



Tribunal Newsletter

DIOCESE OF TYLER

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Message from the Judicial Vicar

THE BRIEFER PROCESS: CAUSES, GROUNDS, AND JURISPRUDENCE

In this issue, we would like to enlighten our readers regarding the briefer matrimonial process established by the Apostolic Letter *Mitis Index* by Pope Francis. Our tribunal is honored by Francis Morrissey, professor of Saint Paul University, Ottawa, Canada, who was also part of the special Papal Commission in the preparation of this *Motu Proprio*, has contributed two articles to our newsletter.

Causes – Article 14 of the Apostolic Letter mentions eight examples/instances for using the briefer process: (1) the defect of the use of reason which is proved by medical documents; (2) defect of faith which can generate simulation of consent or error that determines the will; (3) a brief conjugal cohabitation; (4) an abortion procured to avoid procreation; (5) an obstinate persistence in an extra-conjugal relationship at the time of the wedding or immediately following it; (6) the deceitful concealment of sterility, grave contagious illness, children from a previous relationship, incarcerations; (7) a cause of marriage completely extraneous to married life, or consisting of the unexpected pregnancy of the woman; (8) physical violence inflicted to extort consent.

The Tribunal of the Roman Rota clarifies in an explanatory document of the Apostolic Letter “*Sussidio Applicativo*” (*Sussidio*) that these circumstances are not new grounds of nullity. Rather, they are quite clear situations that need to be applied to an existing ground of nullity so that the invalidity of matrimonial consent can easily be proven by testimonies and documents that can be readily obtained. While applying these causes to pertinent grounds of nullity, for the critical use of the abbreviated process, the judge must evaluate if the circumstances are already manifestly evident in the petition, if

evident proofs are readily available, and if there is no need for further investigation; if not, the case is to be remitted to the ordinary process.

Grounds and Jurisprudence –Pursuant to jurisprudence, Roman Rota in the *Sussidio* suggests the following possible grounds and proofs for the briefer process:

- 1) For the ground of lack of the use of reason, while an expert’s opinion is required for an ordinary process (c. 1680), for a briefer process, instances of the gravest pathologies documented by clinical records, psychiatric report arisen from a non-suspect time may serve as proofs for the nullity of the consent.
- 2) Regarding the defect of faith which can generate the ground of simulation of consent or error that determines the will, simulation is to be proven not simply due to the lack of faith but the defect of a valid intention of the consent through the exclusion of the marriage itself or one of its essential elements or properties. Error is not a simple error, instead error that radically influences the person’s will such that exclusion of consent by implicit simulation takes place.
- 3) In case of a brief conjugal cohabitation, such situation relating to the applicable ground (partial simulation against fidelity, condition, error, fraud, incapacity to assume marital obligations) is to be proven with supportive documents and proofs.
- 4) In case of an abortion procured to avoid children, for the ground against the good of the children, the ground of simulated will contrary to the good of children is to be proven.
- 5) For an obstinate persistence in an extra conjugal relationship at time of or immediately after consent, the ground of partial

simulation against good of fidelity by way of the refusal of the obligation of faithfulness, refusal to have intimate relations with the legitimate spouse are to be proven with supportive documents such as private investigative report, letters, records of telephonic or electronic communications, etc.

6) For a cause of marriage completely extraneous to married life or consisting of the unexpected pregnancy of the woman, total simulation is to be proven, for example, to acquire citizenship, the legitimation of child, economic benefits, etc.

7) For the ground of fraud concerning the deceitful concealment of sterility, grave contagious illness, children from a previous relationship, incarcerations, the malicious deception about a quality to obtain consent, which can gravely disturb partnership of conjugal life are to be proven with supportive documents such as medical reports, civil judicial sentences, and decrees, etc.

8) In case of physical violence inflicted to obtain consent relating to the ground of force and fear, the judge must examine that the force and fear induced from an external cause; actual acts of violence and harm, supported by documents such as medical reports and written police records.

Inside this issue:

<i>The Apostolic Letter Mitis Index and its Key Features</i>	2
<i>A Petitioner’s Story</i>	2
<i>The Briefer Matrimonial Process Established by Mitis Index and the Bishop as Judge</i>	3
<i>Administrator’s Corner</i>	3
<i>An Advocate’s Experience</i>	4
<i>Did You Know...</i>	4
<i>Tribunal Update</i>	4
<i>Exploring the Code of Canon Law</i>	4

THE APOSTOLIC LETTER MITIS IUDEX AND ITS KEY FEATURES

By Prof. Francis G. Morrissey, OMI, Saint Paul University, Ottawa, Canada



On September 8, 2015, Pope Francis issued two new documents relating to the procedures to be observed when processing requests for a declaration of marriage nullity. One of

these, *Mitis iudex*, was addressed to the Latin Church; the other, almost parallel, was for the Eastern Catholic Churches. Both documents were an outcome of the 2014 Synod of Bishops and were the work of a special Papal Commission. Their purpose was to simplify the procedures where possible, cutting out lengthy delays; in this way, Christ's faithful would have better access to the sacraments and to full life in the church community.

