

TRIBUNAL PROCEDURES



Diocese of Cleveland

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Revised September 2019



Tribunal

1404 East Ninth Street, 7th Floor
Cleveland, OH 44114-2555

Telephone: 216-696-6525, extension 4000

Fax: 216-696-3226

Website: www.dioceseofcleveland.org/tribunal

FOREWORD

The promulgation of Pope Francis' Apostolic Letter *Mitis Iudex Dominus Iesus* on September 8, 2015, has given new impetus to the tribunal's ministry of justice. There are a number of new "provisions that favor not the nullity of marriages, but the speed of processes as well as the simplicity due them, lest the clouds of doubt overshadow the hearts of the faithful awaiting a decision regarding their state because of a delayed sentence."¹ At the same time we are reminded of "the unparalleled need to safeguard the truth of the sacred bond ... by the judicial order."²

The staff of the Tribunal of the Diocese of Cleveland takes this opportunity to renew its commitment to a collaborative ministry of justice to all God's people. The assistance of priests, deacons, and lay ecclesial ministers in the ministry of the tribunal has for many years promoted effective resolutions to difficult issues of individuals' marital status in the Church as well as enabled spiritual healing. It is hoped that this booklet will serve as a user friendly reference for those who minister in the parish as procurators.

Reverend Gary D. Yanus, J.C.D.
Judicial Vicar
March 2016

¹ FRANCIS, *Mitis Iudex Dominus Iesus* (2015).

² *Ibid.*



TRIBUNAL MISSION STATEMENT

The Tribunal of the Diocese of Cleveland is the church court established by the Bishop of Cleveland in accordance with canon law. Our primary work is to assist God's people by resolving the canonical status of their marriages. By serving the truth and ministering with pastoral concern, we aim to be an instrument of evangelization.

We participate in the teaching mission of the Church by offering classes and workshops, and responding to canonical inquiries. We also serve as consultors to the diocesan bishop and his staff.

INTRODUCTION

A tribunal is established in each diocese by the bishop to assist him in carrying out his responsibility as shepherd of the local Christian community with which he has been entrusted (cc. 369, 1419, *Code of Canon Law*, 1983). As the judicial arm of the bishop, the diocesan tribunal cooperates in his ministry of furthering the supreme law of the Church – the salvation of souls (c. 1752).

The diocesan bishop appoints a judicial vicar to oversee the operation of the tribunal (c. 1420). This individual must be a priest with a degree in canon law. Other qualified individuals, both cleric and lay, are appointed by the bishop to serve as judges, defenders of the bond, promoters of justice, auditors, assessors, advocates, and notaries in order to process petitions for a declaration of invalidity. The entire judicial process is specified in Book VII of the *Code of Canon Law*, 1983, cc.1400-1707, *Dignitas connubii*, an instruction issued in 2005 by the Pontifical Council for Legislative Texts, and the amendments to the 1983 *Code of Canon Law* promulgated in *Mitis Iudex Dominus Iesus* by Pope Francis in 2015.

Church law safeguards the indissolubility of marriage. By law a marriage is presumed valid until established otherwise by positive proof (c. 1060). While the process is a judicial one, tribunal personnel are committed to demonstrating a pastoral attitude and regard for those who submit cases for adjudication. The staff of the tribunal also assists with other matrimonial issues which are not judicial, such as dissolutions.

PURPOSE OF THIS BOOKLET

The purpose of this booklet is to provide ready reference for those at the parish level (procurators) assisting individuals who are seeking canonical resolution of previous marriages. Ordinarily, the procurator will be approached by a person who desires to submit a petition (petitioner). However, in some circumstances the procurator might also have contact with the other party (respondent) who may support or oppose the petition. Understanding the process will enable the priest, deacon, or pastoral minister to minister effectively to all of these individuals. This latest revision of the manual is based on the current practice of the Tribunal of the Diocese of Cleveland, incorporating the *Code of Canon Law* (1983), *Dignitas connubii* (2005) and *Mitis Iudex Dominus Iesus* (2015).

Much of what is contained appears in outline form for easy use. The tribunal staff is available by telephone to discuss any questions or concerns regarding a particular situation or to provide more in-depth information in a specific area. Please feel free to contact the tribunal staff at 216-696-6525 or 800-869-6525, ext. 4000.

TABLE OF CONTENTS

FOREWORD	i
TRIBUNAL MISSION STATEMENT	iii
INTRODUCTION	v
PURPOSE OF THIS BOOKLET	v
TABLE OF CONTENTS	vi
PART ONE: THE CONCEPT OF A DECLARATION OF INVALIDITY	1
I. DEFINITION OF A DECLARATION OF INVALIDITY IN THE CATHOLIC CHURCH	1
II. CIVIL EFFECTS OF A DECLARATION OF INVALIDITY	1
III. MARRIAGES OF NON-CATHOLICS	2
IV. THE INVOLVEMENT OF THE CHURCH IN MARRIAGES OF CATHOLICS.....	2
PART TWO: THE ROLE OF THE PROCURATOR	4
I. PASTORAL AND CANONICAL GUIDANCE	4
II. SUBMITTING A PETITION	5
A. The Petition form	5
The questionnaire.....	5
The respondent.....	5
Witnesses	6
Reasons for invalidity	7
B. The Cover Letter	8
C. Documents.....	8
D. Photocopy the Case.....	9
III. WHILE THE CASE IS IN PROGRESS.....	9
IV. CONFIDENTIALITY	9
PART THREE: DETERMINING THE TYPE OF CASE	10
I. STEPS TO DETERMINE THE CASE TYPE	10
II. SACRAMENTAL AND NON-SACRAMENTAL BONDS.....	10
III. DISSOLUTION OF THE BOND (NON-SACRAMENTAL BONDS ONLY)	12

A. Pauline Privilege:	12
B. Favor of the Faith (<i>Favorem</i>):	12
IV. DECLARATIONS OF INVALIDITY	13
Causes of Invalidity	14
A. Formal Case	15
B. Documentary Case	15
Existence of Impediment	15
Lack/Defect of Form.....	15
PART FOUR: DECLARATIONS OF INVALIDITY – FORMAL CASE	17
I. REASONS FOR INVALIDITY	17
General reasons for invalidity.....	17
Specific grounds for invalidity.....	18
A. The Lack of Capacity to Consent (c. 1095)	18
1. Lack of Sufficient Use of Reason (c. 1095, 1°)	18
2. Grave Lack of Discretion of Judgment concerning the essential rights and obligations of marriage (c. 1095, 2°).....	18
3. Incapacity to Assume the Essential Obligation of Marriage Due to Causes of a Psychological Nature (c. 1095, 3°).....	19
B. A Defect or Lack of Knowledge (cc. 1096-1098).....	19
1. Ignorance (c. 1096 §1)	19
2. Error Concerning the Person (c. 1097 §§ 1, 2)	19
3. Fraud (c. 1098).....	20
C. A Lack of the Will to Consent (cc. 1099, 1101-1103).....	20
1. Error concerning the Nature of Marriage (c. 1099)	20
2. Total Simulation of Marital Consent (c. 1101 §2).....	20
3. Partial Simulation – Exclusion of Children (cc. 1101 §2; 1055 §1).....	20
4. Partial Simulation – Exclusion of Fidelity (cc. 1101 §2; 1056)	21
5. Partial Simulation – Exclusion of Indissolubility (cc. 1101§2; 1056).....	21
6. Partial Simulation – Exclusion of the Good of the Spouses (cc. 1101 §2; 1055 §1)	21
7. Condition (c. 1102).....	22
8. Force or Fear (c. 1103).....	22

II. THE JUDICIAL PROCESS.....	22
A. The Initial Evaluation.....	22
Competence.....	22
Review of documents.....	23
B. Sources of Information (Proofs).....	23
1. The Petitioner.....	23
2. The Divorced Spouse (Respondent)	24
3. Witnesses	24
4. Special Witnesses and Expert Witnesses.....	25
Chart—The Life Cycle of a Formal Case	26
C. Procedure.....	27
1. Acceptance of the Petition	27
2. Decree of Contestation (Setting of Grounds).....	27
3. Collecting the Proofs – Ordinary Process.....	28
4. Collecting the Proofs – Shorter Process.....	28
5. Publication of the Acts – Ordinary Process	28
6. Publication of the Acts – Shorter Process.....	29
7. Conclusion of the Case	29
D. Decision by the Judge(s)	29
THE DECISION	30
1. Affirmative Decisions.....	30
2. Negative Decisions	30
3. Appeals	31
E. TIME TO COMPLETE A FORMAL CASE.....	31
III. THE CAUTION/PROHIBITION	31
PART FIVE: DECLARATIONS OF INVALIDITY – DOCUMENTARY CASES	33
I. LACK OF FORM.....	33
1. Procedure	33
2. Exceptions.....	34
II. DEFECT OF FORM	34
III. EXISTENCE OF IMPEDIMENTS	35

A. Impediments in General (cc. 1083-1094)	35
B. Previous Marriage Bond [<i>Ligamen</i>] (c. 1085)	35
IV. SAME-SEX ‘MARRIAGES’	36
PART SIX: DISSOLUTION OF THE BOND	37
I. PAULINE PRIVILEGE (cc. 1143-1147).....	37
A. Definition	37
B. The Petition	38
C. The Authorization	38
II. FAVOR OF THE FAITH.....	38
A. Definition	38
B. The Conversion of the Petitioner	39
C. The Cover Letter of the Pastor	39
D. Documents Needed	40
E. The Forwarding of the Case to Rome.....	40
III. RATIFIED BUT NOT CONSUMMATED MARRIAGES (c. 1142).....	41
IV. DISSOLUTIONS OF MARRIAGE IN OTHER CIRCUMSTANCES	41
PART SEVEN: APPENDIX	42
I. FINANCIAL POLICY	42
II. GUIDELINES FOR DOCUMENTS	42
A. All Documents	42
B. Specific Documents.....	42
1. Baptism	42
2. Marriage.....	42
3. Divorce or Dissolution.....	43
4. Pre-Nuptial Files	43
C. Obtaining Documents.....	43
III. Communities in Which Valid Baptism Is Not Practiced or Is Doubtful.....	43
1. Communities Which Do Not Practice Valid Baptism	43
2. Communities Whose Baptism Is Doubtful	44
PART EIGHT: GLOSSARY	45

PART NINE: SAMPLE PETITIONS	53
First example.....	53
Second example	53
Third example	54
Fourth example	55
PART TEN: BIBLIOGRAPHY	56
Legislative documents	56
Additional reading	56

PART ONE: THE CONCEPT OF A DECLARATION OF INVALIDITY

I. DEFINITION OF A DECLARATION OF INVALIDITY IN THE CATHOLIC CHURCH

A declaration of invalidity by a tribunal of the Catholic Church is a statement based on canon law and ecclesiastical jurisprudence that a specific marriage was lacking in qualities essential for a true and binding marriage.

The state has created divorce as a means to end the civil legal aspects of a marriage. However, the Catholic Church knows that the vows of the sacrament of matrimony, as well as those of non-sacramental marriages, by their nature cannot be broken by any civil power. Therefore, any question concerning the validity of a sacramental or non-sacramental marriage is properly presented for review to the tribunal, the court of the diocesan bishop.

The process is designed to study the quality of the marital relationship to determine if some essential aspect of marriage, as the Church understands it, was missing from the relationship. It is possible that some serious problems were present from the very beginning of a marriage which precluded the couple from establishing a partnership of the whole of life. This matrimonial covenant by its very nature is ordered toward the good of the spouses and the procreation and education of children. It is this permanent and faithful union between baptized persons which is by definition the sacrament of matrimony (c. 1055).

The tribunal gathers evidence and studies the relationship in comparison to the Church's understanding of marriage. If the decision is reached that the relationship was lacking or defective in some essential way, the judge acknowledges that fact by issuing a declaration of invalidity. In order to reach this decision, the judge must have moral certitude that the presumption of validity, which every marriage enjoys in the law (c. 1060), is reversed. This must be supported by the strength of the evidence gathered in each case.

II. CIVIL EFFECTS OF A DECLARATION OF INVALIDITY

A Catholic declaration of invalidity of marriage has no civil effects in the United States; therefore the civil legitimacy of children is not affected. The divorce must be finalized in the civil court before the ecclesiastical process can begin.

III. MARRIAGES OF NON-CATHOLICS

Some individuals whose marital status in the Church needs to be clarified are not Catholic, and it may be difficult for them to understand the involvement of the Catholic Church in their marriage. This is an especially sensitive area which the procurator should be prepared to address.

The Catholic Church considers valid those marriages of persons of other religions or those of no religion if they are valid in the civil arena. Exceptions are impediments of natural law, such as blood relationship or previous bond.

So that a Catholic party can remain in good standing with the Church, the tribunal accepts petitions from persons of other religions and judges them by the same standards as marriages of Catholics.

