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Tribunal Newsletter

DIOCESE OF TYLER

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Message from the Judicial Vicar

Good News for the Tyler Border (Patrol) Parishes!

Competency of Tyler Tribunal - The question arose in a previous presbyteral council meeting: "Can our tribunal accept cases of parishioners living on the border of the Tyler Diocese, belonging to a parish in the Tyler Diocese, when they actually live under the jurisdiction of Dallas Diocese?" Yes. We can now accept these cases prudently if there is a source of competency. The recent reform in the procedural laws made by Pope Francis opened the canonical door for such cases and made the procedure more available to petitioners.

Absolute Competence - Competence, in simple terms, is the distribution of judicial power among the tribunals of the Church, a share of the jurisdiction given to each judge or tribunal. All judges have competence but not all have the competence to hear a specific case.

The *absolute incompetence* of a judge means the complete lack of jurisdiction for judging a specific case.

Canon 1405 lists certain cases which are reserved to the Apostolic See or the Roman Rota. Other tribunals are absolutely incompetent to adjudicate these cases. Absolute incompetence stems from specific cases concerning a cause already pending before another tribunal, the dignity of the parties, the grade of the tribunal, or the quality of the issue (c. 1405, §§1-3). Absolute incompetence would render that court's decision invalid.

Relative Competence -

Relative incompetence means a judge has jurisdiction to hear a particular type of case, but with competence limited by a territorial defect, (e.g. jurisdiction under canon 1672, Title I, II, or III).

If a person is cited by a judge who does not have jurisdiction, then the judge is considered *relatively incompetent*. Relative incompetence is based on canons 1408-1414 in regard to trials in general and canon 1672 for marriage cases. Relative incompetence renders the legal process illicit, but not invalid. It is therefore of great importance for a judge to know when incompetence is *absolute* (e.g. causes reserved to the Holy See) and when the incompetence is *relative*.

Sources of Relative Competence for Marriage Cases -

According to the new canon 1672, a tribunal may accept a case, (Title I) place where the marriage was celebrated, (Title II) domicile or quasi-domicile of the petitioner and/or respondent, (Title III) place in which the majority of the proofs are to be gathered.

Regarding the use of forum of the petitioner, the new canon has removed the need for the respondent's judicial vicar's consent, and the restriction that the parties must reside in the same episcopal conference of bishops. Therefore, if a petitioner has a domicile in a parish of our diocese, with the intention to reside permanently or for at least 5 years (c. 102, §1) or quasi-domicile (temporary residence), with the intention to reside for at least 3 months (c. 102, §2), he may present a petition to the tribunal. For instance, if a student from another diocese, state, or country is attending a university in the Tyler Diocese, and has become a member of a parish here with the intention of residing over 3 months, even if the respondent is not in the same territory of the episcopal conference of the USA and living in another country, the petitioner may submit a petition to the Tyler tribunal by the reason of his quasi-domicile. Pope Francis' revised canon 1672 offers a favorable solution to our acceptance of petitions from border parishes of our diocese.

Very Rev. Lawrence Rasaian, JCD

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COMPETENCE FOR MARRIAGE CASES

Title I- Tribunal of the Place of Marriage

Title II- Tribunal of the Petitioner or Respondent

Title III- Tribunal of the majority of proofs



Email canonical questions to the Tribunal Office at: mtiscareno@dioceseoftyler.org; the response from the Judicial Vicar will be published in future issues of the TNL.

THE ROLE OF AN ADVOCATE IN CASES OF THE NULLITY OF MARRIAGE

By Very Reverend Anthony McLaughlin, JCD

Appointment of an Advocate - Whenever a case is presented to an ecclesiastical tribunal for examination, the parties who are participants in such a judicial action are provided with a number of rights that are defined by Church law. Among these is a party's right to appoint an advocate (c. 1481, §1), whose duties are to represent the interests of the party who has made such an appointment by presenting a mandate providing for such an appointment. It is the responsibility of the ecclesiastical tribunal to have available such legal representatives, most especially for marriage cases (c. 1490), and to assure that such advocates meet the requirements of law in order to serve in such a capacity (c. 1483).

The rights and responsibilities of advocates who do participate in marriage cases was addressed in an Allocution of Pope Pius XII to the Roman Rota on October 2, 1944. These principles are currently found not only in the *Code of Canon Law* but have also been very specifically incorporated into the Instruction *Dignitas Connubii* that was promulgated

by the Pontifical Council for Legislative Texts on January 25, 2005.

