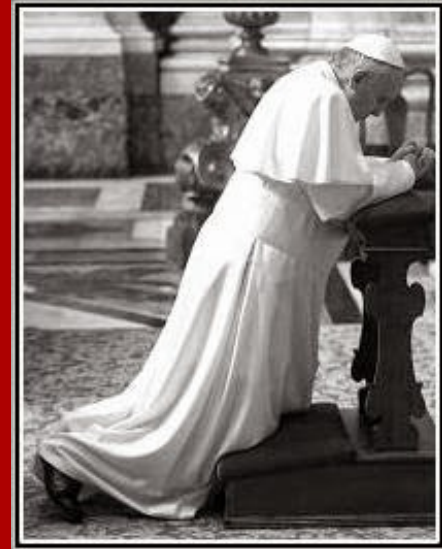


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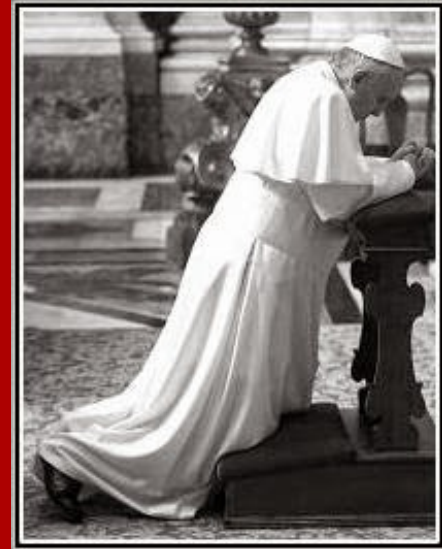
“GENTLE JUDGE, LORD JESUS”



THE REFORM OF THE DECLARATION OF NULLITY PROCESS

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“GENTLE JUDGE, LORD JESUS”



I. WHAT HAS NOT CHANGED

II. WHAT HAS CHANGED
-STRONGER EMPHASES

III. *PROCESSUS BREVIOR* – The abbreviated process

I. WHAT HAS *NOT* CHANGED



- **The indissolubility of marriage**
 - **Marriage enjoys the favor of the law**
-

- **Judicial process**
 - **The ordinary contentious (formal) process is normative**
 - **Collegiate tribunals are normative**
 - **Evidence**
 - **Experts**
-

- **Moral Certainty**
 - **Grounds of Nullity**
 - **Second Instance**
 - **Tribunal Officials**
 - **Cost**
-

II. WHAT HAS *CHANGED*



- **Competence**
 - **Composition of collegiate tribunals**
-

II. WHAT HAS *CHANGED*

- **The abbreviated process - “*Processus brevior*”**
- **Only one sentence needed**



STRONGER EMPHASES



- **Active role of the bishop as judge**
- **Weight of the parties' testimony**
- **The pre-judicial investigation**

In the abbreviated process, the prejudicial investigation is even more robust. Parishes (and advocates) even may be in touch with the Respondent in seeking his or her consent and testimony



III. *PROCESSUS BREVIOR*

- A. PRE-JUDICIAL INVESTIGATION**
 - B. CONSENT**
 - C. CIRCUMSTANCES**
 - D. PROOFS**
 - E. LIBELLUS***
-

Processus Brevior



A. PRE-JUDICIAL INVESTIGATION

- **Preliminary Questionnaire**
 - **Approved Advocates** under the direction of the Pastor should take on the task of the parish investigation in accordance with Art. 2 of the Procedural Norms
 - **Pre-judicial/ Pastoral Investigation** must be able to present the conditions set forward in Can. 1683 to propose that the abbreviated process can be applied.
 - The **Judicial Vicar makes the determination** if indeed the abbreviated process is applicable.
-

Conditions for Abbreviated Process

Can. 1683

B. CONSENT

- **Can. 1683 1°** - Petitions must be presented by **both parties** to the marriage or by one party but with the **“consent”** of the other
 - **“Consent”** of the party must be in writing and notarized.
-

