamora bona profluunt pro animarum salute, pro pace familiarum, pro ipsius civilis reipublicae incolumitate ac prosperitate; iis omnibus, qui matrimonio conjuncti sunt, praecipimus, ne inconsulta auctoritate ecclesiastica, tribunalia civilia adeant ad obtinendam separationem a thoro et mensa. Quod si quis attentaverit, sciat se gravem reatum incurrere et pro Episcopi judicio puniendum esse.

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 (English Translation from Fogarty[6]).

1917 *CIC* canon 93, Domicile

Herein is shown canon 93 from the 1917 Code and English translation. This canon is cited as a source for the 1983 *CIC* canon 104 in *fontes/Fontium* annotations promulgated by Saint Pope John Paul II, in the year 1989[7], and translated by the Canon Law Society of America in 1999[8].

Can. 93. par. 1. Uxor, a viro legitime non separata, necessario retinet domicilium viri sui; amens, domicilium curatoris; minor, domicilium illius cuius potestati subiicitur.

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[5] Acta et Decreta Concilii Plenarii Baltimorensis Tertii. Praeside Jacobo Gibbons. Baltimore: Typis Joannis Murphy Et Sociorum, 1886. (page 64)

[6] Fogarty, Gerald P, S.J.. The Historical Origin of the excommunication of Divorced and Remarried Catholics Imposed by the Third Plenary Council of Baltimore. Jurist 38 1978:426-433. Citing Schema Decretorum Councilii Plenarii Baltimorensis Tertii, no. 138, p. 34.

[7] *Codex Iuris Cononici Auctoritate Ioannis Pauli II Promulgatus, Fontium Annotatione et Indice Analytico– Alphabetico Auctus* (*Libreria Editrice Vaticana*, 1989) ISBN: 882091610X

[8] Code of canon law : Latin-English edition : new English translation. Washington D.C. Canon Law Society of America, 1999. ISBN: 0943616794.

par. 2. Minor infantia egressus potest quasi-domicilium proprium obtinere; item uxor a viro legitime non separata, legitime autem separata etiam domicilium (www.intratext.com).

Can. 93. The wife, if not lawfully separated from the husband, necessarily shares the domicile of her husband; the insane that of his guardian; the minor that of the person in whose charge he is. A minor can after the years of infancy acquire a quasidomicile of his own; a quasi-domicile can be acquired by the wife not legally separated, while the legally separated wife can acquire a domicile of her own. (Canon 93). (Woywod[9] p. 18)

1917 *CIC* canon 1013, Ends Properties of Marriage

Herein is shown canon 1013 from the 1917 Code and English translation. This canon is cited as a source for the 1983 *CIC* canons 1055 & 1056 in *fontes/Fontium* annotations promulgated by Saint Pope John Paul II, in the year 1989[10], and translated by the Canon Law Society of America in 1999[11]. Cardinal Raymond Burke taught that mutual assistance is still the obligation of marriage in his 2011 talk in LaCross Wisconson[12], though this obligation is often waived in civil no-fault divorce. The party who maliciously abandons marriage is often financial rewarded in the civil forum's no-fault divorce.

End and Properties of Marriage

Can 1013 §1. Matrimonii finis primarius est procreatio atque educatio prolis: secundarius mutuum adiutorium et remedium concupiscentiae.

§2. Essentiales matrimonii proprietates sunt unitas ac indissolubilitas, quae in matrimonio christiano peculiarem obtinent firmitatem ratione sacramenti. (source (http://www.intratext.com/)

Can 1013 §1. The primary object of marriage is the procreation and education of offspring; the secondary purpose is mutual assistance and the remedy of concupiscence.