Duties of an Advocate - Specific procedural responsibilities of an advocate who is representing the petitioner or the respondent in a marriage case include:

- * Assisting the petitioner in determining the issue and basis of the case to be presented to the tribunal, or assisting the respondent in responding to the citation and *libellus* presented by the petitioner;
- * Indicating the proofs to be presented and the witnesses to be named to the tribunal;
- * Preparing the petitioner or the respondent for the presentation of his or her personal declaration or testimony;
- * Presenting to the tribunal the essential points to be elicited in the testimony of the witnesses;
- * Being present at the interrogation of the parties, the witnesses and the experts (c. 1677, §1) and participating in accord with the provisions of law by presenting the judge or auditor with questions to be posed

to the parties or the witnesses (cc. 1533; 1561);

- * Assisting the party being represented in the preparation of a response to exceptions or controversies which arise during the course of the trial;
- * Preparing a brief arguing the contention of the party being represented on the basis of the proofs and testimonies that have been gathered (c. 1602);
- * Preparing a rebuttal in response to the arguments prepared by the other party's advocate and the observations of the Defender of the Bond (c. 1603); and
- * Assisting the party in challenging the definitive sentence if necessary at the appropriate time.

Observations of an Advocate - In preparing the brief in which the advocate presents to the tribunal, this formal argument is to examine both procedural and substantive issues.

This will be addressed in a separate article in this issue.

An Advocate is a person who is appointed by ecclesiastical authority who safeguards the rights of a party in a canonical process by arguments regarding the law and facts. (L.G. Wrenn, *New Commentary*, p. 1646)



A Petitioner's Story

Before I talk about my experience with the Diocesan Tribunal, I want to mention that some time ago I researched in Mexico the requirements for a declaration of invalidity. At that time, it was so confusing and complicated to me that I did not even try.

After 6 years of living in the United States, my parish priest told me to try; he said it was different now. I made the decision to research and I called the Tribunal of the Diocese of Tyler at the beginning of 2016. Since the first time I called, the person I spoke to (Teresa Tiscareño) was kind and clear explaining and answering my questions. She always took the time to answer my calls and we were in contact during the entire process.

Sometimes I was nervous and anxious to know the final decision; I had no idea what could happen. Some months later I received a letter in the mail; obviously it was not in my language but with the help of a translator and my 11 year old daughter we had an idea of what the letter was about. I couldn't believe it. I was happy but at the same time I was confused, until I called the tribunal and I was told my case was completed and my marriage was declared invalid. As I write this now I feel the same excitement as when I first heard about it.

Currently, I have a beautiful family. I have by my side a hard-working and responsible man whom I love. We have 3 children; 2 girls who are 11 and 6 years old and a 4 year old boy. My spouse thinks different than me about marrying by the Church someday, but I trust the Lord that one day we'll be before the altar, receiving this wonderful blessing.

ADVOCATES—ONE WHO SPEAKS OUT FOR

By Reverend Gavin N. Vaverek, JCL

An ‘advocate’ speaks out for something or someone. In the Church’s judicial process an advocate can speak on behalf of a person involved in the legal process. An advocate can be of tremendous help to a party in the tribunal process. Advocates are also a help to the tribunal in its quest to find the truth concerning the issue before the court.

Practical help of the Advocate to the party -

When Pope Francis asks the Church to journey with people through the process, the advocates are in an excellent position to do exactly that. At the minimum, the advocate in a marriage case will make contact with the party to answer any questions they may have. But, the advocate can often be of more practical assistance if a party is willing to avail themselves of their help. The tribunal of the Diocese of Tyler has several trained advocates, mostly lay people, or deacons, who are willing to be of help to people in the process. Many times, the parties have struggled far into the process before an advocate is appointed, and so they have few, if any questions or needs. Many times, the help of a good advocate would help reduce the time it takes to have the *libellus* and petition received. Once the *libellus* and petition are submitted, an advocate can be helpful in answering a party’s questions and assisting the party in responding to requests from the tribunal.

Brief of the Advocate - After the case is instructed and the acts published, the advocate should prepare a brief in which the advocate presents their observations to the tribunal, this formal argument is to examine both procedural and substantive issues. This brief speaks for the interests of the party, while honoring the duty to seek the truth.

The following five areas can be helpful for the advocate offering observations to the court:

1. Review of the Procedural Acts - As a practical point, in a case where everything procedurally is in order the advocate could just state summarily something like: “The procedural norms appear to have been observed.” This would indicate that the advocate gave them consideration. The advocate may choose to comment in more detail about the procedural acts.

The brief may indicate if the tribunal had the source of competence to accept the petition in accord with canon 1672 concerning the place of marriage, domicile or quasi-domicile of petitioner or respondent, and the place where most proof are available. It may say if the procedural acts were followed properly and in a timely manner relating to the acceptance of the tribunal, the citation of the parties, the formulation of the doubt and if modified according to canon 1513, the publication of the acts, and the conclusion of the case, and the publication of the decision. It may also mention if additional proofs were offered by any of the parties after the publication of the acts and whether or not those new acts were published again.

2. Respect for the Right of Defense -

The brief may note if the right of defense of the parties was respected, especially at three critical moments of the citation, publication of the acts, and publication of the decision. This is particularly important in a case where there is contentious testimony, or where the grounds are against the respondent. Often the respondent offers limited or no cooperation/testimony to the Tribunal. The advocate for the respondent should, in such cases, speak forth on behalf of the respondent and the presumption of his good will and good intentions.

