Continuing Education for Advocates and Priests

METROPOLITAN TRIBUNAL AND OFFICE OF CANONICAL AFFAIRS
AUGUST 2016

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ADVOCACY
- Accompanying the Petitioner
- Identifying Grounds
- Drafting the Libellus

ADVOCATE
/verb: to plead in favor of/
/noun: one who pleads the cause of another/
WHAT THE ADVOCATE NEEDS TO DO TO GO IN THE RIGHT DIRECTION

a) Interview the party with an open mind.

b) Don’t predetermine the grounds, but rather discover what the person is revealing to you.

c) Ask clarifying questions.
IDENTIFYING GROUNDS

d) Ask yourself: “Are we dealing with a **Juridical Incapacity** or another **defect of consent**?”

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**JURIDICAL INCAPACITY**

- $\text{Canon 1095}$ They are incapable of contracting marriage:
  - §1 who lack the sufficient use of reason
  - §2 who suffer from grave lack of discretion of judgment
  - §3 who are not capable of assuming the essential matrimonial rights and duties which are to be mutually given and accepted;

- concerning essential matrimonial rights and duties which are to be mutually given and accepted;

- due to causes of a psychic nature.

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**OTHER DEFECTS OF CONSENT**

- Simulations (1101)
  - Total Simulation
  - CBF, CBC, CBP
  - Contra Bonum Sacrament
t  - Contra Bonum Sacramentalitatis

- Errors
  - 1097 §1 Error of Person
  - 1097 §2 Error of Quality
  - 1098 Imposed Error
  - 1099 Determining Error

- Conditioned Consent
  - 1102 §1 Future Condition
  - 1102 §2 Past/Present Condition

- Force or Fear (1103)

- Ignorance (1096)
d) Ask yourself: “Are we dealing with **juridical incapacity** or another defect of consent?”

**Juridical Incapacity**

- **§1** who lack the sufficient use of reason
- **§2** who suffer from grave lack of discretion of judgment
- **§3** who are not capable of assuming the essential obligations of matrimony due to causes of a psychic nature.

**Other Defects of Consent**

- **Simulations** (1104)
  - **Canon 1095**
  - **Juridical incapacity or another defect of consent**

- **Errors**
  - **Canon 1095**
  - **Juridical incapacity or another defect of consent**

- **Conditioned Consent**
  - **Canon 1095**
  - **Juridical incapacity or another defect of consent**

- **Force or Fear** (1103)
  - **Canon 1095**
  - **Juridical incapacity or another defect of consent**

- **Ignorance** (1096)
d) Ask yourself: “Are we dealing with a Juridical Incapacity or another defect of consent?”

- **Juridical Incapacity**
  - § 1095 They are incapable of contracting marriage:
    - who lack the sufficient use of reason
    - concerning essential matrimonial rights and duties which are to be mutually given and accepted
  - § 1102 § 1 who are not capable of assuming the essential obligations of matrimony due to cause of a specific nature

- **Other Defects of Consent**
  - Simulations (1101)
    - Total Simulation
    - CBF, CBC, CBP,
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    - 1102 § 2 Past/Present Condition
  - Force or Fear (1103)
  - Ignorance (1096)
CANON 1095: THOSE INCAPABLE OF MARRIAGE

• **Juridical Incapacity** Not Difficulty

• **Be able to Pinpoint the Source of Invalidity**
  a) If the advocate is suggesting a Juridical Incapacity, then he or she must be able to point to “a psychological anomaly of a serious nature”;

  b) If the advocate is suggesting another defect of consent, then he or she must be able explain the nature of this defect.
CONSENT: A HUMAN ACT

• **Remember: It’s All about Consent**
  a) Consent makes marriage, as canon 1057 states: “The consent of the parties, legitimately manifested between persons qualified by law, makes marriage; no human power can supply this consent.”

  b) This consent is a human act which requires the action of both the intellect and the will. This essential interplay between the cognitive, evaluative and votive functions form the essential axis for the commission of a truly human act. One cannot will what one does not understand and one cannot evaluate what one does not know.
CONSENT: THE HARMONIOUS ORDER

- **Speculative Intellect:** Marriage considered as an abstract concept.
- **Practical Intellect:** Marriage considered as something to do. Involves the “critical faculty”
  - Evaluating
  - Considering
  - Judging
  - Choosing
- **Internal Freedom**
  - Freedom from impulses
  - Capacity for self-determination
CANON 1095: SERIOUS ANOMALIES

