

On August 15, 2015, Pope Francis issued the *Motu proprio Mitis et misericors Iesus* [*Gentle and merciful Jesus*], a document revising the marriage nullity process in the Eastern Code of Canon Law. Our Eparchial Tribunal is ready to implement the new norms when they come into force on December 8, 2015. The mass media, including even some Catholic news outlets, have widely reported this event, but some of these reports have contained inaccuracies about the changes. To clarify what the changes really are and how they might affect you, please consult the answers to the following frequently asked questions (FAQs).

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### **1. What is the Marriage Nullity process and why does it Exist?**

Jesus taught that marriage is indissoluble. Once people get married, they are married until one of them dies, even if they someday separate, justifiably or otherwise. Since they remain married for life, if one of them goes on to live in the manner of husband and wife with someone else, then he or she is living in an irregular state. A married person's vocation is to lifelong fidelity to the marital covenant, even when (in cases of abandonment or necessary separation) that means living as though celibate. Christ knew our human nature and He knew that this was a hard teaching. He was already challenged and ridiculed for it in His own time, but He did not back down from it one bit.

With that being said, there are certain marriages that are invalid from the start. They have the outward appearance of a marriage and are usually entered into in good faith, but because of some impediment, some defect of consent, or some problem in the form of the marriage celebration, they are never really marriages at all. If there was really no marriage at all, and if that fact is publicly proven, then those two parties are free to marry someone else in the Catholic Church. The Church and society as a whole have the responsibility to uphold and support couples in their marriage vows even when one or both of them no longer want to be married. That is why there has to be proof of nullity before a new marriage can be recognized. The spouses themselves, let alone one of them, cannot simply decide privately that the marriage is invalid and that they are free to move on.

The marriage nullity process is a judicial process developed over the centuries to allow people who believe that their marriage was invalid the opportunity to prove that fact, all the while safeguarding the rights of both parties and upholding the dignity and indissolubility of marriage. A declaration of nullity does not and cannot dissolve an existing marriage; rather it is an official declaration by the Church that it has been proven beyond a reasonable doubt that a given marriage was invalid from the start. When a marriage is actually invalid, declaring the nullity of the marriage is a good and just thing.

### **2. Why is Pope Francis changing the Marriage Nullity process?**

Pope Francis teaches exactly what Christ taught: that marriage is indissoluble. Indissolubility is part of the Good News! It tells us that God wants us to love and be loved

unconditionally, and that He made us capable of that kind of love. Nothing that Pope Francis has said or done has changed or could change any of that. There is nothing merciful in finding a pretext for calling a marriage invalid when it is really just broken, or in declaring that a marriage is probably invalid even when real doubt remains, which is why Pope Francis very prudently retains the principle that a marriage cannot be declared invalid unless it has been proven beyond a reasonable doubt. His concern is not to have more "annulments" regardless of the truth of the matter, but to eliminate any unnecessary, artificial, or unduly burdensome barriers toward obtaining a just and expeditious judgment. He also wants to minimize as much as possible the amount of time people spend in a state of uncertainty while their case is pending.

The existing marriage nullity process, when followed faithfully, is both effective and (under ideal circumstances and considering the complexity of the matter) relatively expeditious. But like any fallible, human process it can and should be reformed when necessary. Pope Francis, working with a commission of experts, has reformed the process in order to make it as accessible as possible, without in any way undermining the integrity of the process.

### **3. How is the marriage nullity process going to change?**

The document contains a number of "tweaks" to the process, but there are five major changes: (1) new rules for tribunal competence, (2) new requirements for tribunal personnel, (3) the elimination of the requirement for a second conforming affirmative, (4) a shorter and more streamlined process, judged personally by the diocesan bishop, for certain rare and exceptional cases, and (5) a change in the approach to recovering tribunal expenses.

### **4. When do these changes take effect?**

The revised laws take effect on December 8, 2015.

### **5. What is tribunal competence, and how will it be different?**

Almost every eparchy or diocese has a tribunal, but not just any tribunal can hear any marriage nullity case. The tribunal has to have competence (jurisdiction) over the marriage in question. After December 8, 2015 there will be three ways that a tribunal can be competent: (1) if the marriage took place in that eparchy or diocese, (2) if either party lives in that eparchy `diocese, and (3) if for whatever reason the

majority of the relevant evidence is located in that eparchy or diocese.

#### **6. How do the changes in the rules for competence affect me?**

If your case is already pending, or if you introduce it before December 8, 2015, they don't. If you introduce your petition on or after December 8, 2015, you may have one or more additional options for where to introduce your petition.

#### **7. What does it mean that the requirement of a second affirmative is being eliminated?**

For cases decided after December 8, 2015, if nobody (i.e., neither party nor the defender of the bond) appeals an affirmative decision within fifteen days, it becomes executory, meaning the parties can act on it, usually by remarrying in the Catholic Church. That is true at the first instance level or at any appellate level: one un-appealed affirmative sentence definitively establishes the nullity of the marriage. This applies to cases whose final sentences are published on or after December 8, 2015.

#### **8. How long is the process supposed to last?**

The marriage nullity process is not something that can be rushed: marriages are complex and unique, and in order to know beyond a reasonable doubt whether a marriage is invalid from the start, it is necessary to gather a great deal of information. That means questioning the parties, interviewing witnesses, and collecting documents and other evidence. All the while, both parties' rights have to be carefully protected, and all of this takes time. The law says that the process should normally be completed in a year in the first instance, but when delays arise it can take even longer. In many cases, it can be completed significantly sooner, and every tribunal aims at maximum efficiency, but never at the expense of the integrity of the process as a search for the truth.

