

A lawyer was no longer required before the marriage courts of the churches. As a result, both plaintiffs and defendants could no longer be represented by a lawyer at the hearings but rather had to appear in person in all cases. § 143 of the instructions for the ecclesiastical courts stipulated that they could be accompanied by “advocates”. Although they had the right to consult with them before making a statement, only those statements which they made personally should be included in the minutes. If an “advocate” made a statement of his own, this had to be recorded in the minutes as being the advocate’s own statement. § 143 also gave the investigating commissioner the right to have “advocates” who “have a disruptive effect” removed.

A long statement made by the St. Pölten Marriage Court to Emerich Dorner, dean and investigative commissioner in Theresia Halbwachs’ divorce suit, provides us with an indication of how these requirements should be interpreted in practice. On 18 February 1857, the marriage court commissioned him with a preliminary investigation into her divorce proceedings and instructed him how to proceed. The marriage court ordered him to send both parties a written invitation to a hearing at which both parties had to appear in person. If one of the spouses appeared accompanied by a legal adviser, the investigating commissioner had to determine

“whether the person appearing is a real lawyer or just a subaltern of such a lawyer.”  
(DASP K1/4)

According to the marriage court, if the person appearing with the spouse was a lawyer, he was permitted to be present at the questioning of the party he was representing, and no objections could be raised against his presence. However, he was not allowed to take part in the confrontation between the spouses, in which the investigating commissioner had to make sure that he “left”.

The instructions of the marriage court make it clear that only lawyers would be accepted as the “advocates” mentioned in § 143. According to the marriage court, people who are not lawyers, including notaries, and who do not have a license to represent in civil disputes, are not to be permitted. In the divorce proceedings of the St. Pölten Marriage Court and the

Vienna Metropolitan Court, we found no evidence that lawyers were present at the hearings. However, it can be assumed that spouses consulted legal representatives at least in advance and/or also during the divorce process.

Andrea Griesebner, with the assistance of Isabella Planer, March 2021, translation Jennifer Blaak

**Next menu item | Couples**

Citation: Andrea Griesebner and Isabella Planer, Lawyers (1857-1868) » Start » Lawyers, in: Webportal. Marriage at Court 3.0, 2025, <[http://ehenvorgericht.univie.ac.at/?page\\_id=10554&lang=en&pdf=10554](http://ehenvorgericht.univie.ac.at/?page_id=10554&lang=en&pdf=10554)>. [Date of access: 2025-07-05]