

The New Process

ANNULMENTS IN THE 21ST CENTURY

This is not a “get out of jail free” card.

The new process still requires that we be thorough and have a clear understanding of the facts of each case. A petition that is manifestly false or frivolous or lacks any evidence can still receive a negative decision.

The Annulment Process

Matthew 19

Now it came to pass, when Jesus had finished these sayings, that He departed from Galilee and came to the region of Judea beyond the Jordan. And great multitudes followed Him, and He healed them there. The Pharisees also came to Him, testing Him, and saying to Him, "Is it lawful for a man to divorce his wife for just any reason?" And He answered and said to them, "Have you not read that He who made[a] them at the beginning 'made them male and female,' and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh'? So then, they are no longer two but one flesh. Therefore what God has joined together, let not man separate." They said to Him, "Why then did Moses command to give a certificate of divorce, and to put her away?" He said to them, "Moses, because of the hardness of your hearts, permitted you to divorce your wives, but from the beginning it was not so. And I say to you, whoever divorces his wife, except for sexual immorality, and marries another, commits adultery; and whoever marries her who is divorced commits adultery." His disciples said to Him, "If such is the case of the man with his wife, it is better not to marry."

The Annulment Process

Step One: Meet with the Petitioner.

This meeting should be friendly and supportive. Encourage the Petitioner to be open and honest about their story. Reinforce the confidentiality of the process. Remind them that there are biblical and sacramental reasons for having to investigate the marriage.

Leave your own opinions about the process at the door- ultimately they will not help the person you are counseling. It is better to know the law and get it to work for you, not against you!

If they are frustrated with the process encourage them to get smart, not angry.

The advocate's attitude about the process can sometimes make all the difference.

The Annulment Process

Step Two: The Documents

This is one of the chief areas where we lose time in the process. Make sure all documents are gathered quickly from approved sources

- Full (First, Middle, Last, Maiden) Names. Full Addresses.
- Current Baptism record with Notations.
- Certificate of Marriage.
- Divorce Decree.
- Identification of Witnesses and Mandate (signed).
- Documents should be gathered from all previous marriages, not just the ones that the parties think "count."

The Annulment Process

Step Three: The Short History

After you have taken time to get to know the Petitioner, ask some questions about the marriage at bar and encourage the Petitioner to begin filling out the "short history."

Do not leave any space blank. If the party states that there were no problems before marriage, ask questions in order to draw out the answers. Sometimes the memories will be buried or the person is still looking through "rose-colored glasses."

The short history should be written from the perspective of the Petitioner, not the Advocate. Remember that this is that person's petition, not yours.

The Annulment Process

Step Four: The Grounds

Before you start checking all the possible grounds, ask the Petitioner which of them will actually be able to be proven before the court.

Generally two people must be able to state something before it is considered factual in the court proceedings. "One witness is no witness."

That which can be proven with official documents is also helpful.

Take time to go through each potential ground with the Petitioner and ask specific questions about the circumstances of the marriage at bar.

Any grounds that are checked should also appear in the "short history."

The Annulment Process

Step Five: The Proofs

At this step it is important to identify sources of information that will help the case proceed. Primarily this is in the form of witnesses.

Witnesses should be people that knew the couple at the time of marriage.

Character witnesses are those who know the parties well and can attest to their truthfulness (or lack thereof).

Official documents, such as arrest records or correspondence can also be collected at this time if the Petitioner has access to them.

The Annulment Process

Step Six: Final Matters

Verify that all documentation has been collected.

Sign the mandate.

Have the Petitioner initial the "Petition Agreement."

Do not promise a swift conclusion. Be realistic with the person and urge them to be patient.

The Shorter Process

In certain circumstances, a shorter process may be possible. The new law creates an "administrative process" for annulments that will likely be much shorter than the formal process.

The proofs are collected at the beginning.

The Respondent must agree with using the shorter process.

The Bishop makes the final ruling.

The Shorter Process

From *Mitis*:

It is thus the concern for the salvation of souls that today as yesterday remains the supreme goal of the Church's institutions, rules and law, which impels the Bishop of Rome to offer to the bishops this document of reform, inasmuch as they share with him the task of the Church, namely the protection of the unity of faith and discipline regarding marriage, the cornerstone and origin of the Christian family. The zeal to reform has been fueled by the enormous number of faithful who, while wishing to act according to their consciences, are too often separated from the legal structures of the Church due to physical or moral distance; charity and mercy therefore require that same Church, as a mother, to make herself closer to her children who consider themselves separated.

The Shorter Process

I. – A single executory sentence in favor of nullity. – It seemed appropriate, in the first place, that there is no longer required a double conforming decision declaring the nullity of the marriage to enable the parties to be able to contract a new canonical marriage. Instead, moral certainty, reached by the first judge under the norm of law, is considered sufficient.

The Shorter Process

II. – A single judge acts under the responsibility of the bishop. – The constitution of a single judge, who nevertheless is to be a cleric, is in the first instance committed to the responsibility of the bishop, who in the pastoral exercise of his judicial power is to take care that no laxism whatever is indulged.