• **Serious Anomalies**
  - There are many serious psychic anomalies which can lead to a Juridical Incapacity for marriage.
  - Some of these are diagnosable disorders found in the DSM-V, whereas others are not.
  - There must be a causal link between the serious anomaly and the Juridical Incapacity, either a grave lack of discretion of judgment or an inability to assume the essential obligations of marriage.
CANON 1095: SERIOUS ANOMALIES

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<thead>
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### CANON 1095: SERIOUS ANOMALIES

**Examples of Serious Anomalies**

<table>
<thead>
<tr>
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<th>Sexual Disorders</th>
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<td>Emotional instability</td>
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<td>pornography, etc.</td>
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</tbody>
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CANON 1095: LACK OF INTERNAL FREEDOM

- Due discretion of judgment requires two things: critical evaluation and internal freedom.
- Freedom can be compromised either from an external source (ab extrinseco) or from an internal source (ab intrinseco). If freedom is compromised from an extrinsic source, then the proper canon is force or fear, c. 1103. However, if the loss of freedom is due to pressure from family and friends, and/or immaturity, and/or an juridical Incapacity to deal with stressful situations, etc., then the proper chapter of nullity is canon 1095, 2°

“The discretion of judgment requires two things simultaneously: critical cognition or assessment about the object of consent, and internal freedom (ab intrinseco) in choosing marriage; it is necessary that both be proportionate to the essential and gravest rights and obligations of marriage.” (Coram De Lanversin, 10 June 1992, RRT Dec. 86 [1992], pp. 331-343, n. 8.)
“[...] we must sometimes admit, if we are talking about human beings without their intellective faculty, or their volitional faculty, or their affectivity fully intact, that autonomous and imputable freedom can be obstructed from external circumstances especially from the external pressure of others. Such situations must certainly be distinguished from instilled fear. Here, the subject assigns him or her self to something, namely to marriage, with respect to evading an evil imposed or foreseen from the outside; there, the subject endowed with a frail power of the intellect and will, is easily moved from the outside into a state which he or she would not consent to otherwise. Therefore, the will is not restricted from an extrinsic source but, in it itself; the will has the cause of its own weakness, that is, a lack of conscious and free election: somehow other external agents substitute themselves for the will of the subject, and that is only able to come about from the unhealthy condition of the same subject.” (coram Pompedda, 18 November 1993, n. 3.)
CANON 1095: LACK OF INTERNAL FREEDOM

• **Internal Freedom and Psychic Anomalies**
  - Severe disorders and psychic disturbances render one incapable of marriage because the integrity and proper functioning of the **critical faculty** is damaged.
  - Less severe disorders do not completely destroy the critical faculty, but they may compromise the person’s internal freedom.
  - Such anomalies, “**Deprive the victim of the internal freedom and clarity of thought which are indispensable for making weighed decisions concerning important matters affecting one’s life [such as marriage].**”

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CANON 1095: LACK OF INTERNAL FREEDOM

- **Sufficient Internal Freedom Can Be Lost**
  a) A *psychic disturbance* can impede the free choice of the person;
  
  b) Cultural, social and *familial pressure* can deprive an immature person of the freedom of choice;
  
  c) A *premarital pregnancy* can impair, especially young persons, of the freedom to choose marriage;
  
  d) A *lack of impulse/emotional control* (i.e., affective immaturity) can deprive a person of the freedom to choose marriage;
  
  e) *Drug use* can impede not only the capacity of the person to evaluate marriage, but also the ability to freely choose marriage.
We must make a distinction between full maturity and canonical maturity.

**Full Maturity**
- Full maturity is the stage of complete integration of the personality, which comes only later in life.
- Full maturity is not often found in young adults.
- Full maturity is not required for marriage.

**Canonical Maturity**
- Canonical maturity is the basic minimum level of psychic and affective maturity which is required for giving valid matrimonial consent.
- Psychic maturity refers to the sufficient maturity of the mind, namely, the capacity to understand and evaluate marriage.
- Affective maturity refers to the maturity of the emotions and impulses, namely, the capacity to regulate one’s emotional life and to have mastery over impulses.
CANON 1095: AFFECTIVE IMMATUREY

• Affective immaturity is seen in one who cannot resist his or her affective impulses, in one who cannot exercise self-control, in one who is controlled by his or her emotions, in one who is compelled to act out of fear, anxiety, etc.