IV. THE INVOLVEMENT OF THE CHURCH IN MARRIAGES OF CATHOLICS

Even Catholics require a sound explanation of the role of the tribunal in such a personal area as their marriage. Why should the tribunal become involved if it is God who judges all? The Catholic faith holds that the marriage bond is indissoluble; it may not be broken by any earthly power (Mark 10:2-9). The Catholic Church cannot recognize civil divorce as an instrument which dissolves a marriage and allows for remarriage. Until it has been established by a church tribunal that in a specific marriage there had been present certain impediments, circumstances, or conditions which rendered the marriage invalid from the beginning, a person who has been married and divorced, and whose spouse is still living, is not free to marry in the Catholic Church.

Marriage is not a private affair but a public one in civil law as well as in canon law. Canonically one must prove freedom to marry; banns are announced so that anyone who objects may make that known to the authorities; application for the sacrament is made with the parish priest; dispensations, if needed, are granted by the bishop; and the marriage is witnessed by a cleric with the faculty to assist at the marriage and two other witnesses. All of this is done in the external forum of the Catholic Church.

A case of invalidity is an action of the external forum as well. The tribunal is the judicial arm of the bishop of the diocese, and judges are appointed to hear the marriage cases for which they have competence. The decision has public effects: a person regains the status of 'single' if the declaration of invalidity is granted. A negative decision signifies that insufficient evidence was presented to overturn the presumption of validity.

The tribunal makes a human judgment according to procedures identified in canon law. Of course, in the forum of conscience, each individual relates to and is judged by God who knows no limitation and is not bound by human categories of proof.

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PART TWO: THE ROLE OF THE PROCURATOR

I. PASTORAL AND CANONICAL GUIDANCE

The procurator is the priest, deacon, or approved pastoral minister who represents and assists a party before the tribunal (cc. 1481-1490). The procurator's role includes listening to the petitioner's story to determine the type of case, explaining why this process is important (both pastorally and juridically), and supporting the petitioner in the preparation and presentation of a petition. The procurator should be attentive to all previous marriages, including common law and marriages between people who were not Catholic. The procurator **must never** discourage someone from presenting a petition to the court, even if the procurator may feel that the person does not have a strong case.

In formal cases, the procurator is incapable of serving as a witness in the case (c. 1550). Therefore, in order to be free to serve as a witness, a priest, deacon, or pastoral minister who has counseled either party or who can provide good insights into the personalities of the parties or their marital relationship should direct the petitioner to another procurator.

In assisting a person to present a petition, the procurator has a special opportunity and responsibility to teach, support, guide, and be an instrument of healing.

Teach:

- Explaining the process
- Instructing the petitioner about the teaching of the Church on the sacrament of matrimony, on separation, on divorce, on obligations to children and on remarriage
- Giving direction regarding admission to the sacraments of Penance and Eucharist

Support:

- Providing moral encouragement for the completion of the petition
- Counseling regarding information to be shared
- Serving as a sounding board
- Communicating with the tribunal
- Accompanying the individual to the tribunal for review of the acts and sentence should the petitioner so desire

Guide:

- Preparing the petition

- Gathering the documents
- Responding to tribunal letters and requests

Instrument of Healing:

- Showing compassion
- Sharing the pain
- Accepting the sorrow
- Praying for healing

II. SUBMITTING A PETITION

Before submitting a petition for a declaration of invalidity to the tribunal, a divorce must be finalized in the civil courts. It is sometimes wise to advise, for pastoral reasons, that a person wait a number of months after the divorce is finalized before preparing a petition.

A. The Petition form

The petition form (T-101) is available on the tribunal website as a fillable PDF file. If possible, the petitioner form should be completed on a computer before printing it, adding the signatures and dates by hand. The first two pages will be copied and mailed to the respondent. The petitioner's signature is required on pages two and three; the procurator's signature and the petitioner's initials are also required on page three. These **signatures and initials are necessary** if a petition is to be accepted. If the form is not filled out correctly, it will be returned to the procurator. The petitioner's address is never revealed to the respondent.

The questionnaire

In responding to the questions of the preliminary questionnaire, it is recommended that the petitioner prepare a draft which can be reviewed by the procurator before being submitted to the tribunal. If it is not possible to submit a type-written statement, a legible, hand-written statement is acceptable. Details are important; simple 'yes' or 'no' answers are generally not sufficient.

The respondent

Church law recognizes the right of the petitioner's divorced spouse to participate in an investigation of a marriage. The current and complete address of the divorced spouse must be included in order for the tribunal to contact him/her and offer him/her the opportunity to reply. If the address is not available, the last known address together with the name and address of a family member may be given. The efforts of the petitioner to find an address of the respondent

must be documented by the petitioner on the *Form T101A SEARCH FOR A DIVORCED SPOUSE (RESPONDENT)*. This form is available on the tribunal website or by contacting the tribunal.

The procurator may contact the respondent prior to the submission of the case, to assist him or her and to discover if he or she wishes to join with the petition. If the respondent does wish to join with the petition, he or she must sign and initial at the bottom half of the fourth page of the petition form. The respondent must read and agree with the petitioner's statement on the second page. The respondent may share a procurator with the petitioner, or may choose another procurator.

The procurator will need to make a pastoral decision whether or not to contact the respondent prior to the submission of the case. If it is decided to involve the respondent in the case prior to submission, it is strongly recommended that the procurator have some *direct* contact with the respondent by telephone or in person. Communicating with the respondent only via the petitioner is discouraged.

Witnesses

It is essential that witnesses be provided, using one or two sheets of form T-101W. Witnesses are persons who knew the spouses during their courtship and marriage. Witnesses may include parents, relatives, or close friends of the couple. For the ordinary process, the tribunal contacts witnesses by mail, using questionnaires. Witnesses should be encouraged to keep a photocopy of their testimony in case it gets lost in the mail.

The petitioner is asked to provide between six and ten witnesses, if possible. In order to obtain a balanced perspective on the marriage, at least three witnesses should represent the viewpoint of the petitioner and **at least three should be able to testify from the viewpoint of the respondent**. Failure to provide sufficient witnesses may delay the case, or even prevent an affirmative decision.

At times petitioners are hesitant to name witnesses because they believe that few individuals were aware of the situation involved in a given marriage. Experience has shown that such a determination should be made by the witnesses themselves. Witnesses often provide candid insights and observations regarding a marriage of which the parties may not be aware.

Petitioners are now asked to indicate whether or not the witness has been informed of the case, and whether they have agreed to testify. It is not *required* to contact each witness beforehand, but experience shows that it significantly increases the likelihood of their participation. **Witnesses who can give the respondent's perspective should be named, even if the petitioner does not wish to contact the witness in advance.**

The petitioner should also indicate on the witness form the aspects of the relationship about which the witness can testify. For example, the witness may know a lot about a party's family background, or have been a confidante during difficult aspects of the courtship, or observed certain behaviors during the relationship. This is a good opportunity to discuss with the petitioner who would make a good witness. Those who only met the couple long after the wedding, or who only know details of the relationship through hearsay, are less likely to be useful witnesses.

Marriage counselors and other professionals may also act as witnesses, but when they do so, they require a release signed by the person about whom they are giving information. These should be listed on form T-101C. Release forms from the petitioner and/or respondent will be requested during the course of the case, if these will be useful. The tribunal will not contact counselors without a prior signed release from the party.

Reasons for invalidity

It is now required that the petitioner indicate, on the second page of the petition form, the reasons that he or she believes the marriage is invalid. The procurator will need to exercise considerable guidance in helping the petitioner to produce a statement which is relevant to canonical reasons for matrimonial invalidity. **This statement should not cite specific grounds;** it is the tribunal's role to translate the facts of the marriage into juridically relevant categories. The statement should, however, show some awareness of the reasons why a marriage might be invalid. For example, a statement which focuses exclusively on events at the end of a long marriage, or which explains why the petitioner wants to remarry, will not be useful. A statement which notes how the parties married for the wrong reasons, or had no intention or ability to live marriage as the Church understands it, will be relevant even though it does not cite the canonical grounds. See *Part Four: Declarations of Invalidity – Formal Case* for aspects of a marriage that may make it invalid, and *Part Nine: Sample Petitions* for sample statements.

This section may seem similar to one of the questions asked in the formal petition. This page will be photocopied and mailed to the respondent at the beginning of the case, unlike the testimony in the questionnaire. The testimony would normally be expressed in the petitioner's own words, whereas the statement of reasons for invalidity would be crafted with more of the procurator's assistance. The reasons for invalidity of marriage should be substantiated in the responses to the questionnaire. The reasons for invalidity section is not the place for additional testimony; no 'facts' should be referenced in the reasons for invalidity which are not already stated and fully explained in the question responses.

B. The Cover Letter

The procurator is to submit a signed cover letter with every formal case, preferably on parish letterhead paper. The following issues should be addressed in the cover letter:

1. *Procurator's relationship to the petitioner*

Is the person a parishioner? A personal friend? Who will be responsible for the preparation for a future marriage? Who will be the celebrant of a new marriage or validation if such is possible?

2. *Procurator's insight into the petitioner*

Does this person demonstrate maturity and insight? Is the person sincere and trustworthy? Is either of the parties well known in the parish community?

3. *Reasons for the petition*

Why is this person submitting a petition at this time? Is the petitioner (or an intended spouse) being prepared for baptism or reception into the Church? Is there grave illness or advanced age? Are there any other special pastoral circumstances that need to be considered?

4. *Intent to remarry*

If the person hopes to remarry, to whom? What religion is the fiancé(e)? Was the fiancé(e) ever married before? If so, is that person free to marry? Has a decree of invalidity previously been granted, or is a case being submitted? Does the petitioner clearly understand that no wedding date can be set or promised until the case is fully completed, and that the Church might not find the marriage invalid? If already in a subsequent union, is the present relationship stable?

5. *Concerns about remarriage*

Any problems which might affect this person's ability to give consent to a future marriage should be noted. Is the person still in need of emotional, psychological, or spiritual healing?

6. *Contact with the respondent*

What contact has the procurator had with the respondent? What is the respondent's attitude to the case? Is he or she willing to assist the tribunal? How does his or her account of the relationship differ from the petitioner's account?

C. Documents

The petition form indicates the documents which must be submitted. See *APPENDIX: II. GUIDELINES FOR DOCUMENTS* for additional information about documents.

D. Photocopy the Case

It is highly recommended that the procurator make a photocopy of the completed petition form, preliminary questionnaire, documents, and cover letter before sending a case to the tribunal. Occasionally there are problems with the postal service.

III. WHILE THE CASE IS IN PROGRESS

At times the tribunal will contact the petitioner or procurator if the witnesses are not responding or if there is a need for a personal interview with the petitioner. The procurator may be present for the petitioner's interview.

A procurator is welcome to review the progress of a petition at any time during the processing of a case. This can be beneficial to one's pastoral and professional growth while providing background information for counseling the parties. At the time of the publication of the acts of the case, the procurator may review the acts with the petitioner or in place of the petitioner and apprise the party of pertinent information.

IV. CONFIDENTIALITY

Testimony gathered by the tribunal is available only to the tribunal officials assigned to the case, the petitioner, the respondent, and their procurators. All materials relative to the trial are treated with the confidentiality required by church law.

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PART THREE: DETERMINING THE TYPE OF CASE

Determining the type of case to submit to the tribunal may be quite complicated. If a case is improperly presented, unnecessary delays could result. This part of the handbook attempts to provide procurators with guidelines to evaluate cases in order to ascertain the type of case to submit.

I. STEPS TO DETERMINE THE CASE TYPE

1. Consult the section entitled *SACRAMENTAL AND NON-SACRAMENTAL BONDS* (immediately below). This section explains the two types of marriage bonds. Determine the type of bond for the case you are presenting and consult the appropriate section.
2. Apply the basic guidelines provided in these sections to the details of the case. For example, if it is a non-sacramental bond and neither party was baptized, the case may be a Pauline Privilege.
3. Consult the appropriate section according to the type of case. The specific requirements for the case, documents required, explanation of the process, etc. are provided in this part of the handbook.
4. Ratified-but-not-consummated cases require prior consultation with a canonist.
5. If further assistance is needed, one of the canonists at the tribunal will be pleased to assist.

II. SACRAMENTAL AND NON-SACRAMENTAL BONDS

The Catholic Church believes that God is the author of all marriages. Therefore the Church must protect the sacred bond of marriage whether the marriage is sacramental (both parties are baptized validly) or non-sacramental (at least one party is not baptized validly).

The Church's teachings define the nature and purpose of a sacramental marriage:

The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized. (c. 1055 §1).

By virtue of their baptism, the parties have invited God to enter their covenant of love. The presence of God's grace in their union effects the reality of Christ's presence in the world. A sacramental marriage is sometimes referred to as a 'Christian marriage.'

