Procedural Update of Marriage Tribunals

INTRODUCTION:

1. *Procedures*:

Subjectively understood, Procedures mean the ordained series of acts and formalities duly prescribed by law to accordingly resolve doubts, settle issues, decide conflicts through the intervention of competent public authority. *Objectively* considered, Procedures refer to the composite body of laws that regulate, determine and direct the said acts and formalities.

2. *Marriage Tribunals*:

Marriage Tribunals are judicial institutions established by law to resolve the four following particular cases according to Procedures: Marriage Nullity. Canonical Separation of Spouses. Dispensation from Ratified but not Consummated Marriage. Presumed Death of a Spouse. Tribunals in general, resolve all contentious and penal cases, i.e., the prosecution or vindication of the rights of physical and juridical persons, the declaration of juridical facts, the determination and imposition of penalties for crimes

3. *Book VII CIC 1983*:

The Code of Canon Law 1917 carries Procedures in Book IV, viz., before the last Book V on Crimes and Penalties. The Code of Canon Law 1983 however contains Procedures in Book VII, i.e., the very last Book after all the six other Books have legislated everything else necessary prior to the application of Procedures if needed. Rights have three basic reference points: *first*, to persons; *second*, to things; *third*, to actions on persons and/or things. Wherefore, it is more logical and also more pedagogical to have Procedures on actions upon persons and/or things which are but adjective rights, as the very last Book after all the six other Books which provide on substantive rights.

The internal division itself of Book VII CIC 1983 compared to Book IV CIC 1917 is also more logical and pedagogical. From the *"De Judiciis in Genere"* (Part I), the *"De Judicio Contentioso"* be this *"Ordinario"* or *"Orali"* (Part II), it goes on to the *"De Quibusdam Processibus Specialibus* (Part III) — such as Matrimonial Procedures — the *"Processu Poenali"* proper (Part IV), down to the *"De Ratione Procedendi in Recursibus Administrativis atque in Parochis Amovendis vel Transferendis"* (Part V).

A. GENERAL PROCEDURES:

The more salient innovative features of Procedures in General, drawn from the text and context of Book VII CIC 1983, are the following:

1. *Pastoral Dimension*:

In contraposition to the impersonality, rigidity and over technicality of Procedures in CIC 1917, Book VII CIC 1983 has the underlying Supreme Law in the Church, viz., pastoral service to and ultimate salvation of the People of God, in faithful observance of the spirit of II Vatican Ecumenical Council. In effect, Procedural Law now expressedly and repeatedly provides that the competent ecclesiastical Judicial Authority should exhaust all possible pastoral means, all sound prudential efforts to exhort and

mediate, to pacify and reconcile Parties in conflict in order to prevent painful litigations, avoid demanding trials, and thus promote the mandatory love and opted peace among God's People.

2. *Procedural Simplicity*:

The very intricate, complicated and onerous provisions of Procedures in CIC 1917 cedes to the more reasonable, manageable and applicable procedural imperatives of Book VII CIC 1983, without sacrificing the postulate of truth and the mandate of justice and equity, which however, should not be so delayed less they be actually denied. The relative procedural simplicity of Book VII CIC 1983 provides the remedial response to the adverse reaction towards the very taxing and exacting procedural demands of Book IV CIC 1917 that bring about the sad paucity of able and willing Tribunal practitioners, and the disconcerting and then ever increasing petitions coming from practically all Nations active in Tribunal work, for dispensations from general procedural provisions, to the detriment of Common Law and the confusion of God's People.

3. *Human Dignity and Subsidiarity*:

The Procedural Law of CIC 1983 brings to fore its but adjective and not substantive nature, and comes in due defense of the rights of persons and the rights on things, being thus respectful of the inherent dignity of the human person usually expressed in the protection and vindication of his rights. And in the hierarchy of human persons in Office, this deferential posture finds expression in the principle of subsidiarity, i.e., sound autonomy and due discretion in favor of subordinate judicial authorities to render definite and defined their concrete procedural options on given judicial matters provided by law on the basis of particular circumstances obtaining in their respective jurisdictions.