§2. The essential qualities of marriage are unity and indissolubility, which in the Christian marriage receives their peculiar firmness by reason of the Sacrament (Woywod p. 205).[9]

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[9] Woywod, Stanislaus. The New Canon Law: a Commentary and Summary of the New Code of Canon Law. New York: Joseph F. Wagner (Inc.), 1918. (*Imprimatur* from Archbishop of New York) https://ia801400.us.archive.org/27/items/newcanonlaw00woywuoft/newcanonlaw00woywuoft_bw.pdf

[10] *Codex Iuris Cononici Auctoritate Ioannis Pauli II Promulgatus, Fontium Annotatione et Indice Analytico– Alphabetico Auctus* (*Libreria Editrice Vaticana*, 1989) ISBN: 882091610X

[11] Code of canon law : Latin-English edition : new English translation. Washington D.C. Canon Law Society of America, 1999. ISBN: 0943616794.

[12] Cardinal Burke, Prefect of the Apostolic Signatura. *So Called New Grounds Of Nullity*. Presentend August 10, 2011. Canon Law Conference, August 9 and August 10, 2011, Shrine of Our Lady of Guadalupe La Cross, Wisconsin. https://archive.org/details/BurkeClip

1917 *CIC* canon 1016, Marriage governed by Divine Law

Herein is shown canon 1016 from the 1917 Code and English translation. This canon is cited as a source for the 1983 *CIC* canon 1059 in *fontes/Fontium* annotations promulgated by Saint Pope John Paul II, in the year 1989[13], and translated by the Canon Law Society of America in 1999[14].

> Can. 1016. Baptizatorum matrimonium regitur iure non solum divino, sed etiam canonico, salva competentia civilis potestatis circa mere civiles eiusdem matrimonii effectus (www. intratext.com).
>
> The Marriage of baptized persons is governed not only by the divine law, but also by canon law, with due regard to the competency of the civil power concerning the merely civil effects of Matrimony (Augustine[15] p. 22; pdf p. 1934).

Herein is an excerpt of a commentary about canon 1917 *CIC* canon 1016 with an imprimatur from the Archbishop of St. Louis.

> But the State may never, under any condition, claim the right to enact laws that clash with the natural or the divine law, no matter whether there be question of a Marriage of baptized or unbaptized persons. For the State is not above these laws. Thus laws favoring divorce or polygamy in any shape or form are looked upon by the Church as antagonistic to the divine law and she never fails to denounce them (Augustine[15] p. 29; pdf p. 1941).

1917 *CIC* canon 1128, obligation common conjugal life

Herein is shown canon 1128 from the 1917 Code and English translation. This canon is cited as a source for the 1983 *CIC* canon 1151 in *fontes/Fontium* annotations promulgated by Saint Pope John Paul II, in the year 1989[10], and translated by the Canon Law Society of America in 1999[11].

> Can. 1128. Coniuges servare debent vitae coniugalis communionem, nisi iusta causa eos excuset (www.intratext.com).
>
> Married people are bound to live together unless they have a just cause for separation. (Augustine[15] p. 369; pdf p. 2279)

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[13] *Codex Iuris Cononici Auctoritate Ioannis Pauli II Promulgatus, Fontium Annotatione et Indice Analytico– Alphabetico Auctus* (*Libreria Editrice Vaticana*, 1989) ISBN: 882091610X

[14] Code of canon law : Latin-English edition : new English translation. Washington D.C. Canon Law Society of America, 1999. ISBN: 0943616794.

[15] Augustine, P. Chas.. Commentary on the Code of Canon Law. Book III De Rebus, or Administrative Law, Volume V, Marriage Law and Matrimonial Trials, Second Revised Edition. St. Louis Mo.: B. Herder Book Co. 1920. (with *imprimatur* from Archbishop of St. Louis MO.) https://ia800306.us.archive.org/1/items/1917CodeOfCanonLawCommentary/1917CodeOfCanonLawCommentary_text.pdf

1917 *CIC* canon 1129, adultery ground separation

Herein is shown canon 1129 from the 1917 Code and English translation. This canon is cited as a source for the 1983 *CIC* canon 1152 in *fontes/Fontium* annotations promulgated by Saint Pope John Paul II, in the year 1989[10], and translated by the Canon Law Society of America in 1999[11].