While there were a certain number of technical changes introduced in the Church's law, four, in particular, are of interest to the general Catholic public.

The first of these consists in a simplification of the rules allowing a tribunal to accept a case. Henceforth, a person can bring a case to the tribunal of the diocese where he or she lives, no matter where the wedding took place, or where the other party now resides. This reduces the time required to consult the other dioceses involved, particularly in the case of immigrants and refugees.

A second change concerned the proofs required to present a case. The words of the parties can now be given a higher level of credibility, given the fact that people who come to the Church do so for peace of conscience. Likewise, the number of required witnesses is diminished.

While previously every marriage case had to have two concordant sentences of nullity before a person could remarry before the Church, this is no longer required, and one affirmative decision suffices – saving the right of appeal by either party or by the defender of the bond.

The fourth change introduced a shorter process for those instances where the nullity of the previous marriage was evident. Pope Francis provided a sample list of situations where it could reasonably be concluded that there would be sufficient grounds to proceed to a judgment of invalidity. Since this procedure is rather new, it will be the object of a separate column.

Of course, a change in procedures does not imply a change in teaching. Rather, the procedures have as their purpose to make certain that the judges in the courts have the required moral certitude of the nullity of a marriage before pronouncing their sentence. Pope Francis insisted on keeping a judicial framework for such cases, rather than simply allowing for a documentary process in all cases, because he wanted to make certain that arguments on both sides of the issue would be brought forward, and that a well-founded decision be given, whether for nullity, or in favor of the validity of the marriage being examined by the court.

A PETITIONER'S STORY

In 2015, I contacted the Tribunal in Tyler and they informed me in detail about the cases for a declaration of invalidity. At first I was confused because I always had the idea that marriage is a sacrament for life regardless of the serious problems lived at home.

When I was told about the requirements needed to present the case I felt overwhelmed, because for me it was very difficult to get some of our documents, but the Tribunal helped me obtain some certificates. There were times when I wanted to leave the whole process. I had to remember my past

again and that was very painful for me, but during the process I found the strength to continue my case. I felt very supported and emotionally released because for the first time I was facing resentment that I had going through in my life. Since then I feel in peace and I have learned to forgive this person who

h u r t m e s o m u c h .

...I feel in peace and I have learned to forgive...

I could not believe when I received the final decree; I thanked God for giving me what He thought was best for me. I am very happy now for this opportunity and the support from the Tribunal.

It is a little difficult for me to think about the Sacrament of Marriage. I do not discard the idea of getting married, but I ask God if that is in his plans, to allow me find a person with fear of God, someone who could love himself so that he is able to love and respect me too and together we can give the best of ourselves in pleasing God.



E-mail 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 BRIEFER MATRIMONIAL PROCESS ESTABLISHED BY MITIS IUDEX AND THE BISHOP AS JUDGE

By Prof. Francis G. Morrissey, OMI, Saint Paul University, Ottawa, Canada

The *Motu proprio Mitis iudex*, building on previous exceptional examples, introduces into the mainstream of tribunal practice, a new abbreviated or shorter process to be applied in those instances when the nullity of a marriage is quite evident, at least to a trained person.



One of the features of this shorter process is that it is the bishop himself who is the judge in such cases. He is to be assisted by others, but the decision is his. For ordinary and more formal cases, the bishop still entrusts the entire matter to judges he has appointed to the tribunal. Canon Law has consistently held that the diocesan bishop is the judge in the diocese; this new procedure simply applies this norm to a specific type of case.

For this procedure to be applied, both parties to the union must agree beforehand to its use. The documents outlining the situation are presented as well as statements from witnesses, medical experts and other qualified persons. These

are examined by the court personnel; a day is then assigned for a hearing where any contrary arguments would be brought forward and examined by the court. If really necessary, a second day can be scheduled, but if the case is that evident, it shouldn't be necessary to extend the time.

Among examples put forward by Pope Francis are instances where a person went through a wedding ceremony simply to obtain a visa to enter the country or to remain there, or where the wedding took place because of a pregnancy and broke up immediately after the birth of the child. There could also be cases where a person hid a serious criminal record or a serious illness that would affect the conjugal life. These situations, as such, do not make the marriage null, but they are strong indications of a lack of sincerity or of emotional freedom.

When the case is brought to the bishop for a decision, he can decide whether to agree with the proposal, or to send the file back to the tribunal for the ordinary process. There can be an appeal against

the bishop's decision by the defender of the bond; usually there would not be an appeal from one of the parties, since both agreed initially to the procedure.

