

CONGREGATION FOR THE DOCTRINE OF THE FAITH

NOTES
REGARDING DOCUMENTARY AND PROCEDURAL ASPECTS
OF FAVOUR OF THE FAITH CASES

1) The diocesan Bishop

The persons competent to instruct favour of the faith cases are “the diocesan Bishop and those equivalent to him in law, or the eparchial Bishop” (art. 3); where the term *Episcopus* is used elsewhere in the Norms, it is to be understood in light of article three.

It is the intention of the Norms that those matters which are attributed by name to the diocesan Bishop pertain only to him and to the others equivalent to him, excluding the vicar general and episcopal vicar, “except by special mandate” (cf. can. 134 § 3). If the diocesan Bishop has given a special mandate to the vicar general or an episcopal vicar, a copy of the mandate signed by the diocesan Bishop, duly dated and notarized in conformity with can. 474, should always be included among the documents.

2) Initiation of the Process

The commission or nomination of the Instructor, Defender of the Bond and Notary is to be given in writing, signed by the diocesan Bishop, dated and notarized. It may be given on a permanent basis or case by case. Since it marks the initiation of the process at the diocesan level, the commission is to be established *before* any testimony is received or research takes place.

3) The Votum

The votum of the Bishop is likewise to be signed by the diocesan Bishop. This document, given on his pastoral authority, is to set forth his opinion of the case and the reasons which recommend it. Precise reference is to be made whether the conditions for granting this favour have been met, along with any positive doubt which may have arisen about the validity of the marriage (cf. artt. 10, 24). The Bishop should always give clear indications about the present condition of the parties and whether the petitioner has attempted a new marriage in any form or may be cohabiting with the third party (artt. 1, 4-5, 24). Fear of scandal arising from the concession of the favour, or any doubt about the sincerity of conversion of the petitioner or intended spouse, or any particular difficulties regarding the manner in which the petitioner is fulfilling obligations arising from the former marriage should be settled before the case is submitted (cf. artt. 7 § 3, 9, 20).

4) Report of the Instructor

The report of the Instructor which is to accompany the completed process when it is sent to the Defender of the Bond is distinct from the Bishop's votum (art. 23). It should make reference to the quality of the testimony obtained, to the reasons why certain witnesses cited by the petitioner may not have given formal testimony or why the required searches of baptismal records may have been omitted; in short, it is to be the first hand commentary on the development of the process. In this way, the report is also a valuable means of anticipating requests which the Congregation would be expected to make for additional testimony or some other completion of the acts.

5) Certificates and decrees

Where applicable, certificates of baptism or profession of faith or both are to be included in the process with regard to the petitioner and/or the interested party (art. 22 § 2). Baptismal certificates should also be provided in the case of any children born to the first marriage who are still minors. A copy of the pre-nuptial investigation and dispensation D.C. (in the case of a Catholic marriage), the marriage certificate and a copy of the civil divorce decree or sentence of civil nullity for the marriage presented for dissolution are also to be included.

Certificates of divorce or sentences of civil nullity, along with the dispositive part of the canonical sentence of nullity, must be included for each marriage attempted either by the petitioner or the interested party (art. 19). In the case of marriages attempted outside the canonical form, even though the documentary process is not employed, an administrative declaration of the nullity issued by competent authority must always be included for any union of this kind.

The *cautiones* are an essential element in any marriage to be contracted with a non-Catholic and the favour of a dissolution will not be granted unless these guarantees regarding Catholic practice and the formation of the children are made in writing and signed by both parties (art. 5). Even though it may be prudently foreseen that the couple is beyond childbearing years, the Catholic party must still promise to maintain and practice the faith and the non-Catholic must always give assurance "to permit my spouse to practice the Catholic religion".

6) Testimonies

Both spouses are to be heard as part of the instruction. If the former spouse is absent from the process, this must be declared *ad normam iuris* (artt. 12, 15 § 2). This means that the Instructor is to contact the other party in a way that may ensure their co-operation, inviting them to give testimony. If the other party has neither appeared nor given a reason for being absent, the Instructor is then to place a document in the acts which notes this fact and

explains the situation. Before doing so, however, the Instructor should be certain that some form of notification has indeed reached the other party (cf. can. 1592).

The *third party* is always to be included among the witnesses. Although not normally qualified to comment on the baptismal status of the parties to the former marriage, the third party can testify about any obligations the petitioner may have with regard to the former marriage, about the causes for its breakdown and about his own religious practice as well as that of the petitioner.

7) Written declarations and interviews by telephone

The Norms indicate that the matters asserted in the case must be proven according to the norms of law (art. 12 § 1), that the record of each testimony is to be signed by the witness, the Instructor and the Notary, and that mention is to be made whether the oath was taken or excused or refused (cf. artt. 14, 15).

In the case that a witness may be far away or for some other reason cannot or will not come to the office of the Instructor, they may be heard in another place by a Notary or in any other legitimate manner (art. 15; cf. can. 1528).

Depositions and testimonies by letter or telephone are open to abuse and have a very uncertain probative value. In the first place, there is no guarantee of the identity of the person who composes written responses or of the person who answers a telephone. Responses given by letter are often vague or imprecise. They provide no opportunity to ask for clarifications or support for a particular answer and the danger is always present that they may have been dictated by another person. If some exceptional circumstance seems to justify this type of interrogation, statements of this kind should at least be taken to a notary or legitimated in some way to ensure their genuineness and authenticity and to ensure that such witnesses take seriously the evidence they have given.

8) Summary and Index

In addition to the Observations of the Defender of the Bond, the case must include an Index and a Summary of the case. The Summary is an overview of the essential information regarding the petitioner, the former spouse and the future spouse. The Index is the table of contents or list of all documents, testimonies and other acts and the pages where they are found. For this reason, every page of the acts must always be clearly numbered.

While there is no prescribed order for the acts in the completed process, the following arrangement always expedites the examination of a case:

1. summary
2. petition
3. commission
4. testimonies of the petitioner and former spouse

5. related documents and baptismal searches
6. testimonies
7. testimony of the third party and related documents
8. letters regarding the religious practice of the parties
9. report of the Instructor
10. observations of the Defender of the Bond
11. votum of the Bishop
12. authentication of the acts
13. index.

9) Three copies of the acts

The Norms refer to original documents and to authentic copies of documents (*tum originalia tum in authentico exemplari*: art. 13 § 1). Documents do not have probative force unless they are originals or copies prepared by ecclesiastical or civil notaries and are certified by them as concordant with the originals (cf. can. 1544). The instructor should always insist upon original documents or certificate copies.

The acts sent to the Congregation must contain all the documents which belong to the process. A statement that the documents are “on file in the Chancery” is not sufficient. Any document which is not in a language commonly used by the Roman Curia should be accompanied by a translation (art. 25 § 1; cf. Ap. Const. *Pastor Bonus* art. 16).

Where the Norms indicate that the Bishop is to transmit “*tria exemplaria actorum omnium*” to the Congregation (art. 25), it is to be understood that one set of the acts will contain, where possible, all the original documents or certified copies and that there will be in addition two photocopied sets, for a total of “three copies”. The Notary, however, is to authenticate each set of the acts (art. 13 § 2).