

# DIOCESE OF DALLAS

## Role of the Petitioner's Procurator-Advocate



## **Role of the Petitioner's Procurator-Advocate**

*(Revised December 16, 2015)*

In the Diocese of Dallas, the Petitioner appoints the same person as both Advocate and Procurator. He/she can at any time appoint someone else in the place of either or both.

The Petitioner's Procurator-Advocate ensures that at all times the rights of her/his client are protected:

1. To provide testimony
2. To know the proposed grounds
3. To know the issue on which the case will be joined
4. To be informed of any proposed change in grounds
5. To appoint a Procurator and/or Advocate
6. To know the names of the witnesses proposed by the former spouse
7. To propose witnesses
8. To review the *Acta* (case file) in the local Tribunal office
9. To review the First Instance Decision in the local Tribunal Office
10. To assist the Petitioner to appeal the First Instance decision to the appropriate Appellate Court including the Rota
11. To review any Second Instance decision in the local Tribunal office
12. To be kept fully informed throughout the processing of the case

The Petitioner's Procurator-Advocate also has important rights in the process. Among the most significant are:

1. Exemption from any requirement to testify in the case (cc. 1548, §2, 1<sup>o</sup>; 1550, §2, 1<sup>o</sup>). This is akin to the attorney-client privilege of civil law.
2. Participation in the examination of the witnesses, unless restricted by the Judge due to particular circumstances (c. 1550). This includes the right to propose questions for the Judge or Auditor to ask of a witness, but not to ask questions directly unless Tribunal norms provide for that (c. 1561).
3. The right to review the published Acts of a case and the right to a copy of the Acts (c. 1598, §1).
4. The right to present written or oral briefs in defense of the client's position (cc. 1601-1603), within the reasonable regulations issued by the Tribunal.

The Petitioner's Procurator-Advocate is crucial to the protection/vindication of the rights of the Petitioner and to the smooth functioning of the tribunal in its judicial procedure.

The Procurator-Advocate represents the Petitioner to safeguard the rights of that party. He/she need not have a degree in Canon Law but must have completed sufficient Advocate training including updating, be a Catholic of at least 18 years of age and of good reputation, and be approved by the Diocese.

The Procurator-Advocate is the person empowered to act in place of the Petitioner. He/she acts on behalf of

the party as well as directs and guides her/him. The Procurator-Advocate advises the Petitioner and the Court on behalf of the party.

The role of the Petitioner's Procurator-Advocate is several-fold:

1. To know the specific problem in the marriage under consideration
2. To comply faithfully with the procedural norms
3. To help the party prepare the petition, according to the norms of law
4. To represent the party
5. To renounce the action if it becomes evident there are no grounds
6. To review the Acts of the case (for purposes of publication, c. 1598 and DC 229)
7. To receive the sentence (for purposes of publication, c. 1614 and DC 258)
8. To serve as Advocate on an appeal in Second Instance, if necessary
9. To carry out other acts that may be opportune or necessary; that is, designate new witnesses, call for expert advice, etc.

As most Petitioners to a nullity case are unfamiliar with the workings of a tribunal, it is to their benefit to have a Procurator-Advocate.

When the Petitioner's Procurator-Advocate introduces the case (referred to as Preliminary Investigation on the parish level), he/she also does the following:

