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The Ecclesiastical Tribunals
Field Hospital for Wounded Marriages
The New Matrimonial *Processus Brevoir*

By Roberto Rosas¹

I. INTRODUCTION

The Church, Mother and Teacher, *Mater et Magistra* of all nations, lovingly welcomes, through its ecclesiastic tribunals its children wounded as a result of a failed marriage. Just as authentic field hospitals, it offers them the *Brevior* process before the bishop to heal their marital wounds.²

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² See MATER ET MAGISTRA, ENCYCLICAL OF POPE JOHN XXIII ON CHRISTIANITY AND SOCIAL PROGRESS, (May 15, 1961), <http://w2.vatican.va/content/john->

At the end of this brief process, the Church, column and foundation of the truth,³ guarding with maternal instinct the life and happiness of its children, with its light illuminates, ignites, and inflames the heart of wounded couples to guide them to a new chance at life.⁴

In the sentence of the Tribunal, where benevolence and respect have been found and where justice and peace have embraced, the Church, filled with eternal wisdom, offers its children a remedy as efficient as it is adequate, and takes them on to the path of eternal salvation, to *salus animarum*.⁵

Many faithful live in irregular marriage situations.⁶ During his address to officials of the Tribunal of the Roman Rota on January 23, 2015, Pope Francis made it clear that he felt an urgency to set a new marriage annulment reform into motion, one that had already been in the works for four months. He declared, “[p]astoral experience teaches us that today there is a great number of the faithful in irregular situations, on whose personal stories the diffusion of a worldly mentality has had a hefty influence.⁷ There exists, in fact, a kind of *spiritual worldliness* “which hides behind the appearance of piety and even love for the Church,⁸ which leads to the pursuit of personal well-being instead of the glory of the Lord.”⁹

xxiii/en/encyclicals/documents/hf_j-xxiii_enc_15051961_mater.html (last visited Apr. 17, 2017) [hereinafter POPE JOHN XXIII].

³ I *Timothy* 3:15 (King James).

⁴ See, POPE JOHN XXIII, *supra* note 2.

⁵ See, POPE JOHN XXIII, *supra* note 2.

⁶ Alejandro W. Bunge, *El nuevo proceso de nulidad matrimonial* § 1 (Sept. 8, 2016)

<http://www.awbunge.com.ar/Nuevo-proceso-matrimonial-Monterrey-Mexico.pdf>

[<https://perma.cc/B8LE-5HU4>]; Pope Francis, Address of His Holiness Pope Francis and the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year, (Jan. 23, 2015) [hereinafter Pope Francis, Address].

⁷ Pope Francis Address, *supra* note 6 (citing *Apostolic Exhortation, Evangelii Gaudium of the Holy Father Francis to the Bishops, Clergy, Consecrated Persons and the Lay Faithful on the Proclamation of the Gospel in Today's World*, n.93

http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html (Last Visited February 21st, 2018)).

⁸ *Id.*

⁹ *Id.*

On August 15, 2015, the Supreme Legislator signed new marriage annulment processes, and on December 8 of the same year, these new processes became effective for the Latin Church as well as for the Eastern Churches.¹⁰ The last reform of comparable scope and depth was in the eighteenth century, when Pope Benedict XIV introduced the mandatory participation of the defender of marriage ties in cases of marriage annulment, as well as the mandatory double sentence to execute a marriage annulment.¹¹

This article will focus on explaining the new marriage annulment processes of the Latin Church, which are found in the *Motu proprio Mitis Iudex Dominus Iesus*,¹² although the same processes apply to the processes in the Eastern Churches.¹³ Any differences that exist between the two processes are due to the distinct ecclesiastical structure between one Church and another.¹⁴

This explanation will advance the following points: (1) marriage; (2) reasons for a new matrimonial process; (3) guiding principles for the new process; (4) pastoral footprint of service to the faithful in ecclesiastic tribunals; (5) actualization of the ecclesiastic structure; (6) the ordinary process and the documentary process; and (7) nature and particularity of the briefer matrimonial process before the Bishop.

¹⁰ Bunge, *supra* note 6.

¹¹ *Id.*

¹² Pope Francis, *Apostolic Letter Motu Proprio of the Supreme Pontiff Francis Mitis Iudex Dominus Iesus by Which the Canons of the Code of Canon Law Pertaining to Cases Regarding the Nullity of Marriage Are Reformed*, THE HOLY SEE (2015) [hereinafter, *Apostolic Letter*]; William L. Daniel, *An Analysis of Pope Francis' 2015 Reform of the General Legislation Governing Causes of Nullity of Marriage*, 75 JURIST: STUDIES IN CHURCH L. & MINISTRY 429 (2015) [hereinafter Daniel, *An Analysis*]; Rafael Rodríguez Chacon, *Principales novedades en el proceso canónico de nulidad matrimonial tras la reforma del Papa Francisco*, EL DERECHO (Nov. 11, 2016), http://www.elderecho.com/tribuna/civil/Novidades-proceso-canonic-nulidad-matrimonial-reforma-Papa-Francisco_11_1008430001.html [https://perma.cc/M7NU-9CGE].

¹³ *Apostolic Letter*, *supra* note 12; Chacon, *supra* note 12.

¹⁴ Bunge, *supra* note 6, at 2.

It is also important to note that *Mitis Iudex* has completely restructured the specific norms of the matrimonial process presented in Chapter 1 of Title 1 of Part III of Book III of the *Code of Canon Law, Canons 1671 to 1691*.¹⁵ These canons have been replaced by the new ones.¹⁶ However, not all legislation has changed. In certain instances, the new norms do not alter the former ones; sometimes they modify old norms and add new ones.¹⁷ In a few instances, other procedural law canons have been modified, especially with regard to the structure of the ecclesiastic tribunals when nullity of marriage is involved.¹⁸

To clarify the changes, the article will discuss: 1) the former canons in their actualized version, 2) the canons involving contentious processes, 3) the canons about trial in general, 4) the general norms of the Code, and 5) the philosophical and theological principles that are the foundation of all canonic order.

We must note that the rules of procedure that make up the *Motu proprio* do not compose the entire procedure of marriage annulment.¹⁹ Rather, these rules of procedure make the most important innovations clear and facilitate the application of the new process.²⁰

II. MARRIAGE

As seen through the eyes of religious poetry, marriage is the greatest symbol of mystical life.²¹ Marriage, alongside night and flame, is one of three dominant symbols in the works of St. John of the Cross, a fourteenth-

¹⁵ CODE OF CANON LAW §§ 1671–91 (2015); Chacon, *supra* note 12.

¹⁶ Bunge, *supra* note 6, at 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Roberto Rosas, *The Law of the Church in the Nullity of Marriage due to Causes of Psychic Nature* 6, PRAWO I KOSCIOT 183 (2014) [hereinafter Rosas, *The Law*]; Roberto Rosas, *Canon 1095 and the Dignitas Connubii: The Role of Consent, Incapacity, and Psychic Anomalies in Cases of Matrimonial Nullity*, 58 ATENEO L.J. 867 (2014) [hereinafter Rosas, *Canon 1095*].

century mystic poet.²² These three symbols together provide the tone and atmosphere of the mystical world, with night representing significance, marriage representing the communion of love, and flame representing change and life.²³ In other words, “the symbol of the flame is the brooch and the culmination of the fervor of the consummated love in marriage and is the perfect gradual illumination of the dark night.”²⁴

A valid marriage exists due to the foundational power of a sole efficient cause²⁵—consent. Section I of Canon 1057 of the 1983 *Code of Canon Law* (*Code*) clearly and resolutely indicates that “[t]he consent of the parties, legitimately manifested between persons qualified by law, makes marriage; no human power is able to supply this consent.”²⁶

Section 2 of Canon 1057 of the *Code* states that “[m]atrimonial consent is an act of the will by which a man and a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage.”²⁷ The consent of each party consists of a voluntary act through which each gives and accepts each other.²⁸ With the goal of creating a marriage, the act of consent should be considered as human, intelligent, and free.²⁹ It is not limited to a present commitment but serves as a promise for a lifetime.³⁰

²² SAN JUAN DE LA CRUZ, OBRA POÉTICA COMPLETA 23, (Miguel de Santiago 1977); Rosas, *The Law*, *supra* note 21, at 183.

²³ Rosas, *The Law*, *supra* note 21, at 183.

²⁴ *Id.*

²⁵ Aristotle argued that, in order to understand an object, especially changes that the object might undergo, one has to understand its four causes. According to Aristotle, the efficient cause of an object is equivalent to that which causes change and motion to start or stop. See Istvan Bodnar, *Aristotle's Natural Philosophy*, STAN. ENCYCLOPEDIA PHIL., <http://plato.stanford.edu/entries/Aristotle-natphil/> [<https://perma.cc/LCV9-FUW5>] (last visited Sept. 12, 2016).

²⁶ CATHOLIC CHURCH, CANON LAW SOCIETY OF AMERICA, CODE OF CANON LAW, LATIN-ENGLISH EDITION: NEW ENGLISH TRANSLATION 335; 1983 CODE c. 1057, § 1).

²⁷ 1983 CODE C.1057, § 2.

²⁸ Rosas, *The Law*, *supra* note 21, at 184

²⁹ *Id.*

³⁰ *Id.*

In his celebrated Spiritual Exercises, St. Ignatius of Loyola said, “[f]irst [,] let [us] draw our attention to the fact that love has two parts, which are the person giving love and the person receiving love.”³¹

To gain a true understanding of the new marriage annulment process, it is important to first understand the concept of marriage as it pertains to the Church, the emphasis in the union of man and woman and the indissolubility of marriage.

A. Canon Law and the Elements of Marriage

Classical theologians argue that God established the natural matrimonial institution in Genesis 2:24 as it is written, “[t]herefore a man shall leave his mother and father and be joined to his wife, and they shall become one flesh.”³² Through the teachings of the Church and Canonists, theologians have determined that God created the natural matrimonial institution through the following essential elements:

- (1) The personal structures, which state that man and woman, as a married couple, become intimately complete in the biological and spiritual order, and by doing so become the other;
- (2) The essence and the essential properties which state that the union for a lifetime is destined to last as long as one of the spouses does not die; thus it is considered exclusive and indissoluble;
- (3) The essential purposes;
- (4) The reciprocal rights and obligations; and
- (5) The ethical and religious principles, which along with the positive legislative norms, specify the agreement in its totality and the content of each of the rights and obligations of its members.³³

³¹ Two parts means two individuals, who tend to have only one love: *duo in corde uno* (two in one heart). See IGNACIO CASANOVAS, Segunda Nota: De las Obras de Amor, en Ejercicios de San Ignacio, Tomos V-VI, Comentario y Explicacion de los Ejercicios Espirituales de San Ignacio de Loyola (1948).

³² Rosas, *Canon 1095*, *supra* note 21, at 871 (citing *Genesis 2:24* (King James)).

³³ *Id.*

B. Definition and Purpose of Marriage Under the Canon Law

Although today, society has given marriage many different meanings,³⁴ the legal canonical definition of marriage can be obtained through a slight style modification of Canon 1055 of the 1983 Code of Canon Law and formulated as follows: “[a] partnership of the whole life established between a male and a female, through the matrimonial partnership (alliance), order by its own nature, for the good of the spouses and for the procreation and education of the offspring.”³⁵ This definition establishes marriage as a partnership that is to last for a lifetime.

Further, the legal canonical definition also establishes the purpose of marriage. The 1917 Code of Canon Law provides marriage is to be for “the procreation and education of offspring.” During the Middle Ages, the only essential purpose of marriage was the procreation and education of children.³⁶ However, beginning in the eleventh century, there was a shift toward recognizing the three purposes for marriage: (1) the procreation and education of children, (2) mutual help, and (3) the remedy for the hunger and desire of earthly goods and uncontrollable pleasures.³⁷ Although the 1917 Code of Canon Law included these three purposes, the procreation and education of offspring is still deemed as the essential, objective, and natural primary purpose, while the latter two are deemed accidental, subjective, and extrinsic purposes, subordinate to the primary purpose.³⁸ Since mutual help can exist in any relationship, it is not an intrinsic purpose of marriage, and since the remedy for hunger and desire of earthly goods

³⁴ See Anthony Esolen, *Healthy Societies Need Successful Marriages*, CRISIS MAGAZINE (Dec. 19, 2012), <http://www.crisismagazine.com/2012/healthy-societies-require-successful-marriages> [<https://perma.cc/4HKD-LVNK>].

³⁵ ALBERTO BERNANDEZ CANTÓN, COMPENDIO DE DERECHO MATRIMONIAL CANÓNICO 23 (1991); Rosas, *Canon 1095*, *supra* note 21, at 873.

³⁶ Rosas, *Canon 1095*, *supra* note 21, at 873.

³⁷ Rosas, *Canon 1095*, *supra* note 21, at 873; WARNHOLTZ CARLOS BUSTILLOS, MANUAL DE DERECHO MATRIMONIAL CANÓNICO 28 (1996).