• Affective immaturity is a defect of the freedom of choice.

“Immaturity, which is called affective (not be confused with immaturity of judgment), is a sign of a certain disturbance of the emotions, seldom truly grave; nevertheless in certain cases it attains a level not to be ignored, so that the mind of the contracting party is gravely disturbed, and from there freedom indeed fails.

“This is found in immature personalities from various causes, which do not necessarily reach a pathological level. Because of their instability, suggestibility, conflictual nature, inconstancy of the emotions, juridical incapacity for tolerating frustrations, their matrimonial consent sometimes does not enjoy even freedom which is necessary for choosing a state of life, even in subjects who do not present specific psycho-pathological phenomena, or who cannot be called strictly neurotic.

“Therefore, grave affective immaturity is reduced to a defect of internal freedom, which obstructs sufficient deliberation, since without a doubt the contracting party is not able to resist an assault of pressure from within because of the destroyed harmony of the personality.” (Coram Palazzini, 11 January 1978, p. 3.)
Requirements of Canonical Maturity

• Capacity to love and be loved.
• Capacity to master one's affective moods.
• Capacity to face reality and work with it adequately.
• Capacity to interpret positively the experiences of life.
• Capacity to learn from one's experiences.
• Capacity to accept negative experiences.
• Capacity to bind oneself, be responsible and know oneself.
• Capacity to relate adequately with others.
OVERVIEW OF JURIDIC CAPACITY FOR MARRIAGE

- **Age:** 14 for girls, 16 for boys
- **Speculative Intellect:** Basic understanding of marriage (c. 1096)
- **Practical Intellect:** Capacity to discern, consider, judge and evaluate the choice of marriage
- **Internal Freedom:** Freedom of the will from impulses, compulsions, etc.
- **Maturity:** Canonical maturity, not full maturity

We must **not** assume that everyone is juridically incapable of marriage. **Indeed, marriage is a natural institution which is suitable for the majority of the population.** Therefore, the average person should be capable of marriage. Nevertheless, for someone who is capable of marriage, the nullity of marriage can arise from another defect of consent.
OTHER DEFECTS OF CONSENT

• The juridic incapacity for marriage due to a psychological defect (c. 1095) concerns those who are prevented from contracting marriage due to some anomalies.

• Other defects of consent presuppose that the person is juridically capable of marriage, however, the problem lies in what the person wills or understands about marriage.

• One such defect of consent is determining error, c. 1099:

“Error concerning the unity or indissolubility or sacramental dignity of marriage does not vitiate matrimonial consent provided that it does not determine the will.”
Speculative Error Does Not Invalidate Consent

- Canon 1099 says that “Error...does not vitiate matrimonial consent...”
- We must make a distinction between the speculative intellect and the practical intellect.
- According to Aquinas: “The speculative intellect...directs what it apprehends...to the consideration of truth” (ST, I, q. 79, art. 11).
- Whereas: “The practical intellect is that which directs what it apprehends to operation” (ST, I, q. 79, art. 11).
Canon 1099 must be seen from an historical perspective.
Throughout history, certain populations have occasionally denied either the unity, indissolubility or sacramental dignity of marriage.
The unity of marriage is denied by polygamous cultures, including Fundamentalist LDS sects in this country.
The indissolubility of marriage is denied by modern Western culture, as well as by certain Protestant sects who firmly believe that marriage can be dissolved in case of adultery.
Finally, the sacramental dignity of marriage is denied by our modern culture, including Protestant sects who teach that marriage is not a sacrament.
However, insofar as these errors are merely speculative, they do not vitiate matrimonial consent.
CANON 1099: SPECULATIVE ERROR

• Due to these cultural influences, speculative error about marriage is widespread.

• However, generally speaking, these erroneous opinions are maintained on the *theoretical and speculative* level. That is to say, these erroneous opinions are not applied to the concrete marriage which is being contemplated.

“Society’s crisis of values is certainly not a recent phenomenon. [...] Indeed, at the root of the crisis of marriage is often a crisis of knowledge enlightened by faith — that is, knowledge informed by the adhesion to God and his design of love realized in Jesus Christ. [...] Indeed, the lack of knowledge of the contents of the faith might lead to what the Code calls determinant error of the will (cf. can. 1099). This circumstance can no longer be considered exceptional as in the past, given the frequent prevalence of worldly thinking.” (Pope Francis, Address to the Roman Rota, 23 January 2015.)
Speculative errors about the nature of marriage have the potential of vitiating consent, only if the error moves from the speculative intellect into the practical intellect.