1. Spends a minimum of two hours initially helping the client get the case into the Tribunal. Much of this time will be spent in listening actively to the client.
2. Assists the Petitioner to prepare a fully answered, current [Petition for Investigation of a Marriage Bond](#) including, ideally, a list of four knowledgeable witnesses. These witnesses are in addition to the parents and stepparents of both parties, who always are contacted.
3. Assists the Petitioner to submit with the case completed [Character Reference Questionnaires](#) from the three character witnesses listed on the Petition. While character references do not need to have known either party prior to the marriage, they should be people who have known one of the parties for a number of years in a relationship that would give them some insight into the person's character in order to confirm the veracity of the Petitioner and/or Respondent regarding her/his confessions/declarations. (See attached [Character Reference Questionnaire](#).)
4. Encourages the Petitioner to obtain the Respondent's full participation either as Co-Petitioner, or at least as a consenting other party. If such participation is not forthcoming, the Case Sponsor/Procurator-Advocate will send a letter with consent form to the Respondent inviting her/his participation. (See [Sample Letter to the Respondent](#).) Even if it is anticipated the Respondent either will not sign the Petition as Co-Petitioner or will not consent to the process, the Petitioner still is expected to make every effort to provide a current name, address, and telephone number for the Respondent. (See [People Searches](#) for assistance.) If all efforts to locate the Respondent have been exhausted, such efforts should be documented in the *libellus*.
5. Assists the Petitioner to complete in full detail the Petitioner's [Questionnaire](#) and any [supplemental questionnaires](#) that may be required.

6. Assists the Petitioner to obtain copies of the civil marriage and divorce records as well as a current baptismal certificate (original, not a photocopy) with sacramental notations for the Catholic Petitioner and a current Church marriage certificate. The Petitioner should provide copies of all documents such as legally obtained medical reports, CPS reports, evaluations by mental health professionals, police reports, etc., that might support the Petition.
7. Obtains a current baptismal certificate with sacramental notations for the Respondent and a copy of the prenuptial papers from the church of marriage.
8. Works through a Tribunal Auditor or *ad hoc* Auditor to obtain witness testimonies to be submitted.
9. Reviews all documents with the Petitioner and Co-Petitioner before submitting the case to the Tribunal. (See [Items Required for Introduction of Cases](#) for further detail.)
10. Submits the case to the Tribunal

It is important in all dealings with the client to exercise attentive listening skills as he/she shares the pain of a broken relationship. The client is opening up wounds that perhaps have not been exposed to anyone else. Putting the client at ease will go a long way in helping the person to tell her/his story fully so the Tribunal can perform its judicial function. Whatever the Procurator-Advocate learns is confidential to be shared only with the Tribunal.

Good questions to ask the client while working with her/him: (1) How would the other partner to your marriage view the marriage? (2) How would other people view your marriage? (3) Are you emotionally ready to go through the process? The Procurator-Advocate will help the Petitioner draw out the important points of the matter to be adjudicated. The Procurator-Advocate may suggest appropriate witnesses, including expert witnesses, to be called. The Procurator-Advocate works for the Petitioner and serves as the point person between the Tribunal and the Petitioner.

## PARISH LETTERHEAD

### Sample Letter to Respondent

[Respondent's Current Name & Mailing address]

Dear [Respondent]:

I am writing to inform you that [Petitioner's full name (full maiden name if a woman)] has completed a Petition for Investigation of a Marriage Bond with the request that the Tribunal of the Diocese of Dallas review her/his marriage with you to determine whether there might have been something so seriously lacking in the consent exchanged that the marriage never could have bound either of you from the beginning and, thus, could be declared invalid.

We would invite your participation, either as a Co-Petitioner in the process or, at least, as a consenting party to the process. Are you willing to become the Co-Petitioner? Or are you willing at least to consent to the process?

Please let me hear from you. You will find enclosed a brochure explaining the process as well as a form which you may sign to agree to the process as Co-Petitioner. For informational purposes, we also are enclosing a copy of the Petitioner's Agreement.

I look forward to hearing from you by \_\_\_\_\_ (indicate two weeks from the date of the letter)\_\_\_\_\_ so we will know whether you are interested in becoming a Co-Petitioner in this Petition, whether you prefer to consent to the process but not to serve as Co-Petitioner, whether you are unwilling either to co-petition or to consent but do wish to participate, or whether you prefer no involvement in the process.

Regardless of your decision regarding involvement in the process to whatever extent, you will be kept fully informed by the Tribunal throughout the processing of the case.

Sincerely yours,

Catholic parish cleric or lay minister