³⁸ Rosas, *Canon 1095*, *supra* note 21, at 873.

and uncontrollable pleasures is obtained through marriage, it is not considered a substantial part of it.³⁹

C. *Unity and Indissoluble Character of Marriage*

Canon 1056 of the *Code* identifies the essential properties of marriage as unity and indissolubility⁴⁰ Without these two properties, a true marriage cannot exist.⁴¹ Unity is the strength of the married union and of the exclusive and mutual surrender between a man and a woman.⁴² Unity is the strength of the marriage and of the exclusive and mutual surrender between a man and a woman that is perpetual until the death of one of the spouses.⁴³

It is noteworthy that in his writings, St. Augustine identified three goods of marriage, which reinforce the two properties of marriage and its primary purpose. The three goods of marriage are *bonum sacramenti*, *bonum fidei*, and *bonum prolis*.⁴⁴ The first of the goods—*bonum sacramenti*—emphasizes the indissolubility of marriage. It represents the inability to dissolve the marriage and theologians argue that without this good, a marriage cannot exist.⁴⁵ The *bonum fidei* emphasizes the property of unity of marriage. It represents the right to fidelity, and the obligation to maintain fidelity in accordance with the bond of unity for a life time.⁴⁶ Lastly, the *bonum prolis* emphasizes the primary purpose of marriage. It represents the right to procreate and to educate offspring, along with the rights to paternity and maternity.⁴⁷

The unity and indissolubility of marriage are of such vast importance that the Sacrament of Marriage is ordered by the Church to further cement these

³⁹ *Id.*

⁴⁰ 1983 CODE c.1056, § 1.

⁴¹ See BUSTILLOS, *supra* note 37, at 34; see Rosas, *Canon 1095*, *supra* note 21, at 874.

⁴² BUSTILLOS, *supra* note 37; see Rosas, *Canon 1095*, *supra* note 21, at 875.

⁴³ BUSTILLOS, *supra* note 37, at 31; see Rosas, *Canon 1095*, *supra* note 21, at 874.

⁴⁴ Rosas, *Canon 1095*, *supra* note 21, at 874.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

two properties as the matrimonial foundation. This Sacrament is a physical act that symbolizes the expression of mutual consent and mutual surrender of the husband and wife.⁴⁸ Modern theologians and canonists emphasize that this union lasts or should last until the death of one of the spouses.⁴⁹

In early centuries of the Church, marriage was considered sacred, even when the concept of sacrament did not exist.⁵⁰ In his text, St. Paul exhorts the Christian husband and wife to form an unbreakable union.⁵¹ He bases this exhortation, in part, on the union of Adam and Eve prior to sin.⁵² When God first introduced the woman to Adam, Adam responded, “this is now bone of my bones, and flesh of my flesh [—] she shall be called [woman], because she was taken out of [man].”⁵³ In this manner, God established that the union between Adam and Eve, prior to sin, embodied mutual surrender and unbreakable and eternal communion of love, just as the union between Christ and the Church.⁵⁴ The union between husband and wife is not purely symbolic.⁵⁵ To be effective, the husband and wife, through the grace of Christ, must reflect in their conjugal union the union of Christ and the Church—love, surrender, loyalty, communion, and the indissolubility of the union.⁵⁶ Christ is the head and the husband and wife are both the body.⁵⁷

D. Creation of Marriage

Canon 1057 of the *Code* sets the founding element of marriage as “[t]he consent of the parties, legitimately manifested between persons who are capable according to law, makes marriage; no human power can supply this

⁴⁸ See BUSTILLOS, *supra* note 37, at 42; see Rosas, *Canon 1095*, *supra* note 21, at 876.

⁴⁹ BUSTILLOS, *supra* note 37, at 46; see Rosas, *Canon 1095*, *supra* note 21, at 878.

⁵⁰ BUSTILLOS, *supra* note 37, at 46; see Rosas, *Canon 1095*, *supra* note 21, at 879.

⁵¹ *Id.*

⁵² See BUSTILLOS, *supra* note 36, at 83; see Rosas, *Canon 1095*, *supra* note 21, at 879.

⁵³ See Rosas, *Canon 1095*, *supra* note 21, at 879 (citing *Genesis* 2:23 (King James)).

⁵⁴ See BUSTILLOS, *supra* note 37, at 48; see Rosas, *Canon 1095*, *supra* note 21, at 880.

⁵⁵ Rosas, *Canon 1095*, *supra* note 21, at 880.

⁵⁶ *Id.*

⁵⁷ *Id.*

consent.”⁵⁸ This consent is both necessary and sufficient for the marriage to exist.⁵⁹ Thus, the essential elements for the creation of a marriage are: (1) two acts of will corresponding to each spouse, (2) legitimate manifestation, and (3) persons who are capable, according to law.⁶⁰ If any of these elements are lacking, the marriage covenant does not come into existence.⁶¹

The consensual capacity of persons involved is presumed.⁶² However, a marriage may be null and void when, at the time of its celebration, there is an impediment, a defect due to lack of consent, or a defect of legitimate form.⁶³ Some examples of defect of consent are ignorance, various kinds of error, simulation, condition of force, and fear.⁶⁴ In addition, Canon 1095 of the *Code* describes three causes of incapacity to consent to marriage: (1) “those who lack sufficient use of reason,” (2) “those who suffer from grave lack of discretion of judgment concerning essential matrimonial rights and duties, manually to be handed over and accepted,” and (3) “those who are not capable of assuming the essential obligations of marriage due to causes of psychic nature.”⁶⁵

Further, in regards to the will of the parties, according to classic doctrine, it was inconceivable that the will would fail because of an illness or irresistible impulse.⁶⁶ Only a disorder in the act of understanding could bring about a defect of will.⁶⁷ Thus, there have been Roman Rota sentences that have declared marriages null for lack of internal freedom in the case of

⁵⁸ 1983 CODE c.1057, § 1.

⁵⁹ Rosas, *The Law*, *supra* note 21, at 186.

⁶⁰ *Id.*

⁶¹ See Roberto Rosas, *Matrimonial Consent in Canon Law, Juridical Aspects*, 43 REVISTA JURÍDICA DE LA UNIVERSIDAD INTERAMERICANA DE PUERTO RICO 423, 423–30 (2009).

⁶² Rosas, *The Law*, *supra* note 21, at 186.

⁶³ *Id.* at 188.

⁶⁴ *Id.* at 188.

⁶⁵ 1983 CODE c.1095, §1; Rosas, *The Law*, *supra* note 21, at 189.

⁶⁶ Rosas, *The Law*, *supra* note 21, at 187.

⁶⁷ *Id.*

some psychic disorders that directly affect the will, such as neuroses, psychopathies, affective imbalances, incoercible internal propulsions, and obsessive ideas.⁶⁸

III. REASONS FOR A NEW MATRIMONIAL PROCESS

Monsignor Alejandro W. Bunge notes that the reasons for a new matrimonial process are founded on Pope Francis' concern for many faithful who, in the past, found themselves in irregular marriage situations.⁶⁹

Although it is the objective of the Church to create marriages composed of strong, everlasting bonds, the reality is that today, many believers have marriages that ultimately fail.⁷⁰ In his apostolic exhortation, *Amoris Laetitia*, Pope Francis stressed that the fast pace of life, stress, fear of commitment, self-centeredness, and arrogance are among the reasons that, in today's society, marriage is swept aside whenever it becomes inconvenient.⁷¹ In the past, when these marriages failed, couples sometimes faced a very complex, slow, and dreadful canon-law annulment process.⁷² Pope Francis stressed that "the slowness of the process cause[d] distress and strain on the parties" and thus ma[de] them feel discriminated against by the Church.⁷³ Rather than have believers stray away, Pope Francis desired to welcome broken families into the Church so that they may be healed through Christ.⁷⁴ He recognized their struggle and their suffering and thus

⁶⁸ J.J. GARCIA FAILDE, NUEVO ESTUDIO SOBRE TRASTORNOS PSIQUICOS Y NULIDAD DEL MATRIMONIO 81–82 (Univ. Pontificia Salamanca ed., 2003); Rosas, *The Law*, *supra* note 21, at 186.

⁶⁹ Bunge, *supra* note 6, at 4.

⁷⁰ *Id.* at 2–3.

⁷¹ *Id.* at 6; Pope Francis, *Post-Synodal Apostolic Exhortation Amoris Laetitia of the Holy Father Francis: To Bishops, Priests and Deacons, Consecrated Persons, Christian Married Couples and all the Lay Faithful on Love in the Family* (Apr. 8, 2016), <https://www.documentcloud.org/documents/2793677-AL-INGLESE-TESTO.html> [<https://perma.cc/7RZU-EW44>] [hereinafter Pope Francis, *Amoris*].

⁷² Bunge, *supra* note 6, at 8; Daniel, *An Analysis*, *supra* note 12, at 437.

⁷³ Rosas, *The Law*, *supra* note 21.

⁷⁴ Bunge, *supra* note 6, at 5.

he envisioned an annulment process that was simplified—one that provided a fast and just response.⁷⁵ This can be seen in Pope Francis' April 2016 apostolic exhortation, *Amoris Laetitia*, as he declared, “The welfare of the family is decisive for the future of the world and that of the Church.”⁷⁶

Monsignor Alejandro W. Bunge further notes that Pope Francis is aware that many criticized the new process,⁷⁷ but that such critiques would not stop the change, which was not only necessary but urgently needed to reach believers and mitigate their suffering.⁷⁸ During a March 2016 address to the participants of a course organized by the Tribunal of the Rota Romana, Pope Francis declared, “[t]here has been criticism . . . it’s true . . . I’m sorry . . . I’m sorry . . . but we have to seek the well-being of the souls . . . resolve all the suffering.”⁷⁹ As such, two fundamental aspects of the new matrimonial process are the fulfillment of the new matrimonial process, and the two documents in which the new process was enacted—*Mitis Iudex Dominus Iesus* and *Mitis et Misericors Iesus*.

A. Fulfillment of the New Matrimonial Process

On August 27, 2014, Pope Francis created a Pontifical Commission for the purpose of studying the reform of the matrimonial process to prepare a final reform proposal.⁸⁰ The Pontifical Commission began working immediately and continued until the official enactment of the reform.⁸¹ The

⁷⁵ Daniel, *An Analysis*, *supra* note 12, at 437.

⁷⁶ Pope Francis, *Amoris*, *supra* note 69.

⁷⁷ See generally, *An academic opinion on the reform of canon law on marriage annulments*, DOCUMENTATION INFORMATION CATHOLIQUES INTERNATIONALES (Sept. 25, 2015), <http://fsspx.news/en/search/dici/An%20academic%20opinion%20on%20the%20reform%20of%20canon%20law%20on%20marriage%20annulments> [https://perma.cc/77EN-5ML4]; Richard A. Spinello, *Does Amoris Laetitia Retreat from Absolute Moral Norms?*, CRISIS MAGAZINE (May 10, 2016), <http://www.crisismagazine.com/2016/05/amoris-laetitia-retreat-absolute-moral-norms> [https://perma.cc/X3EP-FLY9].

⁷⁸ Bunge, *supra* note 6, at 6.

⁷⁹ *Id.* at 6; Pope Francis, *Address*, *supra* note 6.

⁸⁰ See also Bunge, *supra* note 6, at 17; See Daniel, *An Analysis*, *supra* note 12, at 431.

⁸¹ Daniel, *An Analysis*, *supra* note 12, at 431.

Commission was charged with a mandate from the Holy See “to prepare a proposal to reform the matrimonial process, seeking to simplify the procedure, rendering it more agile, and safeguarding the principle of the indissolubility of marriage.”⁸² The objective was to simplify the process for the faithful who suffered at the end of their marriages because they were burdened by the difficulty of the process.⁸³ The reform “was completed in less than one year” and abolished a procedure that “characterized the matrimonial nullity process for 274 years.”⁸⁴ On March 12, 2016, Pope Francis addressed those who took part in the formation of the new marriage annulment process and thanked them for nearly a year of work, emphasizing that the objective of the reform was “to demonstrate the Church’s concern for those faithful who await a swift assessment of their respective marital situations.”⁸⁵

B. Mitis Iudex Dominus Iesus and Mitis et Misericors Iesus

The new process was enacted in the form of two different documents: *Mitis Iudex Dominus* for the Latin Church and *Mitis et Misericors Iesus* for the Eastern Church.⁸⁶ Both documents were enacted on the same day and contain only slight differences regarding judicial execution.⁸⁷ For both the Latin and Eastern Church, the new process has an amended version of the pertinent chapter and book in *Code of Canon Law* dedicated to the reasons for declaring the nullity of a marriage.⁸⁸

⁸² See also Frans Daneels & O. Praem, *A First Approach to the Reform of the Process for the Declaration of Nullity of Marriage*, 76 JURIST 115, 118 (2016); Daniel, *An Analysis*, *supra* note 12, at 432.

⁸³ Bunge, *supra* note 6, at 7; Chacon, *supra* note 12; Daneels, *supra* note 80; Pope Francis, *Address*, *supra* note 6.

⁸⁴ Daniel, *An Analysis*, *supra* note 12, at 32.

⁸⁵ Pope Francis, *Address*, *supra* note 6.

⁸⁶ Bunge, *supra* note 6; Chacon, *supra* note 12.

⁸⁷ Bunge, *supra* note 6, at 8.

⁸⁸ *Id.*

IV. GUIDING PRINCIPLES FOR THE NEW MATRIMONIAL PROCESS

The preamble of both *Motu proprio* presents some guiding principles for the new matrimonial process, focusing on the indissolubility of marriage. These guiding principles include (1) the suffering faithful as the center of pastoral concern, (2) the abolishment of the need for a double conforming sentence, (3) the Bishop as the center of pastoral service for justice, (4) the restoration of the synodal aspect of the episcopal ministry, (5) right to appeal to the apostolic see of Peter, (6) the gratuity of the process, and (7) the principal of celerity of the process.