A non-sacramental marriage occurs when one or both of the parties have not been baptized validly. Since God is the author of all marriages, a non-sacramental marriage is a part of the natural order and thus can be called a natural marriage. (See *Part Seven: Appendix: III* for a list of communities in which valid baptism is not practiced or is doubtful.)

Both **sacramental marriages** and **non-sacramental marriages** possess the essential properties of unity and indissolubility. However, there are different grades of indissolubility. A **sacramental marriage** that is contracted by valid consent and has been consummated is absolutely indissoluble; it cannot be dissolved by any human power. A **non-sacramental marriage** contracted by valid consent is indissoluble but not absolutely. While these marriages cannot be dissolved by the will of the parties or by the state, they can be dissolved in certain circumstances which are based on an individual's ability to practice the Christian faith. A **sacramental marriage** that has not been consummated is also indissoluble but not absolutely. These marriages can be dissolved for a just cause at the request of one or both of the parties. A valid **non-sacramental marriage** can also be dissolved if it has not been consummated.

A **sacramental marriage** comes into being when (1) parties who are capable according to the law (2) manifest valid consent in (3) the form approved by the law. If any of these three elements are lacking, a marriage has not come into existence. In order to declare a marriage invalid, a petition must be submitted to the tribunal and the tribunal must render an affirmative decision.

When evaluating a marriage case, the procurator must first determine the baptismal status of both parties as this will be the basis for determining the type of case to be submitted to the tribunal. The case will fall into one of two categories:

1. If one or both parties are not baptized validly at the time of the wedding, a **dissolution of the bond** may be possible. At least one of the parties must be non-baptized at the end of the common life. Consult the section below entitled *Dissolution of the Bond*.
2. If both parties are baptized validly at the time of the wedding or become baptized during the common life, the case must be considered for a **declaration of invalidity**. Consult the section entitled *Declarations of Invalidity*.

III. DISSOLUTION OF THE BOND (NON-SACRAMENTAL BONDS ONLY)

Two processes in the Church dissolve **natural (non-sacramental) marriages** – the Pauline Privilege (cc. 1143-1147) and the Favor of the Faith (*favorem*). When evaluating these cases, the procurator must take the following basic points into consideration:

A. Pauline Privilege:

1. **Both parties** must have been **non-baptized** at the beginning of the marriage.
2. The **respondent** must remain non-baptized **at the time of the use of the Privilege**.
3. The petitioner **must desire to convert** to the Catholic faith or, at least, to Christianity, or have been baptized after the end of the common life.
4. The petitioner must **intend to marry** a specific person.
5. If these requirements are present, consult the section entitled *Pauline Privilege*.

B. Favor of the Faith (*Favorem*):

1. At the beginning of the marriage **at least one of the parties** must be **non-baptized** and remain non-baptized up to the final separation.
2. The **conversion** of the petitioner is **not required** but the dissolution must favor the practice of the Catholic faith.
3. The petitioner **must intend to marry** a specific person.
4. If these requirements are present, consult the section entitled *Favor of the Faith*.

When evaluating cases for a **dissolution of the bond**, the documentation required is particularly important. While the case may meet the criteria for a dissolution, it is often quite difficult to procure the documentation, especially if the respondent is not cooperative. If there are doubts about the availability of documentation and there is reason to believe that sufficient grounds exist to prove that the marriage is invalid, submitting a petition for a **declaration of invalidity** may result in a more timely resolution. If there is a doubt about the type of case to submit, consult the tribunal for assistance.

IV. DECLARATIONS OF INVALIDITY

A **declaration of invalidity** from the tribunal is a statement that a marriage was lacking in qualities essential for a true and valid marriage as understood by the Catholic Church. The cases that should be considered for a declaration of invalidity are:

- A. **Both parties** are **baptized** at the time of the marriage.
- B. One or both parties were not baptized at the time of the marriage, but they are **both baptized by the time they separate**.
- C. When a dissolution of the bond case (non-sacramental marriages) is not able to be processed because all of the criteria are not met or due to problems obtaining documents.

Three elements are required for a valid marriage:

- 1. valid **consent** is manifested
- 2. parties are capable according to the law (**no impediments** exist)
- 3. **form** is approved by the law

See *Invalidating and Incapacitating Causes of Invalidity* chart on the following page.

Causes of Invalidity

Defect of consent cc. 1095-1103	Lack of capacity to consent 1° – lack of use of reason 2° – lack of discretion of judgment 3° – incapacity to assume obligations of marriage Defect or Lack of Knowledge (cc. 1096-1098) c. 1096 – ignorance c. 1097 – error c. 1098 – fraud Lack of Will (cc. 1099, 1101-1103) c. 1099 – error of law c. 1101 – simulation: total partial: exclusion of fidelity exclusion of children exclusion of indissolubility exclusion of the good of the spouses c. 1102 – conditional consent c. 1103 – force and fear
Existence of impediment cc. 1083-1094	c. 1083 – lack of age c. 1084 – impotence (absolute or relative) c. 1085 – prior marriage bond (<i>ligamen</i>) c. 1086 – disparity of worship c. 1087 – Holy Orders c. 1088 – perpetual vow of chastity in religious institute c. 1089 – abduction c. 1090 – crime c. 1091 – consanguinity c. 1092 – affinity c. 1093 – public propriety c. 1094 – adoption
Defect/Lack of form cc. 1108-1127	Defect of Form cc. 1108-1111 – official witness qualified by office, delegation, or church <i>sui iuris</i> c. 1118 – official witness qualified by place c. 1116 – before witnesses only cc. 1108, 1127 – proper expression of parties Lack of Form c. 1117 – absence of form c. 1127 – defective dispensation

There are two ways to process a **declaration of invalidity**; as a **formal case** or as a **documentary case**. If the invalidity is caused by a defect of consent, a formal case is required. If the invalidity is caused by the existence of an impediment or a defect/lack of form and invalidity is proved by authentic documents, and is called a documentary case.

A. Formal Case

The formal case always examines a defect of consent.

- **Any marriage bond** (sacramental or non-sacramental) can be evaluated for a defect of consent.
- The defect of consent must be shown to have been present **at the time of consent**.
- For Catholic parties who attempted civil marriage and then married in the Catholic Church at a later date, the defect of consent must have been present at the time of the Church wedding.
- Consult *Part Four: Declarations of Invalidity – Formal Case* for complete information on this type of case.
- A formal case may be judged using either the shorter process or the ordinary process. These are not two different types of cases, but different procedures for addressing the same kind of case. After conducting a preliminary review, the tribunal will decide whether to use the shorter process or the ordinary process.

B. Documentary Case

The documentary case examines either an existence of impediment or a lack/defect of form.

Existence of Impediment

1. The existence of an impediment invalidates marital consent.
2. Some impediments can be dispensed and others cannot. Some impediments apply to all marriages and others only to those of Catholics.
3. Consult *Part Five: Declarations of Invalidity - Documentary Cases. See Section III. Existence of Impediments*.

Lack/Defect of Form

1. All Catholics, as well as the Orthodox and members of the Polish National Catholic Church, are required to marry according to the canonical form established by their respective churches.

2. If canonical form was **lacking or defective**, the marriage is invalid.
3. Consult *Part Five: Declarations of Invalidity - Documentary Cases*.

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PART FOUR: DECLARATIONS OF INVALIDITY – FORMAL CASE

I. REASONS FOR INVALIDITY

General reasons for invalidity

Procurators and petitioners are not expected to have or use detailed understanding of the grounds of invalidity. Nevertheless, knowledge of the characteristics which can indicate an invalid marriage is helpful when helping the petitioner with his or her testimony and preparing the ‘Reasons for invalidity’ section of the petition. It is better for procurators to address the general factors in the relationship which could be evidence of invalidity rather than concentrating on any specific grounds. It is the tribunal’s responsibility to translate the general factors into the most appropriate ground(s).

The following are areas of a relationship to consider when a petitioner wishes to make a petition for a declaration of the invalidity of the marriage. These circumstances do not, in themselves, prove invalidity, but should be given special attention by the petitioner and procurator when writing testimony and alleging reasons for invalidity of marriage.

- **Poor reasons for marrying**

For example: wedding prompted by an external event; a poor understanding of marriage due to family background; financial motives more important than the relationship; ignoring advice against the wedding; validation of civil marriage without proper motivation; serious misunderstanding about the nature of marriage; marriage only due to a belief about the other party which was not true.

- **Inability to live married life**

For example: pre-existing addiction or mental illness which caused the breakup of the marriage; deliberate disregard for the other spouse’s wellbeing; same-sex attraction preventing marital relations.

- **Exclusion of indissolubility or fidelity**

For example: party does not believe he or she is obliged to be sexually faithful in marriage; has affair(s) around the time of the wedding; premarital thoughts of divorce; many failed marriages and relationships due to infidelity or lack of commitment.

- **Openness to children**

For example: premarital determination against having children; sterilization; refusal to have children; persistent withholding of potentially fertile sexual intercourse; complete disinterest in raising the couple’s children.

- **Mistake regarding the other spouse**

For example: deliberate concealment of important fact about oneself directly related to the marriage; family hides a party's problems in order to persuade someone to marry him or her; serious misjudgment about a quality of the other person where, if the truth had been known, the marriage would not have happened.

Specific grounds for invalidity

To declare a marriage invalid, one or more canonical grounds for invalidity must be established and substantiated by credible evidence. Below is a simple explanation of the grounds of invalidity that could be used in a formal case. Church law and jurisprudence mean that the grounds are more complex than is possible to summarize in a work of this nature, therefore there may be good reasons that the tribunal has not chosen a ground which seemed suitable based on the procurator's reading of the petitioner's testimony.

A. The Lack of Capacity to Consent (c. 1095)

1. Lack of Sufficient Use of Reason (c. 1095, 1^o)

An individual must possess sufficient use of reason to give valid marital consent. Should a party be impaired by a severe psychiatric disorder, severe developmental delay, or intoxication which prohibits the use of reason at the time consent is exchanged, the consent is invalid.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: grave disturbance of the mind; effects of drug abuse; heavy intoxication at the time of consent. The testimony of an expert witness is often required.

2. Grave Lack of Discretion of Judgment concerning the essential rights and obligations of marriage (c. 1095, 2^o)

Marital consent is a function of a person's intellect and will. The person must have a basic understanding of the essential obligations of marriage, and the ability to apply that understanding to the marriage being contemplated. If the intellect is not able to make a sufficient evaluation of the decision to marry or the will is not able to make a free choice, the consent is invalid. In other words, the individual must be able to understand the essential obligations of marriage in regard to *this* marriage, to *this* person, at *this* time.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: profound irresponsibility; extreme control of one party over the other; family of origin disturbed by dysfunction of parents' marriage; break up of the marriage over previously known facts; disregard of parental or peer advice against the marriage; failure to see negative qualities or

circumstances of the other person that everyone else sees; behavior ignores the basic responsibilities of marriage; accepts unquestioningly the unreasonable behavior of the other party. The testimony of an expert witness is ordinarily required.

3. Incapacity to Assume the Essential Obligation of Marriage Due to Causes of a Psychological Nature (c. 1095, 3^o)

An individual must be capable of assuming the obligations of marriage. If a party suffers from a psychological disorder which interferes with his/her ability to assume the obligation of a permanent, exclusive, heterosexual partnership, the marriage is invalid.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: serious untreated mental condition that has onset prior to the marriage; incurable mental illness that renders the person unable to function in the marriage despite treatment; preexisting addiction. The testimony of an expert witness is ordinarily required.

B. A Defect or Lack of Knowledge (cc. 1096-1098)

1. Ignorance (c. 1096 §1)

Marriage is a permanent relationship between a man and a woman which is ordered toward the procreation and education of children by means of sexual cooperation. If a party does not know that marriage involves some form of sexual activity, the marriage is invalid.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: horror or repugnance at first attempt of intercourse; grave shyness or shame; gross naive disinterest in sex; repressive family background.

2. Error Concerning the Person (c. 1097 §§ 1, 2)

Marriage consent is invalid if a person is in error about the actual identity of the spouse. Marriage consent is also invalid if a person is in error about a quality of the spouse that is directly and principally intended. In other words, if the person had known, prior to the marriage, that a specific quality was not present in the spouse, then he/she would never have married that person. The quality must be related to the substance of marriage.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: never revealed quality such as permanent sterility, homosexuality, pathological addiction to alcohol or drugs, sexual diseases, or criminal record with consequences to the marriage; followed by a devastating effect or reaction upon discovery of the truth.

3. Fraud (c. 1098)

Marital consent is invalid if a party exchanged consent as a result of being deceived concerning a quality of the spouse which could disrupt seriously the communion of life. The quality must be capable of disrupting the marriage, i.e., serious medical condition such as AIDS, a criminal record, psychiatric illness, etc. The ground of fraud applies to the one deceived; e.g. the ground of fraud on the part of the petitioner could mean that the petitioner was deceived by the respondent and the respondent's family.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: history of deceit; special arrangements to avoid detection; a motive to hide the information, concealment of previous vasectomy, criminal record, debilitating disease or genetic deficiency; family covered up party's troubles in order to rid themselves of a 'problem child;' other party left the marriage when discovering the truth.

