

Domestic Relations Problems of the Catholic Lawyer and Diocesan Procedures

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>



Part of the [Catholic Studies Commons](#), and the [Criminal Law Commons](#)

Recommended Citation

(2016) "Domestic Relations Problems of the Catholic Lawyer and Diocesan Procedures," *The Catholic Lawyer*: Vol. 4 : No. 4 , Article 8.
Available at: <https://scholarship.law.stjohns.edu/tcl/vol4/iss4/8>

This Morality in Legal Practice is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

A forum for the expression of readers' views on:

MORALITY IN LEGAL PRACTICE

While this department's usual presentations are problem cases, it is felt that the following panel discussion report well serves the purposes for which the department was created. Certainly the report will afford our readers material upon which they can sharpen their perception of the moral issues involved in domestic relations practice. Reading it, they can concretize the application of moral principles. Some details of the procedures described prevail in only one diocese, yet the approach clearly and practically reflects principles of morality and rules of canon law which apply everywhere. Comments and inquiries prompted by the report will be welcomed.

The discussion reported was held at a meeting of the Catholic Lawyers Guild of the Diocese of Grand Rapids, in Grand Rapids, Michigan, on September 15, 1957. There were three panel members. The Very Rev. Msgr. Louis L. Verreau is Secretary of the Diocesan Marriage Advisory Board. The Rev. Charles Salatka, J.C.L., is Vice Chancellor of the Diocese and Spiritual Director of the Guild. The Rev. Joseph Podhajski, J.C.L., is Vice Officialis of the Diocesan Tribunal. The Moderator was Mr. J. Robert Smolenski, a member of the Michigan Bar and of the Guild.

His Excellency, the Most Rev. Allen J. Babcock, Bishop of Grand Rapids, has graciously permitted THE CATHOLIC LAWYER to publish this report.

A Panel on "Domestic Relations Problems of the Catholic Lawyer and Diocesan Procedures"

Mr. Smolenski: The profession of a lawyer offers a career that is both honorable and lucrative. The lawyer who guides his conduct by the principles of Christian Faith regards his professional activities as a means

of defending and proclaiming the unchangeable law of God, of which every just civil law is a participation. There is certainly no incompatibility between an active and successful law career and an exemplary Catholic life.

However, just as in other walks of life, there are lawyers who profess to be practical Catholics, but who, in their professional activities, fail to measure up to the moral standards prescribed by their Church. For just as surely as there exist the Canons of Legal Ethics for lawyers, there also exists the ethical code laid down for them by Catholic theology. As Catholic lawyers, we have certain definite and positive moral obligations to observe in our professional practice of law.

We cannot disregard our moral obligations as lawyers, any more than we can disregard the Canons of Legal Ethics. The penalty of serious sin is much worse than the prospect of disbarment. All too often our transgressions of the moral code are indeliberate because of our ignorance. Yet we have told many of our clients that "ignorance of the law is no excuse." That axiom applies to us as well.

We have a duty to inform ourselves of the teachings of our Church as they pertain to the practice of our profession. We cannot say "Ignorance is Bliss," that we can't sin if we don't know we're doing wrong. We have a duty to educate our consciences in this matter.

Since the biggest single item of individual legal practice today is in the field of domestic relations, your officers and this panel have chosen as their subject: "DOMESTIC RELATIONS PROBLEMS OF THE CATHOLIC LAWYER AND DIOCESAN PROCEDURES." We feel that it is timely and most needed. It is a large field and we will cover a lot of ground today, perhaps too much, but we want you to leave with a good basic grasp of your moral obligations as a lawyer in connection with marital problems of separation and divorce.

At this point let me ask Father Salatka to lay the ground work for this discussion.

Father Salatka: Gentlemen, there are two perfect societies here on earth — the State and the Church. They are called perfect societies in the sense that each has within itself the means necessary to the attainment of its ends. The aim of the State is the temporal good, the temporal happiness of its citizens in this life. The Church, on the other hand, is concerned with the spiritual good of man — his personal sanctification here on earth and ultimately his everlasting happiness in heaven. God has divided the care of man between these two societies.

From the nature and purpose of these societies we can conclude to the areas of their respective competence. Thus the State has the right and duty to order all things which from their nature refer to the temporal welfare of its citizens. Such things embrace secular business, politics, civil law, civic offices, and the like. The Church's competence belongs to matters which are spiritual or have a relationship to the spiritual. In its sphere each of these societies is supreme — the Church presiding over divine, the State over human affairs.