A. *The Suffering Faithful as the Center of Pastoral Concern*

First, the new matrimonial process focuses on the pastoral concern for the faithful who suffer from failed marriages.⁸⁹ Monsignor Alejandro Bunge explains that the foundation for this principle is the parable Jesus told about the lost sheep.⁹⁰ He explains that in the parable, the pastor does not feel satisfied only tending to the sheep who exhibit good behavior and remain loyal.⁹¹ Rather, the pastor desires to offer mercy, healing, and forgiveness to the lost sheep, those who feel isolated by the closed-minded attitudes of others.⁹² Similar to the lost sheep, the matrimonial reform serves as an instrument to reach the faithful who become unmotivated because of the difficulties presented by the old annulment process.

B. *The Abolishment of the Need for a Double Conforming Sentence*

One of the most important things about the reform is that it abolished the need for two affirmative sentences to establish nullity of marriage.⁹³ On

⁸⁹ See Bunge, *supra* note 6, at 8; see also Daniel, *An Analysis*, *supra* note 12, at 443.

⁹⁰ Bunge, *supra* note 6, at 8.

⁹¹ *Id.*

⁹² *Id.*

⁹³ SANTIAGO BUENO SALINAS, LA CELERIDAD DEL PROCESO, LA REFORMA DEL PROCESO MATRIMONIAL CANÓNICO 97 (Thomas Reuters Aranzadi 2017) [hereinafter BUENO]; Daneels, *supra* note 80, at 118; Daniel, *An Analysis*, *supra* note 12, at 450; William L. Daniel, *The Abbreviated Matrimonial Process before the Bishop in Cases of*

March 12, 2016, during his address to the participants in the course of formation on the new process, Pope Francis explained, “[t]he standard of double conforming sentences is a historical event, of the times of Pope Benedict XIV Lambertini.⁹⁴ Being a historical event, born out of the problems that surged in that time, in the center of Europe, it no longer appears necessary.”⁹⁵

While some defended the need for retaining a double conforming sentence, several episcopal conferences revealed the need to do away with it.⁹⁶ These conferences determined that there was no need for a double conforming sentence because, in a majority of cases, a finding of nullity in the first instance was confirmed in the second instance.⁹⁷ Although the double conforming sentence has been abolished, the right to appeal a finding of nullity in the first instance has been preserved.⁹⁸ Consequently, today, if one party wants to appeal the first sentence declaring nullity of a marriage, the opportunity will be granted.⁹⁹

Canon law professor William L. Daniel comments that the elimination of the requirement of a double conformity sentence is the most profound change because it “eliminates a safeguard of the indissolubility of marriage that has been established by Pope Benedict XIV in 1741,” and that was confirmed by his “successors throughout the last one hundred years.”¹⁰⁰

“*Manifest Nullity of Marriage*,” 75 JURIST 539, 546, 590 (2015) [hereinafter Daniel, *The Abbreviated*].

⁹⁴ Bunge, *supra* note 6, at 9; Chacon, *supra* note 12; Pope Francis, *Address*, *supra* note 6.

⁹⁵ Bunge, *supra* note 6, at 9.

⁹⁶ Daneels, *supra* note 80, at 118.

⁹⁷ Bunge, *supra* note 6, at 9.

⁹⁸ BUENO, *supra* note 91, at 99; Bunge, *supra* note 6, at 9; Chacon, *supra* note 12.

⁹⁹ Bunge, *supra* note 6, at 9.

¹⁰⁰ Daniel, *An Analysis*, *supra* note 12, at 450.

C. The Bishop as the Center of Pastoral Service for Justice

Another factor considered in the decision for the reform was the desire to give the Bishop the central place to exercise justice in the diocese.¹⁰¹ This is one of the most notable changes, as “Bishop” is the word most used in the reform—a total of thirty-five times—assigning him tasks that range from control and vigilance of the administration of justice to the personal development of his function as a judge. The Preamble of *Mitis Iudex* establishes the Bishop’s function in general terms.¹⁰²

Through this reform, the Bishop will be the one to either render an affirmative sentence of nullity or decide whether the case should undergo the ordinary nullity process.¹⁰³ However, there is a certain “deconcentration” of the Bishop’s judicial authority, as he is assisted by the judicial vicar and his tribunal in the brief nullity process.¹⁰⁴ In cases of nullity, this deconcentration is justified because it requires a specific kind of expertise that the Bishop alone does not always possess.¹⁰⁵ Because this deconcentration may hinder the mission and the paternal image of the Bishop, canon 1673 § 2¹⁰⁶ requires the Bishop to designate a tribunal for his

¹⁰¹ Chacon, *supra* note 12; Daneels, *supra* note 80, at 118.

¹⁰² *Apostolic Letter*, *supra* note 12 (“In order that a teaching of the Second Vatican Council regarding a certain area of great importance finally be put into practice, it has been decided to declare openly that the bishop himself, in the church over which he has been appointed shepherd and head, is by that very fact the judge of those faithful entrusted to his care. It is thus hoped that the bishop himself, be it of a large or small diocese, stand as a sign of the conversion of ecclesiastical structures, and that he does not delegate completely the duty of deciding marriage cases to the offices of his curia. This is especially true in the streamlined process for handling cases of clear nullity being established in the present document.”); see also CARLOS M. MORAN BUSTOS, EL PROCESO “BREVIOR” ANTE EL OBISPO DIOCESANO, 131 PROCESOS DE NULIDAD MATRIMONIAL TRAS LA REFORMA DEL PAPA FRANCISCO (Dykinson 2016).

¹⁰³ Daniel, *The Abbreviated*, *supra* note 91, at 590.

¹⁰⁴ See BUSTOS, *supra* note 100, at 133.

¹⁰⁵ *Id.*

¹⁰⁶ See *Apostolic Letter*, *supra* note 12, at Art. 1, Can. 1673 §2 (“The bishop is to establish a diocesan tribunal for his diocese to handle cases of nullity of marriage without prejudice to the faculty of the same bishop to approach another nearby diocese or interdiocesan tribunal.”).

diocese, and article 22 § 2¹⁰⁷ of *Dignitas Connubii* alludes to the fact that the Bishop may decide the case for himself in special circumstances.¹⁰⁸ The Bishop must execute his judicial function while protecting the right of the faithful to effective judicial guidance.¹⁰⁹ The Bishop must also act as Moderator, or Director, or President of the tribunal in accordance with article 308 of *Dignitas Connubii*.¹¹⁰

In practice, the compromise that the Bishop has to execute in his judicial function manifests itself in the following concrete ways:

- (1) The Bishop must establish the general guidelines for all the judicial participants of his tribunal, especially its members;¹¹¹
- (2) The Bishop must find ideal persons to perform the judicial functions, with the adequate qualification and exclusive or priority dedication;¹¹²
- (3) The Bishop must establish effective mechanisms for the control of his activity in accordance with celerity and diligence;¹¹³
- (4) The Bishop must pay careful attention to the findings of his tribunal, protecting and guaranteeing *favor veritatis* and *favor matrimonii* and the principle of indissolubility;¹¹⁴

¹⁰⁷ Pontifical Council for Legislative Texts, *Dignitas Connubii*, Art. 22 §§ 1-2 (Jan. 25, 2005) [hereinafter, *Dignitas*] (“In each diocese the judge of first instance for causes of nullity of marriage not expressly excepted by law is the Diocesan Bishop, who can exercise judicial power personally or through others, in accordance with the law. Nonetheless, it is expedient that, unless special causes demand it, he not do this personally.”)

¹⁰⁸ See BUSTOS, *supra* note 100, at 133.

¹⁰⁹ 1983 CODE c.221, § 1 (“Christ’s faithful may lawfully vindicate and defend the rights they enjoy in the Church, before competent ecclesiastical forum in accordance with the law. Christ’s faithful have the right that no canonical penalties be inflicted upon them except in accordance with the law.”)

¹¹⁰ See also BUSTOS, *supra* note 100, at 133–34; *Dignitas*, *supra* note 105, at Art. 308 (“The Bishop Moderator is to see that neither by manner of acting of the ministers of the tribunal nor by excessive expenses are faithful kept away from the ministry of the tribunal with grave harm to souls, whose salvation must always remain the supreme law in the Church.”).

¹¹¹ See BUSTOS, *supra* note 100, at 134.

¹¹² *Id.*

¹¹³ *Id.*

(5) The Bishop must ensure that the faithful partake in the process free of cost;¹¹⁵ and

(6) The Bishop must establish mechanisms that remedy negligent error, incompetence, or abuse at the time of administering justice, including the possible removal from the judicial function.¹¹⁶

Monsignor Bunge states that the ministry of government of the Bishop is not only of a legislative and executive function; it is also judicial.¹¹⁷ Regardless of his function in the brief process, the Bishop may still serve as judge in the ordinary process and the documentary process.¹¹⁸

D. Restoring the Synodal Aspect of the Episcopal Ministry

In order to regain the synodal aspect of the Church that existed during the very first centuries, Monsignor Bunge explains that it was important to restore the function of the Metropolitan Tribunal as the tribunal of appeals for the diocese tribunals.¹¹⁹ Since the Bishop exercises his ministry in collaboration with members of the episcopal conferences and the Metropolitan Tribunal, it was important for each Bishop to instruct the tribunal in the diocese to handle cases of marriage nullity. However, in instances where each Bishop was not able to instruct a tribunal, it was crucial to establish a tribunal specifically designated to handle such cases. After this change, one can appeal from the Metropolitan Tribunal of first instance to the tribunal chosen by the Archbishop with the approval of the

¹¹⁴ *Id.*

¹¹⁵ See *Apostolic Letter*, *supra* note 12, at Art. 7, §1 (“Through the cooperation between tribunals mentioned in can. 1418, care is to be taken that parties or witnesses, can participate in the process at a minimum of cost.”); See also BUSTOS, *supra* note 100, at 134.

¹¹⁶ See also BUSTOS, *supra* note 100, at 134; *Dignitas*, *supra* note 105, Art. 75 §2 (“When the correct administration of justice is impeded because of negligence, incompetence or abuses, the Bishop Moderator or the *coetus* of Bishops is to address the matter by apt means, not excluding removal from office, as the case may require.”).

¹¹⁷ Bunge, *supra* note 6, at 10; Daniel, *The Abbreviated*, *supra* note 91, at 590.

¹¹⁸ BUSTOS, *supra* note 100, at 135.

¹¹⁹ Bunge, *supra* note 6, at 10.

Apostolic See through an Apostolic Signature.¹²⁰ This change will increase the number of tribunals for first instances and for appeals, which is of vast importance because, in some locations, there is currently only one tribunal for appeals.¹²¹ Thus, this change will ensure a more rapid and effective result for every case.¹²²

In addition, the episcopal Conferences will now assist the effective application of new matrimonial process in several ways. First, the Conferences will assist in the organization of tribunals to promote a better relationship between the faithful and the tribunal, and to manifest the love of Christ to those involved in the process. The Conferences will also offer a permanent training in regard to the initiatives of the Bishop for the operators of the tribunals.¹²³ The training will be imparted through the various institutes and faculty of canon law, focusing specifically on the procedural and substantive aspects of the new process.¹²⁴

E. Right to Appeal to the Apostolic See of Peter

In order to preserve the ancient judicial principle of the Apostolic See of Peter and the ordinary Churches, the faithful will still have the right to appeal to the ordinary Tribunal of the Apostolic See, Roman Rota, in accordance with the new process, although appeals may now be extremely rare.¹²⁵

¹²⁰ Daneels, *supra* note 80 at 118.

¹²¹ Bunge, *supra* note 6, at 11.

¹²² Bunge, *supra* note 6, at 10.

¹²³ *Id.* at 11–12.

¹²⁴ *Id.* at 11–12.

¹²⁵ Bunge, *supra* note 6, at 11–12; Daneels, *supra* note 80, at 119; Daniel, *The Abbreviated*, *supra* note 91, at 590.

F. The Gratuity of the Process

The Episcopal Conferences must assure that the new nullity process is gratuitous.¹²⁶ This spirit of generosity is Pope Francis' response to the demands and needs of many faithful.¹²⁷ Although the process is provided to individuals free of cost, upon receiving a sentence, the parties are encouraged to make a voluntary contribution, if possible, to help in the cause for the poor.¹²⁸

This spirit of gratuity is not as new as it may appear.¹²⁹ The possibility of undergoing the nullity process free of cost already existed and has been applied before.¹³⁰ However, it is thanks to the new *Motu proprio* that this possibility has been made known to all the faithful.¹³¹ This fact is truly important because it further demonstrates that Pope Francis is sincerely concerned with removing all obstacles for the faithful to establish nullity.¹³²

In addition to these six aforementioned principles, professor of canon law William L. Daniel and Archbishop-Secretary of the Supreme Tribunal of the Apostolic Signatura, Frans Daneels, O. Praem, both mention three general guiding principles that seem to have generally motivated this reform: (1) the celerity of the process, (2) the protection of the indissolubility of marriage, and (3) the proximity between the judge and the parties.¹³³

¹²⁶ JULIO ORTIZ HERRAÍZ, *La Gratuidad del Proceso*, IN LA REFORMA DEL PROCESO MATRIMONIAL CANÓNICO 470.

¹²⁷ *Id.*

¹²⁸ Bunge, *supra* note 6, at § 2; Daneels, *supra* note 80, at 118.

¹²⁹ HERRAÍZ, *supra* note 122.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Daneels, *supra* note 80, at 119; Daniel, *An Analysis*, *supra* note 12, at 437.

