

Origins of the Defender of the Bond

From Roman Law to the Defender in the *Ius Vigens*

Northwest Region Canon Law Conference

May 3, 2017

Roman Law

Roman penal law was fundamentally an accusatorial system (*via accusationis*) built on the principle of self-help.

An accuser (*actor*) had to bring a petition (*libellus*) to a praetor who would cite the accused (*reus*) for the *contestatio litis* and then entrust the doubt to be resolved to a judge (*iudex*). If the guilt was proven, the accused was bound to pay the penalty (*poena*).

Gratian confirms the necessity of an accuser for an action:
«*Nihil contra quemlibet accusatum absque legitimo et idoneo accusatore fiat*».
«No accusation is brought against anyone unless there is a legitimate and qualified accuser»
(C. 2 q. 1 c. 4).

Roman Law

The *contradictorium*

- The fundamental principle of the *contradictorium*: There are three in judgment. The *actor*, the *reus*, and the *iudex*. To these, Gratian adds the witnesses.
- «*In omni iudicio quatuor personas semper esse necesse est, id est iudices electos, et idoneos accusatores, defensores congruos atque legitimos testes*».
- «*Iudices autem debent uti equitate, testes veritate, accusatores intentione ad amplificandam causam, defensores extenuatione ad minuendam causam.*»
«Moreover, the judges must practice equity; the witnesses must tell the truth; the accusers must attend to the development of their case; and the defendants must act to diminish it» (C. 4 q. 4 c. 1).

Roman Law

The *contradictorium*

- Therefore the *actor* (who favors the action) cannot be the *iudex* (who must remain impartial).
- «*In una enim eademque causa nullus simul potest esse accusator et iudex*» (C. 2 q. 1 c. 17). «In one and the same cause, no one can be simultaneously accuser and judge».
- This fundamental principle was deeply imbedded in Roman Law.

Roman Law

Historical Developments

- In early Christianity, accusations were too easy to bring and could be used to harass Bishops.
- Constantinople I (381) instituted the «*poena talionis*», binding the *actor* to pay the *poena* if the accusation against the *reus* was not proven.
- Consequently, accusations became too difficult to bring, especially against powerful persons.
- In the 9th Century, the *via denuntiationis* was introduced, by which criminal conduct to be denounced to an ecclesiastical authority.
- Still, some crimes went unpunished.

Roman Law

The Inquisitorial System

Innocent III introduced a reform described in three letters:

- On September 22, 1198, he entrusted the investigation (*inquisitio*) of a case of simony to the Archbishop of Milan *ex officio*, even without an accuser who would come forward (X 3.12.1).
- On May 5, 1199, he asked the Archbishop of Sens to investigate *ex officio* the case of a notorious heretic, citing the widespread reputation (*fama*) of heresy and danger of scandal (X 5.34.10).
- On December 2, 1199, he wrote to teachers of canon law, pronouncing it licit to initiate a process when the criminal conduct of a cleric «reaches the ears of the prelate.» It was not that the prelate was both accuser and judge, but rather that «demanded by reputation or denounced by outcry, he carries out what is proper to his office» (X 5.3.31).

Roman Law

The Inquisitorial System

In 1215, Innocent III codified the *via inquisitionis* in Lateran IV.

- «*Si per clamorem et famam ad aures superioris pervenerint, non quidem a malevolis et maledicis, sed a providis et honestis ... non tamquam sit actor et iudex, sed quasi deferente fama, vel denunciante clamore, officii sui debitum exequatur*».
- An offense ought to be investigated when news of it «comes through clamor or reputation to the ears of the superior, not from spiteful or slanderous persons, but from those who are thoughtful and honest». In this matter, the case should proceed «not because the judge is the actor, but rather, as if demanded by reputation or denounced by outcry, he carries out the duty proper to his office».

Roman Law

The Inquisitorial System

- The *via inquisitionis* depended on a legal fiction: the reputation (*fama*) takes the place of the *actor*.
- Doubt remained because of the appearance that one person served as both accuser and judge.
- Between 13th and 14th Centuries, as an organic development, causes began to be entrusted to a procurator, or eventually a promoter who came to be known as the *promotor fiscalis*.
- The *promotor fiscalis* acted by office by bringing accusations in the interest of justice and the common good.

