



## ***Mitis Iudex Dominus Iesus: Most Relevant Changes***

(November 13, 2015)

This explanation seeks to clarify, as it relates to Tribunal ministry, the Apostolic Letter in the Form of *Motu Proprio* of the Supreme Pontiff Francis *Mitis Iudex Dominus Iesus* on the Reform of the Canonical Process for Declaration of Nullity of Marriage in the Code of Canon Law. If you need an English or Spanish translation of the document, contact Margaret Gillett, (214) 379-2840 or [mgillett@cathdal.org](mailto:mgillett@cathdal.org).

The following changes to cc. 1671 through 1691 of the Code of Canon Law will have a significant impact on Tribunal ministry.

### **I. No more mandatory review for affirmative formal cases of nullity**

Any affirmative decision rendered on December 8, 2015 or thereafter no longer will require a mandatory review. A decision still can be appealed by either party or by the Defender of the Bond to the appropriate Appellate Court, including the Roman Rota. However, the Appellate Court or the Rota will decide if the appeal has merit for the case to have a further hearing.

If no appeal is introduced, once 15 working days (about three weeks) have passed after notification to the parties that an affirmative decision has been rendered, that decision becomes effective and may be acted upon. Then, unless otherwise impeded, either party can marry in the Church upon completion of the usual prenuptial investigation, including satisfaction of any stipulations (*monitum* or *vetitum*) placed by the First Instance Court.

Since all cases adjudicated prior to December 8, 2015 still require the Appellate review, the Petitioner's Procurator-Advocate should encourage the Petitioner to send the \$100 Appellate Court fee to the Tribunal so the case and fee can be sent to the Appellate Court for the Dioceses of Texas, as required by Canon Law.

### **II. Competence**

Requirements for competence have changed. It no longer will be necessary for both parties to live within the same Episcopal Conference. Likewise, the consent from the Judicial Vicar of the Respondent is not necessary. The Dallas Tribunal will accept matrimonial cases so long as the Petitioner or Respondent has a domicile or quasi-domicile in Dallas, the marriage occurred in Dallas, or the majority of proofs will be gathered in Dallas. This means, for instance, that we can process a case for a woman living in Dallas now but who married in Saigon, even if the former spouse still lives in Saigon or elsewhere.

Parishes need not wait until December 8, 2015 to submit cases for which we are not presently competent but will become so on December 8. We can begin preliminary work on

them even before the effective date of the new *Motu Proprio*.

### **III. Certain Proofs Gain Greater Probative Value**

Credibility witnesses (character references), that is, people who from a lengthy association have sufficient knowledge to speak to the good name of the Petitioner or Respondent, but who were not necessarily acquainted with either party prior to the marriage, can be used to confirm the veracity of the Petitioner and/or Respondent regarding her/his confessions/declarations. Therefore, the Tribunal is requesting, through its updated [Items Required for Introduction of Cases](#) available from the Tribunal or through the Diocesan website [www.cathdal.org](http://www.cathdal.org), submission of three completed [Character Reference Questionnaires](#) for every formal nullity case.

As in the past, cleric and lay ministers who introduce a case should encourage the Petitioner to provide any church or civil documents to support the petition for invalidity. Now, however, legally obtained court records, medical records, police reports, hospital records, social workers' reports, CPS reports, etc., along with the confessions/declarations of both parties and the statements of three credibility witnesses, can provide a higher level of proof to assist the Judge(s) to reach moral certitude. The evaluation of a Court-appointed Expert with the declaration of the Petitioner and/or the Respondent could be sufficient for the Judge(s) to reach moral certitude. Thus a greater combination of more varied proofs can contribute to the Judges' ability to reach moral certitude.

### **IV. The Briefer Process**

Much publicity in the secular press and otherwise already has surrounded the briefer process, which also might be referred to as the "Bishop's Process," since the diocesan Bishop is the one who must reach moral certitude regarding the invalidity of the previous marriage.

Certain critical conditions must be in place for the Briefer Process to be utilized: the overt consent of the Respondent; an evident ground for nullity; the adequacy of proofs submitted with the Petition; and the likelihood that the Bishop can reach moral certitude regarding the invalidity of this particular marriage.