The Shorter Process

III. – The bishop himself is judge. – In order that the teaching of the Second Vatican Council may finally be put into practice in an area of great importance, it was decided to make it clear that the bishop himself, in his church of which he is constituted shepherd and head, is by that reason himself a judge among the Christian faithful entrusted to him. It is greatly hoped that in large as well as in small dioceses the bishop becomes a sign of the conversion of ecclesiastical structures and does not leave the judicial function in matrimonial matters completely delegated to the offices of his curia. This is especially true in the briefer process which will be established to resolve the most evident cases of nullity.

The Shorter Process

IV. – The briefer process. – Indeed, aside from expediting the ordinary process for the declaration of nullity, a form of briefer process is designated – in addition to the current documentary procedure – to be applied in cases in which the alleged nullity of the marriage is supported by particularly clear arguments. It has not entirely escaped us that a briefer process can endanger the principle of the indissolubility of marriage. For precisely this reason we have chosen that in such a procedure, the judge is to be the bishop himself who, due to his pastoral office, is with Peter the greatest guarantor of Catholic unity in faith and in discipline.

The Shorter Process

The Rules for competency have been simplified:

- 1° the tribunal of the place in which the marriage was celebrated;
- 2° the tribunal of the place in which either or both parties have a domicile or a quasi-domicile;
- 3° the tribunal of the place in which in fact most of the proofs must be collected.

The Shorter Process

The Respondent must still be contacted. The Defender of the Bond is contacted at this time as well. The Respondent and Defender have fifteen days to make a response to the Petition.

After this fifteen days, the Judicial Vicar will formulate the doubt and decide if the case qualifies for the documentary process, the shorter process, or the formal process.

The Shorter Process

Can. 1678 § 1. In cases of the nullity of marriage, a judicial confession and the declarations of the parties, possibly supported by witnesses to the credibility of the parties, can have the force of full proof, to be evaluated by the judge after he has considered all the indications and supporting factors, unless other elements are present which weaken them.

§ 2. In the same cases, the testimony of one witness can produce full proof, if it concerns a qualified witness making a deposition concerning matters ex officio, or unless the circumstances of things and persons suggest otherwise.

The notion of “full proof” has been broadened to include a the statement of a single party backed up by witnesses to credibility (character witnesses).

The Shorter Process

Can. 1683. The diocesan bishop himself is competent to judge the cases of the nullity of marriage with the briefer process whenever:

- 1° the petition is proposed by both spouses or by one of them, with the consent of the other;
- 2° circumstance of things and persons recur, with substantiating testimonies and records, which do not demand a more accurate inquiry or investigation, and which render the nullity manifest.

Note that the Respondent must give consent for the shorter process and there must be substantiating evidence at the beginning of the process in order to proceed with the briefer process.

The Shorter Process

Can. 1684. The libellus which introduces the briefer process, in addition to those things enumerated in can. 1504 must:

- 1° set forth briefly, fully, and clearly the facts on which the petition is based;
- 2° indicate the proofs, which can be immediately collected by the judge;
- 3° exhibit documents on which the petition is based in an attachment.

See the Revised Petition in your handouts. Page 4 includes instructions for the Shorter Process.

The Shorter Process

The Shorter Process requires a thorough investigation from the start:

“The pre-judicial or pastoral investigation, which in the context of diocesan and parish structures receives those separated or divorced faithful who have doubts regarding the validity of their marriage or are convinced of its nullity, in the end is directed to understanding their situation and to gathering elements useful for the eventual judicial process, either the ordinary or the briefer one. This investigation will be developed within the unified diocesan pastoral care of marriage.”

The Shorter Process

The pastoral investigation will collect elements useful for the introduction of the case before the competent tribunal either by the spouses or perhaps by their advocates. It is necessary to discover whether the parties are in agreement about petitioning nullity.

All elements having been collected, the investigation culminates in the libellus, which, if appropriate, is presented to the competent tribunal.

The Shorter Process

The respondent who remits himself or herself to the justice of the tribunal, or, when properly cited once more, makes no response, the respondent is deemed not to object to the petition.

The Shorter Process

Among the circumstances of things and persons which can allow a case for nullity of marriage to be handled by means of the briefer process according to canons 1683-1687, are included, for example: the **defect of faith** which can generate simulation of consent or error that determines the will; a **brief conjugal cohabitation**; an **abortion** procured to avoid procreation; an obstinate persistence in an **extra-conjugal relationship** at the time of the wedding or immediately following it; the deceitful concealment of **sterility**, or grave **contagious illness**, or **children** from a previous relationship, or **incarcerations**; a **cause** of marriage completely **extraneous** to married life, or consisting of the **unexpected pregnancy** of the woman, **physical violence** inflicted to extort consent, the **defect of the use of reason** which is proved by medical documents, etc.

The Shorter Process

Evidence is important!

See the two documents regarding proofs in your packet:

- The Witness Form
- The Evidence Form

State clearly what the evidence is showing to the judge and make sure it is signed and sealed in your presence. These forms should be clearly labeled and accompany the Petition if you wish to use the Shorter Process

The Shorter Process

The Canons establish several time limits for the hearing of proofs.

The initial hearing is to be held within thirty days of the formulation of the doubt. This is the only time allotted to gather proof for nullity. This is why it is important to have most of the evidence gathered beforehand. Both parties are allowed to attend this hearing and present their own briefs.

Following the initial hearing, there is a limit of fifteen days to gather evidence in favor of the bond.

After this time the bishop will look over the evidence gathered and make his final decision.