Causes of Canonization

Procedural development

- Causes of canonization were originally handled by the local Bishop or in a diocesan Synod. Over time, it became preferable to consider these causes in larger gatherings of Bishops, in provincial or regional councils.
- Various Papal interventions beginning in the 10th Century lead to the definitive reservation of canonizations to the Roman Pontiff in 1234.
- Once reserved to the Roman Pontiff, causes of canonization came to be treated in a canonical manner. The postulator was the *actor causae*. Evidence was collected through a canonical process that eventually involved the Roman Rota. The cause was judged by the Pope with the assistance of the cardinals in the Roman Curia.

Causes of Canonization

The promoter of the faith

- In time, a “procurator of the faith” or a “promoter of the faith” was heard to clarify doubts about a cause of canonization.
- By the 16th Century, the *promotor fiscalis* regularly took part as the promoter of the faith in causes of canonization, acting by office to raise objections against a servant of God in the interest of protecting the faith.
- A promoter of the faith was regularly nominated in diocesan and apostolic processes.
- A *contradictorium* was created between the postulator (*advocatus sancti*) and the promoter of the faith (*advocatus diaboli*).

Causes of Canonization

The Sacred Congregation of Rites

- In 1588, Sixtus V created the Sacred Congregation of Rites. From this time forward, the *promotor fiscalis* regularly served as the promoter of the faith in Causes of Canonization.
- He had the right to intervene at any stage of the process.
- He must always be cited for any session of the process.
- He was always to be heard before rendering a decision about a Cause of Canonization.
- His duty was to safeguard the faith, to protect divine cult, to see to the observance of the law, to promote justice, to serve the truth.

Causes of Canonization

The Sacred Congregation of Rites

- In 1708, the offices of *promotor fiscalis* and promoter of the faith were separated.
- Prospero Lambertini was appointed Coadjutor Promoter of the Faith, and Promoter General in 1712 where he served until 1728.
- On August 17, 1740, he was elected Pope Benedict XIV.

Causes of Marriage Nullity

- Little is known of the canonical procedures applied in causes of marriage nullity in the early Church. By the 8th Century, there is evidence of witness testimony was obligatory.
- By the middle ages, a canonical process had developed involving a *contradictorium* between three parties: the *actor*, the *pars conventa*, and the *iudex*.
- There was the presumption that the *actor* and the *pars conventa* would take opposing sides, but what if the respondent does not participate, or even shares the petitioner's desire for nullity?

Causes of Marriage Nullity

- Hostiensis (writing in mid 13th Century) suggested that the court should admit any party that wants to stand for the marriage, such as a family member.
- By the 14th Century, after the rise of the *promotor fiscalis*, it became common to ask the *promotor* to intervene *ad hoc* to defend marriage in certain cases.
- By the 16th Century, various canonists called for the regular intervention of the *promotor*, though this was not mandatory.

Causes of Marriage Nullity Reforms of Benedict XIV

On April 11, 1741, Benedict XIV wrote to the bishops of Poland in *Matriomonii*:

- He lamented that some persons were contracting three or even four ecclesiastical marriages.
- Judges were either not well trained or even sometimes dishonest.

On November 3, 1741, Benedict XIV issued the apostolic constitution *Dei Miseratione*.

- He instituted the defender of marriage.
- He required a mandatory appeal to review affirmative decisions.

Causes of Marriage Nullity Reforms of Benedict XIV

Dei Miseratione, §1:

- «We have heard that in some ecclesiastical curias too many judges with imprudent facility, rashness and lack of prudential judgment have issued sentences in favor of the nullity of marriage and have given spouses the ability to marry again with others.
- «These clearly unprepared judges afflicted by the condition of human nature like our first Parent ... ought to in some way be admonished lest they precipitously and with audacity break the sacred and perpetual bond of marriage.»

Causes of Marriage Nullity Reforms of Benedict XIV

The defender of marriage, or defender of the bond:

- Must swear an oath to uphold the bond of marriage;
- Must be cited for the validity of any juridic act;
- Had the right to be present for interrogations;
- Had the right to speak orally or in writing in favor of the marriage;
- Had the right to adduce anything necessary to sustain the marriage.
- Was considered to be a true party to the cause, along with the spouses.

Causes of Marriage Nullity Reforms of Benedict XIV

The defender reflects Benedict XIV's experience as promoter of faith.

The duties of the promoter of the faith	The duties of the defender of the bond
safeguard the faith	safeguard the dignity of marriage
protect divine cult	defend the marriage bond
see to the observance of the law	see to the observance of the law
promote justice	promote justice
serve the truth	serve the truth

The Promoter and the Defender Today

- The *promotor fiscalis* continued as the primary official responsible for bringing accusations of wrongdoing and safeguarding justice up to the beginning of the 20th Century.
- By the beginning of the 20th Century, he began to be referred to as the “promoter of justice,” the term used in the 1917 and 1983 Code of Canon Law.
- The defender of the bond remained fundamentally unchanged from 1741 up to the codification of 1917. *Dei Miseratione* was the primary font for the canons on the defender in the 1917 Code of Canon Law.