The updated [Petition for Investigation of a Marriage Bond](#) is designed to include the Respondent's formal consent to the Petitioner's Petition. Cleric and lay ministers in the parish who introduce cases should make every effort to gain the cooperation of the other party (Respondent). As already stated, the overt consent of the Respondent is a pre-requisite for consideration of the Briefer Process.

The following facts and their related grounds for marriage nullity can have significant results in adjudicating all marriage cases, not only for the Briefer Process but also for the Ordinary Process:

A. A defect of faith leading to a simulation of consent or error in determining the will

- (Possibly Simulation c.1101 or Error Determining the Will c.1099)
- B. Brief conjugal life
  - C. Abortion procured with the purpose of avoiding openness to children (Partial Simulation-*Contra Bonum Prolis* c.1101)
  - D. Obstinate persistence in an extra-conjugal relationship at the time of the marriage or immediately following (Partial Simulation-*Contra Bonum Fidei* c.1101)
  - E. Deceitful concealment of sterility, or of a grave, contagious illness, or of children from a previous relationship, or of incarcerations (Imposed Error c.1098)
  - F. A situation in which the reason for entering marriage is completely extraneous to conjugal life (Total Simulation c.1101)
  - G. The unplanned pregnancy of the woman (usually Incapacity to Contract Marriage c.1095)
  - H. Physical violence inflicted to extort consent (Force and/or Fear c.1103)
  - I. Defect of the use of reason proved by medical documents (Lack of Reason c.1095, 1°)

This is not an exhaustive list of indicative facts. No doubt, further clarifications/developments will be forthcoming.

While, on the parish level as part of the Preliminary Investigation, cleric and lay ministers should make every effort to obtain a well-articulated statement from the Petitioner and, if at all possible, from the Respondent, along with as many proofs as possible, no one should promise which type of process will be utilized and what the results will be. Rather, a decision to submit a case to the diocesan Bishop will be made by the Judicial Vicar, after he reviews the declarations of the Petitioner and Respondent, all documents submitted, and the comments of the Defender of the Bond.

The 45-day timeframe for the processing of a case, of which you no doubt have heard, refers to the Briefer Process. That 45-day period begins once the Formulation of the Doubt is decreed.

The Tribunal will utilize the Briefer Process whenever the conditions are met. Therefore, the parish cleric or lay minister should submit to the Tribunal, with the help of the Petitioner, whatever can be obtained, such as the input of both the Petitioner and Respondent on the [Petition for Investigation of a Marriage Bond](#) and the declarations of both the Petitioner and Respondent as well as any documentation either can provide to support a finding for invalidity. But the minister should make no promises that the Briefer Process, rather than the Ordinary Process, will be utilized.

The *Motu Proprio* envisions a preliminary process to gather the statements of both parties and as many documents and witnesses' statements as possible even before introduction into the Tribunal. This preliminary work, critical in expediting cases, is to be undertaken normally at the local parish.

Regardless of the kind of case to be processed, whether it be administrative, documentary, formal (either Briefer or Ordinary Process), or Privilege (Pauline or Petrine), the role of the cleric or lay minister on the parish level is paramount to a successful outcome. As in the past, the

parish minister's most important tasks before submitting the case to the Tribunal are:

- Meet with the Petitioner several times in order to hear the story;
- Assist the Petitioner in completing the Petition and questionnaire(s);
- Enable the Petitioner to make contact with the Respondent to determine whether he or she will become a co-Petitioner and sign off on the same [Petition for Investigation of a Marriage Bond](#) and complete the generic Respondent's Questionnaire for submission to the Tribunal. If necessary to encourage this participation by the Respondent send a letter from the parish minister to the Respondent;
- Gather all pertinent church and civil documents to prove that the presumption of validity in the marriage in question may be overturned; and
- Obtain, for submission with the case, completed [Character Reference Questionnaires](#) for the Petitioner/and or Respondent.

The Tribunal will be offering workshops for priests, deacons, and lay ministers in the Deaneries or parishes or at the Pastoral Center to explain the changes to the Code of Canon Law, cc. 1671-1691, as they will affect Tribunal ministry.

If you have any questions please contact Margaret Gillett, who can be reached at (214) 379-2840 or [mgillett@cathdal.org](mailto:mgillett@cathdal.org).