This discussion would be considerably simplified if the two spheres of the spiritual and the temporal never touched upon each other. But we know that such is not the case. There are matters which by their nature or for some other reason are the concern of both the Church and the State. An instance of this is the education of youth. Both the Church and the State are interested in their education, but under different respects. Such matters are referred to as *res mixtae*. Another example is Christian marriage. Christian marriage as a Sacrament pertains to the Church without prejudice to the competency of the State with regard to merely civil effects of the contract. Merely civil effects are those civil consequences of marriage which are separable from its substance; for example, the right of the wife to the husband's name, her right of succession, her right of dower, and such reasonable regulations as are imposed for the protection of public order, health or safety.

The conflict comes when both powers — the ecclesiastical and the civil — claim competence over the same matter under the same respect. A case very much to the point is marriage. The marriage of two baptized persons is a Sacrament. So the Church rightfully asserts its exclusive competency over such

a marriage contract and over its inseparable effects. Canon 1960 of the Code of Canon Law states: "Matrimonial cases between baptized persons belong by proper and exclusive right to the ecclesiastical judge." Hence, when the State attempts to assume competency over a Sacramental marriage contract, it exceeds its jurisdiction.

I mentioned the competency of the Church with regard to Sacramental marriages, that is, marriages of baptized persons, because the Church can legislate only for its subjects, and only the baptized are its subjects. However, and this is a fact that is not always grasped, every person who is validly baptized is objectively a subject of the one true Church established by Christ, that is, of the Catholic Church, and is bound by its laws except when these laws state otherwise. Canon 87 states: "Baptism of water constitutes a human being a person in the Church of Christ, with all the rights and duties of Christians." Whether a person was baptized in the Catholic Church or not does not matter in this regard. So long as he or she was baptized validly, he or she is a subject of the true Church of Christ and subject to its legislation.

Persons who are not baptized are in a different position. They are bound, of course, as is everyone, by the Law of God. But not being subjects of the Church they do not fall directly within its jurisdiction. I should note here that indirectly an unbaptized person may become subject to certain laws of the Church, that is, in cases where he or she marries a baptized person. The state properly exercises its competency over the marriage of two unbaptized persons, even to the point of declaring the marriage null if the marriage labored under an invalidating civil impediment. However, once a marriage of unbaptized persons is entered into validly

in accordance with civil law, then no human authority can dissolve it.

A fundamental fact about any marriage is that it is a divinely instituted relationship and hence it is subject primarily to the Divine Law which governs unbaptized persons as well as the baptized. Moreover, the unity and indissolubility of marriage are a divine command. Hence, they bind all men without exception. Consequently, when a marriage is valid, no mere human authority can dissolve the marriage bond. The Church being of divine institution has been empowered by her Divine Founder to dissolve the marriage bond in certain specific instances. No instance of such a grant of power to civil authority is anywhere presented in divine revelation. Even with regard to the marriage of two unbaptized persons, once the marriage is valid, the State does not have the power to dissolve the bond.

Mr. Smolenski: Thank you, Father. I am sure that all present have been made aware, if they were not aware already, of the fact that the marriage of two baptized persons is a Sacrament and that hence the Church has competency over such a contract. At this point I would ask Fr. Podhajski to discuss some of the laws which the Church has made concerning marriage. In addition, I think all of us would be interested in knowing a bit more about the power of the Church to dissolve marriages in certain specific instances.

Fr. Podhajski: Gentlemen, since the Church received from Christ Himself competency over the Sacrament of marriage and consequently over the contract which constitutes the Sacrament, it has exercised this competency by making laws concerning marriage. To secure the observance of these laws previous to a marriage is the responsibility of the Pastor and of the Bishop. If

these laws or God's own law, interpreted by the Church, have not been observed, the Church reserves to itself the right to pass judgment on the validity, or the invalidity of a marriage. It does so through the Diocesan Tribunal.