G. *The Principle of Celerity*

The nullity reform was partly based on the need to eliminate “the slowness and excessive length of trials” for the benefit of the faithful.¹³⁴ It was meant to make administration of justice more flexible, as it simplified procedures, shortened time limits, and increased the discretionary powers of the judge.¹³⁵ The ultimate goal was to abbreviate the process.¹³⁶

Author Santiago Bueno Salinas comments that regardless of this new principal, his experience as judicial vicar in the ecclesiastic jurisdiction has showed him that difficult decisions need to be made calmly and with much time to meditate, and that swiftness may increase the risk of mistake and failure.¹³⁷ Bueno, however, does admit that any member of the Catholic faith agrees that a matrimonial process lasting longer than a year can be detrimental to one’s spiritual and psychic health, but that they also know that any decision made immediately and instantaneously can also cause grave negative effects.¹³⁸

The canonical processes are generally known for being slow and expensive.¹³⁹ There are extreme cases where a canonical process has taken ten years to reach a final sentence, but such examples are not indicative of the nature of every case.¹⁴⁰ Bueno assures that in his experience, most cases are resolved within one year and a half, and it is rare that any procedure lasts longer than two years, so long as the parties have been diligent in their duties.¹⁴¹ Sometimes, the reason the procedures last so long is because difficulties arise among the parties or because the procedures take place in territories where communication is difficult.¹⁴²

¹³⁴ Daniel, *An Analysis*, *supra* note 12, at 438.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ BUENO, *supra* note 91, at 95.

¹³⁸ *Id.* at 96.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

Bueno analyzes several circumstances that caused slowness in the process and made the reform necessary.¹⁴³ Among these are: (1) location of the responding party, (2) irresponsible witnesses, (3) instruction of expert witnesses, (4) delay tactics, (5) lack of preparation of judicial-canonical nature, (6) overburdening of the judicial organs, (7) excessive zeal on behalf of judges, (8) warrants to gather evidence, (9) protection of indissolubility of marriage, and (10) principle of proximity.¹⁴⁴

1. The Location of the Responding Party

It is not unusual for parties to lose contact with one another after a separation or divorce, especially if there are no children involved.¹⁴⁵ There are times where the parties have not been in contact with one another for years, and the petitioning party has no way of locating the responding party.¹⁴⁶ Although it may be possible to carry on the process without the responding party, this should be avoided and only be pursued where there is moral certainty that it is impossible to locate the responding party.¹⁴⁷ So long as the judge believes that the responding party may be located, attempts should be made to locate him or her.¹⁴⁸ This can certainly cause a delay in the process.¹⁴⁹

2. Irresponsible Witnesses

There are instances where witnesses do not appear to testify on the scheduled date and do not forewarn of their absence from the procedure.¹⁵⁰ When witnesses forewarn of their absence, they do so on such short notice

¹⁴³ BUENO, *supra* note 91, at 105–12.

¹⁴⁴ *Id.* at 105–12.

¹⁴⁵ *Id.* at 105.

¹⁴⁶ *Id.* at 106.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

that it is impossible to reschedule a new witness.¹⁵¹ One way to resolve this issue is for lawyers to assure that their witnesses will be able to testify on the scheduled dates or to act promptly when they are notified of their absence to substitute for the absent witness.¹⁵²

3. The Instruction of the Expert Witnesses

Expert witnesses play an essential role in the nullity process. In cases where the mental state of one of the parties is at issue, evidence of psychological or psychiatric doctors or experts is required, unless there are medical records indicating that there is a diagnosis of a personality disorder.¹⁵³ In such cases, the parties could certainly access the new brief nullity process.¹⁵⁴ However, for the rest of the cases, the instruction of expert witnesses will continue.¹⁵⁵

Expert witness instruction is one of the principal causes for delays in the matrimonial process.¹⁵⁶ In some cases, it may take several months to assign an expert, to designate his duties, to give the parties a date to meet with the expert, to allow the expert to select dates for interviews with the parties and to provide evidence, and for the expert to create a report.¹⁵⁷ Although there is no simple solution, Bueno suggests that tribunals with a larger case load have experts available to the parties for an expedited resolution of the cases.¹⁵⁸

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* at 107.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ BUENO, *supra* note 91.

¹⁵⁸ *Id.*

4. Delay Tactics

In every process, whether canonical or civil, the responding party has the right to file exceptions and objections as its right to defend the cause.¹⁵⁹ In matrimonial processes, the feelings of the responding party may interfere in his or her procedural posture.¹⁶⁰ Many believe in good faith that they must defend their point of view in light of the opposition.¹⁶¹ This may cause the process to slow down, which is not necessarily a problem.¹⁶² The problem arises when a responding party takes advantage of the occasion to assert all kinds of claims, including manipulations, to slow the process down.¹⁶³ In some cases, the responding party may use delay tactics.¹⁶⁴ Some of the delay tactics include multiple requests for extensions, seeking recourse against judicial decisions, striking witnesses and expert witnesses, appeals, and providing evidence against the final sentence.¹⁶⁵ Fortunately, this does not occur frequently because the litigious cases, such as property and child custody disputes, are resolved on the civil side of the case through a divorce or separation.¹⁶⁶

The *motu proprio* has recognized the problem of delay tactics made in bad faith and offers a partial solution to at least stop appeals with no foundation against a final sentence. The new Canon 1680 § 2¹⁶⁷ permits the appellate tribunal to confirm directly by decree the sentence below if it is certain that the appeal has been made in bad faith with the intent to create a delay.¹⁶⁸ The interpretation of this new canon may not be easy because there is no criteria to determine when and how an appeal has been made in bad

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 108.

¹⁶³ BUENO, *supra* note 91.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 108.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

faith.¹⁶⁹ If the appellant makes a clear effort to present its appeal, it will be difficult to determine that it has been made as a delay tactic, especially when the tribunal cannot simply observe the attitude of the appealing party to reach their final decree.¹⁷⁰

5. Lack of Preparation of Judicial-Canonical Nature

Canon 1420 § 4 lists the requisites to name judicial vicars.¹⁷¹ The minimum requirement is that they be priests with a degree in canon law and be no less than 30 years of age.¹⁷² Bueno expresses that these requisites are problematic because they are too exiguous, and because current diocese Bishops can select judicial vicars too liberally.¹⁷³ He further states that common sense dictates that there should be more stringent requirements, such as previous experience or abilities, or that there be a group of qualified persons previously approved by the Apostolic Signature, from which the Bishop can select the individual.¹⁷⁴ Bueno believes there should be such additional requirements for the appointment of diocese judges and defenders of the bond as well.¹⁷⁵

This lack of individuals with sufficient judicial preparation may cause a judicial stall.¹⁷⁶ Another problem is that when a diocese formally names a judicial vicar, the vicar may lack so much judicial preparation that he may be unable to do his part.¹⁷⁷ Additionally, the judicial vicar is a priest that has

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ 1983 CODE c.1420, § 4 (“The judicial Vicar and the associate judicial Vicar must be priests of good repute, with a doctorate or at least a licentiate in canon law, and not less than 30 years of age.”).

¹⁷² *Id.*

¹⁷³ BUENO, *supra* note 91, at 111.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

been charged with this responsibility for so long and is of such great age that he cannot adequately respond to the tasks assigned in a swift manner.¹⁷⁸

The new *motu proprio* seeks to compensate for these deficiencies of the judicial vicars by proposing a greater participation of the Bishop.¹⁷⁹ However, this will not necessarily solve the aforementioned problems because, in some instances, the Bishop may not be a jurist and may not necessarily have canonical experience.¹⁸⁰ If a Bishop that lacks canonical experience is entrusted with the cases and only has the assistance of two other laypersons, he may not be able to adequately resolve the case.¹⁸¹

Additionally, even if the Bishop is a jurist and has canonical experience, his credentials may not be up to date, or he may not have time to take on this task.¹⁸² It is difficult to imagine that some of the Archbishops with the most preparation from dioceses such as Paris, Madrid, Barcelona, New York, Rio de Janeiro, and Mexico, may have enough time to participate in the brief matrimonial process.¹⁸³ This means there is a risk that there will not be enough qualified Bishops to handle the amount of nullity cases, and the qualified Bishops may find themselves overburdened with cases.¹⁸⁴

Bueno states that it is important to remember that centuries ago, the *episcopalis audientia* replaced the diocese tribunals because the Bishops at the time lacked judicial preparation and time to resolve cases.¹⁸⁵ Bueno believes the same may be happening today, as a judicial vicar may be selected even if he only has a degree in canon law and is over 30 years of age, without any additional requirements.¹⁸⁶

¹⁷⁸ BUENO, *supra* note 91, at 111.

¹⁷⁹ *Id.*

¹⁸⁰ BUENO, *supra* note 91.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* at 111–12.

¹⁸⁴ *Id.* at 112.

¹⁸⁵ *Id.*

¹⁸⁶ BUENO, *supra* note 91.

6. Overburdening of the Judicial Organs

Many judicial administrations are overburdened, and consequently, this has a negative effect on judges.¹⁸⁷ This also affects ecclesiastic tribunals and the defenders of the bond.¹⁸⁸ Generally, the Church does not suffer from such an excess of cases that it would collapse, but there are several factors than can cause the tribunals to be overburdened.¹⁸⁹

First, the matrimonial process is analogous to a criminal procedure; it requires much time to unravel and is composed of an instruction and an investigative stage.¹⁹⁰ The parties have a time of two or three hours to present their case, and the witnesses can take up to another one or two hours.¹⁹¹ The tribunal also needs enough time to reflect on and study the findings presented in the case, which means the instruction of the case may take more than a week.¹⁹² If there are more cases to be resolved than weeks available to resolve them, it is clear the tribunals will inevitably be backlogged.¹⁹³

Further, the new procedural norm requires that at least the head of the tribunal be a member of the clergy, while the others may be laypersons.¹⁹⁴ This may cause some difficulty because there are not enough clergy members available to serve as judges since they have other duties to fulfill.¹⁹⁵ Additionally, it is very difficult to find laypersons that meet the requisites to serve as judges, which include that they be licensed in canon law, and must not have conflicts of interest with the Church, meaning they cannot be practicing attorneys.¹⁹⁶

¹⁸⁷ *Id.* at 109.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ BUENO, *supra* note 91, at 109–10.

¹⁹⁴ *Id.* at 110.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

7. Excessive Zeal on Behalf of Judges

“The sanctity of the sacrament of marriage is defended with wise and prudent justice, not with obsessive suspicions nor personal campaigns.”¹⁹⁷ Judges must use prudence in making sure procedural laws are followed.¹⁹⁸ Judges are required to presume the parties bringing cases before the tribunals are acting in good faith, and this presumption can only be rebutted when there is objective indicia or proof to the contrary.¹⁹⁹ This means that judges should not be distrustful of the parties and should not seek to exhaustively investigate each of his doubts or suspicions.²⁰⁰ Judges should give a similar benefit of the doubt to expert witnesses and other participants in the proceeding.²⁰¹ If judges seek to investigate each of their doubts or suspicions, this could create unjustifiable delay in the proceeding, and even cause prejudice to the faithful.²⁰²

8. Warrants to Gather Evidence

Warrants are sent to and from diocese tribunals to obtain statements from parties or witness.²⁰³ Usually, these are sent between dioceses of the same country, but there may be a delay where there is a need to obtain evidence from other countries.²⁰⁴ Other countries may have different canonical procedures, which at times may be in conflict with the procedures of the country that sends the warrant.²⁰⁵ The various warrant procedural requirements in different localities and territories may create defects in the warrants that would otherwise not exist in the receiving countries.²⁰⁶ These

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 108.

¹⁹⁹ *Id.* at 109.

²⁰⁰ BUENO, *supra* note 91.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.* at 106.

²⁰⁴ *Id.*

²⁰⁵ BUENO, *supra* note 91.

²⁰⁶ *Id.*

defects may cause receiving countries to return the warrants.²⁰⁷ Clearly, the different procedures in different countries may be problematic for the instructor of the case.²⁰⁸ It may take up to five or six months to fully comply with the warrants and gather the necessary evidence, and at times, there will be no confirmation that the warrant was received, or the particular diocese may never receive a response.²⁰⁹ The efforts of the judge to seek a response will undoubtedly cause further delays.²¹⁰

This delay raises the question of whether there should be one single procedural discipline in the Churches in different territories around the world.²¹¹ However, traditionally, Church authorities in different territories of the Latin Church and the Eastern Church have legislated particularities differently according to their norms and culture, and the *motu proprio* has not completely revised canon law procedure in the distinctive territories.²¹² Rather, this legislation was meant to resolve urgent issues facing the faithful.²¹³ Had the *motu proprio* revised the entire canon law procedure, taking the particularities of every single territory into consideration, the reform would have taken much longer and its goal of resolving an urgent issue would have been in vain.²¹⁴

9. Protection of Indissolubility of Marriage

A basis guiding the reform was the Church's need for procedural protection of the indissolubility of marriage.²¹⁵ Pope Francis' objective was to protect "the truth of the sacred bond," as his predecessors did.²¹⁶ As such,

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.* at 112.

²¹² BUENO, *supra* note 91.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ See Daneels, *supra* note 80, at 118.

