

admitted to the process only if the respondent at one point prior to the conclusion of the trial is permitted access to it.

6. If the petition is not immediately communicated to the respondent, the judge must inform him at least of the object of the cause (*obiectum causae*). This means that the other spouse is to be informed of the purpose of the action, the declaration of the nullity of the marriage. It is advisable that the respondent be informed at the same time of what a marriage nullity process is, what purpose it serves, and why it is conducted. The respondent is also to be informed of what ground or grounds (cause of action) the petitioner has advanced. Without this minimal information the respondent would not be in a position to express his or her opinion regarding the formulation of the doubt the judge must propose to him in accord with §2.
7. When §3 is read in conjunction with c. 1508 §2, it is clear that the judge's decision not to disclose the *libellus* to the respondent is expressed by means of a decree that is not merely procedural in nature. According to Art. 261, this entails that the decree must be at least summarily motivated in order for it to have legal effect. At the same time, there is no specific means of recourse available against such a decree since it does not hinder the process or terminate this or any instance of the cause (see Art. 280 §1, 4°).
8. The decision of the judge not to divulge the contents of the *libellus* to the respondent is not irreversible. For instance, if the opposing party were to make his or her participation in the process dependant on first receiving a copy of the *libellus*, the judge could again weigh the reasons for and against divulging the petition.

Article 128

Lack of Citation

Art. 128 – If the citation does not contain those things which are necessary in accordance with art. 127, § 3 or if it was not legitimately communicated to the respondent party, the acts of the process are null, without prejudice to the prescriptions of artt. 60; 126, § 3; 131 and with the prescriptions of art. 270, nn. 4, 7 remaining in force (cf. can. 1511).

Art. 128 – Si citatio non referat quae ad normam art. 127, § 3 necessaria sunt vel parti conventae non fuerit legitime notificata, nulla sunt acta processus, salvis praescriptis artt. 60; 126, § 3; 131 et firmis praescriptis art. 270, nn. 4, 7 (cf. can. 1511).

1. The acts of the process are null (for more on this see comm., par. 5 below) if the citation of the non petitioning party required by Art. 126 does not contain the necessary information stipulated in Art. 127 §3; that is, if it does not indicate at

least the object of trial, and the ground or grounds of nullity alleged by the petitioner. Without this minimal information, the non petitioning party cannot make a suitable decision as to whether and to what extent he wishes to participate in the process.

2. A successful citation of the respondent has not occurred if the decree does not reach the legitimate address of the party. It is not sufficient for the respondent to hear of the citation or the process by some other means (see Arts. 130 §1 and 133).
3. It may happen that the respondent actually received the appropriate citation, but the acts do not verify this having taken place. If so, the resulting effect might be the same as if no legitimate citation had occurred. The addressee of the citation is then in the position to contest the validity of the process and to challenge the sentence with a complaint of nullity (since the tribunal cannot prove to him that he was, in fact, cited). This would not be the case, however, if the respondent did actually participate in the process as if he or she had been legitimately cited.
4. Article 128 establishes the nullity of the *acta processus* for failure to cite the respondent. The judicial acts (*acta iudicialia*) mentioned in Art. 88 are not intended here. That is, this article is not speaking to the written instruments that witness to either the substantive or procedural activity of the court. Rather, the nullity sanction applies to the procedural acts of the court, including, for example, the formulation of the doubt and the instruction of the cause. This means that the testimony of witnesses could not be used in a subsequent hearing of the cause without further verification. The witnesses themselves would at least have to authenticate the status of the deposition before the newly constituted tribunal.
5. In marriage nullity trials, remediable nullity of sentence is generally the consequence of failure to issue a legitimate citation (see Art. 272, 5°). If, however, the lack of citation resulted in an actual denial of the right of defense, irremediable nullity of sentence always results (see Art. 270, 7°).
6. The references at the end of Art. 128 to other articles of the Instruction concern:
 - the nullity of the procedural acts if the defender of the bond does not participate in the process as required by law (Art. 60);
 - no necessity for a citation if the non petitioning party is actually present before the judge (Art. 126 §3);
 - the citation should be legitimately communicated to the guardian if the

petitioner is incapable of acting on his own behalf (Art. 131 §1);

- the irremediable nullity of sentence if the trial was not instituted against a respondent party (Art. 270, 4°);

- the irremediable nullity of sentence if a party is denied the right of defense (Art. 270, 7°).

