


Formal Case Process

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Formal Case Process

Purpose:

To provide Parish Advocates with an understanding of the process, why it takes as long as it does, and what the hold-ups can be.

To assist Parish Advocates in helping Petitioners avoid unnecessary delays.

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1. Registration of the Case

- Cases are submitted by the Parish Advocate only.
- Delays are caused by missing documents, missing signatures, missing information, missing witnesses.
- A letter acknowledging receipt of the case is sent to the Parish Advocate.

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Submitting a Formal Case

- Form C includes:
 - Biographical Information
 - Marital History
 - Marriage under Investigation
 - Oath
 - Formal Petition (*Libellus*)
 - Intentions
 - Witness List
 - Mandate for Parish Advocate
 - Counselor Release Form

Tab 10, pp. 39-47

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Submitting a Formal Case


- Required Documents:
 - Summary Statement by Petitioner, *signed and dated*
 - Baptismal certificate with notations, *issued within six months*
 - Original, certified marriage certificate/license
 - Certified divorce decrees (Judgment **and** Notice of Entry of Judgment), *must have stamp or seal*
 - Advocate's Notes Concerning the Petitioner, *signed and dated*
 - \$150 deposit (or payment in full, \$600)

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Submitting a Formal Case

- Other Documents: (*may be required*)
 - Affidavit of Diligent Search
 - Decree(s) of Nullity
 - Death Certificate
 - Witness Affidavits Regarding Baptism


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About the Respondent

- Participation of Respondent
 - Every reasonable method of finding the respondent (including Internet search) must be documented by Petitioner, before declaring Respondent’s whereabouts unknown.
 - Use Affidavit of Diligent Search to document efforts to locate the Respondent. [Tab 10, p. 62]


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About the Respondent

- What if the Respondent is violent?
 - Even violent Respondents have rights
 - Documented evidence (e.g., restraining order)
 - Can be cited through another tribunal
 - Judicial Vicar assesses any concerns
- Failure to respect the rights of the Respondent renders the process null and void.

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2. Acceptance of the Petition (*Libellus*) and Citation of the Parties

- Verification of Data
- Acceptance or Rejection
- Citation of the Parties
 - Decree of Acceptance and Citation
 - Defender of the Bond is named

Parties are given three (3) weeks to respond.


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Acceptance or Rejection

- Judicial Vicar reviews Summary Statement to see if there is any indication of grounds.
 - If yes, case is accepted.
 - If not, Summary Statement sent back to Parish Advocate to work with Petitioner to provide more information.
 - If no useful information is added, the case is rejected. A Decree of Non-Acceptance is issued.


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Ordinary or Briefer Process

- Judicial Vicar determines whether the case may qualify for the “Briefer Process” or whether it will be done through the ordinary process.
(The Briefer Process will be explained later.)


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Citation of the Petitioner

- Cover Letter (copy sent to Parish Advocate)
- Copy of Decree of Acceptance and Citation
- Account Statement
- Payment Option Form
- Self-Addressed Envelope


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Citation of the Respondent
(via certified mail)

- Cover Letter
- Copy of Decree of Acceptance and Citation
- “Ten Rights of the Respondent”
- Copy of Petition (*Libellus*) p. 4 of Form C
- Copy of Summary Statement
- Mandate for Advocate
- Letter of Intent to Participate
- Annulment Brochure
- Self-Addressed, Stamped Envelope


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Rights of the Respondent

- Summons
- Know the Grounds
- Advocate
- Propose Witnesses
- Know Names of Witnesses
- Inspect the Acts
- Offer Additional Proofs
- Reply to Conclusion
- Review the Sentence
- Appeal or Complaint


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3. Joinder of Issues (*Contestatio Litis*) / Constitution of the Court / Instruction

- Includes:
 - Date of case acceptance
 - Competence of Tribunal to hear the case
 - Ground(s) on which case will be tried
 - Judges assigned to the case
 - Auditor assigned to the case
 - Beginning of “Instruction” (gathering testimony)

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Competence (c. 1672)

Determination of Competence (Jurisdiction)

- 1° Diocese where marriage took place
- 2° Diocese of the domicile of Petitioner or Respondent
- 3° Diocese where most of the proofs will be collected


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Joinder of Issues (*Contestatio Litis*)

- Based on information received in the Petitioner’s Summary Statement, the Judicial Vicar sets the grounds the case will be tried on, in the form of a question:
"Is it certain that the marriage contracted by Miranda Marie Smith and Armando Leon Cortez on June 26, 2001, before Rev. John M. Mason at St. Celestine Parish in Birds Crossing, CA, was invalid on the grounds of a grave defect of discretion of judgment concerning the essential matrimonial rights and duties mutually to be handed over and accepted (1983 CIC, c. 1095, n.2), on the part of the Petitioner?"

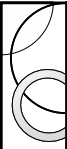
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Constitution of the Court

- Our Tribunal utilizes a three-judge court:
 - Presiding Judge – Judicial Vicar
 - Judge *ponens*
 - Collegiate Judge

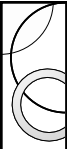
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Instruction of the Case

- Petitioner, Respondent, and witnesses are sent questionnaires. Requested to reply within three (3) weeks. Additional follow-ups (for a total of six weeks) may follow.
- Parties and/or witnesses may request a telephone interview. Interviews are transcribed (and translated as needed).