²¹⁶ Daniel, *An Analysis*, *supra* note 12, at 441.

the new legislation allows for the ordinary judicial process to take place when challenging the validity of marriage and the more brief nullity process – an alternative when nullity is manifestly evident and both spouses consent to it.²¹⁷ Additionally, the reform emphasizes the importance of the full participation of the defender of the marriage bond at all stages of the process, and preserves his right to be heard and to appeal.²¹⁸

10. The Principle of Proximity

The reform was also motivated by Pope Francis' desire "for the more personal care of the faithful who find themselves in need if the Church's ministry of justice."²¹⁹ Pope Francis declared that the Church has the obligation to reach out to those who cannot "approach the Church's judicial ministry."²²⁰

V. PASTORAL FOOTPRINT OF SERVICE TO THE FAITHFUL IN ECCLESIASTIC TRIBUNALS

In March 2015, Roman Rota imparted a course to address *Motu proprio Mitis Iudex* and the procedural aspects of unconsummated marriage dispensation.²²¹ During this address, in reference to the two *Motu proprio*, Pope Francis declared, "these developments have an eminently pastoral objective: to demonstrate the Church's concern of those faithful who await a swift assessment of their respective marital situations."²²² The following subsections elaborate on this pastoral objective.

²¹⁷ *Id.* at 441.

²¹⁸ *Id.*

²¹⁹ *Id.* at 442.

²²⁰ *Id.* at 443.

²²¹ Pope Francis, *Address of His Holiness Pope Francis to Participants in the Course Promoted by the Tribunal of the Roman Rota*, THE VATICAN (March 12, 2015), https://w2.vatican.va/content/francesco/en/speeches/2016/march/documents/papa-francesco_20160312_corso-rota-romana.html [<https://perma.cc/57P4-JR62>] [hereinafter, *Roman Rota Address*].

²²² Daniel, *An Analysis*, *supra* note 12, at 437; *Roman Rota Address*, *supra* note 214.

A. *The Pastoral Dimension's Reach*

It is generally understood that the pontifical ministry of priestly vocations has always had a pastoral objective—to bring all humanity to salvation through teaching of the word of God, the sacrifice of Jesus Christ, and the forgiveness of all sins. Through the new marriage reform, this same pastoral objective has now been applied to the judicial ministry of the Church.²²³

B. *Consequences in the Judicial Ministry*

Although the application of the pastoral objective to the judicial ministry has had some consequences, Monsignor Alejandro Bunge explains that there are two consequences of special relevance: to have a greater compromise within the judicial ministry and to avoid hiding salvation in the judicial processes.²²⁴ The first consequence can be seen through the new brief process, as judges show a greater compromise to the judicial ministry by facilitating assistance to those suffering from broken marriages.²²⁵ Additionally, salvation is no longer hidden within a complex judicial process, as it is presented to those in broken marriages through the new brief nullity process.²²⁶ The Pope is conscious that the mission of the Church is to bring salvation to everyone, especially those who are marginalized within the judicial processes of the Church.²²⁷ Thus, through the new brief nullity process, the Pope seeks to bring salvation to all.²²⁸

C. *Shortening the Distance Between the Faithful and the Tribunals*

The *Motu proprio Mitis Iudex* speaks of the physical or moral distance between the faithful and the judicial ministry of the Church.²²⁹ Although

²²³ Bunge, *supra* note 6, at 14.

²²⁴ *Id.* at 14–15.

²²⁵ *Id.* at 15.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

this distance may discourage those seeking a marriage annulment, Pope Francis has emphasized that the Church is a mother that seeks the wellbeing of her children and would even give up her life for them.²³⁰ Thus, one of the main objectives of the nullity reform was to promote this maternal instinct and emphasize closeness between the faithful and the Church.²³¹ It is evident that one of the reasons the faithful slowly stopped accessing the judicial ministry of the Church was because the judicial procedures had become so focused on technicalities and complex language.²³² Conversely, it was imperative to focus on the faithful and not the process.²³³

Thus, it became important to eliminate the gap between the pastoral objective and the institutionalization of its processes. To do this, judicial ministers must keep in mind, as Pope Francis explained:

[i]n the Church, in fact, the Institution is not just an exterior structure, while the Ministry refers to a spiritual dimension. In reality, the Ministry and the Institution are inseparable because the Ministry has a body in real time. Because of this, the matters that at first glance appear as only institutional, are really matters that manifest themselves in the concrete things of life and implicate the implementation of the Ministry in real time.²³⁴

For these reasons, Monsignor Bunge urges that judges must never forget that they are also pastors and that they must continue to enforce the pastoral objective.²³⁵

²³⁰ Daneels, *supra* note 80, at 118; Daniel, *An Analysis*, *supra* note 12, at 453

²³¹ Bunge, *supra* note 6, at 16.

²³² See generally Tribunal Apostólico de la Rota Romana, *Subsidio aplicativo del Motu proprio Mitis Iudex Dominus Iesus* (Jan. 2016), <http://www.rotaromana.va/content/dam/rotaromana/documenti/Sussidio/Subsidio%20Aplicativo,%20espa%C3%B1ol.pdf> [https://perma.cc/9HXJ-XUMP].

²³³ Bunge, *supra* 6, at 15–16.

²³⁴ Bunge, *supra* 6, at 16; Pope Francis, Roman Rota Address, *supra* note 214.

²³⁵ Bunge, *supra* 6, at 16.

D. The Importance of Prejudicial Investigation

Dignitas connubii states, “[a]t every tribunal there is to be an office or a person available so that anyone can freely and quickly obtain advice about the possibility of, and procedure for, the introduction of their cause of nullity of marriage, if such should be the case.”²³⁶

Pope Francis urges that it is not enough for judicial ministers to sit back and wait for the faithful to come to them; rather, ministers must go and seek them during their time of need.²³⁷ This is exactly what he seeks to do through the *Motu proprio*.²³⁸ To do this, the Church must implement a kind of pastoral service that provides family, psychological, and spiritual guidance to those seeking to nullify their marriage.²³⁹ Such a service may be most effective with the help of priests, deacons, and parsons, who are all knowledgeable in different areas of the ministry.²⁴⁰ The focus of this service must be marriage, family, and helping the faithful present their nullity case to the tribunals.²⁴¹ Monsignor Bunge explains that individuals with experience in these areas in the diocese or the Episcopal Conference should prepare a *vademécum*, or handbook, which will instruct those implementing the pastoral ministry.²⁴² Further, this pastoral service must pay special attention when it detects a possible marriage nullity. This pastoral service must treat the possible marriage nullity with discretion, especially when there are fresh wounds involved, and must try to gather all the necessary elements to prove the nullity.²⁴³ This stage of pastoral service should culminate in the preparation of a written petition for nullity, which the

²³⁶ *Id.* at 17.

²³⁷ *Id.* at 18.

²³⁸ *Id.* at 17.

²³⁹ *Id.* at 19.

²⁴⁰ *Id.*

²⁴¹ Chacon, *supra* note 12.

²⁴² Bunge, *supra* note 6, at 17.

²⁴³ *Id.*

individuals in charge of ministry will help the parties involved prepare and present to the judicial tribunal.²⁴⁴

VI. ACTUALIZATION OF THE ECCLESIASTIC STRUCTURES

Because the marriage annulment reform has modified the judicial structures of the Church, it is essential to explain the way the new structures work.

A. Tribunals of First Instance

According to research performed in Mexico, Mons. Bunge infers that the various diocese tribunals are tribunals of first instance and that the tribunal of Archdiocese of every respective province serves as the appellate tribunal to such courts.²⁴⁵

Further research showed that in Argentina, tribunals are located exceptionally far from individuals seeking recourse.²⁴⁶ Several factors contributed to this distance between the Church and the faithful. Firstly, such a distance was likely created by a lack of ministers with the necessary preparation in the country.²⁴⁷ For example, because there were only fifteen diocese tribunals, someone living in Rio Gallegos would have to travel 1,880 kilometers to the nearest tribunal in Neuquen to present his annulment case.²⁴⁸ Even worse, someone living in Ushuaia would have to travel 2,462 kilometers to the same tribunal.²⁴⁹ Another factor was that there was likely no need for more tribunals since there were not many nullity cases.²⁵⁰ Fortunately, in the few months following the reform, the

²⁴⁴ Bunge, *supra* note 6, at 19; Daneels, *supra* note 80

²⁴⁵ *Id.* at 19.

²⁴⁶ *Id.* at 20.

²⁴⁷ Daneels, *supra* note 80, at 117.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

amount of diocese and interdiocese tribunals in Argentina have doubled.²⁵¹ Surely, such changes will take place in Mexico too.²⁵²

Because it likely will not be possible for every single Bishop to create a new diocese tribunal to handle nullity cases, where a new tribunal cannot be created, the Bishop may access another tribunal within the same ecclesiastic province.²⁵³ The creation of these tribunals of first instance is of vast importance, but this does not prohibit Bishops from handling nullity cases themselves in various cases before the creation of the tribunals.²⁵⁴

B. Collegiate Tribunal or Single Judge

The general idea has been that a collegiate tribunal with a minimum of three judges is needed to resolve marriage nullity cases, but in order to simplify the nullity process, now as few as one judge will suffice.²⁵⁵ This tribunal should always handle cases of nullity, but there is an exception to situations where a tribunal may not be available. When a tribunal is not available, the Moderating Bishop of the tribunal may elect to assign cases to a single judge, who must always be a clergy member.²⁵⁶ This single judge must assist experts in judicial or human sciences, such as psychiatrist or psychologists, specifically approved by the Bishop for this task to assess the facts of each individual case.²⁵⁷

C. The Appellate Tribunal

Before the reform, every affirmative sentence in a nullity case was automatically appealed.²⁵⁸ Now, only persons wishing to appeal their

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ Bunge, *supra* note 6, at 21.

²⁵⁴ *Id.* at 22.

²⁵⁵ 1983 CODE c.1673, §§ 3, 4; Daneels, *supra* note 80, at 119; Daniel, *An Analysis*, *supra* note 12 at 462.

²⁵⁶ 1983 CODE c. 1673 §§ 3, 4; Bunge, *supra* note 6, at 24.

²⁵⁷ 1983 CODE c. 1673 §§ 3, 4; Bunge, *supra* note 6, at 24.

²⁵⁸ Chacon, *supra* note 12.

affirmative or negative sentences will have an opportunity to do so.²⁵⁹ Immediately upon the effectuation of the new reform, all the interdiocese tribunals and their pertinent appellate tribunals automatically disappeared.²⁶⁰ The creation of new diocese tribunals with their pertinent new appellate tribunals will be up to the individual Bishops.²⁶¹ Bishops also have the choice to leave old appellate tribunals in place.²⁶² In regards to the Archdiocese tribunals of first instance, the Archbishop is the one who will have to designate an appellate tribunal with the approval of the Holy See.²⁶³ However, in the case of interdiocese tribunals, the appellate tribunal will still be the one created by the Episcopal Conference with the approval of the Holy See.²⁶⁴ The Episcopal Conference will also have the ability to create one additional appellate tribunal, with approval of the Holy See, to the one already in place.²⁶⁵

D. A Practical Guide for the Formation of New Tribunals

In his presentation regarding the nullity of marriage reform, Mons. Bunge set forth a helpful guide for the formation of new tribunals.²⁶⁶ This section explains the contents of this guide.

First, as previously mentioned, the reform calls for the Bishops to create new tribunals, whether diocese or interdiocese, of first and second instance, without prior permission from anyone.²⁶⁷

Additionally, Pope Francis summarized four important principles concerning the reform:

²⁵⁹ 1983 CODE c. §1679 (“The sentence that first declared the nullity of the marriage, once the terms as declared by cann. 1630–1633 have passed, becomes executive.”).

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ Bunge, *supra* note 6, at 11.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

- (1) Every Bishop has the right to create his own tribunal.
- (2) Every Bishop has the right to associate one or more Bishops in the same ecclesiastic province to form the tribunal.
- (3) Every Bishop has the right to associate one or more Bishops from other provinces or metropolis with the permission of the Apostolic See.
- (4) Regional tribunals, like the ones in Italy, are not mandatory. The Bishop has the freedom to decide on this issue.²⁶⁸

Before the creation of a tribunal, the Bishop must inform the interdiocese tribunal Moderator and the Apostolic See of the tribunal.²⁶⁹ The Bishop may also request the academic grades of the chosen members of the tribunal before its creation.²⁷⁰ Bishops seeking to create an interdiocese tribunal in the same ecclesiastic province may do the same.²⁷¹ Conversely, if a Bishop seeks to create a diocese tribunal with members from more than one province, he must seek the permission of the Holy See.²⁷²

To create a diocese tribunal for cases of marriage nullity, there must be a judicial vicar, a defender of the marriage bond,²⁷³ a notary, a promoter of justice, and at least one advisor for the Bishop in cases he handles alone.²⁷⁴ Ideally, the judge should have at least two other advisors for a fair finding of nullity.²⁷⁵ The judge may also select an auditor as an optional participant of the tribunal.²⁷⁶ The following are requisites for the participants:

- (1) The judicial vicar must be a priest, over thirty years of age, with a good reputation, and with a degree in canon law. If he does

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ Bunge, *supra* note 6, at 12.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ Chacon, *supra* note 12.

²⁷⁴ Bunge, *supra* note 6, at 24.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

not have a degree in canon law, he may still be a vicar, but only with the permission of the Holy See.

(2) The defender of marriage and the promoter of justice may be clergy members or laypersons, but with prudence and a passion for justice, as well as holders of a degree in canon law. The Holy See will grant these two positions.

(3) Judges may be clergy or laypersons, as long as one of the judges in the tribunal is a member of the clergy—priest or deacon—and must also possess a degree in canon law.²⁷⁷ They should also have satisfactory grades as well as prudence and maturity.²⁷⁸

(4) Advisors must help single judges who are assigned to decide a nullity case alone. Advisors must have lived an exemplary life and must be experts in the field of judicial or human science. They must be approved by Bishops and must be present during the hearing of a case.