Duties of the Defender of the Bond

With special consideration of

Mitis Iudex Dominus Iesus

August 15, 2015

Mitis Iudex

Introduction

- «Through the centuries, the Church, having attained a clearer awareness of the words of Christ,
 - came to and set forth a deeper understanding of the doctrine of the indissolubility of the sacred bond of marriage,
 - developed a system of nullities of matrimonial consent, and
 - put together a judicial process more fitting to the matter so that ecclesiastical discipline might conform more and more to the truth of the faith she was professing.»

Mitis Iudex

Introduction

- The Lord Jesus gave to the successors of Peter the power of the keys «to carry out the work of truth and justice in the Church.»
- «All [the Church's] institutions, constantly subject to improvement, work, each according to its respective duty and mission, toward the goal of transmitting divine grace and constantly promoting the good of the Christian faithful as the Church's essential end.»

Mitis Iudex

Introduction

- The zeal for the salvation of souls ... remains the supreme end of the Church's institutions, rules, and law.
- The Bishops share in the ecclesial duty of safeguarding the unity of the faith and teaching regarding marriage, the source and center of the Christian family.
- These reforms respond to the faithful who seek to assuage their consciences, but are often kept back from the juridical structures of the Church because of physical or moral distance.
- The synod fathers called for a more streamlined and readily accessible judicial process.

Mitis Iudex

Introduction

- These provisions favor not the nullity of marriages, but the speed of processes as well as the simplicity due them, lest the clouds of doubt overshadow the hearts of the faithful awaiting a decision regarding their state because of a delayed sentence.
- Cases of nullity continue to be handled in a judicial rather than an administrative way, not because the nature of the matter demands it, but rather due to the unparalleled need to safeguard the truth of the sacred bond: something ensured by the judicial order.

Mitis Iudex

Status of the Defender of the Bond

- Many of the provisions of *Mitis Iudex* streamline and simplify the process for causes of marriage nullity.
- However, the references to the Defender of the Bond have increased.

Canons 1671-1691 1983 Code of Canon Law	Canons 1671-1691 Modifications in Mitis Iudex
6 references to the defender of the bond	13 references to the defender of the bond (11 explicit and 2 implicit)

Defender of the Bond

Purpose

- It is for defenders of the bond: to compose and allege observations against the nullity of marriage; to assert evidence in favor of the validity or the consummation of the marriage; and to produce all those things that they think are useful to uphold the marriage (CIC 1917, c. 1968, 3º).
- In every grade of trial, the defender is bound by the obligation to propose any kind of proofs, responses and exceptions that, without prejudice to the truth of the matter, contribute to the protection of the bond (*Dignitas Connubii*, Art 56 §3; cfr. CIC 1983, c. 1432).
- The defender can never act in favor of the nullity of marriage (DC, Art 56 §5).

Defender of the Bond

A party to the trial

- The defender of the bond is implicitly a party to the trial under the 1917 Code of Canon Law.
- The defender of the bond is made an explicit party to the trial in CIC 1983, c. 1433:
 - The defender has the right to be heard when the parties must be heard;
 - The defender has the same right make requests of the court as the parties.

Defender of the Bond Citation

- «If the promoter of justice or defender of the bond was not cited in cases which require their presence, the acts are invalid unless they actually took part even if not cited or, after they have inspected the acts, at least were able to fulfill their function before the sentence» (CIC 1983, c. 1433).
- «In causes of the nullity of marriage the presence of the defender of the bond is always required» (DC, Art. 56 §1).
- «The defender must participate from the beginning of the process and during its course, in accordance with the law» (DC, Art. 56 §2).

Defender of the Bond

Acts of a “session”

- A session is a gathering of the members of the tribunal for the purpose of carrying out the work of the trial.
- The notary is to document everything that takes place during the session, including whether the defender of the bond was present.
- The citation of the defender of the bond allows him to perform his function at each session.

Defender of the Bond Citation and presence

Degree of Participation	Actions of the Defender
Optimal	The defender is cited and participates in every session.
Engaged	Even if not cited, the defender participates in every session.
Periodic	The defender does not participate in every session but does respond at specific stages of the cause.
Minimal	The defender is cited but does not take part until the end when presenting the <i>votum</i> .
Non-existent (and INVALID)	The defender is not cited and does not take part in the trial.