Here in brief and in general are the grounds recognized by the Church as invalidating a marriage:

1. Non-age. Male must be 16 — female must be 14.
2. Impotency. Anyone not capable of performing the marriage act cannot make a valid marriage contract. Impotency is not to be confused with sterility, which latter is not an impediment to marriage.
3. Defective consent;
 - a. Insanity. Since consent is of the essence of a contract, anyone not capable of giving consent cannot make a valid contract.
 - b. An intention excluding any of the essential properties of marriage; namely, indissolubility, unity (as opposed to polyandry and polygamy), transferral of the right to these acts which by their very nature are intended for the procreation of children.
 - c. Force and fear. This must be external, grave and unjustly induced.
 - d. Error with regard to the identity of the person one desires to marry.
4. Defect of form or solemnization. A Catholic is bound to marry before a priest and two witnesses.
5. If any of the following impediments were present at the time of the marriage and not dispensed from in cases in which a dispensation is possible:

- a. Previous valid Bond.
- b. Consanguinity. In the collateral line, to the third degree inclusive; in the direct line — all.
- c. Affinity. In the direct line — all. In the collateral line, to the second degree inclusive.
- d. Crime—conjugicide, conjugicide and adultery, adultery with mutual promise of marriage or actual attempt at marriage.
- e. Disparity of worship. A marriage contracted by an unbaptized person with a person who was baptized in the Catholic Church or who has been converted to it from heresy or schism is null.
- f. Sacred Orders. A marriage attempted by a Subdeacon, Deacon, Priest or Bishop would be invalid.
- g. Solemn vows. Anyone who is a member of a Religious Order or Congregation and has made solemn vows would invalidly attempt marriage.
- h. Spiritual relationship arising from baptism. The person baptizing and the sponsor contract a spiritual relationship only with the person baptized.
- i. Public decency, which forbids a marriage in the 1st and 2nd degree of the direct line with blood relatives of a spouse of an invalid marriage.
- j. Adoption, if civil laws make it invalidating impediment.

When the validity of a marriage is impugned it is presented to the Diocesan Tribunal which then processes it either:

1. by a simple administrative procedure,

2. by summary judicial process, or
3. by formal procedure.

Choice of procedure is dictated by the type of case.

A final word might be added about the instances when the Church dissolves a non-sacramental marriage, i.e., a marriage in which one or both parties are unbaptized.

1. The Church enters into the picture only when one party is or is about to become a Catholic.
2. To protect the faith of the Catholic, the marriage is dissolved by either:
 - a. Pauline Privilege — in the case of a marriage between two unbaptized persons, or
 - b. Privilege of the Faith — in the case of a marriage between one unbaptized person and one baptized person.

The Scriptural basis for both these privileges is found in St. Paul's First Epistle to the Corinthians, Chapter 7, verses 8-15:

But I say to the unmarried and to widows, it is good for them if they so remain, even as I. But if they do not have self-control, let them marry, for it is better to marry than to burn. But to those who are married, not I, but the Lord commands that a wife is not to depart from her husband, and if she departs, that she is to remain unmarried or be reconciled to her husband. And let not a husband put away his wife. To the others I say, not the Lord: If any brother has an unbelieving wife and she consents to live with him, let him not put her away. And if any woman has an unbelieving husband and he consents to live with her, let her not put away her husband. For the unbelieving husband is sanctified by the believing husband, and the unbelieving wife is sanctified by the believing husband; otherwise your children would be unclean, but, as it is, they are holy. But if the unbeliever departs, let him depart. For a brother or sister is not under bondage in such cases, but God has

called us to peace.

Mr. Smolenski: Thank you Father. Applying what you have said to the problem of whether a Catholic lawyer is permitted to take a divorce case, I think we can rightly conclude that there is no objection to a Catholic lawyer handling divorce cases of marriages which have been dissolved by the Petrine or Pauline privileges or which have been declared null by the Church because of an invalidating impediment or because of defective consent or because of lack of proper Canonical form.

But let us consider the case of two Catholics validly married, who are seeking a separate maintenance or divorce. How does the Church handle a case like this? I would ask Msgr. Verreau, Secretary of the Diocesan Marriage Advisory Board, to tell us something about the Board and how it functions with regard to such cases.

Msgr. Verreau: Gentlemen, the Diocesan Marriage Advisory Board was instituted in this Diocese to consider the cases of validly married Catholics who have marital difficulties. The purpose of the Board may be said to be twofold: first, to make a final attempt at reconciliation of the Catholic couples; then if no reconciliation is possible, to consider whether or not the plaintiff has a just cause which excuses her or him from observing the law of cohabitation which binds married spouses (Canon 1128); secondly, to consider whether there is reason to permit the plaintiff to approach the civil courts to secure the civil effects of a separation, chiefly, protection, support, etc.