When the simplified procedure is used, it is not necessary to transcribe in detail all the statements of the parties and witnesses. Rather, a summary of the content suffices in most cases, because other documents are available to support the request.

Of course, this procedure presumes that the diocesan bishop is familiar enough with the grounds of nullity and with the Church's procedural law. If, for some reason, a bishop did not feel comfortable handling such cases personally, he can ask the tribunal to observe the ordinary procedure and proceed to judgment.

A number of dioceses have already begun using this shorter procedure, to the benefit of all those involved in the process.



Administrator's Corner

The changes Pope Francis made in his *Mitis iudex* were welcomed and happily received by tribunal personnel. From a practical view, tribunals are able to dispense justice more expediently without sacrificing the integrity of the process. The rights of both parties remain intact, while decisions may be reached in a more timely fashion. The changes reflect a 'common sense' approach, which in no way diminish the specific protocols and dignity of canon law.

Tribunals still require jurisdiction to process a petition, but save time by not requiring the respondent's Judicial Vicar's consent when the respondent lives outside diocesan boundaries. Respondents are still informed, invited to participate, and their rights are protected.

Formal case petitions require only one decision from a competent tribunal, with the right to appeal, allowing for more timely justice, while maintaining the rights of both parties.



A briefer process is now available for petitions, as Father Anthony McLaughlin, JCD, so vividly describes, whose invalidity would be obvious "to a blind man on a galloping horse." These are fair and welcomed changes indeed.

- Margaret Oppenheimer

AN ADVOCATE'S EXPERIENCE

By Deacon Larry and Laura Bate

Many needing an annulment are fearful of beginning the process, concerned the answer will be negative. Inertia can set in and hold back those who could find a healing answer through the annulment process. Courage is needed to begin this journey. The advocate is a companion on the journey, drawing out the information needed for the case and explaining the Tribunal process. This can be a confusing time for the person, and the advocate is there to help sustain courage and determination.

An important part of an advocate's role is education. What is marriage? What is an annulment? Explaining the term "declaration of nullity" is often helpful to break the common idea of an annulment as "Catholic divorce."

Typically we interview the petitioner early in the process face to face to hear the story. We take notes, which are helpful in guiding the petitioner to fully share information on the formal case questionnaire. Working through the questionnaire can be cathartic as

it is honestly, deeply, prayerfully answered. It is heartwarming to witness God's peace unfolding in the person as the case proceeds. When the person views the former marriage in reality, healing can begin. We encourage those with whom we work to be much in prayer seeking God's truth and His will.





Tribunal personnel try to be practical and efficient in processing petitions we receive. We must follow certain protocols, and only ask for things that are required. We understand there may be challenges for petitioners, but there are certain things that we must have in order to move forward: copies of civil documents, the ex-spouse's address, and willing witnesses. We are here to educate and assist, and it is never our intent to be difficult. It is certainly a co-operative effort, but for our part, we are happy to help those in need reach their marriage goals.

- Margaret Oppenheimer

Tribunal Update - July 2017	
Formal Petitions Opened	40
Formal Petitions Completed (Case Decisions)	36
Prior Bond (Ligamen)	5
Pauline Privilege	3
Radical Sanation	7
Lack of Form	21
Appeal Cases	3

Exploring the Code of Canon Law

Bishop Strickland desires to convene a Diocesan Synod in 2022 on the 35th Anniversary of the Diocese according to his recently released "Constitution on Teaching." What is a Diocesan Synod?

Synod is an assembly of selected priests and other members of Christ's faithful of a diocese which assists the diocesan bishop for the good of the whole diocesan community (c. 460). The 1997 Instruction on the Diocesan Synod issued by the Congregation for Bishops and the Congregation for Evangelization of Peoples describes that the synod is an action of episcopal governance and an event of communion. The synod contributes in shaping the pastoral activities of the diocese and lends continuity to its own liturgical, spiritual and canonical traditions. The synod will also evaluate the adequacy of pastoral programs already in place, and propose new pastoral plans where such are deemed desirable.



Who can convene a synod and what is the juridical nature of the synodal declarations and decrees?

A synod is to be celebrated in a diocese after the bishop has heard the presbyteral council (c. 461, §1). Only the diocesan bishop convenes, presides over, and signs the declarations and decrees. The decrees and declarations from the synod are juridic norms, which can be named as "constitutions" or "directives for future pastoral programs." The diocesan bishop is to communicate the text of the declarations and decrees of the synod to the Metropolitan and to the Conference of Bishops to promote communion in the episcopate and normative harmony in the diocese (c. 467). The 1997 Instruction says that the diocesan bishop will send a copy of the synodal documentation to the Congregation for Bishops or to the Congregation for the Evangelization of Peoples for their information.

"If, then, you are looking for the way by which you should go, take Christ, because He Himself is the way." -St. Thomas Aquinas