CHANGES RELATING TO SOME ASPECTS OF DECLARATIONS OF NULLITY FOR MARRIAGE

Tribunal of the Diocese of Sioux Falls

On September 8, 2015, Pope Francis issued a legal document called ***MITIS IUDEX DOMINUS IESUS***, (in English, "The Lord Jesus, the Gentle Judge"). In it, he revised some aspects of the procedure that is followed by the Church in declaring that a marriage is null. The secular media and even some Catholic media has, unfortunately, not presented the information completely or correctly. This is written to clarify some of the misunderstandings that have come to the attention of the Tribunal of the Diocese of Sioux Falls.

The Church's marriage nullity process:

The Lord Jesus taught that marriage is a permanent commitment, that the marriage vows, once exchanged and mutually received, are indissoluble. So that means that once a couple is married, even though they might get a civil divorce or separate, they still are in the Eyes of God joined in the bond of matrimony.

The Church, though, has recognized that in some cases, there are conditions that prevent a marriage from being valid from the beginning. The Church, in every diocese, under the direction of the Bishop, establishes courts called Tribunals that exist to examine individual marriages to see if they are indeed true and valid. A declaration of invalidity is given by the Tribunal in specific cases after a thorough investigation.

The process for evaluating marriages that are called into question has developed over many centuries and continues to develop today. It involves testimony and proof that the marriage was a valid or invalid **sacrament** according to the laws of the Catholic Church.

Pope Francis' changes to the Process

In introducing some changes to this process Church Courts (Tribunals) use in issuing decrees of invalidity, Pope Francis reiterates the Church's desire to uphold the teaching of Our Lord on marriage. Namely, that marriage is indissoluble. The Church maintains and assumes that a marriage is valid UNTIL it is proven contrary (canon 1060). It would be dishonest, unjust, and unmerciful to say that a valid marriage is invalid when it is not.

The Pope's concern is not to have "easier," or "quicker" declarations of invalidity but to make changes that would alleviate unnecessary or burdensome barriers in obtaining a decision by Church Tribunals. For that reason, Pope Francis, with the counsel and recommendations of a committee of experts in Church Law has **CHANGED SOME** elements of the process while maintaining basic and essential principles of Church Law upheld for centuries.

What are the major changes to the Process?

There are five changes that affect the process for declaring a marriage null:

1. The elimination of the requirement of an automatic "appeal" to a second instance (appellate) court.

2. The introduction of a streamlined process that can be judged personally by the Diocesan Bishop for rare and exceptional cases.
3. New rules for Tribunal competence.
4. New requirements for a "college" of judges.
5. A request for a change in handling the costs that are a part of the operation of a Tribunal.

When did these changes take effect?

These changes in procedure took effect on December 8, 2015. Effectively three months after they were announced. It is normal for new laws to have a period of time that allows for transition, so they may be studied and prepared by experts in Church Law (canon 8).

1. **Removing the automatic "appeal" of a second instance court and how it affects the process?**

   Up to the date of December 8, 2015, all cases that were decided still carried the requirement to automatically go to the second instance (appellate) court. The purpose of making this part of the marriage nullity process was to be a protection or "safeguard" for the sacrament of marriage. Also, it was "another set of eyes" to ensure that the rights of all involved were protected.

   The right to appeal a decision is a very important right everyone has, and it needs to be protected. It will continue to be an option for the parties involved, who after receiving a decision on a questioned marriage will still have the option of appealing the decision. The difference is that the second instance (appeal) court will not automatically receive all the decisions. Under the Pope Francis' changes, the second instance (appellate) court will only receive those cases appealed by the parties involved. This means that after the Tribunal has made a decision on a particular marriage, the parties will have 15 days from receiving the decision to appeal if they think that the decision is in error or one or any of the parties believes that their rights were not properly protected during the process.

   Will the Process be any shorter?

   The process, due to the nature and gravity of questions relating to the validity or invalidity of marriage, has requirements and time frames that **must be observed** to protect the rights of the persons involved. These rights include but are not limited to: the right to defend one's self, the right to propose witnesses and proofs, and the right to appeal. The process requires time to gather information, interview the parties and witnesses, and collect all required documents. The law foresees that the process should normally take up to one year (canons 1453 and 1465), but issues can occur which may mean that the process can take more or less time depending on the specific circumstances. The Tribunal of every diocese always wants to be efficient, while never rushed; **the aim is always discovering the objective Truth.**

2. **What is this new "shorter process" involving the Diocesan Bishop?**

   The new process, **rare and exceptional**, that has been added would involve cases where the facts are very clear and the extra processes of a "full formal trial" by the Tribunal would be an unnecessary formality.

Who would be eligible for the "shorter process" that is introduced by these changes of Pope Francis?

While this is all new, and has not been completely "ironed out" yet, the criteria that Pope Francis has determined to look at for eligibility is:

1. When both spouses petition for the marriage study together, or at least the spouse petitioning has the consents of the other spouse and can prove it.
2. The nullity of the marriage must be manifestly clear. Since most deal with what is referred to as a "defect of consent" (ie., a judgment of the internal act of the will of one or both of the parties), this is very difficult to prove in a summary way, thus most often would not be eligible for the "shorter process" that Pope Francis is introducing.
3. All the facts would have to be very clear, beyond question and provable through verified documents.

The first criteria might be clear and obvious, but the other two criteria are not so clear and would need juridical protection that the "formal" process, not the abbreviated new summary process ("shorter" process) could handle. Furthermore, the connection to the Diocesan Bishop being personally involved would indicate just how rare and exceptional such a process should indeed be.