The practical intellect is engaged in the concrete choice for marriage, which necessarily includes two considerations:

- Whether or not marriage (i.e., formal object of consent) is a suitable choice for me, here and now, given the concrete circumstances of time and place, and
- Whether or not this other person (i.e., material object of consent) is a suitable marriage partner for me.

A person must will both objects, namely, marriage itself and the other person as spouse.
CANON 1099: WANTING A DEFECTIVE MARRIAGE

• Mere speculative error about the nature of marriage does not destroy consent because the will is free to abandon the error.
  • For example, a woman may erroneously believe that abortion is necessary for population control (speculative error), however, when the woman gets pregnant herself, she may choose to keep the baby (i.e., she does not apply the error to her action).
  • Similarly, a person may erroneously believe that marriage can be dissolved, yet will for themselves a permanent union.
• Therefore, matrimonial consent is vitiated when the intellect provides the will with only a defective formal object, (e.g., a dissoluble marriage) and the will chooses this object.
CANON 1099: DEFECTIVE FORMAL OBJECT

“But canonical efficacy of this error, which invalidates matrimonial consent properly speaking does not consist in the fact that the error itself, as an act of the intellect, becomes the object of the will, but because, under the guise of apparent truth, it determines the object of the internal will in such a way that the will under the appearance of good, accepts the object. For this reason, error of this kind, since it restricts the formal object of the matrimonial act of the will only to one kind of dissoluble marriage, renders the marriage invalid by stripping it of the essential property of indissolubility.” (Coram Stankiewicz, 25 April 1991, n. 7.)
For cases of determining error, it is necessary to analyze two causes:

- Firstly, one must be able to identify the source of the speculative error. This is similar to the remote cause of simulation. The **remote cause of the speculative error are those circumstances whereby the person obtained the speculative error**. For example, multiple divorces in the person’s upbringing, or strong indoctrination in a Protestant sect, or a lack of a Christian upbringing combined with a firm embrace of the cultural notion of marriage.

- Secondly, one must be able to **identify the source of the translation of this speculative error into the practical intellect** and its effect on the formal object of consent.

Furthermore, to specify the nature of the error determining the will and attracting the spouse to the object as presented to him, these two things are required: ‘a) that the person marrying hold that the bond of matrimony ought to be dissolved at least where the marriage would be wrecked (remote cause for simulation); b) that the person have the conviction that the bond of matrimony is to be dissolved in the concrete case of his own marriage here and now to be contracted, at least in the case of a probable failure (proximate cause of simulation)’ (coram Pinto, 14 November 1986, RRD 78 [1986], p. 626, n. 4).’ (Coram Boccafola, 21 November 2002, n. 10.)
CANON 1099: REMOTE AND PROXIMATE CAUSE

“[Speculative error is] not enough to render marriage null, because – as constant rotal jurisprudence teaches – it only regards matrimony in general, and not instead one’s own concrete matrimonial consent, determining one’s object. [...] this [speculative] error can still constitute the [remote] cause of the exclusion or of the positive determination of the object of consent, though not by itself, but only when occurring together with another element, that is to say, a motive or at least an occasion [i.e., proximate cause], which induces the application of the error to one’s own concrete matrimonial consent.

“Among such motives or occasions, rotal jurisprudence suggests different kinds, for example: some kind of discord between the parties present from before the marriage, or doubts about the happy outcome of the marriage, or warnings on the part of others not to contract the marriage with the companion, etc.” (Coram Boccafola, 21 November 2002, n. 6)
DETERMINING ERROR OR PARTIAL SIMULATION?

- Speculative Intellect: **An error** about the nature of marriage.
- Practical Intellect: The error moves into the practical intellect (i.e., the contractant wants a defective marriage).
- The Will: The contractant chooses a defective marriage because that is all that the intellect has given the will to choose.

- Speculative Intellect: **No error** about the nature of marriage.
- Practical Intellect: The contractant wants a different kind of marriage (i.e., one without children, permanence, etc.).
- The Will: The contractant makes a positive act of the will to exclude some essential element or property of marriage.

