



AN OVERVIEW OF THE ABBREVIATED MARRIAGE NULLITY PROCESS BEFORE THE DIOCESAN BISHOP

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 following are the two essential factors which must both exist in order to petition for a declaration of nullity using the abbreviated process before the diocesan Bishop:

1. The petition must be proposed by both spouses or by one of them with the consent of the other (c. 1683 §1 MIDI), and
2. Circumstances of things and persons recur, with substantiating testimonies and records, which do not demand a more accurate inquiry or investigation, and which render the nullity manifest (c. 1683 §2 MIDI).

Both parties must consent to the use of this process because it entails an abbreviation of their right of defense and of other procedural steps. If this process is used, the examination of the parties and their witnesses is to take place in a single session at the tribunal (c. 1686 MIDI). The Bishop will judge the case. If moral certitude about nullity cannot be reached, he is to remit the case to the ordinary process.

The following are the main stages of the abbreviated marriage nullity process before the Bishop 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 (cc. 1501, 1684 MIDI):

- 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);
- The facts on which the petition is based, set forth briefly, fully, and clearly;

- The proofs which can be immediately collected by the judge;
- The documents, in an attachment, upon which the petition is based;
- The addresses of the Petitioner and the Respondent.

For the abbreviated process, the *libellus* must include the proofs and documents upon which the petition is based in order to support the allegation and the claims of the parties. This allows the judge to be in a state of high probability that what the *libellus* says is true. Among the documents supporting the petition are included all medical records that can clearly render useless the requirement of an *ex officio* expert (*MIDI Ratio Procedendi*, art. 14 §2).

The *libellus* must be signed by the Petitioner or his/her procurator with the date of the petition. In addition to the *libellus*, the Petitioner must submit an application form 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 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 cites the parties and the Defender of the Bond to the trial (c. 1676 §1).

Please note that admission of the *libellus* does not necessarily mean that the abbreviated process will be used. The type of process to be used will be determined in the following step, and depends on whether the petition meets the requirements for the abbreviated process or not.

Fifteen days are given for the parties and Defender of the Bond to respond to the *libellus* and proposed grounds and express their views (c. 1676 §1), especially regarding the use of the abbreviated process.

III. The Formulation of the Doubt, Establishment of Judicial Panel, Decision of Process, and Citation of Parties and Witnesses to the Single Instructional Session

After **fifteen days** have passed and after the parties have 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.

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).

This decree also accomplishes the following things:

- Determines whether the case is to be treated with the ordinary process, abbreviated process, or documentary process.
 - If the *libellus* does not fulfill the requirements for the abbreviated process but otherwise has some basis, it may be admitted to an examination using the ordinary process or documentary process for marriage nullity, as the case may be.
- Cites all who must take part to the single instructional session, which must be held within thirty days (c. 1685 *MIDI*). Those who must take part include the Petitioner, the Respondent (if involved), the Witnesses, and the Defender of the Bond.

This 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. The Single Instructional Session

The single instructional session must be held within thirty days of the decree which formulates the doubt (c. 1686 *MIDI*). This session is the same as a deposition in the ordinary process, but everyone is to be present at once unless the Instructor decides to proceed otherwise.

If there are any additional proofs to be brought forward, such as letters or other certified documents, they must be brought to this session. These are to be made known to the principal parties (Petitioner, Respondent, and Defender of the Bond) since proofs are not to be admitted under secrecy in order to protect the right of defense (*DC* art. 157 §2).²

Since all parties are to take part in the single instructional session and therefore all of the acts are already known to each of them (cf. c. 1598), no publication of acts to the Petitioner or Respondent is necessary in the abbreviated process.

V. 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 then the new proofs must then be published to the parties as in the ordinary process (*DC*, art 239).

In this same decree, the Instructor establishes 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 (cc. 1599 §3, 1601; *DC* art. 240). This time period is usually **fifteen days**.

VI. Discussion of the Cause

The Defender of the Bond, Advocates, parties, and the Promoter of Justice (if s/he has participated in the trial) are to submit briefs and observations, which are their own interpretations of the proofs of the cause

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

(c. 1686 *MIDI*). The Defender of the Bond and Promoter of Justice (if involved) are required to submit their observations at this stage.

In the abbreviated process, there is no back and forth discussion at this stage. The persons who must submit their arguments are to do so within the time limit set by the Instructor. The Instructor and Assessor are to examine the arguments in order to advise the Bishop. Subsequently, everything is sent to the Bishop for his decision.

VII. Definitive Sentence of the Bishop

Once the Bishop has received the acts, he is to both consult with the Instructor and Assessor, and consider the observations of the Defender of the Bond and defense briefs of the parties (c. 1687 §1 *MIDI*).

The Bishop may not delegate his judgment to another. Although he must consult with the Instructor and Assessor, he must also personally examine the acts and come to a decision. If moral certitude about the nullity of the marriage is reached (i.e., an affirmative decision), the definitive sentence is to be issued accordingly (c. 1687 §1 *MIDI*). The sentence must be issued no more than **a month** after the day when the cause was decided (c. 1610 §3; cf. *MIDI Ratio Procedendi*, art. 20 §2). He must present the reasons in law and in fact on which the dispositive part (decision) of the sentence is based (c. 1611).

On the other hand, if moral certitude cannot be reached, the Bishop must issue a decree which explains his doubts and refers the cause to the ordinary method (c. 1687 §1 *MIDI*). If this happens, the Judicial Vicar would assign a sole Judge or the College of Judges to further instruct the cause as necessary.

VIII. Publication of the Sentence

Once the definitive sentence is written, it is then published to the parties as swiftly as possible (c. 1687 §2 *MIDI*), and it has no force before its publication (c. 1614). This communication of the sentence is made 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).

The sentence is also transmitted to the Defender of the Bond and (if participating) the Promoter of Justice. The Defender must decide whether or not to appeal if the decision is affirmative.

IX. 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). An appeal must be filed before the bishop within **fifteen days** from notice of the publication of the sentence (c. 1630 §1). When the abbreviated process is used, the party has the right to appeal to the metropolitan or to the Roman Rota (c. 1687 §3 *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).

X. 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, 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). However, those things which must precede the celebration of marriage in accordance with canons 1066-1071 are to be observed.