



DIOCESE OF OAKLAND
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FREQUENTLY ASKED QUESTIONS REGARDING
MITIS IUDEX DOMINUS IESUS

On Tuesday, September 8, 2015, Pope Francis issued *Mitis Iudex Dominus Iesus* [The Lord Jesus, Gentle Judge], a document revising the marriage nullity process. The mass media, including even some Catholic news outlets, have reported a great deal of misinformation about the changes.

Read this FAQ to find out what the changes really are and how they might affect you.

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 ongoing state of adultery. 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. The Church and society as a whole have the responsibility to uphold and support couples in their marriage vows even when (especially when) one or both of them no longer want to be married, which is why there has to be proof of nullity before a new marriage could 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 to attempt 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, three months from their promulgation.

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

Every diocese has a tribunal, but not just any tribunal can hear any marriage nullity case. The tribunal has to have some jurisdiction over the marriage in question. Currently, there are four ways that a tribunal can be competent: (1) if the marriage took place in that diocese, (2) if the Respondent party lives in that diocese, (3) if the Petitioner lives in that diocese and certain other formalities and requirements are observed, and (4) if for whatever reason the majority of the relevant evidence is located in that diocese and certain other formalities and requirements are observed. The formalities and requirements for numbers 3 and 4 involved seeking the consent of the judicial vicar of the diocese where the Respondent party lived. They were designed to protect the rights of the Respondent party, but increased mobility and mass communications made them

practically obsolete; they could also be unduly time-consuming. Under the revised law, there will be three ways that a tribunal can be competent, and none of them require any of those extra formalities and requirements: (1) if the marriage took place in that diocese, (2) if either party lives in that diocese (a combination of numbers 3 and 4 from above, without additional formalities), and (3) if for whatever reason the majority of the relevant evidence is located in that diocese (without additional formalities).

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 are the requirements for tribunal personnel, and how are they going to change?

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, but only one of whom (the judge ponens) is responsible for most of the day-to-day handling of the case. Only one of these three can be a layperson. The college of three judges will remain the norm under the new law, but now up to two of them can be laypeople.

8. How will the new personnel requirements affect my case?

Very likely they won't, whether your case is already pending or is yet to be introduced. Already, you were only likely to meet in person with one or two of the court auditors, or in some cases one of the three judges, who might be a priest or a layperson; that will remain the same. In certain infrequent circumstances where one of the judges has to recuse himself or herself due to a conflict of interest, it 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.

9. What is the current requirement of a second conforming affirmative?

The whole marriage nullity process leads up to the moment when the judges make their decision: has the marriage been proven invalid or not? If it has been proven invalid on a given ground, the judges vote in the "affirmative." If any doubt remains, the judges vote in the "negative." As an extra protection against unfounded declarations of nullity, an affirmative decision does not become "executory" (meaning the parties can act on it, usually by getting remarried) unless that decision is upheld on the same ground by an appellate tribunal. This requirement holds even when nobody appeals the sentence (the 'automatic appeal' was part of the old process). Also, if there is a disagreement between the original tribunal and the appellate tribunal

(affirmative/negative or negative/affirmative), the case has to be heard by a second appellate tribunal.

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

Under the revised law, if nobody (i.e., neither party nor the defender of the bond) appeals an affirmative decision within fifteen ‘useful’ days (this Diocese does not include weekends and holidays in this time), it becomes executory. 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. Please note that there are still certain remedies against an affirmative sentence aside from appeal, and that two conforming negative decisions on the same ground still extinguishes the normal avenues for further appeal on that ground.

11. Why is the requirement of a second affirmative being eliminated?

The requirement of a second conforming affirmative is a safeguard against unfounded declarations of nullity and other injustices, but it is not required by the divine law or by the very nature of the matter: no more than a third or a fourth or a fifth conforming sentence is required. For the better part of the last several centuries, the requirement has been in place, but Pope Francis has discerned that the extra certainty it affords is disproportionate to the additional burden of time, energy, and resources that it entails. And since the right to appeal remains in force, everyone’s right to defend their marriage remains intact.

12. 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.

13. 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, but not non-existent — that are not “lack of form” cases and that do not qualify for the documentary process, 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 could safely be omitted without compromise to the integrity of the process. For cases such as these, Pope Francis has created a new, shorter process.

14. Who qualifies 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, or if not together, then the other party must at least consent to it.
- (2) The nullity of the marriage must be manifest. Most marriage nullity cases deal with a defect in marital consent, i.e., with an invisible, internal act of the will placed by the spouses, often several years prior. Clearly, it would be exceptional for such a defect to be patently 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. In general, the first criterion is not uncommon, but the second and third are both rare, especially in conjunction.