C. A Lack of the Will to Consent (cc. 1099, 1101-1103)

1. Error concerning the Nature of Marriage (c. 1099)

Some people hold beliefs that are contrary to the Church's teaching on marriage. If an individual knows the teaching of the Church, but still marries according to his/her own erroneous beliefs, the person's consent is invalid if their error was essential to the decision to marry.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: explicit or implicit intellectual rejection of marriage as a permanent and indissoluble partnership of all of life, ordered to the good of spouses and the procreation of children; empty show of acceptance of Church's teaching on marriage; overt anti-Catholic statements or actions.

2. Total Simulation of Marital Consent (c. 1101 §2)

A marriage is invalid when the intention did not correspond to the actual statement of marital consent during the wedding ceremony. Total simulation is an intention by which a person excludes intends against the very essence of marriage itself.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: constant intent to marry another person; expressed desire against ever marrying; lifestyle and attitudes against marriage; going ahead with the wedding despite not wanting to be married to the person chosen; undergoing wedding ceremony for reasons other than wanting marriage with the person; stubborn belief that a convalidation is merely a blessing of an already existing marriage.

3. Partial Simulation – Exclusion of Children (cc. 1101 §2; 1055 §1)

The Church teaches that an openness to having and rearing children is an essential element of marriage. Marital consent is exchanged invalidly if a party excludes from the union the right of the other to attempt to have children.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: contraceptive mentality; determination against having children; sterilization; denial of sex, especially during the fertile period; denial of other party's requests to have children; one child conceived prior to marriage and stated intent against further children; inordinate fear of childbirth; conviction the world is overpopulated.

4. Partial Simulation – Exclusion of Fidelity (cc. 1101 §2; 1056)

An essential property of marriage is fidelity to one's spouse. If a party reserves the right to sexual relationships outside the marital bond, the consent is invalid.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: family history of infidelity; affair around the time of the wedding; promiscuous relationships; liaisons which are numerous and flagrant; deeply rooted conviction about the impossibility of observing fidelity because of the weakness of human nature; adamant statements of the right to have other relationships when confronted; retained to oneself the right to same-sex sexual acts.

5. Partial Simulation – Exclusion of Indissolubility (cc. 1101§2; 1056)

Indissolubility is an essential property of marriage. If a party reserves the right to dissolve a particular marriage, the consent is invalid.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: mentality of divorce as a solution if unhappy; expressed desire for the marriage to last but if it does not then divorce is possible; request for divorce soon after the wedding; history of marriages and divorces; does not have stable relationships of any kind; demands pre-nuptial agreement anticipating divorce.

6. Partial Simulation – Exclusion of the Good of the Spouses (cc. 1101 §2; 1055 §1)

Marriage is a partnership of the whole of life. If a party excludes the intention to establish and maintain an intimate community of life and conjugal love, the consent is invalid.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: exclusion of interpersonal relationship; violent and abusive behavior; creation of an atmosphere in which the

other party feared for his/her life; spousal abuse; stated intent to make the spouse miserable; allows many external circumstances to take precedence over the marriage.

7. Condition (c. 1102)

Marital consent is invalid if a person attaches a future condition of particular importance to the marriage. The individual placing the condition ranks the condition of higher importance than the marriage. Unless the condition is fulfilled, the party would not want the marriage.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: the mentality that if a certain condition cannot happen, then the marriage is not wanted; pre-nuptial agreement on future action; circumstances agreed upon prior to the marriage that were not fulfilled and one party left the marriage; party left the marriage when learning something new about the other party. Conditions are often placed because of some doubt of suitability of the person.

8. Force or Fear (c. 1103)

The act of consent must be free. If consent is attempted due to an external physical or moral force, it is invalid. If consent is placed because of fear that is (1) grave, (2) extrinsic, and (3) the cause of the wedding, it is invalid. The party believes that he/she must marry in order to free himself/herself from the fear.

No single behavior on its own automatically proves the invalidity of the marriage. Nevertheless, relevant behavioral indicators for this ground may include: threats of harm and the only way out was to marry; compulsion; aversion of at least one of the parties to the marriage; strong ethnic or social mores; reverential fear of family member.

II. THE JUDICIAL PROCESS

A. The Initial Evaluation

Competence

Upon receipt of a formal petition for a declaration of invalidity, an initial evaluation is made as to whether the Cleveland tribunal is competent to hear the case. As of December 2015, the competence of each tribunal is slightly expanded. According to the new canon 1672, a tribunal can have competence due to:

1. The place of the wedding.

If the wedding was celebrated in the territory of the Diocese of Cleveland, the tribunal of the Diocese of Cleveland has competence (unless it was celebrated in the church building of an

Eastern Catholic Church *sui iuris*, in which case the tribunal of that eparchy would have competence).

2. *The domicile or quasi-domicile of the petitioner or respondent.*

If either the petitioner or the respondent reside permanently in the territory of the Diocese of Cleveland, the tribunal of the Diocese of Cleveland has competence. If the party in question is living in Cleveland temporarily or resides in Cleveland only for part of the year (quasi-domicile), consult the tribunal. Residence is determined by the physical location of the home address, not parish of registration or Post Office box. As of December 2015, it is no longer required that the respondent live in the United States, nor is it required to obtain permission from the respondent's diocese. (This source of competence applies to non-Catholics and to Latin Catholics; if the party is an Eastern Catholic then competence from this source would belong to the tribunal of the Eastern Catholic eparchy.)

3. *The place where most of the evidence is located.*

If most of the evidence (i.e. witnesses) is in the territory Diocese of Cleveland, it may be possible for the case to be heard in Cleveland even if neither party lives in the territory of the Diocese of Cleveland and the wedding was celebrated elsewhere. Please consult the tribunal for advice before submitting a case to be based on this source of competence.

Review of documents

Materials received with a petition are evaluated and relevant documents are certified by a tribunal notary. A certified civil decree of divorce or dissolution must be included with the petition. It is the practice of the tribunal not to begin the study of a petition for a declaration of invalidity until the marriage in question has been resolved civilly. In cases involving Catholic parties, the place of baptism of the Catholic parties must be stated (if known) so that proper notification can be made should a declaration of invalidity be issued.

If the petition and documents appear in order, if sufficient grounds for consideration are alleged, and if there is reasonable hope for proof, the petitioner is notified that the case has been accepted. At the same time, the respondent is notified of the acceptance and given the opportunity to participate in the case.

B. Sources of Information (Proofs)

1. The Petitioner

Ordinarily the preliminary statement provided by a petitioner contains sufficient information by which to begin the processing of the petition. An interview with a petitioner takes place when it is deemed necessary. An interview might be necessary due to a brief preliminary

statement, a statement lacking insight, the grounds being unclear or unproven, contradictions requiring resolution, or issues raised in the gathering of information needing clarification. If an interview with the petitioner takes place, generally it will occur after most of the information has been gathered. The meeting at the tribunal is relatively informal. The petitioner's procurator is welcome to be present for this interview.

2. The Divorced Spouse (Respondent)

The universal law of the Church requires that the petitioner's divorced spouse be informed that a petition for invalidity has been filed (c. 1508). The opportunity must be given to the divorced spouse to present his/her perspective of the marriage in question and to make known his/her opinion on the validity of the marriage.

For this reason it is important that the current and complete address of the divorced spouse be included on the petition form. If this is not immediately available, all reasonable efforts to locate the correct address are to be made and must be documented by the petitioner on the *Form T101A SEARCH FOR A DIVORCED SPOUSE (RESPONDENT)* available on the tribunal web site or by contacting the tribunal. If no current address is available, then the last known address or the name and address of a family member who can forward mail to the other party should be given. If all efforts to locate the respondent have been exhausted and are to no avail, the case may then move forward.

It is not *required* for the petitioner or procurator to contact the other party. This will be done by the tribunal. Even if the other party has indicated a lack of interest in the proceedings, the tribunal must inform the party that the matter is under consideration. A specified time is allowed for the other party to reply. The fact that the other party chooses not to participate in the process does not prevent the case from going forward, but it does make the testimony of the witnesses even more important.

3. Witnesses

The petitioner is required to provide the names and current addresses of parties who can testify as witnesses regarding the marriage in question (c. 1526). These witnesses may be family members, relatives, or friends who were acquainted with the parties before and/or during the marriage. In the ordinary process, witnesses are contacted by mail and asked to respond to questions which are aimed at eliciting pertinent information regarding the parties and their marriage. Witnesses may request an interview if they prefer.

Some witnesses may contact priests, deacons, or lay ecclesial ministers either with questions regarding the process or with the desire for assistance in preparing their replies. There also may be instances when a priest, deacon, or lay ecclesial minister is asked to act as an auditor in obtaining the testimony of specific witnesses either for the Cleveland tribunal or for the

tribunal of another diocese. In either circumstance, the co-operation and assistance of the priest, deacon, or lay ecclesial minister is encouraged and appreciated.

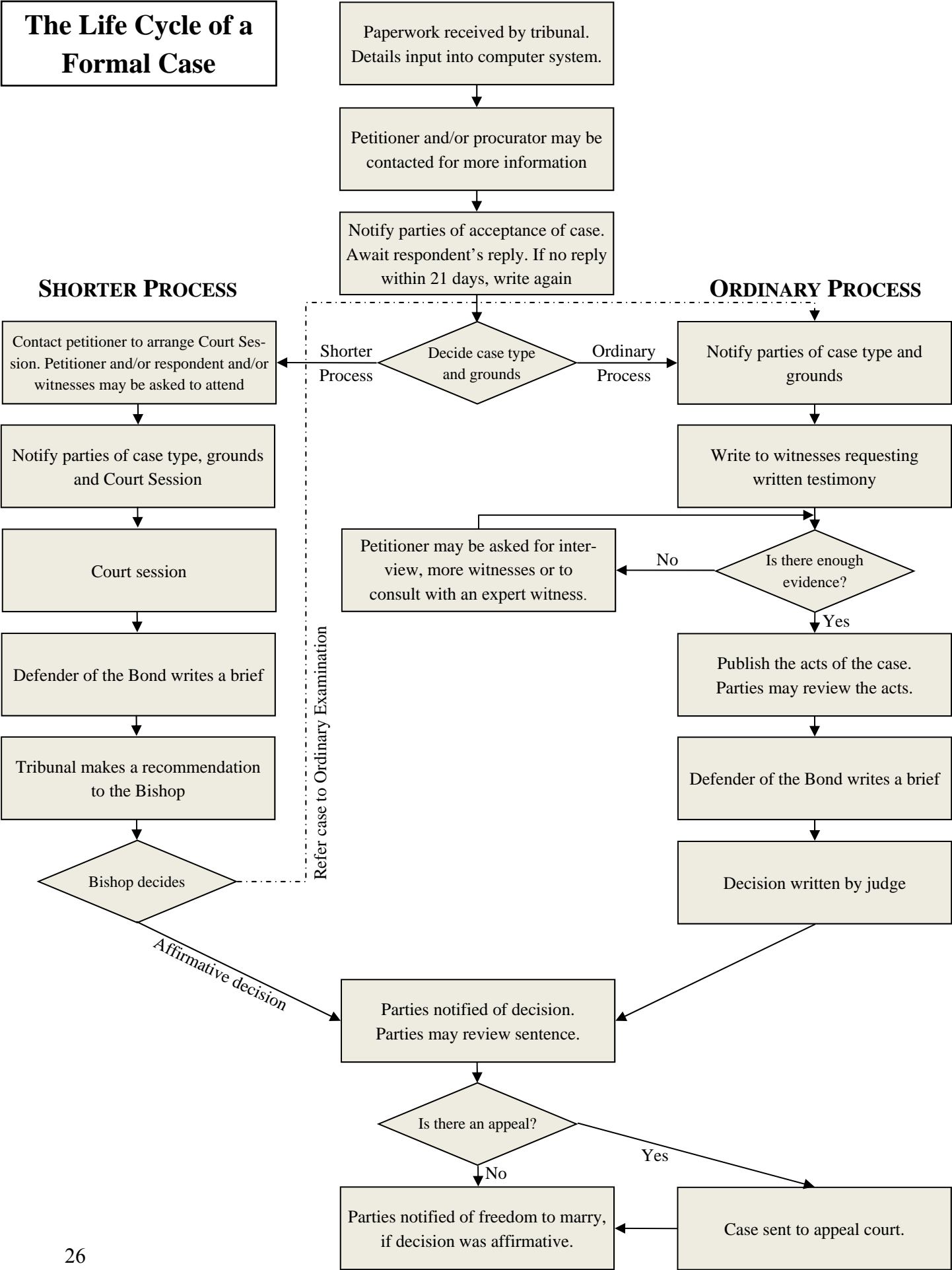
4. Special Witnesses and Expert Witnesses

Doctors, psychiatrists, psychologists, professional counselors, priests, ministers, rabbis, etc. are persons who would have a special expertise. If they were consulted at any time prior to, during, or after the common life, they might be valuable witnesses. Releases provided by the tribunal must be signed by the persons who consulted doctors, psychiatrists, psychologists, or professional counselors. The tribunal sends the request for such information to the professional after receiving a signed release from the party.