> Can. 1129. § 1. Propter coniugis adulterium, alter coniux, manente vinculo, ius habet solvendi, etiam in perpetuum, vitae communionem, nisi in crimen consenserit, aut eidem causam dederit, vel illud expresse aut tacite condonaverit, vel ipse quoque idem crimen commiserit.
>
> § 2. Tacita condonatio habetur, si coniux innocens, postquam de crimine adulterii certior factus est, cum altero coniuge sponte, maritali affectu, conversatus fuerit; praesumitur vero, nisi sex intra menses coniugem adulterum expulerit vel dereliquerit, aut legitimam accusationem fecerit (www.intratext.com).
>
> 1129§ 1. If one of the spouses commits adultery, the other has cause for separation, either forever or for a time, and may therefore leave hearth and home. However, separation is not permitted if the second party has consented to the crime, or been responsible for it, or has 53 either expressly or tacitly condoned it, or committed the same crime. (Augustine[15] p. 370, pdf 2280)
>
> 1129§ 2. Tacit condoning of the crime consists in this that the innocent party, after having become certain of the crime, nevertheless continues to live with the other in marital relations ; such the law presumes to be the case, unless the innocent party within six months either expel or leave the guilty partner, or bring legal accusation against him, or her (Woywood**Error! Bookmark not defined.** p. 230)

1917 *CIC* canon 1130, readmit adulterer

Herein is shown canon 1130 from the 1917 Code and English translation. This canon is cited as a source for the 1983 *CIC* canons 1155 & 1692 in *fontes/Fontium* annotations promulgated by Saint Pope John Paul II, in the year 1989[10], and translated by the Canon Law Society of America in 1999[11].

> Can. 1130. Coniux innocens, sive iudicis sententia sive propria auctoritate legitime discesserit, nulla unquam obligatione tenetur coniugem adulterum rursus admittendi ad vitae consortium; potest autem eundem admittere aut revocare, nisi ex ipsius consensu ille statum matrimonio contrarium susceperit (www.intratext.com).
>
> Can. 1130. The innocent spouse, if he or she has separated from the other legitimately, either by a judicial sentence or by private authority, is under no obligation to readmit the guilty partner to married life ; they may, however, admit or recall each other, unless, with the consent of the innocent spouse, the guilty one has embraced a state incompatible with matrimony (Augustine[15] p. 374; pdf p. 2284)

> The married person who, either upon sentence of the judge, or by his or her own authority lawfully leaves the guilty party, has no longer obligation to again admit the adulterer to conjugal life; the innocent party, however, has the right to admit the guilty partner, and to oblige him, or her, to return, unless he or she has in the meantime, with the consent of the innocent party, embraced a state of life contrary to marriage.(Canon 1130) (Woywod[9] p. 230)

Herein is an excerpt from commentary on 1917 *CIC* canon 1130 with *imprimatur* from the Archbishop of St. Louis.

> *A fortiori*, the adulterous party has no right to choose another state of life without the free consent of the innocent party (Augustine[15] p. 375; pdf p. 2285).

1917 *CIC* canon 1131, other grounds separation

Herein is shown canon 1131 from the 1917 Code and English translation. This canon is cited as a source for the 1983 *CIC* canons 1153 & 1692 in *fontes/Fontium* annotations promulgated by Saint Pope John Paul II, in the year 1989[10], and translated by the Canon Law Society of America in 1999[11].

