APPENDIX B:
THE MARRIAGE NULLITY PROCESS

DIOCESE OF MADISON-TRIBUNAL · 702 S. High Point Road, Suite 225 · Madison, WI 53719-4926 · 608-821-3060 · tribunal@madisondiocese.org

The marriage nullity process serves a significant function, that is, to promote the good of marriage in general and to protect its indissoluble character in particular. The presumption of law in favor of the validity of marriage may be overturned only when a competent judge, acting in a legitimate ecclesiastical forum, reaches moral certitude regarding the invalidity of the bond before the tribunal. The marriage nullity process serves precisely to allow for and encourage the discovery of the truth regarding the juridic status of the marriage in question and thus to determine whether or not the legal presumption in favor of the validity of marriage can be overturned.

Presentation of a Petition (*Libellus*)
A judge cannot adjudicate a case concerning the nullity of marriage unless one of the parties to the marriage has presented a petition (*libellus*) that accuses the marriage of invalidity (c. 1501). This *libellus* must express the tribunal before whom the cause is introduced, specify the marriage in question, present a petition for a declaration of nullity, and propose—although not in technical terms—the reason for petitioning, that is, the ground or grounds of nullity on which the marriage is being challenged. It must also indicate at least in a general way the facts and proofs on which the Petitioner is relying in order to demonstrate what is being asserted. The *libellus* must be signed by the Petitioner, or his/her procurator, indicating also the day, month and year, as well as the place in which the Petitioner or his advocate live. Additionally, the *libellus* must indicate the domicile or quasi-domicile of the other spouse and should include an authentic copy of the marriage certificate, and if need be, a document of the civil status of the parties (*DC*, art. 116).

Admission or Rejection of the *Libellus*
The Judicial Vicar, once he has seen that the matter is within the competence of his tribunal and that the Petitioner has standing, either admits or rejects the *libellus* by decree (c. 1676 §1). If the case requires, the Judicial Vicar can institute a preliminary investigation regarding the question of the tribunal's competence or, if the *libellus* seems to lack any basis whatsoever, he can do so in order to see whether it could happen that some basis could appear from the process (*DC* art. 120). The *libellus* can be rejected if the tribunal does not have jurisdiction, if the petition is presented by one who does not have the right to challenge the marriage, if it does not fulfill the requirements listed above, or if it is apparent that the petition lacks any basis whatsoever (*DC*, art. 121). To the rejection of the *libellus*, recourse can be taken within ten days.

Citation of the Respondent and Defender of the Bond
In the decree by which the *libellus* is admitted, the Judicial Vicar cites the Respondent and the Defender of the Bond to the trial and allows each a period of fifteen days to express their views on the petition (c. 1676 §1). The citation includes a proposal of the ground or grounds on which the marriage will be judged, so that the parties may respond. The introductory *libellus* is also attached to the citation, unless there are grave reasons (e.g., the well-founded suspicion of violent retaliation or of perjury) that the *libellus* not be communicated to the Respondent until later in the process (c. 1508 §2). One who refuses to receive a citation is to be considered as having been cited legitimately (DC, art. 133). Parties who do not wish to participate still receive the decree of the formulation of the doubt, the decree of publication of the acts, and the definitive sentence. (*DC*, art. 134).

Formulation of the Doubt, Decision of Process, and Constitution of the College of Judges
After 15 days have passed, and the Respondent party has again been admonished to express his or her views if and insofar as necessary, and after the Defender of the Bond has been heard, the Judicial Vicar is to set by decree the formulation of the doubt, taken from the petitions and responses of the parties. This decree determines the ground or grounds on which the validity of the marriage is being challenged. This decree also decides whether the case is to be treated with the ordinary process, the documentary process, or the abbreviated process. The decree is communicated to the parties who can have recourse to the college within 10 days of notification to have the formulation of the doubt changed (c. 1676 §2). If the case is to be handled through the ordinary process, the Judicial Vicar, constitutes the names of the judges and the Defender of the Bond. There is a Judge *Praeses* who presides over the tribunal (*DC*, art. 46), a Judge *Ponens* who does most of the day-to-day instruction of the case (*DC*, art. 47), and an Associate Judge who meets in the college for adjudication. The Defender of the Bond is bound by the obligation to propose any kind of proofs, responses and exceptions that, without prejudice to the truth of the matter, contribute to the protection of the bond (*DC*, art. 56).

Instruction of the Cause
After the formulation of the doubt has established the ground or grounds on which this marriage is being judged, the parties have the opportunity to present proofs. The parties in the case will be invited to give an oral deposition at the Tribunal, and afterwards the witnesses will be invited to do the same. Other proofs can be brought forward as well, such as letters, which the parties, before or after marriage, have given to one another or to others (*DC*, art. 186). Finally, in cases concerning canon 1095 (see APPENDIX A), the opinion of a psychological expert is to be sought (*DC*, art. 203).

