

FROM:  
Jennifer JONES  
(omitted identifying information)

Dominique François Joseph Cardinal Mamberti  
Prefect of the Apostolic Signatura  
Palazzo della Cancelleria  
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Regarding:  
x Month 2017        Decree, Congregation of Divine Worship and Discipline of the Sacraments  
x Month 2017        Decree, Bishop NAME NAME  
x Month 2017        “Jennifer” Petition to Bishop NAME, Separation of Spouses Case

Your Excellency,

**Recourse: Congregation of Divine Worship & Discipline of the Sacraments,  
Rejection, and 30 days of Silence**

1. [Omitted Sections]

**Recourse: Acts Violated Some Law in Decision Making**

2. I have submitted legitimate petitions for a decree of separation of spouses to Bishop NAME (*See Exhibit xxx*). He or his delegate rejected each petition (*See Exhibits xxxx*). The petition of x Month 201x (*Exhibit xx*) is the basis for the recourse herein. Only once, on xx Month 201x, did Bishop NAME state a reason for his rejection:

Efforts were made pastorally to seek reconciliation between Mr. and Mrs. “JONES.” The efforts were not successful. Mr. “JONES” had already begun divorce procedures. His resolve was to see the divorce filing to its conclusion.

Given the existence of an active, civil procedure at the present time, and the customs of the Church and civil courts in this country in this matter, it is not expeditious to consider this petition at the present time (*See Exhibit x*).

His Excellency violated some law in decision making. Canon 87 §1 shows that a diocesan bishop is not able to dispense from procedural law. Canon 1692 of the 1983 Code, and other authorities,

demonstrate that the customs of the territory of DIOCESE NAME are contrary to divine law, natural law, and canonical procedural law. Bishop NAME's statements are not precise. I imagine he is referring to the custom of diocesan personnel instructing a party that he is free to petition in the civil forum for divorce because the diocesan personnel believe that the civil forum has competence to decide all cases of separation of spouses with no prerequisite for a Bishop's judgement (*See Exhibit 3, Msgr. Xx Judicial Vicar's rejection of Month 201x petitions*).

*Decision Making Contrary to Roman Curia, Particular Law, Learned Persons*

3. The rejection of Bishop NAME is based on the customs of the Church in the matter. However, it was the opinion of learned persons, traceable back to the Council of Trent, that a Catholic party was required to have his bishop's permission before initiating an action in the civil forum for separation of spouses, separation of bed and board, or divorce. The requirement was only waived if a particular law, or concordat waived the requirement in the party's territory.
4. None of these sources taught that a Petitioner's right to a decision in a case of separation of spouses is waived if the other spouse has no desire to reconcile (*See Exhibit 3, Msgr. Xx Judicial Vicar, par. 1*). None taught that a Petitioner's right to a judgement was waived if the other spouse initiated a divorce action in the civil forum or had the resolve to see the divorce filing to its conclusion.
5. In the sixteenth century, we had the Council of Trent clarify the role of Church over all marriage cases wherein they issued decrees about the doctrine on the Sacrament of Matrimony. "Can. 12. If anyone saith, that matrimonial causes do not belong to ecclesiastical judges; let him be anathema" (Session 24. 11 November 1563, c. 12. *See Exhibit 24-a*).
6. In 1860, we had the Sacred Congregation of the Holy Office teach that a condition under which one could approach the civil forum required that "there must be present just causes for the separation in the judgment of the bishop." (*Collectanea Sancti Congregationis de propaganda fide seu decreta instructiones rescripta pro apostolicis missionibus*. Vol. 2 Ann. 1867-1906. n. 2272. Rome: *Polyglotta* (1907) *See Exhibit 24-b*).
7. In 1880, we had the Encyclical of Pope Leo, XIII, on Christian Marriage, *Arcanum Divinae*, "Let no one, then, be deceived by the distinction which some civil jurists have so

strongly insisted upon – the distinction, namely, by virtue of which they sever the matrimonial contract from the sacrament, with intent to hand over the contract to the power and will of the rulers of the State.” (n. 23. *See Exhibit 24-c*).