> Can. 1131. § 1. Si alter coniux sectae acatholicae nomen dederit; si prolem acatholice educaverit; si vitam criminosam et ignominiosam ducat; si grave seu animae seu corporis periculum alteri facessat; si saevitiis vitam communem nimis difficilem reddat, haec aliaque id genus, sunt pro altero coniuge totidem legitimae causae discedendi, auctoritate Ordinarii loci, et etiam propria auctoritate, si de eis certo constet, et periculum sit in mora.
>
> § 2. In omnibus his casibus, causa separationis cessante, vitae consuetudo restauranda est; sed si separatio ab Ordinario pronuntiata fuerit ad certum incertumve tempus, coniux innocens ad id non obligatur, nisi ex decreto Ordinarii vel exacto tempore (www.intratext.com).
>
> Can. 1131. Other reasons for separation : if one party joins a nonCatholic sect ; or educates the offspring as non-Catholics ; or leads a criminal and despicable life; or creates great bodily or spiritual danger to the other party; or if through cruelties he or she makes living together too difficult, and other such reasons, which are to the innocent party so many legal causes to leave the guilty party by authority of the Ordinary of the diocese, or also by private authority, if the guilt of the other party is certain beyond doubt, and there is danger in delay.
>
> In all these cases the common life must be restored when the reason for the separation ceases; if, however, the separation was pronounced by the bishop either for a time, or indefinitely, the innocent party is not obliged to return except when the time specified has elapsed or the bishop gives orders to return (Woywod p. 230-231)[9]

Herein is shown commentary on canon 1131 from the 1917 Code by Augustine[15] with *imprimatur* from the Archbishop of St. Louis.

The Code now proceeds to enumerate other causes for separation besides adultery. Such causes are, for example, if the other party joins a non-Catholic sect; or gives his children an education which is not Catholic ; or leads a scandalous and disgraceful life; or gravely endangers the spiritual or bodily welfare of the other; or renders the marital union intolerable by acts of cruelty. These and similar reasons give the other spouse the right to withdraw by appealing to the Ordinary of the diocese, or even without legal process, if they are proved with certainty and delay would be dangerous.

It is a commonplace of ecclesiastical writers to compare infidelity, idolatry, heresy to fornication or spiritual adultery and on this ground to admit separation.14 This is the first cause mentioned in the text. The second is educating one's children in a non-Catholic denomination. to which category belong also the " Old Catholics." A third cause is leading a criminal or shameful life (robbery, bawdry,15 drunkenness). A fourth cause is spiritual or bodily danger. There would be spiritual danger if the Catholic party were prevented from exercising his or her religion, or persistent onanism. Bodily danger accrues from contagious diseases of an incurable and hereditary nature.18 By cruelty is here understood not only quarrelsome and angry wrangling, but actual maltreatment (wife-beating)."

Whenever such a cause is proved by facts and witnesses, the innocent party may freely depart, or invoke the episcopal court. However, says § 2, when the reasons that prompted the separation cease, the marital relation must be restored. Only after the ecclesiastical court has rendered a decision in favor of a separation, either for a limited term or indefinitely, is the innocent spouse free from the duty of cohabitation. (18) If the Ordinary should command resumption of cohabitation, or if the decree of separation was given for a limited period only, married life must be resumed. It is, therefore, always safer to invoke the ecclesiastical court in such cases. (19) A civil court may indeed give sentence of temporary divorce or separation, but this has merely the effect of private separation, unless the episcopal court accepts the evidence and verdict of the civil court and makes them its own (Augustine[15] p. 376-377; pdf p. 2286-2287)

1917 *CIC* canon 1132, care of children

Herein is shown canon 1132 from the 1917 Code and English translation. This canon is cited as a source for the 1983 *CIC* canon 1154 in *fontes/Fontium* annotations promulgated by Saint Pope John Paul II, in the year 1989[10], and translated by the Canon Law Society of America in 1999[11].

Can. 1132. Instituta separatione, filii educandi sunt penes coniugem innocentem, et si alter coniugum sit acatholicus, penes coniugem catholicum, nisi in utroque casu Ordinarius pro ipsorum filiorum bono, salva semper eorundem catholica educatione, aliud decreverit (www.intratext.com/).

After the separation, the children are to be placed in charge of the innocent party, and if one of the parties is a nonCatholic the Catholic party is to have charge over

them, that they may be raised as Catholics, unless the Ordinary decides differently for the sake of the welfare of the children, always safe guarding their Catholic education (Woywod p. 231).[9]

Herein is shown commentary on canon 1132 from the 1917 Code by Augustine[15] with *imprimatur* from the Archbishop of St. Louis.

