



## AN OVERVIEW OF THE ORDINARY MARRIAGE NULLITY PROCESS

### *Tribunal of the Diocese of Toledo in America*

The marriage nullity process serves a significant function, that is, to promote the good of marriage in general and to protect its indissoluble character in particular. The presumption of law in favor of the validity of marriage may be overturned only when a competent judge, acting in a legitimate ecclesiastical forum, reaches moral certitude regarding the invalidity of the bond before the tribunal. The marriage nullity process serves precisely to allow for and encourage the discovery of the truth regarding the status of the marriage in question and thus to determine whether or not the legal presumption in favor of the validity of marriage can be overturned. The following are the main stages of the ordinary marriage nullity process in consecutive order.

#### **I. Presentation of a Petition (*Libellus*)**

A judge cannot adjudicate a cause concerning the nullity of marriage unless one of the parties to the marriage has presented a petition (*libellus*) that accuses the marriage of invalidity (c. 1501). This *libellus* must include the following information:

- The tribunal before whom the cause is introduced;
- Specify the marriage in question;
- Present a petition for the declaration of nullity;
- Propose the reason for petitioning (the ground(s) of nullity on which the marriage is being challenged);
- In general, the facts and proofs on which the Petitioner is relying in order to demonstrate what is being asserted
- Addresses of the Petitioner and the Respondent

The *libellus* must be signed by the Petitioner or his/her procurator and advocate with the date of the petition. In addition to the *libellus*, the Petitioner must submit an application for the marriage nullity process, which includes more detailed information and facts about the marriage in question.

*See the application checklist for a full list of documents which must also be included along with the libellus.*

#### **II. Admission of the *Libellus* and the Judicial Citation**

The Judicial Vicar, once he has seen that the matter is within the competence of his tribunal and that the Petitioner has standing, either admits or rejects the *libellus* by decree (c. 1676 §1). The

*libellus* can be rejected if the tribunal does not have jurisdiction, if the petition is presented by one who does not have the right to challenge the marriage, if it does not fulfill the requirements listed above, or if it is apparent that the petition lacks any basis whatsoever (c. 1505 §2). Recourse against the rejection of the *libellus* can be taken within **ten days**.<sup>1</sup>

In the same decree by which the *libellus* is admitted, the Judicial Vicar cites the Respondent and the Defender of the Bond to the trial (c. 1676 §1). The introductory *libellus* of the Petitioner is also attached to the citation, unless there are grave reasons (e.g., the well-founded suspicion of violent retaliation or perjury) that the *libellus* not be communicated to the Respondent until later in the process (c. 1508 §2). One who refuses to receive a citation is to be considered as having been cited legitimately (*DC*, art. 133).<sup>2</sup> Parties who do not wish to participate still receive the decree of the formulation of the doubt, the decree of publication of the acts, and the definitive sentence (*DC*, art. 134).

**Fifteen days** are given for the Respondent and the Defender of the Bond to respond to the *libellus* and citation and express their views (c. 1676 §1).

### **III. The Formulation of the Doubt, Establishment of Judicial Panel, and Decision of Process**

After **fifteen days** have passed, and after the Defender of the Bond has been heard, the Judicial Vicar is to set by decree the formulation of the doubt, taken from the petitions and responses of the parties. This decree determines the ground or grounds on which the validity of the marriage is being challenged.

This decree also decides whether the case is to be treated with the ordinary process, abbreviated process, or documentary process. If the cause is to be handled through the ordinary process, the Judicial Vicar constitutes the college of judges or a single judge with two assessors (c. 1676 §3).

The decree is communicated to the parties and the Defender of the Bond, who can have recourse within **ten days** of notification to have the formulation of the doubt changed (c. 1513 §3).

### **IV. Instruction of the Cause**

After the formulation of the doubt has established the ground or grounds on which this marriage is being judged, the parties have the opportunity to present proofs. The parties in the cause will be sent written questionnaires or invited to give an oral deposition at the Tribunal, and afterwards the

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<sup>1</sup> **A note on time limits.** Most time limits mentioned in this document are called preemptory time limits. This means that they have been established by the law for extinguishing rights (c. 1465). If someone does not act within these time limits, their right to act in that particular matter is forfeited. The time limit does not begin to run if the person is unaware or unable to act (c. 201 §2). The time limits cannot be lengthened or shortened unless both parties request it (c. 1465; *DC* art. 81).

<sup>2</sup> In this document, the abbreviation “*DC*” refers to the Instruction *Dignitas Connubii* and its articles.

witnesses will be invited to do the same. Other proofs can be brought forward as well, such as letters, which the parties, before or after marriage, have given to one another or to others (*DC*, art. 186). Finally, in causes concerning any of the canon 1095 grounds (see **FOUNDATIONS OF NULLITY EXPLANATIONS** document), the opinion of a psychological expert is to be sought, unless from the circumstances this would appear evidently useless (c. 1678 §3).

## V. Publication of the Acts

After the proofs have been acquired, the judge proceeds to the publication of the acts, which is carried out by decree and which permits the parties and their advocates to examine the acts of the cause that the tribunal (*DC*, art. 229). In order to avoid very serious dangers (e.g., the well-founded suspicion of violent retaliation, threat of civil lawsuit for defamation of character, etc.), the judge can decree that some act is not to be shown to the parties (*DC*, art. 230).

