



FAQ about the Revised Matrimonial Nullity Process as of December 8th, 2015

On September 8th, 2015, Pope Francis issued the motu proprio *Mitis Iudex Dominus Iesus* ("The Lord Jesus, Gentle Judge"), a document revising the procedure for cases of matrimonial nullity ("annulments"). A similar document was also issued for the Eastern Catholic Churches. The changes took effect on December 8th, 2015. The media, including even some Catholic news outlets, have reported a great deal of misinformation about the changes. Please read the information below to find out what the changes really are and how they might affect you.

What is the marriage nullity process and why does it exist?

The Lord Jesus taught that marriage is indissoluble. Once a man and a woman marry, they are married until one of them dies, even if they later separate, justifiably or otherwise. Since the matrimonial bond is dissolved only by death, if one of them goes on to live in the manner of husband or wife with someone else, then he or she is living in an ongoing state of adultery. A married person's vocation is to lifelong fidelity to the marital covenant, even when, in cases of abandonment or necessary separation, that means a life of chastity as would befit a single person. Christ knew our human nature and He knew that this was a hard teaching. He was challenged and ridiculed for it even by those in His own circles.

With that being said, there are certain marriages that are invalid from the start. They have the outward appearance of a marriage and are usually entered into in good faith, but because of some impediment, some defect of consent, or some problem in the form of the marriage celebration, they are never really marriages at all. If there was really no marriage at all, and if that fact is publicly proven, then those two parties are free to marry someone else. The Church and society as a whole have the responsibility to uphold and support couples in their marriage vows when (perhaps especially when) one or both of them no longer want to be married, which is why there has to be proof of nullity before a subsequent attempt at marriage can take place.

The spouses themselves – one of them, or even both together – cannot simply decide that the marriage is invalid and that they are free to move on. The marriage nullity process is a judicial process developed over the centuries in the Church to allow people who believe that their marriage might be invalid to attempt to prove that fact, all the while safeguarding the rights of both parties and upholding the dignity and indissolubility of marriage. A declaration of nullity does not and cannot dissolve an existing marriage; rather it is an official declaration by the Church that it has been proven beyond a reasonable doubt that the matrimonial bond never arose between the parties.



Why did Pope Francis change the marriage nullity process?

Pope Francis teaches exactly what Christ taught: that marriage is indissoluble. Marriage is not a sin; therefore it cannot be “forgiven.” The permanence of marriage is integral to the Gospel. The Church has long taught that divorce, “re-marriage” and “trial marriage” (living as if married) are gravely contrary to the dignity of the human person, who is not disposable, interchangeable, or to be made the object of experimentation. God wants us to love and be loved unconditionally, and He made us capable of that kind of love. Pope Francis has not said or done anything that changed or could change any of that. There is nothing merciful in finding a pretext for calling a marriage invalid when it is really just a broken interpersonal relationship, or in declaring that a marriage is probably invalid even when real doubt remains, which is why Pope Francis very prudently retains the principle that a marriage cannot be declared null unless it has been proven beyond a reasonable doubt. His concern is not to have more “annulments” regardless of the truth of the matter, but to eliminate any strictly unnecessary or unduly burdensome barriers toward obtaining a just and expeditious judgment. He also wants to minimize as much as possible the amount of time people spend in a state of uncertainty while their case is pending. Even before the reforms, the nullity process – at least in the United States – was both effective and (under ideal circumstances and considering the complexity of the matter) relatively expeditious. But like any fallible, human process it was subject to reform. Pope Francis has reformed the process with an eye to the conditions that prevail in the Church globally, in order to make it as accessible as possible, in as many places in the world as possible, without undermining the integrity of the process.

How has the marriage nullity process changed?

Mitis iudex contains a number of alterations to the process, but there are five major changes: (1) there are new rules for tribunal competence (the place where a case can be heard), (2) new requirements for tribunal personnel, (3) the elimination of the requirement for a second conforming affirmative decision (“automatic appeal”), (4) an abbreviated process, judged personally by the diocesan bishop, for certain exceptional cases, and (5) a change in the approach to recovering tribunal expenses (in many of the Catholic dioceses of the United States, going from a partially subsidized process to an entirely subsidized process).

When did these changes take effect?

The revised laws took effect on December 8th, 2015, three months from their promulgation. They do not apply retroactively to cases that were already pending at that time, other than the elimination of the need for a second conforming affirmative decision (see below). Cases introduced after December 8th will be judged according to the revised procedures.



What is tribunal competence, and how has it changed?

Competence simply indicates the location where your petition can be filed. Under the revised law, there are now three ways that a tribunal can be competent (“able to hear your case”), with no extra formalities and requirements: (1) if the marriage took place in that diocese, (2) if either party lives in that diocese, (3) if for whatever reason the majority of the relevant evidence is located in that diocese.

How do the changes in the rules for competence affect me?