#### **9. What is the new shorter process?**

Even before the reforms, there were shorter processes that could be used in special cases when the nullity of the marriage is obvious and indisputable. The "documentary process" involves cases when an official document (e.g., a marriage certificate proving a previous marriage bond) proves the nullity of a marriage beyond a reasonable doubt; in some cases it can be finished in a matter of weeks. The so-called "lack-of-form" process, which deals with Catholics who marry outside the Church without a dispensation, is not even a judicial process at all but a simple administrative verification of facts; in urgent cases it can be finished in days. However, there are certain cases—rare and exceptional, they do occur—that are not "lack of form" cases or "documentary process" cases, but in which all the relevant facts are readily available and clearly demonstrate the nullity of the marriage. In such cases, some of the more time-

consuming formalities of the ordinary process can safely be omitted without sacrificing the integrity of the process. For cases such as these, Pope Francis has created a new, shorter process.

#### **10. What cases qualify for the shorter process?**

The shorter process is designed only for those rare cases when it can be employed without injustice. Three strict qualifications have to be met. (1) Both spouses have to petition for it together, or if not, then the other party must freely and knowingly consent to it in writing. (2) The nullity of the marriage must be manifest (clear and obvious). Since most marriage nullity cases deal with a defect in marital consent, i.e., with an internal act of the will placed by one or both of the spouses, often several years prior, it would be exceptional for such a defect to be obvious today. (3) All the facts that make the marriage manifestly null have to be readily available. Unlike the documentary process, the shorter process can involve the questioning of both parties and knowledgeable witnesses, but this is to be done all in one session when possible. Even though both spouses petition, the second and third requirements must still be met. The fact that the eparchial bishop has to oversee the process personally is an indication of that Pope Francis does not believe that the majority of nullity cases could be processed in that way because an eparchial bishop would not have the time to do that in addition to all of his other duties.

#### **11. How does the shorter process work?**

First, the parties (or one of them with the written consent of the other) have to submit a petition for a declaration of nullity, which in addition to all the information normally contained in a petition, has to demonstrate why the shorter process could be used, i.e., why the nullity of the marriage is obvious and also how it will be proven by readily available evidence. If the case is admitted to the shorter process, the judicial vicar issues a decree stating the grounds in the case, nominating an instructor (an official in charge of gathering the evidence) and an assessor (an official in charge of advising the bishop) and citing them along with the parties and the defender of the bond to come to a session at the tribunal within thirty days. At that session, the parties will be questioned along with their witnesses, and other evidence may be presented. Afterwards, the defender of the bond and the parties have fifteen days to present their closing arguments in the case, at which point the whole case is presented to the bishop for his judgment.

If, based on all the evidence presented, the bishop is certain beyond a reasonable doubt that the marriage is invalid, he can issue a sentence declaring the nullity of the marriage. If the bishop is not morally certain, then he must send the case back to the normal process in the tribunal, starting from the beginning. Appeal against the bishop's affirmative decision can be made by either party or the defender of the bond within fifteen days.

**12. How long does the shorter process take?**

A number of news outlets reported that the shorter process will last 45 days. Some of them even reported that number as if it applied to all marriage nullity processes! However, this is inaccurate. The law allows up to 120 days for the shorter process from start to finish, and that is if everything goes perfectly. If there are delays for any reason, it will take longer.

**13. How do I know if my case qualifies for the shorter process?**

You will only know for sure after your case is submitted to the tribunal. However, because all three of the requirements for the shorter process have to be met, most marriage cases will probably not be able to be treated in the shorter process. Nevertheless, with the elimination of the need for two conforming sentences, even cases handled in the ordinary process will be shorter after December 8, 2015.

**14. Why is it important for both spouses to agree to the shorter process?**

There is a common misconception that if both spouses agree that the marriage is invalid, a declaration of nullity is somehow automatic or guaranteed. This has never been true, and the new law does not change that. Actually, the facts of the case, and not the spouses' agreement or disagreement, determine whether the marriage has been proven invalid. So why does it matter whether they both agree to the shorter process? This requirement helps protect both spouses' right to defend the validity of their marriage, including by insisting on the full, ordinary judicial process.

**15. What did Pope Francis change with regard to tribunal fees and why?**

In the Catholic Church, justice can't be bought or sold. What many tribunals, including our own, have done, fully in keeping with canon law, is to pass on some portion of their expenses (salaries, supplies, office space) to the parties who request their services. If these expenses not paid for by the parties, then it has to be borne by the Church, which is really means the other people in the pews. No one is ever denied access to the tribunal due to inability to pay and anyone who demonstrates the need for a partial or total reduction of fees receives one.

Generally Church tribunals operate at a heavy loss. Pope Francis said that the process should be gratuitous whenever possible. Our eparchy is an expanding eparchy, and has never had a large cash reserve. The Tribunal has not been regularly subsidized by the Chancery, and has always operated on a "shoestring budget." It is not possible for the eparchy to completely absorb all the costs of the tribunal, but Bishop Gregory has reduced the tribunal fee to \$500, which is not enough to cover the costs of the average annulment case. The Bishop has agreed to subsidize the tribunal to cover the expenses in excess of the filing fee.

**16. When and how is the new law going to be implemented in the Eparchy of Saint Maron?**

The new law comes into effect on December 8, 2015. Our tribunal is committed to implementing it fully by that time, but there are a lot of adjustments to be made. In the meantime, our heavy caseload continues to progress at full speed. Feel free to call or email the tribunal with general questions or questions about your case and we will respond as quickly and fully as we are able, but please be patient with us. If you have a case pending, we will contact you if the changes in the law have an important bearing on your case.