Before the examination of the acts, the judge can require the parties to take an oath or promise that they will use the knowledge gained through this inspection only for their legitimate defense in the canonical forum. If a party refuses to take the aforementioned oath or promise, s/he will be considered to have renounced the faculty of examining the acts (*DC*, art. 232).

When the publication of the acts has been completed, the parties and the Defender of the Bond, in order to complete the proofs, can propose others to the judge. When these have been acquired there can be a second publication of the acts (*DC*, art. 236).

A time limit of **ten days** is usually set for the parties to exercise the right to inspect the acts (*DC*, art. 233 §1).

## VI. Conclusion of the Instruction of the Cause

When all those things pertaining to the publication of the proofs have been completed, and the judge considers the cause to have been sufficiently instructed, the judge issues a decree declaring the conclusion in the cause (*DC*, art. 237). After the conclusion in the cause, the judge can still call the same or other witnesses, but only in exceptional circumstances, and the new proofs are then published in the same way as before (*DC*, art. 239).

## VII. Discussion of the Cause

After the conclusion of the cause, the judge sets a suitable period of time for exhibiting defenses and observations in writing by the Defender of the Bond and the parties themselves or their advocates (*DC*, art. 240). This time period is usually **fifteen days**. When the defenses and observations have been mutually exchanged, each party is then permitted to exhibit responses within a short period of time, a right which is given to the parties only once (*DC*, art. 242). In the exchange of responses, it is always the right of the Defender of the Bond to be heard last (*DC*, art. 243).

The overall length of time that this stage takes depends on whether or not the advocates or parties wish to propose any defenses. The Defender of the Bond must always submit observations.

## VIII. Definitive Sentence

Since the Toledo Tribunal usually proceeds with a sole judge (c. 1673 §4), there is no meeting of the college of judges in these cases.

The sole judge will write the sentence himself (c. 1610 §1) and it is issued no more than **a month** after the day when the cause was decided (c. 1610 §3). The definitive sentence decides the question before the tribunal, that is, whether the invalidity of the marriage has been proven. In the sentence, the judges present the reasons in law and in fact on which the dispositive part (decision) of the sentence is based (c. 1611). An affirmative decision indicates that nullity has been proven; a negative decision indicates that nullity has not been proven.

If a party in the process was found to be incapable of marriage by reason of a permanent incapacity, a *vetitum* (prohibition) is added to the sentence, by which the party is prohibited to enter a new marriage unless the same tribunal which issued the sentence has been consulted. If a party was the cause of the nullity of the marriage by deception or simulation, the tribunal may decide to attach a *vetitum* to the sentence, by which the party is prohibited to enter a new marriage unless the Ordinary of the place in which the marriage is to be celebrated has been consulted (*DC*, art. 251).

## IX. Publication of the Sentence

Once the definitive sentence is written, it is then published to the parties and has no force before its publication. This communication of the sentence is made by a showing at the tribunal, by giving a copy of the sentence to the parties or their procurators, or by sending it to them in the mail (*DC*, art 258). If there is the possibility for an appeal, information is provided at the time of the publication of the sentence regarding the way in which an appeal is placed and pursued, with explicit mention being made of the faculty to approach the Roman Rota besides the local tribunal of appeal (*DC*, art. 257).

## X. Appeal

A party who considers himself aggrieved by a sentence has the right to appeal from the sentence to a higher judge. The Defender of the Bond is bound by office to appeal, if he or she considers the sentence that first declared the nullity of the marriage to be insufficiently founded (*DC*, art. 279). In addition, a new ground of nullity can be proposed in the grade of appeal, in which case the appellate tribunal may admit it as if in first instance (*DC*, art 268). An appeal must be filed before the judge by whom the sentence was issued within **fifteen days** from notice of the publication of the sentence (c. 1630 §1). The party has the right to appeal to the ordinary appellate tribunal or to the Roman Rota.

After the appellant files the appeal before the judge in first instance, that party must then pursue the appeal before the appellate judge **within a month** of its filing. The appellant can call upon the assistance of the first instance tribunal to send the act pursuing the appeal to the second instance tribunal (*DC*, art. 284). In order to pursue an appeal, it is required that the party indicate the reasons for appeal. Meanwhile, the first instance tribunal will send the acts to the appellate tribunal (*DC*, art. 285). When the time limits concerning appeals have expired without any action, the appeal is considered to have been abandoned. The appellant may also renounce the appeal (*DC*, art. 287).

## **XI. Freedom to Marry After an Affirmative Decision**

A sentence that first declared then nullity of the marriage, once the time for appeal has passed, becomes effective (c. 1679). After the sentence declaring the nullity of the marriage has been executed, the parties whose marriage has been declared null can contract a new marriage if they are otherwise free to marry, unless a prohibition attached to the sentence itself or established by the local ordinary forbids this (c. 1682 §1). However, those things which must precede the celebration of marriage in accordance with canons 1066-1071 are to be observed.

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