(5) Notaries may be the same individuals who participate in other processes of the diocese or may be individuals specifically designated to be a part of the hearing. They must hold a good reputation and may act as priests if there happens to be an issue with a judge.

(6) Auditors must be approved by the Bishop, may be clergy or laypersons, must have requisite prudence and be firm in the doctrine.²⁷⁹

The judicial vicar, defender of marriage, promoter of justice, and judges are appointed for a determinate amount of time, usually between three and five years, but the time may vary depending on the circumstances.²⁸⁰

²⁷⁷1983 CODE C. 1673, § 3 (“Cases of nullity of marriage are reserved to a college of three judges. A judge who is a cleric must preside over the college, but the other judges may be laypersons.”); Daneels, *supra* note 80, at 119; Daniel *An Analysis*, *supra* note 12, at 462.

²⁷⁸Bunge, *supra* note 6, at 24.

²⁷⁹*Id.*

²⁸⁰*Id.*

VII. THE ORDINARY PROCESS AND THE DOCUMENTARY PROCESS

Before the reform, two canons contained the laws concerning the right to invalidate a marriage.²⁸¹ After the reform, the substantive law to invalidate a marriage remains the same, except it has now been codified into one single canon.²⁸²

A. Determining Competent Tribunals

Additionally, in an effort to bring the faithful closer to the Church, the titles of competence, which indicate what tribunals are competent for nullifying a marriage, are broader now. Before the reform, the competent tribunals included: (1) the domicile of the responding party; (2) the domicile of the petitioning party; (3) the location of the proofs, but only if competence was assigned by the judicial vicar of the responding party; and (4) a tribunal located in the Episcopal Conference which both spouses are members.²⁸³ Today, because of the broadening of the competent tribunals, this is no longer the case. Now, the competent tribunals are: (1) in the place where the marriage was celebrated, (2) in the domicile or quasi-domicile of both or one of the parties, or (3) the location where most of the proof is.²⁸⁴ This change has come in part because globalization in the past twenty to thirty years made it so that diocese tribunals handled the nullity of a marriage celebrated in a different country, while domicile of the responding party was in yet third country and the couple cohabitated in yet a fourth country.²⁸⁵ If the responding party's domicile was not known, the only domicile left would be the country where the couple celebrated the marriage, which would likely be a country where neither of them resides

²⁸¹ *Id.* at 25.

²⁸² *Id.*

²⁸³ 1983 CODE C. 1672; BUENO, *supra* note 133, at 104; Bunge, *supra* note 6, at 26; Daneels, *supra* note 80, at 119.

²⁸⁴ 1983 CODE C. 1672; BUENO, *supra* note 133, at 104; Bunge, *supra* note 6, at 26; Daneels, *supra* note 80, at 119.

²⁸⁵ BUENO, *supra* note 133, at 105.

any longer.²⁸⁶ This layout was clearly inconvenient for all persons involved in the procedure, and the new reform simplifies the previous canon.²⁸⁷

Further, before the reform, the approval of a judicial vicar was needed before seeking annulment in a particular tribunal.²⁸⁸ After the reform, this is no longer necessary, which eliminates unnecessary delays in the process.²⁸⁹ The parties are now also allowed to request the collaboration of various tribunals, if possible, in cases where parties and witnesses are in closer proximity to different tribunals to avoid any additional travel expenses.²⁹⁰ The request should be made in writing and parties should receive a response without unnecessary delay.²⁹¹

B. Elimination of the Requirement to Seek Reconciliation

Before the reform, judges in the tribunals of first instance had the obligation to seek the reconciliation of parties seeking to nullify their marriage before taking on the case.²⁹² The reform has eliminated this obligation, and now, judges must confirm the failure of the marriage union before accepting a nullity case.²⁹³

C. The Nullity Petition

A written petition for nullity of a marriage signed by either both or just one party must be presented to the judicial vicar of the competent tribunal.²⁹⁴ The judicial vicar must notify the defender of the marriage bond first, then must notify the other party, who shall receive fifteen days to

²⁸⁶ *Id.*

²⁸⁷ Bunge, *supra* note 6, at 26.

²⁸⁸ 1983 CODE C. 1672; Bunge, *supra* note 6, at 26; Daneels, *supra* note 80, at 119.

²⁸⁹ Bunge, *supra* note 6, at 26.

²⁹⁰ 1983 CODE C. 1418; Bunge, *supra* note 6, at 26.

²⁹¹ Bunge, *supra* note 6, at 26.

²⁹² *Id.*

²⁹³ *Apostolic Letter*, *supra* note 12, at Art. 3 Can. 1675 (“The judge, before he accepts a case, must be informed that the marriage has irreparably failed, such that conjugal living cannot be restored.”).

²⁹⁴ Chacon, *supra* note 12.

respond to the petition.²⁹⁵ If the other party fails to respond, the judicial vicar must decide whether to send out a second notification.²⁹⁶

Next, the judicial vicar must decide whether the parties are to proceed under the ordinary nullity process or the briefer one before the Bishop.²⁹⁷ Upon making a decision, the judicial vicar must render a decree that states his decision and the tribunal's explanation of the issues to be addressed during the process.²⁹⁸ Both parties and the defender of marriage must receive this decree.²⁹⁹

The parties may contest the vicar's decree, and the vicar himself, his superior (the Bishop), or the leading judge of the tribunal may render a decision.³⁰⁰ The parties will also have the right to modify the issues to be addressed during the process.³⁰¹

The defender of the marriage bond also has the right to contest the judicial vicar's determination that the abbreviated process is to be used.³⁰² This recourse is presented to the judicial vicar and is not an appeal but merely a form of "procedural recourse" essential to any judicial process.³⁰³

²⁹⁵ *Id.*

²⁹⁶ *Apostolic Letter, supra* note 12, at Art. 3 Can. 1675 § 1, 2 ("After receiving the *libellus*, the judicial vicar, if he considers that it has some basis, admits it and, by a decree appended to the bottom of the *libellus* itself, is to order that a copy be communicated to the defender of the bond and, unless the *libellus* was signed by both parties, to the respondent, giving them a period of fifteen days to express their views on the petition. After the above-mentioned deadline has passed, and after the other party has been admonished to express his or her views if an insofar as necessary, and after the defender of the bond has been heard, the judicial vicar is to determine by his decree the formula of doubt and is to decide whether the case is to be treated with the ordinary process or with the briefer process"); Bunge, *supra* note 6, at 26; Chacon, *supra* note 12.

²⁹⁷ See BUSTOS, *supra* note 100, at 154; Daneels, *supra* note 80, at 118; Daniel, *The Abbreviated*, *supra* note 91, at 581.

²⁹⁸ *Id.*

²⁹⁹ BUSTOS, *supra* note 100.

³⁰⁰ Daniel, *The Abbreviated*, *supra* note 91, at 581.

³⁰¹ *Id.* at 584.

³⁰² *Id.*

³⁰³ *Id.*; Chacon, *supra* note 12.

D. The Ordinary Process

In the ordinary process, the parties presenting the petition for nullity will select a competent tribunal to have their hearing. The parties will usually be the ones to present their nullity case, although sometimes the promotor of justice may do so only if the nullity has already been publicized and the marriage cannot be validated.³⁰⁴ Once the parties and the defender of marriage have been notified of the judicial vicar's decision, the competent judicial vicar³⁰⁵ must: (1) admit the petition, so long as it has a valid foundation; (2) notify the defender of marriage and the defendant, unless the defendant has already signed the petition, that the defendant has fifteen days to respond, again, unless this period is extended; (3) render the official definition explaining the nullity issues to be dealt with at the hearing; and (4) determine whether the case will undergo the ordinary process or the briefer one where it is to be heard by the Bishop.³⁰⁶ If the case undergoes the ordinary process, in his decree, the vicar will include the judges or judge and advisors that are to take part in the hearing and the sentence. However, if the vicar decides that the case is to undergo the briefer process before the Bishop, then canon 1685 will apply.³⁰⁷ If the vicar selects the briefer process and one of the parties has not yet signed the petition, then he must ask the party to do so.³⁰⁸ The party must decide whether they consent to the petition in full or just to the nullity process selected.³⁰⁹ Next, the parties must gather all the evidence to be presented.³¹⁰

³⁰⁴ 1983 CODE C.1674, § 1 (“The following are qualified to challenge a marriage: (1) the spouses; (2) the promotor of justice when nullity has already become public, if the convalidation of the marriage is not possible or expedient.”); Bunge, *supra* note 6, at 25.

³⁰⁵ Bunge, *supra* note 6, at 25.

³⁰⁶ *Id.*

³⁰⁷ See *Apostolic Letter*, *supra* note 12, at Art. 5, Can. 1685 (“The judicial vicar, by the same decree which determines the formula of doubt, having named an instructor and an assessor, cites all who must take part to a session, which in tum must be held within thirty days”); Bunge, *supra* note 6, at 25.

³⁰⁸ Bunge, *supra* note 6, at 26.

³⁰⁹ *Id.*

³¹⁰ *Apostolic Letter*, *supra* note 12, at Art. 3, Can. 1677, 1678 §3.

Experts may be brought in to participate in cases that involve impotence or defective consent resulting from a mental illness or from an anomaly of psychic nature.³¹¹ If there is doubt about whether a marriage was consummated, then the hearing will be suspended upon testimony from the parties.³¹²

Next, the judge must publish the evidence. Both parties will be allowed to supplement the evidence or object to it.³¹³ The parties will be given a specific period of time for oral arguments and rebuttals.³¹⁴ Judges must then assess the evidence gathered to determine whether it serves as full proof to arrive at a final verdict.³¹⁵ They must look to the weight and credibility of the testimony of the parties and their witnesses.³¹⁶ To render a final verdict, judges must possess a moral certainty that all the evidence presented surrounding both the law and the facts has sufficient weight and that any reasonable doubt of positive error is excluded, even if the possibility of the opposite outcome cannot be completely excluded.³¹⁷

Once the judge renders a verdict declaring a marriage null, the parties have the opportunity to appeal the sentence.³¹⁸ The parties will then be

³¹¹ *Apostolic Letter*, supra note 12, at Art. 3, Can. 1678 § 3.

³¹² Bunge, supra note 6, at 26; *Id.* § 4.

³¹³ *Apostolic Letter*, supra note 12, at Art. 3, Can. 1678.

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Apostolic Letter*, supra note 12, at Title IV, Art. 12 (“To achieve moral certainty required by law, a preponderance of proofs and indications is not sufficient, but it is required that any prudent doubt of making an error, in law or in fact, is excluded, even if the mere possibility of the contrary is not removed.”); Daniel, *The Abbreviated*, supra note 91, at 555; Chacon, supra note 12; MARIA ROCA FERNANDEZ, *La Reforma del Proceso Canónico de las Causas de Nulidad Matrimonial: De las Propuestas Previas a la Nueva Regulación*, LA REFORMA DEL PROCESO MATRIMONIAL CANÓNICO 91 (Thomas Reuters Aranzadi 2017); RAFAEL RODRIGUEZ CHACÓN, *La Ejecutividad de las Sentencias Afirmativas de Nulidad de Matrimonio No Apeladas*, LA REFORMA DEL PROCESO MATRIMONIAL CANÓNICO, 423 (Thomas Reuters Aranzadi 2017); BUSTOS, supra note 100, at 130.

³¹⁸ 1983 CODE C. 1630–33 (“An appeal must be introduced before the judge who rendered the sentence within the peremptory period of fifteen useful days from the notice

allowed to participate in a hearing held before the same tribunal to determine whether the verdict may be appealed.³¹⁹ The defender of marriage will also be allowed to participate in the hearing.³²⁰ If the tribunal finds that there is not a sufficient basis for an appeal, it will simply affirm the verdict.³²¹ If the appeal is successful, the tribunal will make the necessary changes to the first verdict.³²²

The parties are also allowed to appeal an executive verdict to a third-degree tribunal. This would allow the parties to present the original nullity case again, but they would have a completely new hearing with new evidence or arguments within thirty days of the request for the appeal.³²³ It is important to note that if one of the parties remarries another person after a judge has declared a marriage null, the parties to the nullity case may not have this appellate hearing.³²⁴ The parties may elect to include a provision in the verdict that prohibits one or both of them from remarrying.³²⁵ The judicial vicar must notify the Ordinary of Mass that officiated the marriage of the final verdict.³²⁶ The Ordinary of Mass will then record the findings in

of the publication of the sentence. If an appeal is made orally, the notary is to put it in writing in the presence of the appellant. If a question arises about the right to appeal, the appellate tribunal deals with it as promptly as possible (*expeditissime*) according to the norms of the oral contentious process. If the appeal does not indicate the tribunal to which it is directed, it is presumed to be made to the tribunal mentioned in cann. 1438 and 1439. If the other party has appealed to another appellate tribunal, the tribunal of higher grade deals with the case, without prejudice to cann. 1415. An appeal must be pursued before the appellate judge within a month from its introduction unless the judge from whom appeal is made has established a longer period for a party to pursue it.”); BUSTOS, *supra* note 100, at 127.

³¹⁹ 1983 CODE C. 1628 (“[A] party who considers him or herself to be injured by a judgment has a right to appeal from the judgment to a higher judge. . . .”).