In certain cases, canon law requires the judge to seek the opinion of an expert witness. For example, if the parties were strongly influenced by their culture, an expert in that culture may assist the judge in understanding this aspect of the case. In other cases the court may request that the petitioner meet with a psychological expert witness, who will write a report for the tribunal in response to the specific questions asked. The tribunal will pay the cost of court-requested expert witnesses.

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The Life Cycle of a Formal Case



C. Procedure

1. Acceptance of the Petition

In an initial evaluation the tribunal determines that (1) it is competent to hear the case, (2) the proper documents have been received, (3) some reasons for invalidity have been alleged, and (4) sufficient witnesses have been named. The judicial vicar accepts the case, and the parties are notified.

The respondent is given three weeks to reply. If he or she does not reply, a second letter is sent giving another two weeks. The respondent is provided with a questionnaire as well as a response form. The questionnaire is a slightly simplified version of the petitioner's questionnaire. The response form gives the respondent the opportunity to indicate his/her level of participation in the process, including agreeing with the petition, and to appoint a procurator if desired. The respondent is informed of the witnesses the petitioner has named, and given the opportunity to name more witnesses.

If it appears that the shorter process may be appropriate for the case, tribunal staff will contact the petitioner and/or procurator to discuss a date for the court session.

These are the requirements for the use of the shorter process:

- The respondent **must** agree with the petition. This may be indicated by signing the petition form before it is submitted, or by agreeing when cited later by the tribunal.
- The invalidity of the marriage is **immediately clear**:
 - At least one ground for invalidity must clearly emerge from the initial testimony of the parties.
 - The testimony of the parties must agree on the significant areas of the relationship, especially regarding the source of invalidity.
 - Any further evidence required must be easy to collect. For example, witnesses knowledgeable about the factors leading to invalidity must be willing and able to testify. Cases requiring an expert witness would not be suitable for the shorter process.

2. Decree of Contestation (Setting of Grounds)

After receiving the respondent's response or, if he/she does not respond to the second letter, tribunal staff will evaluate the case and make a recommendation for both the process by which the case is to be heard (either ordinary or shorter), and the grounds of invalidity. The judicial vicar will issue the decree stating the process and the grounds.

The parties will be notified of the process and grounds, and may challenge the grounds in writing within three weeks. The judge(s) will consider these observations and may or may not change the grounds. The parties and procurators would be notified of the decision of the judge(s) and any changes that would result. The parties and/or procurators only need to submit comments if they have concerns regarding the grounds determined by the judicial vicar. If they are willing to accept them as stated, no response is necessary. Please refer to the previous section on the grounds for a summary of the various grounds.

3. Collecting the Proofs – Ordinary Process

As soon as the grounds are set, the tribunal writes to the witnesses asking that they answer questions about their knowledge of the relationship. A major part of the time involved in the processing of a petition for invalidity is spent in waiting for the responses from the witnesses. Second letters are sent to the witnesses who have not replied to the initial mailing within six weeks. When the tribunal has received all the testimony which seems likely to be forthcoming, a determination is made whether sufficient information has been gathered in order to proceed to the next stage. If further information is necessary, contact will be made with the petitioner and the procurator. Expert witnesses, if deemed necessary to the case, would be contacted during this phase of the process.

4. Collecting the Proofs – Shorter Process

If the case seems as though it may be eligible to be heard according to the shorter process, the petitioner and/or procurator will be contacted *before* the grounds and case type are formally chosen, in order to arrange the court session.

When the parties are notified of the grounds, they are also notified of the date and time for the court session. The court session takes the place of the witness letters and questionnaires. In order to provide quicker answers to what should be a relatively simple case, the witnesses with knowledge of the key elements of the case will be asked to attend a meeting with tribunal staff, where they will each give their testimony orally. Depending on the completeness of their written testimony, the petitioner and/or respondent may be requested to attend the session to clarify certain points. Even if their presence is not requested, the parties still have the right to attend. It is the responsibility of the petitioner (and possibly also the respondent, depending on his or her level of participation in the case) to coordinate a session at which all the relevant witnesses can attend.

5. Publication of the Acts – Ordinary Process

When it is determined that adequate information has been gathered, the investigation phase of the process is concluded. A letter is sent to the parties and to the procurators informing them of this fact. Procedural law requires that the parties to a case have the right to review the acts of the case which include the statements of both parties and the available testimony of the

witnesses (c. 1598). The purpose of this review is to enable the parties to make any additions or observations regarding the information which has been collected. Before reading the acts of the case, parties are required to sign an oath of secrecy and a memorandum of understanding, indicating that they understand the purpose of their examination of the acts and that nothing from the acts of a case can be used in any other way. They are not permitted to discuss the content of the testimony with anyone except their appointed procurator.

6. Publication of the Acts – Shorter Process

There is no publication of the acts in the shorter process, because both parties have already agreed with the invalidity of the marriage and have the right to be present at the court session when the witnesses testify. If a party especially wants to see some evidence which he or she has not yet seen, contact the tribunal.

7. Conclusion of the Case

Following conclusion of the information gathering phase of the process and after the parties have had the opportunity to review the acts of the case, the case is referred to the defender of the bond for a final review and brief by that officer of the tribunal. The defender of the bond is responsible for presenting any reasonable arguments that can be made in favor of the bond of the marriage.

If either of the parties has an advocate, the advocate(s) will also write a brief arguing from that party's perspective. The parties and procurator may also present a brief if they wish.

D. Decision by the Judge(s)

Once the brief of the defender of the bond has been prepared, the case is placed on the docket of the judges for a decision. The judges review the facts of the case as they have been presented and the law which pertains to the grounds upon which the declaration of invalidity is sought. The law is applied to the facts as presented by the parties and witnesses, and a decision is made.

In the ordinary process, the case will be decided by three judges, one of whom (the *ponens*) will have been overseeing the case throughout its progress and will write the sentence. For shorter process cases, the judge is the diocesan bishop himself. A tribunal staff member called the Assessor will make a recommendation to the bishop.

THE DECISION

Once the decision has been made (by the judges in the ordinary process, or by the bishop in the shorter process) this information is conveyed by letter to the parties and the procurators. The parties have the right to review the sentence under the same conditions mentioned above for the review of the acts of the case (c. 1614). The sentence is the complete explanation for the decision, weaving together the theology and canon law of marriage with the testimony in the case to lead to the conclusion. Additional observations or challenges, as appropriate, can be offered by the parties and/or the procurators.

1. Affirmative Decisions

An affirmative decision means it has been found with moral certitude that the marriage in question is invalid.

As of December 2015, it is no longer required to have every affirmative decision reviewed by a second tribunal. If there is no appeal against an affirmative decision the parties are free to contract marriage anew, unless there is a prohibition or caution attached to the sentence. If the period for appeal lapses without an appeal being made, the tribunal will write to the parties and their procurators to inform them of this.

2. Negative Decisions

A negative decision means that sufficient evidence has not been collected to declare the marriage invalid. This may be for a variety of reasons. Sometimes the petitioner does not cooperate in gathering more evidence, but demands that the case nevertheless be brought to a decision. Sometimes the petitioner is cooperative, but there is simply insufficient evidence regarding the relationship to overcome the presumption of validity. On other occasions, the evidence may be ample and may indicate that the presumption of validity should be upheld. The procurator's pastoral role will be more important than ever in helping the petitioner to adjust his or her plans in light of a negative decision.

A marriage case deals with the status of persons and thus is never a closed issue. Therefore it may be possible in the future to present new evidence or new witnesses, or different grounds may be proposed. The tribunal staff should be consulted before a case is presented regarding a marriage which previously received a negative decision.

The diocesan bishop cannot issue a negative decision in the shorter process. If the shorter process cannot lead to an affirmative decision, the case will be referred to the ordinary process for further investigation.

3. Appeals

The petitioner, the respondent, and the defender of the bond have the right to appeal against any decision within fifteen days of notification of the sentence. Appeals are usually heard by the local court of second instance, either in Cincinnati or Toledo. Appellants may alternatively choose to direct their appeal to the Apostolic Tribunal of the Roman Rota, the Church's highest court for matrimonial cases.

E. TIME TO COMPLETE A FORMAL CASE

By Church law and diocesan regulations, priests, deacons, or other Church personnel are not permitted to give dates for remarriage in the Church unless a declaration of invalidity has been granted and any caution/prohibition has been lifted by the tribunal.

The time needed to process a case depends on many factors, such as the type of grounds, how many witnesses are needed, the disposition of the respondent, and the cooperation of parties and witnesses. Since each petition is unique, there is no standard by which it can be determined how long a particular case may take to be processed.

Formal cases heard according to the ordinary process may be completed in approximately a year to eighteen months; some are completed more quickly, others take longer. Shorter process cases may take a number of months from the reception of the petition to the final declaration of freedom to marry. Any estimate of time must always be on the longer side, and it must be clear that this is not a promise. The parties may be disappointed, but they will know realistically that they cannot set a date, rent a hall, or otherwise prepare for a wedding. Typically, the greatest variable in determining how long a particular case will take is the step where the tribunal solicits testimony from the witnesses.

Some cases cannot be brought to a conclusion due to a lack of evidence, and for some marriages the presumption of validity is upheld. The procurator should prepare the petitioner for these possibilities.

Again, **DO NOT INDICATE, EVEN TENTATIVELY, A DATE WHEN A PARTY MIGHT BE ABLE TO HAVE ANOTHER WEDDING, NOR INDICATE THAT AN AFFIRMATIVE DECISION WILL BE GIVEN.**

III. THE CAUTION/PROHIBITION

Sadly, statistics prove that the rate of marriage failure increases for each previous failed marriage a party has had; too many people attempt remarriage without having fully learned the

lessons from their previous relationships. The prohibition and caution are part of the Church's pastoral response to this phenomenon.

When the judge(s) in a case of invalidity has serious concerns regarding an individual's capacity or readiness for future marriage, the judge(s) may place a prohibition or caution on one or both parties (c. 1682, §1). When a caution/prohibition has been placed on an individual, the party's as well as the procurator's final letters and the confirmation document will state that no arrangements for another marriage are to be made until the preparing minister (priest, deacon, or pastoral minister) who is preparing the individual for marriage consults with the judge. In preparing individuals who have received a declaration of invalidity, careful attention first should be given to the *Marriage Policy for the Diocese of Cleveland*.

When a prohibition or caution is placed on a party, the preparing minister must contact the judge who will share with the preparing minister recommendations for preparing the individual and his or her intended spouse for marriage. If the preparing minister was not the party's procurator during the case, a release may be required before the tribunal will disclose details of the prohibition or caution.

In addition to the required PREPARE/ENRICH inventory, the recommendation of the judge may include counseling for the individual, pre-marital counseling for the individual and his or her intended spouse, and/or a psychological evaluation. A *prohibition* indicates serious issues concerning the capacity of the individual to give valid consent. A *caution* expresses specific areas of concern to be addressed during marriage preparation.

Where a prohibition has been issued and after the individual has fulfilled the judge's recommendations for preparation for marriage, the preparing minister must write a report to the Judicial Vicar indicating (1) the names of the individuals; (2) the protocol number of the case; (3) the recommendations of the judge; (4) the way in which the individual complied with the judge's request; (5) a copy of the report from the professional consulted, if any; and (6) the minister's endorsement of the proposed marriage. It is required that the preparing minister submit the entire pre-nuptial file along with the cover letter. The tribunal's permission for the marriage will be mailed to the preparing minister.

Where a caution has been issued, this information is for use at the preparing minister's discretion. It is not required to contact the tribunal with details of how the concerns have been addressed.

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PART FIVE: DECLARATIONS OF INVALIDITY – DOCUMENTARY CASES

A documentary cases is a case in which in which a marriage is proven invalid by the use of authentic documents.

I. LACK OF FORM

The Church alone is competent to legislate concerning the administration and celebration of its sacraments. The Church has a specific canonical form for its members to follow in order to marry validly. Church law specifies that every baptized Catholic must exchange marital consent within the Catholic form of marriage; that is, in the presence of a properly delegated priest or deacon and two witnesses (c. 1108). The Orthodox Churches have their own requirements for the form of marriage.

1. Procedure

Form *T-103: Declaration of Invalidity of Marriage on the Grounds of Lack of Form* is used for a Catholic petitioner, Catholic respondent, Orthodox petitioner or Orthodox respondent who has married outside his or her respective Church.