Conditions for Abbreviated Process

Can. 1683

C. CIRCUMSTANCES

- Can. 1683 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”
 - Circumstances are not grounds, they are facts or events upon which some grounds may be based.
 - In and of themselves they do not fully prove anything.
-

Conditions for Abbreviated Process

Can. 1683

C. CIRCUMSTANCES

Potential
Ground

**Art. 14 §1 - The circumstances which may allow
for *Processus Brevior***

i. Defect of faith that results in:

- simulation of consent or **c. 1101**
 - an error that determines the will; **c. 1099**
 - Unity
 - Indissolubility
 - Sacramental Dignity
-

C. CIRCUMSTANCES

Art. 14 §1 - The circumstances which may allow for *Processus Brevior* (Defect of Faith)

- ITC (1979) “when there is no faith a real doubt arises whether there is truly sacramental intention and whether the contracted marriage is validly contracted or not”
- JP II, FC # 68 cautioned that trying to create a criteria for judging the level of faith of those requesting marriage would involve grave risks both of making erroneous judgment and of creating doubt about the validity of many marriages.
- As for wishing to lay down further criteria for admission to the ecclesial celebration of marriage, criteria that would concern the level of faith of those to be married, this would above all involve grave risks. In the first place, the risk of making unfounded and discriminatory judgments; secondly, the risk of causing doubts about the validity of marriages already celebrated, with grave harm to Christian communities, and new and unjustified anxieties to the consciences of married couples; one would also fall into the danger of calling into question the sacramental nature of many marriages of brethren separated from full communion with the Catholic Church, thus contradicting ecclesial tradition.

“However, when in spite of all efforts, engaged couples show that they reject explicitly and formally what the Church intends to do when the marriage of baptized persons is celebrated, the pastor of souls cannot admit them to the celebration of marriage. In spite of his reluctance to do so, he has the duty to take note of the situation and to make it clear to those concerned that, in these circumstances, it is not the Church that is placing an obstacle in the way of the celebration that they are asking for, but themselves”

C. CIRCUMSTANCES

Art. 14 §1 - The circumstances which may allow for *Processus Brevior* (Defect of Faith)

Pope Benedict XVI stated in his last address to the Roman Rota, “Yet, closure to God or the rejection of the sacred dimension of the conjugal union and of its value in the order of grace certainly makes arduous the practical embodiment of the most lofty model of marriage conceived by the Church according to God’s plan and **can even undermine the actual validity of the pact, should it be expressed — as the consolidated jurisprudence of this Tribunal assumes — in a rejection of the principle of the conjugal obligation of fidelity itself, that is, of the other essential elements or properties of matrimony**”

It is foreseeable—but theology and jurisprudence remains undeveloped—that the defect of faith might pertain to:

- Atheistic egoism; a person rejects God as creator and sees himself as master of his own universe, to the point that he fashions marriage according to his own ideas.
 - More subtle manifestation : Moral relativism applied to marriage; marriage is a subjective reality and should fulfill each person’s needs
 - What was true in the past may not be true today and/or what’s true for you is not true for me.
 - Person may believe in God, even consider himself Catholic, but reject Church authority pertaining to marriage and/or certain Church teachings about marriage/sexuality
 - Intellectual errors do **not** impact the validity of marriage unless the *will*--and, thus, consent--is affected. Pre- and post-nuptial *actions* reveal impact on the will.
-

Conditions for Abbreviated Process Can. 1683

C. CIRCUMSTANCES

Potential Ground

ii. Brief conjugal cohabitation – Less than three (3) years

NA

iii. Abortion procured to avoid procreation;

**CBP or
c.1095 2**

- Formal cooperation on the part of the man

iv. Obstinate persistence in an extraconjugal relationship at the time of the wedding or immediately following it

