

since no court has yet been constituted to consider the petition. The constitution of the court occurs only *after* the tribunal has received the petition and the judicial vicar has established a court to consider it. Consequently, by use of the term *judge* the Instruction must mean the judicial vicar or the adjutant judicial vicar as the case may be.

5. The judge can allow a petitioner to present his petition orally if the person is not capable of composing a written petition, either because he cannot write or he cannot express himself in written form.
6. No trial can be conducted without a written record of its proceedings. This is why a *written* petition is required. According to Art. 127 §3, the respondent is to receive a copy of the written petition. This constitutes another reason why it is important that the judge have the introductory petition properly drawn up and recorded in the register.
7. The written record of the orally presented petition must be authenticated by the petitioner as corresponding to his or her request for the intervention of the tribunal. Thus, the written form of the petition is to be read to the petitioner. The petitioner does not have to sign the written petition, but he or she must approve of it (*probandus est*). This can take place orally, with the notary indicating that approval was given.
8. The written record of the orally presented petition takes the place of the usually required written petition. As a consequence, the oral petition, like a written one, must also meet the legal requirements of Art. 116 §1. Further, it too must be admitted or rejected by the court (see Art. 119), and must eventually be communicated to the respondent (see Art. 127 §3).

Article 116

Content of the Petition

Art. 116 – § 1. A *libellus* by which a cause is introduced must:

1° express the tribunal before which the cause is to be introduced;

2° describe the object of the cause, that is, specify the marriage in question, present a petition for a declaration of nullity, and propose—although not necessarily in technical terms—the reason for petitioning, that is, the ground or grounds of nullity on which the marriage is being challenged;

Art. 116 – § 1. Libellus, quo causa introducitur, debet:

1° *exprimere coram quo tribunali causa introducatur;*

2° *circumscribere obiectum causae, scilicet determinare matrimonium de quo agitur, exhibere declarationis nullitatis petitionem, proponere, etsi non necessario verbis technicis, rationem petendi seu caput vel capita nullitatis quibus matrimonium impugnatur;*

3° *indicare saltem generatim*

3° indicate at least in a general way the facts and proofs on which the petitioner is relying in order to demonstrate what is being asserted;

4° be signed by the petitioner or his procurator, indicating also the day, month and year, as well as the place in which the petitioner or his advocate live, or declare they reside for the purpose of receiving acts;

5° indicate the domicile or quasi-domicile of the other spouse (cf. can. 1504).

§ 2. There should be attached to the *libellus* an authentic copy of the marriage certificate and, if need be, a document of the civil status of the parties.

§ 3. It is not permissible to require expert reports at the time when the petition is being exhibited.

quibus factis et probationibus innitatur actor ad evincenda ea quae asseruntur;

4° *subscribi ab actore vel eius procuratore, appositis die, mense et anno, necnon loco in quo actor vel eius procurator habitant, aut residere se dixerint actorum recipiendorum gratia;*

5° *indicare domicilium vel quasi-domicilium alterius coniugis (cf. can. 1504).*

§ 2. *Libello addantur exemplar authenticum celebrati matrimonii atque, si casus ferat, documentum de statu civili partium.*

§ 3. *Relationes peritales haud licet exigere in actu exhibendae petitionis.*

1. Paragraph one (§1) stipulates what information is required to form a complete petition; that is, what the petition must contain in order to be admitted as the first act of the trial process (with citation of the respondent). According to Art. 121 §1, 3°, an erroneous petition can be rejected. After it is corrected it can then be presented again for consideration by the court (Art. 123). A petition is invalid if signed by a procurator who has not been given a mandate by the party submitting the petition.

2. The petition must name the tribunal whose intervention is being sought (§1, 1°). It is not sufficient for the petition to seek simply the intervention of any ecclesiastical tribunal. If the petitioner has the choice of several relatively competent tribunals, the court should verify whether the petitioner was aware of this.

On the other hand, it makes no difference if the petitioner initially approaches another diocesan office or person to hand over the petition. Often petitioners are unaware where or how to find the ecclesiastical tribunal. They turn at times to the bishop, vicar general or, as is often the case, to a parish priest (pastor). These persons when approached are simply to send the petition to the tribunal for processing.

The tribunal whose intervention is requested in the petition must be competent

according to the norms of Art. 10. Otherwise, the petition is not admissible before that tribunal and so must be rejected (see Art. 121 §1, 1°). If the petition is rejected for lack of competence, it is helpful for the tribunal to indicate to the petitioner how to resolve the problem. This could include information regarding possibly competent tribunals that the petitioner could approach for consideration of the petition.