How would the "shorter" process work:

1. The parties submit one petitioner with both signatures or one may submit a petition with the consent of the other (must be verified) for a declaration of nullity to the Diocesan Tribunal which in addition to the usual information and requested documents would further have to have information demonstrating why the shorter process should be used and how the proofs can be verified.
2. The Judicial Vicar of the Diocese issues a decree stating the grounds, nominating an instructor who gathers the evidence, nominating an assessor who will advise the Diocesan Bishop, and orders that **ALL** who must take part in the session meet within a period of 30 days.
3. The defender of the bond and the parties will have 15 days to present their own arguments in the case.
4. After steps 1-3 have concluded, the whole case is presented to the Diocesan Bishop for his judgment. If the Diocesan Bishop decides that he has "moral certainty" that the marriage is invalid, he can issue a sentence declaring the nullity of marriage. If the Diocesan Bishop cannot say he is morally certain, the case then goes back to the Tribunal and the case is opened as a "formal process" as though the Tribunal just received it.
5. If the Diocesan Bishop affirms that the marriage is invalid, the parties have 15 days to appeal the decision.

What is the actual length of time that the "shorter" process will take:

Some media outlets reported that this process will take 45 days. Even with the clearest evidence and cooperative parties and witnesses, the process will not be that quick! Justice is done with proof and facts and certainty, not speed and shortcuts!

The number of 45 days seems to come from some reporters reading numbers in the Pope's document, without considering that there are other considerations, such as the fact that the law

allows 30 days to review a submitted petition by the parties (canon 1506), and 30 days to write the decision after it has been reached (canon 1610 §3). The number also does not admit for the 15 days to pass to appeal the decision (canon 1630 §1). That means according to most experts in Church law that the rare times that this "shorter process" might be used would be at least 120 days without any other possibility of delays that might come up.

3. What is Tribunal competence and how will it be different?

Every diocese has a Tribunal, but not every Tribunal can hear any and all marriage nullity case. The Tribunal has to have some jurisdiction over the marriage in question. Prior to the changes to the law by Pope Francis there were four ways that a Tribunal could have jurisdiction:

1. If the marriage took place in that diocese.
2. If the Respondent diocese of residence.
3. If the Petitioner lives in that diocese, both parties live in the same conference of Bishops, and permission has been given from the Judicial Vicar where the Respondent lives.
4. If the majority of the relevant evidence is located in that diocese and permission from the Judicial Vicar where the respondent lives has been given.

These requirements were designed to protect the rights of the Respondent, but increased mobility and mass communications made these "norms" practically obsolete as well as being unduly time-consuming.

Under the revised law of Pope Francis, there are three ways that a Tribunal can be competent, and none of them require any of those extra formalities and requirements:

1. The diocese where the marriage took place.
2. If either the Petitioner or Respondent to the marriage lives in the diocese where the petition is submitted.
3. If the majority of the relevant evidence or proof is located in the diocese where the petition is submitted.

4. What are the new requirements for Tribunal personnel?

Marriage nullity cases are normally tried before a "college" of three judges, all of whom meet to decide whether or not the marriage is proven invalid. Prior to Pope Francis' changes, only one of these three judges could be a layperson (men or women) with a degree in canon law. Under certain circumstances a single clerical judge was permitted.

Under the new "norms," the college of three judges will remain the norm with a single clerical judge being an exception for certain circumstances, but now up to two of the judges may be lay individuals (men or women) with degrees in canon law and only one needs to be a cleric.

In certain infrequent circumstances where one of the judges has to recuse himself or herself due to a conflict of interest, the revised law 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 according to the time frames established in the law.

5. What about the "fees" that are involved in the process of obtaining a decree of nullity?
The media has included in reports some very absurd monetary figures involved in the process. Dioceses usually ask the parties to contribute to some of the costs that are involved in maintaining a diocesan office that is dedicated to receiving and reviewing questions about the nullity of marriages, called a Tribunal.

In the Diocese of Sioux Falls there is a small filing fee requested to open a case, and only after the case is decided is a request for a donation to defray a very small portion of the costs involved made to the party or parties. There are different ways of handling these costs in different places in the world (remember the Catholic Church is Universal!). In the United States, and in most dioceses including the Diocese of Sioux Falls, the diocese subsidizes heavily the costs associated with the Tribunal operation.

The Pope rightly wants to be sure that there is no hint of someone being able to pay for a decision in his/her favor and has asked that fees be re-evaluated.

The New Norms and the Tribunal of the Diocese of Sioux Falls:
The Tribunal here is dedicated to the objective Truth and the teachings of Our Lord, and to following Church Law that governs the process of establishing the validity or invalidity of individual marriages when they are called into question. The Tribunal takes the opportunity to recommit itself and its staff to a timely and just process for those involved for their good and spiritual well-being.

One of the results of this new set of "norms" and procedures by the Pope is that it allows us to once again be reminded about the Truth of marriage, its goodness and its indissolubility and the need to protect parties and to catechize about what makes a marriage, and what is required by parties who wish to enter into marriage.

As with all new laws and procedures, it will take experts in Church Law (people with degrees in Canon Law) time to implement the changes fully, and fine-tune forms and processes based on this new document and the wishes of Pope Francis. We will make every effort to do it with a sense of fairness, justice and Truth, faithful to the Gospel and Our Lord Jesus Christ!