3. Relevance of Law and Jurisprudence

The advocate may comment briefly if the law and jurisprudence on the grounds were well understood by the tribunal or not. Since our tribunal has much experience, the advocate will normally be able to offer a concise observation on the judge(s) expertise.

4. Remarks about the Acts of the Case -

The advocate has the right to access the complete acts of the case. If access was impaired or there seems to be a problem in the instruction of the case, the advocate can include those observations in the brief. From the examination of the acts of the case, the advocate may mention a few valuable remarks regarding the nullity of the case, as proposed by the petitioner, has been well demonstrated in the trial. Additional questions that should be addressed include whether the proofs are consistent with the alleged grounds for the nullity of the marriage; whether the case rests solely on the statements of the petitioner or the



respondent, and if so, whether the judicial confession or declaration of the parties are strong enough to produce the full force of proof (c. 1678, §1). An advocate for the respondent should be attentive to comment on if the grounds are against the respondent and a brief comment on the proofs offered. The advocate must be mindful that the presumption is to the parties’ good intention and good actions. Advocates must be mindful that as court officers they have an obligation to assist the tribunal in coming to understand the truth.

5. Recommendation for a Decision -

Finally the brief may recommend the judge (s) either an affirmative or negative decision with regards to the doubt as formulated for the case. Ordinarily the advocate for the petitioner will seek to be supportive of the petitioner’s desire for the declaration of nullity. Always seeking to speak on behalf of the truth.

Did you know?

Tribunal cases are named using a woman’s maiden name plus the man’s last name. (Smith -Jones) A woman’s present last name may have no recognizable connection to a pending case! It is best to refer to the protocol number/case name when speaking to tribunal personnel. The protocol number, assigned upon acceptance, reflects the year and the number in order of acceptance: TY #2017-0001, -0002, and sometimes the case type: #2017-0401, for Ligamen cases and -0801 for Pauline cases.

Legible handwriting is always appreciated, especially for names, addresses, and phone contact information. We want to communicate effectively with everyone. It helps to know if a witness is Ms., Mr., or Mrs.

-Margaret Oppenheimer

An Advocate's Experience

By Mrs. Frances Poinsett

My husband, Bob, and I have been assisting individuals in the annulment process for ten years. We began as auditors helping the petitioner in the paperwork process and over the last couple of years have become advocates for the petitioner or respondent. Each person is unique in their story. And, each is deserving of respect and compassion.

We always stress that the person needs to tell their story ... fully. The tribunal cannot read between the lines for them so telling their story is very important. And, we always stress that they pick good witnesses. Witnesses that are willing to participate in

the process and will do so in a timely manner.

My husband went through the annulment process himself. He and I personally know the importance of the work of the tribunal. It allowed us to marry in the Church, it allowed my husband to return to the sacraments, and it allowed me to receive the sacraments for the first time and to become a member of the Catholic Church. No longer a Protestant, but one who had come home.

Without the mercy of the Church and the work of the tribunal this could not have hap-

"...it allowed me to receive the Sacraments for the first time..."

pened. And, I am most grateful as I cannot imagine my life without the Catholic Church, without the sacraments, without the true Body and Blood of Christ.

I keep the importance of the work in mind each time I help someone in the annulment process. My husband and I both consider the work of the tribunal as one of the most rewarding ministries in the Church.

Administrator's Corner

GETTING STARTED

It is not overly difficult to determine what type marriage case is needed, but it does take some practice. It can be confusing, but these questions are key. The answers will also determine if Tyler has competence to process the petition. A diagram is helpful for multiple marriages. 1. Write down the first name of each party to the marriage. 2. Note the baptismal status for each person. 3. Note where the marriage was celebrated; a) county/state, b) civil union/church denomination. 4. Does either party live within the Tyler Diocese? 5. Was it the first marriage for both parties? 6. If not, list all prior marriages for the former spouse. 7. List all prior marriages for the petitioner's current or intended spouse. These questions apply to every prior marriage, regardless of a person's baptismal status.

- Margaret Oppenheimer

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Exploring the Code of Canon Law

What if the cited respondent neither cooperates nor wants to be contacted again, can the nullity trial continue until the final decision?

Yes. If the cited respondent does not respond, or indicated he wishes no further contact, the judge may declare such a respondent absent from the trial. The judge would appoint an advocate for the respondent's right of defense. The judge then decrees that the case is to proceed to the definitive decision and its execution according to canon 1592, §1 and *Dignitas Connubii* art. 138.

What if two non-Catholic parties marry and divorce each other twice, for the same reason? When processing the trial, are two separate decisions necessary?

No. Even though there are two different times of consent, by reason of connection or interconnected cases (c. 1414) for the same parties, the tribunal is competent to handle both causes in the same process, using the same ground and proofs, providing a single decision for both marriages.



Tribunal Update - April 2017

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"Be attentive to the needs of the poor, the suffering, the lonely, for whoever has chosen to love Jesus cannot but love his neighbor." -Pope Francis