3. The petition must specify the marriage that is being challenged; that is, it must indicate clearly who the spouses are, and the date on which and place where the marriage was celebrated. It must further contain a request for the declaration of the nullity of the marriage, and give the reasons for the alleged nullity. Even though no technical expression of the grounds is required, a *caput nullitatis* should at least be recognizable in the petition; that is, an indication of the ground or grounds of nullity alleged based on the substantive marriage law of the Church. Since persons who lodge a petition commonly do not do so based on the assistance or advice of an advocate or other legal expert, they most often do not have any knowledge of the legal grounds for challenging the validity of a marriage. There should be no expectation, then, that the petition submitted will contain concrete expressions of the grounds.
4. The facts upon which the assertion of the nullity of the marriage are based should be given in general terms rather than specific ones (§1, 3°). This should include the circumstances surrounding the spouses and the marriage that relate to the petition (e.g., "He never intended to be faithful to me, not even before the marriage."). However, such information is to be expected only if the petitioning party has some idea of the grounds upon which the marriage might best be challenged (see comm., par. 3 above).
5. The tribunal is to be informed in the petition of the means by which the petitioner intends to establish his or her claim; that is, what proofs will be presented to the court (§1, 3°). A detailed indication of the proofs is not yet necessary. At this point the petition might indicate only general information concerning what proofs will be adduced, most especially who will function as witnesses in the trial and what, in general terms, the witnesses will testify to. The addresses of the witnesses is to be made available in the petition (see Art. 117). Certain documents are also to be made available with the petition, such as a marriage license and civil decree of divorce, if available.
6. The petition must contain the authentic signature of either the petitioner or the legitimately appointed procurator (§1, 4°). If the procurator signs the petition, he or she must present an authentic copy of the mandate before the judge can admit the petition (see Art. 106 §1, and for exceptions, see Art. 106 §2).
7. The petition must indicate as well the place where the petitioner and procurator

(if there is one) live or reside. This would include, if the domicile and residence are different, the place where communications from the court can be sent; that is, a postal address (§1, 4°). Use of the phrase *residere se dicere* does not require that the petitioner or the procurator actually reside or work at the address given. An indication of the place is required so that the court can be assured of a reliable place for the communication of acts. If it can be shown that a citation was sent to the address indicated in the petition (for instance, through return receipt of certified mail), then the citation can be considered as having reached the party for whom it was intended. However, the petition must also indicate the actual domicile of the petitioner. This is so even if the domicile is not the place for the receipt of notifications since that determination will play a role in the question of competence of the court in light of Art. 10 §1, 3°.

8. The domicile or quasi-domicile of the respondent must also be given (§1, 5°). This is required for the purposes of determining the competence of the court (see Art. 10 §1, 2° and 3°). The indication of an address for the receipt of notifications (in the sense of Art. 116 §1, 4°) does not suffice since it is meant only to indicate where documents can be sent, not the place of legal domicile or quasi-domicile. It is important for a court to keep this distinction in mind. It is not uncommon for persons who are party to a nullity process to offer a mailing address distinct from the place of domicile or even of residence. The purpose of doing so might be, for instance, to maintain a degree of confidentiality regarding the proceedings.
9. An authentic copy of the marriage license should be included with the petition so that the information concerning the marriage being challenged can be verified (§1, 2°); specifically, who the spouses are and where and when the exchange of consent occurred. A civil marriage license is required for non-Catholics whose marriages before the civil forum are recognized by canon law (for the relevant prescriptions regarding canonical form, see Art. 4 §1, 2°). Catholics who were married in the civil forum with the proper dispensation having been received according to c. 1127 §2 may also present a civil license, as would Catholics whose marriage according to canonical form was recognized by and registered in the civil forum.
10. It is not permitted to require the petitioner to include expert opinions with the petition. The criteria enumerated in the law for the lodging of a petition are exhaustive (see Arts. 121 §1, 4° and 122). This provision would entail as well that it is not permitted to require the petitioner to include with the petition answers to a lengthy series of questions regarding the pre-matrimonial and matrimonial period. The petition should not be seen as a vehicle for an early instruction of the cause.

DIGNITAS CONNUBII:
NORMS AND COMMENTARY

by

Prof. Dr. Klaus Lüdicke

and

Rev. Msgr. Ronny E. Jenkins

Canon Law Society of America