



Concerning Issues: The Formal Process - The Tribunal and Court Officials

The Formal Process

Beginning with this March 2015 edition of *Concerning Issues* and continuing for the next several months, the judicial process used for declaring a marriage invalid due to defective consent will be explored. This is often referred to as “the formal process.” This issue will focus on the grades of tribunals and the court officials and their roles. The canonical question deals with the sometimes complicated issue of competence.

Often Asked Canonical Question

Can the Erie Tribunal handle a particular case?

By canon law, a court must have competence or jurisdiction before it can accept a case. Canon 1673 defines competence as:

- 1) The diocese where the marriage was celebrated
- 2) The diocese where the Respondent lives (has a domicile or quasi-domicile)
- 3) The diocese where the Petitioner has a domicile or quasi-domicile provided both the Petitioner and the Respondent live in the territory of the same conference of bishops and the judicial vicar of the Respondent gives his consent after he has heard the Respondent.
- 4) The diocese where most of the proofs must be collected with the consent of the judicial vicar of the Respondent, who must first ask if the Respondent has any exception to make.



*“... like the
Persons of
the Trinity,
marriage is a
communion
of love
between
co-equal
persons”*

From the USCCB’s
pastoral letter:
“Marriage –
Love and Life in
the Divine Plan”

Grades of Tribunals

All of the Christian faithful have access to the courts of the Church to vindicate and defend their rights. All cases brought before a Church court, or tribunal, are regulated by the Church’s procedural laws. In general, there are three levels of Church courts:

- 1) First Instance - This is usually the diocesan tribunal. In actual practice, diocesan tribunals are for the most part involved with marriage cases.
- 2) Second Instance - For cases tried before a diocesan court, the Court of Appeal or second instance court is usually at the Metropolitan diocese. Therefore, the court of appeal for cases tried in Erie is the Metropolitan Tribunal of the Archdiocese of Philadelphia. In marriage nullity cases, all affirmative decisions must be ratified by the Court of Appeal. Parties may also appeal a decision to the Court of Appeal.
- 3) Third and Subsequent Instances - These are the tribunals of the Holy See. The first is the Roman Rota which is the highest court of appeal in the Church. The second is the Supreme Tribunal of the Apostolic Signatura which oversees all the judicial structures of the Church.

Officers of the Court

The Diocesan Bishop is the chief judge (canon 1419) and has primary oversight of the diocesan tribunal. The Judicial Vicar directs the diocesan court and, in larger dioceses, can be assisted by an adjutant judicial vicar. The court is composed of several judicial personnel, namely:

Judges - Hear and decide cases. Marriage cases are usually decided by a three-judge panel at first instance and always at second instance. The *Ponens* is the judge assigned to write the actual decision or sentence.

Auditors - Collect the proofs according to the direction of the judges. Auditors often interview the parties and witnesses.

Defenders of the Bond - Argue in favor of the validity of the marriage. Defenders of the Bond must propose all arguments that are reasonable against a finding of nullity.

Notaries - Record what has taken place and sign the record with a notation of the place and time.

Court Experts - In marriage cases, most experts are psychological experts who offer the court professional opinions regarding a party’s ability to consent to marriage on the day of the wedding.

Advocates - Assist the parties in presenting their testimony and argue on behalf of the party they represent.

The Parties of the Case

Petitioner - The person who formally petitions the Church court to declare his or her former marriage invalid.

Respondent - The former spouse of the Petitioner who may or may not be opposed to a possible declaration of nullity.