✓ Determining error does not require a positive act of the will. However, it is necessary to pinpoint exactly how and when a merely speculative error entered into the practical intellect and determined the will.
✓ Accordingly, there is a very thin line between exclusion of indissolubility an error about indissolubility determining the will.
✓ Indeed, the jurisprudence from the Roman Rota uses language typical of simulation to describe aspects of determining error, such as *causa simulandi*. 
SIMULATION OF MARITAL CONSENT (c. 1101, §§ 1 & 2)

Simulation = Assuming a false appearance and/or positing a false juridical act with knowledge, capability and intention.

1983 CIC, canon 1101 § 1
“The internal consent of the mind is presumed to conform to the words and signs used in celebrating the marriage.”
c. 1101 § 1 expresses a presumption of law. This places the burden of proof on the one alleging simulation:

1. To **produce** evidence of the alleged simulation, AND
2. To **persuade** the Tribunal of the alleged simulation.

(Here, we have not yet reached the issue of overturning the presumption of validity of marriage).
SIMULATION OF MARITAL CONSENT (c. 1101, §§ 1 & 2

§2. If, however, either or both of the parties by a positive act of the will exclude marriage itself, some essential element of marriage, or some essential property of marriage, the party contracts invalidly.

c. 1101 § 2 considers of three kinds of nullity:
THREE ELEMENTS REQUIRED FOR SIMULATION


- The will motivates simulation or exclusion and is applied in its relation to the intellect (i.e. “understanding”).
- The moment in which one moves from “knowing” to “acting” (i.e. the “decision”).
- An omission or a negative act is never sufficient for simulation. Simulation requires that an act take place.

The Will (Voluntas)
The ACT of Willing (actus)
The Positive Act (Positivus)

THE CHURCH ASSUMES THAT THE PERSON SIMULATING MARITAL CONSENT KNOWS EXACTLY WHAT HE OR SHE IS DOING.

TOTAL SIMULATION:

Total simulation occurs when a person contracting marriage participates in the external form of marriage either as a sham or as a means of achieving some result completely extraneous to marriage. The simulator manifests marital consent with no desire to married at all (to this particular person at this particular time).
PARTIAL SIMULATION (essential elements):

1. Simulation *Contra Bonum Prolis*

   a. Not a question of not having children

   b. It is a permanent OR temporary **exclusion of Openness to the Procreation** and Education of Children. (i.e. the exclusion of those conjugal acts that are open to the possibility of conceiving children).

   i. If the right is excluded by either or both parties permanently, the marriage is invalid.

   ii. Temporary exclusion of the right can be invalid, but a temporary exclusion might not be invalidating.
PARTIAL SIMULATION (essential elements):

2. Simulation *Contra Bonum Coniugum* – Exclusion of the good of the spouse:

*Bonum coniugum*

- includes interpersonal communication
- is the sum of interpersonal goods between spouses;

- involves (at least) establishing a tolerable interpersonal relationship;
- is not to be confused with the concepts of “happiness” and “personal fulfillment.”
PARTIAL SIMULATION (essential elements):

3. Simulation *Contra Bonum Sacramentalitatis*

The exclusion of the sacramental character of marriage

Pastors of souls may not admit to the sacrament of marriage those who explicitly reject what the Church intends to do when the baptized marry (see, Pope St. John Paul II, in FC 68).
PARTIAL SIMULATION (essential properties):

1. Simulation *Contra Bonum Fidei*
   a. The good of fidelity is not excluded *per se* by the act of committing adultery, but by a positive act of the will of the contracting party reserving to himself or herself the right to commit adultery.
   b. The good of fidelity may be excluded also by not handing over to the spouse the exclusive right to the body.

2. Simulation *Contra Bonum Sacramenti*
   The contracting party, by a positive act of the will, intends to retain the right to divorce. In other words, the contracting party specifically wills a dissoluble marriage.
INFORMATION NEEDED TO DEMONSTRATE SIMULATION:

1. **Confession** of the simulating party

2. **Causa Simulandi** - The alleged simulating party’s reason(s) for simulating.

3. **Causa Contrahendi** - The alleged simulating party’s reason(s) for contracting marriage.

Husbands, love your wives, even as Christ also loved the church, and gave himself for it. Ephesians 5:25
DRAFTING THE *LIBELLUS*

The Purpose of the Libellus is to initiate a cause in an ecclesiastical tribunal.