4. *Judicial Institutions*:

Book VII CIC 1983 no longer carries the definition of *"Judicium"* in the Church (c. 1552.1 CIC 1917), dropped the *"Judicium*

Criminale" (c. 1552.1, 1 CIC *Id.*) in favor of *"Processus Poenalis"*, deleted the *"Privilegium Fori"* (c. 1553.1,3 CIC *Id.*) and the question of *"Praeventio"* (c. 1553.2 CIC *Id.*), rather opts for the *"Vicarius Judicialis"* and the *"Vicarius Judicialis Adjunctus"* instead of the *"Officialis"* and *"Vice-Officialis"* respectively (c. 1573.1,3 CIC *Id.*), for *"Judices Diocesani"* who may be simply clerics or even lay persons instead of *"Judices Synodales"* and *"Prosynodales"* who should be all Priests (c. 1574.1 CIC *Id.*), provides for *"Judicium Contentiosum Ordinarium"* and *"Orale"* (cc. 1501-1670 CIC 1983), *"Processus Documentalis"* (cc. 1686-1688 CIC *Id.*), and limits *"Praesumptio"* to *"Juris"* and *"Hominis"* thereby abolishing *"Juris et de Jure"* (c. 1584 CIC *Id.*).

5. *Local Tribunals*:

As a matter of principle, every diocesan Bishop should constitute a diocesan Tribunal of First Instance (cc.1419-1421 CIC 1983), and every Metropolitan Archbishop should establish a Metropolitan Tribunal of First Instance whereto suffragan diocesan Tribunals should send their appealed cases (c. 1438.1 CIC *Id.*), with the understanding that, subject to the approval of the Apostolic See, the Metropolitan Tribunal of First Instance in turn sends its appealed cases to another Tribunal designated by the Metropolitan Archbishop himself on a permanent basis (c. 1438.2 CIC *Id.*)

As a matter of concession, several diocesan Bishops may constitute but one Tribunal of First Instance with the approval of the Apostolic See (c. 1423.1 CIC *Id.*). When they are Suffragans of but one and the same Metropolitan, their appealed cases go to the Metropolitan Tribunal (c. 1438.1 CIC *Id.*). But if they are not suffragan Bishops of one and the same Metropolitan Archbishop, their applealed cases are sent to the Tribunal of Second Instance established by the Episcopal Conference with the approval of the Apostolic See (c. 1439.1 CIC *Id.*).

As a matter of privilege, an Episcopal Conference may establish one or more Tribunals of Second Instance with the approval of the Apostolic See (c. 1439.2 CIC *Id.*) beyond that allowed for appeals from the one Tribunal of First Instance of several diocesan Bishops who are not Suffragans of one and the same Metropolitan (c. 1439.1 CIC *Id.*).

6. *One-Judge-Tribunal*:

While simple contentious and penal cases are legitimately susceptible of definition or resolution by a One-Judge-Tribunal (c. 1424 CIC 1983) be this the diocesan Bishop himself (c. 1419.I CIC *Id.*), his Judicial Vicar (c. 1420.1 CIC *Id.*), or the diocesan Judge who should be a Cleric (c. 1421.1 CIC *Id.*) with the required canonical qualifications (cc. 1420.4, 1421.3 CIC *Id.*) — not necessarily a Priest therefore — or could even be a lay person with the approval of the Episcopal Conference (c. 1421.2 CIC *Id.*) — wherefore either a layman or a laywoman — and while complicated contentious and penal cases may however be also legitimately referred by the Bishop to the definition or resolution by a Three or even Five-Judge-Tribunal (c. 1425.2 CIC *Id.*), the following specific cases are expressedly reserved to the judicial intervention of a Three-Judge-Tribunal: Contentious cases concerning the bond of Sacred Ordination and the bond of Marriage except when this simply undergoes the Documental Process, and penal cases which could therewith carry the penalty of dismissal from the clerical state, the imposition or declaration of excommunication (c. 1425.1 CIC *Id.*).

The provision for the ministry of a Collegial Tribunal on the above said cases notwithstanding, these same cases may still be defined or resolved in the First Instance by a One-Judge-Tribunal when a Collegial Tribunal could not be formed even with the assumption of one lay Judge with the permission of the Episcopal Conference (c. 142.2 CIC *Id.*), on proviso that the Episcopal Conference approves the practice of a One-Judge-Tribunal and only as long as the impossibility of constituting a Collegial Tribunal persists, that the Judge is furthermore a Cleric, and that finally this Judge Cleric takes on as collaborators, an Assessor and an Auditor if possible (c. 1425.4 CIC *Id.*).

The norm remains that the Tribunal of the Second Instance proceeds in the same way as the Tribunal in the First Instance in defining or resolving cases appealed herefrom, i.e., in the Second Instance, a One-Man or a Collegial Tribunal is constituted depending on whether the case appealed comes from a One-Man or Collegial Tribunal in the First Instance respectively (c. 1441 CIC *Id.*). However, it should be always a Collegial Tribunal in the

Second Instance that should define or resolve the heretobefore said Contentious and Penal Cases expressedly reserved to a Collegial Tribunal even if with the also above said approval of the Episcopal Conference, these cases have been previously defined or resolved and subsequently appealed from a One-Judge-Tribunal (c. 1425.1 CIC *Id.*).