8. The Provincial Council for the Archdiocese of Cincinnati, Ohio, in 1882, taught, “Since the Catholic doctrine that matrimonial causes belong to ecclesiastical judges is defined (Conc. Trid. Sess. 24 can. 12.) it is not permitted for one to approach the civil tribunals unto the petitioning of separation from bed and board unless the cause first be approved by the ecclesiastical judge, ... and the case is reserved to the Bishop.” (Translation, *Acta et decreta quatuor conciliorum provincialium Cincinnatiensium* (1882), p. 223 (*See Exhibit 24-d*).

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

[Translation] “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.” (*See Exhibit 24-e*).

10. In 1918, the Very Rev. Henry A. Ayrinhac, President of St. Patrick Seminary, Menlo Park, California, Professor of Moral Theology, Pastoral Theology, and Canon Law, wrote “Marriage Legislation in the New Code of Canon Law.” About divorce and separation, he taught, “The Third Plenary Council of Baltimore, n. 126, forbids having recourse to the civil courts without consulting the Ordinary” (Sec. 320, p. 310. *See Exhibit 24-f*).

11. In 1950, Felix M. Cappello, S.I., Professor at Pontifical Gregorian University, in *Tractatus Canonico-Moralis de Sacramentis, Vol V. De Matrimonio*, taught, “Since matrimonial cases pertain to the Church, it is not permissible for spouses to seek a civil divorce, unless they have obtained a canonical license of separation first (translation of Latin, *Cum causai matrimoniales ad Ecclesiam pertineant, non licet coniugibus petere divortium civile, nisi antea ob causam canonicam licentiam se separandi obtinuerint*) (Sec. 838 4°, p. 844. *See Exhibit 24-g*).

12. In 1958, we had “The Catholic Marriage Manual” published by Random House with a forward by the Bishop of New York:

Persons who believe that sufficient reasons exist to justify separation must request permission to do so from their pastor. The pastor will refer the case to the judges of the marriage Court established by the diocese.” ... “Only a properly authorized representative of the bishop can grant permission to a Catholic to apply for a civil divorce.” (pp 165-166. *See Exhibit 24-h*).

13. On 19 April 1971, the consultants on *Commissionis Codici Iuris Canonici Recognoscendo* discussing *Schema de Processibus* on noted that “matrimonial cases of the baptized belong by proper right to the ecclesiastical judge” [...] “If the church would renounce its own duty and right, it would follow that a separation against the divine law would frequently be imposed or denied.” (translation of Latin original published. *Communicationes XL* (2008) p. 147. *See Exhibit 24-i*). Especially in the United States, because of no-fault divorce, civil decrees against divine law are imposed on divorce Defendants who have done nothing grave to justify separation of spouses. In no-fault divorce, a Plaintiff, like my husband, is relieved of his obligation to contribute his share to the material good of the spouses in a common conjugal dwelling. He is relieved of his obligation to contribute his share of “*mutuum adiutorium*” mutual help in the marital dwelling that he abandoned. In civil no-fault divorce, the judge sees him as having no obligation to maintain a common conjugal life.

14. On 31 March 1979, consultants on *Commissionis* decided that the cases of separation of spouses must not be absent from the general law and must not be left only to particular law; they voted that the intervention of the Ordinary of the residence of the spouse must be required. (*Communicationes XI – N. 2* (1979) pp. 272-273. *See Exhibit 24-j*).

15. In 1984, Carmelo de Diego-Lora in “*Las Causas de Separación de Cónyuges Según el Nuevo Código*” published by the *Libreria Editrice Vaticana* said that the Bishop’s permission is required before filing for divorce. (*Dilexit iustitiam: Studia in Honorem Aurelii Card. Sabattani*. p. 391. *See Exhibit 24-k*, full article attached). Diego-Lora was Vice-dean of the Faculty of Canon Law at the University of Navarra and collaborated as an expert on the Board of Legal Affairs of the Spanish Episcopal Conference. He writes about the obligation of diocesan organizations to have services for helping couples in conflictive marital situations.

