

**Defect of Form**  
In the Form of the Celebration of Marriage

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Tab 2

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**Defect of Form**

- ▶ The intention is to follow canonical form of marriage
- ▶ Defect of Form occurs when the required form *appears to be present* (i.e., the expression of the consent before a bishop, priest, or deacon and two other witnesses), but there is some defect with regard to the...
  - Delegation of the official witness
  - Manner in which the official witness assisted at the wedding
  - How the parties expressed their consent, either personally or through a proxy
  - The presence of two witnesses

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**Qualification of the Official Witness**

Examples:

- ▶ Was not the ordinary (bishop) or the pastor or the parochial vicar or the deacon of the parish
- ▶ Was not delegated to assist at the wedding

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**Manner in which the official witness assisted at the wedding**

Examples:

- ▶ Did not ask for the consent of the parties
- ▶ Asked for the consent of only one party with someone else asking for the consent of the other party
- ▶ Did not receive the consent in the name of the Church

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**The parties failed to express their consent either personally or through a proxy**

Example:

- ▶ The proxy lacked the proper mandate to speak on behalf of one of the parties

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**Defect of Form is a Judicial Process**

- ▶ Use **Form C – Formal Case** to submit a Defect of Form case
  - In your letter to the Tribunal state that this case could be a Defect of Form
  - Summary Statement – very brief summary of the relationship, including a description of how the canonical form was not followed (*why the form was defective*)
- ▶ The case begins with the petition
  - Judge accepts the petition, and the parties are cited

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**Process (continued)**

- ▶ The court is assigned
  - The judge is the Judicial Vicar or other designated judge (a single judge court is the norm)
  - Defender of the Bond intervenes in the case
    - Writes a brief in defense of the marriage (see Tab 2, pp. 3-4)
    - Has a right to appeal the sentence

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**Process (continued)**

- Parties to the marriage are cited
  - Both parties have the right to submit proofs
  - Both parties have right to appeal the sentence
- The case is decided primarily on proof from the document(s), subject to no contradiction
- The focus is on what the documents contain or fail to contain
- If there is some doubt about the validity of a document or if the defect of legitimate form can only be proven by a majority of proofs that are not documentary, then the case must be heard in the ordinary Formal case process.

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**Process (continued)**

- ▶ The case is decided by a judge in the Tribunal through a sentence (see Tab 2, pp. 5-6), and not an administrative process, which ends with the issuance of a decree.

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