CBF

v. Deceitful concealment of sterility or of a grave contagious illness

c. 1098

Conditions for Abbreviated Process Can. 1683

C. CIRCUMSTANCES

Potential Ground

- | | |
|--|------------------|
| vi. Deceitful concealment of children from a previous relationship | c. 1098 |
| vii. Deceitful concealment of incarcerations | c. 1098 |
| viii. A cause of marriage completely extraneous to married life | c. 1101 |
| ix. Unexpected pregnancy of the woman | c. 1095.2 |
| x. Physical violence inflicted to extort consent | c. 1103 |
| xi. The defect of the use of reason proved by medical documents, etc. | c. 1095.1 |
-



D. PROOFS

MAY PROVIDE STATEMENTS OR BE ABLE TO GATHER ALL WITNESSES ON THE SAME DAY FOR DEPOSITIONS AT THE TRIBUNAL.

i. The Pastor/Advocate collects the proofs

- May use 100 questions as guideline
- Must be typed & notarized with a public notary
- Party should initial each page and sign an oath

ii. Extrajudicial confession of the Petitioner/Respondent (*not sacramental confession!*)

- May use 100 questions as a guideline
- Must be typed & notarized with a public notary
- Party should initial each page and sign an oath

iii. Knowledgeable Witnesses

- Must know the parties at the time of the wedding
- Must know the facts from personal experience
- Must be typed & notarized with a public notary
- Party should initial each page and sign an oath

iv. Documentation – (Counselors reports, medical records, etc.)



E. LIBELLUS

- **Proofs to be collected and presented with the Libellus** (<http://archden.org/tribunal/advocate-page/abbreviated-process/>)
- **All is sent to the JV for determination**

The tribunal has provide templates for a *libellus* that will have an option for the signature of both Parties, as well a sample “consent” to be signed by one of the parties on our webpage.

Case Admitted to the Abbreviated Process

When the petition for an abbreviated process is admitted

Grounds are established

Instruction Session held within **30 days**

Testimony is summarized inasmuch as it relates to the grounds.

Case Admitted to the Abbreviated Process

When the petition for an abbreviated process is admitted - cont.

The Defender of the Bond and the parties are given **fifteen days**, to present their *vota*

Considering the Instructor's *votum* and the *votum* of the Assessor, the Archbishop will decide if the nullity of the marriage is proven.

Within fifteen days, the sentence of the Archbishop can be appealed to the senior suffragan diocese.

The new law has not prescribed a time limit for the Archbishop to reach this decision. If the Archbishop finds that nullity is proven, he is to issue a definitive sentence, which briefly explains the reasons for his decision.

Case Admitted to the Abbreviated Process

When the petition for an abbreviated process is admitted - cont.

If no appeal is filed, after the fifteen days, the sentence becomes executive.

On the other hand, if the Archbishop **cannot reach moral certainty**, the case is remanded to the Tribunal to be investigated and adjudicated according to the ordinary process

ORDINARY PROCESS

Pre-Judicial
Process

Judicial Process

**Draft
*Libellus*** Introduction of
Libellus to
Tribunal Joinder Instruction Publication Conclusion Defense Sentence

ABBREVIATED PROCESS

Pre-Judicial Process

Judicial Process

Confirm
Circumstances Obtain
Consent Obtain
Proofs Prepare
Libellus Introduction of
Libellus to
Tribunal Instruction
Session Conclusion Sentence

KEY POINTS

Abbreviated Process



1. Judicial in nature
 2. Consent of both parties is an essential condition
 3. Manifest nullity is an essential condition
 4. Petitioner assisted by Advocate/Pastor is responsible for demonstrating 2 conditions are met
 5. JV makes initial decision to accept case, but, at the conclusion of the process, others (Defender, Assessor, Instructor) might view the case differently and are required to submit briefs to the bishop.
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KEY POINTS (cont.)

Abbreviated Process

6. A single “instruction” session to obtain further testimony is typically required
 7. Traditional grounds need to be proven
 8. Archbishop makes the decision to grant the declaration of nullity or further investigate through the ordinary process
 9. Appeal of affirmative is possible
 10. Process expected to take a few months
 11. Do not set wedding dates on the assumption that this will only be a short process
-

QUESTIONS