Defender of the Bond

Citation and presence

- Some authors claim that the failure to cite the defender at the beginning of the trial can lead to irremediable nullity. Failure to cite an obligatory party would essentially negate the process itself.
- Similarly, the defender may not omit the *votum* at the end of the trial, since this would constitute a failure to complete the duties that arise from a public office.

The Ordinary Marriage Process

- It is useful to review the times and the circumstances in which the defender of the bond can and should intervene in the ordinary contentious process of marriage nullity.

The Ordinary Marriage Process

Preliminary Phase

- The defender is to be informed of the appointment of a procurator or advocate (DC, Art. 101 §4).
- The defender is notified when a *libellus* is accepted (CIC 1983, current c. 1676 §1).
- It is advised that the defender be consulted before rejecting a *libellus* (DC, Art. 119 §2).
- The defender is heard before the grounds are set by the judicial vicar (CIC 1983, current c. 1676 §2).
- *Mitis Iudex* does not refer to the possibility of citing the parties to appear for the joinder of the issues, as was previously allowed.

The Ordinary Marriage Process

Titles of competence

These titles of competence were expanded in *Mitis Iudex*:

- the diocese of domicile (or even quasi-domicile) of the petitioner previously consulting the judicial vicar of the respondent.
- the diocese of the most proofs without previously consulting the judicial vicar of the respondent (CIC 1983, former c. 1673 and current c. 1672).

Does the choice of forum burden the respondent or inhibit the respondent's ability to exercise his or her rights?

The defender may raise exceptions in the interest of the respondent's right of defense.

The Ordinary Marriage Process

Oral Testimony

Interrogatories

- The 1917 code entrusted the defender of the bond with the duty to prepare the interrogatory which was to remain sealed until opened by the judge in the act of examination (CIC 1917, c. 1968, 1º).
- The current law allows the defender the right to present items about which the parties are to be questioned (CIC 1983, c. 1533; DC, Art. 164).

The Ordinary Marriage Process

Oral Testimony

Witnesses

- The 1917 code gave the defender the right to call his own *ex officio* witnesses (CIC 1917, cc. 1759 §2 and 1969, 3º).
- Under the current law, the defender could theoretically call a witness *ex officio* based on his rights of a party in the trial (CIC 1983, c. 1433).
- The defender has the explicit right to ask that a witness be heard, even if renounced by one of the parties (DC, Art. 197; cf. C. 1551).
- The defender also has the explicit right to ask that a witness be recalled for additional testimony (DC, Art. 176; cf. c. 1570).

The Ordinary Marriage Process

Oral Testimony

Ex Officio questions

- The defender of the bond has the right to be present during the examination of any witness (CIC 1983, current Can. 1677 §1, 1º; DC Art. 159 §1).
- Even if the judge composes the interrogatory, the defender has the right to suggest questions during the examination. It is for the judge to ask the questions (CIC 1983, c. 1561; DC, Art. 166).
- *Ex officio* questions are to be noted in the acts by the notary (CIC 1983, c. 1568; DC, Art. 174).

The Ordinary Marriage Process

Experts

- The defender is to be informed of the appointment of a court expert (DC, Art. 204 §2; cf. CIC 1983, c. 1575).
- *Dignitas Connubii* provides specific guidance regarding court experts:
 - Questions for the experts are not to exceed their competence. Expert opinions are to be rooted in Christian anthropology and the scientific method (DC, Art. 56 §4).
 - The judge must take into account the observations of the defender regarding the individual points about which the assistance of the expert is to be concerned (DC, Art. 207 §1; cf. CIC 1983, c. 1577 §1).

The Ordinary Marriage Process Publication

- Publication is directed to the advocates and the parties (CIC 1983, c. 1598 §1). This provides the parties with the first opportunity to review the acts in order to request the completion of the proofs.
- The defender always has access to the acts (CIC 1983, former c. 1678 §1, 2º, now current c. 1677 §1, 2º; DC, Art 159 §1, 2º). The defender can always request additional proofs.
- For the defender, publication constitutes the last opportunity to request additional proofs before the discussion of the cause (DC 236).
- If the defender has nothing to add, this could serve as the occasion for the judge to decree the conclusion of the cause (DC, Art. 237 §2; c. 1599 §1).