The fact that the diocesan bishop has to oversee the process personally is an indication of just how rare and exceptional Pope Francis envisions the shorter process to be.

15. How does the shorter process work?

To begin, the parties (or one of them with the demonstrable 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 manifest 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 of 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 present their testimonies within thirty days. There may be an inquisitor session at the Chancery where the parties would 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 prepared and presented to the bishop for judgment.

If, based on all the evidence presented, he is certain beyond a reasonable doubt that the marriage is invalid he can issue a sentence declaring the nullity of the marriage. If he is not morally certain, the case is admitted to the normal process, starting from the beginning (although some parts of the normal process are deferred as they have been completed in the processing of the other process). Appeal against the bishop's affirmative decision can be made by either party or the defender of the bond within fifteen days to the Archbishop of San Francisco (the Metropolitan See of the Ecclesiastical Province in which the Diocese of Oakland is located) or to the Dean of the Roman Rota. This appeal would be unlikely, however, as the parties requesting this shorter process were both in agreement to the beginning of the process as well as the grounds established for it.

16. 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! This is simply untrue. If you read the new law carefully, you'll see that the number 45 does not appear anywhere! So where does that number come from? This probably comes from adding the 30 days in which the session must be held to the 15 days for the presentation of arguments. But this number is inaccurate and arbitrary. In the first place, the law allows *up to* 30 days to review and admit a petition. The law also allows 30 days for writing the sentence once the case has been decided. And the sentence cannot be acted on until the window for appeal has passed, another 15 days. In all, those procedural time requirements add up to at least 120 days from start to finish, not counting the possibility of delays. Nobody, no matter how strong his or her case, is going to get a declaration of nullity in 45 days.

17. Do I qualify for the shorter process?

Statistically speaking, probably not. Based on a cursory review of the cases heard in 2012 – 2014 (over 250 formal cases), in retrospect, only 10 to 15 (about four a year) appeared to meet the qualifications for the use of the shorter process.

If your case is pending and the tribunal has not already contacted you about the possibility of the shorter process, it means you don't appear to qualify. In any case, no one needs to be overly anxious to qualify for the shorter process: as it is, the cases that would qualify for the shorter process are already the cases that are completed the fastest, and qualifying for the shorter process is no guarantee of an eventual declaration of nullity.

18. 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, it is the facts of the case, and not the spouses' agreement or disagreement on the matter, that 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.

19. Why do many tribunals currently charge for a declaration of nullity?

They don't. Justice can't be bought or sold. What many tribunals do as a matter of fairness, fully in keeping with canon law, is pass on some portion of their expenses (salaries, supplies, office space) to the parties who request their services. If it isn't borne by the parties, it has to be borne by the Church, which ultimately means by the other people in the pews. No one is ever denied their rights due to difficulty or inability to pay. It has always been the policy of the Diocese of Oakland that anyone who demonstrates the need for a partial or total reduction of fees receives one. Even for those who can pay, payment is basically on the honor system: the Church isn't sending anybody to bill collections over unpaid judicial fees. Even then, the requested fees (normally \$650 for an ordinary process in Oakland) only cover a fraction of what it costs to process the case. One sometimes hears complaints that "annulments" are just a racket for the Church to make money; the truth is that from a strictly monetary stand point, Church tribunals operate at a heavy loss.

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

Pope Francis did not eliminate all tribunal fees, he said that the process should be gratuitous whenever that can be done without harming the right of tribunal workers to a just wage. He is asking bishop's conferences and local bishops to do their best to make them gratuitous to the parties (of course, they are never free; the costs are just made up from elsewhere). He has two reasons for this: First, he wants to make sure that nobody is ever discouraged from exercising their rights due to cost. Even though partial or total reductions have always been granted liberally to anyone who needs them, Pope Francis doesn't even want the misconception about expense to be an obstacle. Second, he wants to be sure that tribunals are immune from even the slightest suspicion of financial corruption. There is no doubt that that suspicion sometimes exists among the faithful, even though (in the American context at least) it is unfounded almost to the point of absurdity.

21. When and how is the new law going to be implemented in Oakland?

As already noted, the law comes into effect on December 8. Most changes are already in place and ready to be implemented as of that date. The 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.

If you have a case already in process, please feel free to call or email your case worker with any questions about your case and she will respond as quickly and fully as she is able.

If you have a case pending, please know that we will contact to you if these changes in the law will have an important bearing on your case.

If you are contemplating the submission of a case, we ask that you please contact your local parish; sometime in mid-December they will be receiving the new submission forms for the 'shorter process'.

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