³²⁰ *Id.* (“[I]n cases in which their presence is required, the promoter of justice and the defender of the bond have likewise the right to appeal.”).

³²¹ 1983 CODE C. 1630–33.

³²² *Id.*

³²³ 1983 CODE C. 1633.

³²⁴ Bunge, *supra* note 6, at 29.

³²⁵ *Id.*

³²⁶ 1983 CODE C. 1685.

in the book of matrimony and the books of baptism where the parties are registered.³²⁷

E. The Documentary Process

Through the documentary process, the appropriate diocese Bishop, judicial vicar, or judge may declare a marriage null through a document explaining the reasons for doing so.³²⁸ There must also be no objections or exceptions.³²⁹

The defender of marriage or the opposing party may appeal the verdict to an appellate judge, and the judge must be notified that the process is documentary.³³⁰ The parties will then have a chance to present their arguments, and the defender of marriage will also be able participate.³³¹ The appellate judge will then decide whether the verdict will be affirmed or whether the case will be remanded to the first judge where the parties must proceed under the ordinary process.³³²

VIII. NATURE AND PARTICULARITY OF THE BRIEF MATRIMONIAL PROCESS BEFORE THE BISHOP

A. Who May Execute This Process?

The Bishop is the competent judge who may execute the new brief matrimonial process.³³³ As such, who this Bishop is depends on whether we are speaking in general terms or dealing with a specific type of case.³³⁴ The Bishop need not be completely prepared in canon law to be selected as a Bishop, but they should have “sufficient canonical expertise and

³²⁷ *Id.*

³²⁸ Bunge, *supra* note 6, at 29-30.

³²⁹ *Apostolic Letter*, *supra* note 12, at Art. 6, Can. 1688.

³³⁰ *Apostolic Letter*, *supra* note 12, Art. 6, Can. 1689; Chacon, *supra* note 12.

³³¹ Chacon, *supra* note 12.

³³² *Apostolic Letter*, *supra* note 12, at Art. 6, Can. 1690; Chacon, *supra* note 12.

³³³ Bunge, *supra* note 6, at 32.

³³⁴ Bunge, *supra* note 6, at 32; Daniel, *The Abbreviated*, *supra* note 91, at 590.

experience” and “a doctorate or a license in canon law” because “the administration of canonical justice is a duty of grave responsibility.”³³⁵ The Bishop will have assistance from the instructor of the process and an advisor.³³⁶ The general norm says no other person may be delegated to execute this process unless a particular church makes a petition to the Holy See due to a great amount of faith in the diocese.³³⁷ But there is a minority doctrine that insists the Bishop absolutely cannot delegate his judicial power.³³⁸

The Pope has reserved the application of this process to cases where the arguments supporting nullity make a finding of nullity evident.³³⁹ Because of the clear-cut presence of nullity in such cases, the Pope does not believe it is just to put the faithful through unnecessary procedural delays.³⁴⁰ In order to preserve the indissolubility of marriages in such cases, he decided to trust the Bishop with conducting nullity findings.³⁴¹ *Mitis Iudex* makes it clear that the Bishop, along with Peter, is the biggest grantor of Catholic unity in faith and discipline.³⁴² In addition, the Bishop is entrusted with this responsibility and authority because he is considered the head of the diocese.³⁴³

³³⁵ Congregation of Bishops, *Directory for the Pastoral Ministry of Bishops: “Apostolum Successores,”* THE VATICAN (Feb. 22, 2004), http://www.vatican.va/roman_curia/congregations/cbishops/documents/rc_con_cbishops_doc_20040222_apostolorum-successores_en.html [<https://perma.cc/79VY-QTNY>]; Daniel, *The Abbreviated*, *supra* note 91, at 553.

³³⁶ Bunge, *supra* note 6, at 32; Daniel, *The Abbreviated*, *supra* note 91, at 551.

³³⁷ Bunge, *supra* note 6, at 32; Daniel, *The Abbreviated*, *supra* note 91, at 591.

³³⁸ Daniel, *The Abbreviated*, *supra* note 91, at 557.

³³⁹ Bunge, *supra* note 6, at 32; Daniel, *The Abbreviated*, *supra* note 91, at 590.

³⁴⁰ Daniel, *The Abbreviated*, *supra* note 91, at 431.

³⁴¹ *Id.* at 590; Bunge, *supra* note 6, at 32.

³⁴² Bunge, *supra* note 6, at 32.

³⁴³ *Id.*

B. Which Bishop?

Canon 1672 explains that the Bishop who may resolve nullity cases must be one of the following: (1) the Bishop from the place where the marriage was celebrated, (2) the Bishop of the domicile or quasi-domicile of one of the parties, or (3) the Bishop of the place where most of the evidence is to be gathered.³⁴⁴ If, in any case, there is more than one Bishop fitting these competency definitions at a given time, the Bishop with the closest relationship to the parties shall execute the process.³⁴⁵

C. Who May Assist the Bishop?

As previously explained, during the execution of the brief nullity process, the Bishop may receive assistance from an instructor, an advisor, and a notary.³⁴⁶ As such, the participants of the nullity process include (1) the judicial vicar, (2) the instructor, (3) the advisor, (4) the defender of the marriage bond, (5) the notary, and (6) the Episcopal Conference.

1. The Judicial Vicar

Ideally, the Bishop will have his own diocese tribunal. Subsequently, the judicial vicar of the tribunal will receive the written petition and decide whether to proceed with the brief nullity process.³⁴⁷ If the Bishop does not have a judicial vicar in his diocese, he may resort to another qualified person in his diocese to assist him in deciding whether to proceed with the brief process.³⁴⁸ The qualified person in his diocese may be a clergy member, a layperson with title and experience, or a priest with title of another diocese.³⁴⁹ If the Bishop cannot find one of those individuals, he

³⁴⁴ *Apostolic Letter*, *supra* note 12, at Art. 1, Can. 1672; Bunge, *supra* note 33; Daneels, *supra* note 80, at 118.

³⁴⁵ Bunge, *supra* note 33.

³⁴⁶ Daniel, *The Abbreviated*, *supra* note 91, at 551.

³⁴⁷ Bunge, *supra* note 6, at 33.

³⁴⁸ *Id.*

³⁴⁹ *Id.*

may seek instruction assistance of a tribunal of an adjacent area, so long as the faithful seeking nullity have continued access to the Bishop.³⁵⁰ In any case, where there is no judicial vicar in the diocese, the written petition must be submitted to the Bishop.³⁵¹

2. The Instructor

The judicial vicar must name an instructor on a case-by-case basis.³⁵² During the instruction session, the instructor will gather all the evidence and arguments of the parties and submit them to the Bishop. Although there are no specific requirements or qualifications to be named as an instructor, the individual selected as such should have some knowledge about the process.³⁵³ The judicial vicar may himself be the instructor or may name an instructor of the diocese where the particular case originates.³⁵⁴

3. The Advisor

The judicial vicar must name an advisor to assist the Bishop in studying the case before rendering a final decision.³⁵⁵ The advisor may be a canonist, a jurist, a psychiatrist, a psychologist, a psychology consultant, or an expert in any other required field.³⁵⁶

4. The Defender of the Marriage Bond and the Notary

There existed a concern that tribunals may develop a “divorce-oriented mentality” and would “overuse or misuse” the nullity process.³⁵⁷ Because preserving the union of the marriage is still of vast importance, a defender

³⁵⁰ Bunge, *supra* note 6, at 33.

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.* at 34.

³⁵⁴ Apostolic Letter, *supra* note 12, at Title V, Art. 16 (“The judicial vicar can designate himself as an instructor; but to the extent possible, he is to name an instructor from the diocese where the case originated.”); Bunge, *supra* note 6, at 33.

³⁵⁵ Bunge, *supra* note 6, at 34.

³⁵⁶ *Id.* at 34.

³⁵⁷ Daniel, *The Abbreviated*, *supra* note 91, at 591.

of the marriage bond must be present in each nullity procedure.³⁵⁸ However, the defender of the bond now has fewer opportunities to defend the bond within the process. A defender may find it more difficult to appeal the nullity sentence because sentences are issued by the head of the Church (the Bishop).³⁵⁹ The defender of the bond may be a clergy member or layperson, but they must have a good reputation, must have a degree in canon law, and must have prudence and a passion for justice.³⁶⁰

Additionally, the presence of a notary is required, and any documents not subscribed by one are considered null.³⁶¹ The only requirement under the canon for a notary is that the individual hold an unimpaired reputation and be above all suspicion.³⁶²

5. The Episcopal Conference

The new legislation has encouraged the Episcopal Conferences to assist Bishops in establishing a closer relationship with the faithful.³⁶³ This is especially important for this brief process because one of its main objectives is to eliminate the distance between the faithful and the Church.³⁶⁴

D. The Necessary Conditions for a Bishop to Execute the Brief Nullity Process

Two conditions must be simultaneously present for the brief marriage nullity process to take place: the petition must have been submitted by both

³⁵⁸ 1983 CODE C. 1432 (“A defender of the bond is to be appointed in the diocese for cases which deal with the nullity of ordination or the nullity or dissolution of marriage. The defender of the bond is bound by office to present and expound all that can reasonably be argued against the nullity or dissolution.”); Bunge, *supra* note 6, at 34; Daniel, *The Abbreviated*, *supra* note 91, at 591.

³⁵⁹ Daniel, *The Abbreviated*, *supra* note 91, at 591.

³⁶⁰ 1983 CODE C. 1435 (“It is the Bishop’s responsibility to appoint the promoter of justice and defender of the bond.”); Bunge, *supra* note 6, at 34.

³⁶¹ 1983 CODE C. 1437; Bunge, *supra* note 6, at 35.

³⁶² 1983 CODE C. 438 § 2 (“In cases which could involve the reputation of a priest, the notary must be a priest.”); Bunge, *supra* note 6, at 35.

³⁶³ Bunge, *supra* note 6, at 35.

³⁶⁴ *Id.*

spouses or by one with the other spouse's consent, and circumstances must be supported by facts and evidence so that no additional investigation or instruction is necessary to make nullity manifest.³⁶⁵

The petition should include the applicable chapter(s) on which the parties rely for a finding of nullity.³⁶⁶ The facts and evidence surrounding the case need not completely prove nullity at the petition stage; rather, the petition should indicate facts and evidence that, once proven, make nullity clear and evident.³⁶⁷ A determination of these facts and evidence may be complex and problematic.³⁶⁸ It appears that the judicial vicar will have the discretion to determine whether such circumstances exist.³⁶⁹ In this determination, it is important that he use his prudence and intuition.³⁷⁰

To address this complexity, the rules of procedure provide guidance, as they list some of the circumstances that may make nullity evident.³⁷¹ Whenever possible, each of the circumstances alleged in the petition should include a brief explanation to more clearly indicate nullity.³⁷² For example, the following are the circumstances that may make nullity evident.

³⁶⁵ *Apostolic Letter*, *supra* note 12, at Art. 5, Can. 1683; BUENO, *supra* note 91, at 103; BUSTOS, *supra* note 100, at 135; Daniel, *The Abbreviated*, *supra* note 91, at 591.

³⁶⁶ Bunge, *supra* note 6, at 35.

³⁶⁷ *Id.*

³⁶⁸ Chacon, *supra* note 12.

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ *Apostolic Letter*, *supra* note 12, at Title V, Art. 14§1 (“Among the circumstances of things and persons that can allow a case for nullity of marriage to be handled by means of the briefer process according to can. 1683–87, are included, for example: the defect of faith which can generate stimulation of consent or error that determines will; a brief conjugal cohabitation; an abortion procured to avoid procreation; an obstinate persistence in an extra conjugal relationship at the time of the wedding or immediately following it; the deceitful concealment of sterility, or grave contagious illness, or children from a previous relationship, or incarcerations; a cause of marriage completely extraneous to married life, or consisting of unexpected pregnancy of the woman, physical violence inflicted to extort consent, the defect of the use of reason which is proved by medical documents, etc.”).

³⁷² Bunge, *supra* note 6, at 35.

1. The Lack of Faith to Generate Consent or Mistake That Generates Will to Marry

This lack of faith is not lack of faith in general; rather, it is the lack of faith necessary to generate the consent necessary for a valid marriage.³⁷³ Such a mistake would affect the willingness to marry.³⁷⁴ To determine whether either of the spouses lacks faith, the spouses' background should be investigated. Some of the factors that may indicate a lack of faith are: (1) the cultural formation of the individual, such as an atheist or materialistic family, (2) the values that led to the decision to marry, and (3) the perception of marriage as a form of temporary gratification.³⁷⁵

2. The Brevity of Conjugal Cohabitation

When cohabitation takes place for only a brief period of time, this may be indicative of a lack of unity, which is one of the essential elements of marriage, or a lack of one of its purposes—to procreate.³⁷⁶

3. An Abortion Occurs to Impede Procreation

An abortion during the marriage may also be indicative of the will of the spouses to not procreate.³⁷⁷ The parties must declare, under oath, that the abortion occurred as a result of the will to not procreate.³⁷⁸ This declaration may be supplemented by evidence of contraceptive methods and medical records that show the parties, or at least one of them, entered the marriage unwilling to procreate.³⁷⁹

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 38.