Por el contrario, estimamos, en cambio, que si no se tiene ese servicio de asistencia habrá que crearlo si los jueces eclesiásticos y ministros encargados de la pastoral diocesana se ven incapaces o con grandes dificultades para atender esos problemas

surgidos entre los cónyuges. Precisamente, tal deseo de ofrecer solución pastoral a las diferencias y conflictos conyugales, hace que se imponga al Juez un específico deber, de naturaleza no jurídica sino pastoral, en el Can. 1695, tercero de los preceptos a los que hemos hecho mención. (p. 391)

[Translation, Mary's Advocates] On the contrary, we estimate, by contrast, that if this service of assistance does not exist [service in the pastoral organization of the diocese for the faithful who find themselves in this conflictive matrimonial situation], it must be created if the ecclesiastical judges and ministers in charge of pastoral ministry at the diocesan level are incapable or have great difficulties in attending these problems, which emerge between the spouses. Precisely, such a desire to offer a pastoral solution to the differences and conjugal conflicts makes it necessary to impose upon the Judge a specific obligation, not proceeding from a juridical nature, but pastoral; this, according to Can. 1695, which is the third of the precepts that we have mentioned.

The rejection of my petition by Msgr. Xx Judicial Vicar and Bishop Name NAME gave to our marriage the opposite of a pastoral solution leading to reconciliation. Their responses tacitly condoned marital abandonment, and even explicitly condoned it.

16. In 1985, Diego-Lora published *Medidas Pastorales Previas en las Causas De Separacion Conyugal*, wherein he taught that in territories where the bishop established a particular law instructing that all separation of spouses' cases should be managed by the civil forum, the bishop could only do so if the civil decrees would be in conformance with the requirements of the divine or natural law (pp. 222-223. See Exhibit 24-1, full article attached).

17. In 1993 the Italian Bishops conference published *Directorio Di Pastorale Familiare per la Chiesa in Italia*, that has an introduction by Saint Pope John Paul II. Regarding cases of separation of spouses, they made the distinction between the spouse who has suffered divorce, and one who has requested and obtained a divorce as a consequence of their own morally incorrect behavior. The one who is responsible for the divorce has the obligation to repair evil, *e riparare concretamente il male compiuto* (section 212. See Exhibit 24-m).

18. In 1996, from Rome, Msgr. Luigi Chiappetta, in *Il Codice di diritto canonico: commento giuridico-pastorale (Seconda edizione)*, within his commentary on canon 1152 and 1153, he said that canon 1692 requires the local Ordinary's permission before petitioning in the civil forum for divorce (pp. 419-420. See Exhibit 24-n).

19. In 2000, Canon Law Society of America's "New Commentary on the Code of Canon Law" says "Canons 1692-1696 outline the process by which ecclesiastical authority determines the existence of a legitimate cause and, if one is proven, permits a separation of the spouses." (p. 1375-1376. *See Exhibit 24-o*).

20. In 2001, from the University of Navarra, we had the Sixth Spanish *Código de derecho canónico: edición bilingüe y anotada*; in 2004, we had the English translation of the Navarra "Code of Canon Law Annotated" which says that the bishop's permission is required before filing for divorce, unless particular law enacted by the bishops in the territory waives the requirement (*See Exhibit 24-p*).

21. In 2008, Rev. Philip Brown, in *Legal Separation: A Pastoral Alternative*, said the bishop's permission is required. (Studies in Church Law IV. Bangalore, India: St. Peter's Institute. p. 247. *See Exhibit 24-q*).

*Decision Making Disregards Function of Concordats, Particular Law*

22. Bishop Name NAME says that the "customs of the Church and civil courts in this country in this matter," justify his rejection of my petitions (*See Exhibits xx*). Msgr. Xx Judicial Vicar says that canonical proceedings for cases of separation of spouses' cases were only conducted in countries where civil divorce did not exist:

... [Respondent-spouse] has ended the marriage. He has served you with divorce papers. He said he was continuing counseling to help you to deal with the divorce.

Since that is the case, there is no need to initiate any ecclesiastical process for a separation of spouses, etc. I understand that you have stated your opposition to the divorce proceedings and that you have begun that process, which, if effective, will delay the civil divorce by up to 2 years.