Article 129

Effects of Citation

Art. 129 – When the citation has been legitimately communicated to the respondent party or that same party has appeared before the judge to participate in the cause, the instance begins to be pending and becomes proper to the tribunal, otherwise competent, before which the action was instituted (cf. can. 1512, nn. 2-3, 5).

Art. 129 – Cum citatio parti conventae legitime notificata fuerit aut ipsa coram iudice steterit ad causam agendam, instantia incipit pendere et fit propria tribunalis ceteroquin competentis, coram quo actio instituta est (cf. can. 1512, nn. 2-3, 5).

1. The correct citation of the respondent brings with it two legal effects: the matter becomes a pending cause, and the tribunal before which it stands assumes competence to the exclusion of those tribunals that might otherwise have been competent to hear the cause had the petition been lodged there.
2. With the citation of the respondent, the cause may be said to be pending (and remains so) before the court that will treat the matter until either a definitive sentence is issued or, by exception, the cause is abated or renounced (see Arts. 146 and 150).
3. If more than one relatively competent tribunal had been approached to hear the cause (see Art. 10), the competence of the tribunal which first cites the respondent becomes exclusive. Other tribunals that could have proceeded with the cause now become incompetent to do so. This corresponds to the provisions of Art. 18 regarding prevention among tribunals.

There are exceptions to this norm. Competence does not arise due to citation of the respondent if:

- the judge who cited the non petitioning party is absolutely incompetent (see Art. 8 §2);

- the judge who cited the non petitioning party is relatively incompetent; the

incompetence in this case can be asserted by means of an exception in accord with Art. 78;

- the cause has been called to the Holy See for adjudication pursuant to Art. 28;
- it has been established that another competent tribunal had previously cited the respondent party and so, according to Art. 18, is now the exclusively competent tribunal.

4. For norms regarding citation at the appellate level, see Art. 283 §3.

**2. THOSE THINGS TO BE OBSERVED
IN CITATIONS
AND COMMUNICATIONS**

**2. DE SERVANDIS
IN CITATIONIBUS
ET NOTIFICATIONIBUS**

Article 130

Notification Process

Art. 130 – § 1. The communication of citations, decrees, sentences and other judicial acts is to be done through the postal service or by another means which is very secure, having observed the requirements established by particular law (can. 1509, § 1).

§ 2. There must be proof in the acts of the fact of communication and of the manner in which it was carried out (can. 1509, § 2).

Art. 130 – § 1. Citationum, decretorum, sententiarum aliorumque iudicialium actorum notificatio facienda est per publicos tabellarios vel alio modo qui tutissimus sit, servatis normis lege particulari statutis (can. 1509, § 1).

§ 2. De facto notificationis et de eius modo constare debet in actis (can. 1509, § 2).

1. The primary purpose of the notification of decrees and other acts of the tribunal to the parties or other persons participating in the trial is to keep everyone aware of the procedural course of the trial. However, notification is also meant to assure that the persons to whom the acts are communicated are aware of their legal responsibility in face of the effects the acts are meant to achieve. Accordingly, the means chosen for notification of the acts must assure that:

- the acts will reach the person to whom they are addressed, or
- the acts are presented in such a way that the person can take notice of them.

sentences.

These parties may also be informed of other acts and matters addressed in the trial. However, if they let it be known that they do not desire to receive further correspondence from the court, then they are to be notified only of those acts enumerated in §2. In this case, the court should perhaps inform the party that the notifications are a requirement of the legal process, and not an attempt of the court to disregard the wishes of the party.

4. A person who is declared absent from trial in accord with Arts. 138-142, receives only the decree of the formulation of the doubt and the definitive sentence. This category would include those persons who answer the citation of the court, but who do so only to indicate that they wish nothing to do with the nullity process. This happens, for instance, when non-Catholic persons are cited for trial. They may wish to communicate with the court only to inform the judge that his authority over them is not recognized.

That having been said, a great deal of pastoral sensitivity is called for with regard to those persons who insist that the court contact them no further. Often such persons will respond to a citation in anger simply because of the resentment they still experience regarding the failure of the marriage. The person will demand that the court refrain from further communication for this reason alone. Sensitivity to this dilemma might lead a court to determine that the party should, in fact, be notified of the outcome of the cause, most especially if it results in a declaration of nullity. The outcome might benefit the party in the future should the party wish to make use of the right to marry.

5. It is self-evident that a party who cannot be located does not receive any decrees or communications from the court. This would not necessarily be the case, however, if the location of the respondent was originally known to the court, but changed during the course of the trial. If the respondent is represented by a procurator, the procurator is still to receive the required notifications even if the new location of the respondent is unknown.