The Ordinary Marriage Process

The *votum*

The right and duty to compose the *votum*

- The defender has the right to be heard last, including the right to reply to a second brief from one of the advocates (CIC 1983, c. 1603 §3; DC, Art. 243 §1).
- The *votum* constitutes one of the defender's most important functions and is generally considered to be a duty that the defender must diligently fulfill.
- The defender can make any observations judged opportune in the *votum*. The defender is not constrained by any predetermined model or formula. The defender is not impartial, but in favor of the bond, and should discharge this duty faithfully.

The Ordinary Marriage Process

The *votum*

The approach to the *votum*

- The defender protects the law and serves the interests of the truth.
- Hence the defender need not strenuously emphasize every unfavorable element, cynically presuming the worst possible interpretation.
- Yet, the defender should not give even slight encouragement in favor of nullity, even in making statements that might appear to be obvious.
- Severity is prudent. The defender should not ignore a difficulty, even if only slight, lest a declaration of nullity be given for a valid union.
- In this way, the defender discourages sloppiness and holds the court to a high standard.

The Ordinary Marriage Process

The *votum*

The structure of the *Votum*

- The acts are composed of procedural acts (*acta processus*) and those that respond to the question such as the proofs (*acta causae*).
- A common approach for defenders of the bond is to first make any procedural observations, and then to address the merits of the cause.
- A *votum* that is too brief may fail to adequately defend the bond.
- A *votum* that is too long may fail to succinctly clarify the essential objections to the annulment in the mind of the judge.

The Ordinary Marriage Process

Full Proof

The standard for full proof (in general)

- Can. 1536 §1. The judicial confession of one party relieves the other parties from the burden of proof if it concerns some private matter and the public good is not at stake.
- §2 In cases which regard the public good, however, a judicial confession and declarations of the parties which are not confessions can have a probative force which the judge must evaluate together with the other circumstances of the case; the force of full proof cannot be attributed to them, however, unless other elements are present which thoroughly corroborate them.

The Ordinary Marriage Process

Full Proof

The standard for full proof (pre-*Mitis Iudex*)

- Can. 1679 (former) Unless there are full proofs from elsewhere, in order to evaluate the depositions of the parties according to the norm of can. 1536, the judge, if possible, is to use witnesses to the credibility of those parties in addition to other indications and supporting factors.

The Ordinary Marriage Process

Full Proof

The standard for full proof (post-*Mitis Iudex*)

- *Mitis Iudex* appears to have redefined the bias when approaching judicial confessions of the parties.
- Can. 1678 §1 (current) In cases of the nullity of marriage, a judicial confession and the declarations of the parties, possibly supported by witnesses to the credibility of the parties, can have the force of full proof, to be evaluated by the judge after he has considered all the indications and supporting factors, unless other elements are present which weaken them.

The Ordinary Marriage Process

Full Proof

1983 Code pre-Mitis Iudex	Post-Mitis Iudex
The declarations of the parties <u>cannot</u> have the force of full proof,	The declarations of the parties <u>can</u> have the force of full proof,
unless <u>corroborated</u> by other elements.	unless <u>weakened</u> by other elements.
Their probative force must be evaluated with the other circumstances	Their probative value is to be evaluated
and other indications and supporting factors	after considering all the indications and supporting factors,
including credibility witnesses	and can be supported by credibility witnesses.

The Ordinary Marriage Process Appeal

- Before *Mitis Iudex*, affirmative sentences were automatically transmitted to the tribunal of second instance which could confirm them by decree or admit to ordinary examination (CIC 1983, former c. 1682).
- Now the right to appeal belongs to the defender and the parties (CIC 1983, current c. 1680 §1). The appellate tribunal can confirm the sentence by decree “if the appeal clearly appears merely dilatory” (CIC 1983, current c. 1680 §2).
- If the appellate tribunal determines that the appeal is not merely dilatory, then must the cause be examined by a formal process? What if the appellate tribunal wishes to confirm the affirmative decision by decree?

The Ordinary Marriage Process Appeal

- Can. 1630 §1. An appeal must be introduced before the judge who rendered the sentence within the peremptory period of fifteen useful days from the notice of the publication of the sentence.
- A further question: How many sentences does the defender appeal on an annual basis? What if the answer is zero?

The Ordinary Marriage Process Appeal

- Reasons to appeal an affirmative decision:
- The defender is convinced that the invalidity of the marriage has not been proven on even one ground, in spite of an affirmative finding of the judge.
- The defender is convinced that the judge was in error in finding one or more grounds to be affirmatively proven, while having no objection to the affirmative finding on at least one ground.
- The defender accepts the decision of the judge in finding the nullity affirmatively proven, but finds the reasoning in the sentence to be inherently flawed or severely deficient.