In so doing, it is important to follow the general organization of a Libellus, which is to be **concise**, that is, brief and to the point, containing the necessary information to initiate the cause, but, typically, not exceeding two pages in length.
DRAFTING THE **LIBELLUS**

The necessary elements of a Libellus and their purpose:

**Initiating the Cause**
- The parties must have standing to ask the tribunal to adjudicate the controversy; (only the parties and the Promoter of Justice have standing)

**Competence**
- The Tribunal must have both jurisdiction and competence to adjudicate the controversy;

**Grounds (**Fumus**)**
- There must be a law that applies to the facts of the controversy; and

**Proofs**
- The party/ies must provide the facts necessary for the Tribunal to evaluate the facts in light of the law and come to a decision resolving the controversy at issue.
THE *LIBELLUS* SHOULD BE DIVIDED INTO FOUR SECTIONS:

1. The Facts
2. In Iure
3. In Facto
4. Wherefore (prayer for relief)
The Facts section concerns the issues of Standing, Jurisdiction and Competence. Accordingly, the section should contain the identity of the parties, their dates of birth, address/domicile, baptismal status, religious affiliation, date and location of the marriage at issue, identify prior marriages or subsequent attempted marriages, and salient facts from the backgrounds of each party and of their life together.

The In Facto section should briefly include argument applying salient facts to the law in support of the alleged grounds of nullity. In this section, the Petitioner should also identify necessary proofs to demonstrate the alleged cause of nullity, which are not presented with the Libellus, but which the Petitioner agrees to provide to the tribunal as requested throughout the pendency of the case.

The In Iure section should simply identify which canons of the Code of Canon Law the Petitioner and the Petitioner’s Advocate believe provide the basis for the Petitioner’s claim regarding the nullity of marriage, and the basis for the tribunal’s jurisdiction.

Finally, the “Wherefore” section, completes the Libellus by requesting judicial intervention and resolution of the cause of nullity of marriage and the legal basis therefore.
I. THE FACTS

2. I entered civil marriage with the respondent. We dated for 14 months before we became engaged and were engaged 4 months before we got married. We cohabitated for 6 months before marriage. I was 19 and he was 24 years of age. This marriage only lasted 10 months. I believe we got married out of loneliness due to the fact that we moved away from family and friends shortly before marriage. Once we returned home, we separated after 3 months and then divorced.

3. I was raised in a family of 6 children. My mother was physically and emotionally abusive to all of us. My father was a cross-dresser. We moved around a lot and spent years on welfare. My parents cheated on each other and eventually were divorced after I left home. I left home at the age of 16 to escape the abuse. I do not know much about the respondent’s childhood because it wasn’t something we really talked about. He had one brother and grew up with both of his parents. They are still married. Besides fewer siblings, it seemed like his family had a better relationship with each other.

4. I was barely supporting myself while going to school, he was still living at home. We moved and lived together for a time before getting married. I believe that the motive for our marriage was loneliness because we were so far away from friends and family. I wanted children eventually, the respondent did not want any children ever. I figured he would change his mind once we matured. Neither one of us were ready for marriage. We didn’t know each other at all, and I had no idea what the responsibilities of marriage were because of the poor example from my parents. When we moved back home, the respondent was gone a lot with his friends to bars and strip clubs, we were struggling financially and were not communicating. Three months after moving back, I asked for a separation to have time to sort through my feelings. He told me I could have a divorce and that was the end of the relationship.
II. IN IURE

5. The following Canons are applicable:

Canon 1057 § 2 reminds us that matrimonial consent is an act of the will and that the spouses must have the capacity to give themselves to each other.

Canon 1095 § 2 affirms that the person who marries with a Lack of Due Discretion does so invalidly.

Secondly,

Canon 1055 § 1 reminds us that marriage is established as a partnership between a man and a woman ordered to the good of the spouses, and the procreation and education of offspring.

Canon 1101 § 2 Simulation Contra Bonum Prolis affirms that a spouse has no right to the intention of denying the possibility of procreation either permanently or for a time.

III. IN FACTO (ARGUMENTATION)

6. Further, in accord with c. 1504,2, I have agreed to present those elements of proof the will support my contention that this marriage is invalid, which includes witnesses as noted on the included witness list. I propose the LDD is found in the fact that we did not know each other well enough to enter into marriage evidenced by the fact that we dated for only 18 months, living together for six of those months. At the time of marriage, I had no concept of the responsibility of marriage because I was young and had extremely poor modeling of marriage by my parents and extended family. Our motive for marriage was extreme loneliness due to tour move away from family and friends to a new state where we knew no one.

