

## Petition to Bishop to Pursue Reconciliation, or Separation

To: (Arch)bishop \_\_\_\_\_, (Arch)diocese of \_\_\_\_\_.

- Petitioner asks the Bishop to help reconcile parties' marriage and instruct the Respondent-spouse of the obligations to keep the family united in one marital home.
- If Respondent-spouse does not restore common conjugal life, Petitioner asks for an administrative decree defining the status of the parties in the form of a 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.
- If another ground for separation is proposed for investigation, the Petitioner upholds the right to be informed, in a general way, of any accusations made by the Respondent-spouse against the Petitioner that allegedly justify the Respondent-spouse's separation.
- The diocesan Promoter of Justice should be cited and must take part.
- Within the separation decree, Petitioner asks for Respondent-spouse to be instructed of a separation plan that is in accord with divine law, and shown Respondent's obligations that have arisen in the investigation that are ordered toward the good of the spouses.
- Petitioner asks for the Respondent(s) to be admonished or penalized because Respondent(s) are committing grave wrongs, or are explicit, formal, cooperators with grave wrongs, or necessary, material, cooperators with objective evil.
- In addition to proposing that a penalty be declared, the Petitioner asks that the Respondent(s) be obligated to reimburse the Petitioner for expenses incurred due to the Respondent(s) wrongful acts. Petitioner brings a contentious action for reparation of material damages.
- To prevent sacrilege and scandal, the Petitioner asks that Respondent(s) be instructed to refrain from receiving Holy Communion, because Respondent(s) appear to be in manifest grave sin.
- After having received a citation showing that the Respondent has petitioned for a decree of invalidity of the parties' marriage, the Petitioner brings this action for separation of spouse as a counterclaim and answer. Petitioner asks for the Respondent to be instructed of Respondent's moral and civil obligations toward the Petitioner and parties' children.

*have signature notarized*

(signed) \_\_\_\_\_

printed name: \_\_\_\_\_

Date \_\_\_\_\_

Petitioner

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Wedding Date \_\_\_\_\_

City, State \_\_\_\_\_

Separation Date \_\_\_\_\_

Witness-1

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Relation to Petitioner \_\_\_\_\_

Witness-3

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Relation to Petitioner \_\_\_\_\_

Respondent-Spouse

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Church \_\_\_\_\_

Diocese \_\_\_\_\_

(Optional) Date Filed for Divorce \_\_\_\_\_

Witness-2

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Relation to Petitioner \_\_\_\_\_

Respondent-Other

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Relation to Respondent-spouse \_\_\_\_\_

**General Circumstances:** In about 200 words, describe events leading up to separation, whether Respondent-spouse refuses counseling with named marriage friendly therapist or priest, financial situation before and after separation, number of children and age range, and (optional) how another Respondent is encouraging the martial breakup.

Enter your text here

## Basis in Law and Rights

“Before accepting the case and whenever there is hope of a favorable outcome, the judge is to use pastoral means to reconcile the spouses and persuade them to restore conjugal living” (c. 1695, from Book VII, *Processibus*, Cases of Separation of Spouses).

Canon 49 shows that the Bishop can issue a singular precept urging the Respondent-spouse to uphold the lawful obligations. Canon 1446 shows that bishops are to strive to avoid litigation and the judge can employ a reputable person to mediate between the parties.

An interested party can propose a petition to obtain a decree (c. 57 §1). If a decree is not given within three months, the petitioner can make recourse by appealing to a higher authority (c. 57 §§2-3). Cases of separation of spouses are described in canon 1151-1155.

Pursuant to canon 221 §1, the Petitioner is pursuing and vindicating rights associated with the Respondent-spouse’s obligations to maintain a common conjugal life. The marriage of Catholics is governed not only by divine law but also by canon law (c. 1059). The parties’ marriage must be assumed valid until proven otherwise (c. 1060).

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 renegeing on obligations (cc. 104, 226 §1, 1055 §1, 1151, 1135). Petitioner asserts that Respondent-spouse has no legitimate reason for separation, no *legitime separationis ratione vel alia iusta de causa*. The marriage partnership is “ordered by its nature to the good of the spouses” (c. 1055 §1). “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” (c. 104). “Spouses have the duty and right to preserve conjugal

living unless a legitimate cause excuses them” (c. 1151). In contentious cases of separation of spouses, the tribunal sentence must, “determine what obligations have arisen for the parties from the trial and how they must be fulfilled” (c. 1611, 2°).

**Children:** 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 (cc. 226 §2, 1136).

**Divorce:** 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 cc. 1151-1155). *Decretum* 126 of the Third Plenary Council of Baltimore was promulgated for the United States in 1885: “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.” Canon 1692, the procedural law for cases of separation of spouses of *CIC* 1983, limits the circumstances in which the Respondent-spouse can be legitimately separated or file for civil divorce. The universal precepts in canon 1692 do not derogate the requirement to have the bishop’s permission before filing in the civil forum, as specified in *decretum* 126 of the Third Plenary Council of Baltimore. The new universal law expressly allows for provisions in particular places. Furthermore, “[a] universal law, however, in no way derogates from a particular or special law unless the law expressly provides otherwise” (c. 20). A bishop is not able to dispense from *legibus processualibus* procedural laws (c. 87 §1).

**Promoter of Justice:** Because separation of spouses involves the public good, it requires the involvement of the Promoter of Justice (c. 1696).

**Penalty:** The Ordinary can 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) (c. 1341).

If the Respondent(s) do not have the firm resolve to stop offenses, punishments would be appropriate in accordance with the law. The person in legislative power can strengthen divine or ecclesiastical law (c. 1315). 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 (c. 1319 §1). Respondent(s) reject moral teaching mentioned in Canon 752 (c. 1371, 1°); gravely wound *graviter vulnera* the Petitioner and children (c. 1397); are externally violating divine and canon law (c. 1399); might be disobeying command of the Ordinary (c. 1371, 2°); and violating obligations imposed by penalty (c. 1393).

**Repair Damages:** In addition to proposing that penal action should be initiated against the Respondent(s), the Petitioner brings a contentious action, pursuant to canon 1729 §1, and alleges that Respondent(s) are bound to repair material damage caused.

**Prevent Scandal:** If the Respondent(s) continue to persevere in the grave manifest sin of marital abandonment, divorce, or aiding grave wrongs, the Petitioner asks the Ordinary to advise the Respondent(s) to not receive Holy Communion (c. 916), and to instruct that Holy Communion should be denied (c. 915).

**Response to Petition for Decree of Invalidity:** As required by canon 1463, a counterclaim is made before thirty days have passed after the joinder of the issue. Even in a definitive sentence in a nullity case, the decree must instruct the parties of their moral and civil obligations toward each other and their children (c. 1689. *Mitis Iudex* c. 1691 §1).