



*Diocese of Erie:  
Office of Matrimonial Concerns and the Tribunal*

## Concerning Issues: The Formal Process - The Rights of the Respondent

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### The Right of Defense

Saint John Paul II called on the Church to be “a mirror of justice” before the world. As such, the Church must uphold the natural rights of those who come before its courts. In a marriage nullity case the validity of the union of two persons is being decided. The petitioner is trying to establish his or her right to marry in the Church by petitioning the tribunal to declare a previous union invalid. The respondent may or may not concur. In the formal process, both parties are given the opportunity to present their truth. This edition of *Concerning Issues* will examine the right of defense of respondents in the formal process.

### Often Asked Canonical Question

*What if the petitioner does not know where the respondent is or knows but is afraid of the respondent's reaction?*

The respondent's right of defense is so crucial to a just decision that a possible affirmative sentence can be overturned if these rights are ignored. Therefore, the petitioner must prove to the court that a sincere effort has been made to locate the respondent. Occasionally a person is simply unable to be located. If so, the case can be accepted as long as the petitioner's search has been well documented. The tribunal can assist the Petitioner with suggestions on ways of conducting the search.

Fear of reprisal from an angry former spouse does pose a difficult pastoral situation. It may be helpful to realize that in the majority of formal cases, the former spouse either never responds to the citation or waives his or her rights. So the fears are often never realized.

### The Ten Rights of All Respondents

The Code of Canon Law lists a number of places where the Respondent in a formal marriage nullity case has specific rights. The ten rights of all respondents are:

- 1. Right to be summoned (cc. 1507-1512, 1686)**  
*Once the petition has been accepted, the respondent must be informed. This is referred to as the citation. The respondent has the right to refuse to participate but he or she must be cited. If there is no response to the citation, the person is declared absent by the judge.*
- 2. Right to know the grounds proposed (c. 1508, §2)**  
*The judge can delay informing the respondent of the grounds until after the person gives testimony but only for grave reasons.*
- 3. Right to appoint an advocate and procurator (c. 1477 and 1481 §1)**  
*An advocate is the one who pleads the position of the party; a procurator is a proxy who acts on behalf of the party; both positions require a mandate from the party.*
- 4. Right to nominate witnesses (c. 1551)**  
*After the grounds have been determined, the respondent can name witnesses.*
- 5. Right to know the names of witnesses proposed by the petitioner (c. 1554)**  
*Both parties have the right to know the names of witnesses because they also have the right to challenge a witness's participation.*
- 6. Right to inspect the acts of the case (c. 1598 §1)**  
*The respondent has the right to read the testimony of the petitioner and witnesses but must come to the tribunal office to do so. If the respondent does not live in the Diocese of Erie, arrangements are made for the person to go to the tribunal where he or she lives.*
- 7. Right to propose other proofs (c. 1598 §2)**  
*The Respondent has the right to propose other proofs after inspecting the acts of the case.*
- 8. Right to reply to the pleadings and observations (c. 1603)**  
*This is normally done by the respondent's advocate who can respond to the pleadings from the petitioner's advocate and the observations of the defender of the bond.*
- 9. Right to be aware of the contents of the judgment (c. 1614)**  
*Even if the respondent has not participated and/or has been declared absent, he or she must be informed of the final decision.*
- 10. Right to challenge the judgment by appeal (cc.1628 and 1687)**  
*If the respondent disagrees with the final decision, he or she has the right to appeal either to the normal appellate court or directly to the Roman Rota.*



Msgr. Daniel Magraw, Cindy Mangiaracina, Barb Bettwy,  
Cindy DeCoursey, and Sr. Sylvia Burnett at the luncheon

### It's A Cindy Celebration

This year Administrative Assistants Day is on April 22. The staff of the Office of Matrimonial Concerns and the Tribunal celebrated a little early with a luncheon on Friday, April 10 at Lake View Country Club provided by the Culinary School at Mercyhurst University. We are blessed to have Cindy Mangiaracina and Cindy DeCoursey as our Tribunal notaries and thank them for their generous service.