> Hence children of a mixed marriage may be entrusted to the non-Catholic parent, if, for instance, there is a mother-in-law, or aunt, or other relative who sees to their Catholic education. The underlying reason for this law is that the Catholic Church considers herself the guardian of the faith. Difficulties may occur under this canon, especially in countries which have laws determining the children's religion. The rule should be to safeguard the Catholic education of the children in the best and least offensive way (Augustine[15] p, 378; pdf p. 2288).

1922 Authentic Interpretation of Canon Law

Herein is shown excerpts from the 1922 Interpretation of 1917 *CIC* canon 93[16]. This is a cited source for the 1983 *CIC* canon 104 in *fontes/Fontium* annotations promulgated by Saint Pope John Paul II, in the year 1989[10], and translated by the Canon Law Society of America in 1999[11].

> I:De acquisitione domicilii (can. 93)-
>
> Utrum uxor, a viro malitiose deserta, possit, ad normam can. 93, § 2, obtinere proprium ac distinctum domicilium.
>
> Resp. Negative, • nisi a iudice ecclesiastico obtinuerit separationem perpetuam, aut ad tempus indefinitum.
>
> Concerning the Acquisition of a Domicile (Canon 93): Can a wife who has been maliciously deserted by her husband obtain a proper and distinct domicile, according to Canon 93 section 2? Response: No, unless she has obtained from the ecclesiastical judge either perpetual separation, or separation for an indefinite time. (Mary's Advocates' translation)

1930 Pope Pius XI, Encyclical Casti Connubii

Herein is shown excerpt from the 1930 Papal Encyclical *Casti Connubii*.[17] This is a cited source for the 1983 *CIC* canon 1059 in *fontes/Fontium* annotations promulgated by Saint Pope John Paul II, in the year 1989[10], and translated by the Canon Law Society of America in 1999[11].

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[16] Codicis Authentice Interpretandos. CI Resp. I, 14 iul. 1922 (AAS 14 [1922] 526) http://www.vatican.va/archive/aas/documents/AAS-14-1922-ocr.pdf

[17] Pius PP. XI, Enc. Casti Connubii, 31 dec. 1930 (AAS 22 [1930] 539-592) *fontes* cites p. 577-583, which correlates to numbered paragraphs in English translation 87 – 110. Latin http://www.vatican.va/archive/aas/documents/AAS-22-1930-ocr.pdf; and English

> Wherefore, let the faithful also be on their guard against the overrated independence of private judgment and that false autonomy of human reason. For it is quite foreign to everyone bearing the name of a Christian to trust his own mental powers with such pride as to agree only with those things which he can examine from their inner nature, and to imagine that the Church, sent by God to teach and guide all nations, is not conversant with present affairs and circumstances; or even that they must obey only in those matters which she has decreed by solemn definition as though her other decisions might be presumed to be false or putting forward insufficient motive for truth and honesty (*Casti Connubii* Sec. 104).

1932 Authentic Interpretation of Canon Law

Herein is shown excerpts from the 1932 Interpretation of 1917 *CIC* canon 1131 § 1.[18] This is a cited source for the 1983 *CIC* canon 1692 in *fontes/Fontium* annotations promulgated by Saint Pope John Paul II, in the year 1989[10], and translated by the Canon Law Society of America in 1999[11].

> III. De Separatione Coniugum
>
> Dubia. I. An separatio coniugum ob causas, de quibus in canone 1131 § 1, forma administrativa decernenda sit.
>
> II. An in causis separationis coniugum, de quibus in canone 1131 § 1, in secundo gradu eadem servanda sit forma ac in primo gradu.
>
> Resp. Ad I. Affirmative, nisi ab Ordinario aliter statuatur ex officio vel ad instantiam partium.
>
> Ad II. Affirmative.
>
> Datum Romae, e Civitate Vaticana, die 25 mensis Iunii anno 1932.
>
> 3. Concerning the Separation of Spouses.
>
> Doubt 1. Is the separation of spouses on account of causes (concerning which see Canon 1131 section 1) to be decreed by administrative form?
>
> Doubt 2. In the causes of separation of spouses (concerning which see Canon 1131 section 1), is the same form to be preserved in the second instance as in the first instance?
>
> Response to Doubt 1: Yes, unless the Ordinary decides otherwise ex officio or at the insistence of the parties involved.
>
> Response to Doubt 2: Yes.