The matter has been initiated in civil process. Historically, provisions such as these in past ages existed in Catholic countries where civil divorce did not exist and the ruler or government recognized the authority of the Church as having civil and ecclesiastical effects. These provisions were not in the earlier code of church law. They were left in this code of church law, not as a vehicle for a divorce alternative, but as a recognition of the Church's authority in regard to marriage. (*See Exhibit 3, par. 1-3*)

23. Implementation of the canons on separation of spouses' cases has occurred in recent years/centuries, not only in "past ages." Msgr. Judicial Vicar appears to be unaware of the lawful causes for separation of spouse involving malicious abandonment. Ana Fernández-Coronado González, who is now a Professor of Ecclesiastical Law at the Faculty of Law of the Complutense University of Madrid, published in 1985, her whole dissertation on the study of the jurisprudence on malicious abandonment, *El Abandono Malicioso: Estudio Jurisprudencial*. Furthermore, *Pastor Bonus* shows that the Tribunal of the Roman Rota "fosters unity of jurisprudence, and, by virtue of its own decisions, provides assistance to lower tribunals" (Art. 126). The jurisprudence of the Roman Rota shows that abandonment (*malicious desertionem*) is a ground for a case of separation of spouses. (coram Jullien, Aug. 6, 1930: *Dec. XLVII*, n. 4. page 525; coram Parrillo, May 4, 1929, *Decisio XXIII*, pp. 189-193; coram Franciscus Morano, Dec. 4, 1929, *Decisio LXIII*, pp. 524-530; coram Florczak, June 30, 1928 *Decisio XXIX*, pp. 267-272; coram Perathoner, March 17, 1913, *Decisio XIX*: pp. 217-225)).

24. Msgr. Judicial Vicar suggests that the Church only judged cases of separation of spouses in countries where civil divorce does not exist. Considering examples of two countries with particular law about divorce, shows how Msgr. Judicial Vicar is incorrect. When a country does not have a concordat, cases of separation of spouses should be handled by either the Bishop's administrative process or the judicial process, unless on a case-by-case basis, after the bishop weighs the parties' "particular circumstance" (*perpensis peculiaribus adiunctis*) he gives permission for the civil forum to manage the case. (c. 1692 §§1-2). If a concordat exists between the civil government and the Church, the Church may, or may not, manage cases of separation of spouses, depending on the details of the concordat.

25. **ITALY:** For example, in Italy, the Church ceded its jurisdiction over cases of separation of spouses to the civil governance with a concordat; this would waive the requirement for a party to need the bishop's permission before filing for divorce. The Bishop's Conference of Italy had this concordat in 1929, "[Translation] As to causes of personal separation the Holy See agrees that these shall be judged by the ordinary civil authority" (Lateran Pacts of 1929 Concordat. Art. 34. See Exhibit 24-r). However, no such concordat would have been put in effect unless the decisions forthcoming from the civil jurisdiction would be in conformity with the requirements of divine law: "*muestran uno conformidad essential, en estate material, con las exigencies del*

*derecho divino.*” (See Diego-Lora, Carmelo de. “*Medidas Pastorales Previas en las Causas De Separacion Conyugal.*” *REV-Ius Canonicum* Vol. XXV, N° 49 (1985): 209-225., p. 223. Exhibit 24-l).

26. **SPAIN:** In another instance, a concordat could be entered between the Church and state, wherein it is established that the state recognizes the jurisdiction of the Church to manage causes of separation of spouses. Any spouse under such a concordat-situation that wanted the competent forum to manage separation cases (a.k.a. divorce), would obviously go to the Church. Under that concordat, the civil forum judge would be bound to reject a Catholic’s petition for divorce or separation. The civil judge would follow the concordat agreement signed by the country’s Foreign Minister, Minister of Foreign Affairs, and Ambassador to the Holy See. Spain had this kind of concordat from 1953 to 1979. The concordat stated, “The Spanish State recognizes the exclusive jurisdiction of the Tribunals and the ecclesiastical Dicasteries of the Departments in the causes concerning ... the separation of the spouses...” (Translation. See “*Concordato Entre La Santa Sede y Espana.*” 27 August 1953. *Acta Apostolicae Sedis, XXXV, 1953.* 625-656. p. 642. Art. 24.1. Exhibit 24-s). In 1979, the causes concerning separation of spouses were removed from the concordat. (See “*Concordato Entre La Santa Sede y Espana.*” 3 January 1979. *Acta Apostolicae Sedis, LXXII, 1980.* 29-62. Art 6.2. Exhibit 24-t).