Additionally, I propose that Canon 1101 § 2 Simulation contra bonum prolis, is found in the fact that I was made aware that the respondent never wanted children. Coinciding with this, I did not want children until after I had finished my schooling. Finally, we used contraception on and off during the 10 months of Marriage.
1. THE FACTS

2. I entered canonical marriage with the Respondent in a Catholic Church. We began dating and within a month of dating we moved in together. During this time, we were in the throes of prescription opiate addiction. We took a break while we were both in separate treatment programs for substance abuse for approximately three months. We moved back together immediately after coming home from treatment in January and married 7 months later.

3. I was raised in a close loving family who still believe in living in alignment with the teachings of the Catholic Church. I have two siblings, one older sister and one younger sister. Although we have experienced some dramatic issues as a family, we are still very close and loving. I believe that I grew up in an ideal family, was a good student and had great friends.

The Respondent was not so blessed. At age of 2 the Respondent’s mother and father divorced. Although the Respondent wanted to live with the father, he had to live with the mother and step-father while the older brother lived with the dad. The Respondent was neglected by the mother. At the age of 11 the Respondent’s father died and the mother kicked the Respondent out of her house and the Respondent was taken in by his paternal grandparents. The Respondent’s childhood and adolescent years were filled with major loss and abandonment from his parents which manifested itself through drug and alcohol abuse.

I was sexually assaulted. When the criminal system failed me, I successfully sued the perpetrator in civil court and received monetary compensation. As a direct result of the award, a man attempted to kidnap/murder me which left me wounded and in much pain both physically and emotionally. I used medication for the pain which led to an addiction to prescription opiates.

4. The Respondent and I were life-long acquaintances, growing up in the same neighborhood and attending the same schools, we did not however, begin dating until we were almost 27. Within a month of dating we began living together. We were both in the throes of drug addiction. We sought help through separate treatment centers for three months. After treatment we began living together again. We became engaged in January and by July we were married. During the time of co-habitation, I took responsibility for everything: I was employed, paid all the bills, made sure we attended couple counseling, made sure the Respondent was enrolled in school, and did all the chores. From the day of our marriage he was not sexually interested in me although we did have sexual encounter of us were on an opiate addiction drug which can affect libido. This became the excuse for our sexual problems; however, there were probably deeper underlying issues regarding our sex life including the Respondent’s infidelity.
I didn’t clearly grasp the difficulties in our relationship until after our daughter was born when my eyes were finally opened to the Respondent’s continuing addiction. He had simply replaced his addiction to opiates with shopping, video games, marijuana and more. After I returned to work, I found the Respondent was neglecting our child, leaving her in the crib for many hours at a time during the day while he played video games and smoked pot. I found out later that the Respondent was also hiring prostitutes and using heroin and, I suspect, other hard-core drugs. I discovered that the Respondent had been living a double life through our marriage. Although it seemed as if he was in recovery, he was actually lying about it. I will point out that we were going to couple counseling before and throughout our marriage because I wanted to ensure that we didn’t fall into the trap of drug abuse again. After finding the Respondent sleeping or playing video games in the basement three consecutive times while our daughter was in her crib upstairs in the dark, I sought the help of our therapist and ended up giving the Respondent an ultimatum: get treatment or leave. To my shock and amazement, he left me and his daughter and never came home again. During our separation, I tried to salvage our marriage but, the Respondent was not willing to give up the drugs, or the women he was seeing. I subsequently filed for divorce.

II. IN IURE
5. The following Canons are applicable:
   Canon 1095 § 2 affirms that the person who marries with a Lack of Due Discretion does so invalidly and
   Canon 1095 §3 Inability to Assume the Essential Obligations of Marriage. At the time of the wedding and for psychological reasons, the Respondent was unable to live up to the responsibilities of being a spouse and/or parent.