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https://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19301231_casti-connubii.html

[18] Pontificia Commission ad Codicis Canones Authentice Interpretandos. CI Resp. III, 25 iun. 1932 (AAS 24 [1932] 284) http://www.vatican.va/archive/aas/documents/AAS-24-1932-ocr.pdf

Given at Rome, from Vatican City, June 25, 1932 [Mary's Advocates' translation].

1936 Congregation Discipline of Sacraments, *Provida Mater*

Herein is shown excerpts from *Provida Mater*,[19] the 1936 instruction from Congregation of Discipline of the Sacraments. This is a cited source for the 1983 *CIC* canon 104 in *fontes/Fontium* annotations promulgated by Saint Pope John Paul II, in the year 1989[10], and translated by the Canon Law Society of America in 1999[11].

ACTA 88. Congregationum Sacra Congregatio de Disciplina Sacramentorum Instructio Servanda a Tribunalibus Dioecesanis in Pertractandis Causis de Nullitate Matrimoniorum

Art. 6. - § 1. Uxor, etsi a viro malitiose deserta, eum convenire debet vel coram Ordinario loci in quo matrimonium celebratum est, vel coram Ordinario domicilii vel quasi-domicilii viri ipsius.

§ 2. Uxor, a viro perpetuo aut ad tempus indefinitum separata legitime, i. e. per sententiam iudicialem competentis tribunalis ecclesiastici, vel etiam civilis a S. Sede, vi concordati, recognitam, aut per Ordinarii decretum, non sequitur domicilium viri, ideoque conveniri debet vel coram Ordinario loci in quo nuptiae initae sunt, vel coram Ordinario sui domicilii vel quasi-domicilii.

§ 3. Uxor catholica, etsi a viro non legitime separata, virum acatholicum convenire potest vel coram Ordinario proprii ac distincti quasidomicilii, vel coram Ordinario domicilii viri (Comm. Pont., 14 Iulii 1922 ad can. 93 et 1964).

Herein are shown my comments about *Provida Mater* published on Mary's Advocates website[20].

Provida Mater shows various descriptions of the status of parties prior to nullity proceedings. Some parties have "maliciously deserted" the other party. There are those that are "legitimately separated" and those that are "not legitimately separated." From this, it is clear that the church must have had a process that occurred for individual couples prior to nullity proceedings where the status of parties was defined with a decree. "Legitimate" separation is a separation that is recognized by a decree.

Excerpts Art. 6.: 1). "malitiose deserta" (translation: maliciously deserted); 2) "separata legitime" (legitimately separated); and 3) "etsi a viro non legitime separata" (not legitimately separated)

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[19] SCDS Instr. Provida Mater, 15 aug. 1936 (AAS 28 [1936] 313-361) http://www.vatican.va/archive/aas/documents/AAS-28-1936-ocr.pdf

[20] http://marysadvocates.org/provida-mater-1936-malitiose-deserta/

1949 Pope Pius XII, Disciplina Sacramenti Matrimonii Orientali

Herein is shown excerpts from the 1949 Motu Proprio of Pope Pius XII on Discipline of Sacrament of Marriage for Eastern Church.[21] This is a cited source for the 1983 *CIC* canon 1692 in *fontes/Fontium* annotations promulgated by Saint Pope John Paul II, in the year 1989[10], and translated by the Canon Law Society of America in 1999[11].