CHAPTER III

CAPUT III

THE FORMULATION OF THE DOUBT

DE FORMULA DUBII

Article 135

Formulation of the Doubt

Art. 135 – § 1. When fifteen days

Art. 135 – § 1. *Transacto termino*

have passed from the communication of the decree of citation, the *praeses* or *ponens*, unless one or another of the parties or the defender of the bond has requested a session for the determination of the formulation of the doubt, is to set by his decree within ten days the formulation of the doubt or doubts, taken from the petitions and responses of the parties (cf. can. 1677, § 2).

§ 2. The petitions and responses of the parties, in addition to the introductory *libellus*, can be expressed either in the response to the citation or in declarations made orally before the judge (cf. can. 1513, §§ 1-2).

§ 3. The formulation of the doubt must determine by which ground or grounds the validity of the marriage is being challenged (cf. Can. 1677, §3).

§ 4. The decree of the *praeses* or *ponens* is to be communicated to the parties, who, unless they have already agreed to it, can have recourse to the college within ten days to have it changed; the question however is to be decided *expeditissime* by the decree of the college itself (cf. can. 1513, §3).

quindecim dierum a notificatione decreti citationis, praeses vel ponens, nisi alterutra pars vel defensor vinculi sessionem ad formulam dubii statuendam petierit, intra decem dies ex partium petitionibus et responsionibus formulam dubii vel dubiorum decreto suo ex officio statuat (cf. can. 1677, § 2).

§ 2. *Partium petitiones responsionesque, praeterquam in libello causae introductorio, possunt vel in responsione ad citationem exprimi vel in declarationibus ore coram iudice factis (cf. can. 1513, §§1-2).*

§ 3. *Formula dubii determinare debet quo capite vel quibus capitibus nuptiarum validitas impugnetur (cf. can. 1677, § 3).*

§ 4. *Decretum praesidis vel ponentis partibus notificandum ponens est; quae nisi iam consenserint, possunt intra decem dies ad collegium recurrere, ut mutetur; quaestio autem expeditissime ipsius collegii decreto dirimenda est (cf. can. 1513, § 3).*

1. The usual phrases employed by the code to express the joinder of issues, *contestatio litis* and *concordatio dubiorum*, are rendered in the Instruction by use of the phrase *formulam dubii vel dubiorum statuere*, the formulation of the doubt or the determination of the doubts. The Instruction uses both phrases interchangeably, without regard to whether or not there is more than one doubt in question. The wording of the Instruction is more suitable for marriage nullity processes than true contentious trials inasmuch as the former do not concern a true legal dispute (lawsuit) as is technically implied by the concept of a trial. Instead, marriage nullity trials concern the declaration of a person's legal status, a matter that both parties need not be interested in pursuing, but whose outcome does affect the status of both parties equally.

2. The formulation of the doubt constitutes the binding definition of the object of the trial. It may be changed only under exceptional circumstances. The trial is to treat that question only, the definitive sentence is to be issued in response to it, and the sentence is to be written in light of the doubt initially formulated.
3. The formulation of the doubt is a decision of the *praeses* or the *ponens* (or the sole judge as the case may be). The decision is to be issued in the form of a decree. The decree is merely procedural in nature, and so not bound by the norm of Art. 261 to offer the reasons for its disposition. However, §4 of the Instruction provides a special, limited means of challenging the decree that determines the formulation of the doubt. The decree may be modified only in accord with the provisions of Art. 136.
4. The basis for the formulation of the doubt is the assertion of the petitioner stated in the introductory *libellus* (in terms of Art. 116 §1, 2°), and the response of the non petitioning party after the notification of the citation (*citatio*) in accord with Art. 126 §1.

The request of the petitioner, expressed through the introductory *libellus*, is decisive for the formulation of the doubt. The petitioner requests the intervention of a judge, proposes a ground for the nullity of the marriage, and presents relevant facts and circumstances that support it. At this stage in the trial, the non petitioning party has little influence over the formulation of the doubt since he is not the one presenting the claim of the nullity of the marriage. However, the non petitioning party has the chance to influence the proper determination of the formulation of the doubt by use of the right to offer an opinion regarding it following the notification of the citation. He or she may also take recourse against the formulation. As is always the case, unnecessary tensions between the parties and excessive delays in the trial should always be avoided.