If your case is already pending, they do not. If you have not yet introduced your petition, you may have one or more additional options for where to do so.

What are the requirements for tribunal personnel, and how have they changed?

Nullity cases are normally tried before a “college” (panel) of three judges, who meet in order to resolve the doubt about the marriage, but only one of whom (the Judge Ponens) is responsible for the day-to-day handling of the case. Previously, only one of these three could be a layperson, and two had to be clerics. Under the new law, the college of three judges remains the norm, but now up to two of them can be laypersons.

How will the new personnel requirements affect my case?

Very likely they will not, whether your case is already pending or is yet to be introduced. Already, you were only likely to meet in person with one of the three Judges, who might be a priest or a layperson; that will remain the same. In certain infrequent circumstances where one of the Judges has to recuse himself or herself due to a conflict of interest, it will give the tribunal more flexibility in finding a substitute, which can help avoid delays. In the long run, it will make it easier for the tribunal to remain adequately staffed, which is the single most important factor in handling cases in a just, thorough, and expeditious manner.

What does it mean that the requirement of a second affirmative decision has been eliminated?

Under the revised law, if nobody (i.e., neither party nor the Defender of the Bond) appeals an affirmative decision within fifteen days, it becomes executory (that is, it takes effect – barring any other stipulations, such as a prohibition regarding attempting marriage again). That is true at the first instance level or at any appellate level: one un-appealed affirmative sentence definitively establishes the nullity of the marriage. This applies to cases whose final sentences are published on or after December 8th, 2015, even if they were pending before the new law took effect.



Why was the requirement of a second affirmative decision eliminated?

The former requirement of an “automatic” appeal of any decision in favor of nullity underscores the seriousness of such a decision. For example, in the United States, those familiar with our (secular) legal system know that one of the few instances of an “automatic” appellate review is found in cases where capital punishment is imposed. So a built-in appeal process was a safeguard against unfounded declarations of nullity and other injustices, but it was not strictly required by divine law or by the very nature of the matter. For the better part of the last several centuries, the requirement has been in place, but Pope Francis has discerned that the extra certainty it affords in cases of matrimonial nullity was disproportionate to the additional burden of time, energy, and resources that it entails. And since the right to for the parties to initiate an appeal remains in force, everyone’s right to defend their marriage remains intact.

How long is the process supposed to last?

The nullity process is not something that can be rushed: marriages are complex and unique, and in order to know beyond a reasonable doubt whether a marriage is invalid from the start, it is necessary to gather a great deal of information. That means questioning the parties, interviewing witnesses, and collecting documents and other evidence. All the while, both parties’ rights have to be carefully protected, and all of this takes time. No assurances about the total time involved can be given, other than to assure the parties that cases are handled as expeditiously as possible under the circumstances.

I received a negative decision previously (denied an annulment): can I reapply or try again?

A case cannot be tried twice on the same grounds. However, if it seems that different grounds might be applicable, or if there is significant new evidence available, there might be the possibility of opening a new case.

What is the new shorter or abbreviated process (the “*processus brevior*”)?

Even before the reforms, there were shorter processes that could be used in special cases when the nullity of the marriage is obvious and indisputable. The “documentary” process involves cases when an official document (e.g., a marriage certificate proving a previous marriage bond) proves the nullity of a marriage beyond a reasonable doubt; in some cases, it can be finished in a matter of weeks. The so-called “lack of form” process, which deals with Catholics who marry outside the Church without a dispensation, is not even a judicial process at all but a simple administrative verification of facts; in urgent cases it can be finished in days. However, there are certain cases – rare, but not completely unheard of – in which all the relevant facts are readily available and clearly demonstrate the nullity of the marriage. In such cases, some of the more time-consuming formalities of the ordinary process could safely be omitted without compromise



to the integrity of the process. For cases such as these, Pope Francis has created a new, abbreviated process.

Who qualifies for the shorter or abbreviated process?

The shorter process is designed only for those rare cases when it can be employed without injustice. Three strict qualifications have to be met:

- (1) both spouses have to petition for it together, or if not, then the other party must at least positively consent to it;
- (2) the nullity of the marriage must be manifest. Most marriage nullity cases deal with a defect in marital consent, that is with an invisible, internal act of the will placed by the spouses, often several years prior. Clearly, it would be exceptional for a such a defect to be patently obvious today;
- (3) All the facts that make the marriage manifestly null have to be readily available. Unlike the documentary process, the abbreviated process can involve the questioning of both parties and knowledgeable witnesses, but this is to be done all in one session when possible.

In general, the first criterion is not uncommon, but the second and third are both rare, especially in conjunction. The fact that the diocesan bishop has to oversee the process personally is an indication of just how rare and exceptional Pope Francis envisions the abbreviated process to be.

How does the shorter process work?

First, the parties (or one of them with the formal consent of the other) have to submit a petition for a declaration of nullity, which, in addition to all the information normally contained in a petition, has to demonstrate why the abbreviated process can be used (that is, why the nullity of the marriage is manifest and also how it will be proven by readily available evidence). This will always be done with the assistance of an Advocate.