> Can. 119: Coniux innocens, sive iudicis sententia sive propria auctoritate legitime discesserit, nulla unquam obligatione tenetur coniugem adulterum rursus admittendi ad vitae consortium; potest autem eundem admittere aut revocare, nisi ex ipsius consensu ille statum matrimonio contrarium susceperit.
>
> Can. 120 § 1. 1° Si alter coniux sectae acatholicae nomen dederit; si prolem acatholice educaverit; si vitam criminosam et ignominiosam ducat; si grave seu animae seu corporis periculum alteri facessat; si saevitiis vitam communem nimis difficilem reddat, haec aliaque id genus, sunt alteri coniugi totidem legitimae causae, discedendi, auctoritate Hierarchae loci, et etiam propria auctoritate, si de iis certo constet et periculum sit in mora.
>
> § 1. 2° In omnibus his casibus, causa separationis cessante, vitae consuetudo restauranda est; sed si separatio ab Hierarcha pronuntiata fuerit ad cerium incertumve tempus, coniux innocens ad id non obligatur, nisi ex decreto Hierarchae vel exacto tempore.
>
> § 2. Etiam coniux ab altero malitiose desertus obtinere potest decretum separationis ab Hierarcha loci ad certum incertumve tempus ad normam §1, n. 2.

Signed

Respectfully Yours in Christ,

Marie C (Bai) Macfarlane copy signed 12 May 2017 with clerical errors noted & corrected.

Marie C. (Bai) Macfarlane

[21] Pius PP. XII, m.p. Crebrai allatai, 22 febr. 1949 (AAS 31 [1949] 89-117), Sections 119 – 120. http://w2.vatican.va/content/pius-xii/la/motu_proprio/documents/hf_p-xii_motu-proprio_19490222_crebrae-allatae.html

Exhibit 10

Prot. No. 74-2017

Marie. C. Macfarlane
Marys Advocates
2721 Wagar Road
Rocky River OH 44116

Cleveland mail - 4-13-2017

13 April 2017

Delivered

Most Rev. Daniel Thomas
Diocese of Cleveland, Apostolic Administrator
1404 East Ninth Street
6th Floor
Cleveland, OH 44114

Your Excellency,

Within ten days after receiving your reply

Thank you for your reply dated 28 March 2017. I received it on 4 April 2017. Within ten days after receiving your reply/decree, I am seeking the revocation or emendation of your reply as described in canon 1734 §1. For clarity, I am keeping the distinctions you made, addressing particular problems separately.

Four Distinct Requests, Revocation or Emendation

1. Unspecified many problems

You explained that there were many problems that you are not detailing now which prevent you from being able to grant the requested ecclesiastical permission to publish. I am not asking anything, at this time, relative to the unspecified problems which do not need to be addressed until after addressing other problems in particular.

2. Party must have Bishop's permission

After reviewing my thoughts herein and included *List of Sources in Chronological Order*, will you amend your reply about my statement that a party is obligated to have the bishop's permission before filing in the civil forum?

My flyer states "before a spouse files in the civil court for divorce or civil separation, he or she must have permission for the Bishop." You instructed me to "note the fact that in the United

Exhibit 11

Mary's Advocates
2721 Wagar Road ❖ Rocky River, OH 44116 ❖ 330-690-8942

2 May 2017

Most Rev. Daniel Thomas
Diocese of Cleveland, Apostolic Administrator
1404 East Ninth Street
6th Floor
Cleveland, OH 44114

Prot. No. 74-2017

Your Excellency,

I am following up on my letter that was delivered on 13 April 2017 about my request for permission for publication of a trifold flyer, "Separation and Divorce, Catholic Perspective."

I sought the revocation or emendation of your 28 March response that I received on 4 April from your Excellency. In my 13 April letter, I asked the following:

> 2. Party must have Bishop's permission
> … will you amend your reply about my statement that a party is obligated to have the bishop's permission before filing in the civil forum?

If no decision is made regarding my request for revocation or emendation within thirty days, the time limits for making recourse run from the thirtieth day.

Respectfully Yours in Christ,

Marie (Bai) Macfarlane copy signed 12 May 2017
Marie (Bai) Macfarlane
Director, Mary's Advocates

cc: Rev. Donald P. Oleksiak