The Ordinary Marriage Process

Processus Brevior

- The defender sees the *libellus* when it is presented and can offer an opinion (c. 1676 §1).
- The defender receives the decree of the judicial vicar ordering the briefer process (c. 1676 §4).
- The defender should examine, as a precondition, whether both parties have proposed the petition or at least consented to it (c. 1683, 1º).
- The defender should examine, as a precondition, whether the nullity is manifest because of the recurring circumstances of things and persons (c. 1683, 2º).

The Ordinary Marriage Process

Processus Brevior

- The judicial vicar cites “all who must take part” to a session to be held by the instructor within 30 days (c. 1685). This should include the defender.
- The defender presents a brief within 15 days (c. 1686). There is no decree concluding the instruction.
- The sentence is communicated to the parities (c. 1687 §2). It is assumed that this includes the defender.
- The defender presumably has the right to appeal (c. 1687 §3), which also must presumably be filed within 15 days.

The Ordinary Marriage Process

Processus Brevior

- The metropolitan can reject a dilatory appeal by decree (c. 1687 §4), but he presumably needs to hear the defender in second instance before making this decision?
- A defender of the bond might understandably be loath to appeal a decision of his or her own diocesan bishop.
- A defender might give advance notice as a courtesy by expressing the opinion that an affirmative decision in a particular *processus brevior* would appear to require an appeal.

The Ordinary Marriage Process

Practical Suggestions

- Defenders may have a large case load and may find it difficult to adjust to a more engaged approach.
- Develop a system for taking notes that allows the defender to identify salient points without having to reread the case each time he intervenes.
- Take notes on the procedural points separately from the substantive notes on the facts of the case. The procedural questions can be quickly ticked off when checking on a case.

The Ordinary Marriage Process

Practical Suggestions

- Develop a system for checking on all assigned cases periodically. Avoid waiting until the end to read a case.
- Formulate pertinent observations along the way.
 - What matters raise suspicions that should be probed during the instruction of the case?
 - What matters require more explanation and should be further explored?
 - What is noted about the witnesses presented (or those not presented)?

The Ordinary Marriage Process

Practical Suggestions

- A defender's notes could be useful in raising questions that can be resolved during the instruction of the cause.
- These same questions cannot be resolved if they are raised only at the end after the conclusion of the cause has been reached.

A good defender of the bond is a great asset to the judge and to the administration of justice.

If the defender discharges his office with diligence, competence, and thoroughness, not only will the examination of the cause be more complete, but the judge will also be more easily able to render a decision with a tranquil conscience.

Causes of Matrimonial Nullity versus Causes of Canonization

Key similarities and differences
for tribunal members who may participate
in a Diocesan or Eparchial Inquiry

Applicable Legislation

Causes of Marriage Nullity	Causes of Canonization
1983 Code of Canon Law.	1983 Code of Canon Law, canon 1403.
Francis, Apostolic Letter <i>Motu Proprio Mitis Iudex Dominus Iesus</i> , 2015.	John Paul II, Apostolic Constitution <i>Divinus Perfectionis Magister</i> , 1983.
	Congregation of the Causes of Saints, <i>Normae Servandae in Inquisitionibus ab Episcopis Faciendis in Causis Sanctorum</i> , 1983.
Pontifical Council for Legislative Texts, Instruction <i>Dignitas Connubii</i> , 2005.	Congregation of the Causes of Saints, Instruction <i>Sanctorum Mater</i> , 2007.

The *actor causae*

- A cause of marriage nullity is initiated by a petitioner who is one of the spouses (or rarely the promoter of justice).
- A cause of canonization is initiated by an *actor* (petitioner) who may be a natural person but often is a juridic person.
- The *actor* is often an association of the faithful (e.g. a guild or foundation). For a religious, the religious order is often the *actor*. For a cleric, a parish or diocese could be the *actor*.
- It is permitted that the diocesan bishop, competent to instruct the cause, may also serve as the *actor causae*.

The *actor causae*

In a cause of canonization, The *actor* is responsible:

- for promoting the cause
- for paying the legitimate expenses of the cause, and
- for nominating the postulator.

A natural person may not be able to do this, since the time required to pursue a cause may last more than one lifetime.

The Postulator

- In a cause of marriage nullity, the petitioner may have the assistance of an advocate and/or a procurator.
- In a cause of canonization, the *actor* must have the assistance of a qualified postulator who is the juridic representative of the *actor* during the process.
- Postulators should be expert in history, theology, and canon law.
- The first duty of the postulator is to present a *libellus* to the competent bishop. He or she must attach the published writings of the servant of God, a brief biography, and a list of potential witnesses.