7. *Availability of Ecclesiastical Tribunals*:

Contrary to the reservation or restriction imposed by Canon 1646 CIC 1917, Book VII CIC 1983 now explicitly declares that anyone, baptized or unbaptized, can and may legitimately invoke the ministry of Ecclesiastical Tribunals for a judgment, and that the duly cited Respondent should answer the case duly presented by the Petitioner (c. 1476).

8. *Automatic Acceptance of the Bill*:

The law now provides that if within a month from the presentation date of the Bill, the Judge concerned had not issued required Decree of Acceptance or Rejection of the Bill, the Petitioner may formally insist that the said Judge fulfill his Office. And if the Judge, notwithstanding the formal Instance, remains silent or inactive for ten days thereafter, the Bill is ipso facto considered by law as having been accepted.

9. *Order of Proofs*:

As established by Book VII, Part II, Section I CIC 1983, there is a new Order of Proofs, viz., a new priority and a new titling of proofs now exist for the judicial cognizance of cases submitted to Tribunal ministry for adjudication: *First,* the *"De partium Declarationibus"* (cc. 1530-1538). *Second,* the *"De Probatione per Documenta"* (cc. 1539-1546). *Third,* the *"De Testibus et Attestationibus"* (cc. 1547-1573). *Fourth,* the *"De Peritis"* (cc. 1574-1581). *Fifth,* the *"De Accessu et De Recognitione Judiciali"* (cc. 1582-1583. *Sixth,* the *"de Praesumptionibus"* (cc. 1584-1586).

Within the context of the judicial principle that the Judge is the *"Dominus Processus"*, and should therefore be more active,

more concerned for and dedicated to the pursuit of justice and truth (c. 1530 CIC 1983), the new Order of Proofs thus established by itself already indicates the respective probative weight that Tribunals should assign according to their very listing. That is to say, before all the other acceptable proofs, the *"De Partium Declaratione"* should be given due serious attention, inquiry and credence — contrary to the previously felt procedural presumption that Petitioners and concordant Respondents are *"suspect"*, and that in effect they should be subjected to several and different *"Juramenta"* (cc. 1829-1836 CIC 1917).

10. *Practical Procedural Points*:

Canon 1501: No Judge may take cognizance of any case unless upon formal presentation of a Bill by the interested Party, the Advocate, or the Promotor of Justice according to norm.

Canon 1505.1: There are four taxative causes whereby a Bill may be rejected: Incompetence of the Judge. Certitude on the lack of legitimate personality on the part of the Petitioner to stand in Court. Clear lack of merit of the case even if submitted to trial. Non-compliance with the essential contents of the Bill as required by norm.

Canon 1507.1: There is a new way of citing the Parties in a case, viz., the Citation of the Parties for the Joinder of Issues already contained in the Decree of Acceptance of the Bill, with the further stipulation as to whether the said Parties should respond in writing or instead personally appear before the Judge.

Canon 1528: If a Party or a Witness refuses to appear before the Judge to give the response or testimony required, they may still be heard even by a lay person designated by the Judge, or they may even be allowed to give the said response or testimony before a Notary Public or in any other manner considered procedurally legitimate or judicially acceptable.

Canon 1558: In principle, the Courtroom is the place for the testimony of Witnesses — unless the Judge otherwise decides on account of particular factors affecting the person or the condition of the Witnesses as stipulated by the norm.

Canon 1567.2: A Tape Recorder may now be legitimately used to obtain testimonies, on condition that thereafter, the said testimonies are committed to writing, and if possible, subsequently signed by the very persons who gave them.

Canon 1575: It is incumbent upon the Judge either to name the Experts in a case after hearing the option of the Parties, or, if the case warrants, to simply make use of the reports already drawn previously by other Experts.

Canon 1573: The testimony of but one Witness cannot constitute full credibility or certitude — unless the Witness is qualified ("testis qualificatus") who testifies on matters effected in the exercise of his or her Office, or unless circumstances of persons or of things warrant otherwise.

Canon 1620: No less than eight factors vitiate a sentence with irremediable nullity: Absolute incompetence on the part of the Judge. Lack of authority of the person that adjudicated the case. Sentence passed under duress from force or grave fear. No right to stand in Court on the side of one Party at least in the case. Denial of the right to defense. Irrelevance of the sentence to the controversy.