27. In Diego-Lora’s 1984 work, “*Las Causas de Separación de Cónyuges Según el Nuevo Código,*” he discussed how Spain’s 1953 concordat lead all cases of separation of spouses to be judged in the ecclesiastic judicial venue (p. 392-393. See Exhibit 24-k). The word “tribunal” was in the concordat, not the word “bishop” or “administrative.” After cases of separation of spouses were omitted from the concordat in 1979, a party could choose either the ecclesiastic judicial or administrative venue. But the absence of a concordat or particular law did not waive the requirement for a party to have the bishop’s permission before filing in the civil forum for divorce.

#### *Decision Making: Competence of Ecclesiastical Judge to Instruct Obligations*

28. When Bishop NAME rejected my petitions, he failed to prevent scandal and instruct my husband of his obligations toward me: both to reconcile, and fulfil other marital obligations. The Bishop upon request, I pray, should, pursuant to canon 48 through 50, decide our case on the



administrative venue, and enjoin the Respondent-spouse to “*do something,*” after the Bishop hears about my rights that are injured. Were a case of separation of spouses to proceed in the judicial venue, the sentence must decide the controversy and “determine what obligations have arisen for the parties from the trial and how they must be fulfilled” (c. 1611, 2<sup>o</sup>). Therefore, the Bishop, I argue, made a mistake in his decision to deny my request to give instructions to my husband of his obligations: “Petitioner asks that parties be instructed about a separation plan that is in accord with divine law specifying support (*mutuum adiutorium*) and preventing scandal (See Exhibit 16, *Petition to Bishop to Pursue Reconciliation, or Separation*, par. 5).

### *Decision Making: Conclusion*

29. Based on all the citations collected herein, a party in the United States can only petition in the civil forum, on a case-by-case basis, with the bishop’s permission (canon 1692 §2). If a party were to submit an ecclesiastic petition for separation of spouses to the judicial forum, the diocesan tribunal judge could try to persuade the party to go to the civil forum instead, only if the party also had the bishop’s permission.

30. The diocesan tribunal judge can never try to encourage the person to go to the civil forum if the civil forum is going to interfere with effects outside the merely civil effects of marriage. In the US, decrees forthcoming from the civil forum always disrupt marital life beyond the merely civil effects of marriage. Upbringing of children, and the obligation to maintain the common conjugal life seem not to be the merely civil effects of marriage. The obligation to contribute toward “the good of the spouses” seems not to be a merely civil effect of marriage (*cf.* 1983 *CIC* c. 1055, 1917 *CIC* c. 1013 “*mutuum adiutorium*” mutual help). The diocesan tribunal judge is not competent to authorize someone to go to the civil forum; that competences rests with the bishop alone (canon 1692 §2). In the United States, furthermore, we have the Third Plenary Council of Baltimore, Art. 126, which establishes the procedure in which no one is allowed to file for civil divorce without the permission of the bishop first.

31. Prior to the enactment of unilateral no-fault divorce statutes, the civil forum might have managed cases of separation of spouses such that their outcomes were in accord with divine law. However, in the civil government’s no-fault divorce system, the party who is the cause of the breakup is given instructions that are contrary to the good of the children, the other party, and the

public good of the Church. Every divorce Defendant that has done nothing grave justifying legitimate separation of spouses, is coerced to sign a civil divorce agreement wherein the spouse wanting the breakup is purportedly relieved of most or all of his spousal and parental obligations. If a divorce Defendant refuses to sign a civil divorce agreement, the civil judge can issue a divorce decree that is even worse for the spouse who is counting on the others spouse to uphold marital obligations. Furthermore, civil divorce lawyers will charge tens upon tens of thousands of dollars if a Defendant does not capitulate to coercion and *agree* to the civil divorce.

32. The custom to which I think Bishop NAME is referring is contrary to divine law, and their practices should be stopped. He should have accepted my petition, conducted an investigation and issued a decree of separation of spouses per my request:

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 (*See Exhibit 16, Petition to Bishop to Pursue Reconciliation, or Separation, par. 5*).

Respectfully Yours in Christ,

Mrs. Jennifer JONES