Let us consider the case of Mr. and Mrs. A. Both are Catholics, members of St. X Parish. They are married sixteen years, have three children, ages 15, 10 and 8. During the years Mr. A has been drinking

increasing amounts and more frequently. The "nagging" becomes more bitter and more constant. The quarrelling and fighting occur more often and more intensely. Finally, a breaking-point is reached. Mrs. A approaches the pastor of St. X and demands permission for a separation.

Probably Mrs. A has approached the pastor two or more times previously to consult about her difficulties. Also the pastor has contacted Mr. A, scolded him and exacted promises of improved conduct. The promises have been kept a short time or not at all. The pastor figures he has exhausted his efforts at reconciling. So he writes up the case according to a list of questions (see Diocesan questionnaire for minimum information in separation cases). He also has the plaintiff sign an application for permission to approach the civil courts and finally sends these papers to the Secretary of the Diocesan Marriage Advisory Board.

The secretary of the Board invites the plaintiff for a conference. He also invites the defendant to speak for himself. He may then invite both parties to a meeting with the Board. If no reconciliation can be worked out, the Board considers the causes which may excuse the spouse from observing the law of cohabitation and the reasons for permitting an approach to the civil courts. Then the recommendations of the Board are sent to the Chancery Office. If permission is granted, the Chancery Office notifies the pastor of St. X as to the permission and any conditions. The pastor notifies the plaintiff. Then the plaintiff is free to engage a lawyer and to file suit, subject to the conditions.

This supposed case outlines the proper procedure for a Catholic spouse of a valid marriage seeking a civil separation, whether

it ends in a separate maintenance or even a divorce, always without dissolution of the marriage bond.

Why must a Catholic obtain the permission of the Bishop before approaching the civil courts? The reason is that the III Plenary Council of Baltimore held in 1884, legislating for the Catholics throughout the United States of America, after prescribing that Catholics who seek a dissolution of a valid marriage bond and attempt a second marriage are *ipso facto* excommunicated, forbids Catholics to approach the civil courts without having consulted the Bishop and adds that if anyone shall do this he incurs the guilt of mortal sin and shall be punished in accordance with the judgment of the Bishop. That prohibition is expressed in n. 124 of the Council's decrees. In n. 126 the Council further decreed:

Moreover . . . we forbid all who are joined in marriage to approach a civil tribunal for the purpose of obtaining a separation from bed and board, unless they have previously consulted the (proper) Ecclesiastical Authority about their case. If a person should approach a civil tribunal without such consultation, let such a one know that he or she (thereby) incurs a serious guilt and is to be punished in accordance with the judgment of the Bishop.

The lawyer is obliged in conscience to learn whether the client has permission or not to pursue civil action. And if not, the lawyer has the obligation to see that the client gets permission. Otherwise the lawyer will be cooperating in evil; he will incur guilt of serious sin and give scandal.

Mr. Smolenski: Thank you, Msgr. We're glad to know that there is such a Board available to which Catholic couples contemplating separate maintenance or divorce can be sent.

I feel that there is still another question

in the minds of many attorneys on these matters, and it is this: "Why is it wrong for an attorney to take any separate maintenance or divorce case indiscriminately?"

Let us turn to Fr. Salatka for a discussion on this phase.

Fr. Salatka: I'm glad Mr. Smolenski used the word "indiscriminately," because there are cases when it is definitely not wrong. Each case has to be considered on its merits to ascertain whether the lawyer may, morally speaking, take the case or not.

By way of parenthesis, I would like to state that it is commendable that we have Catholic attorneys in the field of domestic relations. With a knowledge of God's law and of the law of the Church on marriage, they can do much toward protecting and fostering the public weal, toward safeguarding the sacred institution of marriage, and when it is justified, toward helping deserving persons obtain a separation or divorce. In a rather unattractive field they have an important mission to accomplish.

To get back to Mr. Smolenski's question, the wrongness of taking any divorce case indiscriminately rests on the double wrong on the part of the State in its legislation on divorce:

1. The State usurps competency in enacting laws on the substance of a Sacrament which is patently spiritual. This obviously applies to marriages of baptized persons.
2. The State violates the divine law on the indissolubility of a valid marriage. This last applies as well to valid marriages of unbaptized persons.

An attorney who takes a divorce case without sufficient cause cooperates with the State in at least one of these two evils.

Mr. Smolenski: Father, you mentioned

cooperating with the State in evil. Exactly what do you mean by cooperation here?

Fr. Salatka: There are two kinds of cooperation.