5. The process for the determination of the formulation of the doubt is this. Fifteen days following the notification of the decree of citation, the judge has up to ten further days to determine the formulation of the doubt *ex officio* by a new decree. This is so unless one of the parties has requested a session before the court for the purpose of formulating the doubt.
6. The code no longer includes the provision of Art. 89 §4 *PM*, allowing for a party to declare either personally or in writing his desire to leave the determination of the formulation of the doubt to the justice of the court. All the same, such a declaration is not excluded by the current law. The Instruction refers to it implicitly in Art. 134 §2. If the parties remain silent as to the formulation of the doubt proposed by the judge, he can determine the formulation *ex officio* (according to Art. 127 §2). The judge can also require the

parties to express themselves in writing regarding the proposed doubt(s) or allow them to entrust themselves to the justice of the court. In this way, if he later establishes the formulation of the doubt according to this proposed formula, the consent of the parties to it (in terms of §4) can be presumed to have already been given.

7. The response of the parties can be given in the reply to the judge's proposal of the formulation that accompanies the decree of citation. The introductory petition can serve in place of a statement from the petitioner if the proposed formulation is acceptable to the petitioner. Finally, the parties can offer their opinions to the judge orally. This is foreseen especially if the judge has decreed in accord with Art. 126 §1 that the parties come together to agree on the formulation of the doubt. He can order this either *ex officio* or at the request of one of the parties or of the defender of the bond (§1).
8. According to §3, the formulation of the doubt must clearly indicate by which ground or grounds the validity of the marriage is being challenged; that is, what ground or grounds will be decided during the course of the trial. The formulation of the doubt does not have to agree with the grounds that the petitioner originally proffered as the legal basis for impugning the marriage.
9. A cause for action in marriage nullity processes is the ground of marriage nullity asserted. The ground adduced must be based on a legal norm (of the code) related to the personal circumstances surrounding the spouses and the marriage being challenged. The personal circumstances speak to the facts that support the legal basis challenging the marriage. The legal norm chosen to express the ground of nullity relates to the possible nullifying effect of the personal circumstances.

Inclusion of the personal circumstances cannot be foregone. A doubt formulated in this way, "whether the marriage is null based on c. 1101 §2 *CIC*," in no way indicates whether it intends total simulation, an exclusion of indissolubility or another type of partial simulation. A basis of the cause of action, then, is the indication of personal circumstances that have legal relevance such that they can be formulated in a typical manner (exclusion of indissolubility, or some similar way). The indication of a legal norm, or canon, can be foregone if no uncertainty in the formulation would result. The formulation, "exclusion of indissolubility," is in itself sufficiently clear. It is not necessary to add, "based on c. 1101 §2." On the other hand, a formulation of the doubt expressed as "the infidelity of the other partner" does not indicate sufficiently whether the trial should address simulation according to c. 1101 §2 or an incapacity to assume an essential obligation of marriage (fidelity) according to c. 1095, 3°.

10. According to Art. 130, the decree determining the formulation of the doubt must

be communicated to the parties.

11. The parties may lodge a complaint against the decree of the judge if they have not yet agreed to the determination of the formulation of the doubt. This counts as well if the parties have to this point only responded in writing or if the decree was issued in their presence, but without the parties having had an opportunity to express themselves regarding it. The agreement of the parties referred to in §4 is presumed to have been given if the parties have remitted themselves to the justice of the court.
12. The time limit for lodging a challenge is ten days. The purpose of the challenge is to change the formulation of the doubt. The college is to decide the matter. No further challenge of the outcome is possible. The challenge is to be decided *expeditissime*, which, according to Art. 280, §1, 5°, means it is not open to further appeal. However, according to Art. 136 the possibility still exists for a party to request modification of the formulation at a later stage of the trial.

Article 136

Modification of the Formulation of the Doubt

Art. 136 – Once the formulation of the doubt has been set, it cannot be validly changed unless by a new decree, for a grave reason, at the request of a party, with the other party and the defender of the bond having been heard and their reasons considered (cf. can. 1514).

Art. 136 – Formula dubii semel statuta mutari valide nequit, nisi novo decreto, ex gravi causa, ad instantiam partis, auditis altera parte et defensore vinculi eorumque rationibus perpensis (cf. can. 1514).

1. A modification of the formulation of the doubt set pursuant to Art. 135 can take place only by a decree of the judge. The one authorized to issue such a decree is the judge assigned the duty of determining the formulation of the doubt; that is, the *praeses* or *ponens* of the college, or the sole judge as the case may be.

Any modification to the formulation must take place by decree. Further, the decree must be recorded in the acts and signed by a judge and notary. Article 136 expressly stipulates that if the modification does not occur in this way then the decree is invalid, and so without effect.