Publication of the Acts
After the proofs have been acquired, the *Ponens* proceeds to the publication of the acts, which is carried out by decree and which permits the parties and their advocates to examine the acts of the cause at the tribunal (*DC*, art. 229). In order to avoid very serious dangers (e.g., the well-founded suspicion of violent retaliation, threat of civil lawsuit for defamation of character, etc.), the judge can decree that some act is not to be shown to the parties (*DC*, art. 230). Before the examination of the acts, the judge can require the parties to take an oath or promise that they will use the knowledge gained through this inspection only for their legitimate defense in the canonical forum. If a party refuses to take the aforementioned oath or promise, he/she will be considered to have renounced the faculty of examining the acts (*DC*, art. 232). When the publication of the acts has been completed, the parties and the Defender of the Bond, in order to complete the proofs, can propose others to the judge. When these have been acquired, if the judge deems it necessary, there can be a second publication of the acts (*DC*, art. 236).

Conclusion of the Instruction of the Cause
When all those things pertaining to the publication of the proofs have been completed, and the judge considers the cause to have been sufficiently instructed, the judge issues a decree declaring the conclusion in the cause (*DC*, art. 237). After the conclusion in the cause, the judge can still call the same or other witnesses, but only in exceptional circumstances, and the new proofs are then published in the same way as before (*DC*, art. 239).

Discussion of the Cause
After the conclusion of the cause, the judge sets a suitable period of time for exhibiting defenses and observations in writing by the parties themselves or their advocates (*DC*, art. 240). When the defenses and observations have been mutually exchanged, each party is then permitted to exhibit responses within a short period of time, a right which is given to the parties only once (*DC*, art. 242). In the exchange of responses, it is always the right of the Defender of the Bond to be heard last (*DC*, art. 243).

Deliberation of the College of Judges
Once the discussion of the cause has been finished, the *Praeses* of a collegial tribunal is to determine on what day and at what hour the judges must convene for the deliberation. On the day assigned for the meeting, the individual judges bring their written opinions on the merits of the cause, with the reasons both in law and in fact by which they reached their conclusions. After the invocation of the Divine Name, they present their individual opinions, and a discussion is carried out in order to establish what is to be determined in the dispositive part of the sentence. If the judges are not able to arrive at a sentence, the decision can be deferred to another meeting, but not beyond a week, unless the instruction of the cause is to be completed. When a decision has been agreed upon, the *Ponens* writes it in the form of an affirmative or negative response to the doubt proposed, and the judges sign it (*DC*, art. 248).

Definitive Sentence
In a collegial tribunal, it pertains to the *Ponens* to draw up the sentence, unless in the discussion it was entrusted to another of the judges. The sentence is then issued no more than a month after the day when the cause was decided, unless, in a collegial tribunal, the judges had given a longer time period for a grave reason (*DC*, art. 249). The definitive sentence decides the question before the tribunal, that is, whether the invalidity of the marriage has been proven. In the sentence, the judges present the reasons in law and in fact on which the dispositive part of the sentence is based (DC, art. 250). An affirmative decision indicates that nullity has been proven; a negative decision indicates that nullity has not been proven. If a party in the process was found to be incapable of marriage by reason of a permanent incapacity, a *vetitum* is added to the sentence, by which the party is prohibited to enter a new marriage unless the same tribunal which issued the sentence has been consulted. If a party was the cause of the nullity of the marriage by deception or simulation, the tribunal may decide to attach a *vetitum* to the sentence, by which the party is prohibited to enter a new marriage unless the Ordinary of the place in which the marriage is to be celebrated has been consulted (*DC*, art. 251).

Publication of the Sentence
Once the definitive sentence is written, it is then published to the parties and has no force before its publication. This communication of the sentence is made by giving a copy of the sentence to the parties or their procurators, or by sending it to them in the mail (*DC*, art. 258). If there is the possibility for an appeal, information is provided at the time of the publication of the sentence regarding the way in which an appeal is placed and pursued, with explicit mention being made of the faculty to approach the Roman Rota besides the local tribunal of appeal (*DC*, art. 257).

Appeal
A party who considers himself aggrieved by a sentence has the right to appeal from the sentence to the higher judge. The Defender of the Bond is bound by office to appeal, if he considers the sentence that first declared the nullity of the marriage to be insufficiently founded (*DC*, art. 279). In addition, a new ground of nullity can be proposed in the grade of appeal, in which case, the appellate tribunal may admit it as if in first instance (*DC*, art. 268). An appeal must be filed before the judge by whom the sentence was issued, within 15 canonical days from notice of the publication of the sentence (*DC*, art. 281). The party has the right to appeal to the ordinary appellate tribunal or to the Roman Rota. After the appellant files the appeal before the judge in first instance, that party must then pursue the appeal before the appellate judge within a month of its filing. The appellant can call upon the assistance of the first instance tribunal to send the act pursuing the appeal to the second instance tribunal (*DC*, art. 284). In order to pursue an appeal, it is required that the party indicate the reasons for appeal. Meanwhile, the first instance tribunal will send the acts to the appellate tribunal (*DC*, art. 285). When the time limits concerning appeals have expired without any action, the appeal is considered to have been abandoned. The appellant may also renounce the appeal (*DC*, art. 287).

Freedom to Marry After An Affirmative Decision
A sentence that first declared the nullity of the marriage, once the time for appeal has passed, becomes executive (c. 1679). After the sentence declaring the nullity of the marriage has been executed, the parties whose marriage has been declared null can contract a new marriage if they are otherwise free to marry, unless a prohibition attached to the sentence itself or established by the local ordinary forbids this (c. 1682 §1). However, those things which must precede the celebration of marriage in accordance with canons 1066-1071 are to be observed.