1. Cooperation may mean concurring in or consenting to the evil intent of the State to usurp competency and to break the marriage bond. This kind of cooperation is called formal cooperation and is never permitted.
2. Cooperation may mean taking part in the evil action of the State without sharing in the intent. This kind of cooperation is called material cooperation, and is permitted for a sufficient or proportionate cause.

One might inquire what are sufficient reasons which would justify a lawyer to cooperate thus materially with the State's divorce legislation and be permitted to take a divorce case. To put it another way, when is a lawyer justified in taking a separation or divorce case?

The following are the principal circumstances under which an attorney may take a civil separation or divorce case:

1. CATHOLIC CLIENT:

- a. When permission has been granted by the Bishop. If the client will not ask this permission, the lawyer must do so. For information as to whether the permission has been granted, please contact the client's pastor or the Chancery Office.
- b. After our Diocesan Tribunal has indicated that the civil action may be brought because there are canonical grounds present for impugning the validity of the marriage.

2. BAPTIZED NON-CATHOLIC CLIENT:

- a. When the marriage is obviously invalid by reason of lack of canonical form (marriage to a Catholic before a Minister or Civil Official), or by reason of some canonical impediment, e.g., previous valid marriage. For a judgment on whether there are canonical grounds present to impugn the validity of the marriage, please contact the Diocesan Tribunal.
- b. When there are canonical grounds for a separation plus a sufficient reason to enter a civil suit for separation or divorce.

It is understandable that baptized non-Catholics will not be willing to submit cases to the ecclesiastical court for judgment. Even if they were willing, the Chancery staff would not be able to hear all these cases. Hence, the Bishop leaves it to the lawyer to judge the case and to decide whether the client may licitly seek the help and protection of the civil court. The lawyer's responsibility in this matter is obviously very grave and prudent judgment is necessary.

In deciding these cases the lawyer is to base his judgment not on civil law but on Canon Law. First, the right of the party to separate must be established. Employing Canons 1129-1131, the lawyer will determine if permanent or indefinite temporary separation is justified. Incidentally, these are some of the same

norms that the Bishop uses in deciding whether a separation be allowed or not. These canons deal with separation *a thoro et mensa*, not with divorce.

Canon 1129 states that adultery provides cause for permanent separation, provided that the plaintiff did not consent to, cause, nor condone the adultery, nor himself or herself commit the same crime.

Canon 1131 §1 gives the following grounds for temporary separation applicable to cases of baptized non-Catholics:

- 1) Criminal and disgraceful life of the defendant;
- 2) Danger to soul or body of the plaintiff;
- 3) Unbearable cruelty;
- 4) Other such grounds. Hence this list of grounds is not taxative, that is, not exhaustive. There may be other acceptable grounds.

If in a given case a canonical cause for separation is present, the lawyer must then decide whether he has a just cause to cooperate with the unjust action of the State in exceeding its competency and attempting to sever the marriage bond itself thereby rendering the plaintiff legally capable of contracting a subsequent marriage. In coming to his decision the lawyer is to follow the policy of the Bishop; namely,

- 1) there must be no other avenue of relief open;
- 2) the protection of the civil

- 3) scandal will be removed or minimized;
- 4) the party must not be seeking the divorce for the purpose of remarrying.

If these requisites are present, the lawyer may take the case and plead his client's suit.

3. UNBAPTIZED NON-CATHOLIC CLIENT:

- a. When he seeks a declaration of nullity of his marriage to another unbaptized person.
- b. When the marriage is obviously invalid by reason of lack of canonical form (marriage to a Catholic before a Minister or Civil Official), or by reason of some other obvious impediment, e.g., previous bond, etc. For a judgment as to whether any party in a particular case was bound to observe the canonical form or was bound by an ecclesiastical impediment, please contact the Diocesan Tribunal.
- c. When there is a canonical cause for separation, together with necessity of invoking protection of civil courts and assurance of party that there is no intention to remarry.

Another problem is whether a lawyer may ever take the case of a client who illicitly seeks a civil divorce. Let us say the client is validly married but is desirous of marrying some one else. If you don't take the case, some other lawyer will.

Only a good of paramount importance, only a most serious reason, would justify a lawyer to accept such a case. Listed as very serious causes are the following: disbar-

ment for refusal to accept a separation or divorce case; or if a child would be deprived of its right to a Catholic education and training; or the necessity of a lawyer's losing his means of livelihood or of giving up his profession, if he refused to take the case.