The Competent Bishop

- In a cause of marriage nullity, the *libellus* must be submitted to a competent tribunal.
- Multiple tribunals may be competent based on the place of marriage, the domicile of the petitioner and respondent, and the location of the most proofs.
- In a cause of canonization, the *libellus* must be submitted by the postulator to the competent bishop.
- Only the bishop of the place where the servant of God died is competent (or where the miracle occurred).

The Competent Bishop

- **In a cause of marriage nullity**, competence can also be extended to another tribunal by the Signatura.
- **In a cause of canonization**, competence can be transferred to another bishop only by the Congregation of the Causes of Saints and only with the consent of the bishop competent *de iure*.

The *Libellus*

- In a cause of marriage nullity, the petitioner has a right to a hearing. The *libellus* cannot be rejected except for those reasons established in law (CIC 1983, c. 1505).
- In a cause of canonization, there is no right to canonization. The competent bishop can reject the *libellus* if it does not appear that there is a sufficient foundation to proceed.
- The principle reason for rejecting a *libellus* is that there does not appear to be a sufficient widespread reputation for holiness, intercessory power or martyrdom.

Preliminary Consultation

- **In a cause of marriage nullity**, the tribunal fixes its claim of competence by citing the respondent, who is thereby notified about the introduction of the Cause.
- **In a cause of canonization**, there is no citation of a respondent. However, the competent bishop must notify the following:
 - The faithful through the publication of the edict.
 - The Conference of Bishops, who are asked to give their opinion regarding the opportuneness of the cause.
 - The Holy See by requesting the *nihil obstat*.

Theological Censors

- In a cause of marriage nullity, experts can be appointed.
- In a cause of canonization, two theological censors must be appointed to examine the published writings of the servant of God regarding faith and morals. They may also examine unpublished writings.
- They are to be unknown to each other, offering independent opinions.
- They serve to demonstrate that the writings of the servant of God do not constitute an obstacle to canonization.

Historical Commission

- In a cause of marriage nullity, documentary proofs can be gathered.
- In a cause of canonization, a commission of at least three historical experts must be appointed to gather all documentary evidence that may relate to the servant of God.
- They prepare a historical report in which they comment on the thoroughness of the research and the authenticity of the documents. They often include a brief biography and comments on the significance of the documents uncovered.
- The experts must be called to testify about the work they have done.

The Tribunal of Inquiry

Members

- **In a cause of marriage nullity**, the Tribunal is composed of three judges or a single judge, and a defender of the bond and a notary.
- The judges and defender must possess a degree in canon law. The defender and some judges may be lay persons.
- **In a cause of canonization**, the Tribunal is composed of an episcopal delegate (like a judge instructor), a promoter of justice and a notary.
- The episcopal delegate and promoter of justice must be competent in theology, canon law, and history. The episcopal delegate and promoter of justice must be priests.

The Tribunal of Inquiry

The Promoter of Justice

- **In a cause of marriage nullity**, the defender of the bond is bound by office to argue against nullity and in favor of the bond.
- **In a cause of canonization**, the promoter of justice is bound by office to safeguard the observance of the law and the search for truth.
- It is laudable to consider the promoter of justice as an opponent of the postulator. As such, he should not fail to raise any arguments that work against the canonization of the servant of God.

The Tribunal of Inquiry

Oaths

- **In a cause of marriage nullity**, the Tribunal officials must take an oath to faithfully fulfill their duties when first appointed. Witnesses also take oaths.
- **In a cause of canonization**, the Tribunal officials, and everyone who takes part, must take an oath at the beginning and at the end of their duty, regarding their faithful fulfillment of their office.
- This includes adjunct notaries, experts, copyists, translators, postulators, carriers, etc.
- Every witness must swear twice, at the beginning and at the end of their testimony, regarding their truthfulness.

The Tribunal of Inquiry

Citations

- **In a cause of marriage nullity**, the respondent and the defender of the bond must be cited for the trial.
- **In a cause of canonization**, the promoter of justice must be cited for each and every individual session of the inquiry. Furthermore, the promoter's presence must be documented at every session.
- The witnesses to be heard in the inquiry are also to be cited to testify.

The Tribunal of Inquiry Grounds

- In a cause of marriage nullity, the grounds are determined by the judges.
- In a cause of canonization, the grounds are fixed by the law.
- For confessors, their life, heroic virtue, and reputation for heroic virtue and intercessory power must be examined: “whether the servant of God practiced to a heroic degree the theological virtues of faith, hope, and love of God and of neighbor, as well as the cardinal virtues of prudence, justice, temperance, and fortitude, in addition to all other connected virtues.”
- For martyrs, their life, martyrdom, and reputation of martyrdom must be examined: “whether the martyrdom and the cause of martyrdom is proven.”
- For miracles, the scientific inexplicability of the event and the intercession of the Servant of God.