B. SPECIAL PROCEDURES:

The more significant common principles governing Special Procedures are the following:

1. *Philosophico-Procedural Principle*:

In the constitutional development of Special Procedures (*"De Quibusdam Processibus Specialibus"*), the Legislator very attentively kept in mind the norms of General Procedures (*"De Judiciis in Genere"*) which is the *"genus"* of the former qua *"species"*. The generic anatomy of Procedures in general was first drawn, and thereafter the Legislator put a specific form in the said procedural generic anatomy and came up with Procedures in Special Cases.

2. *Principle of Procedural Particularization*:

Special cases demand particular Procedures based on the nature of the concrete subject matters processed for adjudication. It was therefore not enough for the Legislator to establish the generic anatomy and the specific structure of Procedures. It was necessary to particularized this specific structure in view of having Procedures responsive to particularized Special Case.

3. *Principle of Suppletion*:

In the application of Procedural Law, the particular nature of the issue at hand should be first established, the corresponding individualized Special Procedure should thereafter be accordingly observed, and only in the presence of "lacuna legis" therein should reference be made to General Procedures — without the least prejudice to very distinct Procedures carried by other Instruments not contained in the Code.

C. PARTICULAR SPECIAL MATRIMONIAL PROCEDURES:

The more important new elements in Special Matrimonial Procedures under the four subsequent particular matrimonial issues, are the following:

1. *Procedure for Marriage Nullity*:

a. *Competent Forum* (c. 1673):

In order to someway remedy the procedural difficulty obtaning in the matter of *"Litterae Rogatoriales"* that have always been very inconvenient on the part of both the sending and receiving Tribunals, in view of somehow minimizing the hardship in resolving Marriage Nullity Cases on account of the formerly rather restricted Tribunal competence on account of well limited territorial jurisdiction, and in consideration of the Petitioners who are usually the aggrieved Parties and who should not be therefore altogether subject to the often unreasonable options of the Respondents, the law now provides the following taxative but

extended Tribunal competence under certain conditions: *First*: Place of Marriage Contract. *Second*: Domicile or or Quasi-Domicile of the Respondent in the case. *Third*: Domicile of the Petitioner when this Party and the Respondent reside within the territory of one and the same Episcopal Conference. *Fourth*: Place where most of the evidence should in fact be gathered.

b. *Right to Accuse* (c. 1674):

The law has now abolished the former stopper provision lodged against the culpable Party to accuse his or her marriage of nullity. The abrogation of this provision rests on the doctrine that marriage — unlike other contentious cases —enters the realm of the public good of the Church. Its validity of invalidity therefore has implications on this public ecclesial good.

c. *Procedural Obligations of the Judge* (cc. 1676, 1677, 1679):

The Judge should first employ all possible pastoral means to reconcile the Parties, validate their marriage if necessary, and restore conjugal life there between — before in effect formally accepting their case, meritorious or event rather evident though this be.

The Judge, upon official acceptance of a case, issues the Citation of the Parties. Fifteen days hereafter, he decrees ex officio the Joinder of Issues within ten days — unless either Party forwards the petition for a Session for the formulation of the Joinder of Issues — and formally notifies the Parties

The Judge, in the absence of full proofs from available sources, should assume an active role in his judicial capacity in seeking other indicative or probative factors in favor of justice and truth.

d. *Procedural Rights of the Defender of the Bond, the Advocates and the Promotor of Justice* (c. 1678):

The Defender of the Bond, the Advocates of the Parties and the Promotor of Justice if involved in the Case,

have the right to present the inquiry on the Parties, the Witnesses, and the Experts if any — unless the Judge decides otherwise in favor of sessions *"in privato"* or *"in secreto"* on account of the circumstances of the persons concerned and the particulars of the matter at hand — the right as well to inspect the judicial Acts even prior to their publication, and also the right to examine the documents presented in Court.

e. *Expert Testimony* (c. 1680):

As a matter of principle, the intervention of one or more Experts to testify in cases of the diriment impediment of impotence and the nullity chapter of defect of matrimonial consent on account of mental illness, is still required by law. The same law however now also says that such expert intervention and testimony may be legitimately dispensed by the Judge when they are evidently unnecessary due to given circumstances.

f. *Observations of the Defender of the Bond* (c. 1682):

The mandate of the Office of the Defender of the Bond to promote arguments *"in contra"* of marriage nullity by way of observations in law and in fact, still stands. These observations nevertheless are no longer strictly required in cases of truly strong and really evident proofs of nullity.

g. *Confirmatory Judgment of the Appellate Tribunal* (c. 1684):

Unless so prohibited by virtue of a Restrictive Clause, by a decretal stipulation or by a statute of the Local Ordinary, the Parties in receipt of a confirmatory Decree or Sentence from the Appellate Tribunal may immediately contract or enter into a new marriage.