III. IN FACTO (ARGUMENTATION)
6. Further, in accord with c. 1504, 2, I have agreed to present those elements of proof that will support my contention that marriage is invalid, which includes witnesses as noted on the included witness list. I propose that Lack of Due Discretion is found in the fact that both of us were drug addicts when we first began to date, began living together a month into dating, and then went into the marriage while still working on drug rehabilitation. To complicate the situation, we were both suffering from separate trauma with a diagnosis of PTSD: The Respondent from abandonment as a child and two tours of duty in Afghanistan and Iraq; and me due to a sexual assault and an attempt made on my life. Furthermore, the Respondent was living a lie regarding his recovery pretending that he was working on his addictions but all the while replacing one addiction for others. I further propose that Inability to assume the essential obligation of Marriage is found in the fact that the Respondent was not working the “program” to kick his addictions but rather replacing one addiction with others. I took full responsibility for the relationship, earning the money, doing the chores, making certain we had appointments with counselors, making certain he was in school, etc., when we were cohabitating and throughout the marriage. When we had our baby, I went to work and the Respondent stayed home to care for her. I soon found out that I was trying to take care of everything. The Respondent chose women and drugs over his wife and child. He never contributed to the good of our relationship, household or the good for our child due to severe addiction.

WHEREFORE
I, the Petitioner, now turn to the Metropolitan Tribunal of the Archdiocese of Denver and ask that this marriage be declared null and invalid due to Canon 1095 § 2 affirms that the person who marries with a Lack of Due Discretion does so invalidly and Canon 1095 §3 Inability to Assume the Essential Obligations of Marriage. At the time of the wedding and for psychological reasons, the Respondent, was unable to live up to the responsibilities of being a spouse and/or parent.
I. THE FACTS

2. I entered canonical marriage with the Respondent. After dating for about a year the Respondent moved to another state. One year later I finally moved to the state where he was living to live with my sister and to be closer to him. We dated for five years and were engaged for the final eight months before marriage. We lived together for two years before getting married.

3. I was raised in a family of four which included my parents and my sister. The Respondent was the youngest of the family and had two sisters and a brother. His brother was ten years older, sisters were eight and six years older respectively. As the youngest child in the family he was doted on by both parents.

4. We met because the Respondent worked with my sister’s boyfriend. The relationship developed over time but was threatened when the Respondent was offered a transfer. He was one of the first people that I dated that my parents approved of. My sister and her boyfriend got married and moved together out of state. Because the Respondent worked with my sister’s boyfriend I was able to move there and live with my sister; it was easier to allow the relationship to continue.

When the Respondent applied for a transfer to another state I moved with him because I thought I was in love with him and thought he would be able to care of me. We had a sexual relationship and in my mind I had committed to this relationship and needed to continue with the relationship to make things right with God and with my family.

II. IN IURE

5. The following canons are applicable to the present case:

Canon 1097§2 Error of Quality Petitioner only wished to marry a spouse that had a certain quality. This quality or characteristic was the primary and most important consideration, but it is now known that the petitioner’s future spouse did not have it.

Canon 1103 Force and Fear In the face of some outside force or pressure, petitioner experienced grave fear which compelled her to choose marriage in order to escape the threatened negative consequences.
III. IN FACTO

6. Further, in accord with the canons I have listed below, I have agreed to present those elements of proof that will support my contentions that this marriage is invalid, which includes witnesses as noted on the included witness list.

Canon 1097 § Error of Quality: My belief and expectation was that the Respondent would be a good provider for me. He had a good job and my experience with my own family was that the man is the financial provider for his family and a man with a good job would continue with the job until retirement. I believed the Respondent was a person who I could rely on to support me financially and emotionally. This was my expectation when entering into this marriage and it is still my expectation for a husband today.

Canon 1103 Force and Fear: I finally found someone that my parents approved of. Other men that I had dated were not even allowed at family functions. Developing this relationship and investing a lot of time and effort into it I had developed a fear of ever finding someone who would meet their approval if I did not go through with this marriage. We were living in sin and the only way to get right with God was to get married.

My younger sister was already married and had married the person she had sex with and it seemed the logical conclusion for me to do the same. After we planned the wedding, there were never any specific consequences identified that I would face if I did not follow through with the marriage but there were many indications that my mother expected that I would marry and she would be extremely angry and disappointed if I “backed out”. I had doubts in my mind but family and friends including those from out of town and even Italy were invited and informed and I did not want to embarrass my family.

WHEREFORE

I, the Petitioner now turn to this Metropolitan Tribunal of the Archdiocese of Denver and asks that this marriage with the Respondent be declared null and invalid due to the grounds summarized above.

Great organization!
Good argument for proposed grounds, BUT not the right grounds.
Q&A Session