The Tribunal of Inquiry

The Interrogatory

- **In a cause of marriage nullity**, the judge questions the witnesses. The defender of the bond may present points on which the witnesses are to be examined.
- **In a cause of canonization**, the promoter of justice composes a formal Interrogatory that is used by the episcopal delegate when examining every witness.
- The promoter of justice composes the Interrogatory based on the information available to him: the material presented by the postulator, the opinions of the theological censors, and the documents and reports of the historical commission.

The Tribunal of Inquiry

Witnesses

- **In a cause of marriage nullity**, the petitioner and respondent may present witnesses to the court. The defender of the bond could theoretically present a list of witnesses.
- **In a cause of canonization**, the postulator presents a thorough list of witnesses.
- The promoter of justice is required to call at least two witnesses *ex officio*, particularly from those who could give useful testimony against the cause.

The Tribunal of Inquiry

Witness Testimony

- **In a cause of marriage nullity**, the defender of the bond and the advocates have a right to be present for the hearing of witnesses. They can suggest *ex officio* questions.
- **In a cause of canonization**, the promoter of justice is required to participate in the sessions for hearing witnesses, and may suggest *ex officio* questions to clarify the witness' testimony.
- The postulator is prohibited from taking part in the sessions for hearing witnesses under threat of nullity of session.

The Tribunal of Inquiry

Inquiries into Alleged Miracles

- **In a cause of canonization**, a medical expert is also to be nominated as a member of the Tribunal.
- The medical expert helps the promoter of justice to compose the Interrogatory.
- The medical expert must take part in the sessions for hearing the witnesses and may propose *ex officio* questions to the judge.
- Two other medical experts *ab inspectione* must be appointed to examine the healed person and to testify before the Tribunal.

The Tribunal of Inquiry

Judicial Inspection

- **In a cause of marriage nullity**, although rare, a judicial inspection of a place is theoretically possible (cf. CIC 1983, cc. 1582-1583).
- **In a cause of canonization**, the Tribunal must inspect the place where the servant of God died or is buried for signs of illegitimate cult.
- The tribunal may also inspect the mortal remains to authenticate the body or relics of the servant of God.

The Tribunal of Inquiry

Publication of the Acts

- **In a cause of marriage nullity**, the acts must be published to the parties and their advocates, who may request the completion of the proofs. The defender of the bond always has access to the acts and shares the same rights.
- **In a cause of canonization**, the acts must be published to the postulator and the promoter of justice, who may request the completion of the proofs.
- It is presumed that the promoter of justice is already aware of the information in the acts because of his regular presence at every session.

The Tribunal of Inquiry

Copying of the Acts

- **In a cause of marriage nullity**, publication is followed by the discussion of the cause.
- **In a cause of canonization**, the acts must be carefully copied by a nominated and sworn copyist. These copies must be thoroughly compared to the original, authenticated on each page by the seal of the notary.
- In the final session of the inquiry, the copies of the acts with the oaths of all who took part are sealed and entrusted to a nominated and sworn carrier who transmits the acts to the Congregation of the Causes of Saints.

The Evaluation of the Cause

- **In a cause of marriage nullity**, the discussion of the cause takes place in the same Tribunal, followed by the sentence of the judge(s).
- **In a cause of canonization**, the discussion of the cause takes place in the Holy See.
- Causes are studied for their juridic validity and entrusted to a relator who prepares the *Positio* with the postulator. The *Positio* is studied by historical experts, medical experts, theological experts, and then the Cardinal and Bishop members of the Congregation.
- The Holy Father is the sole judge who renders his definitive decisions by decree.

The Evaluation of the Cause

- In a cause of marriage nullity, the court is required to reach moral certitude in order to prove one of the grounds.
- In a cause of canonization, the standard for proving heroic virtue, martyrdom, or intercessory power is also moral certitude.

Questions and Answers

Origins of the Defender of the Bond
From Roman Law to the Defender in the *Ius Vigens*

Duties of the Defender of the Bond
With special consideration of *Mitis Iudex Dominus Iesus* (August 15, 2015)

Causes of Matrimonial Nullity versus Causes of Canonization
Key similarities and differences for tribunal members who may participate in a
Diocesan or Eparchial Inquiry