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Id.*

4. The Permanence in an Extramarital Relationship During the Marriage Ceremony or Immediately After

An extramarital relationship may show one of the parties has not met his or her obligation of conjugal faithfulness and may be proved through testimony of the parties or witnesses to support that the spouse does not wish to leave the extramarital relationship.³⁸⁰

5. Hiding Sterility, a Serious Contagious Disease, the Existence of Children from a Previous Relationship, or Previous Incarceration

Before marriage, if one of the spouses hides that they are sterile, have a serious contagious disease, have children from a previous relationship, or have been previously incarcerated, there may be an indication that the other spouse would not have married if those circumstances were known.³⁸¹ Any of these circumstances should be supported by evidence.³⁸²

6. A Reason to Marry that is Completely Strange to Marital Life or Consistent with the Unexpected Pregnancy of the Woman

In some instances, a spouse may marry for a completely strange reason other than the marital union or because of an unexpected pregnancy. For example, the male may simulate consent to marry when he feels it is necessary because of an unexpected pregnancy.³⁸³ A mere simulation of consent does not show that there was a clear intention to marry.³⁸⁴

7. Physical Violence Exerted to Force Consent

Any physical violence perpetrated against one of the parties to force consent makes the marriage null.³⁸⁵ In a case of physical violence, the parties must show clear and conclusive proof that violence was perpetrated

³⁸⁰ Bunge, *supra* note 6.

³⁸¹ *Id.* at 38.

³⁸² *Id.*

³⁸³ *Id.* at 39.

³⁸⁴ *Id.*

³⁸⁵ *Id.*

against one of the parties to force consent to marry.³⁸⁶ The evidence presented must include documents such as medical, criminal, and public records, as well as the declaration of the parties and credible witnesses.³⁸⁷ The parties' situation must also be investigated to determine if the party who was allegedly physically forced to consent was able to consent out of their own intelligence and will.³⁸⁸

8. Incompetency Proved by Medical Records

Where one of the parties is incompetent, proof of incompetency must be provided through medical records and testimony. The proof may include "testimony of parents, siblings and peers of the ill person" to show "consistent illness and disturbing behavior of their loved one, incapable of normal interpersonal relationships."³⁸⁹ Medical records could be used to show the person is "afflicted with a serious mental disability or personality disorder" and was hospitalized several times prior to and after consent.³⁹⁰ Such proof may create certainty without a shadow of doubt about the nullity of the marriage.³⁹¹ Because medical and scientific language is not easily understood, cases of incompetency may be very complex.³⁹²

E. The Stages of the Process

1. Introduction of the Case

The written petition must be presented to the judicial vicar or, in his absence, to the competent Bishop.³⁹³ The written petition must include: (1) a brief description of the facts upon which the petition is based, (2) a

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ Bunge, *supra* note 6.

³⁸⁹ Daniel, *The Abbreviated*, *supra* note 91, at 580.

³⁹⁰ *Id.*

³⁹¹ Bunge, *supra* note 6, at 39.

³⁹² *Id.*

³⁹³ Chacon, *supra* note 12.

summary of the evidence that may be immediately collected by the instructor, and (3) any documents that serve as evidence in the case.³⁹⁴ In an appropriate case, the judicial vicar may invite the parties to take part in the brief process, even if the parties have not petitioned for it.³⁹⁵

The judicial vicar's decision to move forward with the brief process may be contested by any of the parties, including the defender of the bond.³⁹⁶ If the judicial vicar rejects the defender of the bond's recourse, he or she may raise the objection again during the process and retains the right to appeal an eventual affirmative decision of nullity.³⁹⁷ The judicial vicar must then name an instructor and an advisor and set a time for the parties, the defender of the marriage, and witnesses to meet within thirty days.³⁹⁸

2. Instruction and Discussion of the Case

The parties and the defender of the marriage must submit the questions that they intend to ask the parties and witnesses during the hearing of the case so that the instructor may prepare interrogatories for the procedure.³⁹⁹ The parties may submit these questions up to three days before the hearing.⁴⁰⁰ During the hearing, a summary of the questions and responses of the parties will be transcribed by the notary.⁴⁰¹ The instructor must set a time of fifteen days within which the defender of the marriage may present his observations and the parties may present their defenses.⁴⁰²

³⁹⁴ Daniel, *The Abbreviated*, *supra* note 91, at 580.

³⁹⁵ *Apostolic Letter*, *supra* note 12, at Art. 15; Daneels, *supra* note 80, at 119.

³⁹⁶ Daniel, *The Abbreviated*, *supra* note 91, at 582.

³⁹⁷ *Id.*

³⁹⁸ Bunge, *supra* note 6, at 40; Chacon, *supra* note 12; Daniel, *The Abbreviated*, *supra* note 91, at 547.

³⁹⁹ Bunge, *supra* note 6, at 40.

⁴⁰⁰ Chacon, *supra* note 12.

⁴⁰¹ *Apostolic Letter*, *supra* note 12, at Art. 18 § 2.

⁴⁰² *Id.* at Art. 5, Can. 1686.

3. Decision of the Case

The Bishop must then analyze the facts and circumstances of the case, and then consult the instructor and the advisor.⁴⁰³ Both the instructor and the advisor should, but are not required to, submit written observations of the case.⁴⁰⁴

If the Bishop arrives at a moral certainty of nullity,⁴⁰⁵ he must execute a nullity sentence. If he does not make a finding of nullity, he will issue a decree transferring the procedure to the ordinary process.⁴⁰⁶ This means that the case will have to be presented anew through the ordinary process, beginning from the stage of presentation of evidence.⁴⁰⁷ This will allow the parties to present new and more detailed evidence and arguments to resolve issues that may have been left unresolved during the initial hearing.⁴⁰⁸ To make this process easier for the parties, the Bishop should issue the reasons for his negative sentence of nullity.⁴⁰⁹

The Bishop must pronounce the final sentence.⁴¹⁰ No one else has the authority to do so unless they receive special permission from the Holy See.⁴¹¹ The parties must be notified of the sentence and the reason for the sentence immediately.⁴¹² Article 20 § 2 of the *Rules of Procedure* states that the sentence must be made known to the parties, ordinarily within one

⁴⁰³ Chacon, *supra* note 12.

⁴⁰⁴ *Id.*

⁴⁰⁵ Chacon, *supra* note 12; Daniel, *The Abbreviated*, *supra* note 91, at 555.

⁴⁰⁶ Chacon, *supra* note 12.

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Apostolic Letter*, *supra* note 12, at Art. 5, Can. 1687 §1 (“After he has received the acts, the diocesan bishop, having consulted with the instructor and the assessor, and having considered the observations of the defender of the bond, and, if there are any, the defense briefs of the parties, is to issue the sentence if moral certitude about the nullity is reached. Otherwise, he refers the case to the ordinary method.”).

⁴¹¹ *Id.* at Can. 1687 §2 (“The full text of the sentence, with the reasons expressed, is to be communicated to the parties as swiftly as possible.”).

⁴¹² Daniel, *The Abbreviated*, *supra* note 91, at 581

month of the decision.⁴¹³ The sentence should be signed by the Bishop, unless he gives another person the authority to do so.⁴¹⁴

4. Challenges and Execution of the Sentence

The Bishop's sentence may be appealed by either the former spouses or, in extremely rare instances, the defender of bond.⁴¹⁵ This is very rare because both spouses are required from the outset to have agreed that the marriage should be null in order to undergo the brief process in the first place.⁴¹⁶ Additionally, the defender of marriage bond must have been present throughout the process, and if he had any arguments against nullity, the Bishop would have already considered them during the procedure.⁴¹⁷

William L. Daniel explains that it may also be socially difficult and imprudent for the defender of the bond to appeal the sentence because the defender is employed by the Bishop and challenging a superior may seem "threatening or intimidating to the Bishop's authority."⁴¹⁸

If the Bishop's sentence is appealed, it should be appealed to either the Metropolitan or the Roman Rota.⁴¹⁹ If it is clear the appeal is only a delay tactic, it should be denied immediately.⁴²⁰ If the appeal is admitted, the case must be transferred for an ordinary review of second degree.⁴²¹

⁴¹³ *Id.*

⁴¹⁴ *Id.*

⁴¹⁵ Bunge, *supra* note 6, at 42.

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ Daniel, *The Abbreviated*, *supra* note 91, at 556.

⁴¹⁹ *Apostolic Letter*, *supra* note 12, Art. 5, Can. 1687 § 3 ("[I]f, however, the sentence was rendered by the metropolitan, the appeal is made to the senior suffragan; if against the sentence of another bishop who does not have a superior authority below the Roman Pontiff, appeal is made to the bishop selected by him in a stable manner."); Chacon, *supra* note 12.

⁴²⁰ *Apostolic Letter*, *supra* note 12, at Art. 5, Can. 1687 § 4 ("[I]f the appeal clearly appears merely dilatory, the metropolitan or the bishop mentioned in § 3 or the dean of the Roman Rota, is to reject it by his decree at the outset; if the appeal is admitted, however, the case is remitted to the ordinary method at the second level.")

⁴²¹ *Id.* ("[I]f the appeal clearly appears merely dilatory, the metropolitan or the bishop mentioned in § 3 or the dean of the Roman Rota, is to reject it by his decree at the outset;

IX. CONCLUSION

Marriage is an inherent reality of the personal and social nature of the human being.⁴²² The essence and characteristics of its makeup are determined by the natural law.⁴²³ From there, Canon Law has made an extraordinary effort, unknown by other judicial codes, to investigate the natural demands of marriage, such as the dignity of the human being demands.⁴²⁴

Marriage is also a complex human reality—it has very broad and varied dimensions; it encompasses physio-biological, psychological, personal, social, religious, moral, and judicial aspects.⁴²⁵ Particularly emphasized is the important role played by *the human sciences* in the juridical study of marriage, including psychology and psychiatry.⁴²⁶ However, it is important to be conscious of the fact that these sciences, like those human acts to which they relate, are subject to change because their production is subject to the freedom of man.⁴²⁷ Science is intrinsically changing—almost all of today’s scientists agree that scientific understandings are not definitive or fixed, because those same scientific truths are only provisional, as well as philosophically probable.⁴²⁸

One must also consider the fact that culture is not uniform.⁴²⁹ It is heterogeneous and unyielding to unity.⁴³⁰ Every society has a unique and

if the appeal is admitted, however, the case is remitted to the ordinary method at the second level.”).

⁴²² Rosas, *Canon 1095*, *supra* note 21, at 924.

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ *Id.*

⁴²⁸ Rosas, *Canon 1095*, *supra* note 21.

⁴²⁹ Ajay Bhatt, *What are the Important Characteristics of Culture?*, at 925 <http://www.preservearticles.com/201101173455/characteristics-of-culture.html> [<https://perma.cc/Q42K-XGZB>] (last visited Jan. 20, 2017); Rosas, *Canon 1095*, *supra* note 21, at 952.

⁴³⁰ *Id.*

different culture.⁴³¹ From a global cultural perspective, it can seem to us that the indissolubility forms part of the marital institution, which at the same time, is based on natural law.⁴³²

However, acceptance of the indissolubility of marriage is rare outside of the Christian culture.⁴³³ From a global society's cultural perspective, it can seem that a marriage should be based on the personal commitment of the couple and should be the result of love, but at the same time, society is aware of cultures in which marriage is based on the father's consent or the contribution from the dowry.⁴³⁴ If society does not want to deny the value of marriage on these other cultural levels, it should accept that perhaps its understanding is not absolute, universal, and immediate.⁴³⁵ It is unclear whether society's principles respond to absolute and universal values, or if society depends principally on its situation and cultural evolution.⁴³⁶

It is important to note, as Pope Francis did, that there exist many faithful in irregular situations of marriage.⁴³⁷ The brief marriage annulment process is intended to address the needs of the faithful in these situations.

The new nullity process reveals a contrast between the canonical tradition of protecting the indissolubility of marriage, and the need for celerity and closer proximity to the Church among the faithful.⁴³⁸ Tribunals around the world face different challenges in correctly applying new process, and the Apostolic See will likely offer guidance to rising procedural questions.⁴³⁹ It will be interesting to see what jurisprudence develops as to "what does and

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ *Id.*

⁴³⁵ *Id.*

⁴³⁶ Rosas, *Canon 1095*, *supra* note 21.

⁴³⁷ Bunge, *supra* note 6, at 4.

⁴³⁸ Daniel, *An Analysis*, *supra* note 12, at 464.

⁴³⁹ *Id.* at 590.

does not constitute manifest nullity of matrimonial consent and cases in which a delay-motivated appeal is verified.”⁴⁴⁰

Finally, the Church’s adoption of this new brief process before the Bishop complies with the supreme law of the Church—the *salus animarum* mandate of its founder, Jesus Christ.⁴⁴¹ It leads those most damaged and hurt by a failed marriage to the path of salvation of their souls, the *salus animarum*, following the supreme law of the Church as stated in canon 1752, the last canon of the *Code of Canon Law*.⁴⁴²

The author would like to conclude with a beautiful thought from Sister Juana Ines de la Cruz, “[M]ay the Lord shower you, not only with abundance of days, but also with His blessings.”⁴⁴³

⁴⁴⁰ Daniel, *The Abbreviated*, *supra* note 91, at 590.

⁴⁴¹ Christ, who was referring primarily to the eternal salvation of the human being said: “I am the way, the truth, and the life.” (*John* 14:6); and on another occasion said: “I am the light of the world.” (*John* 8:12). See, Pope John XXIII, *supra* note 2.

⁴⁴² 1983 CODE C. 1752 (“[C]anonical equity is to be observed, and the salvation of souls, which must always be the supreme law of Christ, is to be kept before one’s eyes.”).

⁴⁴³ SOR JUANA INÉS DE LA CRUZ, OBRAS COMPLETAS 712 (1985).