



AN OVERVIEW OF THE DOCUMENTARY 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 juridic 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 documentary marriage nullity process is used when a document subject to no contradiction or exception clearly establishes (1) a diriment impediment to marriage, (2) a defect of legitimate form without a prior dispensation, or (3) the lack of a valid mandate or proxy. It is much shorter and less complex than the ordinary process since it is almost entirely based on documentary proof rather than testimony of the parties and witnesses.

The following are the main stages of the documentary 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

This *libellus* should note that the documentary process is being requested.

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 and the Grounds of Nullity Explanations document for full lists 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 *MIDI*). 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**.¹

In the same decree by which the *libellus* is admitted, the Judicial Vicar notifies the Respondent and the Defender of the Bond (c. 1688 *MIDI*, cf. c. 1676 §1 *MIDI*). The citation also notifies the respondent of the name of the defender of the bond and the judge who have been appointed as officials for the cause. The introductory *libellus* of the Petitioner is to be attached to the citation.

This decree also establishes that the documentary process is to be used.

One who refuses to receive a citation is to be considered as having been cited legitimately (*DC*, art. 133).² Parties who do not wish to participate still receive 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 *MIDI*).

III. Definitive Sentence

After fifteen days have passed for the Respondent and Defender of the Bond to express their views, the sole judge will write the sentence himself (c. 1610 §1). In order to arrive at his decision, he must first “determine whether or not a dispensation was granted in cases alleging the presence of an impediment.”³ This is carried out *ex officio*.

¹ **A note on time limits.** Most time limits mentioned in this document are called peremptory 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), so these limits begin to run when the person is informed of the act in question. The time limits cannot be lengthened or shortened unless both parties request it (c. 1465; *DC* art. 81).

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

³ Ludicke, Klaus and Jenkins, Ronny, *Dignitas Connubii: Norms and Commentary* (Washington, DC: Canon Law Society of America, 2009) 478.

The definitive sentence decides the question before the tribunal, that is, whether the invalidity of the marriage has been proven. In the sentence, the judge presents 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 it is determined that no dispensation was given in cases of a documented diriment impediment, the judge is to issue a sentence in favor of nullity.

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.

IV. Publication of the Definitive Sentence

Once the definitive sentence is written, it is then published to the parties and the Defender of the Bond; it 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).

V. Appeal

A party who considers himself aggrieved by a sentence has the right to appeal from the sentence to a higher judge. 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.

The Defender of the Bond is bound by office to appeal, if he or she prudently thinks that either the flaws mentioned in can. 1688 *MIDI* or the lack of a dispensation are not certain (c. 1689 §1 *MIDI*).

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).

VI. Freedom to Marry After an Affirmative Decision

A sentence that first declared then nullity of the marriage, once the time for appeal has passed with no challenge being pursued, becomes executive (c. 1679 *MIDI*). 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 *MIDI*). However, those things which must precede the celebration of marriage in accordance with canons 1066-1071 are to be observed.