

DIOCESE OF DALLAS

Parties' Rights in a Marriage Case



## **Parties' Rights in a Marriage Case**

*(Revised December 16, 2015)*

Both the Petitioner and the Respondent have rights. To favor one over the other is to deny justice. The Right of Defense (c. 1598, §1) must be protected. Denial of the Right of Defense causes irremediable nullity (c. 1620, 7°).

The following rights must be protected:

1. The right of the Respondent to be summoned to stand in Court, unless a Curator has been appointed by the Judge (cc: 1476-79; 1620, 5°; 99; 1508, §3; 1528). A Petitioner is expected to make all reasonable efforts to provide a current address for the Respondent. If the Petitioner is able to produce evidence that the Respondent, if cited, could be a danger to herself/himself or to other people, the Presiding Judge may appoint a Curator to protect the interests of the Respondent and to receive all communications normally received by the Respondent during the processing of the case. The Respondent has the right to be cited and, therefore, notified of all judicial acts (cc. 1507-12; 1686). The Respondent also has the related obligation to respond (cc. 1476; 1530; 1531). The Respondent who refuses to accept the citation or who prevents its delivery is considered to have been legitimately cited (c. 1510). Even after the time for response has elapsed, the Respondent may provide a declaration any time during the processing of the case.
2. The right of both parties to know the grounds on which the case will pursued. The *libellus*/petition is to be attached to the citation unless, for grave reasons, the Judge determines that the petition is not to be made known to the Respondent before the Respondent submits a deposition (c. 1508, §2). After the declarations of the Petitioner and Respondent are reviewed, the Judicial Vicar or Adjutant Judicial Vicar will decree the grounds on which the case will be pursued (that is, the Formulation of the Doubt). If, during the processing of the case, grounds are to be altered in any way, the Petitioner and Respondent will be notified.
3. The right of both parties to appoint an Advocate and/or Procurator to assist in the process. This right is made known to the Respondent at the time of citation. Even if the Respondent does not appoint an Advocate or Procurator, the right remains intact (cc. 1477; 1481, §1; 1490). The Advocate gives legal advice and pleads the party's cause before the Tribunal. The Procurator acts as proxy on behalf of the party.
4. The right of both parties to propose witnesses. This right is made known to the Respondent at the time of citation (cc. 1547; 1551; 1593, §1).
5. The right of both parties to know the names of the witnesses presented by the other (c. 1554).

6. The right of both parties to raise objections against the witnesses, the experts, the Judges, the Defender of the Bond or any other officer of the Court (cc. 1555; 1576; 1449). These names are made known to both parties.
7. The right of both parties to inspect the Acts of the Formal Process case at the time of publication under penalty of nullity (c. 1598, §1). Both parties with their respective Advocates and/or Procurators are notified after all material has been gathered and are invited to come to the Tribunal to review all materials, not yet known to them, including the declaration of one another. Restriction of materials from either party is the exception and never includes the restriction of the declaration of either principal from the other. The Judge must ensure that the right of defense remains intact if he/she chooses to restrict certain portions of testimony.
8. The right, after examination of the Acts, to propose other items of proof (cc. 1598, §2; 1593; 1601). The right to plead and respond to pleadings and observations (cc. 1603; 1606).
9. The right of each to be aware of the contents of the sentence and the means by which it may be challenged (cc. 1593, §2 and 1614). The decision can be challenged before the appropriate Appellate Court including the Rota. Both parties have the right to review the sentence with their respective Advocates and/or Procurators in the Tribunal office.

The denial of any right to either party may render the judgment null, since her/his right to defense was denied. If the judgment is rendered null, justice to both parties may be delayed even further.