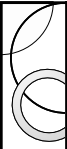
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Instruction of the Case

- The Tribunal has NO control over the timing or quality of proofs (evidence). We often encounter:
 - witnesses not notified in advance by parties
 - anger, indignation, anti-Catholic responses
 - witnesses who don't want to say anything critical (especially parents)
- Consequently, repeated follow-up is often required.
- Process can take anywhere from a few months to a year or more.
- Failure to obtain required proofs may lead to withdrawal or abandonment of case, or a negative decision.


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Gathering and Evaluation of the Proofs

- Auditor gathers, reads, and reviews testimony.
- Auditor consults with Judge *ponens*.
- If needed, additional questions are sent to the parties and/or witnesses.
- The burden of proof rests on the Petitioner, not on the Tribunal.


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Gathering and Evaluation of the Proofs

- If proofs are lacking:
 - If there is reason to believe that more proofs may be available but are not immediately forthcoming, case may be renounced or abated.
 - If it appears there is nothing further to be obtained, case will likely get a negative decision.


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Court Expert Witness

- If the case is based on c. 1095, the testimony is sent to a court-appointed expert.
- The expert is a Catholic psychologist who reviews the testimony and prepares a confidential report for the court.
- In some cases, the expert witness may interview one or both of the parties.


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4. Publication of the Acts

- Petitioner, Respondent, and Parish Advocate receive letter and copy of this decree.
- Both parties and Parish Advocate may clarify, challenge, or request to add testimony.
- If new testimony is to be added, a Decree of Delay of Judgment may be permitted by the judge.


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Delay of Judgment

- After a Delay of Judgment, the Acts are published again, and the normal process continues.


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5. Conclusion of the Case

- Decree of Conclusion
 - Issued three weeks after Publication of the Acts; all evidence gathering is concluded.
- Defender of the Bond
 - Reviews procedural elements and evidence.
 - Writes a brief to the court in support of the marriage bond.


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6. Decision and Sentence

- Case goes to the judges for a decision.
- Judge *ponens* is responsible for preparing the argument and proposing a decision for the judges.
- Each judge must each reach moral certitude in their decision that at least one of the proposed grounds is proven.
 - Affirmative = marriage declared null
 - Negative = marriage remains valid

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Sentence

- Judge *ponens* signs first, followed by Collegiate Judge, followed by Presiding Judge (Judicial Vicar)
- Sentence includes:
 - The Facts
 - The Law
 - The Argument
 - The Decision

Tab 10, pp. 83-90


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Restrictions May Be Applied

- *Monitum* (Warning)
 - **Recommends** some action to be taken prior to a new marriage.
- *Vetitum* (Prohibition)
 - **Requires** some action to be taken prior to new marriage.


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Publication of the Sentence

- Either party and/or Parish Advocate may come in to read the Sentence.
- Parties and their Advocates have three weeks to notify the Tribunal that they want to come in and read the Sentence.


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Appeal

- Opportunity for Appeal
 - Either party – or the Defender of the Bond – may appeal an affirmative or a negative decision to the Court of Second Instance – the Metropolitan Tribunal of San Francisco.
 - Appeal must be submitted within three weeks.
 - Case may also be appealed directly to the Roman Rota.


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Execution of the Sentence

- If there is no appeal after three weeks, the final decrees are issued.
- Petitioner receives original Decree of Definitive Decision and Execution of the Sentence.
- Respondent receives a letter letting him/her know the outcome of the case.
- Parish Advocate receives a copy of the decrees to file at the parish.


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Execution of the Sentence
(continued)

- Parish(es) of baptism of the Catholic party(ies) and church of marriage (if Catholic) are notified of the decision and requested to enter information into sacramental registers.
- The case is then closed.
- Parties are free to marry or be baptized, as long as all other requirements of the law have been fulfilled.


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Reminders

- ✓ **DO NOT** set a wedding date or promise baptism until the decision has been confirmed by the issuance of the Decree of Execution.
- ✓ Too many things are beyond our control.
- ✓ Delayed weddings ALWAYS lead to unhappy brides and grooms.
- ✓ Delayed baptisms lead to enormous disappointment.
- ✓ False promises only increase people's anger and frustration toward the Church in an already difficult situation.

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Reminders

Please...

- ✓ Help Petitioner gather the needed documents and fill out forms completely.
- ✓ Remind them of the need to inform the Respondent and witnesses in advance if they expect their cooperation.
- ✓ Be pastorally sensitive in describing the potential difficulties and delays. This is not the time for rosy-eyed optimism.
- ✓ Feel free to call and ask questions, to see where the case is in the process, and to ask what you can do to help.

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About Tribunal Fees

- Awkward to talk about
- Tribunal operates on deficit budget, subsidized by Diocesan Assessment
- Professional lay employees must be paid ("The laborer deserves his/her wage")
- Average formal case costs in excess of \$1500 to process
- Current fee for a formal case is \$600

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