A declaration of matrimonial invalidity due to a lack of form is not truly a ‘documentary case’ as that term is properly understood in canon law; the invalidity of the marriage should be clear and does not require any canonical action to prove this or make it effective. However, the staff of the Tribunal of the Diocese of Cleveland investigates the paperwork regarding these marriages as a service to the clergy and ministers of the diocese, in order to provide reassurance and remove doubt that the circumstances have been properly identified. The respondent is not contacted during the processing of the case.

The following documents are required:

1. An authentic copy of the Catholic baptismal record issued **within the previous six months**. The baptismal certificate’s notations help establish whether or not the union was ever validated or whether dispensations were ever given.
2. A certified copy of the marriage license application and marriage record. These certificates verify that the marriage was contracted outside canonical form by a minister, justice of the peace, etc., and show any prior marriage.

3. A certified copy of the final divorce decree. It is final if it has the filing date, the date when the divorce/dissolution became effective.

2. Exceptions

In some circumstances, marriages of Catholics are (or were) valid even without canonical form. If one or more of these exceptions applied at the time of the wedding, the marriage would not be invalid due to a lack of form. Consult the tribunal in case of doubt.

1. The *Code of Canon Law* of 1917 (effective May 19, 1918) bound all Catholics to canonical form. The exceptions were children of mixed marriages, and those baptized Catholics who were not raised as Catholics when they married non-Catholic Christians. These exceptions ended on January 1, 1949 for Latin Catholics, and for Eastern Catholics on May 2, 1949.

2. The Second Vatican Council's *Decree on the Catholic Eastern Churches*, '*Orientalium ecclesiarum*,' effective January 22, 1965, declared that Eastern Catholics marry Orthodox Christians validly in the presence of an Orthodox priest, even without permission from the Catholic hierarchy. After March 25, 1967, this applies to Latin Catholics also.

3. Effective as of October 1, 1970, bishops can dispense from canonical form and allow a marriage to take place validly without a Catholic ceremony, for example led by a Protestant minister, rabbi, or civil magistrate. Marriages which took place with this dispensation from canonical form cannot be invalid due to a lack of form.

4. From November 27, 1983, to April 8, 2010, Catholics who had defected from the Church by a formal act were not bound to canonical form. Defection from the Church by a formal act was a difficult process that was very rare in the United States.

5. The 'extraordinary form' of marriage, with witnesses but no competent Catholic minister, is valid if the normal canonical form could not be followed without grave inconvenience, due either to danger of death of one of the parties or because a competent Catholic minister was not expected to be available for at least a month. The latter circumstance would be very rare in the United States.

II. DEFECT OF FORM

There is a defect of canonical form if a ceremony had the outward appearance of a Catholic (or Orthodox) ceremony, but was lacking in some essential aspect. The most common defect of canonical form is lack of delegation of the official Church witness/minister. The question of lawful delegation will sometimes arise when the marriage in question was witnessed

by a cleric not assigned to the parish in which the wedding took place, or by a cleric from a different church *sui iuris*, or where a deacon witnessed the wedding of an Eastern Christian. Please consult the tribunal for assistance if it is suspected that a marriage might be invalid due to a defect of canonical form.

III. EXISTENCE OF IMPEDIMENTS

A. Impediments in General (cc. 1083-1094)

A marriage which takes place in spite of the existence of a non-dispensed impediment is invalid. The documentary process can be used for establishing at least the following impediments: disparity of cult, solemn vows of chastity, the bond of sacred orders, consanguinity, affinity, and (rarely) spiritual relationship. Contact the tribunal for assistance if it is suspected that a marriage might be invalid due to an impediment other than Prior Bond (below).

B. Previous Marriage Bond [*Ligamen*] (c. 1085)

The validity of a marriage may be challenged on the ground that one of the parties was bound by a **previous valid marriage** at the time of the exchange of consent. A person who is bound by a valid marriage may not contract another marriage during the lifetime of his/her spouse. An attempt at another union is invalid. Because the permanent nature of marriage is authored by God, not only ecclesiastical law, a previous valid bond binds all persons irrespective of religion.

The specific petition for this impediment is ***T-105: Petition for a Declaration of Invalidity of Marriage on the Grounds of Ligamen (Previous Existing Bond)***.

The petition and cover letter should include as much detail as possible concerning the parties' marital history. Included should be full names and addresses of all parties, birth dates, their baptismal status, marriage and divorce dates and locations, dates of death, etc. The purpose of this procedure is to determine by authentic documents the validity of the first marriage which, in turn, invalidates succeeding unions. The tribunal conducts the investigation and needs complete addresses for the petitioner, the respondent, and the third party (the previous spouse of the petitioner or the respondent).

The respondent is notified that the case has been presented and given the opportunity to respond. His/her response is not required. Names and addresses of witnesses are requested if documents proving the prior marriage cannot be provided. Witnesses may be asked to testify to

factual information concerning the marriage, i.e., date of the marriage, place of the marriage, etc. They are not asked to provide opinions concerning the quality of the marriage.

Normally, a *ligamen* petition is based on the respondent's prior valid bond of marriage. If the case is based on the petitioner's prior bond, it must not be one which has been or will be declared invalid.

The following documents must accompany the petition:

1. Certified marriage license applications and divorce decrees for all marriages involved. Request the application from the county wherein the marriage was recorded. The application often tells the number of times a person has been married.
2. Other records that may help (baptismal records for Christians of other traditions, death certificates, etc.).

Note: The approximate time to complete such a petition depends upon the ability to locate the necessary certified documents and the cooperation of all the parties involved.

IV. SAME-SEX 'MARRIAGES'

A marriage can only exist between one man and one woman. A person who has attempted 'marriage' with a person of the same biological sex is canonically free to marry a person of the opposite sex. In case of doubt, consult the tribunal.

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PART SIX: DISSOLUTION OF THE BOND

I. PAULINE PRIVILEGE (cc. 1143-1147)

A. Definition

The Pauline Privilege takes its name and requirements from Saint Paul's first letter to the Corinthians:

To the rest I say (not the Lord): if any brother has a wife who is an unbeliever, and she is willing to go on living with him, he should not divorce her; and if any woman has a husband who is an unbeliever, and he is willing to go on living with her, she should not divorce her husband. For the unbelieving husband is made holy through his wife, and the unbelieving wife is made holy through the brother. Otherwise your children would be unclean, whereas in fact they are holy. *If the unbeliever separates, however, let him separate. The brother or sister is not bound in such cases;* God has called you to peace. (1 Corinthians 7:12-15. Emphasis added.)

The Pauline Privilege is not a declaration of invalidity; it is rather a *dissolution* of a presumed-valid marriage based on certain prerequisites:

1. Both parties must be non-baptized persons at the time they married. The fact of their status as non-baptized individuals must be proved by means of knowledgeable witnesses or authentic documents. Knowledgeable witnesses are those who have known the non-baptized party most of his/her life (e.g. parents, siblings). At the time the Privilege is used, the respondent must remain non-baptized.
2. The petitioner must become validly baptized. The tribunal should be contacted if there are questions regarding the nature of the potential conversion.
3. If the petitioner was baptized during the course of the marriage under study, he/she must not be the party who caused the marriage to fail.
4. The petitioner must be intending to marry a specific person in the near future. If the petitioner is not intending to marry a specific person, the privilege cannot be invoked.
5. The respondent must not have been baptized by the time the decree is issued.

B. The Petition

The petition form for a Pauline Privilege (T-107) is to be used. A cover letter which explains the circumstances and the nature of the conversion should also be submitted with the petition. The respondent will be informed of the petition by the instructing judge. The testimony of the respondent, or at least relatives who have known him/her since childhood, is essential to establish the respondent's lack of baptism.

C. The Authorization

The authorization to use the privilege is granted by the diocesan bishop or his delegate. The petitioner must first be baptized. The previous marriage is automatically dissolved when the new marriage is contracted. The new marriage is normally contracted with a Catholic. In rare circumstances, the petitioner can contract the new marriage with a non-Catholic Christian.

II. FAVOR OF THE FAITH

A. Definition

A favor of the Faith dispensation is a *dissolution* of a marriage, granted by the Holy Father. It is not a declaration of invalidity. From the time of Pope Pius XI, dispensation from a non-sacramental, consummated marriage has been granted as a favor of the faith to one of the parties or even a third party who may wish to marry one of the parties of the dispensed marriage. Because it is a favor or a dispensation, it is possible that it may not be granted. The following conditions are essential if the dispensation is to be granted:

1. At least one of the parties must be non-baptized up to the time of the final separation of the spouses. The fact of non-baptism must be proved through means of witnesses and/or authentic documents.
2. Should the non-baptized person have received baptism after the decision to end the marriage, it must be established that there could have been no possibility of marital intercourse by the spouses after the baptism.
3. In those cases in which conversion does not take place, the Catholic baptism and education of the children to be born of the new marriage must be promised by both parties, including the non-Catholic party.
4. Reconciliation between the parties of the previous marriage must be impossible.

5. There must be no danger of public scandal or criticism should the Holy Father grant the dispensation.
6. It must be established that the petitioner was not the cause of the failure of the marriage in question. It must also be established that the Catholic party whom the petitioner wishes to marry in no way contributed to or provoked the failure of the marriage (for example, the petitioner and his intended spouse must not have begun their relationship before the end of the parties' life together).
7. The petitioner must intend to provide for the religious education of the children born of the marriage.
8. The petitioner must see to it that measures are taken in accord with the dictates of justice for the support of the spouse and children of the marriage to be dispensed.
9. The Catholic party with whom the petitioner desires to enter marriage must be fulfilling his/her religious obligations.
10. The norms of the instructions of the Congregation for the Doctrine of the Faith, *Potestas ecclesiae*, promulgated April 30, 2001, require that the respondent be informed of the petition by the instructing judge. The respondent is also to be questioned.

(*Note:* A succession of favor of the faith dispensations is not possible. If a previous marriage was celebrated in virtue of a favor of the faith dispensation, another favor of the faith dispensation for a subsequent marriage will not be granted. Furthermore, a favor of the faith dispensation will not be granted to a Catholic party who was dispensed from disparity of cult for a previous marriage and wishes to enter into another marriage with a non-baptized person. Likewise, a dispensation in favor of the faith will not be granted to a non-baptized person who was dispensed from disparity of cult to marry a Catholic person and wishes to enter a subsequent marriage with another Catholic.)

B. The Conversion of the Petitioner

The conversion of the petitioner is *not* required. However, it must be established that the practice of the Catholic faith will benefit should the dispensation be granted (e.g., marriage to a Catholic).

C. The Cover Letter of the Pastor

The **pastor** (not another priest, and not a deacon or lay minister) of the petitioner must compose a letter to the Holy Father in which he comments on the points mentioned above. He should pay special attention to the conversion of the petitioner, if applicable, and items four, five,

and six listed in the *Definition* section preceding. He should comment as well on the religious practice of the intended Catholic party. It is not necessary for the parish priest to obtain affidavits of non-baptism. The tribunal will obtain statements regarding the non-baptism of the party.

D. Documents Needed

Certified documents must accompany each petition. In addition to the marriage to be dispensed, each marriage connected to the specific circumstances of the petitioner and the current spouse or intended spouse must be completely documented. Depending on the specific circumstances of the marriage to be dispensed, the following documents will be needed:

1. Divorce decree of petitioner and respondent.
2. Marriage record of petitioner and respondent.
3. Marriage record of petitioner and current spouse.
4. Marriage record of current or intended spouse and previous spouse.
5. Divorce decree of current and previous spouse.
6. Baptismal certificate (if Catholic) issued within the past six months, of petitioner; respondent; current spouse or proposed spouse; and previous spouse of current spouse or intended spouse.
7. Baptismal certificates of children born to the marriage to be dissolved.
8. Baptismal certificates of children born to the petitioner and current spouse.
9. Ecclesiastical statement of invalidity of marriage of current spouse or intended spouse and previous spouse.

E. The Forwarding of the Case to Rome

After the tribunal has completed the initial investigation to establish the non-baptism of the party and the worthiness of the petitioner, the case is transcribed and sent for review to the Congregation for the Doctrine of the Faith in Rome with the recommendation of the diocesan bishop. The Congregation for the Doctrine of the Faith will review the documents and, if the requirements are met, recommend that the Holy Father grant the dissolution.

Petitions are submitted to the Congregation for the Doctrine of the Faith only after the judge instructor is satisfied that adequate proof exists regarding non-baptism of the petitioner or respondent and worthiness of the petitioner. After a petition has been sent to Rome, a reply is usually received by the tribunal within six months. However, should there be a request by the Congregation for further information, additional time may be added to the process.

The Congregation for the Doctrine of the Faith requests a fee for each petition submitted; this fee is now covered from the tribunal's budget and there is no charge to the petitioner.

III. RATIFIED BUT NOT CONSUMMATED MARRIAGES (c. 1142)

If a marriage – even a sacramental marriage – has not been consummated, the Roman Pontiff can dissolve the marriage. After preparation by the tribunal, the case is sent to the staff in the office of the Roman Rota for further consideration and recommendation to the Holy Father.