h. *Documental Procedure* (c. 1686):

Always subject to recourse to the Appellate Tribunal by the Defender of the Bond, by the aggrieved Party directly or through his or her Advocate, and by the Promotor of Justice when involved in the case, the Judge, omitting

all other procedural formalities but duly citing the Parties and Advocates together with the Defender of the Bond and the Promotor of Justice concerned, may legitimately declare marriage nullity evidently established through any of the following three documental evidences immune to contradiction or exception: *One*: Existence of a diriment impediment without dispensation. *Two*: Lack of Canonical Form without dispensation. *Three*: Defect of Procuratory Mandate. It should be noted that Marriage Nullity Cases may not be tried under Oral Contentious Procedure.

i. *Moral and Civil Obligations of Parties* (c. 1689):

When an affirmative confirmatory Sentence or Decree of marriage nullity is pronounced, the Parties should be explicitly and ardently admonished in the very instrument of judgment, about their respective moral and even civil obligations toward each other and in the support and education of their children if any.

2. *Procedure for Canonical Separation*:

a. *Ecclesiastical or Civil Judgment* (c. 1692):

In the event that all possible pastoral remedies proved in vain for the reconciliation of the Parties, when local Ecclesiastical Tribunals pronounce decisions without civil effects, and if local civil judgments in this matter are not contrary to Divine Law, the diocesan Bishop concerned may legitimately advise the Parties in pursuit of conjugal separation, to present their case instead before the Civil Forum.

b. *Oral or Ordinary Contentious Procedures* (c. 1693):

The Oral Contentious Procedure should be observed unless one Party at least or the Promotor of Justice pleads for an Ordinary Contentious Procedure, in which case, in the presence of an appeal from the decision of the Tribunal of First Instance, the Appellate Tribunal pronounces thereupon by a Decree or a formal Sentence through Ordinary Contentious Procedure.

c. *Presence of the Promotor of Justice* (c. 1696):

While the Defender of the Bond is a mandatory figure in Marriage Nullity Cases, in Canonical Separation Cases the Promotor of Justice is a required Church representative. These cases also enter the realm of the public good of the Church. The Promotor of Justice therefore should be duly cited at their trial — under penalty of nullity of procedural acts.

3. *Procedure for Dispensation "Super Ratum-Non Consummatum"*:

a. *Change of Procedure*:

The law provides for the possibility of needed change both from Nullity Procedure to Dispensation Procedure (c. 1681 and from Dispensation Procedure to Nullity Procedure (c. 1700.2).

b. *Procedural Particulars*:

Only the Spouses, one of them at least, have the right to petition for the Dispensation (c. 1697). Only the Holy See takes cognizance of the fact of inconsummation and the existence of the just cause for Dispensation (c. 1689) which only the Roman Pontiff may grant. Only the diocesan Bishop of the Petitioner by virtue of the latter's domicile or quasi-domicile, is competent to accept the case (c. 1699.1). Only the Defender of the Bond should be cited for the Instruction of the case — not any Advocate unless the diocesan Bishop concerned otherwise allows on account of given difficulties in the case (c. 1701).

c. *Competence of the Diocesan Bishop*:

The diocesan Bishop competent to accept the case is also competent to commit the Instruction thereof either to his own Diocesan Tribunal, to the Tribunal of another Ecclesiastical Jurisdiction, or to any knowledgeable Priest (c. 1700.1), and competent as well to pronounce his *"votum pro rei veritate"* (c. 1704.1) for transmission to the Apostolic

See with all the pertinent documents, the observations of the Defender of the Bond included (c. 1705.1).

4. *Procedure for the Presumed Death of a Spouse*:

Canon 1707 provides that whenever the death of a Spouse cannot be duly proven by an authentic ecclesiastical or civil document, the other Spouse is definitely not freed from the marriage bond until a Declaration of Presumed Death is accordingly pronounced by the diocesan Bishop concerned, i.e., by strength of moral certitude through opportune investigation, depositions of Witnesses and other prudential means. The mere absence of a Spouse even for a relatively long time by itself does not constitute sufficient evidence. In doubtful and complex cases, the Bishop should consult the Apostolic See.

CONCLUSION:

Updating juridical structures in general means making these relatively static and permanent institutions more attuned and responsive to the dynamic and changing sociological factors affecting the people for whom they exist, purifying these of anachronistic, superfluous and vague elements, and completing these with provisions required by actual realities and practices. In this sense, it can be legitimately said that Matrimonial Tribunals are institutionally and procedurally updated in Book VII, Code of Canon Law 1983.

† OSCAR V. CRUZ, JCD, DD