2. The modification of the formulation of the doubt can be initiated by a request of the parties and (according to Art. 59) by the defender of the bond and the promoter of justice (if one is participating in the trial). The defender would make such a request in order to assure that the doubt is formulated as best as possible. However, the defender cannot petition for the addition of a ground. This would go against the notion of his position as the official standing in

defense of the bond itself. The promoter of justice, on the other hand, may petition for the addition of a ground if the conditions necessary for his or her intervention are met.

3. The non petitioning party, the promoter of justice and the defender of the bond (see Art. 59, 1^o) must be heard regarding the matter and their rejoinders, if they should offer any, must be considered by the judge. The judge should respond in the decree to substantial objections raised by the respondent or defender of the bond. Even if no objections are raised, the fact that they were heard should be indicated in the acts. Based on the wording of the text of Art. 136, the hearing of the parties is necessary for the validity of the decree.
4. The law does not foresee modification of the formulation of the doubt taking place *ex officio*, not even in marriage nullity trials where judicial discretion is given more breadth than in other types of trials. Article 136 recommends that should a judge discover during the instruction of the cause that the grounds have been set in such a way that the sentence based on them will neither discover the truth of the matter nor serve the cause of justice he is to suggest that one of the parties request a modification of the grounds. He may also suggest this to the defender of the bond or promoter of justice, if the promoter is participating in the process.
5. The current article requires a grave cause, or *gravis causa* for the modification of the formulation. As is always the case with the use of this phrase in canon law, it involves an indeterminate legal concept which requires an interpretation on a case by case basis as it is applied. The interpretation must take account of the interests of those participating in the trial in maintaining the formulation of the doubt as originally set and the interests of the one requesting the modification. A grave cause always arises if the ultimate purpose of the trial, to discover the truth regarding the status of the marriage, cannot be achieved without a modification to the original formulation of the doubt.
6. Even as the parties are to be heard before the decision is made regarding modification of the doubt, they may not obstruct the modification by means of an exception. Nor can they compel a modification to the formulation by lodging a request for one. The question arises, then, as to whether or not there is a legal remedy available to oppose the modification of the formulation of the doubt.

Article 135 §4 allows a party to take recourse to the collegial tribunal against the decree that initially set the formulation of the doubt. The college is bound to decide the matter *expeditissime*. This means no further appeal of the decision is possible. If one were to apply this procedure analogously to the question of recourse against a change in the formulation of the doubt, then the parties would be able to approach the college in hopes of receiving relief against the decree

of modification.

7. There are several reasons to suggest that modification of the formulation of the doubt is prudent when justified. If a party is not successful in having the judge modify the formulation of the doubt, the party might be compelled to lodge a new petition and so have another trial begin. The problem here is that the witnesses might not be prepared to undergo another round of interrogations. This not only creates needless procedural activity, but it also hinders the exercise of the party's rights. In the extreme case where a judge illegitimately set the formulation of the doubt and the college is not prepared to modify it, the only solution available to the petitioner seems to be renunciation of the cause and submission of a new petition.

Article 137

Art. 137 – After ten days from the communication of the decree, if the parties have not offered any opposition, the *praeses* or *ponens* is to order by a new decree the instruction of the cause (can. 1677, §4).

Ordering the Instruction of the Cause

Art. 137 – Post decem dies a notificatione decreti, si partes nihil opposuerint, praeses vel ponens novo decreto causae instructionem disponat (can. 1677, § 4).

1. In marriage nullity trials, the *praeses* or the *ponens* is expressly called upon to order the instruction of the cause. They do this first and foremost by requiring the parties to submit proofs, if this has not yet happened, or to further specify and amplify the proofs proffered in the introductory *libellus*.
2. The order to begin the instruction of the cause should also determine what proofs are to be collected, and most especially what witnesses are to be heard. However, this is not the last decision to be made regarding what proofs are to be collected. In that respect, the requirement of Art. 137 is not necessarily fulfilled by the issuance of only one merely procedural decree. The decree (and any others like it that might later be issued) is to be communicated to the parties since, according to Art. 199, the names of the witnesses are to be made known to the parties prior to their being questioned by the court. This allows for exceptions against the hearing of certain witnesses to be lodged prior to the taking of their deposition. It also permits for the preparation of a proper defense inasmuch as the other party will be aware from the start of what proofs are to be collected and, at least in summary, to establish what facts.
3. The instruction of the cause should take place according to the criteria of efficiency and expediency. Based on the principle that a judge is to proceed *ex officio* when justice demands it (Art. 71 §1), he should already at this stage