The canonical understanding of consummation requires the deposit of male ejaculate during vaginal intercourse after the wedding. The tribunal should be consulted before attempting to submit a case of this kind.

IV. DISSOLUTIONS OF MARRIAGE IN OTHER CIRCUMSTANCES

When a polygamous unbaptized man with several unbaptized wives is baptized into the Catholic Church and it would cause hardship for him to remain with the first wife, he may choose to remain with a subsequent wife instead. The same applies, *mutatis mutandis*, for a polyandrous woman (c. 1148).

A person who cannot reestablish the common life with a spouse due to captivity or persecution can contract a new marriage, as long the marriage was not consummated after baptism (c. 1149).

Please consult the tribunal before attempting to use either of these provisions.

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PART SEVEN: APPENDIX

I. FINANCIAL POLICY

Since May 2014, no fees are asked of petitioners for marriage cases at the tribunal of the Diocese of Cleveland. This includes consultation with an expert witness, where necessary. The operating costs of the tribunal are funded entirely by the faithful of the Diocese of Cleveland in their Sunday offerings.

II. GUIDELINES FOR DOCUMENTS

A. All Documents

Original certified documents must be submitted with all petitions for a declaration of invalidity. When the process is completed the documents will be returned to the petitioner. If the originals are needed by the petitioner prior to the conclusion of the case, contact the tribunal.

B. Specific Documents

1. Baptism

For Catholics: Baptismal records must be recent, dated within six months of submission. If the baptismal record of the respondent cannot be obtained by the petitioner or procurator, the tribunal will request it from the proper parish.

For non-Catholics: Any document or copy of a baptismal record is sufficient.

When certificates are prepared, all notations in the baptismal register must be included. If there are no notations, this should be indicated in an appropriate place. Procurators should be careful to review the notations on the reverse side of baptismal certificates they receive from petitioners.

2. Marriage

Civil documents must be originals or certified copies. Two documents are required – a marriage certificate/record indicating the place, date, and who performed the ceremony and a marriage license application indicating any previous marriages. These documents may be obtained from the county in which the parties **applied** for their marriage license, *not* from the county in which they were married.

3. Divorce or Dissolution

A certified copy is essential since it indicates the case number and filing date. If the separation agreement is lengthy and distinct from the divorce or dissolution decree, it need not be submitted unless it offers facts which support the petitioner's allegations. It is often helpful to review the divorce decree for information regarding alimony, child support arrangements, etc.

4. Pre-Nuptial Files

A pre-nuptial file should be submitted with the petition when it is available in the procurator's parish archives. The tribunal will request the file from other parishes. It is important to send everything which is in the file.

C. Obtaining Documents

The responsibility for obtaining civil documents rests with the petitioner. Marriage documents are obtained from the county court house that issued the marriage license. This is not necessarily the county in which the marriage took place. Divorce records are obtained through the court in which the divorce was filed. A minimal fee is generally required for certified documents.

The responsibility for obtaining ecclesiastical documents also rests with the petitioner, but the procurator may offer assistance.

III. Communities in Which Valid Baptism Is Not Practiced or Is Doubtful

(For a more complete list see JOHN M. HUELS, *The Pastoral Companion*, 2009, pp. 380-381).

1. Communities Which Do Not Practice Valid Baptism

Apostolic Church

Baha'i

Bohemian Free Thinkers

Christadelphians

Christian Scientists

Church of Divine Science

Church of Jesus Christ of the Latter-Day Saints ('Mormons')

Church of the Universal Brotherhood

Church of the New Jerusalem in the USA (Swedenborg)

Jehovah's Witnesses

People's Church of Chicago

Reunification Church ('Moonies')

Salvation Army

Seventh Day Adventist

Shakers

Society of Friends ('Quakers')

Unitarians

2. Communities Whose Baptism Is Doubtful

Baptism practiced in the following communities requires an investigation into each case:

Mennonite

Moravian Brethren

Pentecostal

Plymouth Brethren

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PART EIGHT: GLOSSARY

ABATEMENT. If, over a period of six months, no action has taken place in a case, the process is ended. The case is placed in the inactive file. The process may be renewed by written request of a party or his/her procurator.

ACTS OF THE CASE. The proofs that have been gathered and will be used by the judge(s) to decide the case as well as the decrees issued by the judge(s) are considered the acts of the case.

ADVOCATE. An advocate is a person who assists either party with representation in a marriage case. While a procurator has a more pastoral role, the advocate has specialized knowledge of canon law to assist the party if this is necessary.

AFFINITY. Affinity is a relationship that derives from a valid marriage. It exists between the man and the blood relatives of the woman, and between the woman and the blood relatives of the man (canon 109).

AFFIRMATIVE DECISION. An affirmative decision given in a declaration of invalidity states that the judge is morally certain that a specific marriage bond is invalid.

ATTEMPTED MARRIAGE. A person is bound by a valid bond of marriage until the death of his/her spouse or until the bond is declared invalid or dissolved by the Church. A person obliged by a previous marriage invalidly attempts a second marriage.

ASSESSOR. The canonist who advises the bishop in judging a shorter process case.

AUDITOR. An auditor is a tribunal official, appointed by the bishop, who assists the judge in the collection of proofs by interviewing the parties or witnesses, tracking the activities of the case, etc. The auditor acts as a kind of ‘case manager’ and is usually the first point of contact for enquiries about the progress of a case.

BRIEF. A brief is a short summary of the case with observations and arguments of important points relative to the validity or invalidity of the bond. The brief of the procurator or advocate of the petitioner argues for invalidity. The brief of the defender of the bond argues for validity.

CANON LAW. Canon law encompasses all the laws of the Catholic Church, divine and ecclesiastical, as well as universal and particular. Examples are the *Code of Canon Law*, *Code of Canons of the Eastern Churches*, liturgical laws, laws promulgated by the diocesan bishop, etc.

CANONICAL FORM. Canonical form is the celebration of a marriage of at least one Catholic party, in the presence of two witnesses and a properly delegated cleric.

CAUTION. An expression of pastoral concern to be addressed during marital preparation.

CHURCH (COMMUNITY). A Christian community that has valid sacraments and apostolic succession is considered a church community. Examples include the Catholic Church, the Polish National Church, the Greek Orthodox Church, etc.

CHURCH (*sui iuris*). Each of the twenty-four churches (twenty-three Eastern Churches and the Latin Church) that form the Catholic Church is considered a church (*sui iuris*). They have their own hierarchy and law, as well as maintain union with the Pope. Examples include Latin, Byzantine, Melkite, Ukrainian, Romanian, etc.

COLLEGIATE TRIBUNAL (COLLEGE OF JUDGES). A collegiate tribunal consists of three judges who are appointed to hear a case. They vote on the decision.

COMPETENCE. Competence refers to the fact that a tribunal must be entitled to hear a specific case. Competency is determined by the place the marriage occurred, the domicile or quasi-domicile of the parties, or the place where most of the proofs will be collected (with the consent of the judicial vicar of the domicile of the respondent) (canon 1672).

CONDITIONAL CONSENT. If a person attached a future condition to the marriage, the consent is invalid. The individual gives the condition greater importance than the marriage. Without the condition, the person would not want the marriage (canon 1102).

CONSANGUINITY. Consanguinity is a relationship by blood (canons 108, 1091).

CONSENT (MARITAL). The act of self-giving and accepting, of embracing marriage as a partnership of the whole of life ordered toward the procreation and education of children and the good of both spouses. Consent makes marriage.

CONSUMMATION. Consummation is the willing and mutual act of sexual intercourse after the exchange of valid consent.

CONVALIDATION. The validation or convalidation of a marriage transforms an invalid marriage into a valid one. The consent must be a new act of the will consenting to a marriage which the parties knew was invalid from the beginning (canons 1156-1160).

COURT OF FIRST INSTANCE. The tribunal that initially hears a case is the court of first instance. It sets the grounds, gathers the proofs, and makes the initial decision.

COURT OF SECOND INSTANCE. The tribunal that examines the procedures of the first instance court as well as the evidence that was gathered is the court of second instance if an appeal is made against the decision of the Court of First Instance.

DECLARATION OF INVALIDITY OF MARRIAGE. A declaration of invalidity is a judgment by the tribunal that a marriage is invalid.

DECREE (GENERAL). A decree is a law issued by a competent legislator for a community.

DECREE (JUDICIAL). A judicial decree is an act of a judge that makes a decision on a matter.

DECREE OF CONTESTATION (JOINDER OF THE ISSUE). After reviewing the available evidence, the judge(s) set(s) the grounds on which the case will be judged.

DEFENDER OF THE BOND. An official of the court who offers everything that can be reasonably proposed in favor of the validity of the marriage bond is the defender of the bond.

DELEGATION FOR MARRIAGE. The sacred minister must be properly delegated to witness a marriage. In the Diocese of Cleveland, pastors and parochial vicars have the faculty to witness marriages only in their assigned parishes. Deacons assigned to the parish require delegation by the pastor. Visiting priests and deacons must be delegated by the pastor or parochial vicar.

DIRIMENT IMPEDIMENT. A diriment impediment is a fact, state, or condition that results in an invalid marriage (canon 1073).

DISPARITY OF CULT. Disparity of cult is an impediment to marriage between a Catholic and a non-baptized person. The Catholic must obtain a dispensation from this impediment before he/she can contract a valid marriage (canon 1086).

DISPENSATION. A dispensation is the relaxation of an ecclesiastical law in a particular case. It is granted by someone who has the power to dispense the given law (canon 85).

DISSOLUTION. A dissolution does not challenge the validity of a marriage bond but canonically terminates it in specific situations in favor of the practice of the Catholic faith.

DIVINE LAW. Divine law is the law of God that is binding on all individuals.

DIVINE NATURAL LAW. Divine natural law includes laws and principles that are knowable by human reason which come from God and are binding on all individuals. It cannot be restricted or conditioned by the Church.

DIVINE POSITIVE LAW. Divine positive laws are laws of God that are revealed in scripture and tradition. They are declared as truths of faith by the teaching office of the Church. It cannot be restricted or conditioned by the Church.

DOCUMENTARY CASE. Documentary cases are cases in which the invalidity of the marriage can be proved through authentic documents, i.e., lack/defect of form, prior bond, disparity of cult, etc.

DOMICILE. Domicile is the permanent residence of an individual.

ECCLESIAL COMMUNITY. An ecclesial community is a Christian denomination which practices valid baptism but does not have valid ordination.

ECCLESIASTICAL LAW. An ecclesiastical law is a human law made by the Church. It can be changed by the Church and binds only Catholics and others through association. It can be dispensed by the competent ecclesiastical authority (canon 11).

ERROR OF PERSON. Error of person is a ground for declaring a marriage invalid. It is based on the mistaken identity of one's intended spouse (canon 1097, §1).

ERROR OF QUALITY. Error of quality is a ground for declaring a marriage invalid. It is based on an error concerning a quality of one's intended spouse. This quality must be directly and principally intended (canon 1097, §2).

EXPERT WITNESS (*peritus*). A *peritus* is an expert in a given field who is consulted by the tribunal in order to clarify specific issues in a marriage case. It usually refers to a mental health professional but can also refer to experts in various cultures or customs.

EXTERNAL FORUM. The external forum operates in the public realm and includes observable, verifiable facts. Marriage tribunals operate in the external forum.

FACULTY FOR MARRIAGE. The cleric who is the official witness of a marriage must have the authority to act. This authority comes through his office or by delegation. In the Diocese of Cleveland, pastors and parochial vicars assigned to a parish have this authority only in the territory of that parish.

FORCE OR FEAR. Marriage must be entered freely. When force or grave fear, inflicted from outside, is imposed on a person, consent is invalid if he/she is compelled to choose marriage to be free of it (canons 1103).

FORM (CANONICAL). For a valid marriage, a Catholic is required to be married in the presence of two witnesses and a cleric who has the faculty to assist at the marriage.

FAVOR OF THE FAITH (*favorem*). See *Petrine Privilege*.

FRAUD (*dolus*). Marriage consent is invalid if a party exchanged consent as a result of being deceived concerning a quality of the spouse which could disrupt seriously the communion of life, e.g., serious medical condition such as AIDS, a criminal record, psychiatric illness, etc. (canon 1098).

GROUND OF INVALIDITY. Reasons that would make a marriage bond invalid are the grounds on which the declaration of invalidity would be based.

IGNORANCE. Marriage is a permanent relationship between a man and a woman which is ordered toward the procreation and education of children by means of sexual cooperation. If a party is ignorant of these facts, the marriage is invalid (canon 1096, §1).

IMPEDIMENT. See Diriment Impediment.

INDISSOLUBILITY. Indissolubility is an essential property of marriage which holds that a valid marriage bond is permanent (canon 1056).

INSTRUCTING JUDGE. Judge who directs the information gathering phase of the process.