If the case is admitted to the shorter process, the Judicial Vicar issues a decree stating the grounds in the case, nominating an Instructor (an official in charge of gathering the evidence) and an Assessor (an official in charge of advising the bishop) and citing them along with the parties and the Defender of the Bond to come to a session at the Tribunal within thirty days. At that session, the parties will be questioned along with their witnesses, and other evidence may be presented. Afterwards, the Defender of the Bond and the parties have fifteen days to present their closing arguments in the case, at which point the whole case is presented to the bishop for his decision. If, based on all the evidence presented, he is certain beyond a reasonable doubt that the marriage is null, he can issue a sentence declaring the nullity of the marriage. If he is not morally certain, the case is admitted to the ordinary process, starting from the beginning. Appeal against the bishop's affirmative decision can be made by either party or the Defender of the Bond within fifteen days.



What is the role of an Advocate?

Having an Advocate is not like having an attorney of one's own, who takes your case and wins it for you. In canon law, an Advocate is mostly involved in the procedural aspects of the case. It is not an adversarial process, but a search for the truth. The Advocate is usually present to explain the grounds, to make sure that the necessary documentation is assembled, and that the case moves forward in a timely manner.

How long does the shorter process take?

A number of news outlets reported that the abbreviated process will last 45 days. Some of them even reported that number as if it applied to all marriage nullity processes! However, this is simply untrue. A careful reading of *Mitis iudex* will show that the number 45 does not appear anywhere (no need to be fluent in Latin or Italian to know that). So where does that number come from? Probably from adding the 30 days in which the session must be held to the 15 days for the presentation of the arguments. But this number is inaccurate and arbitrary. In the first place, the law allows up to 30 days to review and admit a petition. The law also allows 30 days for writing the sentence once the case has been decided. And the sentence cannot be acted on until the window for appeal has passed, another 15 days. In all, that's 120 days from start to finish, not counting the possibility of delays. No one, no matter how strong his or her case, will be able to obtain a declaration of nullity in 45 days. Ultimately, no exact timeline can be given in any matrimonial nullity case, "shorter" or not; nor can the final outcome of the case be guaranteed.

Do I qualify for the shorter process?

Statistically speaking, probably not. Based on recent cases of this Tribunal, only a handful would seem in retrospect to meet the qualifications for the shorter process. In any case, no one needs to be overly anxious to qualify for the shorter process: as it is, the cases that would qualify for the shorter process are already the cases that are completed the fastest. Qualifying for the shorter process is also not a guarantee of an eventual affirmative decision.

Why is it important for both spouses to agree to the shorter process?

There is a common misconception that if both spouses agree that the marriage is invalid, a declaration of nullity is somehow automatic or guaranteed. This has never been true, and the new law does not change that. Actually, a marriage is proven to be null based on the facts of the case, and not the spouses' agreement or disagreement on the matter. So why does it matter whether they both agree to the shorter process? This requirement helps protect the rights of the spouses to defend the validity of their marriage, including by insisting on the full, ordinary judicial process.

Why do many tribunals currently charge for a declaration of nullity?



Most Catholic dioceses in the United States have eliminated their fees. Formerly, the fees that were requested covered only a fraction of the real cost – the total cost of the case was heavily subsidized by the faithful of the diocese. Now it will be a complete subsidy, likewise paid for by the faithful of the diocese. One used to hear sometimes that “annulments” were a way for the Church to make money; the truth is that from a strictly monetary standpoint, Church tribunals have always operated at a loss and that will now continue into the future.

What did Pope Francis change with regard to tribunal fees and why?

Pope Francis asked that the process should be free whenever that can be done without harming the right of tribunal workers to a just wage. He asked bishops’ conferences and local bishops to do their best to make this process free for the parties (of course, they are never free; the costs are just made up from elsewhere). He has two reasons for this. First, he wants to make sure that no one is discouraged from exercising their rights due to cost. Even though partial or total reductions have always been granted liberally to anyone who needs them, Pope Francis does not even want the misconception about expenses to be an obstacle. Second, he wants to be sure that tribunals are immune from even the slightest suspicion of financial corruption. There is no doubt that that suspicion sometimes exists among the faithful, even though (in the American context at least) it is unfounded almost to the point of absurdity.

How is the new law being implemented in the Diocese of Bridgeport?

As already noted, the law came into effect on December 8th, 2015. The Tribunal of the Diocese of Bridgeport closed from December 1st, 2015, to February 1st, 2015, in order to restructure its operations. A number of valuable forms and resources are available on the Tribunal’s website. Feel free to call or e-mail the Tribunal with general questions or concerns about your case and we will respond as quickly and fully as we are able, but please be patient with us. If you have a case pending, trust us to contact you if these changes in the law have an important bearing on your case.