Theologians treating the matter agree that the fee alone, no matter how substantial, is not a sufficient cause; neither would the danger of losing the party as a client in other matters suffice. The private advantage at stake would not seem to be enough cause to compensate for the very great public and private evil which results from divorce. The fact that another lawyer will take the case is inconsequential; nor may the attorney justify his cooperation on the score that his client is in good faith and feels in conscience that divorce is lawful. The attorney must obey his own conscience, not that of the client. Sometimes a lawyer, like any other conscientious man, needs to have special moral counsel in order to form his conscience correctly.

Post Panel Discussion

Question: In an emergency would the Bishop grant permission for an attorney to institute a separation or divorce case without the preliminaries outlined in the panel discussion?

Answer: I feel certain the Bishop would grant the permission without delay when the facts warrant it. After filing the praecipe for summons the attorney would of course be expected to refer the client to the proper pastor or, that being impossible, to the Diocesan Marriage Advisory Board for the investigation required. Should the subsequent investigation on the part of the attorney or of the Church show that the client does not have a sufficient reason for a sep-

aration or divorce, the attorney would not be justified in continuing the case.

Question: Would immediate permission be granted an attorney to take a case with a view to attempting a reconciliation of the parties?

Answer: Yes, it would, providing that, if the efforts at reconciliation fail and if due investigation shows the grounds for separation to be insufficient, the attorney would be willing to withdraw from the case.

Question: How much of an investigation is the pastor expected to make?

Answer: The Chancery Office has sent all priests of the Diocese a list of the minimum requirements for parochial investigation in separation cases. A copy will be given to you. Even this list of minimal investigation is evidence of how seriously the Church regards these separation cases. Also available for you is a copy of the "Petition for Marital Separation" to be submitted to the Bishop after all efforts at reconciliation have failed.

Question: To whom is the Diocesan Marriage Advisory Board advisory?

Answer: To the Bishop.

Question: How can the lawyer find out if the prospective client, party to a Catholic marriage, has the proper ecclesiastical permission?

Answer: The lawyer may ask the pastor of the client or contact the Chancery Office. The permission emanates from the Chancery Office and is sent to the pastor who then informs the client.

Question: If the plaintiff does not have the Church's permission, does the lawyer have an obligation to obtain it?

Answer: The lawyer's obligation is to see to it that the client gets the permission. It may be necessary at times for the lawyer to arrange for an appointment for his client with a priest or with the Diocesan Marriage Advisory Board.

Question: Is the defendant in a separate maintenance or divorce action always required to obtain the Bishop's permission before deciding on a course of action or non-action in the case?

Answer: No ecclesiastical permission is needed for a defendant to enter a civil suit for the purpose of arranging an equitable property settlement or alimony. So far as weakening the civil bond of marriage is concerned, for a defendant to contest or not to contest a civil action for a separate maintenance or divorce, the following rules apply:

1. The defendant does not need the Bishop's permission:
 - 1) If he or she decides not to contest a civil action for a separate maintenance or divorce when the plaintiff has obtained ecclesiastical permission to institute such a suit.
 - 2) If he or she decides to contest a civil action for a separate maintenance or divorce when the plaintiff has not obtained or has been denied the Church's permission to institute such a suit.
2. The defendant needs the Bishop's permission:
 - 1) If he or she decides not to contest a civil action for a separate maintenance or divorce when the plaintiff has not obtained or has

been denied the Church's permission to institute the suit. In a given case the defendant may have the moral obligation to oppose the action rather than not to contest it.

- 2) If he or she decides to contest a civil suit when the plaintiff has the Bishop's permission to institute it. If the defendant feels that the Bishop has erred in granting ecclesiastical permission to the plaintiff, said defendant is free to submit to the Bishop's office the reasons for the claim and to request a review of the case.
- 3) If he or she decides to cross bill for a divorce, or if she decides to cross bill for separate maintenance.

Question: Why bother with a separate maintenance, why not simply institute a civil suit for divorce?

Answer: The Church uses all the means within its reach to protect the marriage bond. When a separate maintenance is available and would provide adequate relief for the deserving party, the Bishop grants permission for it rather than for a civil divorce, since by a separate maintenance decree the bond of marriage does not purport to be broken even in civil law and hence neither party is free to marry again. The Bishop will grant permission for a civil divorce action only when a separate maintenance is not applicable or does not provide the relief needed. Even then an attorney should strive for a limited divorce, that is, a divorce from bed and board, insofar as it is obtainable, since it, too, does not purport to break the marriage bond.