INSTRUCTOR. The tribunal staff member who leads the evidence gathering in shorter process cases. Similar to an Auditor in an ordinary process case.

INSTRUCTION OF A CASE. The phase of the case in which information is gathered, e.g., testimony of the parties, testimony of the witnesses, opinions of counselors and/or expert witnesses, etc.

INTERNAL FORUM. The internal forum is the forum of conscience. It is a person's thoughts, sins, and actions that are not publicly known. It is the forum in which the sacrament of reconciliation operates.

JOINER OF THE ISSUE. See Decree of Contestation.

JUDGE. A judge is a person appointed by the diocesan bishop to hear and decide cases brought to the tribunal.

JUDICIAL VICAR. The judicial vicar is a priest who is the chief judge and administrator in the tribunal.

LACK OF DUE COMPETENCE. If a party suffers from a psychological disorder which interferes with his/her ability to assume the obligations of a permanent, exclusive, heterosexual partnership, the marriage is invalid. The party is incapable of assuming the essential obligations of marriage due to causes of a psychological nature (canon 1095, §3).

LACK OF DUE DISCRETION. Marital consent must be informed, prudent, and free. If the intellect is not able to make a mature evaluation of the decision to marry or the will is not able to make a free choice, the consent is invalid. The party suffers from a grave lack of discretion of judgment (canon 1095, §2).

LACK OF SUFFICIENT USE OF REASON. If a party is impaired by a severe psychiatric disorder, severe mental retardation, or intoxication which prohibits the use of reason at the time consent is exchanged, the consent is invalid. The party suffers from a lack of sufficient use of reason (canon 1095, §1).

LEGAL RELATIONSHIP. A legal relationship arises through legal adoption and is an impediment to a valid marriage in the direct line or in the second degree of the collateral line.

LIBELLUS. The *libellus* is the formal petition presented by the petitioner to the tribunal. It contains the basic information needed to begin the process, e.g., names of the parties, their baptismal status, place and date of wedding and divorce, the domiciles of the parties, etc.

LICEITY. An act that has followed the prescription of the law. Generally refers to a requirement that is not necessary for the validity of an act.

LIGAMEN. See Prior Bond.

MIXED MARRIAGE. A mixed marriage is marriage between a Catholic and a baptized non-Catholic (canon 1124).

MORAL CERTITUDE. Moral certitude is that degree of assurance which induces a person of sound mind to act, without doubt, upon the conclusions to which it leads. It is defined as the absence of well-founded doubt. If the judge cannot reach moral certitude, the presumption of the validity of the marriage bond remains.

NEGATIVE DECISION. A negative decision given in a declaration of invalidity states that the judge did not reach moral certitude that a specific marriage bond is invalid. Because the validity of a marriage is already presumed in law, a negative decision does not claim that a given marriage is proven valid. It merely states that it has not been proven invalid.

NOTARY. A notary is an official of the tribunal who authenticates documents.

ORTHODOX CHURCHES. The Orthodox Churches have valid sacraments and apostolic succession but are not under the leadership of the pope. For validity, they require that their members receive a nuptial blessing from an Orthodox priest. Since 25 March 1967, marriages of Latin Catholics to Orthodox Christians which were celebrated by Orthodox priests are valid even if permission was not given by the Latin bishop.

PAULINE PRIVILEGE. The Pauline Privilege is the dissolution of a presumed-valid marriage between two non-baptized parties, following Saint Paul's instructions in 1 Corinthians 7:12-15.

PETITIONER. The petitioner is the party who introduces the case to the tribunal.

PETRINE PRIVILEGE (FAVOR OF THE FAITH OR FAVOREM). The Petrine Privilege is a dissolution of a presumed-valid marriage in which at least one party is non-baptized. It is granted by the Holy Father as a favor of the faith of one of the parties or of a third party who desires to marry one of the parties.

PONENS. The *ponens* is the judge who writes the final decision on a case.

PRESIDING JUDGE. When a collegiate tribunal hears a case, one of the judges is appointed as the presiding judge who has particular responsibilities during the trial.

PRIOR BOND (*ligamen*). If one party is bound by a previous valid marriage, he/she may not contract another marriage. The prior bond is an impediment to the second and subsequent marriages (canon 1085).

PROCURATOR. The procurator is a priest, deacon, or pastoral minister who is mandated by a party to perform acts before the tribunal in the party's name as well as provide guidance and support during the processing of the case.

PROHIBITION. When the judge(s) in a case of invalidity has/have serious concerns regarding an individual's capacity or readiness for marriage, the judge(s) may place a caution/prohibition on one or both parties. No arrangements are to be made for another marriage until the pastoral minister or priest who is preparing the person for marriage consults with the judge.

PROOFS. The proofs are the evidence which will be used by the judge(s) when making a decision. It includes the statements of the parties, testimony of witnesses, input of expert witnesses, etc.

PUBLICATION. When all the proofs have been gathered, the parties and/or their procurators/advocates, must be permitted to inspect the proofs that will be used to decide the case. This is called the publication of the acts. When the judge(s) make(s) the final decision, the parties and/or their procurators/advocates must be permitted to read the decision. This is called the publication of the sentence. In each case, the purpose of publication is to ensure that the right to defense is protected.

PUTATIVE MARRIAGE. A putative marriage is an invalid marriage that has been celebrated in good faith by at least one of the parties. It is putative until both parties become certain of its invalidity (canon 1061, §3).

QUASI-DOMICILE. Quasi-domicile is the temporary residence of at least three months of an individual.

RADICAL SANATION. A radical sanation is an action by which an invalid marriage is made valid retroactively without the renewal of consent (canon 1161).

RATIFIED MARRIAGE. A ratified marriage is a valid marriage between two baptized persons. It is a sacramental marriage (canon 1061, §1).

RESPONDENT. The respondent is the divorced spouse of the petitioner.

ROMAN CURIA. The Roman Curia is made up of the various offices, departments, tribunals, etc. of the Apostolic See.

ROMAN ROTA. The Roman Rota is one of the three tribunals of the Roman Curia. It is the principal appellate court of the Curia and has competence to hear appeals of marriage cases in second and third instance.

SENTENCE. After the judge has evaluated the acts of the case along with any briefs that have been submitted, he/she renders a decision which is put forth in the sentence. In the sentence, the judge states and applies the law to the facts of the case.

TRIBUNAL. The tribunal is a court established by the Catholic Church to decide issues presented to it; most of the work of the diocesan tribunal involves cases that examine the validity of marriages.

UNITY (MARITAL). Unity is an essential property of marriage that requires monogamy and fidelity (canon 1056).

USE OF REASON. Reason is a function of intellect and will. Both parties must possess sufficient use of reason to exchange valid marital consent.

VALIDITY. Some laws are so serious that they must be observed for an action to produce the effects described in the law. If marriage consent is valid, the result is a marital bond that is permanent, faithful, indissoluble, and open to the procreation and education of children.

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PART NINE: SAMPLE PETITIONS

These examples are intended to give some idea of how typical marital histories encountered by procurators might be translated into statements claiming reasons for invalidity, using the groups of reasons for invalidity on pages 17-18. The details in these examples are not intended to indicate that a real marriage with similar facts would be found invalid.

First example

In this example, the procurator recognized that the couple's decision to marry was based on poor reasons. Depending on the details in the testimony and the participation of the respondent and witnesses, the tribunal might consider using the grounds of total simulation (c. 1101 §2) or a grave lack of discretion of judgment (c. 1095 °2) on the part of the petitioner.

I believe the marriage is invalid because Bob and I married for all the wrong reasons. Although we had been dating steadily for a while, our engagement was prompted mainly by the fact that he was about to be deployed overseas and wanted someone 'at home' to come back to. I was completely surprised by the proposal but, seeing everyone looking at my face for an answer, felt like I couldn't say no.

My own parents' marriage ended in divorce when I was young, so I had no real idea of what a good marriage should look like. I ought to have taken the advice of my friends who, seeing how Bob disrespected me, advised against the wedding, but things just seemed to be snowballing ahead and I didn't have the courage to call everything off. On the morning of the wedding I still had my doubts, but decided to give it my best shot.

The evidence is my own testimony, Bob's (if he will participate) and the testimony of my friends and family, especially my bridesmaid Anna with whom I shared my fears and who advised against the wedding. My family can confirm the general course of the relationship but may not know much about the problems. Bob's parents, if they reply, should be able to testify about his motives for the marriage.

Second example

In this example, the procurator recognized the petitioner's attitude to children was problematic, and encouraged him to give more detail about this aspect of the relationship. Depending on the details in the testimony and the participation of the respondent and witnesses, the tribunal might consider the grounds of partial simulation by an intention against children (c. 1101 §2), or error of quality of person (c. 1097 §2) on the part of the respondent.

This marriage is invalid because I would not agree to have children with Rachel. Before the wedding we talked vaguely about children and said that we might have them at some time in the future, but it was all just idle daydreaming for me. I was amazed that, very soon after the wedding, Rachel started talking about having children in the near future. I would always tell her it was not the right time; our careers were just taking off, we were juggling student loans, and none of our friends were having kids yet. As things went on I became stronger in my reluctance to have children with her, and we just didn't feel as close as we used to. I was surprised at how important it was for her to have children. I stopped trusting that she was taking her birth control pills and started insisting on using condoms. Soon after this she left me, saying she wanted to have children before it was too late for her. I now recognize that when I went into the marriage, I was withholding from her the gift of my fertility.

Complete details are given in my written testimony. My family and friends know nothing of these intimate details. Rachel can confirm it all, along with her sister.

Third example

In this example, the procurator recognized the importance of the respondent's mental health issues, and of the petitioner's reflections on her own decision to marry him. Depending on the details in the testimony and the participation of the respondent and witnesses, the tribunal might consider the grounds of an incapacity to assume the essential obligations of marriage (c. 1095 °3) on the part of the respondent, or a grave lack of discretion of judgment on the part of the petitioner (c. 1095 °2).

My marriage is invalid because Joe's psychological problems prevented him from being a suitable husband. From the very beginning of the marriage, his erratic behavior made my life very difficult. I was constantly taking care of him; he was not a true partner to me. Although we had two children together, it felt like I had to take care of three children; the two girls and Joe.

For my own part, I recognize now that when I married Joe I was looking for someone to take care of and not an equal partner. I had just about come to this realization and was thinking of leaving when I discovered I was pregnant with my oldest daughter. I stuck it out for another ten years after that, but felt I had to leave when I saw the effect his illness was having on our children's development.

My testimony details the many ups and downs of my relationship with Joe, along with my reflections on why I initially found myself drawn to him. I also enclose the psychological evaluation of Joe that was ordered by the court as part of our child custody hearing.

Fourth example

In this example, the procurator recognized that the respondent deliberately deceived the petitioner, who would not have married him had she known the truth. Depending on the details in the testimony and the participation of the respondent and witnesses, the tribunal might consider the grounds of error of quality of person (c. 1097 §2) or fraud (c. 1098) on the part of the petitioner.

My marriage is invalid because Matthew tricked me into marrying him, by making me believe something about him that was not true. I met him online and communicated through emails for several months before we actually had our first date. I had told him that it was very important to me that I be with someone who shared my Catholic faith – I attend Mass daily, am active in my parish as a lector, and teach in our parish school of religion. Matthew told me that he had been in the seminary for several years. I never checked it out because I had no reason not to believe him.

Matthew and I attended Mass together every Sunday during our eight month courtship and prayed the Rosary together every week. The main reason that I married Matthew was because I believed he was a committed practicing Catholic. He said his whole family was very religious, but he never introduced me to his parents or to his brother and sister until the wedding rehearsal. I thought it was strange that although they were allegedly very religious that they were so disrespectful to the priest who led the rehearsal.

The last time he attended Mass with me was our nuptial Mass. After we married, he always found an excuse not to go. I found out about a month after the honeymoon from his friend Steve that he had never been in the seminary. When I mentioned to Steve that I had been so impressed by the importance Matthew gave his faith, Steve just laughed. Steve had known him for fifteen years and in that time the friend was certain he had never known him to go to Mass or to any church service at all.

I was devastated to say the least. When I asked Matthew about all this, he just laughed and said it was too late for me to do anything about it since we were married. My mother and father are able to confirm my testimony as are my sister and my uncle. They were present on a number of occasions when Matthew talked about his seminary days and his ‘pilgrimages.’ Steve is also willing to testify.

PART TEN: BIBLIOGRAPHY

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The Apostolic Letter *Mitis Iudex Dominus Iesus*, promulgated by Pope Francis on September 8, 2015 and coming into effect on December 8 of the same year, has significantly rewritten the procedural law for cases concerning the invalidity of marriage. All publications written previously must be read with the knowledge that much of their subject matter has significantly changed. As of early 2016, no reliable commentaries on the new norms have been published in English. Please exercise extreme caution when reading of the changes in press coverage, much of which is seriously misleading.

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